

Women in the Judiciary in the Arab States

Removing Barriers, Increasing Numbers



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Economic and Social Committee for Western Asia

Women in the Judiciary in the Arab States

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Executive Summary

Women's right to participate fully and equally in all aspects of public life, including the judiciary, is widely recognized as a fundamental human right. There is a large body of evidence that women's presence in the judiciary is a catalyst for the development of strong, independent, accessible and gender-sensitive judicial institutions and, more broadly, the achievement of gender justice within society. Increasing women's participation in the judiciary has therefore become an important development objective globally. In recent years, at the national level Arab countries have taken steps to appoint an increasing number of female judges and public prosecutors – in some countries, for the first time. Despite these efforts, however, women remain starkly underrepresented in judicial institutions in the Arab region, with strong disparities between and within Arab countries.

This study, produced by the United Nations Economic and Social Commission for Western Asia (ESCWA) in partnership with the International Commission of Jurists (ICJ) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Middle East and North Africa, examines women's presence in judicial institutions in the Arab countries. The study's regional analysis is completed by case studies conducted in five countries that have achieved a comparatively high presence of women in the judiciary (Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia). The case studies include interviews with female judges identifying obstacles they have faced in their career, as well as focus group

discussions with male and female actors in the legal system (judges, lawyers and court officials) on the perceived impact of women's presence. The case studies also identify relevant good practices that can be emulated in other Arab countries.

The case studies reveal that, in line with global evidence, women's increasing presence in judicial institutions is viewed overwhelmingly positively by actors of the legal system in the Arab region, who cite a variety of effects such as more gender-sensitive handling of cases, increased understanding of the judiciary's role in protecting women from violence and even a more cordial atmosphere inside the courtroom. The presence of female judges encourages women to come forward and make use of judicial mechanisms when their rights have been breached. In addition, female judges were viewed as less susceptible to corruption and political pressure, thereby contributing to increasing the independence of the judiciary and the quality of judgements.

Despite these potential gains, there are still large disparities between Arab countries regarding the presence of women in judicial institutions. The number of female judges has significantly increased in countries such as Jordan, Lebanon, the State of Palestine, Morocco and Tunisia. However, in other States, particularly in the Gulf region, progress has been more limited, with Bahrain being a notable exception. Although Saudi Arabia appointed a female arbitrator to a commercial court in 2016, the country still does

not have women as full members of its judiciary. In Kuwait, the first group of female judges is expected to assume office in a couple of years, once they finish their training at the office of the public prosecutor. A few countries, such as Somalia and Oman, do not yet have any female judges in their judiciaries. Women's presence remains marginal in most other Arab States.

There are clear gender disparities within national judicial systems. In all Arab countries, including those with significant overall numbers of female judges, there are far fewer women serving in intermediate and higher courts than in courts of first instance and conciliation courts. Female judges are more likely to work in civil rather than criminal or military courts and in urban rather than rural areas. With only few exceptions, female judges remain excluded from sitting on the religious courts that handle personal status matters in several Arab States. Women are underrepresented in prosecution services. In addition, women do not generally hold positions in judicial councils and similar judicial high decision-making bodies.

The disparities between and within countries show that strong barriers to female judges' appointment to and progression in the judiciary endure. Such barriers are multifaceted with legal, political, institutional, normative and structural dimensions. Weak legal commitments to gender equality and uneven implementation of women's rights undermine women's equal access to a judicial career. Conservative interpretations of religious law and practices remain a basis to contest women's judgeship, particularly regarding appointment to religious courts. The absence of fair appointment processes for judges and the lack of objective and clear criteria for career progression impact women disproportionately, and most notably at the top of the judicial hierarchy.

Conservative gender norms, patriarchal structures and gender-based discrimination also remain significant barriers. The uneven distribution of tasks within the household means that marriage, motherhood, and childcare affect women's access to a judicial career and their progression within it. The absence of suitable childcare facilities, adequate parental leave and flexible working conditions for both women and men all have a negative impact on women's career progression. Gender-based stereotypes also constitute a barrier for female judges' progression, as does the fragmented support from national women's machineries and civil society organizations.

Based upon analysis of the normative framework (including international binding commitments) and extensive analysis of evidence and best practices at the global and regional level, the study provides an extensive list of concrete and actionable policy actions to increase women's presence in judicial institutions. Arab States, international organizations and civil society organizations are recommended to:

- Introduce national targets and accountability mechanisms;
- Expand outreach activities to attract more women into the judiciary;
- Revise entry and career progression rules in line with the principles of transparency, fairness and sensitivity to the specific needs of women and men;
- Develop the judiciary as a gender-sensitive workplace;
- Promote mentorship and networking for women in the judiciary;
- Increase coordination with broader efforts to promote women's participation to public life and access to justice.

Contents

	<i>Page</i>
Acknowledgments	iii
Executive Summary	v
1. Why Do Women in the Judiciary Matter?	1
A. Purpose, methodology and structure	4
B. Normative framework	5
C. Judicial systems and judges in the Arab States	13
2. Female Judges in the Arab States	23
A. Country-level percentages	25
B. Entry into the judiciary	29
C. Distribution across court levels and grades	32
D. Distribution across court types	33
E. Representation in prosecution services	35
F. Distribution across regions	35
G. Representation in judicial decision-making bodies	36
3. Barriers to Women's Presence in the Judiciary	37
A. Weak commitments to gender equality in national legislation and policy frameworks	39
B. Conservative religious doctrine	40
C. Poor level of transparency and fairness in judicial appointments	40
D. Gender-blind rules on appointment and career progression within the judiciary	42
E. The uneven distribution of unpaid care work	43
F. Gender stereotypes and patriarchal assumptions regarding women's role in society	44
G. Fragmented support from national women's machineries and civil society organizations	46
4. Key Findings, Good Practices and Policy Recommendations	49
A. Key findings	51
B. Overview of regional good practices	52
C. Policy recommendations	54
Annex	57
Bibliography	63
Endnotes	71
List of Tables	
Table 1. Status of Ratification of International and Regional Instruments	7
Table 2. Women in the judiciaries of Arab States	26
Table 3. Percentage of female candidate at the Institute of Judicial Studies in Lebanon	30
Table 4. Percentage of female candidates at the Institute for High Judicial Studies in Tunisia	30

List of Figures

Figure 1. Examples of types of courts in the Arab States	14
Figure 2. Percentage of female judges	27

List of Boxes

Box 1. Formal and informal justice in conflict-affected areas	17
Box 2. Female judges around the globe	28
Box 3. Women in the legal profession	31
Box 4. Why do women choose a judicial career?	31
Box 5. Women in international courts	33
Box 6. Women's participation in decision-making in Arab States	36
Box 7. Qaadi and Qaadiya	46

1

Why Do Women
in the Judiciary
Matter?

1.

1. Why Do Women in the Judiciary Matter?

The judiciary plays a fundamental role in the good functioning of society. Judicial institutions guarantee order within society by protecting human rights, upholding the rule of law, providing redress to victims and holding those responsible for injustices, including individuals, government and other institutions under their jurisdiction, to account. An independent, impartial and effective judiciary significantly contributes to building trust between the government and its citizens, maintaining peaceful relations and cultivating respect for the rule of law. To achieve this aim, it is essential that the judiciary reflects the society that it serves in all its diversity, thereby enabling judicial institutions to deal with a multitude of individual contexts with fitting sensitivity.

Women's full and equal participation in the judiciary is both an end in itself, as it fulfils their right to equal participation in all aspects of decision-making, and a catalyst for the development of strong, independent, accessible and gender-sensitive judicial institutions. There is a rich body of evidence demonstrating that women's increased presence in the judiciary is beneficial for the good administration of justice, resulting in better outcomes for men and women alike. Diversity enriches the quality of judicial decision-making in general, and for cases affecting women in particular. In the view of many observers, women's full and equal participation in the administration of justice is therefore a prerequisite for building a gender-sensitive judicial system.¹ A gender-sensitive judiciary can also significantly contribute to

societal development by advancing a human-rights based agenda that includes gender equality and combating gender-based discrimination. As noted by the former Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, achieving gender equality and empowering women "requires an independent judiciary able to exercise its role to uphold the rule of law and make all persons, institutions and entities, public and private, accountable to gender-sensitive laws".²

Arab States have affirmed their commitment to eliminating barriers to women's access to decision-making and to achieving gender justice by ratifying various international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³ All Arab States have also pledged to achieve the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development, of which women's right to equal participation and inclusive institutions are key pillars – as captured in SDG 5 ("Achieve gender equality and empower all women and girls") and SDG 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"). At the regional level, Arab States have restated their commitment to gender justice by adopting the Muscat Declaration ("Towards the Achievement of Gender Justice in the Arab region"). Through the Declaration, Arab States commit themselves to eliminating all forms of discrimination

between men and women and supporting effective national accountability mechanisms, including the judiciary.

In line with these commitments, all Arab States have taken visible steps to remove barriers to women's presence in their judiciary systems. Such efforts, combined with the rising number of women entering the legal profession, have led to a rise in the number of female judges, public prosecutors and women in other key roles in the judiciary over the last decade – in some States, for the first time. Nevertheless, the distribution of the rising number of female judges remains uneven at both the regional and institutional level. Although some countries in the region have achieved significant progress, women's representation in the judiciaries in the Arab region remains far below equality. The lacklustre picture suggests that strong institutional and sociocultural barriers to women's full and equal participation are still in place in all Arab States. These barriers need to be addressed by Arab States in a holistic and comprehensive manner to enable them to meet their international commitments.

A. Purpose, methodology and structure

The present study was developed by the Economic and Social Commission for Western Asia (ESCWA) in partnership with the International Commission of Jurists (ICJ) and the Office of the High Commissioner for Human Rights (OHCHR) – Regional Office for the Middle East and North Africa. The study examines women's presence in judicial institutions in the Arab countries, identifies barriers to women's entry to and progression through the ranks of the judiciary and offers policy recommendations to remove these barriers. The study covers the

Arab region with a specific focus on ESCWA member States.⁴

The global literature identifies a data deficit regarding women's presence in judicial institutions.⁵ This deficit is acute in the Arab region, where, with a handful of exceptions, data on the presence and distribution of women in the judiciaries are not consistently collected by States. Public availability of data is even more limited. In addition, Arab countries have a large degree of diversity in their respective judicial systems in terms of sources of law, history, structures, degree of independence and judicial career paths, which limits the possibility of inferring region-wide trends from the limited quantity of data publicly available.

To address these data limitations, the research team drew quantitative and qualitative data from a variety of sources to develop the present study. A comprehensive desk review (in Arabic, English and French) was conducted to identify available data and data gaps in sources such as States parties' reporting on the implementation of CEDAW, other reports by governmental bodies and non-governmental organizations, as well as the academic literature. Online research was also conducted to collect official data available on the websites of ministries and governmental bodies (such as judicial councils).

To bridge identified data gaps, the research team addressed a questionnaire to the national women's machineries of ESCWA member States. The questionnaire sought to collect data on the presence of women in the judiciary as well as associated national initiatives and mechanisms. Professional associations and non-governmental organizations were also invited to provide information through a dedicated questionnaire. The report benefited additionally from information provided by global and regional

experts, including female judges, during an Expert Group Meeting organised in Beirut on 28 and 29 November 2018.⁶

The study further builds on data from five country case studies conducted in Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia. The case studies aimed to collect in-depth evidence on the presence and distribution of female judges and to identify good practices in enhancing women's participation in judicial institutions, as these five countries have achieved a comparatively higher presence of women in the judiciary. The case studies were conducted using a combination of desk-based research, individual interviews and focus group discussions. The desk-based research analysed relevant legal and policy frameworks and collected available data on the distribution of women in judicial institutions. Interviews were conducted with as many as 5 to 10 female judges in each of the countries regarding their experiences in pursuing a career within judicial institutions. Focus groups discussions comprising male and female judges, prosecutors, lawyers and court officials were also organized in all five countries. The focus group discussions were guided by standardized questions and aimed to supplement quantitative analysis by collecting a diversity of views and experiences regarding women's presence in the judiciary within these countries, including perceived impact on the administration of justice. The interviews and focus group discussions also sought to identify good practices in enhancing women's participation in Arab judicial institutions. The evidence collected through the case studies fed into the present report's analysis and policy recommendations; the case studies for Lebanon and the State of Palestine have also been published as stand-alone background papers.⁷

The present study is divided into four chapters. The first chapter introduces the structure, methodology and normative framework relating to women's right to equal participation in the judiciary, including a brief review of global and regional evidence on the impact of women's presence in the judiciary. It also presents key features of the different judicial structures in Arab countries. The second chapter examines women's presence in the judiciary across Arab States looking at overall numbers as well as distribution across judicial grades, functions and women's representation in judicial decision-making bodies office and in judicial training institutes. The third chapter analyses the barriers to women's access and career progression within the judiciary. The fourth chapter summarizes key findings and good practices from the region and presents a list of policy recommendations.

B. Normative framework

A rich normative framework places the obligation to ensure women's full and equal participation in the judiciary upon the State. This obligation derives from the State's commitments to women's rights under international law, including the right to non-discrimination and to equal participation in public life. Women's full and equal participation in the judiciary is also a prerequisite for guaranteeing judicial strength and independence of the judiciary and realizing the right to equal access to justice, thereby contributing to fulfilling States' international legal obligations in this regard. This section presents the relevant normative frameworks as well as empirical evidence at the global and regional levels regarding the impact of women's presence in judicial institutions. A further exploration of the normative framework, particularly the role of women in the judiciary in achieving gender

justice, is provided in a dedicated policy brief, “Women in the Judiciary: A Stepping Stone towards Gender Justice”.⁸

1. Non-discrimination on the basis of sex

Several international conventions and frameworks guarantee the right to non-discrimination on the basis of sex. The International Covenant on Civil and Political Rights (ICCPR) in article 26 provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The International Covenant on Economic, Social and Cultural Rights (ICESCR) in article 3 requires State parties to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set out in the Covenant. CEDAW requires, in article 2, States to eliminate discrimination against women in all its forms and ensure the practical realization of the principle of the equality of men and women through law and other appropriate means. The Beijing Declaration and Platform for Action and the SDGs also contain clear commitments for member States to eliminate all forms of discrimination that may prevent women from enjoying their rights.

Regional human rights instruments of relevance to Arab States include commitments to gender equality and non-discrimination on the basis of sex. The Arab Charter on Human Rights requires in article 3, paragraph 1, that “[e]ach State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein,

without discrimination on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability”. Article 11 of the Arab Charter also provides that “[a]ll persons are equal before the law and have the right to enjoy its protection without discrimination”. The African Charter on Human and Peoples’ Rights notes that “[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”. Article 2 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (also known as the Maputo Protocol), similarly requires States to “combat all forms of discrimination against women through appropriate legislative, institutional and other measures”.

Although translation into national legislation and policy frameworks remains uneven, Arab States have signalled their commitment to the elimination of discrimination on the basis of sex through their signature and ratification of related international and regional instruments (table 1). ICCPR and ICESCR were ratified by most Arab States except for Oman, Saudi Arabia, the United Arab Emirates and Comoros (although the latter has been a signatory since 2008). CEDAW was ratified by all Arab States, with the exception of Somalia and the Sudan, albeit with reservations.⁹ On a regional level, the Arab Charter on Human Rights was ratified by all Arab States with the exception of Comoros, Djibouti, Mauritania, Oman and Somalia. The African Charter on Human Rights was ratified by Algeria, Comoros, Djibouti, Libya, Mauritania, Somalia, the Sudan and Tunisia. Comoros, Djibouti, Libya and Mauritania have also ratified the Maputo Protocol.

Table 1. Status of Ratification of International and Regional Instruments

	ICCPR	ICESCR	CEDAW	The Arab Charter on Human Rights	The African Charter on Human and Peoples' Rights	Protocol to the African Charter Human and Peoples' on the Rights of Women in Africa
Algeria	1989	1989	1996	2006	1987	2003
Bahrain	2006	2007	2002	2006	---	---
Comoros	2008	2008	1994	---	1986	2004
Djibouti	2002	2002	1998	---	1991	2005
Egypt	1982	1982	1981	2004	1984	---
Iraq	1971	1971	1986	2013	---	---
Jordan	1975	1975	1992	2004	---	---
Kuwait	1996	1996	1994	2013	---	---
Lebanon	1972	1972	1997	2011	---	---
Libya	1970	1970	1989	2006	1986	2004
Mauritania	2004	2004	2001	---	1986	2005
Morocco	1979	1979	1993	2004	---	---
Oman	---	---	2006	---	---	---
State of Palestine	2014	2014	2014	2007	---	---
Qatar	2018	2018	2009	2009	---	---
Saudi Arabia	---	---	2000	2009	---	---
Somalia	1990	1990	---	---	1985	2006
The Sudan	1986	1986	---	2013	1986	2008
Syrian Arab Republic	1969	1969	2003	2007	---	---
Tunisia	1969	1969	1985	2004	1983	---
United Arab Emirates	---	---	2004	2008	---	---
Yemen	1987	1987	1984	2008	---	---

Legend: Ratified (Ratified with Reservations or Declarations), Signature only, No action

Sources: Gender Justice and the Law: Assessment of Laws Affecting Gender Equality in the Arab States Region, 2018; supplemented by information from the websites of the League of Arab States and the African Commission on Human and Peoples' Rights.

Note: Accessed April 2019.

2. Equal participation in public life

The right of women to participate equally in public life is widely acknowledged as a fundamental human right. Provisions related to women's equal participation are found in the Universal Declaration of Human Rights, ICCPR, CEDAW, the Vienna Declaration and Programme of Action, the Beijing Declaration and Platform for Action, as well as in United Nations General Assembly resolutions such as resolution 66/130 on women and political participation. It also features in the 2030 Agenda and in regional instruments.

Article 25 of ICCPR protects the rights of every citizen, without discrimination, to take part in the conduct of public affairs and to have access to public service. The United Nations Human Rights Committee, in General Comment No. 28, emphasized that the right to participate in the conduct of public affairs under paragraph 29 and called on States to provide statistics on women's participation in the judiciary under article 29.¹⁰ Article 7 of CEDAW requires States to "take all appropriate measures to eliminate discrimination against women in the political and public life of the country..." These measures, according to General Recommendation No. 23 of the Committee on the Elimination of Discrimination against Women (CEDAW Committee), include removing formal barriers and taking positive actions to ensure that women have equal opportunities to participate in the judiciary such as targeted recruitment, numerical goals and quotas, financial assistance and training.¹¹ Women's right to participate equally in public life also entails equal opportunity for promotion to higher level within the judiciary. In article 7, ICESCR emphasizes "the right of everyone to the enjoyment of just and favourable conditions of

work" and in particular to "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence".

The Beijing Declaration and Platform for Action asserts that "women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace".¹² The Beijing Platform also specifically calls for States to "ensure that women have the same right as men to be judges, advocates or other officers of the court".¹³ It also calls on States to "commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, inter alia, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions".¹⁴

Other international frameworks support women's right to equal participation in public life. United Nations General Assembly resolution 66/130 on women and political participation, adopted in 2011, "further encourages States to commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, inter alia and as appropriate, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and

men, if necessary through positive action, in all governmental and public administration positions".¹⁵ Target 5.5 of the SDGs, adopted in 2015 by all Arab States, commits States to "ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life". Target 16.7 of the SDGs further requires States to "ensure responsive, inclusive, participatory and representative decision-making at all levels", including the judiciary.¹⁶

On the regional level, the Arab Charter protects the right of every citizen "to the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity". Article 34(4) of the Arab Charter additionally provides, that "[t]here shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work".¹⁷ The African Charter on Human and Peoples' Rights also provides that "every citizen shall have the right of equal access to the public service of his country".¹⁸ The Maputo Protocol similarly requires States to take all appropriate measures to "ensure increased and effective representation and participation of women at all levels of decision-making" and "that women are represented equally in the judiciary and law enforcement organs".¹⁹

3. Judicial strength, independence and the good administration of justice

Although there is no evidence that women judge differently than men, there is a large body of evidence demonstrating that women's presence in the judiciary, and judicial diversity in general, make a positive difference in the

administration of justice and contribute to the edification of strong and independent judicial institutions.²⁰ As female judges do not speak with one voice, the argument for women's presence in the judiciary is better advanced on the basis of diversity, rather than on the basis of a potential difference between men and women judges.²¹ On a general level, diverse public institutions tend to perform better in the delivery of services and public goods.²² A more diverse composition enables public institutions to respond to the specific needs of various users and recipients. Organizational diversity has been linked to increased innovation, diminished corruption and closer adherence to good governance standards.²³ Public institutions in which all components of society are equitably represented are generally perceived as more legitimate, which in turn enhances their sustainability, notably in post-conflict settings.²⁴

Research on women in the judiciary similarly shows that diversity is beneficial for the good administration of justice as it enables the emergence of diverse perspectives on adjudication, justice and the law that enrich the quality of judicial decision-making for everyone.²⁵ The literature highlights that female judges may offer a different perspective based on their own experiences of the world as women. In turn, this enables the judiciary as a whole to respond to diverse social and individual contexts and experiences with fitting sensitivity and therefore contribute to better judicial outcomes.²⁶ Judge Françoise Tulkens, of the European Court of Human Rights, argued that while female judges "are not judging cases in a radically different way [...] they do, however, sometimes and even often, bring 'something different' [...] simply because they occupy a very different position on account of their gender and other elements that form part

of their own history”.²⁷ In her support for a more diverse judiciary, Baroness Brenda Hale, one of the first female judges in the United Kingdom’s Supreme Court, similarly argued that the perspectives and experiences of female judge as women should be “just as much part of the background and experience which shapes the law as the experience of leading men’s lives has been for centuries”.²⁸

Key international instruments relating to judicial strength and independence accordingly recognize that the appointment of women to the bench contributes to the development of strong and independent judicial institutions. The United Nations Basic Principles on the Independence of the Judiciary emphasize in article 10 that “in the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status”.²⁹ At the regional level, this requirement for non-discrimination on the basis of gender and gender sensitivity within the judiciary is reaffirmed in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa adopted by the African Commission on Human and Peoples’ Rights of the African Union in 2003. The Principles and Guidelines require member States of the African Union to ensure that qualified persons shall be entitled to be considered for judicial office without discrimination on any grounds including sex and gender.³⁰

4. Access to justice

Judicial institutions play a key role in guaranteeing women’s rights, eliminating the multiple forms of discrimination faced by women and facilitating, in the long run, a more gender equal environment within societies.³¹ Article 2 of

CEDAW recognizes this central role and obliges States parties to “ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”. In General Recommendation No. 33 on women’s access to justice, the CEDAW Committee clarified that commitments to non-discrimination require the courts and justice institutions to protect women’s rights and to order remedies in case of violations.³²

It highlighted that courts and other formal and informal judicial mechanisms have the obligation to protect women’s rights, including by upholding women’s rights that stem from international treaties, as well as general principles of equality. Therefore, any woman who has seen her rights breached should be able to gain remedy and justice through independent and impartial judicial mechanisms.

The former Special Rapporteur Gabriela Knaul further noted that achieving gender equality and empowering women “requires an independent judiciary able to exercise its role to uphold the rule of law and make all persons, institutions and entities, public and private, accountable to gender-sensitive laws”.³³ She argued that an independent, impartial and gender-sensitive judiciary plays a crucial role in advancing women’s human rights and achieving gender equality and emphasised that developing a gender-sensitive judiciary should be a priority for States. The Special Rapporteur recommended that States should “endeavour to evaluate the structure and composition of the judiciary to ensure adequate representation of women and create the conditions necessary for the realization of gender equality within the judiciary and for the judiciary to advance the goal of gender equality”.³⁴

Realizing the potential of judicial institutions as an accountability mechanism protecting gender

equality and women's empowerment necessitates that women can access independent and impartial courts. It requires that judges base their decisions on relevant facts, evidence and the law without discrimination or prejudice. Yet, in many countries, women struggle for access to justice on the same level as men and are confronted by a complex landscape of discriminatory laws, insensitive procedures, male-dominated institutions and patriarchal values and practices. In the view of the CEDAW Committee, such obstacles to justice amount to a "structural context of discrimination and inequality" and constitute "persistent violations of women's human rights".³⁵

There are numerous forms of discrimination that may be experienced by women seeking to access judicial institutions. These include stereotypes held by judges that may distort perceptions and result in decisions based on preconceived beliefs and myths rather than relevant facts. Judges may adopt rigid standards about appropriate behaviour for women and penalize those who do not conform to these stereotypes.³⁶ Legal procedures may also contain discriminatory aspects, such as provisions that accord inferior status to the testimony of women or require them to meet a higher burden of proof than men. In addition, the judicial system might not be well equipped to handle all cases in a gender-sensitive manner. Such sensitivity is critical in issues relating to gender-based violence, including sexual violence, for example if women are required to testify in public or to face their abusers in courts. Such procedures may discourage women from using judicial mechanisms that might expose them to uncomfortable experiences in court and social stigma, especially in conservative contexts.

Factors such as physical distance, lack of education and information or inability to afford legal procedures also limit women's ability to access judicial mechanisms.³⁷

In light of the above challenges, the principle of equal access to justice has become well-established in international legal instruments and frameworks. Article 14 of ICCPR provides that "all persons shall be equal before the courts and tribunals" and that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Article 15 of CEDAW requires States parties to "accord to women equality with men before the law". The Declaration of the High-level Meeting of the General Assembly on the Rule of Law establishes that equal access to justice is a core requirement of the rule of law.³⁸ The Bangalore Principles of Judicial Conduct, endorsed by the United Nations Economic and Social Council (ECOSOC), forbid judges from manifesting, "by words or conduct, [...] bias or prejudice towards any person or group on irrelevant grounds", including sex, in the performance of judicial duties.³⁹ The Sharjah Principles of Judicial Conduct, adopted at the 11th Conference of Heads of Arab Judicial Inspection Bodies also forbids bias in the administration of justice, including based on sex.⁴⁰ The SDGs and the Beijing Platform for Action contain further provisions towards women's access to justice.

There is strong evidence that women's increased participation in justice institutions can produce tangible results in improving women's access to justice, thereby contributing to fulfilling States' obligations in this regard. Increasing the number of female judges and other front line justice sector officials was found to create a more

conducive environments for women in courts and to make a difference in the outcomes of cases related to sexual harassment and discrimination.⁴¹ In international courts there has been evidence attributing the successful prosecution of sexual crimes to the presence of female judges on the bench.⁴² For instance, Judge Navanethem Pillay, the only female judge on the International Criminal Tribunal for Rwanda panel, is often credited with the successful prosecution of Jean-Paul Akayesu and his subsequent conviction of rape as a war crime, a crime against humanity and an instrument of genocide.⁴³ In this trial, Judge Pillay took the initiative to ask witnesses about evidence of sexual violence and, as result, requested the prosecution to amend the indictment to include charges of sexual violence. Similarly, at the International Criminal Tribunal for the former Yugoslavia, Judge Elizabeth Odio Benito was believed to have “publicly exhorted”⁴⁴ prosecutors to include gender-related crimes in the indictment of Dragan Nikolić, which ultimately led to his conviction of aiding and abetting rape as a crime against humanity.⁴⁵

At the national level, empirical studies on the impact of female judges show that better gender balance may have a positive impact on judicial decision-making, particularly in cases involving sex-based discrimination, divorce, child custody, gender-based violence, asylum and criminal and commercial law.⁴⁶ Baroness Hale asserted that, in her experience, being a woman makes a difference in judging particularly in areas concerning childbearing and sexuality.⁴⁷ The presence of female judges on the panel may also impact on the way male judges take decisions: Boyd, Epstein and Martin argued that male judges are more likely to decide sex discrimination cases in favour of the plaintiff when a woman is present on a judicial

panel, and less likely to do so when the judicial panel is exclusively male.⁴⁸

Diverse explanations for the positive impact of judicial diversity have been advanced in the literature. Several studies have, for example, also found that female judges often conduct their courts differently than their male counterparts, particularly when engaging with female plaintiffs or defendants during trials and by highlighting the gender implications of rules and procedures that may have a negative or discriminatory impact on women. There is evidence that having female judges often leads to scrutinizing, identifying and challenging sexism and gender-based assumptions about sexual difference, behaviours and reactions in court cases.⁴⁹ Female judges may, for example, “challenge dominant discourses in the court by questioning the current legal construction of ‘woman’, rejecting ‘stock stories’ about women’s reactions and behaviour, not relying on stereotypical or gender-biased assumptions about sexual difference or behaviour, challenging myths and stereotypes about women, and critiquing previous judgments [...] that adopt such myths and stereotypes”.⁵⁰ Women in the legal system have been noted to act as agents of change in favour of developing a more gender-sensitive judiciary, as they are well placed to identify and challenge problematic stereotypes, attitudes and behaviours and push for reform to negative institutional policies and practices. The meaningful presence of women within the judiciary can enhance women’s trust in the fairness of the judicial institution and process and encourage them to seek redress through judicial mechanisms.⁵¹

In its General Recommendation No. 33 on women’s access to justice, the CEDAW

Committee requires States to “confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers of justice-related services, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities”.⁵²

In the Arab States, there have been few attempts to assess the impact of women’s increasing presence in the judiciary. Nevertheless, findings of the five national case studies conducted for the purpose of the present study in Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia show that the impact of the presence of an increasing number of women is noticeable and overwhelmingly regarded as positive. Participants in the case studies reported, for example, that the higher presence of women has led to a more cordial atmosphere inside the courtroom, which facilitates a smooth adjudication of cases, more gender-sensitive handling of cases and higher sensitivity to the judiciary’s role in protecting women from violence. A Lebanese female judge noted that she was more likely to use the full extent of legal provisions to protect and extract a woman from an abusive relationship compared to male colleagues, who would instead seek to reconcile the woman and her partner. Judges and lawyers, male and female, in all the countries noted with appreciation that the presence of female judges encourages women to come forward and make use of judicial mechanisms when their rights have been breached. In addition, female judges were

viewed as less susceptible to corruption and political pressure, thereby contributing to increasing the independence of the judiciary and the overall quality of judgements.⁵³ Finally, it was also noted that associations of female judges in Jordan, Morocco and Tunisia have actively advocated for, organized and supported initiatives to make their respective judicial systems more gender-sensitive.

C. Judicial systems and judges in the Arab States

Women’s ability to enter and progress within the ranks of the judiciary needs to be understood in the context of the judicial systems of the Arab States. Country-specific factors such as the set-up of the court systems, sources of legislation and the processes for the appointment of judges influence the distribution of women in the judiciary and the obstacles they might face in their career progression (as further detailed in chapter 3). As a background for the analysis, this section offers a brief overview of judicial systems in the Arab region (including sources of legislation) and presents illustrative models of judicial career paths adopted by Arab countries to underline their variety.

1. Overview of judicial systems in the Arab region

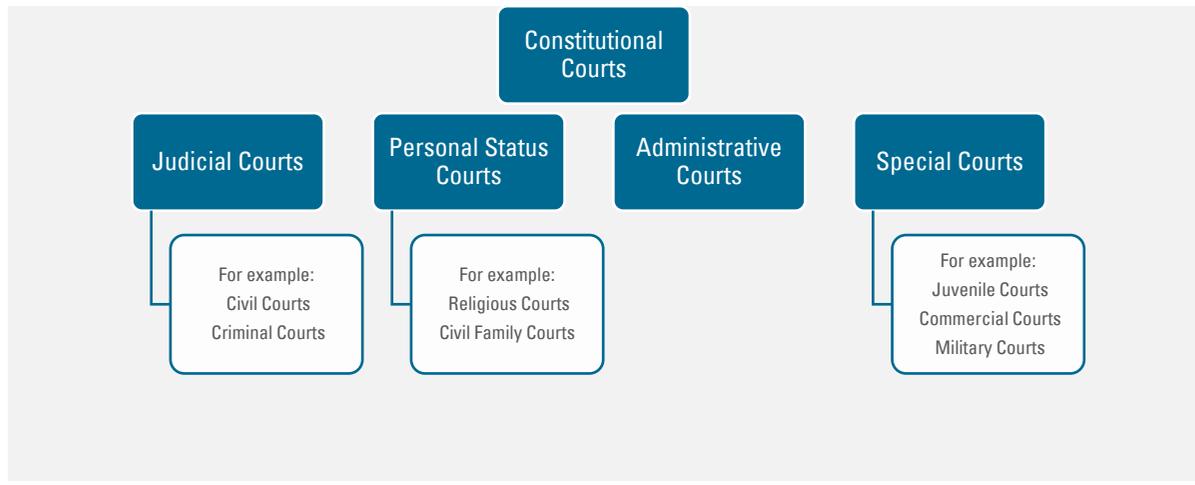
It is difficult to develop a common typology of the judicial systems in an area as diverse as the Arab region while avoiding oversimplification and obscuring essential national specificities. While acknowledging the breath of this diversity, it is nevertheless possible to identify some common characteristics. Arab judiciaries are generally composed of judicial (also referred to as ordinary) courts, personal status courts,

administrative courts and special courts with specialized or limited jurisdiction. Constitutional matters in Arab States are either resolved in specialized constitutional courts or in courts of cassation that exercise the functions of judicial review of legislation and cassation, or the review of lower court decisions. Figure 1 identifies some of the types of courts in the Arab region.

Legal systems in Arab countries are particularly rich and diverse, reflecting the influence of multiple sources, including civil continental law and common law traditions (primarily introduced to the region during Ottoman and European rule) in addition to Islamic law and other religious legal doctrines. In the majority of Arab States, most aspects of legal systems are now governed by secular legislation, except matters related to personal status and family law, inheritance and religious endowment, where Islamic jurisdiction is the main legal source.⁵⁴ Saudi Arabia and other Gulf countries are a notable exception to the above trend, as their respective judicial systems remain primarily based on Islamic law.

The adjudication of personal status matters is an area where differences between national set-ups are particularly noticeable throughout the region. In several Arab countries, these matters are resolved in religious court systems that operate in parallel to the civil court system. Religious and sharia courts are based on the various religious denominations present in each country and are typically organized by their respective religious authorities. In most cases, such courts enjoy a great deal of autonomy from the state’s own judicial bodies. In Bahrain, sharia courts include Sunni and Shia courts. In Jordan, religious courts form part of a separate judicial branch. They are divided into sharia courts and ecclesiastical courts for the Christian minorities. In Lebanon, the religious courts system encompasses specific courts for each of the 18 officially recognized religious groups. Similarly, in the Syrian Arab Republic, personal status religious courts are composed of sharia courts for Muslims, doctrinal courts for Druze and spiritual courts for Christians and Jews.

Figure 1. Examples of types of courts in the Arab States



Source: The diagram was developed during the Expert Group Meeting on Women in the Judiciary, Beirut, 28-29 November 2018.

Other countries in the region have abolished the separation between the religious and civil courts and established a family court system where disputes related to personal status and family matters are resolved. For instance, prior to its independence Tunisia had a pluralistic legal system whereby sharia, rabbinic, French and Tunisian secular legal regimes coexisted. Following independence, the Government took steps towards the unification and nationalization of the justice system by abolishing religious and French courts and only leaving the Tunisian secular courts in place.⁵⁵ Similarly, in Morocco, a unification law was passed to dissolve religious courts in 1969. Shortly after, in 1973, Libya also abolished the sharia court system allowing matters of personal status and family law to be dealt with in family courts within the civil court system. For other countries in the region, the unification of the court system came much later. From its independence in 1971, Qatar had a system of sharia religious courts and civil courts but Law No. 10 of 2003 abolished this dual system and set up a unified court system in its place. In 2004, Egypt created Family Courts as first instance courts specialized in family and personal status issues. In the Sudan, the judiciary historically consisted of two separate divisions: the Civil Division, headed by the Chief Justice, which considered all criminal and civil cases based on the Sudanese common law; and the Sharia Division, headed by the Grand Qadi, consisting of judges trained in Islamic law, applying for matters of personal status, such as marriage, divorce, inheritance and family relations. In 1980, the two systems were merged. However, since 1983, the unified courts have been required to adjudicate based on Islamic law in applicable cases.

Courts in Arab States are generally organized as four-tier or three-tier systems. For example, in Bahrain, Egypt, Jordan, Libya, the Syrian Arab

Republic and Tunisia there is a four-tier structure starting with summary, conciliation, magistrate or district courts at the bottom of the judicial hierarchy and a court of cassation or a supreme court at the top of the pyramid. In Lebanon, Morocco, Qatar and Yemen there is a three-tier system composed of courts of first instance, appeal courts and a court of cassation.

The composition and structure of the judiciary also differs between Arab States as some countries have larger bureaucratic judicial structure than others. For instance, in Tunisia the judiciary is composed of courts and the public prosecution. In Jordan, the judicial structure is expansive and includes the public prosecutor's office, the Civil Attorney General's Office, public notaries; judicial officers; and the Enforcement Division. The judiciary in Jordan also includes several judicial authorities and councils such as the Jordanian Judicial Council, the High Council for the Interpretation of the Constitution, the High Council for Ministerial Court, the Special Office for the Interpretation of the Law and the Technical Office, based in the Court of Cassation. In Libya, the judiciary includes the Judicial Body Inspection Department, the Courts, the Public Prosecution, the Litigation Department, the Public Legal Defence Department and the Law Department. Libya is therefore unique in placing all public lawyers under the authority of the Ministry of Justice as salaried employees, in addition to public prosecutors, government lawyers and judges.⁵⁶

Several Arab States have administrative courts, which are tasked with reviewing decisions by other courts, tribunals or public bodies and examining legal challenges to government decisions, where the law allows this. In Egypt, Jordan, Lebanon, Morocco, the Syrian Arab Republic, Tunisia and Saudi Arabia, administrative courts with varying functions and

degrees of power and independence settle administrative disputes. In Tunisia, the administrative judiciary is composed of the Supreme Administrative Court, Administrative Courts of Appeal and Administrative Courts of First Instance. It has jurisdiction over cases of abuse of power by the administration, administrative disputes and jurisdictional disputes arising between local authorities and between the central government and local authorities. The administrative judiciary in Tunisia also exercises consultative functions, in accordance with the law. It further litigates on the question of the eligibility of election candidates that were rejected by the Independent Elections Authority and its regional branches. The Tunisian administrative court system is largely independent from the State authority and political influence.

In Egypt, the administrative court system is referred to as the State Council, which is independent from other judicial branches. The State Council comprises four levels of courts (Disciplinary Courts, Administrative Courts, Courts of Administrative Justice and Supreme Administrative Court). The State Council has jurisdiction over administrative cases in which the State is a party, as well as financial irregularities and disciplinary cases involving public officials.⁵⁷ The Egyptian State Council is also competent to issue opinions on legal issues, review and draft bills and resolutions of a legislative character and to review draft contracts to which the State is a party.

Arab States' judicial systems also include special courts with limited or specific jurisdictions. The number and functions of special courts vary between countries. Jordan, for example, has a significant number of special courts, including the Income Tax Appeal Court, the Customs Court, the Grand Felonies Court (dealing with serious

crimes of murder, rape and kidnapping), the Land and Water Settlement Court, Council Courts, the Protection of State Property Court, the National Security Court and the Police Court. Tunisia, on the other hand, has a limited number of special courts with district and first instance courts handling all kinds of disputes except those related to labour or property which are handled by the respective special courts. Other types of special courts found in the region include juvenile courts, commercial courts and military courts.

The oversight of judicial institutions is typically the responsibility of a judicial council (or national equivalent). There is no single model for such bodies in the Arab States, as they operate with varying degrees of independence and autonomy in structuring and organizing judicial affairs. They are usually responsible for recruiting, appointing and promoting judges, managing court operations, launching disciplinary proceedings, providing learning and training programmes (usually through judicial training institutes), and protecting magistrates from external interference. The composition of judicial councils varies throughout the region, but typically consists of senior members of the judiciary that are elected or appointed *ex officio*.⁵⁸ Some Arab States have multiple judicial bodies that oversee specific branches of the judicial system. In the State of Palestine, for example, the judiciary branch is managed by the Supreme Judicial Council, while the Constitutional Court is managed by the President of the Court and the General Assembly of the Court. The military courts are managed by the council of the judiciary of the security forces, while the sharia courts are managed by the Sharia Judicial Council.

There are stark differences in terms of judicial capacity between Arab countries. The average number of judges per 100,000 inhabitants is

18.41 in Tunisia; 11.99 in Egypt; 11.5 in Morocco; 11.1 in Lebanon, 9.57 in Jordan, and 2.74 in the Sudan.⁵⁹ Consequently, access to justice varies greatly in the Arab region. It is generally restricted outside of urban centres and might be

even more limited for refugee, migrant and internally displaced populations. Access to formal justice is particularly problematic in countries that have been experiencing conflict, as box 1 highlights.

Box 1. Formal and informal justice in conflict-affected areas

Unrest and armed conflict can disrupt the normal functioning of State institutions. In several conflict-affected areas of the region, access to formal judicial institutions has weakened, putting populations, and particularly vulnerable groups such as women and youth, at a higher risk of human rights violations. The vacuum left by the disruption of State institutions has in some cases led to the emergence of informal mechanisms that seek to replace the security and judicial services that are no longer provided by the government. For example, in Libya, many courts are not operational due to the deteriorated security situation. In affected areas, people resort to other forms of dispute resolution and mediation, such as tribal mechanisms and local religious councils. In Yemen, formal justice coverage is insufficient, and courts are not present in all districts and governorates, making informal and traditional justice systems the main resort for seeking justice.^a A similar situation has also been witnessed in the Syrian Arab Republic, where there has been a proliferation of informal justice mechanisms.^b

The disruption of the judiciary institutions combined with conflict's other negative consequences exacerbates patterns of gender discrimination. Informal justice mechanisms, especially customary and religious-based systems, are likely to uphold rather than challenge the traditional values of the society around them, including discrimination against women. Those are often incompatible with States' human rights obligations under international conventions such as CEDAW, ICCPR, ICESCR, the Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC).^c Under informal justice mechanisms, women may face substantial challenges in accessing justice and obtaining remedies, particularly for personal status issues such as marriage, divorce, inheritance, gender-based violence, blood feuds and similar types of cases.

The post-conflict stabilization and reconstruction phase can provide some positive opportunities for the advancement of a judiciary that is more sensitive to women's and human rights. The post-conflict phase may, for example, favour the entry of women into public positions of power, including in judicial institutions, and create opportunities to redesign related structures and institutions with a renewed focus on rights. There are also examples of informal justice mechanisms emerging in a context of post-conflict institutional vacuum that underline women's positive role as mediators and peacebuilders.^d Liberia's Peace Huts are one such example:

"At first, the Peace Huts focused on a 'shedding the weight' process and counselling women who had experienced grief and trauma as well as supporting ex-child soldiers after the civil war. Then, in 2006, Peace Hut women began hearing cases. The methodology is based on the traditional 'Palava' hut system: the complainant and accused get to air their respective grievance and defence, then the local leader helps them reach an agreement that both consider fair and peace is restored. The role and participation of women in the peace hut for the maintenance of peace in communities is increasingly being appreciated, and women in the communities now see themselves as crucial players in peacebuilding and conflict resolution".^e

Liberia's Peace Huts illustrate the potential of informal justice mechanisms to advance women's rights and enhance access to justice; the potential can be harvested in post-conflict phases if these systems operate in complement to, rather than in isolation from, the formal justice system in relevant areas, and if they lead to adjudications that are in line with State commitments to human and women's rights.

Sources:

- ^a United Nations Development Programme, 2014b.
- ^b Ekman, 2017.
- ^c It should be emphasized that the obligations of State parties under international instruments (including CEDAW) continue to apply during conflict or states of emergency without discrimination between citizens and non-citizens within their territory or effective control. See UNDP, United Nations Children's Fund and UN Women, 2012.
- ^d ESCWA, 2019.
- ^e UN Women, 2012.

2. The judicial career in Arab States

Arab States have adopted different modes of admission into the judiciary, reflecting the variances between national legal systems. In several Arab States, appointment to the bench requires the completion of training at the national judicial institute, which is usually accessed by passing national examinations open to law graduates. This model is in use in Iraq, Jordan, Lebanon, Morocco, the Syrian Arab Republic and Tunisia, among others. A representative example is Lebanon, where eligible applicants are usually called for a preliminary written test aimed at assessing their general knowledge and linguistic capabilities. Successful candidates then become eligible for an interview before the Supreme Judicial Council (SJC), during which legal and judicial topics are discussed. If the candidate passes this interview, they are considered qualified to undergo the written legal test. Candidates who succeed in this portion of the selection process undertake a final oral examination. Candidates that have successfully passed the selection process are appointed as trainee judges at the Institute of Judicial Studies by a Cabinet decree, based on a recommendation by the Minister of

Justice, and after receiving the approval of the SJC.

Conditions for entry into the judiciary differ in other Arab countries. In Egypt, for example, junior judges are mainly selected among the ranks of the criminal department of the public prosecutor's office and members of the State Council, the administrative prosecution and the State Affairs Committee, although candidates for the bench still have to fulfil the requirements set by the Judicial Authority Law, including the possession of Egyptian citizenship, a minimum age, having a good character and having a law degree.⁶⁰ In the Sudan, future judges are first recruited as legal assistants through a competitive process and, if successful in this role, can later be promoted to higher judicial functions.⁶¹

In some Arab countries, entry to the judiciary (including eligibility for the competitive entry exam) is conditional on years of practice in the legal field. In Bahrain, for example, Law No. 42 of 2002 on the Organization of the Judiciary stipulates that the appointment of judges shall be based on qualification and a minimum of years of experience in the legal field (10 years

for appointment to Cassation and Higher Appeal Courts, six years for appointments to the High Court and two years for appointments to the lower court). Similarly, appointment to the public prosecution office requires candidates to have a law degree and a minimum number of years of experience in the legal field depending on the position (15 years for the post of First Attorney General or Public Prosecutor, 10 years for appointment to the post of General Attorney, six years for appointment to the post of Chief of Prosecution and two years for the appointment to the post of Deputy Prosecutor). Several countries in the Gulf require that judges practice in the public prosecution's office before being eligible for appointment as judges.

There are alternative routes for joining the judiciary across the region. For instance, in Egypt, lawyers and law professors or those working in offices similar to judicial offices with nine years of experience are eligible to be appointed as judges. In Iraq, candidates who have practiced as lawyers for more than ten years and are under the age of 45 may also join the judiciary. In Tunisia, law professors and lawyers with at least 10 years of experience may be recruited without a competitive exam to any rank of the judicial hierarchy. In Jordan, candidates can be appointed as a judge if they have practiced as a lawyer for five years and have a first degree in law, for four years if they hold a Master's degree in law and for three years if they hold a PhD in law. In Lebanon, holders of a doctorate degree in law may be exempted from the national examination and appointed directly as trainee judges and lawyers. Employees of the judicial administration and public institutions with a law degree who have exercised their functions for at least six years, may be directly recruited

as tenured judges through a Cabinet decree, and after receiving the approval of the SJC.

In some countries, including Bahrain, Qatar and the United Arab of Emirates, qualified foreign nationals may be recruited as judges on a temporary basis.

Outside of direct appointments, judicial careers in Arab States are generally regulated by progression in a system of judicial grades, according to which judges become eligible for appointment to higher courts and hierarchical positions. The career of a judge could for example take them from a court of first instance, in which legal proceedings are first heard, to appellate courts and high courts (or their national equivalents) as well as high-ranking positions of court president or vice-president. In Jordan, for example, the judicial scale progresses in order of hierarchy from Grade Six to Grade One, then to Grade Special and Grade High. Trainee judges are recruited at Grade Seven. Once their training is complete, trainee judges would generally join Grade Six and then progress from one grade to another after spending a minimum of three years in a given grade. Judges become eligible for nomination to higher judicial function after spending a set number of years in lower positions.⁶²

In Iraq, judges are classified into four classes. Judges are promoted from one class to another based on a decision from the Higher Judicial Council when they have achieved five years of service in the previous class and submitted a research paper.⁶³ In Tunisia, a minimum of 10 years of experience as a judge in the first (lowest) grade is required to be eligible for promotion to the second grade. A minimum of six years of experience in the second grade is required to be eligible for promotion to the third

grade. Appointments to top positions at the Court of Cassation and the Court of Appeal (President, Vice Presidents, President of Chambers, Attorney General, Public Prosecutor among others) and within the Ministry of Justice are reserved for Grade Three judges. Positions such as President, Vice President and Public Prosecutor of First Instance Courts can only be filled by Grade Two judges.⁶⁴

In Morocco, after training at the Judicial Institute, judges at Grade Three (the lowest grade) are nominated to first-degree courts and are generally eligible to advance to Grade Two after five years; Grade Two Judges are eligible to advance to Grade One after five years; Grade One judges are eligible to advance to Grade Exceptional after another five years. Presidents and Prosecutors of first-degree courts and Counsellors and Assistant Prosecutors at the Appeals Courts are nominated among judges at Grade Two and above. Counsellors and Attorneys General of the Cassation Court are nominated among judges at Grade One and above who are working at the Appeals Courts. Presidents and General Prosecutors of the Appeals Courts are nominated among judges at Grade One and above. All the judges at the Court of Cassation are selected from judges at Grade Exceptional. The First President and the General Prosecutor of the Court of Cassation are appointed to the level of Outside the Grade (highest).⁶⁵

In Lebanon, at the end of the training year at the Institute for Judicial Studies, trainee judges start at Grade One. Judges progress automatically every two years from one grade to another. To act as a single judge (who handles a single department in Courts of First Instance), Grade Two or above is required. For the positions of President of a Chamber at the Court of Appeal, Public Prosecutor to the Court of Appeal,

Government Commissioner before the Military Court, First Investigating Judge, Grade Six or above is required. To be appointed as Adviser to the Court of Cassation or Attorney General to the Court of Cassation a judge needs to be at Grade Eight or above. For the posts of President of a Chamber at the Court of Cassation, First President of the Court of Appeal a judge needs to hold Grade Ten or above. Once reaching Grade Fourteen, judges become eligible for appointment to the top positions of First President of the Court of Cassation and Public Prosecutor at the Court of Cassation.⁶⁶

While the seniority requirements for career progression tend to be strict in most Arab countries, meeting them does not automatically guarantee appointments to higher judicial posts. Depending on applicable rules and regulations, career advancement may also require positive evaluations from supervisors, senior and presiding judges and/or judicial inspection bodies. In Lebanon, for example, transfer to a higher rank every two years is subject to satisfactory reports from supervisors. Similarly, in Saudi Arabia, promotions are conditional on completing two yearly satisfactory performance evaluations at the current grade, which are made both presiding judges and the Judicial Council's Judicial Disciplinary Committee. In Jordan, judges applying for promotion in higher courts must submit a legal paper to the review of the Judicial Council.⁶⁷ The selection of appointees for vacant positions among the list of eligible judges may be left to the discretion of senior judges. In Egypt, the presiding judge in a court where a vacancy arises will select a judge from a list prepared by the court's senior judges. The nomination is reviewed by the Judicial Council and, if approved, the Council prepares a decree of appointment to be signed by the President of the Republic.

In many Arab countries, appointments to senior posts within the judiciary may require the endorsement of the executive branch, for example through the Ministry of Justice, the Prime Minister's office or the cabinet. In some countries of the region, the approval of the head of State might also be required for the highest-ranking posts. In Jordan, for example, the King has the sole power to appoint chief justices and other members of the Constitutional Court. In Egypt, constitutional amendments made in

2017 enable the President of the Republic to directly appoint chief justices to higher courts without requiring approval from the Judicial Council or the Ministry of Justice. In Saudi Arabia, the King has the power to directly appoint high-ranking judges. In Morocco the High Judicial Council nominates the Vice President and First Deputy Prosecutors of First Degree and Appeal Courts, while the King appoints the First President and General prosecutors of the Court of Cassation.

2. Female Judges in the Arab States

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2. Female Judges in the Arab States

Women's appointment to judgeship positions started relatively early in some Arab States. In 1959, Zakia Hakki of Iraq became the first female judge in the region. After this breakthrough, several other Arab countries followed suit by appointing women to the bench: Morocco in 1961, Lebanon and Tunisia in 1966, Yemen in 1971, the Syrian Arab Republic in 1975 and the Sudan in 1976. The late 1970s saw a rise in religious and political conservatism and a backlash against women's rights and participation in public life, which stalled progress until the 1990s. Women's first-time appointments to the bench have only trickled since: the State of Palestine in 1982, Libya in 1991, Jordan in 1996, Egypt in 2003, Bahrain in 2006, the United Arab Emirates in 2008, Qatar in 2010 and Mauritania in 2013.

Only Kuwait, Oman, Saudi Arabia and Somalia have not yet appointed female judges. In 2016, the Saudi administrative Court of Appeal in Dammam approved the appointment of Shaima Aljubran as the first Saudi female arbitrator in a case involving a dispute in a commercial court, which is considered a quasi-judicial body.⁶⁸ A recent recommendation issued by the Shura Council for the Ministry of Justice to "empower competent Saudi women who are legally and religiously qualified to hold judging positions" suggests that more Saudi women may be able to join the judiciary in the near future.⁶⁹ In Kuwait, the Supreme Judicial Council admitted 22 women to the Kuwait Institute for Judicial and Legal Studies in 2014. They were

expected to become judges after completing their training and spending a minimum period stipulated by law in the Office of Public Prosecutors. However, shortly after its adoption this decision was reversed. It was only in October 2017, and following a legal challenge, that the Kuwait Supreme Judicial Council reinstated the employment of females to the Office of the Public Prosecutors.⁷⁰ In Oman, although women have not yet been appointed as judges, they have been part of the general prosecution service since 2004 and currently represent 20 per cent of its members.⁷¹

Despite their early entry in many Arab countries, female judges' presence in the judiciary of Arab States remains generally low. This chapter examines key regional trends regarding the number and distribution of women in judicial institutions. Country-level percentages are presented for all Arab States. An in-depth examination and illustrative examples of the distribution of female judges are presented for States for which sufficiently comprehensive data is available.⁷²

A. Country-level percentages

The overall numbers and percentages of women in the judiciary in Arab States varies significantly (table 2) but remains generally below equivalent figures for other global regions (box 2). Nevertheless, a few Arab States have made significant progress towards gender parity in this field. Lebanon has achieved the

highest percentage of women in the judiciary. As of 2018, female judges hold 49.3 per cent of judicial positions (334 female judges in comparison to 343 male judges).⁷³ In Tunisia, the overall representation of women among judges is also high, at 43.1 per cent in 2018.

Morocco, one of the first countries to appoint women to the judiciary, has one of the highest tallies of female judges in the region totalling 922 female judges and 159 prosecutors, out of a total of 4,923 magistrates. This total amounts to only 22 per cent, however.

Table 2. Women in the judiciaries of Arab States

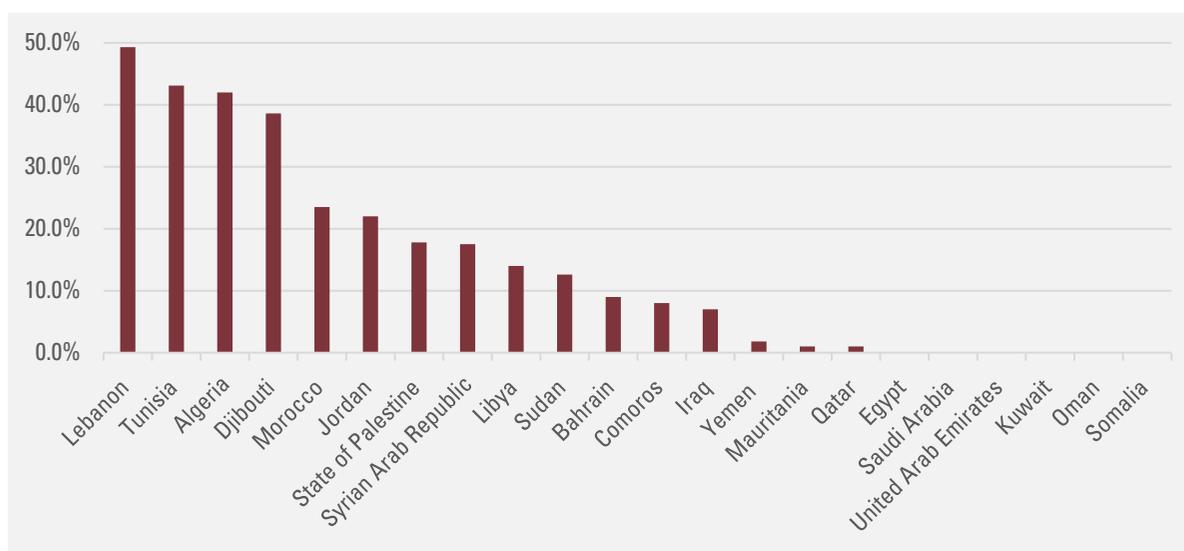
Country	Percentage of female judges	Year of data	Note
Algeria	42	2017	
Bahrain	9	2016	7 out of 49 (14.2 per cent) of public prosecutors are female.
The Comoros	8	2005	
Djibouti	38.6	2009	
Egypt	<1	2018	
Iraq	7	2018	
Jordan	22	2018	Women account for 2.7 per cent of public prosecutors.
Kuwait	-	2017	No female judges but there are 22 female deputy prosecutors. Women are also serving in the commercial arbitration structure, but it is not considered within the judiciary.
Lebanon	49.3	2018	Women represent 30 per cent of public prosecutors.
Libya	14	Unknown	The figure excludes the Litigation Authority and Public Defence department, which fall under the umbrella of the judiciary but do not comprise judgeship positions. Women are well represented in both institutions, amounting to 61 per cent and 68 per cent of staff, respectively.
Mauritania	1	2018	
Morocco	23.5	2018	Women account for 16 per cent of public prosecutors.
Oman	-	2017	No female judges, but women account for 20 per cent of public prosecutors.
Qatar	1	2011	

Saudi Arabia	<1	2018	There is one female arbitrator in a commercial court, considered as a quasi-judicial position.
Somalia	-	2018	No female judges, but there are six female prosecutors.
State of Palestine	17.8	2018	
The Sudan	12.6	2018	
Syrian Arab Republic	17.5	2018	
Tunisia	43.1	2018	
The United Arab Emirates	<1	2015	Only four female judges, but there are also female public prosecutors.
Yemen	1.8	2006	
Average for Arab States	14		

Sources: Questionnaire filled by ESCWA member States, CEDAW implementation reports, case studies, ESCWA Gender in Figures series and desk review.

Note: The public availability of data on the presence of women in the judiciary in Arab States is generally inconsistent. Only a handful of Arab States (such as Morocco, State of Palestine and Tunisia) monitor the presence of women in the judiciary and regularly make available the relevant data to stakeholders, constituting a positive practice to be emulated. The figure provided in the table is the total percentage of female judges at all court levels within the State's judicial system (therefore excluding religious courts in States where such courts are separate entities not under the authority of the State). For States where separate data were not available, or where the two types roles are not clearly separated, the figure also includes public prosecutors (or their equivalent). The average for Arab States is provided for indicative purposes only, owing to the limitations highlighted above.

Figure 2. Percentage of female judges (includes public prosecutors where no separate data was available)



Source: Questionnaire filled by ESCWA member States, CEDAW implementation reports, case studies, ESCWA Gender in Figures series and desk review.

Box 2. Female judges around the globe

The percentage of women in national judiciaries around the globe has significantly increased in the last decades. In Europe, 2014 data shows that women make up more than 54 per cent of judges.^a Women account for over 67 per cent of judges in Croatia, 73 per cent in Hungary, Serbia and Romania and 78 per cent in Latvia and Slovenia.^b Women make a smaller part of the judiciary in Azerbaijan (11 per cent), Armenia (23 per cent), Northern Ireland (23 per cent), Scotland (23 per cent), England & Wales (30 per cent) and Ireland (33 per cent).^c In the United States, women account for 33 per cent of state judges.^d In Muslim-majority countries outside the Arab region, the number of female judges has also been increasing. In Kazakhstan, female judges represent over 40 per cent of judges.^e In Indonesia female judges accounted for 23.4 per cent of all trial courts in 2011.^f In Malaysia, a woman was appointed as chief justice, the highest-ranking position within the judiciary, in 2019.^g

Global figures suggest that while the presence of women in the judiciary cannot be decoupled from the broader socioeconomic context and gender dynamics within society, there is evidence that the relationship between these variables is not clear-cut. For example, comparing the presence of women in the highest courts in countries in Latin America, the Caribbean and the Iberian Peninsula shows that there is no correlation between socioeconomic level of development and presence of female judges in such courts. Argentina, Brazil, Mexico, Portugal and Spain have a lower presence of female judges in the highest courts than Guatemala, Honduras or Jamaica.^h A similar trend also is also observed within the Organisation for Economic Co-operation and Development (OECD) countries, where traditional gender equality “champions” such as Norway, Sweden and Denmark have a lower presence of female judges than Greece, Hungary or Latvia.ⁱ As further explored in chapter 3 of the present study, such examples highlight that the full understanding of women’s presence in the judiciary requires an assessment of country-specific barriers and opportunities that arise from the local set-up of judicial institutions.

Sources:

^a OECD, 2017.

^b Jean and Jorry, 2013, p. 19.

^c European Commission for the Efficiency of Justice, 2018.

^d The American Bench, 2018.

^e This includes 41.5 per cent of judges at the Supreme Court judges and 48 per cent at local courts. CEDAW/C/KAZ/5, p. 5.

^f Abdelkader, 2014, p. 347.

^g Lim, 2019.

^h Gender Equality Observatory for Latin America and the Caribbean, n.d.

ⁱ OECD, 2017.

In Jordan, the number of female judges has been steadily increasing over the last few years, from just 48 in 2009 to 211 female judges in 2018. With 744 male judges in the Jordanian judiciary, this amounts to 22 per cent. In the State of Palestine, the percentage of female judges in the judiciary currently stands at 17.8 per cent (44 women out of 247 judges). In the Syrian Arab Republic, the percentage of women

in the judiciary reached 17 per cent in 2018 (1,491 men and 328 women). In Libya, a survey carried out by the Supreme Judicial Council put the figure for women’s presence in the Libyan judiciary at 14 per cent of sitting judges – or 133 female judges out of 954.⁷⁴ In the Sudan, the percentage of female judges stands at 12.6 per cent. There were 165 female judges in the Sudan out of a total of 1,148 judges in 2017.

In Bahrain, female judges occupied 9 per cent of judicial posts (for a total 10 female judges) in 2016, making the country the best performer among the Gulf States.⁷⁵

In the rest of the region, women's presence in the judiciary remains small or insignificant. In Iraq, although female judges had been appointed previously, in 1984 the Iraqi government prohibited women from entering the Judicial Institute and working in the judiciary in a broader context of conservative crackdown.⁷⁶ After 2003, women were again allowed to enter the Judicial Institute and join the judiciary. Since then, however, the number of women in the judiciary has not significantly increased. In 2018, the number of female judges was 113, representing just 7 per cent of all judgeship positions.

In Yemen, although women first entered the judiciary in the 1970s, there are currently only a few female judges serving on the bench. Prior to the country's unification in 1990, half of the judges in South Yemen were women. Since then, conservative forces have pushed back against women's presence in the judiciary and reassigned female judges to administrative and clerical roles.⁷⁷ In 2006, the last year of data available, women represented just 1.8 per cent of the Yemeni judiciary.⁷⁸

In the United Arab Emirates, there are only 12 female judges in the local judicial systems of Abu Dhabi and Dubai (nine in Abu Dhabi and three in Dubai) and 35 female prosecutors (18 in Abu Dhabi and 17 in Dubai).⁷⁹ In Egypt, since the first appointment of women to the judiciary in 2003, the number of female judges has remained small. In 2015, the total number of female judges was only 80 out of a total of around 12,000 judges, leaving the overall

percentage of female judges well below 1 per cent.⁸⁰ The representation of women on the bench in Qatar is also poor. In 2015, there were only two female judges out of a total of 198 judges (one in the family circuit and one in the civil circuit) and one female assistant judge out of 14.⁸¹ Similarly, in Mauritania, there are currently only two female judges.⁸²

B. Entry into the judiciary⁸³

The mode of recruitment into the judiciary has a marked influence on the presence of women in judicial institutions. Where entry into the judiciary is determined based on a comparatively open, transparent and non-discriminatory process (such as competitive examinations for entry), the proportion of women entering a judicial career tends to be higher and set in a context of the rising presence of women in the legal field generally (box 3). Women's increasing presence in judicial training institutes across the region also suggests that they consider a judicial career as an attractive option (box 4). In Lebanon, for example, female candidates for admission to the national judicial training institute have outnumbered males in recent years (table 3). In Tunisia, women represent the majority of future judges studying at the High Judicial Institute consistently (table 3, table 4). In Jordan, the number of women studying at the Judicial Institute of Jordan has significantly increased over the last few years. Although the Institute was established in 1988, it was only in 2000 that the first female student was admitted for the two-year training course. Following the introduction of a minimum quota of 15 per cent in 2005, the percentage of women at the Institute has gradually increased to reach 54 per cent in 2017 (47 out of 87 candidates).⁸⁴

Table 3. Percentage of female candidate at the Institute of Judicial Studies in Lebanon

Session	Total number of candidates admitted	Number of female candidates admitted	Percentage of women among candidates admitted
2004-2007	28	18	64
2005-2008	8	6	75
2009-2012	13	5	38.5
2010-2013	27	17	63
2011-2014	18	15	83
2012-2016	2	2	100
2014-2017	14	8	57

Source: E/ESCWA/ECW/2018/TP.2.

Note: Sessions may overlap due to the length of training and frequency of entry examinations.

Table 4. Percentage of female candidates at the Institute for High Judicial Studies in Tunisia

Entry examination	Total number of candidates admitted	Number of female candidates admitted	Percentage of women among candidates admitted
October 2008	70	45	64.3
September 2009	51	30	58.8
September 2010	51	32	62.7
November 2011	78	39	50
January 2013	150	73	48.7
October 2013	199	107	53.8
January 2015	100	71	71
February 2016	99	65	65.7
October 2016	200	173	86.5

Source: 2019, تونس، وزارة العدل، المعهد الأعلى للقضاء، 2019.

Box 3. Women in the legal profession

The rising representation of women in the judiciary needs to be understood in the context of the increasing presence of women in the legal profession in the Arab region, if not globally. Overall, the proportion of young women entering law programmes, law schools and taking bar examinations is rising. In Tunisia, for example, women made up 75 per cent of law students in 2016.^a In Jordan, 44 per cent of all students admitted to study law at the undergraduate level in 2015/2016 were women.^b In the Sudan, over 70 per cent of graduates of the Faculty of Law at the University of Khartoum in the academic years 2015-2016 and 2016-2017 were women.^c In Saudi Arabia, where women have been allowed to practice as lawyers only since 2013, they represent 28 per cent of trainee lawyers;^d there are now 304 female lawyers (out of a total of 5,364).^e As a result of these shifts, the representation of men and women in the legal profession has become more equal: for example, in Bahrain and Tunisia, respectively 55 and 45 per cent of lawyers are women.^f Despite this increase, however, women remain generally underrepresented at senior levels in law firms and bar associations.

Sources:

^a Jamel, 2018.

^b Jordan, Ministry of Higher Education and Scientific Research, 2016.

^c Sahla Aroussi, Coventry University.

^d Saudi Gazette, 2018.

^e Abu Naja, 2018.

^f Bahrain, Supreme Council for Women, 2016b; Alghata, 2016.

In contrast, entry systems that require a set number of years of experience in the legal field tend to disadvantage women. Interrupted career paths and part-time working schedules due to family commitments typically disadvantage women in selection processes based on years of continuous practice.⁸⁵ In Arab States where alternative options for accessing the judiciary

Box 4. Why do women choose a judicial career?

The national case studies conducted as part of the present study sought to uncover the reasons that have motivated women to enter the judiciary in increasing numbers. In Lebanon, participants in interviews and focus groups suggested that women seek to join the judiciary because of multiple factors, including financial stability, the comprehensive health and social insurance coverage, the long judicial holidays and fixed working hours (permitting an easier reconciliation of professional and familial duties), the prestige and high social standing associated with this position, as well as women's desire to prove themselves in a decision-making position in a country where opportunities to access such positions remain limited for women.^a In Tunisia, participants suggested that the judiciary offers financial and professional stability, flexible working conditions that allow for reconciling work with family responsibilities given that female judges can work from home and do not have to be always in the office, in addition to the long judicial holidays. Participants in the State of Palestine noted that studying law empowers women to overcome social obstacles and to defend their own right to take up public office on an equal basis with men. In the Sudan, one law graduate emphasized that she aspired to become a judge because Sudanese courts needed more women.

Source: E/ESCWA/ECW/2018/TP.2.

^a On a more negative note, it was noted by participants that due to limited wages, the judicial profession in Lebanon had lost its attractiveness for men who strive for higher earning in a society where they are expected to be the main breadwinners.

through professional experience in the legal field are permitted, the numbers of men entering the judiciary via this route is much higher than that of women. This is the case in Lebanon, where alternate recruitment mechanisms that allow lawyers, employees of the judicial administration and public institutions with six years' professional

experience to be directly appointed as tenured judges have resulted in the admission of more men than women into the judiciary.⁸⁶ Similarly, in the Syrian Arab Republic, the percentage of women entering the judiciary after practicing as lawyers is considerably lower in comparison with those recruited through admission to the Institute for Judicial Studies.⁸⁷

C. Distribution across court levels and grades

In all Arab States, the proportion of women in the judiciary decreases as seniority increases. There are generally fewer women serving in higher courts (including appeals and constitutional courts) than in courts of first instance, where judges typically start their careers. For example, in Jordan, female judges represent 52.9 per cent of judges at Grade Five (most of them working in the Conciliation Courts), but only 5.8 per cent of judges at the higher Grade Two, 5.5 per cent at Grade One, 2.3 per cent at Grade Special and 1.1 per cent at Grade High. Female judges represent 45 per cent of all judges at the Conciliation Courts but only 16 per cent of judges at the Courts of First Instance, 4.3 per cent of judges at the Courts of Appeal and 2.7 per cent of judges at the Court of Cassation. Although Jordanian female judges have been appointed to the positions of President to the Court of First Instance,⁸⁸ they have yet to assume similar positions at the level of Appeals and Cassation Courts. In the State of Palestine, the distribution of female judges also reveals strong representation in the lower Conciliation Courts (27.9 per cent) and weaker presence at the Courts of First Instance (13 per cent), Courts of Appeal (13.9 per cent) and Court of Cassation (11.7 per cent). In Libya, most of the sitting female judges are employed at Courts of First

Instance, where their representation is 18.5 per cent. Their representation in the Courts of Appeals is just 7 per cent.⁸⁹ In Bahrain, female judges are generally concentrated in lower courts, although the appointment of a woman to the Cassation Court in 2017 sent a positive signal regarding female judges' opportunity for progression.

Women's later entry to the judiciary combined with rigid rules regarding career progression plays a large role in women's underrepresentation at higher levels. Nevertheless, the phenomenon is also seen in the Arab States that have a comparatively longer history of women's presence in the judiciary. In Morocco, women represent 30 per cent of judges at the Courts of First Instance, but only 11 per cent of judges at the Courts of Appeal and 21 per cent at the Court of Cassation. Women mostly hold positions at Grade Three (29.5 per cent of judges at this grade), the level where judges start their career. In comparison, women account for only 19.7 per cent of judges holding the higher Exceptional Grade. No woman holds one of the two Outside the Grade appointments at the top of the judicial hierarchy. In 2016, there were only 10 women among the 200 officials who held top positions in the judiciary.⁹⁰ Similarly, in Tunisia, female judges represent 55.3 per cent of judges at the First (lowest) Grade but only 29 per cent at the Third (highest) Grade. They make up 49 per cent of judges at the Court of Cassation, 35 per cent of judges at the Courts of Appeal, 42.5 per cent of judges at the Courts of First Instance, and 47.5 per cent of judges at the District Courts. In Lebanon, while female judges account for 59.1 per cent of judges at Grades 1 to 3, they only account for 37.5 per cent of judges at the highest levels of Grades 14 and above. Similarly, female judges account for 71 per cent

of judges at the First Instance Courts, the proportion drops at the levels of Appeals (47.8 per cent) and Cassation (40.4 per cent), particularly in the criminal field.

Women remain largely underrepresented in high-level positions within the judiciary (such as President and Vice President of Courts, Attorney General, General Public Prosecutor), even in countries that have a relatively higher proportion of female judges. In Lebanon, women account for only five out of the 33 judges who have so-called “major responsibilities” (15 per cent). There has never been a female First President of the Court of Cassation or Public Prosecutor in the Court of Cassation, the two top posts in the judiciary. In Tunisia, the picture is similarly mixed. At the Court of Cassation, female judges make up 100 per cent of Deputy First Presidents, 43 per cent of Head of Divisions and 56 per cent of Counsels, but no female judge has ever been appointed as First President or General Public Prosecutor. Similarly, at the Court of Appeals, female judges make up 46 per cent of First Presidents and 40 per cent of Heads of Divisions, but only 25 per cent of Deputy First Presidents, 8 per cent of General Prosecutors and 15 per cent of Assistant General Prosecutors. At the Court of First Instance, women represent only 32 per cent of Presidents, 8 per cent of Heads of Divisions, and none of the Public Prosecutors. Women represent only 25 per cent of Presidents in District Courts. In addition to posts in the national judiciary, Arab women have been appointed to prestigious positions on international courts (box 5 provides examples).

Box 5. Women in international courts

Female judges from Arab countries have been appointed to prestigious positions in international courts and tribunals. For instance, in 2003, the Jordanian Judge Taghreed Hikmat became the first female Arab judge to be elected by the United Nations General Assembly to an international criminal tribunal. In 2009, Lebanese Judge Micheline Braidy was appointed to the Trial Chamber of the Special Court for Lebanon. In 2017, Judge Chafika Bensaoula from Algeria was elected to the African Court on Human and Peoples’ Rights. The presence of female Arab judges in international courts remains limited, however, in line with a global trend of overall low numbers of female judges in international courts. Underrepresentation is, however, particularly acute for Arab female judges due to several factors. These include the reduced pool of female judges in national judicial systems from which appointments are made as well as the limited participation of Arab States in international courts and tribunals, which restricts the number of appointments made from these countries.

Source: Pillai, 2018.

D. Distribution across court types

In addition to the pattern of gender-based vertical stratification, there is evidence of horizontal stratification in Arab judicial institutions. Generally, female judges are less likely to be found in courts dealing with criminal, security or military-related matters. This pattern holds true even in countries where female judges are present in significant numbers. An illustrative example is Lebanon, where 37 per cent of judges in the criminal field are women, compared to 62 per cent in the civil justice field. In Tunisia, at the Courts of First Instance, female judges represent 63 per cent of

family court judges, 44 per cent of juvenile court judges, 92 per cent of social protection judges, 77 per cent of insurance judges and 85 per cent of commercial register judges. At the same time, female judges are severely underrepresented as investigating judges, representing only 3 per cent of judges exercising this prestigious function. In Jordan, women judges represent 50 per cent of judges at the Youth Courts but none of the judges at the Court of Grand Felonies,⁹¹ Police Court, State Security Court, Corruption Court, Land Court and State Property Court. In Lebanon, women account for 68 per cent of judges at Youth Courts but only 38.8 per cent of judges (and 23 per cent of prosecutors) at Criminal Courts.

In the State of Palestine, women represent 42.9 per cent of judges in Youth Courts but only 11 per cent of judges in Criminal Courts. In Libya, female judges tend to preside over lower courts dealing with family issues and minor criminal cases, but are absent from higher courts and major criminal cases. Even in the Public Defence Department, where women represent 68 per cent of public defenders, most female public lawyers are working on family cases, while most of the lawyers in the criminal section are men.⁹² Female judges' presence in military courts remains negligible, if not non-existent, across the region, with the exception of Lebanon where women account for 28.5 per cent of investigating judges in the military field.

Women's presence in courts dealing with personal status issues (such as marriage, divorce, child custody and inheritance) varies depending on the set-up of the national judicial system. In States where family matters are adjudicated by civil courts, for example in Tunisia, women tend to be well represented in

such courts. However, in States where personal status matters are resolved in religious courts, female judges remain generally excluded from sitting on such courts. In light of the evidence highlighted in chapter 1, exclusion from the courts where matters of marriage, divorce and custodies are adjudicated has devastating consequences for women's rights.

There are nevertheless a handful of positive examples of female judges in religious courts. In Lebanon, Judge Wadad Lahoud was appointed as a judge to an evangelical court, but female judges have never been appointed to sharia courts.⁹³ The State of Palestine became the first country in the region to allow female judges' presence in sharia courts by appointing Judge Asmahan Youssef Al-Wihidi and Judge Khulud Mohamed Ahmed Faqih to religious courts in Hebron and Ramallah, respectively, with the approval and endorsement of the State's Chief Islamic Justice. The State of Palestine also appointed Judge Sumoud Al-Damiri as the Chief Prosecutor in Personal Status Law. Judge Al-Damiri was also recently promoted as a legal appeal judge. In total, there are now three female sharia court judges out of 245 in the State of Palestine.

Women's presence in administrative courts appears to be partly linked to the level of seniority and prestige that appointments to such courts hold. The percentage of female judges in administrative judiciaries therefore strongly varies, from 54 per cent in Lebanon, 37.4 per cent in Tunisia, 34 per cent in the Sudan and 30 per cent in Morocco to 10 per cent in Jordan and none in the State of Palestine. The Egyptian State Council, the country's powerful administrative court, continues to resist the appointment of women.⁹⁴

E. Representation in prosecution services

Another discernible regional trend is the low representation of women in prosecution services.⁹⁵ In Tunisia, women are largely underrepresented in prosecutorial posts at all levels. Male judges occupy both the positions of General Public Prosecutor and Assistant Public Prosecutors at the Court of Cassation. At the Appeal Courts level, female judges represent 8 per cent of General Prosecutors, 7 per cent of First Assistants to the General Prosecutor and 15 per cent of Assistant General Prosecutors. At the Courts of First Instance, there are no female Public Prosecutors or Deputy Public Prosecutors. There is only one female First Assistant for the Public Prosecutor, out of 34 (3 per cent), and only 16 other Assistant Public Prosecutors out of 117 (14 per cent). In Morocco, the number of female magistrates in the prosecution service is also low, with women only representing 5.4 per cent and 7.3 per cent of judges at the level of Cassation and Appeal Courts. In the Courts of First Instance, where female judges have a significant presence overall, the percentage of female prosecutors is just 19.9 per cent. Female prosecutors are more equally represented in commercial courts and commercial courts of appeal – accounting for 28 per cent and 58 per cent of prosecutors respectively.

In Lebanon, the percentage of representation in the prosecution across courts is just 30 per cent. This percentage in criminal courts and at the level of appeal falls to just 23 per cent. In Bahrain, in 2016, female judges comprised 14 per cent of the general prosecution, 5 per cent of partial prosecution services but 27 per cent of special prosecution (family and children, ministries, public bodies, enforcement, traffic).

In Libya, women's presence in prosecution services stood at just 14 per cent.⁹⁶ In Jordan there is one female prosecutor at the Court of Grand Felonies. Against this backdrop, it is noteworthy that in the State of Palestine, the Chief Prosecutor for the Personal Status Law is a woman.

F. Distribution across regions

A gender-based geographic divide in the distribution of judges is observable in all Arab States that provide data on judicial composition at the level of regions, governorates or other administrative divisions. Female judges tend to be concentrated in courts in cities rather than in rural areas. In Lebanon, although the overall number of female judges has increased in all judicial courts across the country, there remain substantial disparities between governorates. Whereas women's representation among judges in Mount Lebanon and Beirut reaches 56.5 per cent and 51 per cent respectively, in the south and Nabatieh these percentages drop to 35.5 per cent and 16.5 per cent (with female judges being mostly present in these governorates' urban centres).

In Morocco, female judges are similarly concentrated in cities and urban centres. For instance, in the Courts of First Instance, female judges' presence reaches 64 per cent in Casablanca, 47 per cent in Rabat, 36 per cent in Meknes, 34 per cent in Fez and 32 per cent in Marrakech but is non-existent in courts located in the south such as Rachidia, Boulman, Tanghir, Fejj and Azilal. In Tunisia, data from 2009 shows that women's representation in the judiciary is also concentrated in cities and urban centres. For instance, the percentages of female judges were 49.7 per cent in the Court of First

Instance in Tunis, 46.7 per cent in Tunis-II, 45.9 per cent in Ariana, 43.2 per cent in Ben Arous and 41.5 per cent in Manouba, compared to smaller numbers in rural areas: 8.8 per cent of judges in Kairouan, 7.7 per cent in Gbilli and 6.3 per cent of judges in Tataouine.

G. Representation in judicial decision-making bodies

Women's presence in senior decision-making functions remains limited in Arab countries (box 6), with judicial decision-making bodies being no exception. In Lebanon, despite the parity achieved in terms of overall representation, there is currently one female judge sitting on the SJC, out of 10 members. In 2017, Judge Helena Iskandar was automatically appointed as a member of the SJC after becoming the Head of the Committee of Cases at the Ministry of Justice.⁹⁷ In Jordan, the President of the Irbid First Instance Court, Judge Nawal Al-Jawhari was appointed to the 11-member High Judicial Council in 2017.⁹⁸ In Bahrain, Judge Fatma Fysal Habil, a female Deputy at the Civil Court, was appointed to the 12-member Supreme Judicial Council in 2016.⁹⁹ In Libya, the 2016 elections organized for the Supreme Judicial Council resulted in the election of Judge Widad al-Hamali to the Supreme Judicial Council, representing the Benghazi Court of Appeal.¹⁰⁰

Tunisia and Morocco have achieved notable increases in women's representation in their respective judicial councils following recent constitutional changes. In Tunisia, the 2014 Constitution broadened the membership of the High Judicial Council to 45 members. Nineteen women (10 elected and nine nominated) joined the body following its formation in 2016.

In Morocco, the 2011 Constitution requires the representation of women at the Supreme Council of the Judiciary to be similar in proportion to their overall presence in the judiciary. As a result, there are currently three women among the 10 elected members of Supreme Council of the judiciary.¹⁰¹

Box 6. Women's participation in decision-making in Arab States

Women's limited presence in senior judicial positions should be understood within a context where women have comparatively fewer opportunities to assume decision-making positions. Despite some disparities, as a whole, the Arab region trails global averages on indicators relating to women's participation in public life, including in parliament, government, public service, local councils, as well as civil society organizations and trade unions.^a

There is no clear-cut relationship between women's presence in the judiciary and their representation in other spheres of public life. In countries such as Kuwait and Qatar, where women's presence in the judiciary is negligible, women's participation in national parliaments is also low.^b Tunisia, which has one of the most equal levels of representation of women in the parliament in the region (31.3 per cent) also has one of the highest proportion of women in the judiciary. On the other hand, Lebanon and Jordan have achieved a comparatively high presence of women in the judiciary but relatively low levels of representation in parliaments (15.4 and 4 per cent respectively), while the situation is the opposite in countries such as Iraq, Mauritania, Saudi Arabia, Somalia and the United Arab Emirates.

Sources:

^a E/ESCWA/ECW2017/3, p. 14, Inter-Parliamentary Union, 2018.

^b Women's presence in parliament reaches respectively 3.1 per cent in Kuwait and 9.8 per cent in Qatar. See Inter-Parliamentary Union, 2018.

3

Barriers to Women's Presence in the Judiciary

3.

3. Barriers to Women's Presence in the Judiciary

Despite progress in recent years, the data presented in chapter 2 highlights that none of the Arab States have achieved women's full and equal participation in their judicial institutions. At the regional level, there is a large degree of diversity as some States, such as Tunisia and Lebanon, are close to reaching nominal parity, while elsewhere women remain largely underrepresented in the judiciary. There are also large disparities in the distribution of female judges within national institutions: the analysis of countries that present comprehensive enough data reveals that women are mainly concentrated in lower courts and in lower judicial grades, in civil rather than criminal courts and in urban rather than rural areas. Female judges remain excluded from religious courts, with only a handful of exceptions. Women are also underrepresented in prosecution services. Finally, they generally do not hold positions in judicial councils and similar bodies.

This chapter identifies barriers to women's full and equal participation in judicial institutions. Although these barriers are country- and context-specific, evidence collected through desk research, interviews and focus group discussions suggests a striking degree of commonality in the obstacles faced by women seeking to pursue a judicial career in the Arab States. As this chapter makes clear, the various types of barriers are strongly interrelated and mutually reinforcing.

A. Weak commitments to gender equality in national legislation and policy frameworks

As noted in chapter 1, Arab States have committed to achieving gender equality by signing up to several international and regional instruments including CEDAW, the chief treaty in this regard. In many countries, however, these commitments have not been adequately translated into laws and policies at the national level. In addition, several countries of the region have entered reservations on articles of CEDAW on the basis of their perceived contradiction with national law (particularly the family code) and the principles of sharia law. These include reservations on article 2, which deals with States' commitment to non-discrimination on the basis of gender and is considered as the core article of CEDAW.¹⁰²

Maleness is not a legal requirement for entering the judiciary in any of the Arab States, as national laws that regulate the organization of the judiciary, including the appointment and progression of judges, are generally drafted in gender-neutral language.¹⁰³ Yet, the absence of a strong commitment to non-discrimination grounded in international instruments and translated into the national constitutional and legal framework, including through enforcement and accountability mechanisms, can make it difficult for women to challenge discriminatory provisions and gain the ability to pursue a

career of their choice on a basis of equality with men, including in the judiciary.

Weak commitments to gender equality may fail to provide women with appropriate mechanisms to challenge provisions that impact their entry and progression through the judiciary, including rules that restrict their entry into judicial institutions,¹⁰⁴ limitations on their personal autonomy based on the Islamic law principles of maintenance and obedience and guardianship of men over women,¹⁰⁵ restrictive labour laws that may prevent their ability to work in certain conditions¹⁰⁶ and gender-based discrimination in the workplace and in judicial appointments. In addition, weak commitments to gender equality do not provide mechanisms for women to challenge their exclusion from sitting in religious courts in concerned Arab countries.

B. Conservative religious doctrine

In some Arab States, resistance to women's judicial appointments was, or is still, justified based on conservative religious doctrine. In the Sudan, even though female judges were appointed to the judiciary (including to sharia courts) from the 1970s onward, the authorities' extremely conservative interpretation of Islamic law between 1990 and 2005 resulted in a failure to appoint any female judges during that period.¹⁰⁷ In Yemen, following unification in 1990, conservative religious interpretations put a halt to women's appointments as judges and led to female judges being reassigned to administrative and clerical roles.¹⁰⁸ In Egypt, women's entry into the judiciary was delayed until 2003, as many judges considered it impossible on the grounds of incompatibility with sharia principles, which the constitution defines as the main source of legislation.¹⁰⁹

In Libya, although a significant number of female judges had been working in the judiciary for decades, two claims were submitted in 2013 to the Supreme Court challenging the constitutionality of the appointment of women into the judiciary, based on article 1 of the 2011 Transitional Constitutional Declaration, which declared the sharia as the main source of legislation in Libya.¹¹⁰

Conservative interpretation of the principle of guardianship have also been mobilized to prevent women from adjudicating in sharia courts in most of the Arab States that have them.¹¹¹ It has also been noted in the literature that a conservative religious worldview can influence the career choices of female law graduates, leading them to decide against applying to the bench as a result of their own conceptions of a woman's proper role.¹¹² The religious argument for excluding women from the judiciary has been increasingly challenged, however, as most Muslim-majority countries around the globe have accepted women's judgeship and appointed women to the judiciary, including to religious courts and family courts.¹¹³ Notably, in 2009, the State of Palestine became the first Arab State to appoint female judges to sharia courts, setting a positive precedent in this regard.¹¹⁴

C. Poor level of transparency and fairness in judicial appointments

The lack of transparency and fairness in judicial appointment processes is likely to have a disproportionately negative effect on female candidates. Several judges interviewed in the framework of the present research believed that the processes for the selection and appointment of judges in their respective States fell short of international standards relating to objectivity,

transparency and fairness.¹¹⁵ This view is shared by international observers.¹¹⁶ Appointment processes may not provide adequate safeguards against potential gender bias, whether explicit or implicit. In several Arab States, entry into the judiciary requires passing one or several rounds of interviews. Interview panels are generally composed of senior judges and therefore tend to be dominated by men. If some of the panel members value professional experience and personality traits that they associate with masculinity or hold prejudicial notions regarding women's suitability to the judiciary, this might influence the panel's decision in the absence of more objective criteria.¹¹⁷ In a study on admissions to the French judicial training institute, Anne Boigeol highlighted concerns about built-in gender bias in the oral examination. She showed that, over the years, male candidates have consistently scored higher than female candidates, which led her to ask whether men's oral skills are truly superior to those of women, or whether "a slight degree discrimination in [men's] favour is at work".¹¹⁸ This potential impact may be further compounded if the panel's decisions are not open to review or challenge.

The lack of clear and objective criteria may further affect women in their career progression. In most Arab States, judges are eligible to progress to a higher rank or function once they have met a certain seniority threshold and if they are deemed competent through an assessment of their judicial performance. Judicial performance is assessed differently in each Arab State, but generally entails evaluation by superiors in the judicial hierarchy, judicial inspection services, the judicial council or the ministry of justice. Yet, often the criteria for the

assessment of performance are not transparent or objectively set.¹¹⁹ For female judges, career progression therefore usually depends on the assessment of their male colleagues, who may hold explicit or implicit bias regarding their suitability to higher office or to hold specific posts (for example handling criminal cases).¹²⁰

In Tunisia, for example, only judges whose names appear on the list of suitable candidates drawn up and published annually by the Tunisian High Judicial Council are eligible for promotion. Yet, the law on the judiciary is not clear on the criteria and conditions required for judges to be on the list of eligibility. Judges' performance is assessed and marked by their superior in the judicial hierarchy. The criteria for the evaluation of performance is also not fixed by law.¹²¹ In Morocco, judges are only eligible for promotion if their names are included on the aptitude list prepared annually by the Minister of Justice, taking into consideration the opinion of the High Judicial Council. Judges' performance in Morocco is also evaluated by their superiors in rank.¹²² During her last visit to Tunisia, the former Special Rapporteur on the independence of the judges and lawyers criticized the absence of detailed and objective criteria for the assessment of performance of judges from the perspective of fairness.¹²³

The degree of transparency in judicial appointment processes also influences the chances of female judges to progress in their career with the same opportunities as men. For example, the reliance in many Arab countries on informal consultation processes in which Chief Justices inform judges and lawyers when a position is vacant, and seek their recommendation for suitable candidates, was found to have a negative impact on

women's inclusion and progression within the judiciary. Qualified female candidates might not be put forward or even informed of the openings as their professional and patronage networks tend to be more limited.¹²⁴ The lack of transparency of such processes is a clear barrier in the Arab States where access to the bench, no matter what the position, is only possible via a decision from the executive appointing identified candidates among legal professionals.¹²⁵

Appointments to the highest judicial levels and decision-making functions (for example as presidents or members of the constitutional courts, judicial councils, judicial inspection services and ministries of justice) are often contingent on political considerations rather than merit, representing another barrier to women's presence in top positions.¹²⁶ As these positions are perceived as prestigious and closely connected to political power, decisions on appointments are generally taken by the executive in consultations with members of the judicial council. Such modes of appointment tend to exclude women, even when they hold the necessary qualifications. A telling example is Lebanon where, in 2018, female judges represented 48 per cent of judges at the senior Grade 14, which made them eligible for appointments to the highest positions within the judiciary. In practice, however, their presence in high-level judicial posts remained extremely marginal.¹²⁷ Similarly, nominations to positions at the Judicial Council,¹²⁸ the SJC¹²⁹ and the Constitutional Council¹³⁰ are politically distributed and highly politicized, resulting in the exclusion of women. Only one female judge has ever served as a member of the Judicial Council (Judge Nahida Khaddaj) and only one female judge is currently a member of the SJC (Judge Helena Iskandar). The Constitutional Council has no female members.

D. Gender-blind rules on appointment and career progression within the judiciary

National laws regulating the appointment and progression of judges are generally drafted in gender-neutral language. There is ample evidence that gender neutral laws and policies often result in discrimination against women, due to their failure to take into consideration the specific conditions of women and to guarantee their equal enjoyment of their rights.¹³¹ Judge Pillay, in her former capacity as UN High Commissioner for Human Rights, warned that non-gender-sensitive laws and policies "are seldom gender-neutral as they reinforce pre-existing inequalities and discrimination against women; a reality that ought to be reversed".¹³² Non-gender-sensitive laws and policies are therefore often referred to as being gender-blind.

Gender-blind rules disproportionately affect women seeking to pursue a judicial career. At the entry level, examples include requirements of professional experience in the legal field as a prerequisite for accessing the judiciary, with such rules common in the Gulf States. As women are less likely to have practiced as lawyers in those countries due to factors such as previous bans on their entry into the profession, the reluctance of law firms to hire women or unevenly distributed family responsibilities, these types of rules can lead to bias against the appointment of women.¹³³

Gender-blind rules also negatively impact women's ability to progress in their careers. In many Arab States, seniority, generally defined as a set number of years that a judge must spend in a lower rank, is the main criteria for appointment to intermediate and higher posts. As many female judges have entered the

profession much later than their male colleagues, such rigid requirements delay their presence in higher courts. In Jordan, for example, appointments to high courts and positions of power within the judiciary largely depend on the number of years of experience.¹³⁴ Appointees to the position of President of Court of Cassation must have served in regular judiciary for a period not less than 25 years.¹³⁵ As women first entered the judiciary in 1996, a female judge would have worked in the judiciary for a minimum of 21 years to reach the Grade High based on these rules. Accordingly, it would take until at least 2021 for the first female judge to be eligible for appointment as a President of the Court of Cassation in Jordan.

Such rigid rules might also fail to accommodate interrupted career paths, impacting women who are more likely to have temporarily stepped away from work to, for example, take leave without pay after maternity, take care of an elderly relative or accompany their spouses abroad. Participants in the case studies also pointed out that the requirement for relocation to a court in a different geographical area in some Arab States might hurt women's participation in the judiciary, owing to differentiated family care expectations.¹³⁶ In Egypt, for example, judges are required to rotate every five years and prohibited from working in the area where they live. In such a system, the prospect of being assigned to a court in an area away from the family home may also dissuade many female graduates from pursuing a career as a judge.¹³⁷

E. The uneven distribution of unpaid care work

Many participants in the case studies noted that a crucial barrier to women's full and equal

participation in the judiciary is the uneven distribution of unpaid care work. This concern is widely acknowledged in other studies in the region and globally. Although women in Arab States have gained the right to study and work outside the home, gender inequality and prevailing gender norms around femininities and masculinities mean that women still assume most of the family responsibilities and household tasks. For instance, in a study on female judges in Tunisia, Ammar pointed out that while the Tunisian legislators have changed many of the unequal family laws, the patriarchal mentality in Tunisian society persists and the primary expectation of women is that they fulfil their roles as mothers and wives.¹³⁸ Based on available time use surveys, it is estimated that women undertake as much as 80 to 90 per cent of all unpaid care work in the Arab States, the highest percentage in a global comparison.¹³⁹

The need to reconcile family and professional responsibilities might constrain women's ability to progress to the highest posts in the judiciary. Women are expected to continue to fulfil time-consuming tasks within the family along with their career, even when they are the main breadwinner. Being a parent also slows down the career of female judges, and its impact on career paths is further exacerbated by the absence of adequate support structure for working parents, such as childcare facilities,¹⁴⁰ enough parental leave¹⁴¹ and flexible working conditions for both men and women. In the State of Palestine, participants in interviews and focus groups noted that many of the difficulties that female judges face in terms of career progression are related to their assumption of most responsibilities with regards to home and childcare, which puts them under high pressure compared to men.¹⁴² Women's familial responsibility towards their children and home also emerged as a significant

barrier for career progression in Lebanon. One female judge interviewed described her own difficulties in trying to reconcile her professional and familial duties and concluded that familial challenges, rather than professional considerations, constitute the chief factors that hinder a female judge's career progression. Participants were also concerned that maternity leave might cause caseloads to build up and lead to resentment from male colleagues, who may feel that female judges do not fully assume their professional responsibilities.¹⁴³

F. Gender stereotypes and patriarchal assumptions regarding women's role in society

Gender stereotypes and patriarchal assumptions regarding women's role in society might inhibit them from applying to the judiciary. Dominant gender norms in the region still require women to submit to the authority of their spouses, fathers and other male family members. Family pressure and approval, particularly from the relevant male guardian, often has a significant bearing on women's ability to pursue an education, enter employment and choose a career. Some families consider a judicial career inappropriate and/or dangerous for women, due to potential contact with criminals and exposure to violence or "obscenity". The fact that becoming a judge involves passing an entrance exam, additional studies at a judicial institute that would result in delayed marriage and potentially relocation may also dissuade female law graduates from pursuing a judicial career.¹⁴⁴ The lack of female judge role models might also play a role in limiting women's interest.

Stereotypes are also likely to narrow the range of functions that are deemed suitable for

women within the judiciary. In line with a patriarchal view that sees women as carers and nurturers primarily, female judges tend to be assigned to civil, family, youth and social protection courts. On the other hand, women are viewed as more fragile and weak, leading to their capacity and interest to handle criminal or security related cases being underestimated and to their limited representation in related courts.¹⁴⁵ In Egypt, for example, female judges have been appointed to family courts but not yet to criminal courts. In Lebanon, a female judge interviewed at the military court noted that the male judges she had worked with continuously implied that they were more competent than her for the sole reason that they are men. Such distinctions reinforce gender stereotyping regarding female competency and capabilities within the judiciary and negatively impact their career advancement.¹⁴⁶ The gendered assumptions about women's role in society and within the judiciary leads to the devaluation of female judges' achievements, experiences and potential and damages their chances for promotion to higher judicial grades. It can also undermine women's confidence and discourage them from putting themselves forward for career progression.

Women's lower representation in prosecution services compared to other judicial functions is another example of the impact of patriarchal expectations. Across the region, relevant authorities have justified women's limited presence in this field on the basis of the nature of the tasks expected in these positions. Working in criminal prosecution services requires the ability to travel promptly to crime scenes, including outside of office hours, which is assumed to be less attractive to women with family and childcare responsibilities.¹⁴⁷ In Morocco and Bahrain, there is a higher representation of women in the prosecution offices related to

commercial courts, family and civil matters, which require fewer hours out of office and fewer visits to crime scenes, compared to criminal ones. In the Syrian Arab Republic, being a **prosecutor is primarily a less demanding office-based job that does not require that case files be taken home**. Hence, female judges often request to be transferred to the public prosecutor's office before and after pregnancy.¹⁴⁸ However, observers have argued that bias related to assumptions about femininities and masculinities, and particularly women's suitability to deal with cases involving extreme violence or threat to national security, are partly behind the exclusion of women from prosecution services.¹⁴⁹ In this view, female judges are underrepresented in the prosecution services, not because they are not applying for posts, but rather because they are not being selected for such appointments based on assumptions regarding their preferences and abilities.

Gender-based assumptions about the capacities and availability of women might also affect the distribution of cases. In Morocco, Judge Malika Hafedh, the President of a Chamber at the Court of Cassation, noted that female judges are assigned to simple cases and left out when it comes to major criminal cases and cases at the Military Court.¹⁵⁰ Female judges interviewed as part of the national case studies reported similar experiences. In the State of Palestine, female judges in the military judiciary pointed out that serious fact-finding cases were usually assigned to male judges. For example, a military judge in the Public Prosecutor's Office noted that she did "not often have serious military cases, and perhaps this is because of the idea that these cases require strong men with the ability to travel, or perhaps the judicial authorities are trying to spare women the danger arising from dealing with these cases". In Tunisia, female

judges reported being excluded from positions within criminal courts by their male colleagues who viewed the first responsibility of women as being mothers and wives. One of the female judges reported that male colleagues had repeatedly told her that they did not want to overburden her with large responsibilities as she is a mother. In the Sudan, judges expressed concerns that the allocation of cases is influenced by the judges' gender: women were, for example, excluded from adjudicating criminal cases involving *hudud* (Islam-based punishments for specific crimes).

Female judges can face challenges to their authority from litigants, as some men refuse or resist adjudication by a female judge. This has been the experience of several female judges in Jordan. Judges and lawyers interviewed in Lebanon expressed concerns that the patriarchal mentality rooted in some regions is reflected in litigants' attitudes towards female judges. For example, one judge recalled that a religious leader who was a defendant in a case she was presiding over persistently refused to appear before her because of his belief that a woman cannot be a judge. Another judge mentioned that a male defendant refused to look at her during the hearing solely based on her gender. In the Sudan, female judges reported that challenges to their authority inside and outside the court were a relatively common occurrence on the part of litigants and lawyers. Interviewed judges usually recorded incidents of personal abuse or misconduct that may constitute contempt of court in the court proceedings. In most cases, the situation was resolved informally through an acceptable apology. The examples provided in box 7 suggests a context where women's presence in judicial institutions remains far from normalized in the public perception.

Box 7. Qaadi and Qaadiya

Participants in the ESCWA case studies noted that, even in Arab countries where women made up a considerable proportion of judges, the judicial profession was still commonly perceived as being exclusively masculine. Several judges noted that the widespread usage of the masculine noun of *Qaadi* (judge) to refer to female judges (as opposed to the feminine *Qaadiya*) was an indicator of this phenomenon. In Tunisia, the female president of a high court noted that for years people referred to her as “Mr. President”, with even the sign on her office door stating as much. She took the initiative to replace the door sign and pushed her interlocutors to refer to her as “Madam President”. In the State of Palestine, a judge regularly noticed the surprise of some people when they entered the court and found a female judge. Participants also highlighted the lack of portrayal of female judges in the media, which results in the absence of potential role models for young women who might have otherwise considered a judicial career and, more generally, in the limited normalization of women’s presence in the judiciary in public perception.

Source: ESCWA case studies.

The strong urban-rural divide in the distribution of female judges has also been linked to gender stereotypes and patriarchal norms. For example, judicial appointments may be influenced by the belief that women should remain close to their family home, or the presumption that more conservative attitudes would make it difficult for women to work as judges with litigants refusing or challenging their authority in rural areas.¹⁵¹ The presumption that female judges would refuse to work outside of cities and urban centres or to relocate away from their families may be another driver, no matter their actual preferences.¹⁵² Similarly, in the State of Palestine, female judges are treated with more flexibility than their male colleagues with regards to assignments to courts that are closer

to the family home. While such measures may encourage some women to pursue a judicial career, they do not help improve gender balance within the judiciary in rural areas or to challenge conservative gender attitudes concerning women’s suitability for judgeships. By treating female judges as a monolithic group with homogenous preferences, such measures might also prevent women who might want to take such posts, for example to progress in their career, from doing so.

G. Fragmented support from national women’s machineries and civil society organizations

As envisioned by the Beijing Platform for Action and subsequent platforms, national women’s machineries should be the State’s main coordinating body for the advancement of women, including in promoting their full and equal participation in public institutions and in advocating measures in favour of women’s access to justice.¹⁵³ In practice, however, the involvement of national women’s machineries in supporting women’s presence in the judiciary has been limited throughout the region, owing to various factors such as lack of clear mandate as well as limited capacities and financial and human resources. There are nevertheless some good practices in this regard. The Supreme Council for Women (SCW), Bahrain’s national women’s machinery, has been closely associated in the State’s efforts to encourage women’s participation in public life, develop a gender-sensitive judiciary and improve access to justice (as reflected in the National Strategy for the Advancement of Bahraini Women for 2013-2022 drafted by SCW). Such efforts also include the “Judges of the Future” initiative (first launched in 2014) that aims to train 30-35 male and female graduates and prepare them to join the judiciary.

In 2016, SCW chose “Women in the Law” as the theme for that year’s Bahraini Women’s Day to showcase women’s contribution to the field and encourage their further participation.

Support from civil society organizations is also rare. In many Arab States, civil society organizations have played a significant role in advocating for and supporting the participation of women in decision-making positions.¹⁵⁴ They do so by conducting a range of support activities, examples of which include awareness-raising campaigns, capacity-building programmes and mentoring of female candidates in elections.¹⁵⁵ Civil society organizations also support women’s access to justice through various initiatives.¹⁵⁶ However, in most Arab countries, civil society organizations generally do not target supporting women’s presence to the judiciary. In the State of Palestine, for example, participants in interviews noted that they had never heard of any civil society programmes to encourage women to work in the judiciary.

There are nevertheless a handful of positive examples regarding the involvement of professional and civil society organizations. The Tunisian Association of Women Judges

was created in 2016, with one of its main aims being to ensure women’s equal representation in the judiciary, including at the highest level. Other organizations, such as the Association of Tunisian Magistrates and the Union of Tunisian Magistrates, which have been presided by female judges since 2011, also provide support and role models for female candidates.¹⁵⁷ Similarly, the Arab Women’s Legal Network, a regional organization based in Jordan, provides a platform for women in the legal sphere to exchange experiences, network and discuss common issues, while also offering extensive training and capacity-building programmes for new and established judges. In Iraq, a woman was elected vice-president of the Iraqi Judicial Association, a civil society organization that seeks to promote the status of judges and the judiciary and brings together active and retired judges. An association of female judges was also recently formed with the support of Higher Judicial Council. In other countries, for example Lebanon, female judges have not been able to organize in a similar manner, as the Ministry of Justice has long forbidden membership in professional organizations. This policy has recently evolved, however, resulting in the creation of a “judges’ club” in 2018.

4

Key Findings, Good Practices and Policy Recommendations

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4. Key Findings, Good Practices and Policy Recommendations

A. Key findings

The presence of women in judicial institutions remains uneven in the Arab region. The number of female judges has significantly increased in countries such as Lebanon, Jordan, Morocco, the State of Palestine and Tunisia. However, in other States, including those in the Gulf region, progress has been limited, with Bahrain being the notable exception to the trend. Although Saudi Arabia appointed a female arbitrator to a commercial court in 2016, the country still does not have women as full members of its judiciary. In Kuwait, the first group of female judges is expected to assume office only in a couple of years, once they finish their training at the office of the public prosecutor.¹⁵⁸ A handful of countries, such as Oman and Somalia, still do not have female judges in their judiciaries, and women's presence remains marginal in most other Arab States.

Analysis of the distribution of female judges within national judiciaries also reveals large disparities. Across the region, women remain starkly underrepresented in high judicial office, higher courts and in judicial decision-making bodies. This is also the case in countries where female judges are present in significant numbers, challenging the notion that women's presence will naturally expand at the top as more women enter the judiciary. Female judges are also underrepresented within the prosecution services, in criminal and military

courts and in other judicial functions that are considered as sensitive and/or prestigious.

Women's presence tends to be stronger at lower judicial levels, for example in conciliation courts, district courts and in courts of first instance, as well as in juvenile courts and family courts (when such courts are not part of the religious court system). With the notable exception of the State of Palestine, in States where personal status matters are adjudicated in religious courts, female judges are excluded. In addition, data on women's representation across geographical areas in Lebanon, Morocco and Tunisia (the only States for which such data are available) show a strong rural-urban divide, with female judges being concentrated in large cities and provincial capitals rather than in rural areas.

These disparities in the distribution of female judges highlight the enduring barriers to female judges' appointment and progression within the judiciary. Such barriers are multifaceted with legal, political, institutional, normative and structural dimensions. Weak legal commitments to gender equality and uneven implementation of women's and human rights standards undermine women's equal access to a judicial career. Conservative interpretations of religious law and practices remain a basis to contest women's judgeships, particularly regarding female judges' appointment to sharia and other religious courts. The absence of fair

appointment processes for judges in the region and the lack of objective and clear criteria for career progression impacts women disproportionately. In addition, political interference by the executive in the appointment processes, as well as appointment processes based on political affiliation rather than merit, have an impact on women's representation, particularly at the top of the judicial hierarchy.

Finally, conservative gender norms, patriarchal structures and gender-based discrimination remain significant barriers for women's judgeships in the region. The uneven distribution of tasks within their households means that marriage, motherhood and childcare continue to disproportionately affect women's progression within the judiciary. The absence of suitable childcare facilities, adequate parental leave and flexible working conditions all have a negative impact on women's career progression. Gender-based stereotypes around femininities and masculinities also constitute a barrier for female judges' progression, as is the fragmented support received from national women's machineries and civil society organizations.

B. Overview of regional good practices

The study identified several good practices for the advancement of women's presence in the judiciary, which are summarized below.

1. Political leadership

Political leadership, proactive government policies and coordination are a key driver in improving women's presence in judicial institutions. In Tunisia in the 1960s, President Habib Bourguiba introduced a law that

regulated access to the judiciary to end the exclusion of women from judgeships. In the State of Palestine, political leadership was crucial in initiating the appointment of women to sharia courts in 2009. In Jordan, the Government's support has been crucial for women's increased participation in the judiciary. In 2000, King Abdullah formed a special commission to modernize the judiciary and increase the number of female judges. As a result, various initiatives were taken by the Jordanian Ministry of Justice to increase women's representation in judicial bodies including setting up a minimum 15 per cent quota for women admitted to the Institute of Judicial Studies. Another positive step has been the appointment of female judges to high-profile positions, including to the Judiciary Council and the Court of Cassation, and the issuance of regulations giving the opportunity for all judges to apply to senior positions without discrimination.¹⁵⁹ The National Strategy for Women 2013-2017 (ratified by the Council of Ministers) also reflected this engagement and defined a target of 20 per cent of women in the legal sphere and the judiciary. As the 20 per cent target was achieved by 2015, the Judicial Council now aims to raise the percentage of women working as judges and prosecutors to 25 per cent in the coming years.

2. Legal reforms

Strong national laws on gender equality and the removal of discriminatory legislation and policies are essential to enabling women's full and equal participation in the judiciary, as they provide them with a basis and/or channels to challenge discriminatory practices. In recent years, significant legal reforms have been introduced across the region.¹⁶⁰ The new and/or amended constitutions of Egypt, Jordan, Morocco and Tunisia include improved

provisions on women's rights and participation in public office. In Tunisia, the 2014 Constitution includes strong commitments to women's participation in public life. In article 46, the Constitution commits the State "to guarantee the equality of opportunities between women and men to have access to all levels of responsibility in all domains. The state works to attain parity between women and men in elected Assemblies". In 2014, Tunisia also lifted its reservations to CEDAW. In Egypt, the 2014 Constitution introduced several provisions aimed at improving gender equality and women's participation. Articles 9 and 11, for example, prohibit discrimination against women.

3. Outreach and capacity development

Targeted outreach and capacity development programmes can be very effective in increasing women's presence in judicial institutions while still respecting the principles of fairness and transparency in judicial appointments. A key driver of the increase in women's presence in the Jordanian judiciary was the Judicial Council's "Future Judges" training programme, which was implemented from 2008 until 2014 as the first initiative of its kind in the Arab region. The programme aimed to attract, train and fast-track qualified young Jordanians, male and female, into a judicial career. Participants were selected on the basis of transparent, objective and clearly advertised criteria; women accounted for 68 per cent of all participants. The programme provided a full scholarship to the students as well as educational opportunities in Jordanian and foreign universities and the Judicial Institute. The programme also included skills development, including in the English and French languages. Similarly, in Bahrain,

the elite "Judges of the Future" programme, implemented since 2014 by the Supreme Judicial Council in partnership with the University of Bahrain and the Judicial Institute aims to train young women and men judges to prepare them for judicial positions.

4. Fair and transparent pathways for entering the judiciary

The importance of fair and transparent processes and equal opportunities for entering the judiciary cannot be overemphasized. In countries such as Algeria, Jordan, Lebanon, Morocco, the Syrian Arab Republic and Tunisia, where the road to a judicial career is through competitive exams and training at judicial institutes, the number of female judges has steadily increased. Despite different constitutional, legal and institutional frameworks, recruitment to the judiciary in these countries takes place under broadly similar conditions. The standard requirements for access to a judicial career are to fulfil clearly advertised criteria (regarding diplomas, age, nationality, etc.), pass one or more rounds of competitive examination (written and/or oral) and the completion of training at the national judicial institute. A fair and transparent process can starkly limit the influence of bias and discrimination in the recruitment of judges, in comparison to systems where judicial appointments are largely discretionary.

5. Enhanced policy frameworks and coordination with women's machineries

The adoption of holistic national strategies on gender equality under the leadership of national women's machineries can strongly contribute to

improving women's presence in the judiciary. In Bahrain, the SCW has played a significant role in supporting women's participation in decision-making positions, including as judges. SCW drafted the National Strategy for the Advancement of Bahraini Women (2013-2022), which supports the appointment of women in the judiciary.¹⁶¹ Similarly, in Jordan, the National Strategy for Women 2013-2017 (ratified by the Council of Ministers) defined a target of 20 per cent of women in the legal sphere and the judiciary, which was achieved in 2015.

6. Gender-sensitive workplace

Given the uneven distribution of domestic and family tasks in all Arab countries, it is vital for workplaces, including the judiciary, to introduce measures to mitigate the imbalance. Although such measures should aim to provide the support women need now, they should ultimately pursue a transformative objective toward changing gender norms and compelling men to take an equal role in care responsibilities (for example by giving men and women equal parental leave). Several Arab States have introduced gender-sensitive policies that have proved successful in enabling women to reconcile their work and domestic life. For example, in Jordan and Lebanon, female judges appreciated the ability to work from their homes for aspects of their judicial duties that do not require physical presence in the courts (for example to carry out research and develop their verdicts in cases). The provision of adequate infrastructure is also essential: for example, in the Sudan, the introduction of childcare facilities in courts across the country has been impactful in enabling women to pursue and progress in their judicial career.

7. Affirmative measures

Quotas and other temporary special measures have been introduced by most Arab States to promote women's participation in public life, notably for elections to parliament and other legislative bodies.¹⁶² However, only a handful of Arab States have introduced affirmative measures to improve women's representation in the judiciary and judicial decision-making positions.¹⁶³ In Jordan, in 2005, the Institute of Judicial Studies introduced a quota for the admission of women (set at 15 per cent), which led to an increase the number of female judges. In Morocco, the 2011 Constitution set a quota for women at the Supreme Council of the Judiciary, the judiciary's decision-making body. During the 2015 elections, the quota came into play and three seats were allocated to qualified women, about one third of the number of elected judges. Iraq's National Action Plan for the Implementation of the United Nations Security Council resolution 1325 on Women, Peace and Security (2014-2018) also calls for a 30 per cent quota for the presence of women in all decision-making positions, including the judiciary.¹⁶⁴

C. Policy recommendations

The barriers for women's access to the judiciary are multifaceted, involving legal, political, institutional, normative and structural dimensions. Strategies aimed at removing these barriers should therefore be multi-dimensional and implemented in a coordinated manner. Based upon analysis of the normative framework (including international binding commitments) and extensive analysis of evidence and best practices at the global and regional level, the following policy recommendations are made to Arab States,

international organizations, and civil society organizations:

- *National targets and accountability:* Define precise targets for women's presence in the judiciary and ensure accountability through the regular collection publication and analysis of data on women's presence at all levels of judicial institutions. Identify where disproportionately large gender gaps persist and hold branches of the national judiciary accountable. Consider the introduction of temporary special measures, such as gender quotas, for future recruitments to such entities, as well as for appointments to judicial decision-making positions, including judicial councils;
- *Outreach:* Conduct outreach and media campaigns highlighting the importance of women's presence in the judiciary. Develop guidelines to eliminate negative stereotypes regarding the depiction of women in the media, including in the legal profession. Showcase the personal experiences of female judges who might act as role models for women considering a judicial career. Work in partnership with schools, universities and law schools to identify promising students, female and male, encourage them to pursue a judicial career, and provide training and support to facilitate their entry into the judiciary. Reach out to women in the legal profession and facilitate the entry of qualified candidates into the judiciary;
- *Transparency and fairness:* In partnership with relevant institutions, such as judicial councils or judicial training institutes, take measures to improve transparency and eliminate gender bias in appointment processes, both at entry level and for appointments to intermediate and senior judicial posts. Ensure that position openings are publicly posted, written in gender-neutral language, with objective criteria, and that selection processes are clear and transparent. Introduce gender and implicit bias training for all recruiting judges and ensure equal representation in recruitment panels for all positions, including at the most senior levels. Require candidates of both sexes to be featured on short lists, where applicable;
- *Career progression:* Conduct a gender audit within the judiciary to identify specific challenges and assess implications of institutional policies on women, for example requirements for judges to relocate at regular intervals. Where applicable, add flexibility to seniority requirements for appointment to intermediate and higher courts. Promote the participation of female judges in continuous training and research programmes. Update career advancement rules and regulations to ensure that periods of time spent on family care leave do not hinder career progression;
- *Gender-sensitive workplace:* Introduce gender-sensitive working arrangements such as flexible working hours, remote working (for aspects of judicial work that do not require face-to-face contact with colleagues or users of the judicial system) and the provision of childcare facilities. Implement zero-tolerance policies against workplace discrimination and harassment, including by members of the judicial institutions and their users;
- *Mentorship and networking:* Promote and encourage women's presence in professional associations, particularly in leadership positions. Support the development of national and regional associations of female judges, prosecutors

and lawyers. Provide networking and mentorship opportunities for women seeking to enter or advance in the judiciary;

- *Coordination:* Ensure that actions to increase women's presence in the judiciary are implemented in coordination with efforts to promote women's participation in public life and their access to justice, challenge harmful gender stereotypes and ensure a fair distribution of unpaid care work between men and women. Incorporate these actions in relevant national action plans and strategies, if

applicable, and ensure accountability towards related mechanisms. Conduct consultations with stakeholders within the judiciary, government and civil society to develop guidelines and national action plans toward a gender-sensitive judiciary, including through revision of curricula at judicial training institutes and provision of relevant training on gender equality and human rights for all judges. Where relevant, initiate dialogue with religious authorities regarding women's presence as judges in religious courts, based on the successful Palestinian example.

Annex¹⁶⁵

Table 1. Distribution of judges across the judiciary in Jordan, 2017

Grade	Male	Female	Total	Percentage of women
High	84	1	85	1.17
Special	83	2	85	2.35
First	68	4	72	5.55
Second	162	10	172	5.81
Third	143	18	161	11.18
Fourth	143	67	210	31.90
Fifth	65	73	138	52.89
Sixth	28	7	35	20
Total	776	182	958	

Source: 2017، الأردن، المجلس القضائي.

Table 2. Distribution of judges across grade in Tunisia, 2017

Grade	Male	Female	Total	Percentage of women
First (lowest)	376	465	841	55.29
Second	399	220	619	35.54
Third (highest)	494	202	696	29
Total	1 269	887	2 156	41.14

Table 3. Distribution of judges across grade in Morocco, 2018

Grade	Prosecution services		Judges		Percentages of women
	Male	Female	Male	Female	
Outside the Grade	0	0	2	0	0
Exceptional Grade	359	64	1 050	283	19.7
Grade One	104	21	346	123	24.2
Grade Two	66	7	161	75	26.5
Grade Three	354	76	748	386	29.53

Table 4. Distribution of judges based on grade in Lebanon, 2017

Grade	Male	Female	Percentage of women
1	12	15	55.5
2	17	35	67.5
3	9	5	35.5
4	0	0	-
5	0	0	-
6	8	8	50
7	16	24	60
8	27	39	59
9	27	13	32.5
10	19	25	57
11	16	22	58
12	18	9	33.5
13	13	0	0
14	12	11	48
15	17	17	50
16	15	9	37.5
17	18	9	33.5
18	13	3	18.5
19	1	1	50
20	9	2	18
21	1	0	0
22 and above	2	1	33.5
Total	272	248	47.5

Source: E/ESCWA/ECW/2018/TP.2.

Table 5. Distribution of women in the judiciary in Libya, ca. 2016

	Women	Total	Percentage of women
Senior judges in courts of appeal	26	373	7
Judges in First-instance courts	107	581	18.5
Prosecution	116	835	14
Litigation Authority	390	640	61
Public Defence	773	1 139	68
Law Department	9	26	21

Source: ICJ, 2016a.

Table 6. Distribution of high positions within the judiciary in Tunisia, 2017

Position	Male	Female	Total	Percentage of women
First President at the Court of Cassation	1	0	0	0
General Public Prosecutor at the Court of Cassation	1	0	0	0
Deputy First President at the Court of Cassation	0	2	2	100
Head of Division at the Court of Cassation	16	12	28	43
Counsel at the Court of Cassation	45	57	102	56
Attorney General at the Court of Cassation	24	11	35	31
Attorney General Assistant General Public Prosecutor at the Court of Cassation	1	0	1	0
First President at Appeal Courts	7	6	13	46
Deputy First President at Appeal Courts	9	3	12	25
Head of Division at Appeal Courts	55	37	92	40
General Prosecutor at Appeal Courts	12	1	13	8
First Assistant to the Procurator General at Appeal Courts	13	1	14	7
Assistant General Prosecutor at Appeal Courts	22	4	26	15
Deputy First President in First Instance Courts	1	1	2	50
Head of Division in first Instance Courts	24	2	26	8
Counsel in First Instance Courts	47	27	74	36
The President in First Instance Courts	19	9	28	32
Public Prosecutor in First Instance Courts	28	0	28	0
Senior Investigating Judge in First Instance Courts	1	0	1	0
President District Courts	3	1	4	25
Deputy President District Courts	1	0	1	0

Table 7. Distribution of public prosecutors in Tunisia, 2017

Position	Male	Female	Total	Percentage of women
General Public Prosecutor the Court of Cassation	1	0	1	0
Attorney General the Court of Cassation	24	11	35	31
Attorney General Assistant General Public Prosecutor at the Court of Cassation	1	0	1	0
General Prosecutor at Appeal Courts	12	1	13	8
First Assistant to the General Prosecutor at Appeal Courts	13	1	14	7
Assistant General Prosecutor at Appeal Courts	22	4	26	15
Public Prosecutor First Instance Courts	28	0	28	0
Senior Investigating Judge First Instance Courts	1	0	1	0
Deputy Public Prosecutor First Instance Courts	2	0	2	0
First Assistant for the Public Prosecutor First Instance Courts	33	1	34	3
Assistant Public Prosecutor First Instance Courts	101	16	117	14
First Investigating Judge First Instance Courts	52	2	54	4
Investigating Judge First Instance Courts	75	2	77	3

Table 8. Distribution of public prosecutors in Morocco, 2018

Courts	Male	Female	Total	Percentage of women
Court of Cassation	35	2	37	5.4
Appeal	238	19	257	7.3
First Instance	511	127	638	19.9
Commercial Appeal Courts	5	2	7	28.5
Commercial Courts	7	10	17	58.8
Office of the Public Prosecutor	9	33	12	25

Table 9. Distribution of public prosecutors in Bahrain, 2018

Prosecution service type	Number of prosecutors		Percentage of women
	Male	Female	
Appeal prosecution	4	1	20
General prosecution	6	1	14
Partial prosecution service (district level)	21	1	5
Special prosecution (Family and children, ministries, public bodies, enforcement, traffic)	11	4	27

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Endnotes

Chapter 1

1. A/HRC/17/30/Corr.1; A/HRC/17/30, para. 18.
2. A/HRC/17/30, para. 45.
3. All Arab States, except Somalia and the Sudan, have ratified CEDAW.
4. The ESCWA member States are Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, State of Palestine, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen.
5. International Development Law Organization, 2018.
6. See <https://www.unescwa.org/events/women-judiciary-removing-barriers-increasing-numbers>.
7. E/ESCWA/ECW/2018/TP.2; ESCWA paper on the State of Palestine forthcoming.
8. E/ESCWA/ECW/2018/BRIEF.1.
9. E/ESCWA/ECW/2017/4.
10. The Committee also required States to provide statistical information on women's representation in public office. See CCPR/C/21/Rev.1/Add.10.
11. CEDAW General Recommendation, No. 23.
12. Beijing Declaration and Platform for Action, 1995, principle 13.
13. *Ibid.*, Strategic objective I.2, para. 232 (m).
14. *Ibid.*, Strategic objective G.1. para. 190 (a).
15. A/RES/66/130, para. 9.
16. A/RES/70/1.
17. Arab Charter on Human Rights, 2004, art. 24 (4); art. 34 (4).
18. African Charter on Human and Peoples Rights, art. 13 (2).
19. The Maputo Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, arts. 9 (2) and 8 (e).
20. For a complete review of theoretical and evidence on the impact of women's presence in the judiciary, see Kenney, 2013; Schultz and Shaw, 2013; Hunter, 2015; Rackley, 2013.
21. In her work, Rosemary Hunter warned that assumptions about the difference that female judges would make are based on "the at best naive and at worst essentialist" idea that women be necessary representative of their gender or that they speak with one voice. She argued that while female judges may transform judicial institutions, they can also be transformed by them. In addition, female judges' ability to impact on judicial decision making is often contained within institutional norms and procedures and by the law itself. Women may also come from a conservative mind set. As women's access to decision making in patriarchal societies is difficult, standing up for their own gender requires challenging the institutional structure and practices. Female judges may not want to do this at a time when they are already struggling to gain legitimacy. See Hunter, 2012, p. 6.
22. For a review of global evidence, see Organisation for Economic Co-operation and Development, 2014. Several studies have also highlighted that increases in women's presence in public institutions (when such increases are quantitatively significant and qualitatively meaningful) result in more gender-sensitive policies, thereby ultimately enhancing the status of women. In its General Recommendation No. 23, the CEDAW Committee notes that when women's participation in institutions hits a "critical mass" (generally estimated at 30-35 per cent), there is a "real impact on political style and the content of decisions, and political life is revitalized". For a review of evidence, see United Nations Development Programme, 2014a.
23. See Hunt, Layton and Prince, 2015; Desvaux and others, 2017; Transparency International, 2014; Kumar Jha and Sarangi, 2018; Michailova and Melnykovska, 2009; Agerberg, 2014.
24. E/ESCWA/ECRI/2017/4.

25. United Nations Entity for Gender Equality and the Empowerment of Women, 2011, p. 61; UN Women, 2018.
26. A/HRC/17/30.
27. Tulkens, 2014. Similarly, ICTY Judge Patricia Wald argues that “being a woman and being treated by society as a woman can be a vital element of a judge’s experience. That experience in turn can subtly affect the lens through which she views issues and solutions. A judge is the sum of her experiences and if she has suffered disadvantages or discrimination as a woman, she is apt to be sensitive to its subtle expressions or to paternalism”, cited in Grossman, 2012.
28. Brenda Hale, “Equality in the judiciary: a tale of two continents” (10th Pilgrim Fathers’ Lecture, 24 October 2003), as cited in Rackley, 2008.
29. UN Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principle 10.
30. African Commission on Human and Peoples’ Rights, 2003.
31. E/ESCWA/ECW/2018/BRIEF.1.
32. CEDAW/C/GC/33.
33. A/HRC/17/30.
34. *Ibid.*, para. 47.
35. CEDAW/C/GC/33, para. 3.
36. Cusack, 2014; OHCHR, 2018.
37. E/ESCWA/ECW/2017/4.
38. A/RES/67/1, paras. 14-16.
39. Bangalore Principles of Judicial Conduct, 2002.
40. https://carjj.org/sites/default/files/sharjah_document.doc.
41. UN Women, 2011, p. 61; UN Women, 2018.
42. Grossman, 2012.
43. Goldstone, 2002.
44. Grossman, 2012.
45. Trial Judgement Chamber II (Prosecutor v. Nikolić), Sentencing Judgment, International Criminal Tribunal for the former Yugoslavia 2003, Case No. IT-94-2-S; Grossman, 2012, p. 657.
46. Kenney, 2008; Grossman, 2012.
47. Hale and Hunter, 2008.
48. Boyd, Epstein and Martin, 2010.
49. The question of what feminist jurisprudence would bring to the judiciary has led to attempts by legal scholars to redraft judgments in a feminist perspective in a bid to advocate for a greater diversification of the judiciary, by demonstrating that the presence of multiple voices at all levels of the judicial pyramid can make a difference. An example of this is the Feminist Judgments Project in the United Kingdom aimed at unveiling the “gendered nature” of law, in general, and of judgments. See <https://blogs.kent.ac.uk/law-news/2018/11/29/feminist-judgments-project-writes-feminist-judgments-for-leading-cases-in-english-law/>. Such a feminist perspective, which might not necessarily impact on the outcome of trials, would nonetheless, significantly contribute to improving the quality of judgements by enriching and strengthening the ability of judicial reasoning to respond to varied social contexts and experiences.
50. Hunter, 2012, pp. 10-11.
51. A/HRC/17/30.
52. CEDAW/C/GC/33. The Committee recommends that States parties “take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities”.
53. Some of the participants explained this by the fact that women were less likely to conduct behind-closed-doors meetings with men as it is less socially acceptable in many places in the Arab region.
54. An-Na’im, 2002, p. 17.
55. Ben Achour, 2007.
56. Carlisle, 2017.

57. The State Council has played a significant political role since the 2011 political developments by dissolving the ruling National Democratic Party (NDP) shortly after President Hosni Mubarak stood down from power and by dissolving the first Constituent Assembly in April 2012. See International Commission of Jurists, 2016b, p. 78.
58. For an overview of the various roles fulfilled by judicial councils, see A/HRC/38/38.
59. Figures based on the total number of the population and judges in these countries as obtained by the authors.
60. Egypt, Judicial Authority, Law No. 35 (31 March 1984), Official Gazette, Issue No. 13, arts. 38/43. See also Sonneveld and Tawfik, 2015.
61. The 2018 wave of recruitment – the first in several years – attracted 2,545 candidates. The job opening specified that the age of applicants should not exceed 30 years; should be law graduates; should have completed national service; should have obtained the Bar Examinations Certificate; among other abilities such as computer literacy and fluency in English. According to the advertisement applicants would take written and oral tests.
62. According to law 29 of 2014 on the independence of the judiciary, a judge automatically becomes eligible to become Deputy President of the Court of Cassation Once they have spent five years in Grade High. Judges can only be appointed to the Court of Cassation if they have worked at the level Court of Appeal for a minimum of three years. Similarly, judges can only be appointed to the Courts of Appeal if they have worked at the Courts of First Instance or the Court of Grand Felonies, or in the public prosecution or as assistant general attorney for a minimum of five years. To progress to the Courts of First Instance, a judge must have worked at the Courts of Conciliation for a minimum of five years. To be appointed to the positions of assistant to the Attorney General, Attorney General or Assistant Public Prosecutor at the courts of first instance a judge must have worked for at least 3 years at the Court of First Instance. See المادة 18 والمادة 21، قانون استقلال القضاء، رقم 29 لسنة 2014، الأردن.
63. American Bar Association, 2006.
64. Tunisia, *Relatif à la Fixation des Fonctions Exercées par les Magistrats de l'ordre Judiciaire et à la Définition de Leurs Profils*, Décret No. 73-436 du 21 septembre 1973.
65. Morocco, *Loi Organique No. 106-13 Portant Statut des Magistrats*, Dahir No. 1-16-41 du 14 Joumada II 1437 (24 mars 2016), Bulletin Officiel, No. 6492 (18 August 2016).
66. The modalities for advancement are fixed by Decree-Law No. 150/83. See E/ESCWA/ECW/2018/TP.2, p. 13.
67. Razai, 2018.

Chapter 2

68. This was not a permanent appointment to a court as the rules for appointing an arbitrator in commercial disputes are different from those pertaining to the appointment of judges in the judiciary. Article 14 of the (2012) Saudi Arbitration Law (2012) specifying the rules on who can be appointed as arbitrator does not exclude women. See Balouziyeh, 2017; Almulhim, 2016.
69. Toumi, 2018.
70. OHCHR, 2017.
71. Ali, 2004; Al-Talej, 2010.
72. Unless otherwise indicated, figures provided in this chapter are based on data provided to ESCWA by National Women's Machinery, Ministries of Justice and other national sources. Tables summarizing the data used in the chapter are provided in Annex I.
73. The percentages presented do not include religious courts, from which female judges remain excluded in all Arab countries that have them, with the exception of the State of Palestine. If religious courts are taken into considerations in these calculations, this would significantly affect the overall percentages of female judges in Lebanon and other countries. However, insufficient data is available on the total number of judges in religious court to enable such analysis.
74. Given the unique structure of the Libyan judiciary when taking into consideration women's participation in the Litigation Authority, the Public Defence and other non-judgeship positions that are considered as part of the judiciary in Libya, this figure jumps to 39 per cent or 1,431 out of a total number of 2,227. See ICJ, 2016a.
75. Women also represent more than 35 per cent of all staff at the Ministry of Justice, Islamic Affairs and Endowments and 33 per cent within the Legislation and Legal Opinion Commission. See Bahrain, Supreme Council for Women, 2016a.
76. Around this time a range of conservative policies and legislations were introduced including cracking down on liberal styles of dress and questioning the relationship of their male escorts, see Ahmed, 2010.
77. Richani, 2009.
78. UN Women, 2006.
79. A/HRC/29/26/Add.2.

80. Messieh and Gaber, 2015.
81. A/HRC/29/26/Add.1.
82. Commission Nationale Des Droits De L'homme, 2017.
83. Tables summarizing the data used in this section and the following ones are provided in annex to the report.
84. الأردن، وزارة العدل المعهد القضائي الأردني، دون تاريخ؛ الأردن، المجلس القضائي، 2017.
85. Comparative studies of the processes for the appointment and training of judges showed that the proportion of women entering the judiciary in common law countries, where the recruitment pool is constituted almost exclusively of mature candidates with professional experience in the legal field, is systematically lower than in civil law countries, where the majority of candidates are selected according to their scores on competitive examinations and academic merit. Schultz and Shaw, 2003.
86. E/ESCWA/ECW/2018/TP.2.
87. Cardinal, 2008.
88. CEDAW/C/JOR/CO/6.
89. ICJ, 2016a.
90. Alaoui, 2016.
91. There is only one female prosecutor and no sitting female judge on this court.
92. Carlisle, 2017, p. 260.
93. Personal communication with the Evangelical Religious Court.
94. The National Council for Women, 2015i; CJ, 2016b, p. 88.
95. Notable exceptions to this trend include Kuwait and Oman, where no woman has yet served as a judge, although they have been appointed as public prosecutors.
96. ICJ, 2016a, p. 37.
97. E/ESCWA/ECW/2018/TP.2.
98. http://www.jc.jo/judicial_council.
99. http://www.sjc.bh/page_016.php?PID=5.
100. Tashani, 2016.
101. Critics have argued that while this provision in the Moroccan Constitution guarantees that women judges are represented in this important body, it also means that their representation would only reach gender parity when gender equal representation within the judiciary as a whole has been achieved. This provision can potentially be considered as a cap on women's representation within the Supreme Council of the Judiciary.

Chapter 3

102. Algeria declared on its ratification of CEDAW in relation to article 2 that "it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code". Mauritania, Oman and Saudi Arabia introduced reservations related to the applicability of sharia law and Bahrain, Egypt, Iraq, Morocco and the Syrian Arab Republic have entered further reservations on article 2. In April 2014, Tunisia withdrew its reservations made to article 15(4); articles 9(2), 16 (c), (d), (f), (g), (h) and article 29(1) of the Convention, upon ratification.
103. One exception is found in article 31 of the 2007 Saudi Law on the Appointment and Promotion of Judges, which states that "to be appointed as a judge, a candidate shall [...] be fully competent to hold the position of a judge in accordance with Sharia". Besides the use of the masculine pronoun "he", women's ability to enter the judiciary therefore depends on how the legislators understand and define Islamic requirements.
104. An illustrative example is the Egyptian State Council, which continues to refuse to admit female judges. In 2014, a female lawyer who was prevented from applying for a judicial position at the Council filed a lawsuit against the State. In response, a State Council judge "cited Sharia and the political circumstances in his reasoning against women in the State Council. He added that the constitution does not oblige the judicial body to appoint women". Despite this claim, the 2014 constitution prohibits discrimination against women. In article 9, the Constitution guarantees "equal opportunities for all citizens without discrimination". In article 11, the Constitution also requires the State to ensure the "achievement of equality between women and men in all civil, political, economic, social and cultural rights", including the right "to hold public posts and high management posts in the state and to appointment in judicial bodies and entities without discrimination". The example illustrates that despite these strong commitments at the constitutional level, the absence of specific requirements and

- mechanisms in national legislation and policy frameworks to ensure women's equal representation in the judiciary, including in the various judicial bodies has allowed the State Council to continue to refuse to appoint women, see E/ESCWA/ECW/2017/3.
105. For example, Jordan's 2010 Law on Personal Status, requires that a wife obey her husband and must have his explicit or implicit agreement if she desires to work (Article 61 of the Jordanian Personal Status Law 2010 <https://www.aliftaa.jo/ShowContent.aspx?Id=205#.XRnJG-gza70>). Similarly, the 2005 Personal Status Law in the United Arab Emirates provides that a husband has the right to obedience from his wife "in accordance with custom".
 106. For examples, restrictions on women's night-time work may negatively impact female public prosecutors, who might be required to reach crime scenes at night, see (OECD and CAWTAR, 2014); and for a list of labour restrictions in Arab States, see (International Labour Organization, 2001).
 107. Hoile, 2002, 2003; Fleurh-Lobban, 1983, pp. 32-33.
 108. Richani, 2009.
 109. The view is not confined to the State Council: Yahia Ragheb Daqruri, the president of the judges' syndicate, for example argued that it is against the Sharia to appoint women as judges, see Jon Heller, 2007; see also Messieh and Gaber, 2015. As noted previously, the State Council continues to oppose the appointment of women.
 110. Constitutional Challenge No. 10/60 (judicial year) of 2012 and Constitutional Challenge No. 14/60 (judicial year) of 2013, see Carlisle, 2017.
 111. In the case of sharia courts, tension with Islamic principles is one of the justifications given by religious authorities in States such as Bahrain, Jordan, Lebanon and the Syrian Arab Republic for not appointing women to courts where personal status matters are decided. For example, the principle of guardianship is based on the premise of a woman being unable to make appropriate decisions concerning herself (including marriage, divorce, inheritance) or the welfare of a minor and therefore requiring male guardians, particularly with regards to important decisions and legal matters. In the Syrian Arab Republic, for example, the law on personal status states that the judge is the legal guardian of whoever has no guardian; this has been used as a ground not to appoint women as judges in personal status courts, as they are not supposed to have the capacity to act as guardians over minors, see Cardinal, 2010.
 112. Abdelkader, 2014.
 113. In addition, in Egypt, Libya, Morocco and Tunisia, women have been serving as judges in the secular family courts for a long time.
 114. This appointment was endorsed by Shaykh Taysir Rajab al-Tamimi, the head of the High Islamic Judicial Council, based on historical examples of women's leadership in Islam, the Hanafi jurisprudence on women's judgeship, the opinion of contemporary Muslim jurists, the reality of women's greater participation in decision-making in Muslim societies and the fact that women's experience of family life makes them well-suited for these courts, see Cardinal, 2010.
 115. For example, the UN Basic Principles on the Independence of the Judiciary provide that the "promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience". Similarly, the UN Human Rights Committee, in General Comment No. 32 interpreting States' legal obligations under article 14 of ICCPR, requires States to protect judges from "any form of political influence in their decision-making" including by "establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them" (CCPR/C/GC/32).
 116. See, for example, the reports of the Special Rapporteur on the independence of judges and lawyers relating to the Arab States. Using one example among many, during a visit to the United Arab of Emirates, the former Special Rapporteur Gabriela Knaul highlighted the importance of using a fair and competitive process in the selection of judges to identify the most qualified candidates, increase the perception of fairness, while also protecting the independence of judges. She also recommended that in the appointment of judges, an independent body composed mainly of judges without the participation of representatives of the executive should be used, see A/HRC/29/26/Add.2, para. 36 and para. 100.
 117. These concerns are supported by global evidence regarding the role of stereotypes and implicit gender bias in hiring processes, particularly in male-dominated fields and institutions. See, for example, Moss-Racusin and others, 2012.
 118. Boigeol, 2013.
 119. ICJ, 2014.
 120. ICJ, 2015.
 121. See Tunisia, Constitution Law of 2014, art. 106; see also Tunisia, Law 29 of 14 July 1967 modified by law 2005-81 of 4 August 2005, arts. 33, 34, 35 and 36.
 122. Morocco, Law of 1974, article 23 and Law 106-13 of 2016 article 54.
 123. A/HRC/29/26/Add.3.

124. ICJ, 2014.
125. A corollary of the transparency argument is that attempts to solve the gender deficit in the judiciary by directly appointing women on unclear criteria might prove counterproductive. Egypt's first female judge, Judge Tahani al-Gebali, was appointed by presidential decree to the high position of deputy of the Supreme Constitutional Court, rather than in a first instance court or the office of the prosecution where judges usually start their careers. Despite Gebali's qualifications, the move led to accusations of favouritism and questioning of her legitimacy. It did little to improve the acceptability of women's employment in the judiciary among male judges, as the limited numbers of female appointments since then have shown. As noted by the ICJ, "where women judges are appointed through [non-transparent] means by nondemocratic governments, their presence within the judiciary can become tainted or undermined". Initiatives by the executive to appoint women to the judiciary should therefore be part of sustained efforts to support women's entry and career progression and be based on fair and objective criteria. Failure to do so raises the risk that women's presence in the judiciary remains weak, dependent on the will of the government of the day, and open to contestation, see El Sayed, 2006; Sonneveld and Tawfik, 2015; and ICJ, 2014, p. 3.
126. E/ESCWA/ECW2017/3, p. 20.
127. The position of the First President of the Court of Cassation (President of the SJC) is occupied by a man. Female judges only occupied one out of the 10 positions of President of the Chambers of Court of Cassation; one out of a total of six positions of First President of the Courts of Appeal; one out of a total of six positions of First Investigating Judge; five of the total 11 positions of Public Prosecutor to the Court of Cassation and two of a total of six positions of Public Prosecutors to the Court of Appeal, see E/ESCWA/ECW/2018/TP.2, p. 11.
128. Pursuant to article 357 of the Code of Criminal Procedures, the Judicial Council shall be composed of the first President of the Court of Cassation as President, and of four judges of the Court of Cassation appointed by a decree taken by the Council of Ministers on the proposal of the Minister of Justice and the approval of the SJC. An additional judge or more shall be appointed in the decree to replace the original in the event of death, disqualification, dismissal or termination of service. The Public Prosecution shall be represented at the Judicial Council by the Public Prosecutor, or by any of his deputies.
129. Pursuant to Decree-Law No. 150/83, the SJC is composed of 10 members. These include: the First President of the Court of Cassation (President of the SJC); the Public Prosecutor in the Court of Cassation (Vice-President of the SJC); and the President of the Judicial Inspection Committee (member) as permanent members; two judges among the Presidents of chambers at the Court of Cassation, elected for three years by the First President of the Court of Cassation, the presidents of the chambers and all the advisors in the Court of Cassation as elected members; and one judge among the presidents of the chambers at the Court of Cassation, two judges among the presidents of the chambers at the Courts of Appeals, one judge among the presidents of the chambers at the Courts of First Instance and one judicial judge among the presidents of the courts or the presidents of the departments in the Ministry of Justice as appointed members.
130. The Constitutional Council is not considered part of the Lebanese judiciary, although its membership includes current and former judges. Pursuant to article 3 of Act No. 250/1993 on the Constitution of the Council, its members shall be chosen among active or former judges who have practiced the judicial or administrative judiciary for at least 20 years or among law professors of higher education who have been teaching at least twenty years, in addition to lawyers who have practiced law for at least 20 years.
131. For a discussion on how gender-blind policies and laws result in the exclusion of women see Aroussi, 2017; Mertus, 1994; and Kabear, 2003.
132. OHCHR, 2010.
133. Cardinal, 2008.
134. The progression of a judge to a higher rank is based on seniority and competence as assessed by the Judicial Council and Judicial Inspection Reports on judges' performance. Judges must spend three years in the grade they occupy and must achieve a minimum evaluation outcome of "very good" for two consecutive years to be eligible for progression to the next level. However, after five years in the same grade a judge is automatically moved to a higher grade. When two judges have similar performance, the more senior in terms of years of experience is prioritized.
135. Jordan, Judicial Law No. 29 of 2014 and its amendments, article 12.
136. For example, a female judge interviewed noted that she "considered resigning when she was transferred for months far away from her family home and her children's schools".
137. Sonneveld and Tawfik, 2015.
138. Saad-Zoy and others, 2010, pp. 192-194.
139. E/ESCWA/EC.6/2019/11.

140. In Sudan, since 1997, nurseries have been established in many courts across the country, especially in Khartoum. Sudanese female judges emphasized the importance of this improvement beyond the practical benefits, noting that using such facilities gave them a sense of security that enabled them to focus on judicial work.
141. In the Syrian Arab Republic, for example, female judges are only entitled to paid maternity leave for the first three children (120 days for the first child, 90 for the second, 75 for the third and none for the fourth). However, Syrian women have, on average, three children.
142. A Palestinian female judge noted that she had “a great difficulty to write reports from home because there I am also busy looking after my family and attending to their needs. So as a woman, I work twice as much as my male colleagues, which my performance evaluation, which is associated with promotion, does not take this into account”.
143. This argument is also made in the context of the Syrian Arab Republic (Cardinal, 2012). Interestingly, male judges interviewed for the purpose of this study were keen to emphasize that they never felt that way.
144. Saad-Zoy and others, 2010.
145. This patriarchal mentality is reinforced through the common media portrayal of women as weak and emotional and of men as strong and suited for decision-making roles. See E/ESCWA/ECW2017/3 for a complete exploration of the role of media in perpetuating negative gender roles in the Arab States.
146. Abdelkader, 2014.
147. Saad-Zoy and others, 2010.
148. Cardinal, 2008.
149. Ghamroun, 2015.
150. Alaoui, 2016.
151. Boutkhil, 2017; 2011. كرامة وصايغ.
152. 217. ص. 2000، نويري.
153. E/ESCWA/ECW/2015/3.
154. Al-Ali, 2003.
155. E/ESCWA/ECW2017/3.
156. For example, in Saudi Arabia, Mawada Association provides gender-sensitive legal expertise to relevant courts in cases of divorce and child custody.
157. The Association of Tunisian Magistrates encouraged the First President of the Court of Appeal of Kef to apply for the position of the First President of the Court of Cassation. Although she was not appointed to this post, this encouraged four other female judges to apply for the same position in October 2018.

Chapter 4

158. Kuwait, Supreme Judicial Council, Decision no. 14 (2013) of 20 May 2013, see CEDAW/C/KWT/5, p. 29.
159. Despite these advances, however, Jordan has yet to appoint a female judge to the sharia or ecclesiastical courts, see CEDAW/C/JOR/CO/6.
160. For a complete overview of laws and policies affecting gender equality in the Arab region, see United Nations Development Programme and others, 2018.
161. Bahrain, Supreme Council for Women, 2013.
162. To be most effective, quotas and other similar global best practice measures should be temporary and address those areas where women are starkly underrepresented and where the rate of change would be otherwise slow. In the judiciary, such measures should therefore be best applied for appointments to higher judicial positions, as well as other areas where women are unrepresented (for example in prosecution services). For an extensive discussion on the best use of quotas, see E/ESCWA/ECW2017/3.
163. At the global level, calls for the introduction of judicial quotas have intensified in recent years in some States, particularly in those, such as the UK, where existing policy actions have failed to produce representative and diverse judicial institutions to date.
164. The low proportion of female judges – 7 per cent – in Iraq shows that the target remains largely aspirational, however.

Annex

165. Data provided by national sources in response to ESCWA questionnaire unless otherwise indicated. If no year is specified, the data is as per the latest year available.



Women's right to participate fully and equally in all aspects of public life, including the judiciary, is widely recognized as a fundamental human right. There is a large body of evidence that women's presence in the judiciary is a catalyst for the development of strong, independent, accessible and gender-sensitive judicial institutions and, more broadly, the achievement of gender justice within society. Increasing women's participation in the judiciary has therefore become an important development objective at the global level and in the Arab region. In recent years, Arab countries have taken steps to appoint an increasing number of female judges and public prosecutors – for the first time in some countries. Despite these efforts, however, women remain starkly underrepresented in judicial institutions in the Arab region, with strong disparities between and within countries.

The present study, produced by the Economic and Social Commission for Western Asia (ESCWA) in partnership with the International Commission of Jurists (ICJ) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) - Regional Office for the Middle East and North Africa, sheds light on women's presence in judicial institutions in Arab countries. It examines women's overall presence in the judiciary in each Arab country and their distribution in national judicial institutions, revealing large hierarchical and functional disparities. Such disparities are the result of enduring barriers to women's presence in the judiciary, which are analysed in the present study. To remove these barriers, the study presents good practices from five Arab countries that have achieved a comparably higher presence of women in judicial institutions. The present study then offers a series of policy recommendations to enhance women's presence in the judiciary, targeting policymakers, international bodies and civil society.

