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The State of Gender Justice in the Arab Region

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Executive Summary

Several regional and international bodies have identified gender justice as a crucial area for development, both globally and in the Arab region. This research aims to answer the call of the 2030 Sustainable Development Agenda established by the United Nations General Assembly in 2015, as well as the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Beijing Declaration and Platform for Action (1995), which identify gender justice and equality as crucial areas for development globally. It applies the principles set out in the Economic and Social Commission for Western Asia's (ESCWA) seventh session on the Committee on Women and the subsequent Muscat Declaration (2016), which affirms the region's commitment to the promotion of gender justice and expands the definition of the term, beyond merely eliminating gender-based discrimination, to include mechanisms for accountability and redress for the disparate gaps between the sexes. The report also builds upon the resolutions adopted at the twenty-eighth session of ESCWA in Tunis (2014).

The introduction outlines the study's conceptual framework, presents its research methodology and core definitions, defines the terms utilized throughout the research, identifies its limitations, and grounds it within the existing literature. Chapter 1 provides a contextualized analysis of the research, informed by the historical background of the evolution of gender justice in Arab countries. It highlights the fact that discriminatory justice systems are neither inherent nor limited to Muslim legal systems.

The current justice systems in the Arab world are also informed by pre-Islamic traditions, the rise of Islam, and European colonial interventions. Amid these varying sources of law, women's role has been in perpetual flux, at times being advanced relative to other regions, and at other times restricted. The current legal climate shows a similar conflict between conservative, patriarchal Islamists on one hand, and progressive female and youth-driven reforms on the other. This chapter also explores barriers to gender justice for women through the socio-cultural idiosyncrasies that shape the region, including a patriarchal influence on social and moral codes. This analysis highlights the social realities that must inform any recommendation regarding gender justice reform.

Chapter 2 further develops this contextual analysis by reviewing national justice systems' approaches to gender justice. Its primary focus is to examine the history and dimensions of domestic justice systems that have affected their conception of gender justice at the level of constitutions and national legislation. This chapter provides insight into the state of gender justice through a legal or de jure perspective. It also assesses the compatibility and conformity of national legislation to countries' international treaty obligations. It weighs the approaches in accord with a universal versus cultural relativist analysis, to determine whether formalistic implementation of legal reforms or more gradual change aligned with social realities is best suited. This chapter provides research context and advances key

recommendations by identifying gaps in the national legislation to ensure gender justice.

This chapter concludes that there is, throughout the Arab region, a discrepancy between States' international obligations and their domestic legislation and implementation. Thus, there is a need for governments to undertake a systematic review of legislation to eliminate all forms of discrimination in the legal system, including contradictory provisions in national laws, and ensure that international norms connected to gender equality are fully embedded in the national legislative framework. They also need to set up effective mechanisms to monitor and improve their commitment to the implementation of international norms.

Next, chapter 3 maps the availability of institutional mechanisms at the national level that allow females to seek institutional guarantees and redress. It also discusses the interplay of formal and informal justice systems in several Arab countries, as well as the crucial role of legal aid availability, access, and utilization by women in the region. The mapping in this chapter guides the research by ascertaining the limitations of the formal process of justice administration, and considering how it can be improved upon in the area of gender justice.

This chapter's fundamental contribution is to identify ways in which women can make use of the protective principles and provisions established in the national legislation and ensure the accountability of State actors. In nations where the accountability process is robust, it provides a resource for developing recommendations for improvement. In nations in which the accountability measures available to women are scarce, it flags the mechanisms needed to ensure that their legal rights are enforced, and identifies the shortcomings of

systems in which the law on the books does not translate into actual practice. The following chapter will further develop this framework of de jure and de facto human rights protections and highlight the gaps that exist for women in the region, by analyzing the policies and strategies that inform the way laws are applied.

Effective institutions require sufficient checks and balances, resources and accountability mechanisms. Thus, the purveyors of independent monitoring mechanisms, such as gender equality or human rights commissions, have the responsibility to provide independent recourse to complaints related to gender-based discrimination and oversee the implementation of the government's gender equality commitments.

Chapter 4 examines the various policies and strategies identified by the Gender Justice Cross-Country Survey and to what extent they instate de facto gender justice. It also considers the general approaches countries have adopted towards that goal. Like the two previous chapters, its major contribution to the research question is that of identifying gaps in the executive framework surrounding gender justice, in this case specifically at the policy-level. This chapter confirms that action is required on three levels in the Arab region to enhance policy and legislation, notably by eliminating discriminatory provisions in national policies, and by mainstreaming gender into policy making processes. To ensure its implementation, however, any action along these lines must be supported by firm accountability measures, anchored within existing institutional frameworks.

Finally, chapter 5 offers concrete and specific recommendations to address the gaps identified in the legislation. Specifically, this report calls on States to create an enabling legislative

environment, enhance the capabilities of accountability institutions, and foster an enabling socio-cultural environment. Legislatively, adopting and adhering to international frameworks, and amending national and local legislation to conform to such frameworks, would provide a solid foundation from which to build gender justice mechanisms and foster a culture that condemns gender-based discrimination. At the institutional level, accountability is required to ensure that gender justice is realized in practice and not just on paper. This includes, among other things,

enhancing transparency and accessibility, ensuring institutional independence, boosting institutional capabilities, providing sufficient funding, collecting data and increasing gender parity. Within the socio-cultural sphere, the Rule of Law must be respected, including when it concerns women's access to and understanding of judicial and legal mechanisms. Lastly, all actors, governmental and non-governmental, must work together to fully ensure that gender justice is realized, and that this transformation truly takes root at the national and local levels.

Introduction

Women in the Arab region are, on average, disadvantaged socially, economically, politically and legally, relative to women globally and certainly relative to those in nations of similar economic standing.¹ With the uprisings of 2011 and other developments in the region, there has been a rise in reforms concerning women's role in society. However, without meaningful implementation, and given the social realities of the region, these reforms have not been sufficient to approach actual equality and reduce gender gaps.²

This study contributes to the general work of the United Nations Economic and Social Commission for Western Asia (ESCWA) to support economic and social development and identify best State practices, by examining the progress made towards addressing and eliminating discrimination against women in Arab countries, with a focus on ESCWA countries.³ Its scope spans the years 2004 to 2017, and highlights the significant legislative, political and social changes that have taken place during this timeframe. Its primary research objective is to determine how an environment can be developed – at the legal, policy and social levels – that would be conducive to true gender justice.

ESCWA, as part of the larger United Nations framework, is empowered and directed to work towards the Sustainable Development Goals (SDGs) adopted in September 2015. This study supports ESCWA's efforts to advance the SDGs in the region and in collaboration with other

regional programs, specifically with regard to SDG5 on gender equality. It also answers the call of the Muscat Declaration (2016), which expands the concept of gender equality to include accountability measures that would ensure the presence of effective mechanisms to eliminate discrimination.⁴ Using a de jure versus de facto approach, the study focuses on existing legal and policy mechanisms in the region, accountability mechanisms that enforce legal obligations, and social and cultural dynamics affecting their implementation, to determine the current state of gender equality in the region and the conditions and practices that have witnessed successful development.

This research builds on the body of work found in prior ESCWA reports, including Equality in the New Global Agenda: Integrating a Gender Perspective in the Implementation of Sustainable Development Goals 1 and 2 in the Arab Region,⁵ Tracking Various Development Plans and Women Strategies within the Framework of the SDGs,⁶ Status of Women and Gender Equality in the Arab Region (Beijing+20),⁷ and Does Gender Justice Matter?.⁸ It provides additional information about new developments that have occurred since their publication. It also expands existing ESCWA research by tackling the question of whether to promote a formalistic application of the laws and institutional policies or a more gradual implementation approach, consistent with social norms, based on an analysis of universalist and cultural relativist approaches.

Moreover, this study answers the Beirut Call to Action, adopted during the August 2016 conference on "Prioritizing Women, Peace and Security on the Arab Agenda", which prioritizes gender justice both in times of conflict and of peace.⁹ It directly addresses the first recommendation, to expand research on the complex sociopolitical dynamics between men and women. It also addresses the third and fourth recommendations, which seek information on the gaps in institutional responsibility and the role of institutions in affecting women's role in society, as well as the ninth recommendation, encouraging legislative and institutional reforms that facilitate women's decision-making role in society and peacemaking operations.¹⁰ To this end, the study pays particular attention to the effects of conflict on gender equality, gender justice, and access to justice.

Research methodology

The research methodology adopts a human rights-based model, in which human rights standards and norms serve as qualitative parameters for measuring access to justice outcomes vis-à-vis women. As discussed above, it considers data with regards to both the de jure aspect, relating to the written law, and the de facto aspect, relating to the law in practice. Thus, it seeks to identify shortcomings in legislation that hinder the full realization of international standards, as well as the inadequate implementation of the laws in question. The research focuses on reforms carried out over the past decade, beginning in 2004 and continuing through 2017. It is structured around this period in order to reflect on an era of substantial change for several member States vis-à-vis conceptions of gender justice. Several countries have established new or interim constitutions, many of them containing new provisions of parity between the sexes. These include Egypt between

2011 and 2014, Iraq in 2005, Libya in 2011, Morocco in 2011, Qatar in 2004, Sudan in 2005, and Tunisia in 2011. Oman, Qatar, and the United Arab Emirates became States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2006, 2009, and 2004, respectively. Morocco and Tunisia both lifted their reservations to CEDAW in 2008 and 2014, and the State of Palestine acceded to CEDAW without reservation in 2014.

This report is based on a desk study employing a literature review of scholarly, legal, governmental, development and policy publications, as well as relevant legislation. It utilizes both qualitative and quantitative data to get a complete picture of legislation and how it is applied. In recognition of the importance of directly observed and verifiable information, the research refers to empirical studies conducted by reputable sources, whenever possible.

This research builds on notions of gender justice that have become well established in the existing body of literature. The field of gender justice has repeatedly found that women are subject to discrimination and diminished access to justice relative to their male counterparts.¹¹ Several authors have identified the cyclical relationship between poverty, illiteracy and legal status, with regard to access to and participation in legal and judicial processes.¹² Thus, women, especially in the Arab region, are economically and socially disadvantaged, which in turn distances them from the legal system and limits their access to existing justice mechanisms.¹³ In addition, studies have shown that the unequal treatment of women is largely due to direct discrimination and bias.¹⁴

The existing literature on the subject reflects conflicting opinions regarding the power dynamics at play in creating these disparities. Several researchers have identified the apparent

clash between feminist and Islamist groups, although this issue is not as black and white as some may imply.¹⁵ For the purposes of this study, the research will build on the findings of El Awady, who asserts that Islam must be a central focus in any effort to address gender justice in the Arab region.¹⁶ She posits that while many traditionalist interpretations of Islam are male-centric and promote patriarchal bias, it can also be harnessed as a source of support for gender justice.¹⁷ The role of Islam can be seen in some of the region's legislation, particularly family codes (also known as personal status codes); in the factors affecting judicial discretion in both formal and informal justice mechanisms; and in the socio-cultural dynamics in which this research is grounded.

Another area of debate in the existing literature that features prominently in this research is the role of the legal system and formal reforms relative to social undercurrents. Critical legal studies scholarship questions the law's ability to facilitate social change, arguing that the relationship is actually inverted, i.e. that social realities inform the law.¹⁸ Conversely, those who take the legal formalism standpoint are particularly interested in whether law reform can have the impact promised by legal reformers and hoped for by rights claimants.¹⁹ Initially, women's rights research had focused rather uncritically on the means and methods needed to achieve a particular end. The scholarship was largely doctrinal in nature and concerned itself predominantly with legal texts and legal interpretations. This study seeks to reconcile these seemingly contradictory approaches by recognizing the challenges of creating genuine and sustained social change through legal reform, and then demonstrating how progressive reform, when implemented appropriately, has the potential to effect social change.²⁰ This analysis necessarily addresses another contentious set of theoretical perspectives: universalism and cultural relativism in the context of human rights. The

former states that human rights are universal and should be applied identically to all human beings. The latter suggests that human rights are culturally dependent, and that no moral principles apply perfectly across all cultures.²¹

There is limited knowledge in the region concerning gender justice.²² ESCWA has previously identified several barriers to women's equality, which will be expanded upon in this study, including the availability and functioning of laws and institutions, legal literacy and the empowerment of women, as well as social norms.²³ The existing literature emphasizes how the notion of access to justice has remained gender-blind, partly because of conservative and traditional institutions that reinforce men's authority and control over women under the pretext of protecting the sanctity of the family.²⁴ Bahdi focuses on women's access to justice in the Arab region and concludes that, if laws are to benefit women, then strategies need to be developed to address the barriers to women's access to justice in their substantive, procedural and symbolic forms. Lack of confidence in governments and legal systems prevails, especially where existing accountability systems are weak and perceived as biased against women.²⁵ Mir-Hosseini questions the notion that a traditional interpretation is inherent in Islam and is being properly applied in the Arab region. She argues that justice and equality are in fact intrinsic values in Islam and thus that the denial of women's full equality is not in line with Islamic texts. Nor, she states, are the current Muslim family laws consistent with modern egalitarian conceptions of justice. Accordingly, she finds that laws on the books enforcing a second class status for women are literally man-made and can be changed.²⁶ This study builds on her finding that the socio-cultural norms that keep women in a position of subordination and allow gender-based discrimination to fester are not unchallengeable or imbued with some inherent authority.²⁷

The weakness – and, in many cases, the complete lack – of accountability mechanisms is central to the absence of gender justice in the Arab region. Accountability mechanisms hold governments to certain standards, and essentially promote transparency and oversight.²⁸ They come in many forms, such as checks and balances within the government; independent national agencies that review policy, legislation, judicial decisions and enforcement, as well as the general human rights situation; and supranational bodies. They are further varied in their ability to hold violators accountable – whereas some accountability mechanisms rely primarily on intangibles, like diplomatic pressure, some may have judicial, or other, authority to punish violators and change practices.²⁹ Joseph argues that the Arab region suffers from poor accountability mechanisms, which should govern the relationship between citizens and the State. She describes Arab constitutions as appearing equitable on the surface but in reality reinforcing discriminatory practices and ignoring the specific needs of women to remedy existing inequality. Furthermore, most Arab constitutions identify the family, rather than the individual, as the basic unit of society, which leaves women dependent on traditional patriarchal structures for their very personhood.³⁰ Family laws are, in some ways, a product of these constitutions.

Other research, across the region, finds a lack of capabilities and resources in the justice sector, backlogged court systems, and a lack of transparency that can lead to gender biases within the judicial system. While flaws in the democratic system and due process certainly affect access to justice for both men and women, women's socio-economic inequality may disproportionately cause them to feel the brunt of the costs of legal services and to lack awareness of their rights. Prettitore's analysis of comprehensive legal aid services in Jordan concludes that legal aid services – information,

counseling, and representation in court – can help marginalized groups such as women overcome the obstacles that prevent them from accessing and benefiting from justice institutions.³¹

Lastly, in addition to contributing to and seeking to find balance in the debates that characterize the literature in this field, this research also aims to fill certain gaps that have not been fully addressed in prior studies. Whereas many studies, particularly older studies, only focused on *de jure* gender justice, this study attempts to provide a more wide-ranging analysis of the situation in Arab countries.

It is important to note that this research is not comprehensive and, like all studies, is limited by both intentional choices to ensure clarity and reasonable parameters, as well as by factors beyond the control of researchers. This research discusses gender from a binary perspective, with an emphasis on women as a disadvantaged group. It is also temporally limited, to highlight the current legal culture in the region, which has undergone substantial changes both in the years preceding and following the Arab uprisings. Consequently, it does not cover the history of gender justice in the region in as much depth as other studies may choose to.

Meanwhile, this research was curbed by the unavailability of data in some countries. Across the 22 countries in the Arab region, including several of the 18 ESCWA member States, there is substantial disparity in the amount of relevant data available. In some cases, this is attributable to the paucity of research efforts or statistics gathered; in other cases, the information may not be available outside of the nations under review or be published online. Accordingly, throughout this research, sources were cross-checked to ensure veracity.

1. An Operational Framework for Gender Justice

A. Historical background of gender justice in the Arab region

The Arab region, though representing a diverse group of nations with their own unique social, cultural and historical experiences, has certain shared commonalities.³² With the rise of Islam in the seventh century, Arabs moved from the Gulf region, through the Middle East and Asia, and then swept across North Africa.³³ Arab culture, including its language and religion, has been a mainstay and a powerful uniting element ever since. However, the region has also been shaped by the Ottoman Empire and by imperialist European colonialism.³⁴ This experience of colonialism is both a uniting factor and a point of separation among Arab countries, due to the variations of European influences involved.³⁵ The Maghreb (North Africa) was largely influenced by French and, to a lesser degree, Spanish imperialism; Italy held a stake in Libya; and the Middle East and Gulf nations were subjected to British, French and Ottoman rule.³⁶ In the twentieth and twenty-first centuries, military occupation also left a serious imprint, particularly in the case of Palestine (and Iraq to a lesser degree).

Each of these historical interventions has shaped legal frameworks in the region. Thus, those legal frameworks still reflect some traditional notions, with Islam serving as a reference point and European influences structuring some of the national lines and various dynamics of the justice system.³⁷

Colonial influences can be seen in the general application of civil or common law systems (most evident in penal codes), as well as in specific ideologies regarding gender, sexuality and morality. In recent years, the Arab region has been rocked by major reforms and uprisings. While some attribute the progressive ideals associated with these changes to Western influence, there is also a uniquely regional undercurrent to those youth-driven reforms.³⁸ Meanwhile, this shift into a new era has had a distinct effect on women's rights and on both the role and conception of gender justice in the region. The analysis of how this context has contributed to gender justice as it currently exists can provide a useful backdrop for recommendations to make further progress.

Despite modern conceptions of Islam as oppressive when it comes to women's rights, its original introduction afforded women greater rights than in other cultures of the region at the time.³⁹ Women were granted the right to withhold consent to marriage, men were to an extent prohibited from violence against their wives, and women were permitted to divorce a husband for a valid cause.⁴⁰ Despite these improvements, certain interpretations of the *Quran* have allowed for discriminatory practices to continue, such as polygamy and underage marriage.⁴¹ In some parts of the Arab region, Islam has mixed with local tribal custom. Although most of these tribal groups eventually embraced Islam, a unique hybrid emerged and certain tribal justice mechanisms and ideals

remained. Today, these hybrid systems are among the most rigid in their patriarchal interpretations of Islam.⁴²

Additionally, some scholars point to the region's colonial history as a source of discriminatory animus against women.⁴³ In order to gain power over the Arab population, the colonial government assumed power over Arab men and, in exchange, the men were granted absolute power over women and children.⁴⁴ This was enforced by rewarding those who took the deal, particularly religious leaders.⁴⁵ In some nations, such as Egypt, colonial rule directly informed personal status laws and other legal codes – several were even drafted by French lawyers.⁴⁶

Following World War II, many colonial powers withdrew from the region. In an era of national liberation movements, several nations made efforts to return to their cultural and legal traditions. Monarchies were reinstated, in some cases, and religion was re-centered in political, legal and social life. Holding fast to traditions and attempting to stand apart from Western influence led to stagnation in some countries. Ideals that were deemed "Western" were shunned in places such as Saudi Arabia, while others, such as Morocco, were more receptive to engaging with Europe as a useful partner in trade, humanitarian aid and some political matters.

After Arab States gained independence, many adopted legal, political and socioeconomic reforms that benefited women, in what was seen as a way for the State to "modernize". These efforts varied and were most commonly fostered under the banner of state feminism. Most reforms affected women's lives in the public sphere, rather than the private sphere (except for Tunisia's reform of the personal status law in 1956).⁴⁷ Women's rights

activism in the region was limited to following the State's mandate during these decades. By the 1970s, with the adoption of liberal economic policies often coupled with increasing poverty and instability in the region, it became clear that many States were unable to adequately provide for and protect their citizens. By many accounts, this contributed to the rise and increased power of political Islam, which in turn resulted in the regression of women's rights.⁴⁸ In response, independent women's movements developed and gender justice activism surfaced, strengthened by the growing international women's movement and the several United Nations-sponsored global meetings.⁴⁹ More recently, gender justice gains have been realized as a result of the growing strength of women's movements and organizations in the region, and their engagement with and challenge to the State.

In 2011, a series of uprisings began in the Arab region with protests in Tunisia. The revolutionary wave spread through many nations, with demands for the realization of social and economic rights, and greater representation within government. As a result, several leaders were removed from power. In several States, ranging from Tunisia to Oman, Mauritania to Morocco, and the Syrian Arab Republic to Egypt, new constitutions were established or old ones amended. The revolution was largely youth-led, addressing many of the challenges faced by young people as a result of the youth bulge. Young women were also quite active in these revolutions. For example, women organized and attended sit-ins in Egypt and took part in the removal of the Zine El-Abidine Ben Ali regime in Tunisia.⁵⁰ The attendant feminist discourse focused on issues of empowerment, gender theory and equality.⁵¹ One researcher articulated the goals of feminist discourse as increasing female participation in political activities, empowering

them to challenge gender roles, and creating networks among women to increase awareness of the need for change.⁵²

With the fall of their regimes, many nations faced setbacks as Islamist groups gained greater political power.⁵³ Although women played a strong role in revolutionary activism, a heavy toll was exacted. In Egypt, female protesters were subject to sexual assault, rape, and "virginity tests" by the Supreme Council of the Armed Forces.⁵⁴ Whereas survivors of sexual violence in the Arab region usually do not come forward out of shame and social stigma, in this case three women filed charges.⁵⁵ And while the domestic military court acquitted the perpetrators, they chose to continue pursuing the case at a supranational level.⁵⁶ Such a situation shows that, while turning to law is not a panacea for women, it is seen as an opportunity to obtain justice. Furthermore, it demonstrates why it is important for citizens to have access to multiple legal options to hold perpetrators, whether they are the State, the military or ordinary citizens, to account.

Conflict and government transition have had a significant hand in shaping notions and experiences of gender justice. The Arab region has been the theater of many conflicts and violent revolutions throughout history. It saw its share of violence and destruction during both World Wars; experienced regional conflicts, such as those between Yemen and Saudi Arabia in the 1930s and the Gulf War; lived through civil unrest between different religious and ethnic groups; and witnessed revolutions and regime changes.⁵⁷ Even in the present day, several nations are still in transitional periods of government, following political uprisings and, in the case of Sudan, the secession of South Sudan. The Israeli-Palestinian conflict continues to affect not only Israel and Palestine, but the security of the region as a whole, including

through the creation of numerous refugees and internally displaced persons.⁵⁸ The conflict in Yemen (from 2015)⁵⁹ as well as the Syrian conflict (from 2011) mark another notable situation that currently impacts all aspects of social and political life, including gender justice,⁶⁰ as does the rise of the Islamic State in Iraq and the Levant (ISIL) (from 2014) and its subsequent takeover of Mosul and surrounding areas.⁶¹

One well documented effect of conflict on gender justice is the increased rate of sexual and gender-based violence (GBV).⁶² Rape is often used as a weapon of war, as has recently been documented in Iraq and Syria.⁶³ The prevalence of sexual violence in armed conflict has recently received more international attention and, as a result, post-conflict accountability mechanisms are being empowered to remedy these harms.⁶⁴ The ad hoc courts of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have listed rape as a crime against humanity. The Rome Statute (1998), which established the International Criminal Court, was even more explicit in the types of sexual and gender-based harms that constitute war crimes and crimes against humanity.⁶⁵ The Women, Peace and Security Agenda (Security Council resolution 1325 and others) also focuses on and seeks to redress sexual and gender-based harms committed against women and girls during conflict.

Conflict also impacts other forms of violence, and studies have found that in situations of armed conflict and displacement, the rate of domestic violence increases.⁶⁶ Moreover, along with structural discrimination, women are often silenced by these acts of violence and discrimination, which in turn prevents them from participating in and shaping the post-conflict peacemaking and reconstruction

process. The United Nations Development Programme (UNDP) notes that, while direct violence and animus rightly gets attention, the barriers to justice for women in conflict, as well as in times of peace, are linked to sociopolitical attitudes, economic and social opportunities, as well as legislative and policy practices. Inherent to political instability is the decreased ability to use judicial, legislative and government enforcement mechanisms to realize one's rights.

B. Analytical framework

This study employs the definition of "gender justice" introduced by Anne Marie Goetz⁶⁷ and previously adopted by ESCWA,⁶⁸ as the creation of gender equality through the termination of inequality between men and women, as well as through redress for existing inequalities. It is thus inextricably linked to the concept of gender equality, which is achieved when men and women enjoy the same rights and opportunities across all sectors of society, including access to economic, social and political opportunities.⁶⁹ Gender justice is both a formal process and a substantive outcome.⁷⁰ The successful realization of gender justice relies on two elements: accountability and equality, in line with international and regional standards, notably those of CEDAW, the Beijing Platform for Action, the Women, Peace and Security Agenda, and the 2030 Agenda for Sustainable Development. The formal process of seeking gender justice focuses mainly on accountability, while the ultimate substantive outcome is achieving gender equality. This definition informs the research methodology, which considers the current state of gender justice through both a *de jure* and a *de facto* approach.

The research analyzes the ability of Arab States' legal frameworks to meet these requirements for gender justice through a tripartite

framework. States have an obligation to respect, an obligation to protect, and an obligation to fulfill legal standards to address discrimination against women.⁷¹ The notion of access to justice is crucial to the analysis of gender justice; it combines several pieces of the gender justice jigsaw puzzle, as both a structure that is subject to inequalities and one that has the capacity to provide redress and enforce legislative improvements to gender equality. UNDP has stated that access to justice includes the entire machinery of law making, law interpretation and application, and law enforcement. It further states that it must be defined by equitable and just outcomes.⁷² This report relies on the guidance of UNDP, as well as on knowledge of the formal and informal justice systems prevalent in the Arab region, to establish a working definition of access to justice. For the purpose of this research, access to justice is defined as "people's ability to solve disputes and reach adequate remedies for grievances" by using "formal or informal/traditional justice systems, governmental and non-governmental, judicial or non-judicial" means which are "in conformity with human rights principles and standards".⁷³

While the research primarily assesses States' obligations with regard to gender justice, it must be noted that legislation, policies and judicial systems do not exist in isolation. Thus, any meaningful recommendations on gender justice must also consider those elements within the social and cultural context in which the State operates. This research examines the dichotomy between cultural relativism and universal human rights to balance black letter law with the context in which it exists. Universalism, as the name suggests, is the school of thought that holds that human rights are universal and should apply to every human being. It is criticized as being overly simplistic and failing to take into account the cultural and social backdrop that informs the

application of human rights across contexts; it is not feasible to apply rights in exactly the same way across the broad and diverse corners of the world.⁷⁴ Moreover, strict universalism may not account for the legal pluralism that exists in the Arab region. Whereas universalism typically focuses strictly on formal justice systems, many women in the region rely on informal justice mechanisms, due to shortcomings, physical and cultural distance from the formal systems, and distrust of formal government-led judicial mechanisms. Accordingly, applying a strictly formal, universalist approach would leave many women divorced from the implementation of legal and judicial reforms.

Conversely, cultural relativists believe that human rights are culturally dependent, and that no all-encompassing moral principles apply perfectly across all cultures.⁷⁵ Some cultural relativists further argue that universal human rights, such as those codified in the Universal Declaration of Human Rights (1948) and other major United Nations conventions, impose so-called "Western ideals" and are the product of Western political history.⁷⁶ Donnelly distinguishes between strong cultural relativism, which holds that culture is the principal source of a moral code, and weak cultural relativism, which holds that culture may be an important source for a moral code. Weak cultural relativism has the potential to recognize, at the bare minimum, some basic universal human rights. Within these variations of relativism are hierarchies that debate "in the substance of lists of human rights, in the interpretation of individual rights, and in the form in which particular rights are implemented".⁷⁷ As a critique, cultural relativism is sometimes employed as a political tool to justify human rights abuses by a State against its citizens, including the denial of women's rights.⁷⁸

Most academics and professionals have concluded that neither theory can be applied in its strictest form. Rather, they should be taken together to ensure that all people are guaranteed basic human rights, but that in practice the existing framework is taken into account. Donnelly suggests that the two schools of thought are not irreconcilable opposites, but rather two extremes on the same spectrum that are both too radical; they are most effectively used when viewed on a continuum.⁷⁹ Other academics have defined the ideal as a "culturally-sensitive universalism" in which the basic units of identity, the self and the community, are rejected as opposites, substituted with a notion of self which incorporates social factors while still recognizing the individual as the core unit of rights holders.⁸⁰ According to Welchman, the international instruments of human rights can be used for the achievement of women's rights.⁸¹ Therefore, the analysis and recommendations here will adopt a moderate stance, recognizing both the universality of human dignity and the cultural norms that may affect the manner in which human rights law is implemented. It avoids judgments on State or culture as good or bad. Our integrated model argues that cultural relativism, if appropriately employed, should not conflict with foundational international human rights norms and practices.

C. Social barriers to gender justice

While much of the world contends with patriarchal structures that serve as barriers to gender justice, the Arab region continues to wrestle with "pure patriarchy", as well as more nuanced and structural versions. Many mistakenly attribute this to the presence of Islam as a majority religion in the region. Scholars argue that Islam originally provided women rights that did not exist in the region at the time

when the religion first arose. With the passage of time, however, patriarchal interpretations of the tenets of the religion restricted women's overall empowerment.⁸² It is this patriarchal outlook, which people associate with Islam, that gives gendered and discriminatory traditions and customs their potency and authority.

As Mir-Hosseini aptly puts it, "the daily lives of many Muslim women and their life choices are governed and shaped by a set of patriarchal beliefs and laws for which divine roots and mandates are claimed. Only the elite and the minority of highly educated women have the luxury of choice, of rejecting or challenging these beliefs and laws".⁸³ With this legacy, Arab countries seem split between those who emphasize the universality of human rights and those who call for a more culturally specific, if not "authentic", approach to rights and freedoms.⁸⁴ It is this question that permeates Arab discussions on the enhancement of women's emancipation and, more generally, on women's role in the nation.

Other barriers include the urban-rural divide, which affects levels of poverty. According to World Bank indicators, in 2016, 35.49 per cent of the population of the Middle East and North Africa lives in rural areas,⁸⁵ where families generally tend to suffer from poverty at higher rates than their urban counterparts, a fact that also informs the culture of the region. This wealth disparity prevents many people from meeting the financial and temporal burden of accessing the judiciary, but it also defines gender and social norms in ways that can subvert the progressive intent of legislative and policy reforms. Poverty creates a cyclical relationship of illiteracy, unskilled and poorly paid labor, early entrance into the work force, and a tradition of early marriage, particularly in rural areas.⁸⁶ Urban and rural communities

are starkly divided with regard to numerous factors, from education levels to language; these factors impact access to justice, especially for the poor.

Here, it should be acknowledged that the manifold institutional facets of the demand side of access to dispute resolution, and the intersectionality of different layers that contribute to providing access to adjudication to women, are in a process of interplay, notably through the urban-rural divide that exists across the region.⁸⁷ It is important to acknowledge factors such as marital status, economic class, education level, and urban or rural locality, in order to ascertain how women interact with and are affected by patriarchy differently.⁸⁸ An intersectional analysis points to the need for understanding how intersecting identities transform women's experiences of justice (or the lack thereof).⁸⁹ Acknowledging these varying and intersecting identities can better inform a justice strategy.⁹⁰

Women's rights activists have raised concerns regarding cultural issues, and insist that legal awareness could empower women by equipping them with accurate information about their rights and the institutions they can turn to, using legal literacy and critical legal thinking about their role in society.⁹¹ Legal knowledge about women's rights and state institutions has the potential to affect cultural attitudes across Arab countries and facilitate access to justice.⁹² Another obstacle is that women lack confidence in the legal system's ability to protect their rights and provide their needs, hence the disinterest shown by some women in the region, especially in rural areas where the formal justice machinery is not easily available.⁹³ Furthermore, traditional gender biases and cultural values hinder the ability of women to claim their legal rights.

2. Gender Justice in National Legal Frameworks

This chapter identifies the existing national legislation in ESCWA countries with regard to gender justice, as either (a) establishing a de jure right to equality between men and women, (b) failing to acknowledge or protect certain crucial elements of equality, or (c) promoting unequal legal status. It considers national frameworks, including constitutions, as well as legislation governing elements of day-to-day life, such as family laws and labor laws. This serves to highlight specific aspects of the legal system that must be changed in order to realize gender justice. Analyzing these laws normally entails comparing them to the international standards that govern these fields. This necessarily begs the question of how best to implement the laws on the books. On one hand, some posit that implementation should be modified to reflect the social realities on the demand side, claiming that women in Arab countries are not yet ready for legal rights. On the other hand, distinct barriers on the supply side that stall and undermine the significance of the legislation should be countered through strictly enforced formalism and a universal implementation of rights. The analysis of gender justice in the second part of the chapter centers on a comparative approach to the universalism versus cultural relativism debate, in the context of ESCWA countries.

A. International standards of gender justice

Ideally, international instruments should pave the way for the implementation of gender

justice, including its two components: accountability and equality. On the one hand, parties to these instruments should work on strengthening national accountability mechanisms and eliminating de jure discrimination in their legal systems, particularly their constitutions and other legislation. These instruments also promote change towards gender equality through the increased socio-economic and political participation of women. For example, CEDAW codifies women's rights and, where necessary, notes measures for their protection.⁹⁴ The Convention on the Rights of the Child (CRC) also codifies protections for children, including girls. The two over-arching human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) both prohibit discrimination on several bases, including sex, and further place upon States the obligation to ensure that men and women have the equal right to enjoy the rights contained therein.⁹⁵ Article 14 of ICCPR further protects the right to equal protection under the law, specifically within the context of courts and tribunals, which is crucial to ensuring access to justice.⁹⁶ Moreover, ICCPR guarantees equal protection under the law, to be enforced by the State; therefore, even if it is not mentioned in the treaty, if a State opts to provide a right, privilege or benefit to certain members of society, it cannot do so in a discriminatory manner.⁹⁷ Lastly, the Beijing Declaration and Platform for Action identifies women's rights as

human rights and aims to eliminate gender-based inequalities.

CEDAW outlines several means by which States parties are expected to address discrimination against women. First, States parties to CEDAW must address active discrimination by removing discriminatory provisions in their own laws, and by implementing legislation that prohibits and punishes discrimination.⁹⁸ Next, States parties should create laws or take other appropriate measures to promote the full development and advancement of women, so that they may exercise their human rights on a basis of equality with men.⁹⁹ Lastly, CEDAW calls on States parties to take appropriate measures to modify social and cultural patterns that promote prejudice against women.¹⁰⁰ It also notes that temporary special measures that seek to address past discrimination until de facto equality is achieved, such as affirmative action in employment, should not be considered discrimination.¹⁰¹ Hence, while many international human rights treaties focus primarily on the elimination of discrimination, CEDAW conforms to the model adopted by this study in pushing for special measures and redress to ensure that existing inequality is remedied.

CRC, like most treaties, mandates that its provisions be applied without distinction based on sex.¹⁰² Throughout its text, the treaty mandates special measures for the protection of children, including several issues that are particularly important for girls. States are obligated to protect children from abuse, maltreatment, sexual abuse and sexual exploitation, including through special measures and legislation.¹⁰³ The treaty also enshrines children's right to education.¹⁰⁴

The human rights treaties discussed above specifically enumerate several rights that

promote gender equality and freedoms, which must be applied equally with regards to sex, among other statuses. Women are entitled to the equal enjoyment of all civil, political, economic, social and cultural rights.¹⁰⁵ By virtue of and out of respect for State sovereignty, international treaties leave States some leeway in how they interpret and implement their obligations, calling on States only to "promote and respect" their human rights obligations.¹⁰⁶ The generality of the terms reflects the fact that they do not dictate the content or the means of effective enforcement.¹⁰⁷ As detailed below, States are also permitted to issue reservations, understandings and declarations (RUDs), so long as they do not go against the object and purpose of the treaty.¹⁰⁸ Moreover, while governments are held to strict standards when it comes to ensuring civil and political rights, economic, social and cultural rights are treated as progressive goals and thus lack the same enforceability.¹⁰⁹ And since women are substantially disadvantaged vis-à-vis economic, social and cultural rights, such as education, literacy, employment opportunities and poverty, both in the Arab region and globally, the ambiguous nature of State obligations leaves them susceptible to continued inequality.¹¹⁰ Thus, although international standards provide a baseline for establishing the rights of women, they leave behind significant gaps in terms of ensuring formalistic implementation and enforcement.

The vast majority of Arab States are party to the aforementioned treaties, with few exceptions.¹¹¹ The Comoros, Oman, Qatar, Saudi Arabia and the United Arab Emirates are only party to CEDAW, but not to ICCPR and ICESCR; however, the Comoros is a signatory to both ICCPR and ICESCR.¹¹² Both Somalia and Sudan are party to the ICCPR and ICESCR, but not to CEDAW.¹¹³ All of the countries in the Arab region are party to CRC. However, several of these nations have

issued RUDs that limit the application of these treaties with regard to equality between the sexes.¹¹⁴ These reservations tend to state that the country will implement the treaties' provisions only insofar as it does not conflict with Islamic *Sharia* law; their subject matter specifically references marriage and dissolution practices, laws of inheritance, the passage of nationality and citizenship, free choice of residence and domicile, and the legal capacity for such things as giving testimony and concluding contracts.¹¹⁵ With regard to CEDAW, some scholars have argued that such reservations do in fact go against the object and purpose of the treaty.¹¹⁶

Accordingly, for some provisions the States may not necessarily be bound by their legal obligations to the treaties; however, all four treaties are widely ratified both in the region and globally. Thus, as a matter of customary international law, some of their provisions are binding regardless of legal status, and they certainly provide meaningful standards against which to compare national legislation. Until sex-based discrimination is accepted as a *jus cogens* norm,¹¹⁷ States may still derogate under certain circumstances or claim that the provisions are non-binding for them, because they have persistently objected to them. Emergency situations, including armed conflict and other military and political unrest, are often cited as circumstances under which States may lawfully derogate. Although RUDs are generally accepted, in some instances international and regional judicial bodies have rejected RUDs that are too general or do not have a sufficient rationale.¹¹⁸ Some scholars also note that reservations, and particularly derogative RUDs, are intended to be temporary, and that there is an obligation to revise and make improvements on a State's conformity with treaty obligations.¹¹⁹

The Beijing Declaration and Platform for Action, though non-binding, also provides guidance for and evidence of States' practice and intention to realize gender justice. The Declaration and Platform for Action represents an agenda for women's empowerment that seeks to accelerate the implementation of women's full equality, as codified in CEDAW, as well as in other United Nations conventions and declarations. It imposes specific strategic objectives on States regarding its 12 critical areas of concern; including socioeconomic factors, such as health, poverty and education; situational factors, including the media, armed conflict and environment; access to justice and the treatment of women by institutional mechanisms.

During the seventh session of the ESCWA Committee on Women, the implementation and interpretation of the Beijing Declaration and Platform for Action; women, peace, and security; gender mainstreaming; and GBV were in focus.¹²⁰ The Session adopted the Muscat Declaration, which identifies gender justice as an area in need of improvement, reaffirms the region's commitment to realizing the SDGs related to women's rights, and provides guidance on how to better protect women via national laws and policies.¹²¹

B. Constitutional guarantees

This study has reviewed the constitutions of 18 Arab countries¹²² to identify key areas in which equality is referenced and how these provisions fit in with the obligations of States parties to CEDAW, in order to take all appropriate measures to eliminate discrimination in legislation, in practice and in social and cultural undercurrents. Constitutions and other fundamental laws typically provide the framework for how a government will operate,

the principles it values and demands of all national legislation and policy, and the specific rights and duties it affords its citizens.

Accordingly, constitutions have the authority and the opportunity to establish a general, national policy framework that would protect women and promote gender justice.¹²³ In the case of Morocco, for example, the constitution is foremost in defining the notion of access to justice, as well as in taking steps to ensure the meaning of justice is met. It expressly states that all people are equal before the law.¹²⁴ It further specifies that men and women are entitled to equal enjoyment of all rights and freedoms related to economic, social, cultural, civil and political issues.¹²⁵ The state is given the duty and authority to pursue parity between the genders and combat discrimination.¹²⁶ Accordingly, all laws must be dually adhered to by both men and women and, in theory, failure to comply would accrue the same punishment. Men and women's equal position in the legal system is guaranteed with regard to the electorate process.¹²⁷ However, some have noted that the de facto implementation of gender-sensitive legislation in Morocco has yet to be fully realized.¹²⁸

Nearly all States considered in this study have at least some reference to equal protection under the law for all citizens in their constitution. For many, this appears as one of the "pillars" that the nation believes society should strive towards and the State should protect to the full extent of its ability.¹²⁹ Typically such "pillars" consist of very general principles that do not place any kind of distinct obligation on the State or lawmakers to act, but appear more like aspirational goals. While this is a positive sign, it is ineffective when not accompanied by more affirmative provisions. Another flaw in these provisions is that they do not make specific reference to which statuses are protected; they may refer only to racial, ethnic, linguistic or gender statuses, and

it is not always clear what is and what is not a protected status.

Many of these constitutions take a slightly stronger approach to non-discrimination by establishing an equal protection clause, essentially enunciating that the State must not apply its laws differently.¹³⁰ Typically these provisions will stipulate that all citizens are equal in their rights and duties.¹³¹ These protection clauses are often susceptible to the same pitfalls mentioned above; they are either silent about the protected classes they cover, or do not include sex or gender in their enumeration. For example, the constitutions of Jordan, Kuwait, Libya, and Sudan enumerate factors such as race, language and religion, but do not include sex.¹³² Those of Lebanon, the United Arab Emirates and Yemen do not clarify which characteristics are being referred to.¹³³ Saudi Arabia is the only country whose constitution (Basic Law) does not include any mention of equality either as a core "pillar" or as a protective clause.¹³⁴

Outside of their general provisions, the constitutions of some States have identified specific rights where the importance of equality between the sexes is re-emphasized. In the constitution of Tunisia, the right to vote, to be eligible for election, and the right to work are specifically identified as such. Similarly, the constitution of Mauritania identifies voting and campaigning as specific rights in which gender discrimination is prohibited, while that of Jordan pinpoints employment rights. In addition to making direct provisions for the promotion of equality between the sexes, the constitution of Morocco includes both the male and female forms (in Arabic and in French) of the word "citizen" (or "citizens") every time it is used. Doing so ensures non-discrimination across many fields, such as voting rights, access to information, health, education and housing.

These constitutions have begun to approach their countries' obligations under CEDAW by taking a more proactive role in eliminating discrimination in key human rights and by directly addressing the substantive rights contained in ICCPR, ICESCR and CRC.

Egypt, Morocco and Tunisia have further led the region in their constitutional provisions by stipulating that the government should take an active role in working towards the realization of parity between the sexes, including by establishing independent commissions for the promotion and enforcement of these rights. The constitutions of Egypt and Tunisia suggest taking temporary special measures to ensure the representation of women in the government; Tunisia's constitution grants equal representation for women in all elected assemblies (Article 34). In addition to their provisions for equality, the constitutions of Egypt (Article 11) and Tunisia (Article 46) also establish special protections regarding violence against women, while that of Iraq condemns violence and abuse within the family (Article 29(4)).

C. National legislation

Several areas of law that are regulated by national legislation also play an important part in creating a de jure environment of gender justice, as they strengthen the system of accountability in the country. These are generally aspects of the law with which women initially or frequently come into contact. Scholars have identified family law as one of these key areas since, particularly in the region but also globally, women tend to play the greatest role in the domestic sphere.¹³⁵ Family law is of further importance because many national constitutions identify the family as the basic unit of society, and because it is one of the few areas in which more conservative nations

offer specific protections to women regarding maternity and the family in general.

1. Personal status laws

In the field of family law, Morocco and Tunisia again lead the region on women's progress in the de jure sense.¹³⁶ Morocco adopted its reformed code in 2004, while Tunisia's 1956 code has been amended.¹³⁷ Both the Moroccan and Tunisian family codes enshrine certain rights for women, including marriage by consent, equalizing the minimum age of marriage for men and women, and eliminating repudiation as a means of divorce.¹³⁸ The Moroccan family code also adopts strict regulations on polygamous marriage, mandating consent from each wife and proof of the husband's ability to financially provide for each.¹³⁹ It also goes beyond the progress made in the Tunisian family code, as it not only requires women's consent in order to allow a marriage, but also removes the requirement of a guardian for a woman to enter into a marriage if she so chooses.¹⁴⁰ Despite appearing more secular in many ways, Morocco's *Moudawana* is in fact an Islamic-based code, which the King signed into law as Commander of the Faithful.¹⁴¹ Despite these advances, criticisms of the *Moudawana* remain.¹⁴² Conversely, in more conservative States where Islam is interpreted with a more patriarchal leaning, family codes show a sharp contrast. In Saudi Arabia, family law comes directly from *Sharia* law and the *Quran*, and is not codified; it is therefore rarely subject to question or intervention.¹⁴³ Lebanon's constitution allows the country's different sects to manage their personal status affairs according to their own religious texts.¹⁴⁴

2. Labor laws

Another key area of law to consider with regard to gender justice is that of labor laws.

Employment is one area where discrimination is most visible and likely to enter the judicial arena; it also represents a category of rights that is described in great depth in both CEDAW and ICESCR. Scholars have also noted the particular importance of economic independence and wellbeing in correlation with women's ability and empowerment to access the legal system. Women face several barriers in national labor laws; for example, some States impose early retirement ages for women, maternity leave and benefits are often insufficient for women to maintain a work-life balance, restrictions are sometimes placed on the positions women can hold that may be seen as too hazardous,¹⁴⁵ and there is generally a lack of protection from harassment.¹⁴⁶ Saudi Arabia has issued several employment decrees, since its 2005 revision and as recently as October 2015, that are slowly increasing employment opportunities for women. Female workers are now entitled to 10 weeks of fully paid maternity leave,¹⁴⁷ and women are permitted to own and operate businesses without a male proxy.¹⁴⁸ Several barriers remain, however, and despite tripling female workplace participation in the past two decades, Saudi Arabia maintains one of the lowest rates of female employment in the region, at 15 per cent.¹⁴⁹ Similarly, Egypt's 2003 labor law prohibits discriminatory wages between the sexes, and yet the country continues to rank low on gender equality indexes.¹⁵⁰ Despite efforts to improve gender disparities in Arab labor laws, the International Monetary Fund (IMF) notes that women in the region are represented three times less in the work force than in comparable developing nations.¹⁵¹ Thus, further measures for the protection and promotion of women's participation are still needed.

3. Penal codes

The importance of the penal or criminal code for gender justice lies in its capacity to protect

women and punish law-breakers. These particular laws are often by-products of the colonial era and thus reflect antiquated norms concerning women's status; few have been substantively amended or reformed.

Penal codes criminalize rape and non-partner sexual violence, but such acts are seen as offences against a woman's (or her family's) honor, rather than against her person. Nearly all of the countries in the region do not recognize marital rape. Furthermore, in some jurisdictions, a rapist may avoid punishment by marrying his victim, although a number of States have recently abolished their rape marriage laws: namely, Lebanon (Article 522),¹⁵² Jordan (Article 308),¹⁵³ Morocco (Article 475)¹⁵⁴ and Tunisia (Article 227 bis).¹⁵⁵ Egypt addressed years of unchecked sexual assault and harassment in 2014, criminalizing sexual harassment in its penal code.¹⁵⁶

The criminalization of domestic and intimate partner violence is gaining momentum in the region. However, in several countries, the law gives husbands the right to "discipline" their wives, including physically, despite general prohibitions on violence outside of the family. For example, Section 60 of the Egyptian penal code states that "the provisions of the penal code shall not apply to any deed committed in good faith, pursuant to a right determined by virtue of the *Sharia*". This passage is used to justify any act of domestic violence committed in "good faith", meaning that a husband merely has to suggest that his abuse was in line with religious prescription. In a similar vein, despite the criminalization of rape in the region, marital rape is not explicitly criminalized (with the recent exception of Tunisia). In Lebanon, the law criminalizes a spouse's use of threats or violence when seeking to claim their "marital right to intercourse", but the law does not criminalize such violence as an independent act of rape.¹⁵⁷ Regarding so-called "honor crimes",

there is a significant tendency towards leniency in sentencing men who commit crimes against (suspected) adulterous wives, with men frequently receiving a mitigated sentence.

Women are not afforded the same benefit of light sentencing, however, if they commit violence against (suspected) adulterous husbands.

Box 1. Addressing violence against women in the Arab region through legislative reform

The Arab region has recently seen several legislative efforts to address violence against women, including penal code reform and the creation of stand-alone laws. While some reforms are more progressive than others, they ultimately highlight a growing awareness in the region that legal reform is needed to realize gender justice.

Saudi Arabia passed the Protection from Abuse Act in late 2013.

In January 2014, the Moroccan Parliament revoked article 475 of the Penal Code, which allowed rapists to avoid prosecution by marrying their underage victim. Subsequently, Bill 103.13 on combating violence against women was adopted by the Parliament on 20 July 2016. The bill introduces new crimes; increases penalties in cases of domestic violence and protective measures for survivors of violence, including a referral system; prevents the abuser from contacting the victim; and requires the abuser to seek psychotherapy.

Lebanon's domestic violence law, Law no. 293, was passed in 2014, after a long struggle with the Government over the contents of the law. While Law no. 293 provides for restraining orders, a victims' fund, a specialized police unit, and amendments to the penal code, it does not explicitly criminalize marital rape. Additionally, the law gives primacy to Lebanon's personal status law regime, which may complicate its implementation. More recently, on 16 August 2017, Lebanon removed article 522 of the Penal Code, which allowed rapists to avoid punishment by marrying their victim.

Bahrain passed Law no. 17 of 2015, entitled Protection against Domestic Violence.

Likewise, in 2015, Algeria amended its penal code with Law no. 15-19, to specifically criminalize some forms of domestic violence.

On 26 July 2017, the Tunisian Parliament passed a bill criminalizing violence against women, including domestic violence. The new law contains components to prevent violence against women, protect domestic violence survivors, and prosecute abusers. Specifically, the law contains a broad definition of violence against women and criminalizes and penalizes domestic violence. There are provisions for civil protection orders, family violence units in the police, and referrals to shelters. It also criminalizes sexual harassment in public spaces and fines employers who discriminate against women in terms of wages.

After years of campaigning by women's rights activists, lawyers and journalists, on 1 August 2017, the Jordanian Parliament abolished Article 308 of the penal code, which allowed rapists to avoid prosecution and punishment for rape by marrying their victim.

Source: Compiled by ESCWA.

International standards require the age of consent for marriage to be 18, the age of legal majority in many countries. Even when the legal age of marriage is set at 18 or older, many exceptions exist that effectively void any minimum age requirement. For example, despite legal protections against child marriage, judges in Egypt, Jordan, Lebanon, Morocco, and Tunisia can grant exceptions that allow for children to be married, with or without a minimum age being set, if it is seen as being in the child's "best interest". There is no clear legal guidance on how a child's "best interest" is to be determined, and it remains a matter of judicial discretion.

Only Egypt, Jordan, Morocco and Tunisia have laws against sexual harassment in the workplace or in the public sphere. In Jordan, the law allows an employee who is subjected to sexual harassment (or beating or degradation) in the workplace to resign from his/her position without giving notice. There is no law that criminalizes sexual harassment in the workplace in Egypt, but the country does have recently strengthened provisions to punish sexual harassment in public spaces.

D. Benefits of formalistic legal reforms

International standards and national legislation are key areas of focus for improving justice – they create a legal basis for rights and establish means for enforcing the protection and remedying the denial of those rights. These commitments to the international community and to a State's citizens, though binding, gain their real power from the way they are applied on the ground. Scholars often diverge on this point between formalism and realism; this research, in line with the prior discussion of culturally-sensitive universalism, advocates for the use of formalistic legal reforms.

Formalists view the law as a powerful tool to realize social change that actualizes the underlying legal right. There is an ongoing conversation regarding the effectiveness of formalistic legal reform; some scholars view law as a much smaller element within society, capable of reflecting social and cultural reform, but not of creating it; others argue that ignoring the crucial role law plays in shaping society is a dangerous distortion which can lead to maintaining unjust situations.¹⁵⁸ In contemporary legal scholarship, formalism is defined as an intelligible normative practice. The primary benefit of formalism, and the right way to apply it, is that it requires "integrity" in application, defined as "equal treatment to all litigants presenting legal claims that cannot honestly be distinguished".¹⁵⁹ Conversely, realism or pragmatism in legal interpretation and enforcement would take into account the realities and social dynamics existing in the jurisdiction. It would look at the end first, before judging the means. In a more cynical light, for instance, pragmatism is used by States to justify the existing status quo within their governments and borders. However, it arguably also provides for more attention to context and the actual behavior, will, and desires of the people it intends to regulate. Accordingly, it would reflect the attitudes of the majority of constituents and would be more likely to be adhered to and enforced adequately.

Formalistic legal reforms include legislative acts which are designed to change the law in broad strokes applied equally across the board, and rejecting the notion that current social realities should restrict their application. Formalism is praised for its assertion that, as opposed to outside political forces, law should be defined within itself based solely on legal rights and wrongs. Thus, in this way it is connected to the notion of inherent universal human rights under the theory of universalism, which suggests that

no country or body "created" human rights, but rather codified what is natural to all people by virtue of their humanity.¹⁶⁰ Hence, if a progressive legal framework is created and citizens are exposed to the opportunities it offers them, those citizens will recognize its benefits and integrate it into their own social and cultural norms.¹⁶¹ Formalism rejects the notion that socio-cultural realities should shape law, because cultural realities are based on what is available presently and not on fully informed choice. Thus, people who previously were uninterested in reforms or were proponents of another model will be exposed to those reforms, and the resulting availability of rights and remedies will reduce the ignorance of average citizens about the legal possibilities available. Only through exposure to these options can citizens make informed decisions on their usefulness. People will achieve change when they critically question their assumptions about their role in society and acknowledge the limits and possibilities of the law in their daily lives.¹⁶² The idea that increased visibility and legally codified access to remedies can create actual change in the perception, approach, and desire for those legal remedies is supported empirically by several studies, which show that people's knowledge of judicial procedures, legal institutions, rules and their rights all have a positive effect on their perception of justice.¹⁶³

Research findings show that legal literacy is an important issue in the psychological process of shaping justice perceptions.¹⁶⁴

Box 2. Jordan legal aid case study

In Jordan, civil society organizations, NGOs and legal aid societies have helped to fill the gaps in access to conflict resolution mechanisms for women. The Arab Renaissance for Democracy & Development (ARDD) is exemplary in this regard. ARDD conducted research into the barriers facing women and, much like the present study, identified common trends in Jordan and throughout the region, including the negative effects of illiteracy, procedural barriers due to discriminatory attitudes, and socioeconomic burdens. ARDD determined that information-only support and law on the books were insufficient to address the needs of the female population.

Accordingly, ARDD applies a three-pronged approach to legal aid: advocacy for women's rights at the community and policy levels; grassroots engagement to promote gender-sensitivity in communities in order to promote women's autonomy; and legal aid work that provides counseling, mediation and court litigation support. It also reacts to the specific needs of females in conflict and displacement settings, such as those in Jordan's large Zaatari refugee camp. Issues it has addressed include the lack of record-keeping and family law processes in refugee camps.

Source: Arab Renaissance for Democracy & Development – ARDD (n.d.).

3. Gender Justice in Practice: Institutions for Accountability

This chapter builds on the de jure analysis in the previous chapter by introducing existing mechanisms with the power to either make those written laws a reality or merely an ideal. It maps the availability of institutional mechanisms, at the national level, that allow individual female survivors of gender-based discrimination to seek constitutional and institutional guarantees and redress. The institutions in this chapter include national Constitutional Courts, Administrative Courts, Ombudsman Institutions, and National Human Rights Institutions (NHRIs).

In order to paint a full picture when considering women's access to these accountability mechanisms, one must consider which methods of resolution women would prefer and, if they are different, which ones they actually use. In that context, the interplay between formal and informal mechanisms of access to justice comes into question. While access to justice is, in principle, assured for all citizens in Arab countries, in practice, several barriers to accessing justice continue to exist for women. Access to justice is a central issue that can either facilitate or hinder gender equality in all areas of public life.¹⁶⁵ Limited access to justice is detrimental to progress in women's equality, as it not only perpetuates existing inequalities but also reinforces impunity and a lax judicial framework for the protection of women's rights. One should also examine the forms of legal assistance that are available for each mechanism,

and which types of assistance women tend to seek when pursuing legal redress.

Some Arab countries have established oversight mechanisms that also act as institutions of recourse, such as ombudsman or judicial commissions that adjudicate claims, or pre-emptive institutions such as parliamentary committees, commissions in political executives or advisory councils to ministries or the political executive, which will be discussed in further detail. Lastly, informal justice systems will be considered.

A. Accountability and oversight institutions of recourse

1. International oversight

There are several international bodies that are authorized to oversee a State's compliance with their human rights obligations; due to principles of sovereignty these are largely dependent on State agreement and follow closely with the treaties each nation has ratified. The Human Rights Council, with the authority of the General Assembly, conducts the Universal Periodic Review (UPR) of all member States of the United Nations and monitors the general human rights conditions in each nation.¹⁶⁶ The UPR is a cooperative process with States; the Human Rights Council submits questions to the State, receives responses, and issues

recommendations with the ultimate goal of improving the global human rights situation.¹⁶⁷

Each of the major United Nations human rights treaties have an associated committee that periodically reviews States' compliance. Relevant for this study are the Human Rights Committee (interpreting ICCPR); the Committee on Economic, Social, and Cultural Rights; the Committee on the Elimination of Discrimination Against Women; and the Committee on the Rights of the Child.¹⁶⁸ Like the UPR, the United Nations treaty bodies review States' compliance with their human rights obligations in a cooperative process which considers the States' reports as well as those of civil society organizations (CSOs), NHRIs, and other stakeholders.¹⁶⁹ Treaty bodies make recommendations to nations based on their findings.¹⁷⁰ They also expand on definitions and interpretations of the treaties in general comments.¹⁷¹ Treaty bodies are also empowered to receive individual complaints, but only in nations that have agreed to be bound to their jurisdiction.¹⁷² Libya and Tunisia allow individual complaints to the Human Rights Committee through its Optional Protocol, and the Committee on the Elimination of Discrimination Against Women through the Optional Protocol of CEDAW, unlike all other Arab States.¹⁷³ Morocco has signed, but not ratified, the Optional Protocol giving the Committee on the Rights of the Child competence to hear individual complaints against it.¹⁷⁴

States' responses to these committees vary. For example, the CEDAW Committee, when reviewing submissions, has highlighted the often contradictory messages sent by States that observe reservations to the treaty while asserting that they are meeting the standards of CEDAW. Discriminatory personal status laws are commonly the culprits. In some instances, religion and tradition have been used as

justifications for not abiding by international standards and norms.¹⁷⁵ Women's rights and human rights organizations often submit shadow reports that tell a different story from that of the State fulfilling its obligations under CEDAW, and challenge the narrative of State compliance.

Regionally, the relevant nations fall within the purview of several other oversight bodies. Egypt, Libya, Mauritania, Sudan, and Tunisia come under the monitoring and jurisdiction of the African Commission on Human and Peoples' Rights, and Tunisia has additionally accepted jurisdiction of the African Court on Human and Peoples' Rights.¹⁷⁶ The Arab region does not have a regional court or commission with comparable powers to monitor and process individual complaints. Nevertheless, several more general monitoring bodies, including ESCWA, review compliance and best practices throughout the region.

2. Constitutional courts

A constitutional court, at the fundamental level, is one that is competent to hear cases alleging a violation of one or more provisions of the State's constitution.¹⁷⁷ In several such courts, including those in the Arab region, the court's subject matter jurisdiction may include other topics. Common examples include: cases relating to elections and the confirmation of parliamentarians, cases against high ranking government officials, conflicts between judicial decisions across domestic courts, and acting as the highest appellate court in the nation. Constitutional courts are usually established in the constitution itself or based on a provision in the constitution that enables their formation by another body. Such courts bear a wide variety of names, including Constitutional Council, Supreme Constitutional Court, and Federal Supreme Court, among others.¹⁷⁸ Of the ESCWA

member States, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Qatar, Sudan, Syria, Tunisia, and Yemen have courts serving this role, many of which are relatively new.¹⁷⁹ Oman has provisions for the establishment of a court with jurisdiction over constitutional questions, but at the time of research this had not yet been actualized.¹⁸⁰ In some countries, such as Morocco and the United Arab Emirates, there is a constitutional authority that assesses the constitutionality of new legislation, but such bodies are not competent to hear individual cases of a constitutional nature.¹⁸¹

Constitutional courts have the authority to affect the implementation of gender justice, particularly in those nations where the constitution imposes the principle of non-discrimination. They can also derive power to hear cases related to gender justice from provisions in the constitution establishing certain treaties as the law of the land, in which case they could hear claims that women's rights under the aforementioned treaties are being violated. Without specific constitutional regulation of women's rights, constitutional courts can affect women's realization of their rights, if they accept appellate jurisdiction over a case concerning gender justice in States where they have appellate power. Their ability to address gender justice issues can be limited by whether victims have standing to appeal a case to the courts.¹⁸² In the Arab region, constitutional court review is usually initiated by referral from the executive or other government officials. Gulf nations, including Kuwait, the United Arab Emirates and Yemen, in addition to Egypt, have an ex post review style that is open to individual litigants.¹⁸³

There is some potential for constitutional courts to protect women and ensure their legal rights, but also to go back on legal progress. Illustrating the impact of constitutional courts

on women's rights, in 2013, the Libyan Constitutional Chamber of the Supreme Court reinstated a husband's ability to take a second wife without the consent of the first, overturning a law that had been in place for decades.¹⁸⁴ In the case of Iraq, the Constitutional Court played a pivotal role in protecting the relatively progressive Personal Status Code No. 188 of 1959. For example, the Constitutional Court ruled that articles 40 and 43 on dissolving marriage are not in conflict with article 41 of the constitution, concerning the right of Iraqis to conduct their marriage affairs in accordance with their religion or sect. The court, on various occasions, upheld that the articles in the Personal Status Code provide women with much-needed protection.¹⁸⁵ In Tunisia, where elected assemblies are required to be gender-balanced, there are no provisions ensuring women's representation in Constitutional Courts (which typically consist of appointed positions).

3. Administrative courts

Many of the countries in the Arab region also have administrative courts. These range from the extremely well developed and independent administrative courts of Saudi Arabia and Morocco, which feature an insular and discrete appellate progression, to States like Kuwait, Libya, Qatar, Sudan, and Tunisia, in which administrative hearings are simply assigned to one section operating within the country's Supreme Court, Constitutional Court, or High Court.

Administrative courts are empowered to hear cases from individuals or organizations regarding administrative disputes in which a governmental administrative agency is party. Thus, an administrative court acts as an appellate court to the internal decision-making process of the agency, in order to review whether the administration applied a reasonable

interpretation of its establishing and substantive governing laws. These courts have the power to ensure the accountability of government actors who often are not necessarily elected legislators, who would be publicly regulated through the election process. The subject matter of cases can involve administrative contracts, claims for cancellation of acts filed against administrative authorities, and claims for compensation of prejudice caused by public entities or actions, among others.¹⁸⁶

Administrative courts play a key role in regulating government agencies to ensure that they comply with their domestic and international obligations to respect women's rights. The opportunity they provide to effectively hold governments accountable for their legal obligations was exercised in Kuwait in 2012, when the administrative court overturned a ministerial order that barred women from holding positions in the Kuwaiti justice sector.¹⁸⁷

Government agencies often encounter women's rights by way of family law; agencies may issue marriage licenses, register births, and distribute child support funds. They can also stand as a barrier to accessing social security, health, and other social benefits that may affect women disproportionately. Agencies cover a wide range of people's day-to-day interactions with the government and, accordingly, have many opportunities to circumvent the rights granted to women, or to narrowly interpret them. Administrative courts specialize in administrative law, and have the primary role of adjudicating administrative disputes and ascertaining that the actions of officials are consistent with the law. Because they have broad jurisdiction to rule on legal issues relating to the exercise of government power, they are sometimes considered to be the people's courts. Administrative courts, when run effectively, can

ensure oversight over the discretionary power of government agencies and officials.

4. Courts of general jurisdiction

Courts of general jurisdiction, sometimes known as trial courts or courts of first instance, are those which most laypeople are likely to encounter in the justice system. Most hear both civil and criminal cases.¹⁸⁸ Unlike constitutional and administrative courts which respond directly to laws, policies, and government actions, these courts can hear matters that arise between individual parties.¹⁸⁹ Hence, they are important for realizing the de facto practice of human rights. While other courts consider whether government actions are on the surface discriminatory or otherwise in violation, courts of general jurisdiction address how they play out in real world contexts and are given the authority to apply and interpret laws on an individual basis. Unfortunately, given the vast number of trial courts and their variations across the 18 nations under consideration, there is not much published information about each system.

5. Ombudsman institutions

Ombudsman institutions are offices provided by law in which an independent high-ranking public official hears complaints against government agencies, officials and employers.¹⁹⁰ They are empowered to investigate, recommend corrective action, and issue reports.¹⁹¹ In some countries, ombudsman institutions serve as a key link between citizens and the government.¹⁹² Ombudsman institutions have spread throughout the world, closely following the spread of democracy.¹⁹³ As of 2010, 133 countries had ombudsman institutions.¹⁹⁴ Several of the countries reviewed in this study have employed this accountability mechanism, including Bahrain, Egypt, Jordan,

Morocco, Tunisia, and Yemen.¹⁹⁵ The specific role they play in each nation varies from sub-region to sub-region and from country to country, but on the whole those in the Arab region tend to follow the classic model, in which they are limited to specific complaints, as opposed to a broader mandate (i.e., they follow-up on specific factual allegations, but do not investigate general human rights conditions).¹⁹⁶

The Ombudsman Office in Bahrain publishes periodic reports which provide some insight into its activities.¹⁹⁷ The office dealt with nearly 1,000 cases per year between 2014 and 2016, about 40 per cent of which were lodged by women.¹⁹⁸ In addition, it addressed 67 cases brought by organizations and initiated two of its own investigations.¹⁹⁹ Government agencies under investigation ranged from police forces to detention clinics, and from traffic departments to prosecutorial divisions.²⁰⁰

The Ombudsman Office in Egypt is unique in that it specifically addresses women's interactions and complaints with the government; while other ombudsman institutions may intervene in cases involving women's rights, they do not have a specific unit devoted to them. This unit performs specific functions, such as taking women's complaints, providing legal and social advice, referring women to attorneys or courts, and conducting research on filed complaints.²⁰¹ Additionally, it pursues the broader goals of monitoring women's needs based on the complaints it hears, disseminating information and raising awareness of these challenges, identifying prejudices in the public sphere that influence the legal needs of women, and recording the information it uncovers to create useful resources.²⁰² At the time of writing, no other ESCWA nations have a specific mandate within their ombudsman institutions for the protection of women; however these

institutions may still hear specific complaints connected to gender justice under their existing framework.

6. National human rights institutions

National human rights institutions (NHRIs) play a unique role in the accountability framework because they are established and funded by the State, but are also independent from the State insofar as they are tasked with monitoring it for compliance with its human rights obligations.²⁰³ The 1993 Paris Principles regulate NHRIs and ensure that they are competent to protect and promote human rights within the nation.²⁰⁴ The Office of the High Commissioner for Human Rights (OHCHR) assigns nations' NHRIs a status of A, B, or C, relative to their level of compliance with the Paris Principles.²⁰⁵ Status A denotes an NHRI that is fully compliant, and B one that is partially compliant, while C represents non-compliance.²⁰⁶

NHRIs are empowered to investigate, receive individual complaints, issue recommendations, and draft reports. Individual complaints are usually addressed through follow-ups with the government. They review legislative and administrative provisions to ensure compliance with international standards, encourage States to ratify and comply with emerging treaties, and promote the harmonization of national legislation with international agreements.²⁰⁷ Once established, either via parliamentary legislation or constitutional provisions, NHRIs do not fall under the direct authority of any government branch: executive, legislative, or judicial.²⁰⁸ One of the few ways in which they are not completely independent from the government is that NHRI personnel may be appointed by elected representatives.²⁰⁹ NHRIs are distinct from non-governmental organizations (NGOs) because they cannot have a specific position on issues, whereas NGOs often advocate for

a particular cause or category of victim.²¹⁰ NHRIs are mandated to protect and promote human rights in the State; in some nations this broad principle is applied, while in others a more specific framework has been adopted.²¹¹ Some focus on specific rights, such as freedom of expression, or particular vulnerable groups, such as women or migrants.²¹²

NHRIs also draft reports for United Nations treaty bodies established to monitor compliance. For example, the National Human Rights Committee of the State of Qatar submitted a shadow report to the CEDAW Committee to aid in its consideration of Qatar's first periodic report in 2014.²¹³

Table 1. Status of NHRI compliance with Paris Principles

Country	Status	As of
Bahrain	B	May 2016
Egypt	A	October 2006 (next review deferred to 2018)
Iraq	B	March 2015
Jordan	A	November 2016
Kuwait	In 2015, the Kuwaiti Parliament passed Law 67 to establish a National <i>Diwan</i> for Human Rights. However, the law has yet to come into force.	
Lebanon	In 2016, the Lebanese Parliament passed a law for the establishment of a National Commission for Human Rights. However, the selection of members has not yet been formalized.	
Libya	B	October 2014
Mauritania	A	May 2011 (next review deferred to 2017)
Morocco	A	November 2015
Oman	B	November 2013
State of Palestine	A	November 2015
Qatar	A	November 2015
Saudi Arabia	There is no independent National Human Rights Institution in Saudi Arabia; however, the Human Rights Commission, which was established in 2005 and amended its bylaws in 2016, reports directly to the King on issues relevant to human rights.	
Sudan	Have not established an NHRI	
Syrian Arab Republic	Have not established an NHRI	
Tunisia	B	November 2009
United Arab Emirates	Have not established an NHRI	
Yemen	Have not established an NHRI	

Source: Global Alliance of National Human Rights Institutions, 2017 (as of 26 May 2017).

B. Pre-emptive oversight institutions

The following sections provide an analysis of the institutional gender frameworks which assume different forms and structures in the Arab region, including ministerial units and oversight mechanisms.

Ministries: The State of Palestine has a specific ministry focusing on gender equality issues (Ministry of Women's Affairs), as does Lebanon as of 2016, while Morocco and Tunisia have established institutions that manage combined portfolios including women's affairs (e.g. Tunisia's Ministry of Women and Family Affairs). One criticism of this latter model is that gender equality should not be associated solely with issues that concern family and children's affairs, as this runs the risk of confining women narrowly to their roles as mothers and caregivers.

Quasi-governmental or semi-governmental advisory institutions: Several countries, including Bahrain, Egypt, Jordan, Kuwait, Lebanon and Yemen have established quasi-governmental or semi-governmental advisory institutions under the authority of the head of

government, which provide advisory services to other ministries, inform legislation on gender issues, and develop women-specific programs. For example, in Egypt, the National Council for Women is mandated to propose policies to government institutions aimed at enhancing the status of women and their participation in the sustainable development of the country.

In Jordan, the National Commission for Women is a semi-governmental institution that is responsible for designing the national gender strategy, defining policies related to women in all areas and formulating national plans, strategies, policies and legislation related to women.

Parliamentary Committees have proven quite effective in some contexts to oversee the gender equality agenda. Committees are set up within the legislative branch with clearly defined mandates to carry out in-depth analysis and review public policy and legislation with regard to gender equality. Five countries in the Arab region have reported the use of either the legislature or a committee within the legislature to perform oversight functions (Bahrain, Kuwait, Lebanon, State of Palestine and Yemen).

Table 2. Institutions of gender equality oversight in Arab countries

	Yemen	Egypt	Lebanon	Jordan	Tunisia	Morocco	Bahrain	State of Palestine	Kuwait	Mauritania	Oman	Syrian Arab Republic
Ombudsman Office	X	X	X	X	X	X	X	X	X	X		
Commission in the Political Executive	X	X	X		X			X	X	X	X	X
Independent permanent women's rights commission						X		X				
Parliamentary Committee on gender equality	X		X			X	X		X			
Advisory Council		X		X			X	X			X	
Other	X	X			X		X	X				

Source: ESCWA, 2016e; OECD, 2014a.

Informal justice systems²¹⁴

In many parts of the Arab region, women may not have recourse to the formal justice sector for reasons such as misunderstanding the law; fear and/or intimidation; lack of resources and enforcement; language barriers; or a lack of familiarity with formal procedures.²¹⁵ As such, some women perceive themselves as divorced from the formal legal framework of public institutions.²¹⁶ Such a mindset also reflects a gap between the law as it is written and the law as it is implemented and experienced. Informal justice systems (IJSs), consequently, become the cornerstone of access to dispute resolution for many of these women.²¹⁷

When considering gender justice in terms of the particular needs of women in the Arab region, one must consider the variety of available services to which they may turn to seek redress, the variety of services from which they seek assistance, and the preferred methods of resolution which they employ.²¹⁸ In this context, the interplay between formal and informal mechanisms of access to the adjudication of claims comes into question. IJSs are those which are not part of the formal government, but rather derive their authority from social groups and community structures.²¹⁹ They include traditional, tribal, and religious courts or community-based conflict resolution procedures.²²⁰ IJSs may be utilized in times of transition and conflict, when formal justice systems are non-operational.²²¹ Formal court systems may break down or lose their authority in periods of occupation or armed conflict, as they derive their power from the authority and respect of the government. Meanwhile, informal justice systems tend to retain their power, as it is derived from internal sources of authority.²²² Traditional justice mechanisms have played crucial roles in post-conflict resolution in a diverse range of countries, from Rwanda to

Timor-Leste, and from Sierra Leone to Afghanistan.²²³ And while IJSs fill an authority gap in conflict-affected or rural areas, they are still susceptible to the political and social pressures of conflict, as their decisions rely heavily on individual leaders' perspectives.

Analysis of IJSs is crucial to addressing women's access to dispute resolution mechanisms; especially as, in the developing world, an estimated 80 per cent of women's judicial claims are settled in informal systems.²²⁴ This presents a challenge for women, as IJSs tend to be male-dominated and culturally associated with enforcing and embodying existing patriarchal norms.²²⁵ IJSs lack the binding force of precedent and can thus be less predictable; most do not keep intensive records of decisions to guide parties.²²⁶ They are often guided by religious texts and local custom and tradition, which provide some basis for precedent.²²⁷ International development studies on the right to equality within IJSs recognize that mere legislative guarantees of equality are not sufficient; reforms must engage with customary law and practice, empower local women to take on leadership roles in justice mechanisms, and improve legal literacy and awareness of rights.²²⁸ Much of the literature on legal pluralism posits that IJSs apply legal standards that are highly correlated with poor access to conflict resolution mechanisms for women.²²⁹ The dilemma this poses has resulted in two basic approaches. The first assumes that IJSs are inherently and irremediably inconsistent with women's rights, and therefore that the formal system must be the primary, if not sole, forum for adjudicating disputes involving women.²³⁰ The second approach seeks to engage with IJSs with the aim of transforming them to comply with international standards, while retaining their positive features of accessibility, familiarity and effectiveness.

The frequent use of IJSs by women can be explained by a number of factors that both drive women away from the formal legal system and draw them towards informal justice systems.²³¹ They can arise from biased laws, but may also stem from women being personally more reluctant than men to rely on formal justice channels to resolve conflicts.²³² Lack of confidence in legal and government systems prevails, especially when these systems are perceived as biased against women.²³³ Mukhopadhyay finds that, even when women do gain access to institutions of justice, they are unlikely to be treated equally, because in some instances the law itself is discriminatory, while in others the outcomes or decisions of courts privilege men and subordinate women, perpetuating a male-dominated society.²³⁴ Nevertheless, the case from Morocco (box 3) shows that there are attempts by women's movements to resort to formal justice mechanisms to ensure that equality and nondiscrimination is guaranteed when IJSs produce biased rulings.

A series of United Nations Arab Human Development Reports²³⁵ have identified structural discrimination against women as an important norm governing the everyday private and public life of women in the region, "mainly derived from the concept of the preservation of the family".²³⁶ As such, within the family, roles are defined along gender lines, and men become the counterparts of the outside world and the state.²³⁷ Furthermore, women's access to and acceptability within government structures and public institutions often depends on the consent and backing of a male relative or family guardian.²³⁸ This could result in women not seeking to engage with state institutions on their own, when not supported by male guardians.²³⁹

Box 3. Formal justice versus informal justice: A case from Morocco

The case of the ancestral lands in Morocco provides an example of how women's groups organized to address gender inequalities and utilized a myriad of tools to ensure equal rights to access land, against an existing IJS. In this case, the lands historically belonged to the community or tribe, not to the individual. Community traditions often excluded women from the use, control and sale of land. While the State had allowed these community traditions to rule over relevant decisions, women organized advocacy efforts and invited the State's formal justice system to intervene and enforce equality standards. The State first attempted to regulate the process by creating a Trusteeship Council made up of community leaders, to ensure the equal distribution of land without infringing on community traditions, but with limited impact.

Hence, in 2007, women began to organize and protest their exclusion. By 2010, the Ministry of the Interior issued a decree calling for women to be granted equal control over the land. Another decree was issued in 2012 requiring that women receive their rightful share of inheritance in terms of land. Community leaders in the Trusteeship Council did not comply with these decrees and continued to deprive women of their equal rights.

Women organized, with support from civil society, and decided to appeal to administrative courts to challenge the Trusteeship Council's decisions concerning the lands. On October 10, 2013, the Administrative Court of Rabat issued a landmark ruling granting women their rights to the land for the first time, based on constitutional principles and international standards. The Administrative Court argued that reforms should be based on the principle of equality, as outlined in the Constitution under articles 6 and 19.

Source: Compiled by ESCWA.

Generally, the methods used to settle disputes in IJSs across the Arab region have been linked to the rituals of settlement (*sulh*), reconciliation (*musalaha*), and mediation (*wasata*). Rituals are used in private modes of conflict mitigation,²⁴⁰ which are not controlled by the state, and where customary, traditional steps are taken to resolve conflicts. Sometimes, both private and official justice may be invoked simultaneously to foster reconciliation. The rituals of *sulh* and *musalaha* are alternative and indigenous forms of conflict control and reduction. "The *sulh* ritual stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended".²⁴¹ These rituals are afforded varying degrees of authority in States' formal justice systems.

Morocco's formal judicial system does not recognize *sulh* rituals as a legally acceptable tradition in the family dispute resolution

process, unless they are conducted by a judge. In Jordan, *sulh* is a recognized function of the justice system, with some judges trained in tribal reconciliation.²⁴² Yemeni NGOs have also made progress towards the recognition of tribal justice mechanisms.²⁴³ According to Islamic law, the purpose of *sulh* is to end conflict and hostility among believers, so that they may conduct their relationships in peace and amity. *Sulh* is a form of contract (*akd*), legally binding at both the individual and community levels.²⁴⁴ Public *sulh* and private *sulh* can address conflict between large groups, such as tribes, or between individual parties, to avoid the cycle of dispute.²⁴⁵ *Wasata* is characterized by the fact that one or more persons intervene in a dispute, either of their own initiative or at the request of one of the parties to the dispute.²⁴⁶ The independent mediators must then seek to advance an amicable settlement by proposing solutions to the parties.²⁴⁷ Obviously, mediation can only be successful if the parties accept the proposed solutions.²⁴⁸

4. Gender Justice in Policies and Strategies

This chapter examines the various policies and strategies used in Arab countries to instate gender justice. This chapter complements chapter 2 analysis of gender discrimination and equality in law (de jure) by focusing on whether gender equality is operationalized at the policy level. This chapter undertakes a cross-country policy analysis of women's rights in public and private life in the Arab world, based on ESCWA's Gender Justice Cross-Country Survey results, providing a host of evidence-based contributions from the region.²⁴⁹ It also seeks to determine whether institutional reforms and gender sensitive policy measures enable or inhibit progress towards gender justice, notably by examining institutional protections for women. Lastly, it provides actionable recommendations to address gender justice in the region, supported by examples from specific Arab countries.²⁵⁰

A. Gender equality

In the Arab human development reports, gender inequality has been identified as one of the main obstacles to development in the Arab region.²⁵¹ Although significant advances in social indicators, political participation and legal rights have been recorded over the past few years, women's public participation in the Arab region continues to be hampered by a number of barriers, including persistent discrimination and weak institutions. Nevertheless, positive change reveals an important potential for progress that must be supported with effective

policy measures. This section examines the national policies of Arab countries that seek to integrate gender justice and mainstream gender into policy-making. It also examines the availability of accountability measures, anchored within existing institutional frameworks.

Policy coordination is one area that requires governments' attention, as effective co-ordination mechanisms, pivotal to the implementation of gender equality policies, should be enhanced in a coherent manner, both in the central government and across levels of government.²⁵² The challenge, therefore, is to ensure that institutions working on gender equality have sufficient technical and financial capabilities to carry out the integration of gender considerations within the government, and to identify linkages that would improve cooperation between state structures and national and international organizations.

Government visions for gender equality, supported by concise strategies, have been developed by several Arab countries over the past decade.²⁵³ According to a survey of 12 countries, most report having a relatively comprehensive mandate, including: outlining principles of gender equality in the country (eight out of 12 countries); establishing specific accountability measures to promote gender justice (eight out of 12 countries); identifying specific laws, policy visions, or policy strategies for addressing gender discrimination (six out of 12 countries).²⁵⁴

Table 3. National women's equality advancement strategies in Arab countries

Country	Name of strategy
Bahrain	National Plan for the Advancement of Bahraini Women (2013-2022)
Egypt	Egyptian National Council for Women (NCW) Strategy for Gender Equality (2015-2020)
Iraq	National Strategy against Gender-based Violence (2013-2017)
Jordan	National Strategy for Women in Jordan (2013-2017)
Lebanon	National Strategy for Women in Lebanon (2011-2021); National Action Plan (2013-2016)
Morocco	Agenda Gouvernementale pour l'Égalité IKRAM (2012-2016)
Oman	National Strategy for Women in Oman
State of Palestine	Cross-Sectorial National Gender Strategy (2014-2016)
Sudan	National Strategy for the Advancement of Women (2010-2014)
Tunisia	Stratégie de la lutte contre la violence à l'égard des femmes au sein de la famille et de la société
United Arab Emirates	National Strategy for the Advancement of Women (2015-2021)
Yemen	National Strategy for Women Development (2006-2015)

Source: OECD, 2014b.

A review of these strategies reveals their limited emphasis on specific standards for promoting gender equality (including international gender equality standards) and women's access to public life. Their primary focus is usually on preventing gender-based discrimination, combating GBV and strengthening the economic empowerment of women. Bahrain, Egypt, Jordan, Lebanon, and Morocco focus on gender equality in public service. It is therefore imperative for these strategies to be anchored in international standards, and to strongly advocate for protection objectives alongside preventive measures.

Another priority area for enhancing the implementation of gender-sensitive policies is that of robust institutional frameworks. In order to be effective, national strategies and visions must be supported by sound implementation capabilities, including strong accountability measures. Despite the existence of government strategies and visions in most of the surveyed countries, their implementation remains uneven across the region. Arab countries tend to set up gender focal units within ministries across the government, which often have a direct relationship to central gender institutions. For example, the Jordanian National Commission for Women has established gender focal points in several public institutions, including the Ministry of Planning, the Ministry of Finance, the Ministry of Education, the Department of Statistics and all government agencies. The central coordinating Gender Unit, located in the Ministry of Planning, works closely with the Commission to empower these focal points. Gender focal points may also serve as an entry point for information about CEDAW and methods for implementing it. However, countries need to enhance the mandate and position of gender focal points to ensure their active involvement in different sectors.

This highlights the importance of gender mainstreaming²⁵⁵ at the policy-making level. Gender mainstreaming is defined by the United Nations Economic and Social Council (ECOSOC) as "the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels". It is a strategy for integrating gender-based concerns into the design, implementation, monitoring and evaluation of policies and programs. Its ultimate goal is to achieve gender equality, and it adds a crucial element for progress towards equality,

because it requires gender considerations to be integral to laws and policies instead of remedying shortcomings ex post facto. The Beijing Declaration and Platform for Action adopted gender mainstreaming as a new approach to promote gender equality, laying an important foundation for embedding gender considerations in national laws and policies. For Arab countries, further progress is needed to ensure that policy-making processes embed gender considerations in a systematic manner. Tunisia has a distinct mainstreaming strategy alongside its broader gender equality strategy, while Bahrain, Lebanon, and Morocco have enshrined mainstreaming in their national gender equality strategies.

B. Women and leadership in public life

The Arab region falls considerably short on indicators concerning women's participation in public life, a pre-requisite for inclusive policies and growth, as women remain an untapped source of vital human capital for the region.²⁵⁶ Despite some countries' active strides to boost women's leadership in public life, including in parliaments, the executive and courts, they are still largely underrepresented in these national institutions.²⁵⁷

The participation of women in politics is at the center of women's civil and political rights, as reflected in various international conventions, from the ability to run for office to accessing public service positions.²⁵⁸ At the constitutional level, several countries have introduced proactive measures to enhance women's right to participate in political life (e.g. Lebanon, Morocco, State of Palestine and Yemen). For example, Tunisia has introduced a principle of gender equality in elected councils in its constitution.

Table 4. Female representation in national parliaments

	Seats in parliament held by women, 1990 (percentage)	Seats in parliament held by women, 2016 (percentage)
Bahrain		7.5
Egypt	4	14.9
Iraq	11	25.3
Jordan	0	15.4
Kuwait		3.1
Lebanon	0	3.1
Libya		16
Mauritania		25.2
Morocco	0	20.5
Oman		1.2
State of Palestine ^a		12.1
Qatar		0
Saudi Arabia		19.9
Sudan		30.5
Syrian Arab Republic	9	13.2
Tunisia	4	31.3
United Arab Emirates	0	20
Yemen	4	0
Global Average		23.6

Source: ESCWA calculations based on IPU data.

^a Due to the country's unique sovereignty status, it was not included in the World Bank's national statistics. The data provided refers to Al-Monitor's 2015 statistics; Al-Ghoul, 2015.

Gender quotas have also emerged as a means of increasing women's political representation. Jordan and Morocco are examples of countries that reserve seats or have quota requirements in parliament for women. In Bahrain, the Supreme Council for Women adopted a Political Empowerment Program to increase the political representation of women.²⁵⁹ In May 2010, Jordan adopted a new electoral law, which reserves 15 seats (one seat per electoral district) for women, ensuring a minimum of 10 per cent female representation in parliament, and the 2011 Municipalities Law raised the quota for women's seats in municipal councils from

20 per cent to 25 per cent. Women's participation in representative bodies significantly improved in the United Arab Emirates when the government established the Gender Balance Council in 2015, an entity dedicated to increasing the number of women in leadership positions and strengthening institutional capacity.²⁶⁰ Tunisian and Sudanese women's representation in parliament has exceeded 30 per cent, making them the highest in the region. However, further efforts are needed to ensure sustainability and achieve consistent progress across the whole region, including the adoption of temporary positive measures such as quota systems.

Many countries would benefit from increasing women's participation in parliaments. As of 2016, the female representation rate in parliaments across the Arab region was 17.4 per cent (compared to the world average of 23.3 per cent).²⁶¹ Similarly, in the executive, the proportion of women ministers also remains low. It should be noted that even when women do serve as ministers, they are often responsible for "soft" portfolios focusing on social policy issues, with limited access to key economic positions. In September 2016, the share of women in cabinet across the region averaged 8 per cent. This ranged from 4 per cent in Lebanon, through 10 per cent in Oman, to 30 per cent in Mauritania. Meanwhile, in the United Arab Emirates, seven women were named ministers in the 2016 re-shuffle of the country's 29-member cabinet, accounting for 28 per cent.

Women's political participation is further affected by periods of armed conflict and political transition. Several studies and agencies have determined that women's involvement in post-conflict policy-making and structures is statistically significant for developing lasting peace and security.²⁶² One study found that

including women in peace negotiations reduces the risk of the agreement failing by 64 per cent.²⁶³ Another suggested that women's participation increases the longevity of peace agreements; agreements in which women were involved were found to be 35 per cent more likely to last at least 15 years.²⁶⁴ Despite the importance of female voices, Alaa Murabit, a Libyan activist, noted that throughout the period of transitional peace talks in Libya, as in other North African nations, the decision-makers were almost exclusively older men.²⁶⁵ The United Nations supports this anecdotal observation, stating that barriers to women's political participation are "magnified in post-conflict societies" due to the volatile security situation, militarization, and highly concentrated power in a predominantly male elite.²⁶⁶

However, transitional periods present a unique opportunity for women to engage in the restructuring of government with a greater emphasis on equality. Following the uprisings in the Middle East and North Africa, Arab feminism became more visible in several nations, including Egypt, Libya, Morocco, Tunisia, and Yemen.²⁶⁷ The effects of women's involvement can be seen in many of the constitutional and social developments in the region, in addition to their crucial role in political activism and protests. In Egypt, shortly after the Revolution, feminist and human rights organizations formed a coalition, the Group of Women and the Constitution, in anticipation of a new gender-sensitive constitution. While the group failed to affect the drafting of the 2012 constitution, their efforts influenced the Committee of Fifty to address the rights of women in the 2014 constitution.²⁶⁸ In Libya, a coalition of 70 Libyan women activists met in late 2014 to set out their demands for a gender-sensitive constitution in anticipation of its drafting. Among other demands, the group proposed criminalizing violence against women,

as well as underage and forced marriage.²⁶⁹ The Libyan Women's Platform for Peace launched the Charter of Libyan Women's Constitutional Rights based on a series of workshops and consultations.²⁷⁰ Efforts in Morocco began early on, when a civil society coalition named the Feminist Spring for Equality and Democracy called for greater constitutional gender equality in May 2011. Portraying their efforts as part of a larger Feminist Spring in the region, women's organizations called for constitutional guarantees of gender equality based on international human rights norms.²⁷¹ In Tunisia, women's groups were instrumental in revising the 2012 constitution to make gender equality part of the foundation of the text, instead of gender complementarity.²⁷² Lastly, in Yemen, 30 per cent of delegates to the National Dialogue Conference (NDC) in 2014 were women, and Yemeni women accounted for four out of 17 members in the Constitution Drafting Committee.²⁷³

Little legislation exists in the Arab region concerning conflict-related violence. However, many States are now developing National Action Plans (NAPs) for the full implementation of Security Council resolution 1325, which addresses violence against women in conflict, particularly sexual violence. Currently, only Iraq and the State of Palestine have developed and ratified NAPs, while Jordan has an NAP under debate.

To address the gap in women's representation in the judiciary, Arab countries have taken steps to provide gender-equal access to leadership positions, which also serves to improve the provision of gender-responsive legal services. In Tunisia, for instance, a law from 1967 provides women and men with equal access to legal professions, including that of judge. In total, 38 per cent of judges in Tunisia are female.²⁷⁴ In 2007, 30 female judges were

appointed for the first time in civil and criminal courts in Egypt, out of 124 applicants. In Iraq, the number of female judges increased, from seven in 2003 to 100 in 2016, in the Iraqi Supreme Judicial Council. The Jordanian judiciary is 18 per cent female.²⁷⁵ Nonetheless, variations across the region are often significant, and only a few women occupy senior posts in the judiciary in Gulf nations, reaching a rate of 9 per cent in Bahrain, which appointed its first female judge in 2006.

While women's participation in public life and leadership continues to be hampered by restrictions connected to differences in access to opportunities, governments worldwide have been increasingly recognizing that gender diversity in the public sphere (e.g., the judiciary, parliament, the executive) helps improve the quality of policies and service delivery and has a positive impact on economic well-being and productivity.²⁷⁶ Moving forward, targeted measures should prioritize the improvement of performance and accountability of the judiciary, in enforcing the provisions of international conventions on women's rights and dealing with cases of gender-based discrimination with impartiality. Governments should also take significant steps to improve the training of judges with regard to the basic principles of fair trial and the particular needs of women. Another important line of action is that of increasing oversight of judicial decisions, to ensure that judicial discretion does not turn into judicial partiality. To preserve the independence and impartiality of the judiciary, the government could set up independent committees responsible for selecting, nominating, promoting, and disciplining judges, without excessive influence from the Ministry of Justice or other government bodies. It is also essential to address judicial efficiency with regard to record-keeping, so that judicial decisions

can be quickly, easily and accurately examined by the government to ensure accountability.

At the level of public consultation, Arab countries are increasingly recognizing the need for and importance of consulting with various stakeholders in the policy-making process, including women and women's organizations. Nevertheless, the general practice of citizen engagement and public consultation remains limited and sporadic, and often involves only certain stakeholders outside the government.²⁷⁷

Some countries have adopted specific initiatives to increase the engagement of citizens, including women, in the policy-making process. These include Bahrain, Egypt, Jordan, Lebanon, Morocco, the State of Palestine, Tunisia and Yemen.²⁷⁸ There are examples of involving women's NGOs in developing key laws that have an impact on women (as in Jordan, Lebanon, Morocco and the State of Palestine). In Jordan and the State of Palestine, for example, civil society partners are consulted on legislation in sectors identified as key priority areas by the government. Although formal mechanisms to ensure the inclusion of citizens' input in policy and law-making processes are limited in the region, Jordan and Morocco stand out as positive examples of countries that systematically publish their draft laws online. In the case of Jordan, publishing draft laws on the Prime Minister's official website is part of the country's action plan as a member of the Open Government Partnership. The presence of such consultative processes, accompanied by government efforts to encourage participation, should allow for more inclusive legislation that would be responsive to the needs of women.

To ensure that policy-makers are aware of the interests of all women, it is important

for governments in the region to consult with women themselves about their priorities and concerns. This would allow them to systematically resolve the most pressing issues across the region, and ensure that national priorities on gender equality reflect the views and needs of diverse segments of the population. The fact that governments often rely on a limited set of civil society groups to deliver the message of mainstreaming gender in policies may pose a risk. Indeed, these groups may not always be fully capable of accurately reflecting the views of women in diverse situations. This may require developing alternative participatory mechanisms (e.g., women-only focus group discussions); improving the clarity, regularity and transparency of the consultation process for policy making, including on policies related to gender equality; and strengthening mechanisms of systematic consultation to enable women's organizations to participate in the policy-making process in an inclusive and transparent manner.

C. Gender-based violence policies

Across the region, violence against women (physical, sexual, psychological and economic, among others) still occurs in both the public and private spheres. This violence and the way it is addressed in law and policy place women in a position of disadvantage with regard to the principles of gender equality and gender justice. SDG5 highlights the fact that GBV legislation is necessary to realize equality between the sexes.²⁷⁹ Persistent discrimination and violence against women continue to constrain their access to opportunities in public and economic life. Women have a rather low level of legal protection against violence in the Arab region. A notable exception here is Tunisia, which recently criminalized all forms of violence within its legal framework.

Most countries in the region have integrated GBV in their national agenda by developing policies and strategies, and by providing services, often in response to advocacy efforts and pressure from civil society groups. Few countries have made efforts to translate these strategies into legislation, programs and services. Countries that have developed national action plans to address and combat violence against women include Bahrain, Egypt, Jordan, Lebanon, the State of Palestine, Tunisia and Yemen. In Tunisia, following the development of an international agenda focused on gender, a strategy to combat violence against women was adopted by MAFFE (the Ministry of Family, Women, Childhood, and the Elderly) in 2007, but it has remained on hold, after having faced significant resistance. As of 2016, GBV prevention and response has been made a priority in Tunisia's five-year Development Plan for 2016-2020. However, such practices are not widespread in the region. As such, current national efforts should be stepped up to combat violence against women more effectively and guarantee the physical integrity of women in the region. This may include, alongside protective legislation, enhanced preventive mechanisms and the creation of services to support victims/survivors.

A particular form of GBV that requires a targeted policy intervention is female genital mutilation (FGM). According to the World Health Organization, FGM is a significant concern in Egypt, Sudan and Mauritania, where 91 per cent, 88 per cent, and 69 per cent of women, respectively, have undergone the procedure.²⁸⁰ Yemen and Iraq also have some incidence of FGM, though it is significantly less common.²⁸¹ Egypt's parliament has drafted a law that prohibits performing circumcisions on females in hospitals, and in public or private clinics, yet appropriate penalization has been uneven. In 2016, Mauritania's Council of

Ministers approved a law on reproductive health that explicitly prohibits FGM at the national level.²⁸² Despite efforts by several United Nations agencies and the National Child Welfare Council, Sudan has not taken national legislative action against FGM, but several states within Sudan have criminalized the practice.²⁸³

Across the region, it is clear that CSOs, public institutions and international NGOs are playing an active role in combating GBV by providing different types of services to survivors (and sometimes to perpetrators), while also implementing advocacy and sensitization programs. CSOs are generally the first responders when it comes to meeting the needs of GBV survivors, both in emergency situations and in longer term support. They have proved effective in providing evidence to governments and society, as a result of their efforts and their success at mobilizing resources, establishing coordination mechanisms, and working effectively with the police, justice and health sectors. CSOs have also been on the forefront of setting up GBV shelters and helping survivors develop the skills they need to work and succeed in society. On the whole, assistance for victims of violence, including hotlines, shelters and counseling services, remains very limited in Arab countries. There is also a need for greater provision of free legal aid and advice services for victims of violence.

Survivors of GBV also face cost-based barriers. While the body of data on the prevalence of violence is increasing, data are quite limited on the costs of violence, which include out of pocket costs for survivors seeking services. The economic costs of GBV can be divided into direct and indirect costs.²⁸⁴ Direct costs are the costs of public services provided, which include healthcare services such as emergency room visits, surgical intensive care, specialized therapies, and therapeutic and psychological

rehabilitation support. They also include social welfare, housing, social security, charity, justice, security and legal services. Indirect costs include the myriad ways in which violence stops women from fulfilling their potential, restricts economic growth

and undermines development.²⁸⁵ GBV damages economic productivity and development, due to its profound physical and mental effects on survivors and on society as a whole.

Box 4. Service provision for survivors of GBV

Jordan

Jordanian and international CSOs provide a wide array of services for GBV survivors, such as operating shelters, as well as providing direct services such as legal aid, psychosocial support interventions, health and medical forensic services, advocacy, and awareness campaigns. While their geographical distribution is limited, there are several operational shelters for survivors of domestic violence seeking assistance, counsel and refuge, including the Federation of Jordanian Women's Guest House. The Guest House includes a health clinic to serve residents of the House and runs a guidance hotline. Additionally, the Federation provides programs to train and empower abused women to operate their own businesses. While this institution has an agreement with the Public Security Directorate to use the Guest House as a shelter for female survivors of trafficking until they return to their homelands, it does not explicitly provide any services to men in need of help.

In an additional effort to advance an enabling environment for the physical, psychological and emotional well-being of women and children, a new Center for Integrated Services and Family Justice was established at the Family Reconciliation House of the Ministry of Social Development. An additional, notable program to protect children against abuse was established in 2008. This program aims to mainstream services for victims of child abuse into the health establishments operated by the Ministry of Health. In Jordan, it tends to be the police's responsibility to refer GBV survivors to a temporary safe house, the courts, or medical services. Police forces also offer reconciliation and rehabilitation programs, many of which commonly order perpetrators to pledge to no longer abuse the survivor.

Morocco

With regard to Morocco's government strategies, a 2012 draft law on Free Legal Aid defines in general terms the scope and eligibility for legal aid, the types of primary legal aid providers, and the delivery procedure for such aid.^a Elements of delivery of legal aid are also defined in the Charter for the Reform of the Judicial System.^b Among other things, the latter proposes a plan to evaluate the implementation of the Family Code and improve infrastructure in the family court system. Related activities aim to enhance free access to judicial sector information online and through publications, and to provide free legal aid services through units attached to family courts. If implemented properly, this could benefit a large number of women, especially among the poor. According to the Ministry of Statistics, Family and Children's units in family courts assisted 19,199 women in 2014. The Ministry specifies that 35 per cent of family courts house such units, which were instated in 2009.

Source: Compiled by ESCWA.

^a See Morocco's 2012 Draft Law No. 58.10 concerning legal and judicial aid.

^b The Charter (Charte de la Réforme du Système Judiciaire) was adopted in July 2013 as a result of the National Dialogue on Reform of the Judicial System (La Haute Instance du Dialogue National sur la Réforme du Système Judiciaire), a roughly year-long process of consultations with stakeholders on the development of reforms.

5. Towards a Gender Justice Enabling Environment

This chapter offers key recommendations to inform the burgeoning debate about gender justice in Arab countries. This study has identified key elements for an enabling environment to achieve gender justice in member States, which can inform future policy-oriented research priorities in that regard. The study identifies key perspectives that should inform policy discussions of gender justice across the region, namely: the context in which gender justice is being pursued and whether the manner it is being administered is responsive to that context.

A single uniform approach to access to justice would be unfeasible in societies as diverse as those of ESCWA countries. Their legal and cultural histories span the centuries, including the Arabic influence and the European, as well as Ottoman, colonial period, each of which left its mark on the legal system and the peoples' attitudes towards it.²⁸⁶ Hence, it would be ill-advised to apply a purely formalist or purely cultural relativist model. Instead, a more flexible model that would account for countries' social realities should be adopted. Yet even this balancing act will be insufficient if States continue to exclude informal justice systems from the justice services delivery equation. Moreover, the complex and diverse levels of legal literacy provide an equally nuanced framework for harnessing the transformative power of formal legal change through awareness of the changes taking place on the ground.

Any model for implementing formal legal change should involve thorough training for both formal and informal justice systems. Moreover, judges and leaders of informal justice mechanisms must be trained to deal with the specific issues faced by women in the legal system. One part of developing a relationship between women and the justice system can be accomplished by having judicial leaders learn and appropriately apply the law. This can begin the process of improving perceptions of the legal system and encouraging citizens to use it and initiate claims in it. Another part could be achieved by having women assume a greater and more substantive role in the system and establishing themselves as a force through legal empowerment. Women and other marginalized groups have the ability to shape the perceptions and behavior of judicial authorities through education and legal literacy.

A. Create an enabling legislative environment

- Ratify the Optional Protocol to CEDAW;
- Lift reservations to all provisions of international human rights instruments; specifically, to CEDAW, including Article 2 and Article 16;
- Amend national constitutions to explicitly prohibit discrimination based on gender;
- Develop and adopt innovative tools to examine and reform legislation;

- Adopt a formalistic reform of legislation to address existing gender gaps and gender discrimination by harmonizing national legislation and legal orders with international human rights instruments, and amending discriminatory provisions in national legislation, particularly personal status codes, penal codes and labor codes; and enact laws that address gender-based violence;
- Enhance partnership among various stakeholders, including civil society organisations, in order to adopt a comprehensive legal reform strategy;
- Remove gender-discriminatory clauses on legal capability in civil or religious courts;
- Share lessons learnt from successful experiences in the Arab region;
- Amend clauses concerning the provision of legal aid services to all types of cases (criminal and civil);
- Develop or enhance research and documentation on legislation in the region that supports gender-sensitive reform and women's legal participation and literacy;
- Address existing gender stereotypes at all levels, including within the judiciary.

B. Enhance the capabilities of accountability institutions

- Ensure the independence of legal and judicial institutions (as outlined in the Bangalore Principles);
- Increase the number and geographical coverage of courts and accountability mechanisms that are accessible to all, particularly rural and other marginalized women;
- Increase women's representation in the judiciary and ensure gender parity within these sectors;
- Provide sufficient funds for legal aid services in the national budget and waive

fees for legal proceedings connected to personal status issues;

- Ensure that all members of the judiciary are gender-sensitized and aware of the legal implications of gender discrimination;
- Enhance the capability of judicial training academies to develop training material on how to integrate international human rights frameworks in judicial rulings;
- Enhance the transparency and accessibility of court rulings addressing gender discrimination;
- Increase knowledge and understanding of informal justice mechanisms, especially in post-conflict settings;
- Build up institutional capabilities to ensure the implementation of legislation in a non-discriminatory manner;
- Strengthen formal justice mechanisms to dissuade women from resorting to informal justice systems;
- Ensure that informal justice systems, when they persist, are aligned with normative human rights frameworks;
- Establish accountability institutions that receive and address complaints concerning gender-based discrimination;
- Increase the ability of civil society organizations to positively contribute to data collection on gender discrimination;
- Establish non-judicial institutions, such as National Human Rights Institutions, with broad mandates and functions in line with the international human rights framework (Paris Principles).

C. Create an enabling socio-cultural environment

- Develop policies and tools to enhance the culture of respect and adherence to the Rule of Law that empowers women and ends gender discrimination;

- Develop programs to legally empower women by providing simple and clear information regarding their rights and available channels of recourse should these rights be violated;
- Engage in capacity-building activities to raise the legal awareness (legal literacy) of women in general, and of rural and other marginalized women in particular;
- Enable civil society organizations, in coordination with government, to develop programs to support women's legal literacy and access to justice;
- Enhance collaboration between all legal and justice entities and institutions, with the aim of transforming the socio-cultural landscape.

Appendix

Highlights of international actions and frameworks to promote gender justice

International conventions: Equal rights and equality before the law are among the basic principles articulated in various international conventions on human rights:

- Covenant on Civil and Political Rights (ICCPR, 1966) enshrines the principles of equality before the law and has a principal clause on non-discrimination (Article 26).
- Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966) contains general and specific non-discrimination clauses, which are similar to those of the ICCPR.
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) defines discrimination against women and sets up an agenda for national action to foster greater equality.
- Convention on the Rights of the Child (CRC, 1989) requires equal application of its provisions for both sexes and establishes specific protections from sexual abuse and exploitation.
- Convention on the Rights of Persons with Disabilities (CRPD, 2006) identifies sex as an aggravating factor for rights abuses of people with disabilities and encourages awareness-raising with regards to this and other factors. It also protects reproductive and sexual health.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW, 1990) states that its provisions shall be applied without distinction based on sex or other protected statuses.
- International Convention for the Protection of All Persons from Enforced Disappearance (CED, 2006) states that it does not impose on States a duty to extradite an individual if they believe the prosecution is based on sex or another protected class.
- Convention on International Access to Justice (1980). The Hague Conference on Private International Law.
- Beijing Declaration and Platform for Action (1995) reflects a new international commitment to the goals of equality, development, and peace for all women. It builds on commitments made in the cycle of United Nations global conferences held in the 1990s.

International bodies and reports: recognize the progress represented by uniform and codified law, and the need for justice systems to evolve towards serving justice in full respect of international human rights standards, such as gender equality, non-discrimination, and due-process guarantees.

UN Women, Progress of the World's Women 2011-2012: In Pursuit of Justice. This report finds that one of the most prevalent obstacles to access to justice is gender bias and discrimination in legal systems, through inadequacies in existing laws which fail to protect women or through limitations in judicial remedies provided in practice.

As the World Bank World Development Report 2006 states, "people's legal rights remain

theoretical if the institutions charged with enforcing them are inaccessible".²⁸⁷ Once a normative system that protects the poor exists, and legal awareness is increased, appropriate institutions, both formal and informal, need to be accessible to all.²⁸⁸

United Nations Arab human development reports (2002-2005) identify structural discrimination against women as a key cause of the social and economic problems faced in the region. The Arab Human Development Report 2005 was devoted entirely to gender issues and made a determined call for the social status of women to be improved, and especially for legal discrimination to be eliminated – both formally and in practice.

UNDP, Gender Equality and Justice Programming: Equitable Access to Justice for Women (2007) demonstrates that women have less access to and ownership of judicial processes because of their marginalized status vis-à-vis men in most societies.

Report of the United Nations Secretary-General to the General Assembly, Legal Empowerment of the Poor and the Eradication of Poverty (2009) highlights the importance of access to justice for women by making the point that "the vast majority of the adult poor are women". It recommends increased legal literacy, legal aid, legal reform, and other initiatives that should be actively pursued in order to advance women's legal empowerment.

SIDA. Equal Access to Justice: A Mapping of Experiences (2011) defines an Equal Access to Justice (EA2J) approach, grounded in international and regional human rights instruments, for promoting rule of law assistance. EA2J takes as its point of departure the primary justice needs of women living in poverty and the obstacles they encounter in finding justice.

International Development Law Organization, Lessons Learned: Narrative Accounts of Legal Reform in Developing and Transition Countries (2010) concludes that the field of legal empowerment has a great distance to travel to build up a body of rigorous research that governments, development agencies, and policy-makers can draw on.

Alston, P. and others (2000), "What is Access to Justice? Identifying the Unmet Legal Needs of the Poor", discusses how the current system fails to address the legal needs of the poor in South Africa, Australia, Pakistan, and the United States, and what progress is being made in that area.

Anderson, M. (1999), "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs", examines some of the principal factors that deny poor people access to justice and suggests a number of legal reform strategies.

Sen, A. (2000), "What is the Role of Legal and Judicial Reform in the Development Process?", discusses the importance of legal reform within a comprehensive development framework.

Botero, J. and A. Ponce (2011), "Measuring the Rule of Law", describes the methodology used to build the World Justice Project (WJP) Rule of Law Index – a new quantitative assessment tool designed to offer a comprehensive picture of the extent to which countries adhere to the rule of law in practice.

Cook, R.C. and S. Cusack (2010), "Gender Stereotyping: Transnational Legal Perspective", offers perspectives on ways gender stereotypes might be eliminated through the transnational legal process in order to ensure women's equality and the full exercise of their human rights.

Decker, K., C. Sage and M. Stefanova (2006), "Law or Justice: Building Equitable Legal Institutions", briefly examines the way the relationship between law and development is currently conceptualized in development circles, and in particular how justice sector reform has been pursued in consequence.

Golub, S. (2003), "Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative", examines legal empowerment –

the use of legal services and related development activities to increase disadvantaged populations' control over their lives – as an alternative.

Mukhopadhyay, M. (2008), "Gender and Access to Justice in Sub-Saharan Africa", analyzes the strategies used to promote gender equality per se and gender-equal access to and outcomes of justice processes.

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Endnotes

- 1 Moghadam, 2004, p. 3.
- 2 Younis, 2013.
- 3 ESCWA comprises 18 Arab countries, namely: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, State of Palestine, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.
- 4 ESCWA Committee on Women, 2016b.
- 5 ESCWA, 2016d.
- 6 ESCWA, 2017.
- 7 ESCWA, 2016a.
- 8 El Awady, 2015.
- 9 ESCWA, 2016b.
- 10 Ibid.
- 11 Douglas, 2007; UN Women, 2011; UNDP, 2002, 2003a, 2004 and 2005b.
- 12 Ibid.
- 13 Ibid.
- 14 Douglas, 2007.
- 15 Jad, 2010.
- 16 El Awady, 2015.
- 17 Ibid.
- 18 Bahdi, 2010.
- 19 McCann, 2006.
- 20 Cook and Cusack, 2010; Golub, 2003a; Sen, 2000.
- 21 Abu-Lughod, 2002.
- 22 Slaoui, 2015.
- 23 ESCWA, 2014.
- 24 Kabeer, 1999.
- 25 Bahdi, 2007a.
- 26 Mir-Hosseini, 2009.
- 27 Mir-Hosseini, 2007.
- 28 Stapenhurst and O'Brien, n.d.
- 29 Ibid.
- 30 Joseph, 2010.
- 31 Prettitore, 2013.
- 32 Nasr, 2016.
- 33 Choueiri, 1989.
- 34 Ibid.
- 35 Ibid.
- 36 Weiss and Green, 1987.
- 37 Nasr, 2016.
- 38 Goldstein, 2012.
- 39 Mayer, 1991.
- 40 Welchman, 2007, p. 256.
- 41 Ibid.
- 42 Ibid.
- 43 Global Campaign for Equal Nationality Rights, n.d.
- 44 Fisher, 2012.
- 45 Ibid.
- 46 El-Azhary Sonbol, 2009.
- 47 Generally, Bier, 2011; Charrad, 2001.
- 48 Moghadam, 2013a.
- 49 Afkhami, 1995.
- 50 Alvi, 2015.
- 51 Ghanim, 2017.
- 52 Maravankin, 2017.
- 53 Alvi, 2015.
- 54 Ibid.
- 55 Ibid.
- 56 Ibid.
- 57 Middle East Policy Council, n.d.
- 58 BADIL Resource Center, 2011.
- 59 Yemen Conflict, 2017.
- 60 HRGJ Clinic, MADRE and WILPF, 2016.
- 61 Militants, 2014.
- 62 See, e.g., Bamidele, 2017; Farmer, 2009; Chinkin, 2014.
- 63 HRW, 2016b.
- 64 Chinkin, 2014.
- 65 Ibid.
- 66 Manjoo and McRaith, 2011.
- 67 Goetz, 2007.
- 68 ESCWA adopted a broad definition of gender justice during its 7th Committee on Women (20-21 January 2016). For more details, ESCWA Committee on Women, 2016a.
- 69 See, e.g., UNFPA Eastern Europe and Central Asia, 2013 (accessed 25 June 2017).
- 70 El Awady, 2015.
- 71 Cook and Cusack, 2010.
- 72 UNDP, 2005a.
- 73 Cook and Cusack, 2010.
- 74 Basnet and Albalooshi, 2012.
- 75 Abu-Lughod, 2002.

- 76 These allegations are rooted in the fact that many of the founding principles were articulated by Western powers at a time when, as a result of colonialism, many non-Western countries were not involved with the United Nations or its predecessor, the League of Nations.
- 77 Donnelly, 1984, p. 401.
- 78 Lower, 2013.
- 79 Donnelly, 1984.
- 80 Bteddini, 2008.
- 81 Welchman, 2004.
- 82 Ahmed, 1992; Mernessi, 1991.
- 83 Mir-Hosseini, 2006, p. 645.
- 84 Žvan-Elliott, 2015.
- 85 World Bank, 2016b.
- 86 Hammoud, 2006, p. 83.
- 87 Brah and Phoenix, 2004, p. 83.
- 88 Žvan-Elliott, 2015.
- 89 Crenshaw, 1991.
- 90 Brah and Phoenix, 2004.
- 91 ARDD, n.d.
- 92 Beqiraj and McNamara, 2014.
- 93 UNAMA and OHCHR, 2015.
- 94 CEDAW, 1981.
- 95 ICCPR, 1976, Articles 2 and 3; ICESCR, 1976, Articles 2 and 3.
- 96 ICCPR Article 14.
- 97 *Ibid.*, Article 26.
- 98 CEDAW, 1981, Article 2.
- 99 *Ibid.*, Article 3.
- 100 *Ibid.*, Article 5.
- 101 *Ibid.*, Article 4.
- 102 CRC, 1990, Article 2.
- 103 *Ibid.* Articles 19 and 34.
- 104 *Ibid.* Article 28.
- 105 CEDAW, 1981.
- 106 Goonesekere, 1998.
- 107 *Ibid.*
- 108 Chung, 2015.
- 109 Goonesekere, 1998.
- 110 Moghadam, 2013b.
- 111 UNTC, 2017c; 2017b; 2017d.
- 112 *Ibid.*
- 113 *Ibid.*
- 114 *Ibid.*
- 115 *Ibid.*
- 116 Mayer, 1991.
- 117 At present, while there is consensus that jus cogens norms exist and establish non-derogable principles of international law, there is little agreement on which rights constitute jus cogens norms. Several sources identify the prohibition of racial discrimination and prohibition of slavery as jus cogens, but sex-based discrimination has less clout in terms of being recognized as such.
- 118 Chung, 2016.
- 119 Look for example at CEDAW general recommendations 4 and 20 on reservations: CEDAW Committee, 2009.
- 120 ESCWA, 2016c.
- 121 ESCWA, 2016f.
- 122 As several of the nations under consideration have undergone recent revisions to their constitutions, please note that the constitutions referred to are those established in the following years: Bahrain (as amended through 2002); Egypt (2014); Iraq (2005); Jordan (1952); Kuwait (1962); Lebanon (1926 – restored to force in 1937 and 1943 – as amended through 2004); Libya (Charter/Declaration 2011); Mauritania (1991 as amended through 2012); Morocco (2011); Oman (1996 as amended through 2011); State of Palestine (2003); Qatar (2004); Saudi Arabia (1926 – incorporating through Basic Law of 1992); Sudan (Interim 2005); Syrian Arab Republic (1973 as amended through 2012); Tunisia (2014); United Arab Emirates (1971 as amended through 1972); and Yemen (1991 as amended through 2001).
- 123 Article 6 of the Libyan Constitutional Declaration declares all Libyans equal before the law. However, sex is not one of the bases provided in what appears to be a semi-exhaustive list. Its exclusion seems noteworthy – not a mere oversight. Article 8 also refers to equality, but does not mention sex and can only be assumed to rely on the same list of protected statuses as Article 6.
- 124 Constitution of Morocco, Article 6.
- 125 *Ibid.* Article 19.
- 126 *Ibid.*
- 127 *Ibid.* Article 30.
- 128 Žvan-Elliott, 2015.
- 129 Constitution of Bahrain, Article 4; Constitution of Kuwait, Article 8; Constitution of Oman, Article 12; Constitution of Qatar, Article 19; Constitution of the United Arab Emirates, Article 14.
- 130 Constitution of Yemen, Article 41; Constitution of the United Arab Emirates, Article 25; Constitution of Syria, Article 33; Constitution of Tunisia, Article 21; Constitution of Sudan, Article 2; Constitution of Qatar, Articles 34 and 35; Constitution of Oman, Article 17;

- Constitution of Morocco, Article 19; Constitution of Lebanon, Article 7; Constitution of Libya, Article 6; Constitution of Kuwait, Article 29; Constitution of Jordan, Article 6; Constitution of Egypt, Article 9; Constitution of Bahrain, Article 18.
- 131 Ibid.
- 132 Constitution of Libya, Article 6; Constitution of Kuwait, Article 29; Constitution of Jordan, Article 6; Constitution of Sudan, Article 2.
- 133 Constitution of Yemen, Article 41; Constitution of the United Arab Emirates, Article 25; Constitution of Lebanon, Article 7.
- 134 Constitution (Basic Law) of Saudi Arabia.
- 135 UN Women, 2011.
- 136 Moghadam and Roudi-Fahimi, 2005.
- 137 Žvan-Elliott, 2007.
- 138 Welchman, 2007, p. 256.
- 139 Ibid.
- 140 Ibid.
- 141 Ibid.
- 142 Žvan-Elliott, 2014.
- 143 Vogel, 2000.
- 144 HRW, 2015.
- 145 United Arab Emirates Labor Law, 2017.
- 146 Ibid.
- 147 Hachem, Alkhliwi and English, 2016.
- 148 Ibid.
- 149 Ibid.
- 150 Trannet, 2003.
- 151 Momani, 2016.
- 152 Lebanon, 2017.
- 153 Tahhan, 2017.
- 154 Morocco, 2014.
- 155 HRW, 2017.
- 156 New law, 2014.
- 157 Articles 573/578/582/584 of the penal code 340 of 1943 and amendments of up to 2014. Article 333 of the penal code and the law for the protection of women and family members against domestic violence, ratified by the Lebanese parliament in April 2014. It is worth noting that the parliamentary sub-committee chose to make the law 'gender neutral', which is why the articles concerning marital rape do not make it clear that it is violence against a wife.
- 158 Al-Alwani, 1999.
- 159 The Free Dictionary, 2017.
- 160 Hamowy, 2003.
- 161 Ibid.
- 162 Ibid.
- 163 Verdonschot and others, 2008.
- 164 Bies and Shapiro, 1987.
- 165 Chiongson and others, 2011.
- 166 OHCHR, 2017b.
- 167 Ibid.
- 168 OHCHR, 2017a.
- 169 Ibid.
- 170 Ibid.
- 171 Ibid.
- 172 Ibid.
- 173 UNTC, 2017e; UNTC, 2017f.
- 174 UNTC, 2017g
- 175 Mayer, 2004.
- 176 ACHPR. 2017.
- 177 Garlicki, 2007.
- 178 Ibid.
- 179 Ibid.
- 180 Mechantaf, 2010.
- 181 Butera and Pillay, 2013; Khedr, 2014.
- 182 Harutyunyan, and Mavčič, 1999, chapter 5.
- 183 Bedas-Tueni, 2015.
- 184 Libyan men, 2014.
- 185 Official presentation, 2017.
- 186 Butera and Pillay, 2013.
- 187 HRW, 2012 (accessed 10 November 2016).
- 188 Encyclopaedia Britannica, 2017.
- 189 Ibid.
- 190 Bergman, 2014.
- 191 Ibid.
- 192 OECD, 2014b; Mendiburu, 2014.
- 193 Bergman, 2014.
- 194 Ibid.
- 195 Ibid.
- 196 Ibid.
- 197 Ombudsman Office of the Kingdom of Bahrain, 2016.
- 198 Ibid.
- 199 Ibid.
- 200 Ibid.
- 201 OECD, 2014a.
- 202 Ibid.
- 203 OHCHR, 2010.
- 204 OHCHR, 1993.
- 205 Global Alliance of National Human Rights Institutions, 2017.
- 206 Ibid.
- 207 OHCHR, 1993.
- 208 Ibid.
- 209 Ibid.
- 210 Ibid.

- 211 Ibid.
- 212 Ibid.
- 213 Qatar National Human Rights Committee, 2014.
- 214 "The term informal justice system is used here to draw a distinction between state-administered formal justice systems and non-state administered or informal justice systems" (Wojkowska, 2006, p. 9). "Any attempt to define [informal justice systems] must acknowledge that no definition can be both very precise and sufficiently broad to encompass the range of systems and mechanisms that play a role in delivering rule of law and access to justice" (UNICEF, 2012, p. 6). This study employs a definition of 'informal justice system' that refers to informal dispute resolution mechanisms anchored in customary and tribal structures, which fall outside the scope of the formal justice system.
- 215 UNICEF, 2012 (accessed 19 August 2016).
- 216 Ibid.
- 217 Ibid.
- 218 Bahdi, 2010.
- 219 UN Women, 2010.
- 220 World Justice Project, 2016b.
- 221 IDLO, 2015.
- 222 Röder, 2012.
- 223 Allen and Macdonald, 2013.
- 224 United Nations General Assembly, 2011.
- 225 IDLO, 2013.
- 226 Ricken, 2012.
- 227 Ibid.
- 228 Ibid.; The IDLO Report studied the efforts made in Afghanistan, India, Melanesia, Morocco, Mozambique, Namibia, Rwanda, and Tanzania to instill women's human rights.
- 229 Swaine, 2003.
- 230 Schärf and others, 2002; Golub, 2003b.
- 231 Wojkowska and Cunningham, 2011; Also, UN Women has highlighted institutional and social factors that provide disincentives for women to engage with formal justice systems, including discriminatory state laws or a failure to apply the law in a non-discriminatory manner. UN Women, 2011, p. 52.
- 232 Kabeer, 1999.
- 233 Bahdi, 2007b. Bahdi focuses on women's access to justice in the MENA region and concludes that if laws are to benefit women, then strategies need to be developed to address the barriers to women's access to justice, in its substantive, procedural, and symbolic forms.
- 234 Mukhopadhyay, 2008. Mukhopadhyay lists biases in the treatment of women in courts as witnesses, as defendants, and as lawyers, as well as in the selection of judges and the procedures used in courts.
- 235 UNDP, 2002; UNDP, 2003a; UNDP, 2004; UNDP, 2005b.
- 236 UNDP, 2003b.
- 237 Ibid.
- 238 See, e.g., HRW, 2016a.
- 239 Ibid.; see also Swaine, 2003.
- 240 Giddens, 1991.
- 241 King-Irani, 2000.
- 242 HRW, 2016a.
- 243 Ibid.
- 244 Bosworth and others, 1997.
- 245 Jabbour, 1996.
- 246 Falder and Wirth, 1995.
- 247 Bouheraoua, 2008.
- 248 Ibid.
- 249 ESCWA, 2016e. The ECW gender justice cross-country surveys covered 12 countries throughout 2016 and were conducted with the participation of government officials from the surveyed countries (Bahrain, Egypt, Iraq, Jordan, Lebanon, Morocco, Oman, State of Palestine, Sudan, Tunisia, the United Arab Emirates and Yemen).
- 250 It should be noted that while the chapter highlights practices in a set of selected Arab countries covered in the surveys, it does not aim to provide an exhaustive assessment of the situation in all Arab countries.
- 251 UNDP, 2002 (accessed 24 August 2016); UNDP, 2003a; UNDP, 2004; UNDP, 2005b.
- 252 OECD, 2014c.
- 253 Ibid.
- 254 See table 3 for a list of strategies; Only ESCWA countries that have national gender equality strategies are listed.
- 255 ECOSOC, 1997.
- 256 World Bank, 2004.
- 257 World Bank, 2012.
- 258 CEDAW, Articles 7-8; ICCPR, Article 25; CEDAW requires governments to ensure women's equal access to, and equal opportunities in, political and public life.
- 259 Bahrain Supreme Council for Women, 2017.
- 260 Embassy of the United Arab Emirates in Washington, D.C., 2017.
- 261 IPU, 2017.

- 262 CFR, 2016; Castillejo, 2016; Hedström and Senarathna, 2015.
- 263 CFR, 2016.
- 264 Ibid.
- 265 Ibid.
- 266 OSAGI, 2005.
- 267 Maravankin, 2017.
- 268 Elsadda, 2013.
- 269 UNDP, 2015.
- 270 LWPP, 2014.
- 271 Nair, 2013.
- 272 Charrad & Zarrugh, 2014.
- 273 Gaston, 2014.
- 274 ESCWA, 2016e.
- 275 Ibid.
- 276 Hausmann, Tyson and Zahidi, 2011; The World Economic Forum Gender Gap Report argues that empowering women and fully leveraging their talent and leadership in the global economy, politics and society is fundamental to maximizing a nation's competitiveness.
- 277 OECD, 2013.
- 278 ESCWA, 2016e.
- 279 United Nations, 2017.
- 280 WHO, 2013.
- 281 Ibid.
- 282 Health Policy Plus, 2016.
- 283 Tønnessen, El-Nagar and Bamkar, 2017.
- 284 Morrison and Orlando, 2004.
- 285 United Nations, 2006.
- 286 Gascoigne, 2001-ongoing.
- 287 UNDP, 2005a.
- 288 World Bank, 2006.

This study maps the current state of gender justice in the Arab region, documenting barriers as well as opportunities. Its primary research objective is to determine how an environment can be developed – at the legal, policy and social levels – that would be conducive to gender justice. The study provides insight into the state of gender justice through a legal or de jure perspective, as well as a de facto perspective. It achieves this by reviewing significant legislative, political and social changes that have taken place between 2004 and 2016.

The study also maps the availability of institutional mechanisms at the national level that allow women to seek institutional guarantees and redress. It discusses the interplay of formal and informal justice systems in several Arab countries. The crucial role of legal aid availability, access and utilization by women in the region is also addressed. This study calls on States to create an enabling legislative environment, enhance the capabilities of accountability institutions, and foster an enabling socio-cultural environment.

