

**Economic and Social Commission for Western Asia (ESCWA)**

Report

Expert Group Meeting on the study “Women in the judiciary: removing barriers, increasing numbers” Beirut, 28-29 November 2018

Summary

The Economic and Social Commission for Western Asia (ESCWA) organized an Expert Group Meeting (EGM) in Beirut, on 28 and 29 November, to review the study entitled “Women in the judiciary: removing barriers, increasing numbers”. The study was prepared by the ESCWA Centre for Women in partnership with the International Commission of Jurists (ICJ) and the Office of the High Commissioner for Human Rights (OHCHR). The study offers a regional overview of women’s presence in judicial institutions and identifies common and country-specific barriers to women’s full and equal participation, followed by documentation of best practices implemented by Arab States to remove these barriers. The study also examines the relationship between women’s presence in the judiciary and the achievement of gender equality.

The study argues that States’ international legal obligations to ensure women’s presence in the judiciary are derived from the general international standards concerning the independence of the judiciary and from international legal commitments to women’s human rights and non-discrimination. The study underscores the fact that increasing women’s participation in the judiciary is a stepping-stone towards developing inclusive and sustainable judicial institutions. The study also provides evidence that such an increase contributes significantly to improving the quality of judgements by strengthening the ability of judicial reasoning to respond to varied social contexts and experiences and enhancing the fairness of the judicial decision-making process.

Participants reviewed the study, assessed its key findings and proposed policy recommendations. They also exchanged knowledge and best practices in the area of women’s presence in the judiciary and its relation to gender equality. This report summarizes the meeting’s discussions and recommendations.

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Introduction

1. The Centre for Women of the Economic and Social Commission for Western Asia (ESCWA) held an Expert Group Meeting (EGM) at the United Nations House in Beirut, on 28 and 29 November, to review the study entitled “Women in the judiciary: removing barriers, increasing numbers”, which was prepared by the ESCWA Centre for Women in partnership with the International Commission of Jurists (ICJ) and the Office of the High Commissioner for Human Rights (OHCHR).

2. The publication offers a regional overview of women’s presence in judicial institutions and identifies barriers to women’s full and equal participation, followed by documentation of best practices implemented by Arab States to remove these barriers. The study also examines the relationship between women’s presence in the judiciary and the achievement of gender equality. It argues that States’ international legal obligations to ensure women’s presence in the judiciary are derived from the general international standards concerning the independence of the judiciary and from international legal commitments to women’s human rights and non-discrimination. The study underscores the fact that increasing women’s participation in the judiciary is a stepping-stone to developing inclusive and sustainable judicial institutions. The study also provides evidence that such an increase contributes significantly to improving the quality of judgements by strengthening the ability of the judicial reasoning to respond to varied social contexts and experiences and enhancing the fairness of the judicial decision-making process.

3. Experts who participated in the meeting discussed and assessed the study’s key findings and policy recommendations. They also exchanged knowledge and best practices regarding women’s presence in the judiciary and its relation to gender equality. The following summarizes their discussions and features their main recommendations.

I. RECOMMENDATIONS

4. Experts provided substantive inputs, including primary data, validated the findings of the study and provided additional perspectives to improve its analysis. They reviewed each chapter in detail and made the following recommendations.

A. CONTENT RECOMMENDATIONS

5. The discussions produced the following recommendations to enhance the content of the study:

Chapter I

- Enhance the accuracy and comprehensiveness of the typology and description of judicial systems in the region, including the structure and the degree of independence, autonomy and power of judges at various court levels (for example, the chapter should address the actual power held by judges in lower courts, where women judges generally tend to work);
- If possible, consider including attitudinal, comparative and temporal analytical elements to the study;
- Clarify the history and structure of legal systems in the region;
- Clarify the jurisdictions of various lower, intermediate and superior courts in each of the countries examined;
- Broaden the perspective used to examine judicial systems to also consider religious and cultural angles (including stereotypes) and the patriarchal context;
- Discuss the denominational courts and their role in more detail;

- Discuss the impact of women’s presence in the judiciary on judicial institutions and more broadly, their participation in other spheres that are male-dominated as well as other aspects of gender justice (answering the question of “why it matters”);
- Provide a more detailed breakdown of the provisions of relevant international frameworks (not only regarding gender equality and women’s empowerment, but also judicial independence, such as the Bangalore Principles of Judicial Conduct), as well as their ratification and implementation in various Arab States, and how this relates to women’s presence in the judiciary;
- Include an operational definition of “judge”;
- Clarify that the study is grounded in a human rights and women’s rights approach.

Chapter II

- Clarify that detailed information obtained from specific countries (typically those with high rates of women’s presence in judicial institutions) cannot necessarily be generalized to all Arab countries;
- Provide a clarification on the figures provided and what they include and do not include (for example, the case of Libya where public defenders – many of whom are women – are part of the judiciary as per official statistics);
- List the year of first entry of women into the judiciary in each of the countries discussed, as well as periods of time when women were excluded;
- Provide numbers regarding the numbers of female candidates for judicial positions, if available;
- Define more clearly the presence of women in judicial institutions in the Gulf countries, specifically what roles women can hold in theory and actual practice;
- Discuss further the political, historical and legal contexts in Arab States and their respective impact on women’s presence in the judiciary;
- Assess more precisely the various criteria and rules for entry and progression in the judiciary (for example examinations, seniority requirements, mandatory transfers, etc.) in various Arab States and how they might impact men and women differently; consider highlighting good practices in this area;
- Examine the issue of women’s belief in their own abilities and how this might affect their entry and progression through the judiciary;
- Provide comparisons with situations in other parts of the world, including other Muslim-majority countries and relevant European and North American countries;
- Discuss the importance of various initiatives that seek to highlight the importance of women’s presence in the judiciary and encourage their entry; discuss the role of media and NGOs in this regard, for example in the Sudan;
- Explore the impact of curricula and teaching in judicial training institutions with a view to create a gender-sensitive judiciary and eliminate harmful stereotypes.

Chapter III

- Provide a more nuanced discussion on the barriers to women's access that stem from religious considerations and discourse, as well as practices such as male guardianship, recognising that these are time- and country-dependent; mention recent religious interpretations that facilitate women's entry in the judiciary;
- Examine the role of social structures, beliefs and stereotypes on women's presence in the judiciary;
- Highlight the role of institutions such as National Women's Machineries, civil society organizations and the media;
- Discuss the impact of gender-blind rules and regulations on women's and men's entry and career advancement.

B. STRUCTURE RECOMMENDATIONS

6. The discussions produced the following recommendations to enhance the structure of the study:

Chapter I

- The consultant was requested to develop a diagram on the typology of courts to give a clearer framework for the readers, while also acknowledging that the judicial structure of each country has its own specificities. A tentative structure for the diagram could be:
 - (a) Constitutional Justice;
 - (b) Ordinary Justice;
 - (c) Administrative Justice;
 - (d) Religious Justice;
 - (e) Ad hoc Justice.

Chapter IV:

- A new chapter emanating from the national case studies will be added, to highlight good practices and lessons learned. Each case study will be briefly summarized, before presenting common trends and recommendations from all of them.

II. SUMMARY OF DISCUSSIONS

A. OPENING

7. The director of the ESCWA Centre for Women (ECW), Ms. Mehrnaz Elawady, opened the meeting thanking all the participants for reviewing the draft study and for participating in the meeting. She noted that the Centre was aware of the shortcomings of the draft study, mainly that it was overly descriptive rather than analytical. She added that the fruitful discussions during the two-day meeting would enrich the study and bridge this gap. She introduced the main pillars for the work of the ECW, namely Violence against Women, Women, Peace and Security and Gender Justice (including women's political and economic participation). The director highlighted the centrality of the work of these pillars to the realization of the Sustainable Development Goals (SDGs), starting with, but not limited to, Goal 5 on gender equality. The pillars reflect the priorities of ESCWA member States and enable ECW to support their national efforts towards gender equality and women's empowerment.

8. Ms. Elawady added that the aim of the meeting was to revise the draft study to become a strong and evidence-based document that would convince Arab States that women's presence in the judiciary matters, not only because it represents a basic human right for women, but also because it improves the quality of judicial institutions for all users.

9. The study was the first of its kind in the region for two reasons. It was the first to assess the presence of women in the judiciary in all Arab States. In addition, the study opened the black box of women's presence in the judiciary, by looking not only at general figures, but also by examining the types and levels of women's judicial positions and, more importantly, where women were not present. Case studies highlighting good practice were conducted in five Arab States: Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia. The countries were selected because they have a more equal presence of men and women in the judiciary in comparison to other Arab countries.

10. Prior to initiating the discussions, Ms. Elawady thanked the lead consultant, Ms. Sahla Aroussi, and the four national consultants, Rola Assi, Faten Sebei, Raeda Bawadi, Ahmad Ashqar, as well as Ismail Zein, for conducting the national case studies. She expressed ECW's gratitude to its two partners in drafting the study, namely OHCHR and ICJ.

11. The OHCHR representative gave further details on the collaboration to develop the draft. The representative of ICJ could not join the meeting due to a previous commitment.

B. SESSION 1: SETTING THE SCENE

12. Ms. Sahla Aroussi, the lead consultant, presented the study and introduced chapter I. She emphasized the limited availability of information online related to the topic and noted the various changes in the laws that took place in the region recently. She invited participants to pinpoint any inconsistencies. She underlined the important role of the judiciary in achieving gender justice in the Arab region as it provided access to justice where women were subject to discrimination. She added that an impartial and neutral judiciary contributes to social justice at both national and international levels. As matters stand, women are half of society, but they have not been fairly represented in judicial systems. Some Arab countries have reached a higher presence of women in judicial institutions, but others, particularly among the Gulf countries, have not. Equality in judiciary systems is needed to create fair and gender-equal societies as well as build institutions that are responsive to women's needs.

13. Participants discussed the importance of various commitments to women's participation in public life, including international conventions like the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action. CEDAW, which has been ratified by all Arab States except Somalia and the Sudan, commits States to remove barriers and facilitate women's participation in all aspects of political life, including in the judiciary. The Beijing Platform for Action clearly indicates that States must ensure women and men's equal participation in all aspects of decision-making. The 2030 Agenda calls for the equal participation of women and men in public life. The African Charter of Human Rights also stresses this right. There are commitments to the principle of non-discrimination and equal participation in public life in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR). Finally, the United Nations Basic Principles on the Independence of the Judiciary forbids discrimination in the appointment of judges on the basis of sex.

14. Participants emphasized the general principle that judges should be impartial and independent irrespective of their sex. Participants noted that the appointment of women as judges does not necessarily mean that women are enabled to play an equal role in the judiciary. It was therefore important to know where women were present and absent in the judiciary and with what level of actual power. The typology and structure of judicial institutions in various Arab States played a key role in this regard. Participants also noted the importance of women's presence in the judiciary on a symbolic level, as it signals that women could also

access other areas that remain male-dominated. Nevertheless, change in the composition of judicial institutions can be slow, as judgeships are usually lifetime appointments.

15. A participant from Lebanon brought up her country's experience as an example. The proportion of women studying law was increasing and would exceed 50 per cent in the near future, as would the proportion of judges who were women. Arab women, in Lebanon and elsewhere, face social and religious constraints, and may need to prove themselves more compared to men. Some women might be reluctant to work in heavily male-dominated spheres.

16. Participants discussed the impact of religious interpretations and discourse on women's presence in the judiciary. Experts felt that there must be a differentiation between States where sharia law forms the basis of the legal system, and States where sharia courts (in some cases alongside courts for other denominations) specifically adjudicate on personal status issues. A participant noted that the Grand Imam of Al-Azhar in Egypt, a prominent Sunni religious authority, stated that there was no explicit text in sharia law or in the Qur'an that forbids women from being judges. In his view, the religious text opposed women's presence in specific leadership roles under special circumstances, and this could not be generalized to all positions and roles. Participants noted that the State of Palestine had three judges in religious courts (Muslim), while there was one in Jordan (Christian). The issue of women's presence in the judiciary could not be separated from women's status in the judicial system.

C. SESSION 2: STATUS OF WOMEN IN THE JUDICIARY IN THE ARAB REGION

17. Ms. Aroussi highlighted the main findings regarding women's presence in judicial institutions in the region. Chapter II of the study discussed the various criteria for entry into the judiciary (typically a university degree), as well as the examinations and procedures, and how these might impact women's chances compared to men. Ms. Aroussi noted that in many systems, women had equal chances in the written examinations but not the oral interviews. Many female judges believed this was because oral examinations were led by senior judges, who tended to be men and might display a bias in favour of male candidates. This could delay women's entry into the judiciary in some countries. Career progression was also a key issue, as women's presence was much more limited in higher echelons of the judiciary, as well as specialized courts (such as criminal justice courts or military courts). The lack of clear criteria and transparency in appointment processes has been regularly highlighted as an issue. There has been progress, however, and women have in recent years been appointed to the highest echelons in several Arab countries, including to constitutional, supreme and cassation courts.

18. At a regional level, women's presence in judicial institutions was marked by strong disparities. Some countries were on track to achieve parity, while others did not have any female judges. Based on the experience of countries that provided detailed enough data, women were particularly underrepresented at senior levels, in specific judicial branches (such as criminal justice) and in rural districts. There were significant differences between Arab countries.

19. Participants validated chapter II, noting that it was useful to compare women's presence in the judiciary in all Arab countries. Participants also suggested looking at equivalent figures in other countries (Muslim-majority and relevant Western States). It was also suggested to briefly discuss the presence of women in other spheres of political life and explore why some Arab countries with a higher percentage of women in parliament can have a low presence of women in judicial institutions and the converse. Participants suggested that these gaps may be traced back to different mechanisms for entering the realm of politics and entering the judiciary (namely, elections versus written and oral competitions). Participants noted that, compared to the electoral quotas that exist in some form or another in the majority of Arab countries, there are no similar measures for women's entry into the judiciary, with the exception of Jordan.

20. Participants noted that judicial diversity could improve the judiciary's ability to protect human rights. In some Arab countries, the legislative arsenal was dated and might not provide clear or appropriate guidance

on how to handle current cases, leaving much to be decided by the discretion of individual judges. It was therefore important to ensure that factors such as potential stereotypes or biases held by judges did not affect the outcome of cases; more diverse institutions were critical to addressing this issue.

21. Participants agreed that the lack of clear rules and transparency regulating entry into and, particularly, career progression, were key to understanding women's limited presence in the judiciary. There may be stereotypes favour the hiring or advancement of men, including assumptions regarding marital status, parental leave and household obligations. This highlighted the importance of social factors on women's presence in the judiciary. Participants also drew attention to the specificities of some national justice systems, particularly regarding the status of judges (for example, "contractual judges" in some Gulf countries or the set-up of Egypt's judicial system).

D. SESSION 3: BARRIERS TO WOMEN'S PRESENCE IN THE JUDICIARY

22. The third session covered chapter III which addressed the barriers to women's presence in the judiciary. Ms. Aroussi highlighted some key barriers, including gender-blind rules and procedures, conservative religious interpretations, lack of fair criteria for judicial appointments, as well as patriarchal structures, social norms and stereotypes. The latter result in the triple-load experienced by most women, who were required to conjugate their work with household and childcare obligations to a much higher degree than men.

23. The lead consultant noted that Arab countries have witnessed an increase in women's presence in judicial institutions in recent years, which facilitated the identification of positive factors and good practices. Political will was an important factor, but on its own it did not guarantee a full and equal presence of women in the judiciary. Other important elements included fair and transparent criteria for entry and career progression and strong legal and constitutional commitments to gender equality. It was also essential to recognize the role of National Women's Machineries, civil society organizations and the media in advocating for women's participation at all levels of decision-making, including the judiciary, and in defending women's rights. Affirmative action measures, including quotas, could also make a difference.

24. Discussions emphasized that women and men should have equal opportunities to access professional opportunities among all judicial functions, including in the highest courts. Gender-blind rules and regulations were one of the main obstacles that hindered women's access to judiciary. In some Arab countries, for example, becoming a judge was not reserved to men, but it required having trained and/or practiced as a lawyer beforehand. As women were not able to practice as lawyers until much later than men, this prevented or delayed their ability to enter the judiciary. Barriers that stemmed from religious considerations were also important and should be linked to the discussion on social norms and stereotypes. It should be noted that there was a wide range of religious interpretations regarding women's presence in the judiciary, with strong variations between countries and across time.

E. SESSION 4: CASE STUDIES

25. Session 4 discussed the chapter IV of the study and presented the key findings, good practices and lessons learned from five national case studies that had been conducted in Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia. These countries were selected for their relatively high presence of women in the judiciary in a regional comparison. A key focus of the case studies was to identify factors that supported women's entry into the judiciary, while also highlighting some of the remaining obstacles. The chapter highlighted key findings from the studies, including barriers and enabling factors. The chapter would also showcase best practices from each country in order to encourage their replication in other Arab countries.

26. The national consultants for the case studies in Jordan, Lebanon, State of Palestine, the Sudan and Tunisia presented main findings of the case studies they had conducted. (The consultant for Jordan could not attend the meeting due to an earlier commitment and was unable to join in via teleconference due to connection

issues.) A participant from Egypt also provided a presentation on the status of women's presence in the country's judiciary.

27. Several trends were common to all the countries. Each of the countries had witnessed, and to a degree continued to witness, opposition to women's presence in the judiciary among some segments of society. Women had to push for their right to enter the judiciary. This ability to enter often required political will from the government. In most cases, this took the form of a commitment to transparency and fairness in the appointment of judges; Jordan was successful in adopting quotas for women's entry into the judicial training institute. This evolution had generally gone hand-in-hand with broader developments, including a higher presence of women in law studies and legal occupations (as lawyers) and the elimination of other forms of discrimination in law and society. Focus group discussions and interviews with male and female judges as well as persons who interacted with them (lawyers, court officials, etc.) have shown a broadly positive view of women's increased presence in the judiciary, with several respondents having noted effects such as diminished corruption, higher efficiency and more gender-sensitive judicial institutions. Nevertheless, in each of these countries, challenges and barriers to women's participation remained in place and women remained underrepresented at higher levels, in rural areas and in some specialized courts.

28. The case studies were well received by participants, who indicated that the lessons learned were important. They suggested sharing these findings with all Arab countries in order to replicate good practices. Some participants suggested including all the case studies as annexes to the main studies. ECW would investigate this possibility, as well as the option to publish the case studies as stand-alone papers, depending on budget availability.

F. SESSION 5: POLICY RECOMMENDATIONS

29. The discussions resulted in the following policy recommendations:

(a) Reform legislation to eliminate any discrimination against women's presence in the judiciary and in public life in general, in line with relevant international and regional instruments. Ensure that gender-neutral terminology is used in all relevant legal and administrative documents;

(b) Reform rules for entry and promotions in the judiciary, with clear, objective and transparent criteria based on competency, as well as an appeal process;

(c) Reinforce the role and independence of judicial training institutes, where applicable, in the recruitment process;

(d) Require the meaningful inclusion of women in groups tasked with designing and overseeing entrance examinations; set requirements for women's presence on examination and interview panels;

(e) Raise the awareness and capacity of National Women's Machineries, civil society organizations and the media in promoting and defending women's presence in the judiciary and facilitate their collaboration with each other and relevant entities such as ministries of justice, supreme judicial councils and judicial training institutes;

(f) Monitor the presence of women in the judiciary by including these recommendations in State Party and/or shadow reports to instruments such as the Universal Periodic Review or CEDAW;

(g) Promote cooperation and exchange of experiences between countries with best practices and other Arab States;

(h) Ensure the continuous training of judges, male and female, in the areas of human and women's rights;

(i) Conduct national awareness-raising campaigns to challenge stereotypes and social expectations that hold women back and may prevent them from considering a judicial career, including in rural areas;

(g) Develop guidelines to prevent the diffusion of discriminatory stereotypes regarding women's presence in decision-making in general and the judiciary in particular, in the media;

(k) Implement work-life balance measures that facilitate a better distribution of household and family tasks and career progression, targeting men and women equally, including through enforcing flexible working hours and telecommuting (where possible), institutionalizing maternity and paternity leaves and a better distribution of workload;

(l) Introduce strong administrative and legal frameworks to ensure that household and childcare obligations (actual or assumed) cannot be used to hold women's entry into the judiciary and career progression.

30. Discussions also suggested the following actions regarding the study:

- Identify the most effective channels for the dissemination and monitoring of the implementation of the above recommendations.
- Ensure that the study does not reproduce stereotypes relating to men and women and that the policy recommendations do not lead to the entrenchment, rather than elimination, of discriminatory social norms (for example, regarding the distribution of unpaid care work).

G. CLOSING REMARKS

31. Ms. Elawady thanked participants for their active participation and valuable inputs. She indicated that the study would be shared with participants once it is published. It would be issued in English and then translated into Arabic.

III. ORGANIZATION OF WORK

A. DATE AND VENUE

32. The meeting was held at the United Nations House in Beirut, on 28 and 29 November 2018.

B. ATTENDANCE

33. The meeting brought together a group of renowned jurists and regional experts in the fields of the judiciary and human rights. The annex to the present report provides a list of participants.

Annex

LIST OF PARTICIPANTS

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