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Status of Arab Women Report

Access to Justice for Women and Girls
in the Arab Region: From Ratification to
Implementation of International Instruments

Economic and Social Commission for Western Asia

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United Nations' publication issued by ESCWA.

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Acknowledgements

This publication was prepared at the ESCWA Centre for Women (ECW) by Ms. Lana Baydas, First Social Affairs Officer, under the substantive guidance and overall supervision of Ms. Samira Atallah, Director. Ms. Baydas authored the study, drawing on background papers prepared for ECW by Mr. Mahmoud Kandil, Advisor at the Arab Human Rights Organization; Ms. Suha Oudeh, lawyer in Kuwait; and Mr. Nizar Saghie, lawyer and Editor-in-Chief of Legal Agenda, jointly with Ms. Rana Saghie, lawyer and researcher. Mr. Imad El Nehlawi, Administrative Assistant at ECW, provided research, administrative and logistical support.

The study benefitted from the invaluable contribution and constructive critiques of participants of an expert group meeting that was held at United Nations House (Beirut, 23-24 September 2014) to discuss its preliminary findings. Ms. Lisa Majaj, of the University of Cyprus, provided meticulous peer review of the final draft and made concluding revisions to bring the study to its present version.

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“While both men and women face obstacles in accessing justice, women face different challenges and experience such challenges differently”

I. Introduction

A. Background and objectives

Ensuring women's rights plays an indisputable role in sustainable human development.¹ Yet Arab women face persistent inequalities rooted in discriminatory laws and institutions.² Gender disparities in social, economic and political rights in the Arab region remain significant and widespread.³ Moreover, multi-dimensional inequalities continue to impede progress towards women's empowerment in all spheres, whether political, economic or social.⁴ Nor do principles of gender equality form an integral part of the strategic approach to addressing discrimination in the Arab region. This is true despite the fact that most Arab States recognize, in their constitutions as well as in their official international commitments, the urgency to address gender inequality.

Arab States have legal obligations, as stated in voluntarily ratified international instruments, that require them to "protect, respect and fulfil" the rights of all individuals.⁵ Most Arab States have endorsed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁶ albeit with reservations for the most part,⁷ and have recognized the principles of equality and non-discrimination in their constitutions.⁸ However, these principles have not been fully reflected, normatively and procedurally, in national legal frameworks. The failure to implement principles of equality within the framework of law limits women's enjoyment of civil, political,

economic, social and cultural rights in the region.⁹

The inability of women to challenge discriminatory laws within their countries' formal legal structures is one of the main factors that contribute to gender disparity. Discrimination is clearly manifested in de facto unequal protection before the law, as evidenced in discriminatory national legal frameworks; and, subsequently, in unequal access to justice.¹⁰ Discrimination is further compounded by the lack of institutional mechanisms that would ensure proper implementation of constitutional rights, and by the continued existence of contradictory laws and legal provisions that discriminate against women, often merely for being women.

This study addresses the right of "access to justice" as enjoyed by women in the Arab region in the context of these intersecting factors. It examines available legal protection for women in the Arab region, as well as women's ability to assert their rights through just, non-discriminatory judicial processes. It assesses legislation, including constitutional rights, personal status codes and labour codes, on issues and concerns that impact women's socio-economic and political development. Additionally, it examines the implementation of the right of access to justice, providing a comparative overview of the principle of law (de jure) versus its actual application (de facto).

B. Scope and research methodology

The study focuses on women in ESCWA member States. As such, the geographical

scope of the study includes the following countries: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, the State of Palestine, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen. The study's focus on women in the region encompasses citizens and non-citizens, and includes refugees and migrant workers as well as women of minority groups.

The study addresses women's access to justice in various strands of law, including personal status code, criminal code, labour code and laws combating violence against women. It is worth noting in this regard that it does not address issues related to the interpretation of religion in the analysis of personal status codes. The study undertakes qualitative legal analysis of information drawn from relevant literature and government-issued reports; official submissions to committees of applicable human rights treaties, such as CEDAW and the Human Rights Committee; and related reports by international and national non-governmental organizations (NGOs), especially those addressing directly or indirectly women's access to justice in the region. It also relies on the interpretative work of the committees of human rights treaties.

The study draws upon background papers produced by legal experts addressing research questions related to the applicability of women's right of access to justice in each of the Arab subregions.¹¹ These background papers examine the integration of the right of access to justice within the constitutions and national legal systems of ESCWA member States. They analyse existing structures of justice and consider to what extent these structures are compliant with international obligations. Furthermore, they examine the difference

between men's and women's ability to access justice, as well as the socio-legal obstacles and gaps facing women in accessing justice. The background papers focus on existing measures taken by Arab Governments to improve women's enjoyment of the right of access to justice in terms of availability, accessibility, adaptability and affordability. As such, they provide critical analysis of the impediments and challenges, whether legal, institutional or structural, that women in the region face in accessing justice at the dimensional levels of availability, accessibility, adaptability and affordability.¹² The study includes this material in an attempt to understand how national laws meet the requirements set forth by voluntarily ratified international and regional conventions. The methodology also allows for greater understanding of the applicability of the right of access to justice at a procedural (de facto) level.

Chapter II discusses the right of access to justice as embedded in international and regional legal frameworks. It also examines the trilogy of the legal obligations of States to "protect, respect and fulfil" human rights. This discussion attempts to determine the scope of the right of "access to justice" and to establish national responsibilities to implement and put into practice their commitments in this regard, including in situations of conflict and post-conflict.

Chapter III analyses the legal and constitutional frameworks in the Arab region in an attempt to determine the extent to which the implementation of the right of access to justice for Arab women conforms to international and regional conventions. This chapter specifically addresses how the right of access to justice for women, as enshrined in agreed-upon

international instruments, figures in national constitutions and legislations.

Chapter IV focuses on impediments and obstacles faced by women seeking access to justice in ESCWA member States. Focusing on issues of availability, accessibility and affordability, it examines whether – and in what manner – States manage to translate their obligations under international conventions into concrete procedural measures, which will in turn ensure full enjoyment of this right.

Chapter V discusses approaches to improving the situation of access to justice for women in the Arab region and enhancing the accessibility of national remedies to gender-based injustice. Highlighted in this discussion are best practices and tools available for use by Governments. The chapter illuminates the current efforts and related reform measures of some ESCWA member States taken towards meeting their obligation of making equal access to justice possible.

The conclusions in chapter VI provide applicable policy measures that may be considered by member States and key stakeholders. These measures aim to enhance access to justice for women and to ensure the availability and affordability of national remedies in cases of violation of their rights.

C. Rationale: Why access to justice?

Ensuring rights and upholding the principles of equality and non-discrimination must be achieved through the rule of law. However, rights are only meaningful if they can be protected. As it has been well noted, “just as a strong legal system can protect and open up opportunities for women, a justice system that is inaccessible or that contains discriminatory rules or practices

can significantly impede the advancement of women’s rights”.¹³ Access to justice and effective national remedies are critical to the full and proper application of human rights. Rooted in the principles of equality and non-discrimination,¹⁴ access to justice encompasses “equal access and equality of arms, and ensures that parties to the proceedings in question are treated without any discrimination”.¹⁵ As such, it is “a key element of human rights protection, and serves as a procedural means to safeguard the rule of law”.¹⁶

The international community as a whole has engaged in the development of standards, guidelines and strategies aimed at strengthening justice systems and national legislations by incorporating into them principles of non-discrimination and equality in enjoyment of rights. International human rights treaties consider national laws to be the ultimate source of remedial justice, and assign the prime responsibility of human rights protection to the State. This responsibility is embodied in the principle that States should ensure that procedures to seek protection from human rights violations are available and accessible to all individuals.¹⁷

The right of access to justice is afforded to all individuals: male and female, citizen and non-citizen. However, while both men and women face obstacles in accessing justice, women face different challenges and experience such challenges differently. It is well noted that groups suffering from discrimination and from a lack of the protection of the rule of law are more likely to experience a range of socio-economic, political and criminal injustices.¹⁸ As explained by the Special Rapporteur on extreme poverty, economic obstacles to access to justice are “a major and unacceptable challenge for all people living in poverty, but they are particularly pronounced for women, due to the unequal distribution of resources at both the household and societal

levels”.¹⁹ In other words, women experience violations of their right to justice at two levels, namely: structural and individual. The institutional barriers faced by women as they attempt to access justice are compounded by the lack of capacities at the individual level. As noted, structural obstacles include “the fact that the majority of the poor are women and lack representation and participation in decision-making, while being discriminated in access to economic resources. Some obstacles are reinforced at both individual and structural levels, such as illiteracy and lack of education, powerlessness, lack of [legal rights] awareness, economic status reflected in lower wages, and those deriving from customary practices”.²⁰

Various international instruments tackling elements of gender discrimination have emphasized the right of women to access justice. Primary among these is CEDAW, wherein article 2 (c) requires effective judicial protection of women’s entitlement to enjoy rights on an equal basis with men; and article 15 (1) requires States parties to ensure that “women are equal with men before the law”. As such, effective remedies for discrimination should be available, accessible, adaptable and affordable for women who wish to assert their rights before the relevant courts, tribunals or other institutions.²¹ It is also well established that laws that prohibit discrimination must embody some form of legal or other material consequence for those who violate them.²² In its general recommendation No. 28, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) specifies various types of remedies, whether penal, civil or administrative, depending on the forum that has jurisdiction over particular claims.²³

The right of access to justice applies in all contexts. For instance, in its general recommendation No. 26, the CEDAW Committee asserts the need for access to

remedies by migrant workers, the majority of whom are women. Stating that States parties should have in place “adequate legal remedies and complaints mechanisms, and ... easily accessible dispute resolution mechanisms”,²⁴ CEDAW enumerates the obligations of States parties to ensure that “women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid”.²⁵ Moreover, obligations of States must ensure that the realization of the right of access to justice continues in times of both peace and war. As stipulated in the General Assembly resolution 60/147 (2005), “Basic Principles and Guidelines on the Right to a Remedy and Reparation, “States are to provide “those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, [...] irrespective of who may ultimately be the bearer of responsibility for the violation”; and provide “effective remedies to victims, including reparation...”.²⁶

The right of all individuals, including women, of access to justice is further asserted in regional legal instruments, specifically the Arab Charter on Human Rights and the African Charter on Human and Peoples’ Rights. Most Arab States are parties to these legal instruments, which enshrine principles of equality before the law and stipulate equal access to justice for all. In its preamble, the Arab Charter on Human Rights affirms the right of every individual to enjoy freedom and justice.²⁷ Article 9 of this Charter states that all persons are “equal before the law and everyone within the territory of the State has a guaranteed right to legal remedy”.²⁸ Similarly, the African Charter on Human and Peoples’ Rights reaffirms in its preamble that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African



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peoples". Article 3 of this Charter guarantees the right of "equality before the law" and stipulates that every individual "shall be equal before the law" and every individual "shall be entitled to equal protection of the law".²⁹ These regional legal instruments make clear that access to justice is a right.

D. Conceptualizing "access to justice"

Access to justice is a broad concept, encompassing the ability of individuals to obtain, through judicial processes, just, impartial and timely remedies for all forms of discrimination and violations of human rights.³⁰ Determining the definition of discrimination is a critical first step for establishing the basis on which to exercise the right of access to justice.

Discrimination involves the use of differential treatment, bias in the implementation of law, or the application of different rules for same situations or the same rule for different situations.³¹ Discrimination against women is defined as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".³² Discrimination may be direct or indirect. Direct discrimination occurs when a law or its application relies explicitly on distinctions based on sex. Indirect discrimination is

manifested when a law or policy, whether or not discriminatory in wording, has a discriminatory impact once implemented.³³

Article 14 of International Covenant on Civil and Political Rights (ICCPR) stipulates that each person has the right to:

"1. ... be equal before the courts and tribunals ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..."

3. (b) ... have adequate time and facilities for the preparation of his defence [...]

3. (d) ... be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed."

In interpreting article 14 of ICCPR, the Human Rights Committee noted that the article "sets out a general guarantee of equality before courts and tribunals that applies regardless of the nature of proceedings before such bodies ... [it] entitles individuals to a fair and

public hearing by a competent, independent, and impartial tribunal established by law, if they face any criminal charges or if their rights and obligations are determined in a suit at law ... [and it] secures a substantive right to compensation in cases of miscarriage of justice in criminal cases".³⁴ In order for this guarantee of equality before the law to be implemented, however, individuals must be able to access fully the processes of justice, that is, the justice chain (figure 1). They must be able to achieve just, impartial and timely remedy for discrimination and violations of rights,³⁵ and must have the right to an impartial and independent trial in the case of criminal charges.

The justice chain includes various elements, namely: the existence of non-discriminatory laws, the ability to file a complaint in police stations, the ability to undergo a just and impartial investigation process, the accessibility to fair litigation and adjudication processes, and the ability to receive just and enforced remedy. Traditionally, "access to justice" has been thought of in terms of the ability to gain access to courts and tribunals. Recently, however, there has been a shift from "a uni-dimensional focus on the procedural and cost barriers that prevent individuals from bringing their claims to court to a more holistic assessment of all aspects of the legal system".³⁶ In other words, the focus on access to justice has widened "from simply an emphasis on 'access' to an examination of 'justice' as well".³⁷

This study defines access to justice as the ability of women, whether victims or offenders, to access every step of the justice chain in order to seek and obtain remedy in conformity with international standards. The term "access to justice" does not simply refer to access to judiciary and adjudicatory mechanisms, rather it includes the right to legal protection,

Figure 1. The justice chain



to equality before the courts, and to the ability to obtain a just and timely remedy for violations of rights without discrimination of any kind. The focus of the study analysis is therefore on these elements: “substantive justice which concerns itself with an assessment of the rights claims that are available to those who seek a remedy; procedural aspects which focus on the opportunities and barriers to getting ones claim into court (or other dispute resolution forum); and, the symbolic component of access to justice which steps outside of doctrinal law and asks to what extent a particular legal regime promotes citizens’ belonging and empowerment”.³⁸

As such, the study uses the term “access to justice” in its totality, locating access to justice within the frameworks of accessibility, availability, adaptability and affordability – distinct albeit interdependent components. It is established that the principles of

equality and non-discrimination are central to the realization of the right of access to justice. Conversely, the right of access to justice is a key means to address discrimination. Achieving gender justice “requires that mainstream institutions and procedures – from justice to economic policymaking – are held accountable for tackling the injustice and discrimination that keep too many women poor and excluded”.³⁹ As such, the study also addresses the right of access to justice from the perspective of the obligations of States to ensure “the positive enjoyment” of this right, not only by enacting laws, but also by enacting reform of institutions and bodies “which inherently draw a distinction between men and women”.⁴⁰ In this context, the study tackles aspects of gender mainstreaming within the justice chain as a key means to “end the inequalities between women and men that are produced and reproduced in the family, the community, the market and the state”.⁴¹



“The obligation of States to respect, protect and fulfil human rights through legislation, protective mechanisms and remedies for violation is requisite to women’s right of access to justice”

II. The Right of Access to Justice in International and Regional Instruments

A. Access to justice in international human rights treaties

The term “access to justice” was not explicitly used in international human rights treaties. However, access to justice is considered by the monitoring bodies of international human rights treaties as a right and a requisite for the upholding of all human rights. The interpretative and monitoring committees of international human rights treaties determine access to justice to be a core pillar of the full enjoyment of all human rights, whether political, civil, economic, social or cultural. In its general comment No. 32, the Human Rights Committee, which monitors the implementation of ICCPR, underscores access to justice as a key to the protection of rights,¹ and “an essential tool for reducing poverty and inequality—including gender equality”.²

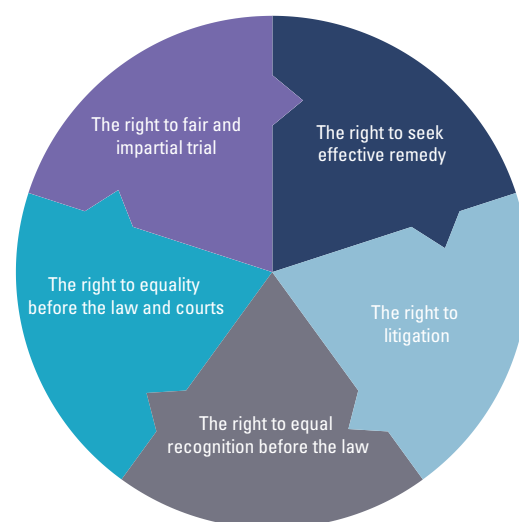
Access to justice is important for States as well as individuals. As has been noted, “access to justice is a particularly important aspect of the rule of law in the context of development work”.³ Both the rule of law and access to justice are “important elements for the stability and development of states. Governments gain significant legitimacy, both domestically and internationally, when rights are respected and promulgated”.⁴

The right of access to justice is complex, and encompasses other rights, as affirmed by international human rights treaties (figure 2). These include the following: (a)

the right to equality before the law and courts; (b) the right to equal recognition before the law; (c) the right to seek effective remedy; and (d) the right to have fair and impartial trial.

These rights, as encompassed in the right of access to justice, were first formally pronounced in article 7 of the Universal Declaration of Human Rights (UDHR),⁵ which states that all are “equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”. Article 8 of UDHR further emphasizes that everyone has “the right to an effective

Figure 2. Access to justice elements



Box 1. Article 14 of the International Covenant on Civil and Political Rights (ICCPR)

“1. All persons shall be equal before the courts and tribunals ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

“6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law.”

Box 2. Discrimination faced by women in seeking legal redress

“A woman’s right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman’s right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman’s legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women’s ability to provide for themselves and their dependents”.

Source: CEDAW Committee, General Recommendation No.21.

remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. Article 10 of the same declaration expresses the right of all individuals to a fair trial in both civil and criminal proceedings. Article 14 of ICCPR further establishes the right to equality before courts and the right of access to courts.⁶ Article 14 emphasizes that the right of access to justice entails the right of equal access and equal treatment before the law and the courts, in conformity with international standards and principles (box 1). It also asserts the right of all persons to seek remedy and compensation for acts violating their human rights.

Reading article 14 along with article 16 of the Covenant establishes that the right of access to justice is linked to the principles of equality and non-discrimination. Article 16 stipulates that everyone “shall have the right to recognition everywhere as a person before the law”. The Human Rights Committee, in its general comment No. 32, notes that “the right of equality before courts ... guarantees ... [the principles] of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination”.⁷

The Human Rights Committee further notes that, as contained by the obligations

of States parties, countries must “take all steps necessary ... to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights”.⁸ The Human Rights Committee’s general comments Nos. 28 and 32 clarify that the fulfilment of article 14 means that States parties are obliged to ensure the enjoyment of the right of access to justice by all individuals, men and women alike. These principles recognize the obligation of States parties to take all measures to ensure the equal enjoyment of this right without any discrimination, whether based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In its general comment No. 28, the Human Rights Committee asserts the equality of men and women in the enjoyment of human rights “on equal basis and in their totality”.⁹

Equality before the law has also been affirmed in article 2 of CEDAW, in particular in provisions (b) and (c), which are the main defining sources of State parties’ “obligation to ensure the availability of remedies for women subject to discrimination”. Article 15 requires State parties to “accord to women equality with men before the law”; and asserts the equality of men and women in accessing courts, tribunals and judicial processes. It also provides for non-discriminatory protection of the law. Article 15 of CEDAW reiterates article 14 of ICCPR, and points to the main components of the full realization of the right of “access to justice”. In its general recommendation No. 21, the CEDAW Committee highlights the importance of ensuring equal recognition before the law as a prerequisite to ensuring the protection of women’s human rights (box 2).

It has been well established that laws prohibiting discrimination must embody some form of legal or other material consequence for those who violate them.¹⁰ As noted above, article 2 (b) “provides the States parties with some discretion, but effective legal and practical protection against discrimination requires some form of sanctions”.¹¹ Article 2 (c) of CEDAW requires effective judicial protection of women’s entitlement to enjoy rights on an equal basis with men. States parties must ensure that access to effective remedies for discrimination is available, accessible and affordable for women at any point at which they wish to assert their rights before the relevant courts, tribunals or other institutions.¹² In this context, all types of remedies and all types of penalties should be made accessible, whether penal, civil or administrative (depending on the forum that has jurisdiction over particular claims). The CEDAW Committee noted, in its general recommendation No. 28, that States parties should incorporate both punitive and restorative remedies in their legislative frameworks, including “different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women”.¹³

Although the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not include a specific provision on the right of access to justice, the Committee of the Covenant deems access to justice necessary for the protection of economic, social and cultural rights. In its general comment No. 9, the Committee noted:

“The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective ... By the same token, there are some obligations, such as (but by no means limited to) those concerning non-discrimination, in relation to which the provision of some form of judicial remedy would seem indispensable in order to satisfy the requirements of the Covenant.”¹⁴

The Committee further noted that there is a general assumption that judicial remedies are only available for violations committed in relation to civil and political rights. However, “the adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society”.¹⁵

The right of access to justice is also affirmed in the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Convention on the Rights of Persons with Disabilities (CRDP).¹⁶ Through their interpretative and monitoring committees, these conventions

call upon States parties to ensure equality before the law, equal treatment before the law, equal protection of the law and equal access to administration of justice processes.¹⁷ Moreover, all international treaties link the realization of the right of access to justice to a facilitating environment established through the independence of lawyers and of the judiciary. A fair trial requires, in the first instance, an independent and impartial judiciary. Similarly, the independence of the judiciary relies heavily on the ability of judges and lawyers to exercise freedom of expression and of association, including the freedom to express views and to participate in matters of concern independent of the authority of other branches of the government, in particular the executive branch.

Determining the scope of the right of access to justice must also be addressed in relation to the “intersectionality” of discrimination. The CEDAW Committee is currently in the process of developing a new general comment on women’s right of access to justice. The discussion papers note that there is a need to recognize intersectionality as a core element in determining the scope of the right of women to access justice, as well as in determining the nature of the obligations of States parties. The CEDAW Committee has rightly pointed out that intersectionality is a “basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation, and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men”.¹⁸

The Special Rapporteur on extreme poverty and human rights has emphasized, in this regard, “the multitude of intersecting obstacles that people living in poverty face in accessing justice, and ... the obstacles faced by women”.¹⁹ In this context, States parties are to take into account all the experiences of individuals in fulfilling their legal obligations to ensure full enjoyment of the right of access to justice, as determined under international human rights treaties. For example, one of the main barriers facing women subjected to violence in their access to justice is financial. In order to guarantee women’s right of access to justice, affordable legal processes and free legal aid should be guaranteed. States should take measures to ensure equal access to justice, and should adapt these measures in a manner that responds effectively to “social, cultural, legal, procedural, economic and practical barriers”.²⁰ All legislation and measures should take into account these distinct gendered experiences and needs.

B. Obligations of States under international human rights treaties

All international human rights treaties places obligations on States parties to respect, protect and fulfil human rights. The CEDAW Committee, in its general recommendation No. 28, noted that the “obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate

the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto, including, where appropriate, the adoption of temporary special measures”.²¹

The obligations specified in international human rights treaties include both obligations of conduct and obligations of results.²² Furthermore, they entail both legislative and administrative measures taken by States parties to ensure the elimination of all forms of discrimination. The CEDAW Committee, in its general recommendation No. 28, defines the obligations of States regarding discrimination against women as follows:

“...the obligation of States parties to ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subjected to discrimination contrary to the Convention...”

*This obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged ...*²³

In other words, the obligations of States incorporate both obligation and reparation. Moreover, States should address their legal obligations in a holistic manner, taking into account social, structural, institutional, procedural, legal and financial aspects. As the CEDAW Committee noted, “States parties should consider that they have to fulfil their legal obligations to all women through designing public



The right of access to justice also places a set of obligations on States parties to ensure “that no individual is deprived, in procedural terms, of his/her right to claim justice”.²⁷ States are to ensure the rights and freedoms of all individuals in their territory and subject to their jurisdiction, regardless of their status. As the Human Rights Committee explains, “the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the

As stated above, the obligation of States to respect, protect and fulfil human rights through legislation, protective mechanisms and remedies for violation is requisite to women's right of access to justice. The Human Rights Committee noted that respect for and protection of human rights cannot be achieved without effective, accessible and affordable systems of justice administration that guarantee judicial and administrative remedies for all individuals subjected to violations of their human rights.²⁹ In this regard, States should ensure that laws provide effective protection of the rights of women, and should provide adequate structures and institutions to address violations. In complying with obligations to protect, States should make available fair and effective protective mechanisms as well as complaints procedures and remedies. In complying with obligations to fulfil human rights, States should develop preventive measures, including public awareness and education programmes, and gender-sensitive training for judicial and law enforcement officers.

As outlined by the CEDAW Committee, the obligations of States extend beyond the incorporation of international human rights standards and principles in their national legislations. Specifically, States are obligated to act upon the responsibility of ensuring the availability of affordable and timely remedies that are accessible without discrimination.³⁰ The CEDAW Committee further emphasizes that States parties should ensure in their legislative frameworks the ability of women to “invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors”.³¹ The CEDAW Committee places the responsibility on courts to uphold the principles of equality and non-discrimination in interpreting the law and pronouncing judgments.

However, the obligations of States do not ensure justice for women unless women are able to access the justice system. Fundamental to the implementation of access to justice for women in the Arab region are the core elements of availability, accessibility, affordability and adaptability. The Committee on Economic, Social and Cultural Rights (CESCR) defines these elements as follows:³²

“(a) Availability – functioning... institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party...”

“(b) Accessibility – ...institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination...

Physical accessibility...

Economic accessibility...

[...]

(d) Adaptability - institutions and programmes have to be flexible so [they] can adapt to the needs of changing societies and communities...”³³

These elements of availability, accessibility, affordability and adaptability inform the actions States should take in ensuring access to justice for women. In addition to making sure that the principle of the right of access to justice is incorporated within national legislations, States should ensure the availability of police stations, courts and tribunals in geographical proximity to women, both in urban and in rural settings. They should make legal structures accessible to women without any forms of discrimination (for example, without requiring the approval of male relatives to file a complaint). States should provide for the availability of legal assistance, whether provision of information, advice or representation, at a cost that is affordable to all individuals within the national territory. States should further be prepared to adapt to changing needs in order to ensure the right of access to justice for all individuals under their jurisdiction, including women.

It should be noted that national remedies are viewed as more effective than the international protection systems afforded by international instruments. In fact, the Human Rights Committee clearly emphasizes that ICCPR is not “a substitute to domestic criminal and civil law”.³⁴ In the Optional Protocol to ICCPR, it is noted that all available national remedies should be exhausted as a criterion for admissibility of complaints before the Human Rights Committee.³⁵ That is, when it comes to the actual application of justice and the enforcement of principles of equality, national legal frameworks are considered the ultimate source of remedial justice, with the prime responsibility of human rights protection assigned to the

State. This responsibility is embodied in the obligation of States to ensure that procedures to seek protection from human rights violations are available and accessible to all individuals.³⁶

C. The right of access to justice in regional human rights frameworks

Principles of equality before the law and access to justice are also enshrined in regional legal frameworks. In the case of the Arab region, both the Arab Human Rights Charter³⁷ and the African Charter on Human and Peoples' Rights³⁸ stipulate equal access to justice for all.

The preamble of the Arab Charter on Human Rights affirms the right of every individual to enjoy freedom and justice.³⁹ It also reaffirms commitment to the International Bill of Human Rights and to the UN Charter.⁴⁰ Article 3 (1) of the Arab Charter on Human Rights affirms the principle of non-discrimination. It states that "each 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 distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability".⁴¹ Additionally, article 3 (2) requires States to take measures to ensure "effective equality in the enjoyment of all the rights and freedoms".⁴² article 11 emphasizes that all persons are "equal before the law and have the right to enjoy its protection without discrimination".⁴³ This provision was reinforced by article 12 of the charter, which states that all persons are "equal before the courts and tribunals ... They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all level".⁴⁴ The Charter also advances the recognition

of a person before the law.⁴⁵ Such recognition, which acknowledges a person's capacity to uphold rights and obligations under the law, is central to the realization of human rights.

Similarly, the African Charter on Human and Peoples' Rights, which enshrines the principle of non-discrimination,⁴⁶ reaffirms in its preamble that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples".⁴⁷ Article 3 of the Charter guarantees the right of equality before the law, stipulating that every individual "shall be equal before the law" and "shall be entitled to equal protection of the law".⁴⁸ Article 7 of the Charter further states that every individual must have the right to have their case heard, including "the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force".⁴⁹ The article stipulates that no one "may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed".⁵⁰

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) explicitly determines the obligations of States parties in ensuring women's right in accessing justice. Article 8 of the Protocol states:

"Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

- a. effective access by women to judicial and legal services, including legal aid;*
- b. support to local, national, regional and continental initiatives directed*

- at providing women access to legal services, including legal aid;*
- c. the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women;*
 - d. that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;*
 - e. that women are represented equally in the judiciary and law enforcement organs;*
 - f. reform of existing discriminatory laws and practices in order to promote and protect the rights of women.”⁵¹*

This article asserts the obligations of States in conduct as well as their obligations in results, thereby addressing the obligations of States to ensure full enjoyment of the right of access to justice in its totality. In addition to requiring States to ensure equality within national legislations, this article requires States to take measures to ensure access to legal and judicial systems, whether through the provision of legal aid, establishment of educational programmes or through other means. Moreover, it specifies the obligation of ensuring the reform of existing laws when necessary. As such, the Protocol ensures the availability, accessibility, affordability and adaptability of legal and judicial systems.

D. Women’s right of access to justice in conflict and post-conflict situations

Currently, the Arab region suffers from civil unrest, armed conflicts and occupation. Men and women of the region are subjected to multiple and profound forms of insecurity, including indiscriminate killings, torture, arbitrary arrest, forced disappearance, and lack of economic and social security. It is widely acknowledged that while such violations of security affect all persons,

women experience these in gender-specific ways. “Severe violations and human rights abuses, including killings, abductions, and forced displacement wreak havoc and destruction in everyone’s lives. However, the impact is different for women and men”.⁵²

In times of war, women suffer both direct and indirect gender-based violence. Women are often targeted and subjected to sexual violence and other forms of gender-based violence as a warfare tactic. It is well documented in international jurisprudence that sexual violence is used to destroy the demographic structure of societies and to terrorize communities.⁵³ The lack of security and of the rule of law in situations of conflict and civil unrest impedes women’s access to justice. Additionally, in times of war, the economic and social rights of women are frequently violated. Among other challenges, women’s existing poverty is exacerbated in the context of ongoing security situations by the inaccessibility of social services provided by Governments and the inability to secure income and ensure family needs. Women suffer from the repercussions of armed conflicts both when they stay in their respective countries and when they flee, seeking refuge in neighbouring countries.

In its general recommendation No. 30, the CEDAW Committee notes that challenges “relating to access to justice are especially aggravated and acute in conflict and post-conflict situations because formal justice systems may no longer exist or function with any level of efficiency or effectiveness”.⁵⁴ Both human rights law and international humanitarian law are applicable in situations such as these. The obligation of States to guarantee women’s right of access to justice does not cease in times of war. Despite the fact that article 14 of ICCPR on the “right to equality before courts

and tribunals and to a fair trial” is not listed among the “non-derogable” rights (rights considered so important that they cannot be taken away or compromised), the Human Rights Committee noted that States parties “should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation”.⁵⁵ The guarantee of equality before the courts and the law may never be subjected to derogation, given that it may affect the enjoyment of non-derogable rights,⁵⁶ referred to in the Human Rights Committee’s general comment No. 4.

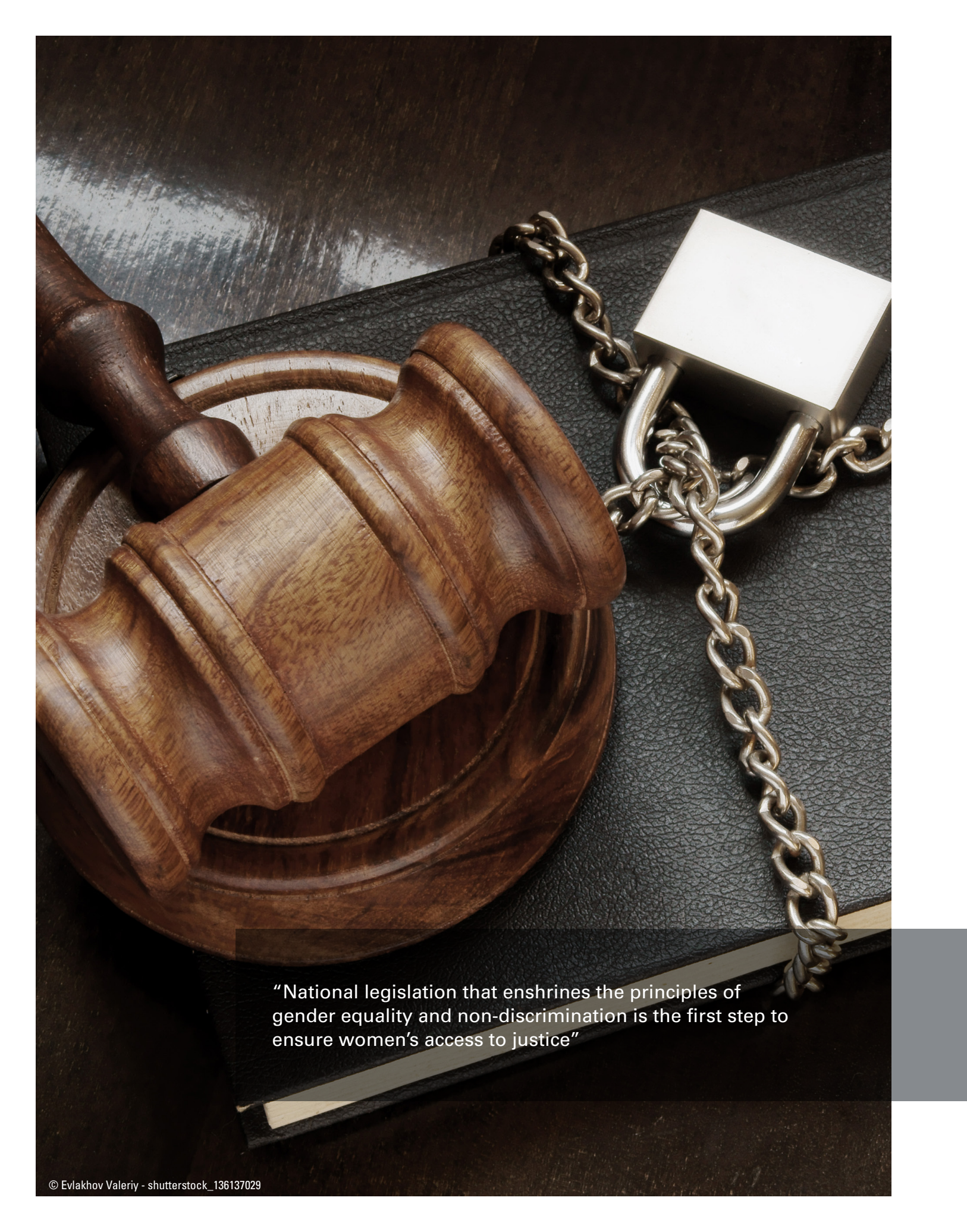
Moreover, it is a general principle of international law that States have an obligation to take preventive measures to combat human rights violations and to effectively investigate and punish perpetrators.⁵⁷ This was the core essence of the Security Council resolution 1325 (2000) on women, peace and security, which outlines the obligation of member countries to take concrete measures to protect women’s rights in times of peace, war and during transitional periods.⁵⁸ Of particular relevance to the present study, the resolution strongly calls on member countries to combat gender discrimination and to avoid including crimes related to gender-based violence in amnesty legislation.⁵⁹ This was reaffirmed by the General Assembly resolution entitled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”. As stated in this resolution, States need to provide “those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice ... irrespective of who may ultimately be the bearer of responsibility for the violation”; and provide “effective remedies to victims, including reparation”.⁶⁰

Within the framework of the CEDAW recommendations, national legal frameworks must guarantee women the right to seek remedy and appropriate reparations for violations committed against their rights. States parties are, for example, to take concrete measures (enacting relevant laws) to increase the representation of women in all decision-making positions, in the law-enforcement sector and the judiciary. They should ensure that gender issues are an integral part of peace processes and transitional justice processes. The CEDAW Committee further emphasizes that States should, in times of conflict and post-conflict, take necessary measures to provide “effective and timely remedies that respond to the different types of violations experienced by women and ensure the provision of adequate and comprehensive reparations; address all gender-based violations, including sexual and reproductive rights violations, domestic and sexual enslavement, forced marriage and forced displacement, in addition to sexual violence, as well as violations of economic, social and cultural rights”.⁶¹ In this context, the Committee encourages States to strengthen their judicial processes by holding “human rights violators accountable for their actions, putting an end to impunity, restoring the rule of law and addressing the needs of survivors through the provision of justice accompanied by reparations”.⁶²

The CEDAW Committee reiterates that States should ensure structural transformation in addressing violations committed against women. It points out that reparation measures, rather than “re-establishing the situation that existed before the violations of women’s rights, should seek to transform the structural inequalities that led to the violations of women’s rights, respond to women’s specific needs and prevent their reoccurrence”.⁶³

In the case of refugees, the responsibility to protect women and ensure the enjoyment of their right of access to justice falls on the host countries. The 1951 Convention Relating to the Status of Refugees⁶⁴ affirms this responsibility as stipulated in article 16: “A refugee shall have free access to the courts of law on the territory of all Contracting States”, and “a refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*”.⁶⁵ However, what is prescribed in theory differs

from reality. Female refugees, women and girls, suffer from discrimination and violence inflicted on them by their family members, by refugee camp administrators and by host communities. It is reported that female refugees, who have little individual security, economic opportunity, or property or land ownership, are subjected to sexual violence, sexual slavery, forced early marriages and trafficking. Moreover, given that non-citizens are not always guaranteed the legal rights of citizens in host countries, refugees fall within the grey areas of legal protection.⁶⁶

A close-up photograph of a wooden gavel resting on a black leather-bound book. The gavel is made of polished wood and is positioned diagonally across the frame. A silver metal padlock is attached to the book's spine with a chain, symbolizing restriction or lack of access. The background is a dark, textured surface.

"National legislation that enshrines the principles of gender equality and non-discrimination is the first step to ensure women's access to justice"

III. Access to Justice in National Legal Frameworks

The previous chapter establishes the key elements of the right of access to justice. It determines the obligations of States that go beyond enacting laws, and focuses on actions and measures to be taken by States to ensure the full enjoyment of this right. This chapter analyses the constitutional and legal frameworks in Arab States in an attempt to determine the extent to which the implementation of the right of access to justice for Arab women conforms to international and regional conventions. As noted above, a State party that has signed and ratified international conventions is under obligation to respect, protect and fulfil these international commitments. States parties are to incorporate international standards and principles in their respective legal frameworks and to take measures to ensure the realization of the rights and freedoms stipulated therein.

As illustrated in the table below, most Arab countries have ratified at least two of the available international instruments highlighting women's access to justice. Such ratification shows commitment to the realization of human rights in general, and women's rights in particular. CEDAW and the Convention on the Rights of the Child (CRC) are the most ratified conventions by Arab States, albeit with reservations to a number of their articles. In particular, reservations were placed on article 2 of CEDAW, which prohibits discrimination against women in national constitutions and laws.¹ According to articles 2 (1) (d) and 19-23 of the 1969 Vienna Convention on the Law of Treaties, a reservation enables a State to accept a multilateral treaty as a whole by giving it the

possibility not to apply certain provisions with which it does not want to comply. As a result, human rights treaty bodies have repeatedly raised concerns regarding the extent to which Arab countries have translated the obligation to "respect, protect and fulfil" all rights into reality, and regarding reservations that defy the object and the purpose of these treaties. Furthermore, with the exception of Libya and Tunisia, none of the Arab States have ratified the Optional Protocol to CEDAW,² thereby limiting women's access to international adjudication. It is important to note that all international human rights protection mechanisms emphasize the need to exhaust national mechanisms and remedies before granting the admissibility of individual complaints. As affirmed in article 4 (1) of the Optional Protocol to CEDAW, the Committee "shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief".³

The sections below assess the availability of constitutional and legal guarantees of the right of access to justice for women in the Arab region, the conformity of these guarantees with international obligations, and their compatibility with the abovementioned international standards and principles.

A. Access to justice in national constitutions

Guaranteeing equality in constitutions is a core pillar of the process of ensuring women's right of access to justice. The CEDAW

Status of ratifications in ESCWA member States

	CERD	ICCPR	ICESCR	CAT	CEDAW	OP-CEDAW	CRC	CMW	CPED	CRPD
Bahrain	X	X	X	X	X		X			X
Egypt	X	X	X	X	X		X	X		X
Iraq	X	X	X	X	X		X		X	X
Jordan	X	X	X	X	X		X			X
Kuwait	X	X	X	X	X		X			
Lebanon	X	X	X	X	X		X		X	
Libya	X	X	X	X	X	X	X	X		
Morocco	X	X	X	X	X		X	X	X	X
Oman	X				X		X			X
Palestine	X	X	X	X	X		X	X	X	X
Qatar	X			X	X		X			X
Saudi Arabia	X			X	X		X			X
Sudan	X	X	X				X			X
Syria	X	X	X	X	X		X	X		X
Tunisia	X	X	X	X	X	X	X		X	X
UAE	X			X	X		X			X
Yemen	X	X	X	X	X		X			X

Abbreviations: CERD: The International Convention on the Elimination of All Forms of Racial Discrimination
 ICCPR: The International Covenant on Civil and Political Rights
 ICESCR: The International Covenant on Economic, Social and Cultural Rights
 CAT: The Convention against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment
 CEDAW: The Convention on the Elimination of All Forms of Discrimination against Women
 OP-CEDAW: The Optional Protocol to CEDAW
 CRC: The Convention on the Rights of the Child
 CMW: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
 CPED: The Convention for the Protection of All Persons from Enforced Disappearance
 CRPD: The Convention on the Rights of Persons with Disabilities.

Source: Compiled by ESCWA.

Committee in its general recommendation No. 28 emphasizes that States parties are under obligation to “ensure that, through constitutional amendments or by other appropriate legislative means, the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status... [and to] ensure that women can invoke the principle of equality in support of complaints

of acts of discrimination contrary to the Convention, committed by public officials or by private actors”.⁴ In this context, ensuring the principle of equality in constitutions is “essential in order to establish a universal imperative of equality for women on which the entire chain of access to justice within the state will rest”.⁵ Additionally, guaranteeing the abovementioned elements of access to justice within constitutions is an affirmation

of the political commitment to grant this right. As noted by the Human Rights Council's mandate holder, Frances Raday, Chair of the Working Group on Discrimination against Women in Law and Practice, "a constitutional guarantee of equality is a critical component in securing gender equality in access to justice. While constitutional guarantees of equality do not necessarily guarantee that equality rights will be available to women in practice, the articulation of equality for women is a significant and essential foundation for the realization of women's rights and is an indispensable expression of political will".⁶

Within the Arab region, the 2002 Constitution of Bahrain ensures the principle of non-discrimination and includes elements of access to justice, namely the equal recognition before the law, the right to litigation, the right to a fair trial, and the right to legal aid (in criminal cases only).⁷ The Constitution of Iraq explicitly states that "Iraqis are equal before the law without discrimination based on gender ... or economic or social status".⁸ Similarly, Morocco's Constitution guarantees equality before the law to all citizens. Jordan's Constitution ensures the principle of equality and provides for equality of all Jordanians before the law.⁹ Article 9 of the Palestinian Basic Law stipulates that, "Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, colour, religion, political views or disability".¹⁰ The 2005 Interim National Constitution of the Sudan¹¹ upholds "values of justice, equality, human dignity and equal rights and duties of men and women", and explicitly affirms gender equality.¹² Article 31 of the Interim Constitution confirms the equality before the law of all individuals, stating that all persons are "equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the

equal protection of the law". In contrast, article 33 (3) of the Constitution of the Syrian Arab Republic (2012) affirms the principle of equality for citizens only, stating that citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.

Following the uprisings in Egypt, Libya, Tunisia and Yemen, which were inspired by calls for equality, human rights and justice, processes for drafting new constitutions have been undertaken in these countries. Women's groups have been successful in asserting their participation in constitution-drafting committees, as well as in reflecting gender perspectives and introducing elements of access to justice in all emerging constitutions, albeit to varying degrees in different countries. Tunisia's new Constitution of 2014 affirms the principle of equality and elements of access to justice. Article 21 states that all citizens, men and women alike, have equal rights and duties, and are equal before the law without any discrimination. Tunisia's Constitution also captures the need to protect women's rights in public and private spheres. Similarly, Egypt's Constitution of 2014 guarantees basic rights and freedoms to all citizens without discrimination on the basis of sex, ethnicity, language and religion.¹³ Elements of access to justice are enshrined in Egypt's Constitution, including the right to litigation, the right to a fair trial and the right to legal aid. In contrast, while Libya's constitutional declaration of 2011 affirms the principles of equality and non-discrimination, it does not explicitly prohibit discrimination on the basis of sex. Article 6 of this constitutional declaration states that "Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities, and be subject to the same public duties and obligations, without discrimination due to religion, doctrine, language, wealth, race, kinship,

political opinions, and social status, tribal or eminent or familial loyalty” .¹⁴ Yemen’s new Constitution¹⁵ is currently under formulation based on the outcome of the National Dialogue Conference. The Conference’s outcome document includes prohibition of discrimination on the basis of sex, equality between men and women, and equality before the law. The Constitution of Yemen of 2001 guarantees the principle of equality in general. Article 25 of the Constitution states that “Yemeni society is based on social solidarity, which is based on justice, freedom and equality according to the law”.¹⁶

Other constitutions in the region prohibit discrimination without explicitly specifying discrimination on the basis of sex, thereby allowing a wide spectrum for interpretation. Lebanon’s Constitution enshrines the principle of non-discrimination and protects the right of equality before the judiciary; the latter provides for the right to legal aid in all cases and could ensure equal access to courts to all individuals. However, the Constitution does not explicitly note the basis of discrimination. This has prompted legal experts to establish that the lack of explicit reference to equality between men and women in Lebanon’s Constitution impedes the effective enjoyment of equality for Lebanese women and therefore their equal access to justice.¹⁷ Similarly, the principle of non-discrimination and the principle of equality before the law are enshrined in the Constitution of the United Arab Emirates, although this falls short of the explicit prohibition of discrimination on the basis of sex.¹⁸

The principles of equality and justice are generally invoked in the Constitutions of Kuwait, Oman and Qatar. Kuwait’s Constitution regards “justice, liberty and equality”¹⁹ as guiding principles for society. It guarantees personal liberty, the independence and impartiality of

the judiciary, and the application of the rule of law. Similarly, Oman’s Basic Law ensures equality and justice as core pillars of Omani society,²⁰ and also affirms the principles of equality and non-discrimination. Article 35 of Qatar’s Constitution stipulates that “all persons are equal before the law and there shall be no discrimination whatsoever on grounds of sex, race, language, or religion”.²¹ Saudi Arabia’s Basic Law states that the Government is based on justice and that it specifically provides the right to litigation to both citizens and residents.²²

As can be seen, prohibition of discrimination in the constitutions of various States varies from explicit to implicit reference to the basis on which discrimination is enacted. The lack of explicit reference to gender as a basis of discrimination has limited the enjoyment of women’s right of access to justice in a number of Arab countries. As such, women do not have the constitutional guarantees to access justice and to establish legal foundation for discrimination on the basis of sex. Additionally, the constitutional guarantees for the enjoyment of the principles of equality and non-discrimination are frequently limited to citizens. The exclusion of non-citizens from guarantees of equality has impeded certain groups – particularly refugees and migrant workers, the majority of whom are women and girls – from enjoying constitutional guarantees of equality, and of the equality before the law.

Despite the abovementioned gaps in guarantees of equality, most constitutions in the Arab region do recognize the principle of equality and do include elements of equal access to justice. Parallel to these constitutional guarantees, various Arab States have developed national legislations to incorporate constitutional guarantees into national legal frameworks.

B. Access to justice in national legislations

This section addresses the right of access to justice in national legislations of ESCWA member States. National legislations that enshrine the principles of gender equality and non-discrimination have put into place an important step in the justice chain ensuring women's access to justice. This section examines the extent to which the national legislations of ESCWA member States are non-discriminatory to women, whether they are adequate to prevent discrimination, including discrimination in the workplace (for example, unequal access to opportunities; dismissal on the grounds of pregnancy, maternity or marriage; sexual harassment in the workplace), and whether they provide equal treatment before the law for women and men alike. Moreover, this section addresses the criminalization of discriminatory acts, including violence against women, and the measures aimed at ensuring the availability of remedies for women. These issues are examined within the context of relevant strands of law, including criminal law, personal status law, law on combating violence against women and labour law.

1. Prohibition of discrimination

As noted, most ESCWA member States prohibit discrimination on the ground of sex, and mention equality in their constitutions. However, these principles are typically lost in translation when moving from constitution to national laws. It is often noted that discriminatory laws have adversely impacted the political and economic empowerment of Arab women.²³

a. Personal status codes

A glaring example of how national legislations have drifted from the principle

of equality may be seen in personal status codes. Arab women's equal status with that of men has been curtailed by discriminatory provisions in personal status codes. Most of the region's personal status codes contradict provisions of international treaties, particularly those of CEDAW, and those of national constitutions. With the exception of Morocco and Tunisia, Arab women do not enjoy equal rights in marriage, divorce, custody and guardianship. As has been noted, these forms of inequalities "severely marginalize women and girls, curtail their equal opportunities to education and employment, restrict their access to healthcare and make it difficult for women to seek judicial remedies when their rights are violated".²⁴ Most ESCWA member States, with the exception of Saudi Arabia, have codified their personal status codes. Generally, the provisions of personal status codes in the region stem from religious principles and are linked to religious courts. The lack of a unified civil personal status code is one of major factors contributing to discrimination and inequality. Despite the fact that equality before the law, the right to litigation and the right to seek remedy are guaranteed in principle, these rights are contradicted by the provisions of personal status codes (family law) that instate inequalities.

Most of the region's personal status code laws discriminate against women by the mere fact of recognizing men as heads of households, thereby institutionalizing "the inferior status of women in the family".²⁵ Women are expected to obey their husbands in return for the provision of financial support.²⁶ With the exception of the personal status codes of Libya, Morocco and Tunisia, the obedience rule is explicitly mentioned in national laws. A woman's prescribed duty to be "obedient" could allow husbands to deny their wives the right to work and thereby deny them the right to financial equality. As such, it clearly contradicts the obligations of

States under CEDAW of ensuring equality between men and women.

It is widely known that some Arab countries have established the need for “guardianship” for a woman to enter into marriage, enter into contracts, access legal services, make health-related decisions, or travel. The guardianship system has reinforced the unequal recognition of woman before the law, and has further curtailed women’s ability to participate effectively in economic and political spheres. On one end of the spectrum, Morocco’s personal status law puts a limitation on the power of the guardian to force his ward into marriage.²⁷ At the other end of the spectrum, in Yemen, a woman cannot marry, regardless of age, without the approval of her guardian. The guardian system also limits women’s access to justice in cases where the guardian is himself the perpetrator of violations of women’s rights, as in cases of domestic violence.

Generally, Arab women do not have equal right to divorce. Men are not obliged to provide reasons for divorce, whereas women must establish legal grounds for divorce, such as maltreatment, a husband’s imprisonment for three years or malicious abandonment. In Christian communities, depending on the sects, divorce is either granted on the basis of very exceptional conditions, or forbidden. Recent reforms in the region have introduced more equal rights in family laws of some Arab States. Morocco’s *Moudawana* and Tunisia’s family law code grant men and women equal right to divorce. Equality in the enjoyment of the right ensures women’s enjoyment of equality of arms in cases related to divorce. Egypt introduced law reforms in 2000 granting women the right of *khula’a*, the right to divorce without the provision of legal grounds. However, *khula’a* does not guarantee women equality in attaining

all of their rights (maintenance, payment of agreed-upon dowry, custody) in terms of legal remedies. This fact has inhibited women’s ability to resort to courts to exercise their right to divorce.

Another discrimination women face concerns the issue of custody of and guardianship over their children. In some Arab countries, women still need the permission of their children’s father in order to travel with their children or to open a bank account for them. In contrast, national laws does not require the father to obtain the mother’s permission to perform similar actions. Reforms were recently introduced in Egypt and Lebanon lifting the requirement for permission to be granted by the father for a mother to travel with her children (Egypt), or for a mother to open a bank account for her children (Lebanon). Under Muslim law, divorced women have the custody of their daughters until the age of 12, and of their sons until the age of nine. Women in Egypt, Jordan, Syrian Arab Republic and Yemen lose custody of their children if they remarry. This rule does not apply to men if they remarry. As such, women do not enjoy equality before the law from the outset of a case.

b. Criminal code

Criminal codes in Arab countries ensure the principles of equality and non-discrimination in general. The provisions of codes are de facto applicable to all individuals within the State’s territories, men and women, citizens and non-citizens alike. These provisions take into consideration whether a woman who committed a crime is pregnant. Article 32 of the penal code in Morocco enacted this positive discrimination, noting that women who commit a crime when they are more than six-month pregnant may postpone their imprisonment until 40 days after delivery. Despite this, some clauses in the penal codes remain discriminatory.

In cases of adultery, men typically receive more lenient penalties than women.²⁸ While the punishment varies between countries, overall, women convicted of adultery are subject to longer sentences than men convicted of the same offence. In 2014, amendments to articles 487, 488 and 489 of Lebanon's penal code state that an individual, whether man or woman, who is accused of adultery will receive a three-month to two-year sentence. These amendments also institute a single definition of the crime of adultery to be applied to both men and women. Previously, according to article 488 of Lebanon's penal code, for a man to be accused of adultery he had to have committed the act of adultery in the marital home, whereas a woman could be accused of adultery regardless of where or under what circumstances the act was committed.

Penal codes in some Arab States, as in the case of the State of Palestine and Yemen, provide for lenient rulings for so-called "honour killings" committed by men, while providing much more severe penalties for women convicted of homicide. In cases of homicide committed against a woman by her male relative or husband, and in situations where the woman was allegedly caught in the act of adultery or illegitimate sexual relations, the male perpetrator can be granted a pardon for non-premeditated killing. In such cases, a man might receive a maximum sentence of one year imprisonment. For example, article 232 of Yemen's penal code states that if a man kills his wife or her alleged lover in the act of committing adultery, or attacking them, causing disability, he may be fined or sentenced to imprisonment for a term not exceeding one year. However, a woman who commits homicide under similar conditions will be tried for intentional crime and will be subject to life imprisonment. This is the case in most penal codes of the region. However, in some cases this disparity has been

addressed in the context of efforts to combat so-called honour killings. For instance, Jordan and Lebanon have amended the leniency clause in their penal codes; and the legislative branches in the two countries have annulled articles in their respective penal codes²⁹ that mitigated the sentence of a person claiming they killed or injured their wife, daughter or other female relative to protect family "honour".

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

In matters related to protecting women in the workplace, penal codes provide women with protection against sexual harassment. Bahrain's penal code provides for three-month imprisonment and a fine of 20 Bahraini dinars (70 United States dollars) for anyone who offends a woman's modesty by committing "an act of indecency, by words or deeds".³⁰ However, there are calls in the region, including in Egypt and Lebanon, for legal reforms that would consider sexual harassment as a specific offence with appropriate punishment.

c. Labour code

The equal right to work and the equal opportunity to employment in both public and private sectors are enshrined in the labour codes of the region. Article 88 of Egypt's labour code of 2003 states that the provisions of the labour code are applicable to women without discrimination. Article 9 of Bahrain's Law No. 36 of 2012, on the

promulgation of the labour law in the private sector, stipulates that every citizen capable of work and wishing to work shall submit a request to register his name at the Ministry or any of its affiliated centres. However, while the region scores high in terms of the ratio of girls to boys in tertiary education, the percentage of Arab women in the labour force remains a concern (figure 3).

Women's employment faces particular challenges. The restrictions imposed by the guardianship system in some countries in the region limit women's ability to work outside of the home. Once women manage to enter the labour force, labour codes guarantee, to a large extent, equal rights, opportunities and treatment. For instance, the Saudi Arabia's labour code prohibits gender-based gaps in wages and salaries; and equal wages for equal work are also specified in the labour

Figure 3. The ratio of girls to boys in tertiary education versus the percentage of Arab women in the labour force



Source: UNESCO Institute for Statistics (UIS), Tertiary Education, available from <http://data.uis.unesco.org> (accessed 14 February 2015); and International Labour Organization (ILO), Key Indicators of the Labour Market (KILM), available from <http://kilm.ilo.org/KILMnet/> (accessed 14 February 2015).

codes of Egypt and Morocco. However, what occurs in practice still differs from what is prescribed by law. For example, "in Morocco, women's average earnings were estimated at 24 per cent of those of men in 2010".³¹ Most of the labour codes in the Arab region provide for favourable treatment of pregnant women, including, for example, by prohibiting the dismissal of a woman while she is on maternity leave. Libya, Morocco and the Syrian Arab Republic offer adequate maternity leave of 14 weeks of paid leave.³² However, paternity leave is not recognized in the region.³³ The failure to consider men's role in the domestic sphere poses a different form of gender discrimination.

Meanwhile, gaps and discriminatory provisions still exist in Arab labour codes, hampering women's economic empowerment. For example, the labour codes of Bahrain and Egypt indicate that women cannot be employed to work during the hours from 7 pm to 7 am. Furthermore, article 89 of Egypt's labour code requires any employers wishing to recruit women to guarantee their protection and transportation. Such a requirement reflects the belief that "women are a vulnerable group in need of protection" and in need of being guarded.³⁴

In most ESCWA member States, social security policies and taxation laws are unfavourable to women. Article 81 of Jordan's Social Security Law No. 1/2014 includes discriminatory provisions regarding family indemnities. In the case of remarriage, a woman does not receive her deceased husband's indemnities, but this rule does not apply to the husband of a deceased woman.³⁵ In Lebanon, by contrast, a number of court decisions have invoked gender equality, requiring the social security fund to pay family indemnities to the mother, thereby allowing her to receive health benefits for her children, as long as they are proven to be in her custody and her husband does not receive such benefits.³⁶

Another gender gap occurs with regard to tax regulations and retirement ages that discriminate between men and women. Discriminatory tax laws are recognized as an obstacle to the economic participation of Arab women.³⁷ In fact, some of the region's income tax laws provide for an unequal treatment between men and women; and while they view spouses as two separate taxpayers, only the husband is entitled to tax relief. Some reform initiatives have been undertaken, for example in Jordan and Lebanon, aimed at ensuring equal benefits for tax reduction for men and women. Moreover, with the exception of Bahrain, Egypt, Kuwait, Lebanon, Morocco, the Sudan and Tunisia, which have similar retirement ages for men and women,³⁸ women's age of retirement in the rest of the region is still lower by five years than for men. This adversely impacts women's benefits and allowances at the time of retirement.

It should be noted that citizen and non-citizen domestic workers, the majority of whom are women, are not included in the majority of the region's codes. This creates a legal vacuum regarding the availability of protection for this group. Academic and policy-oriented studies have identified chronic violations of the rights of domestic workers and the inability of these workers to seek justice and remedies.³⁹ However, initiatives have been carried out in the region to expand the protection afforded in labour codes to domestic workers. As of 2008, Jordan's labour code extends protection to domestic workers. Jordan passed new regulations in 2012 that limit the number of daily working hours for domestic workers to eight hours, and stipulate that workers are not required to seek permission from employers to leave their homes during non-work hours.⁴⁰ Similarly, Bahrain has extended some of the protections in its labour code to domestic workers, such as access to labour dispute mediations.⁴¹

Women in the Arab region represent the majority of the labour force in the agricultural sector, constituting a form of informal economy.⁴² Women and girls working in this sector are subject to violations. Usually, they receive no payment for their labour, or are at best low-paid and they are typically engaged in seasonal work, which carries no security or benefits. Such informal economies have not yet been regularized by law in most member States. As such, women fall outside the protection of law, and continue to be marginalized and have their right of access to justice undermined.⁴³

2. Criminalization of discrimination

While constitutions across the region guarantee the right to litigation for all people, without any discrimination on the grounds of sex, the non-criminalization of certain behaviour "in which women are the sole or main victim"⁴⁴ restricts women's ability to access justice. One area where gaps in law are longstanding in the region is violence against women. The issue of violence against women has recently moved beyond the solely "private" sphere into a wider public realm, with the recognition of the obligations of States to protect individuals in both public and private spheres.

Following calls from civil society, Lebanon, Jordan and Saudi Arabia criminalized domestic violence, as is seen in Lebanon's law of 2014 on the protection of women and family members from domestic violence. Controversy has surrounded the question of whether Lebanon's law on family protection explicitly criminalizes marital rape or not.⁴⁵ However, lawmakers assert that the law does criminalize marital rape.⁴⁶ In Egypt, one of the main obstacles to access justice for women survivors of violence against women is that crimes of violence are not sufficiently defined.⁴⁷ In June 2014, Egypt amended article 306(a) in the penal code to criminalize

harassment in the form of words, gestures and actions expressed in person or through other means of communication. The law stipulates a minimum sentence of six-month imprisonment and a fine of 3000 Egyptian pounds (\$429) for an offence. A second amendment to the law stipulates a more severe sentence for an offender who is in a position of authority over the complainant, and for offences involving multiple perpetrators. Jordan, Morocco and Tunisia similarly criminalize sexual harassment.

In contrast, in Kuwait, domestic violence, sexual harassment and marital rape are not criminalized. The law in Kuwait does, however, allow women to file a complaint with police, and abusers can be charged with assault. The fact that violence against women in general, and domestic violence, marital rape and sexual harassment in particular, are not crimes makes it impossible for Kuwaiti women to take legal actions against perpetrators. As a result, Kuwaiti women's enjoyment of civil, political, economic, social and cultural rights is negatively affected.

3. Availability of remedies

Both access to justice and the availability of effective remedies for violations of justice are crucial for the protection of women's rights. The abovementioned codes to a certain extent provide for remedies for discrimination and human rights violations directed against women. The availability of remedies is particularly evident in penal codes, labour codes and laws combating violence against women (for example domestic violence and human trafficking). Remedies are available either in the form of punishment or in the form of reparations or restitutions. For instance, Lebanon's law on domestic violence ensures that women who are subjected to violence are provided with remedies that correspond to the gravity of the crime. The law ensures women's right to child custody, housing,

medical treatment and rehabilitation, with the last being paid by the perpetrators of the crime. In Jordan, work operations may be suspended, in accordance with Jordan's labour code, if it is established that a female worker has been sexually attacked. Additionally, a woman subjected to sexual harassment at the workplace has the right to terminate her contract and obtain full compensation.⁴⁸

Invoking the principle of equality offers a means by which women may seek remedy. In 2009, four Kuwaiti women parliamentarians appealed an article requiring the presence of a male guardian to issue and renew passports at the Constitutional Court.⁴⁹ The Court found that the article in the personal status law that required a woman to obtain the approval of her guardian violated the guarantees of personal freedom and gender equality as enshrined in Kuwait's Constitution.⁵⁰

In general, legal frameworks provide for the protection of women's rights on the basis of the principle of equality and non-discrimination, and ensure the availability of suitable remedies. It has been noted that despite the existence of labour laws that "mandate equal pay for the same type of work and equal opportunities for training and promotion, these laws are frequently violated in terms of salary and employment perks".⁵¹ The existence of such laws do, however, allow for remedies to such violations to be sought. For example, women in the Gulf subregion can "file discrimination complaints with government agencies".⁵² In 2014, the Administrative District in Kuwait ruled that the requirement limiting applications for the position of public prosecutor position to male candidates was discriminatory. The Ministry of Justice removed the requirement accordingly.

4. The protection of non-citizens

In most ESCWA member States, female refugees fall outside the protection of the

law.⁵³ The region has a considerably large number of the world's refugees, at some 22 per cent.⁵⁴ The ability of female refugees to enjoy the right of access to justice is curtailed by the fact that most ESCWA member States have not ratified the 1951 Convention on the Status of Refugees, and by the existence within national legislations of discrimination against non-citizens. Female refugees do not have adequate legal means to protest discrimination.

Female refugees face discrimination on the basis of gender, as a result of their refugee status, and as a consequence of the social and economic vulnerability their status entails. Female refugees have very limited access to education, work opportunities and health services.⁵⁵ According to the International Labour Organization (ILO), "Syrian refugees are characterized by high unemployment levels, most notably amongst women at 68 per cent. Given the absence of male heads in most refugee households, there is an impetus for women to seek work. However, they still face the additional burden of childcare, which impedes them from employment. In fact, out of all the Syrian refugee women aged above 15 years, only six per cent are currently working in Lebanon".⁵⁶ Furthermore, female refugees are subjected to all forms of violence, including sexual violence, forced and child marriage, trafficking and exploitation. Recently, numerous reports indicate high numbers of early marriages within refugee communities in Lebanon and Jordan. Iraqi and Syrian female refugees are subject to trafficking and to forced and early marriages. However, they are unable to seek remedies owing to a number of barriers, including the legal vacuum created by the absence of legal protection of non-citizens, the curtailed freedom of movement of refugees, and regulations by host countries related to the acquisition of residency. As a result, the right of access of female refugees to justice is curtailed.

Additionally, the Arab region suffers from the phenomena of forced labour and trafficking in persons. According to ILO estimates, some 600,000 individuals in the region, the majority of whom are women and girls coming from Asia, are victims of forced labour and trafficking.⁵⁷ ILO relates the propagation of this phenomenon to the instability in the region, the non-criminalization of the crime of trafficking, the existence of the sponsorship system (Kafeel), and to "early and temporary forms of marriage in the Middle East [that] make women vulnerable to sexual exploitation by forcing them into prostitution for economic gain".⁵⁸ A total of 14 ESCWA member States have ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the Convention against Transnational Organized Crime, (Palermo Protocol).⁵⁹ Eight of these States have passed laws that criminalize and impose penalties (fines and imprisonment) for crimes of trafficking.⁶⁰ However, despite the adoption of the legislation, the implementation of such laws is hindered by the non-dissemination of information on the law and available support, as well as by such practices as the confiscation of legal documents of trafficked women and girls, and the imposition of restrictions on their freedom of movement.

In sum, the constitutions across the Arab region protect the principles of equality and non-discrimination as well as all the elements of the right of access to justice. However, the region's personal status codes, labour codes and criminal codes offer limited protection of women's right of access to justice. As such, legal gaps compounded by structural barriers (as described in chapter IV) circumscribe women's realization of equality before the law, equality of arms and of effective remedies.



"Women face difficulties in filing complaints, navigating the judicial processes and, if they manage to access the court system, enforcing remedies"

IV. Barriers to Arab Women's Access to Justice

Access to justice involves a number of steps that enable women to claim and obtain just remedies for violations committed on the basis of discrimination. Chapter III concludes that the existence of discriminatory laws, compounded by the lack of laws prohibiting certain violations, leaves Arab women with limited opportunities to access the justice system. Furthermore, at each step of the justice process, Arab women face barriers to their access to justice. Women face difficulties in filing complaints, navigating the judicial processes and, if they manage to access the court system, enforcing remedies. These difficulties are experienced at institutional and procedural levels as well as at social levels. As highlighted below, these barriers are a manifestation of the gender stereotyping faced by women. As noted, “gender stereotyping affects women’s experiences as victims of human rights violations, beginning with whether or not a violation of women’s rights is perceived to have occurred through to whether or not women are able to obtain reparations for those violations ... gender stereotyping undermines the role and perceptions of women as witnesses within the justice system ... female offenders are also affected by gender stereotyping”.¹ Moreover, as noted in chapter II, States are obligated to ensure the availability of affordable and timely access to justice without any discrimination. This chapter analyses the barriers impeding women’s access to justice in accordance with the obligations of States.

A. Barriers at the institutional and procedural levels

Effective access to justice depends first on the availability of functioning institutions. As discussed, States parties should ensure the implementation of laws through a functioning chain of justice that is responsive to gender needs. However, justice institutions in the Arab region are not effective in this regard owing to the reasons set forth below.

1. Plurality of legal mechanisms and systems

Most countries in the Arab region have a plurality of legal orders, including the legal orders of different religions and sects as well as the country’s national legislative framework. Moreover, some countries have significant numbers of religious orders; for instance, there are 18 confessions in Lebanon. This plurality poses challenges for women’s access to justice, as is manifested with particular clarity in the adjudication of family matters and issues related to violence against women. As mentioned above, family matters are dealt with in religious laws and courts in accordance to an individual’s religious affiliation. However, the religious orders applicable in the case of a marriage of mixed religions or sects are those of the husband. This situation poses particular challenges in terms of ensuring effective remedies for women in cases related to divorce entitlements, child custody and inheritance.

The plurality of legal systems also contributes to inconsistency in the provision of remedies, while inconsistency between

systems creates space for discrimination. Some crimes stipulated in civil laws may not be considered crimes in religious laws, and vice versa. As such, the precedence of either civil law or religious law is determined on a case-by-case basis. The lack of unified judicial system impairs women's ability to seek and enforce remedies, and leaves women in a legal vacuum. In Lebanon, the Law on the Protection of Women and Family Members from Domestic Violence may lead to the imprisonment of the perpetrator – the husband in most cases. However, the religious court may not immediately approve the request for divorce of a woman subjected to violence and thus protect her from the recurrence of the crime. Furthermore, article 22 of the Law states that in the case of contradiction between it and the personal status code and its rules, supremacy goes to the provisions of the personal status law. Women's rights may suffer when such contradictions come into play.

2. Gender responsive justice system

a. Under-representation of women in the justice system

According to a report in 2012 by UN Women, the representation of Arab women in the judiciary is among the lowest in the world.² Owing to the lack of official statistics, it is difficult to determine the magnitude of women's under-representation in the judiciary. According to a report relying on secondary sources, only 42 out of 12,000 are women.³ In 2011, 20.12 per cent of judges in Morocco were female.⁴ In Lebanon, female judges constitute 42 per cent of the total number of judges.⁵ In the United Arab Emirates, amendments to the federal judicial law in 2008 paved the way for the appointment of female federal judges and prosecutors.⁶ In Libya, 130 out of a total of 959 appointees to judiciary posts are women, and 120 women are public prosecutors. Women are generally

excluded from appointment as judges in religious courts. However, in Palestine, two women were appointed as judges to the Islamic Sharia Court in the West Bank in 2009, becoming the first female judges in Palestinian Islamic courts that deal with family affairs.⁷ In Lebanon, one woman has been appointed in the ecclesiastical Anglican court.⁸

Women are also under-represented in other sectors of the justice chain, namely, prosecution and police forces. However, there have been recent efforts in a number of Arab countries to increase the number of female police officers and prosecutors, and to establish special units to deal with cases of violence against women. In 2014, the Ministry of Interior in Egypt created a number of decentralized special units to combat violence against women. In Lebanon, the Internal Security Forces started to recruit women in 2012. Oman and Yemen have also integrated women into their police forces. Kuwait has established family units within police stations to deal with cases of violence.

b. Institutional weaknesses on gender-related issues

In the Arab region, the administration of the justice sector is not gender sensitive in its training or in its modus operandi. The CEDAW Committee, in its concluding observations to States parties, repeatedly establishes a link between the lack of sensitization on gender issues of law enforcement agencies and the lack of access to justice for women. For example, the Committee noted in its concluding observations to Morocco that "a number of constraints and difficulties have emerged, including in particular difficulties attributable to inadequate infrastructure and logistical resources, a lack of awareness and training among officials responsible for enforcing the code and the persons in charge of publicizing it and propagating an

understanding of it throughout Morocco's social fabric".⁹

Additionally, the curricula of the judiciary and police institutes do not reflect the obligations of States under international instruments and do not provide proper training on how to handle gender-related cases. The lack of regular training programmes and the failure to update training courses leave officials involved in the administration of justice lagging behind in terms of new developments in the law, whether these relate to abolishment of discriminatory law or to the enactment of legal protection of women's rights. These gaps result in judges, police and prosecutors who "lack understanding on the sensitivities surrounding certain violations of women's rights or even of their justiciability".¹⁰ Women subjected to violence often cite the attempts of police officers to convince them of the non-justiciability of their complaints and to interfere in the justice process by proposing mediation instead. To address these gaps in capacity and knowledge, the Ministry of Justice in Jordan established specialized units in 2009 within five courts to hear cases involving gender-motivated crimes.¹¹ In Lebanon, the law on domestic violence provides for severe punishment of officials who obstruct the justice process.¹²

Courts may demonstrate gender bias in exercising their jurisdiction and in their rulings. This owes to a lack of gender sensitization, as noted, as well as to a lack of appropriate monitoring and of sanctions against judicial personnel for failure to uphold the principles of equality and non-discrimination. With regard to gender-based violence crimes, there is a general unwillingness on the part of law-enforcement officials to exercise powers of arrest, file charges, pursue criminal prosecutions and enforce protective measures or other remedies. In Lebanon,

before the adoption of the Law on the Protection of Women and Family Members from Domestic Violence, Lebanese women subjected to violence – leading to death in some instances – were not able to obtain effective remedies due to improper investigation, biased judgment in favour of the male perpetrator, or unwillingness of the victim to pursue criminal prosecution.¹³ Women of the region have expressed their reluctance to approach the police, the prosecution and the judiciary owing to the fact that these sectors are embedded in systems of social discrimination, inequalities and bias. As the unwillingness of women to pursue legal recourse suggests, such institutional weaknesses contribute to a lack of confidence and trust in the justice administration sector.

3. Lack of accessibility

Another obstacle facing Arab women in accessing justice is the accessibility of the justice system. Inaccessibility may be linked to many factors, including the following: the centralized justice system, the guardianship system, economic dependency, or factors related to occupation and security situations. Courts are generally centralized in the capitals or in major cities, resulting in women from rural areas needing to travel long distances to reach the courts. Despite the fact that rural men and women suffer from the centralization of courts, rural women bear extra burdens related to limited financial resources. Furthermore, rural women are mostly engaged as daily labourers in agricultural activities, and most women cannot sacrifice a day's income to travel to the courts.

Additionally, some countries of the region still do not allow women and girls to travel or to access courts without their male guardian's approval or without the presence of a male relative. Such requirements hinder women's

ability to seek redress, especially when the male guardian is the perpetrator. Moreover, the guardianship system creates another level of discrimination for female offenders, who often overstay their sentences arising from an unwillingness of male guardians to pay the required release fees and to accompany them upon leaving prison.

Unaffordable legal procedures, together with lack of access to financial resources on the part of the majority of Arab women, also pose another impediment to women's access to justice in the region. Women are reluctant to file claims in court given a lack of financial resources. According to a recent study by UN Women, many women have "observed that economic hardships such as poverty and severe economic hardship blocked them from even reaching out for help or following up with the social welfare or police".¹⁴ Alternatively, they may initiate the claims process without a lawyer because of inability to pay lawyer fees, with a corresponding detrimental effect on the case's level of success.¹⁵ Some judicial systems are sensitive to the ramifications of a lack of financial resources on the part of the claimant. In Egypt, fees are waived in cases related to family matters, as well as in labour cases if the complainant is the worker.¹⁶ In Lebanon, fees are waived in cases related to domestic violence. In Bahrain, as stipulated in article 6 of the labour law, fees are waived in cases related to labour.¹⁷

The security situation in a number of ESCWA member countries plays a role in limiting women's ability to seek and access justice. For example, the occupation by Israel hinders the ability of Palestinian women to access the justice system.¹⁸ The lack of free movement between the administrative zones in the West Bank and the requirement to cross multiple checkpoints, where women are subjected to all forms of harassment, have severely restricted the ability of

Palestinian women to enjoy the right of access to justice.¹⁹ The inability of most women to afford transportation costs adds another level of difficulty in accessing justice.

4. Lack of legal aid and counselling services

While the constitutions across the region provide for the right to counsel and to legal aid, such aid and counsel are provided under strict eligibility criteria and, in some countries, are only provided for criminal cases. Insufficient funding in national budgets has a detrimental effect on legal aid and leaves room for discrimination in the provision of this aid. Civil society organizations, along with lawyers' syndicates, are filling this gap.²⁰ However, owing to the limited availability of funding, the quality of the services is questionable. Legal clinics that provide pro bono legal assistance, legal education and training to marginalized groups have been introduced in universities in Iraq, Lebanon, Morocco and Palestine.²¹ Although this is a relatively new concept in the region, it has gained broad support, particularly from the communities that the legal clinics serve.²² However, the law profession codes of the Arab region do not allow lawyers who are not registered with the respective syndicates to practise law or represent clients in any legal proceeding. This fact, together with reliance on donor funding, hinders the value and the sustainability of the service.

B. Barriers at the capacity level

The lack of legal empowerment is another obstacle confronting Arab women in their access to justice. Information on laws (rights and duties) and on legal procedures is often complicated and not easy to access. While national women's machineries (NWMs) in the region have engaged in legal-awareness campaigns, these have been limited in time and geographical coverage. Women are not aware of their rights, let alone how to navigate

the legal orders of their respective countries.²³ High rates of illiteracy, especially in rural areas, have left Arab women unaware of their rights, of the remedies available, and of what justice mechanisms offer and how to access them. It was noted that “major obstacles to access [justice] are related to weak legal education among women as well as absence of effective awareness on rights, obligations, and legal procedures that could provide women with tools to better access to justice”.²⁴

C. Barriers at the social level

The fear of reprisal or social ostracism is detrimental to Arab women’s right of access to justice. Women sometimes face social disapproval in pursuing justice, particularly in cases related to family matters and gender-based violence. Women are often reluctant to seek justice in cases related to sexual harassment in the workplace, fearing scandal or the loss of their jobs. If a woman decides to pursue a case, she may be pressured by family members to withdraw her complaint. For example, in Jordan, under the penal code, charges of rape and sexual abuse can be dropped if the perpetrator marries the victim for a period of at least 5 years. In such cases, there are no clear procedures for determining the consent of the victim to such a marriage. In practice, female victims may be pressured into accepting such arrangements in order to avoid bringing shame on themselves and their families, and to protect themselves from becoming victims of additional crimes by family members to protect family honour.²⁵

D. Other barriers

1. Independence of the judiciary

Judicial independence is a critical element in the protection of the right of access to justice. Arab States have endorsed the

independence of the judiciary, and have also proclaimed their acceptance of the principle of the separation of powers. Most Arab constitutional texts make this acceptance explicit. However, reports show that the reality remains different. It was noted that the judiciary suffers from the authority of the executive branch. In Jordan,²⁶ Lebanon,²⁷ Palestine,²⁸ and the Syrian Arab Republic,²⁹ the majority of the members of the high judicial councils, who are mandated to address the recruitment, promotion, transfer, discipline and dismissal of judges, are appointed by the State. This brings the judicial authority under the full control of the executive authority and seriously affects its independence.³⁰

2. Duration of legal proceedings

The lengthiness of legal proceedings, compounded by their unaffordable cost, can seriously hinder women’s enjoyment of their right of access to justice. It is well acknowledged that legal proceedings in civil and religious courts are extremely lengthy. Settlements for family matters cases may require as long as five years to be achieved. However, in cases related to violence, harassment or trafficking, women victims/survivors are in need of immediate remedial actions for their safety. In such situations, the lengthiness of legal proceedings impedes the right of women to access justice and may expose women to exacerbated abuse while cases are ongoing.

3. Language

In the legislations of all ESCWA member States, interpreters are to be made available to non-Arabic speakers undertaking legal proceedings. However, reports indicate that migrant workers and trafficked persons do not have easy access to interpreters or legal information in their native languages.³¹



"Addressing gaps in the justice chain via a holistic approach ensures the full realization of women's right to seek remedy to violations"

V. Addressing Barriers to Women's Access to Justice: Strategies, Approaches and Good Practices

Chapters III and IV identified various factors, both legislative and procedural, that impede Arab women's access to justice. These factors include the lack of legal guarantees of equal protection before the law and the courts, the existence of discriminatory laws, the expense of legal procedures, the lack of legal aid and counselling, the lack of knowledge of available measures that protect women, difficulty in gaining access to services, lack of resources or means to participate in justice processes, and lack of trust in the enforcement mechanisms. All of these pose significant barriers to women's right of accessing justice.

In order to address these barriers and enhance women's enjoyment of their right of access to justice, the following strategic avenues have been adopted by governments, NWMs, civil society organizations and other stakeholders: (a) legal protection; (b) legal empowerment; (c) adjudication; and (d) enforcement. It is worth noting that this chapter is not intended to evaluate the initiatives as such; rather, it aims to provide an overview of measures undertaken by all stakeholders to address the abovementioned legal gaps and structural barriers.

A. Strategies adopted

1. Legal protection

Discriminatory laws remain prevalent in the Arab region. Women and men are not equal before the law. In response to this situation, countries have introduced legal reform, integrating gender equality

in constitutions, eliminating gender discrimination from national legislations, and addressing legal gaps in conformity with CEDAW and ICCPR as well as other ratified international human rights treaties. Recent constitutions reflect such reforms. For instance, the Constitution of Egypt of 2014 recognizes equality between men and women and ensures equal citizenship rights in civil, political, economic and social fields.¹ Similarly, Tunisia's Constitution of 2014 enshrines women's rights, with article 46 stipulating that the State shall guarantee equal opportunities between men and women in the bearing of all the various responsibilities in all fields.² Article 46 also commits the State to attempting to balance the number of men and women serving in elected councils. In Morocco, amendments were introduced to the family code, which now stipulates equality between spouses.³ In Lebanon, the National Committee for Lebanese Women Affairs (NCLW) launched a national campaign entitled "*Wayn ba'dna*" (loosely translated as "we are still at this stage") to press for reform on laws that have adverse economic impact on women.⁴ The Legislative Committee of Egypt's National Council for Women (NCW) consults directly with Members of Parliament to seek legal clarifications of or propose amendments to laws that discriminate on the basis of gender.

2. Legal empowerment

Legal empowerment strategies ensure that the principles of equality and non-discrimination do not remain simply de

jure principles, but are translated into practice as de facto principles as well.⁵ Legal empowerment includes raising legal awareness and providing legal aid services.

Initiatives have been taken by a number of regional NWMs, civil society organizations and lawyer syndicates to ensure women's access to legal information as "a foundation to fight injustice".⁶ These initiatives aim at assisting women in pursuing their right to seek remedy through the justice system. The extent to which women are aware of their rights and of available protection mechanisms depends on various factors, including education and economic status. Awareness also depends on women's geographical location (for example, rural versus urban). Information strategies recognize these factors and tailor messages in accordance to the needs and backgrounds of women in different locations and sectors.

Knowing one's rights is insufficient if it is not accompanied by knowledge of how to claim these rights through the justice process. Providing legal aid services is one of the obligations of States in effectively implementing the right of access to justice. Governments, NWMs, civil society organizations and lawyer syndicates provide such services in the Arab region.

Egypt's National Council for Women (NCW) was established by presidential decree in 2000 to work on improving the status of Egyptian women by empowering women in social, economic and political arenas through a number of programmes.⁷ The Office of the Ombudsman was established in 2001 as part of NWC to investigate, mediate and resolve claims of gender discrimination.⁸ The Office receives complaints and provides legal counselling and legal aid services to women whose political, civil, economic, social and cultural rights have been violated. It also prepares

legal and social studies to present for consideration to the NCW Legislative Committee. The Office handles claims related to personal status and nationality, sexual harassment, divorce, domestic violence and gender discrimination in the workplace. The Office of the Ombudsman has established several branch offices across the country and, in addition, maintains a large network of national NGOs to which claims, complaints and requests for legal counselling falling outside the scope of the Office are referred. In 2013, the Office of the Ombudsman processed 2761 complaints and provided 122 legal consultations.⁹

As part of its legal empowerment strategy, NCW also established the Women's Legal Rights Project aimed at providing information and answering women's queries on personal status issues, with the ultimate goal of simplifying litigation procedures.¹⁰

In Iraq, the Bar Association Law provides for a legal aid committee to be responsible for the provision of legal aid regardless of whether a case is criminal or not. In order to qualify for legal aid, a defendant is required to pass a means test. The committee may grant legal aid to a litigant who is financially unable to pay attorney fees or is unable to find a legal representative. Upon court request, it may grant legal aid to a criminal defendant or a juvenile. Legal aid services are also provided by civil society organizations. The Future Association for Iraqi Women provides legal consultations and develops awareness-raising programmes for divorced women and women in need.

In Lebanon, the law stipulates that the defendant in a criminal case is entitled to the appointment of a legal aid lawyer;¹¹ a party in a civil case is similarly entitled,

upon proof of poverty, to the appointment of a legal aid lawyer. In the case of foreign defendants, reciprocity of the country of origin is required for legal aid in civil matters.¹² The Lebanese Bar Associations (Beirut and Tripoli) are responsible for assigning lawyers to defendants in return for symbolic fees paid from the Bar Fund. The Beirut Bar Association has a specific committee dedicated to legal aid, namely, the Legal Aid Committee, which is composed of more than 30 lawyers appointed by the President of the Bar. The purpose of the Committee is to defend those prosecuted before the courts or specialized authorities who are financially unable to pay attorney fees. However, the present system of delivering legal aid does not result in the systematic provision of quality legal representation to clients. This owes to a heavy dependence on trainee lawyers, lack of training and monitoring of lawyers, and the low fees paid for legal aid cases.¹³ The number of total requests remains very low (at 410 requests in 2011), which may reflect low confidence in the legal aid system.¹⁴ Besides the Bar Association, four NGOs are known to offer legal aid, namely: Caritas, Association Justice and Mercy (AJEM), Dar Al Amal, and Fondation Père Afif Osseiran (FPAO).¹⁵

In Jordan, the main legal aid services are provided by NGOs, primarily the Justice Centre for Legal Aid (JCLA), Tamkeen, Arab Renaissance in Democracy and Development, and Mizan. Criminal law procedures stipulate the appointment of a lawyer in certain serious cases for defendants unable to do so owing to their economic situation.¹⁶ The Head of the Bar Association may, at their sole discretion, delegate to any practising lawyer the task of providing one free legal service a year. However, in practice, this power of delegation is rarely used. In Palestine, NGOs are the main providers of legal

aid. Examples are the Awn Access to Justice Network in the Gaza Strip,¹⁷ the Bar Association, and the Women's Centre for Legal Aid and Counselling, which offer free legal aid services. In the Syrian Arab Republic, legal aid is still a nascent concept, and in the case of foreigners the law requires reciprocity from the defendant's country of origin.¹⁸

3. Gender-sensitive judicial reform

It is widely recognized that "the rule of law requires not only that laws are passed, but that they are equally enforced and independently adjudicated, free from bias or discrimination".¹⁹ A gender-sensitive justice system increases the likelihood that non-discriminatory rulings will be applied. Establishing a gender-responsive justice system involves ensuring equal representation in judicial appointments, establishing specialized courts, and implementing gender-sensitive legal awareness so that adequate types of redress or compensation corresponding to the gravity of the discriminatory act are applied.

However, women are significantly under-represented in the legal and judicial fields, and this under-representation leads to discrimination in adjudication. For example, in Bahrain, "there are only seven women in the judiciary and none in the Shari'a courts, which hear the cases that most often and most directly affect women".²⁰

A number of Arab countries have undertaken initiatives to increase women's presence in the justice system. In implementing its family code, namely, *Moudawana*, the Government of Morocco created family sections within the district courts, employing a female social worker in each; and also implemented a training programme for family court judges. While distrust of the police remains a problem,

women are much more willing to approach the new family courts. According to a study in 2009, women are mistrustful of the police and criminal courts, but are much more willing to go to family courts for a divorce in cases of domestic violence.²¹ Initiatives such as family courts increase the possibility of women accessing justice.²²

4. Enforcement

A functioning system of enforcement is requisite for establishing accountability, ending impunity and deterring recurrence of discriminatory acts. Initiatives have been taken in the region to reform the police and prison sectors and enhance enforcement. These initiatives include building the capacity of law enforcers to implement orders, rulings, settlements and decisions resulting from adjudication related to gender discrimination.

As noted above, women who have suffered violence and discrimination are often re-victimized by the attitudes of law-enforcement personnel. Most ESCWA member States are mainstreaming gender-sensitive approaches in their law-enforcement agencies, particularly in police forces, in their efforts to combat violence against women. Women have been integrated into law-enforcement forces, and special units on gender issues have been established. Egypt recently established units on sexual harassment in its police forces. In Lebanon, the General Directorate of the Internal Security Forces (ISF) adopted the ISF Code of Conduct in 2012, wherein article 4 stipulates equality between men and women and prohibits discrimination on the basis of sex in the fulfilment of ISF officer responsibilities. The ISF Code of Conduct has been integrated into the training curriculum of ISF officers. In 2012, Lebanon allowed women to join its internal security forces.

B. Holistic approach

Strategies for reforming the justice system should be considered holistically and simultaneously, given that “only sector-wide reforms can ensure what should be a basic trait of liberal democracy: the equality of the citizens before the law, not only in the legislation but actually realized in practice”.²³ Achieving access to justice requires a holistic approach that goes beyond accessing courts and guaranteeing legal counselling and representation. Rather, access to justice “must be defined in terms of ensuring that legal and judicial outcomes are just”.²⁴ As a result, achieving this access also entails putting into place mechanisms by which to enforce judicial outcomes.

Addressing gaps in the justice chain via a holistic approach ensures the full realization of women’s right to seek remedy to violations. In all the abovementioned strategies, civil society organizations and NWMs play a key role in either supporting governmental efforts or undertaking separate initiatives to protect women’s right of access to justice. These initiatives are sometimes undertaken in isolation of others. However, in order to ensure a successful outcome, initiatives should be carried out in a comprehensive, holistic and concerted manner.

A recent initiative in Lebanon combating violence against women illustrates this kind of holistic approach. The Law on the Protection of Women and Family Members from Domestic Violence,²⁵ passed in April 2014, guarantees the right to seek judicial processes and remedies for women subjected to violence. The Law ensures the affordability of this right by waiving fees related to the initiation of court legal proceedings. It includes clauses related to protection and enforcement with regard to judicial decisions. The adoption of the Law

has been accompanied by widespread civil society activism in Lebanon, including a number of public awareness-raising campaigns on the phenomenon of gender violence and on the legal rights of women subjected to violence. Meanwhile, civil society organizations provide services of legal aid and counselling for violence victims. In addition, the Internal Security Forces has developed a training programme for ISF officers in gender-sensitive skills in order to better address the needs of women subjected to violence.

Judges also play a critical role in ensuring women's right to just and fair remedies. A number of judges use the provisions of the Law in issuing protective orders and rulings that go beyond the text of the Law, thereby "filling the legal gaps in the law and correcting its most prominent shortcomings".²⁶ This has resulted in a number of rulings favourable to women.²⁷

In Jordan, a recent initiative to enhance women's access to justice in labour-related matters manifests another good-practice element of the holistic approach to justice reform. Jordan has introduced some positive legislative reforms, in particular by implementing major revisions to its labour law to include protection for domestic workers (many of whom are women) and to agricultural workers, including guarantees of monthly salaries, minimum wages, sick leave and regulation of working hours.²⁸ These amendments are accompanied by inspection mechanisms established by the Ministry of Labour in order to obligate employers to adhere to the provisions of the law. Such mechanisms are put into place through the Directorate of Inspection, which is an independent directorate within the Ministry that has the task of following

up on the commitments of employers and their implementation of the provisions of the labour law. Moreover, a special unit was created in the Ministry to ensure the protection of the rights of women workers.²⁹ In 2013, the Ministry of Labour, Jordan's Bar Association, civil society organizations and ILO engaged in a review of existing labour laws in order to address gaps in enforcement and ensure that non-discrimination and gender equality were adequately addressed by the judiciary.

Approaches to ensuring access to justice are embedded in the principles of equality and non-discrimination, and should incorporate these principles into every step of the justice chain. Clearly, establishing an environment that enables equal access to justice requires the engagement of various sectors of society, including law-enforcement agencies (for example, police and prison officials), the judiciary (for example, courts and prosecutors) and civil society (for example, social workers and paralegals). Cooperation among these sectors and actors should be taken into account when assessing women's access to justice, given that all elements of the justice chain are interlinked and affect access to justice, directly or indirectly.³⁰ Similarly, no measure should be taken in isolation of other measures. As demonstrated in previous chapters, a discriminatory law could impact women's right to file a complaint, to stand before a court, and to seek judicial remedy. A holistic reform initiative should address gaps in legislation, in legal knowledge, and in the justice and enforcement systems rather than focusing on one element to the exclusion of others. Such an approach will help to ensure that underlying principles of equality and non-discrimination are put into practice in a comprehensive manner.

Law
OBLIGATIONS
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ACCESS EQUALITY JUSTICE
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individuals
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LAW

"Access to justice is not limited to accessing courts; rather,
it entails obtaining a just remedy"

VI. Conclusion

Access to justice is a crucial element for the realization of human rights and is a cornerstone for the advancement of women's rights in particular. A right cannot be fully enjoyed if remedies cannot be sought when that right is violated. The right of access to justice is complex and encompasses other rights, namely: (a) the right to equality before the law and courts; (b) the right to equal recognition before the law; (c) the right to pursue effective remedy; and (d) the right to a fair and impartial trial. This study considers women's access to justice in the Arab region through a review of legislation, institutional structures, procedures, and cultural factors, showing that women's access to justice is hampered at various levels by several factors. A summary of the main findings of the study is set forth below, presented under the categories of legislative frameworks, and of institutional and procedural frameworks.

A. Legislative frameworks

The right of access to justice is affirmed in all international human rights instruments as "a basic right as well as an indispensable means to combat poverty, [and] prevent and resolve conflict".¹ As such, these human rights instruments uphold the right of access to justice as an essential element in the achievement of full enjoyment of civil, political, economic, social and cultural rights by all individuals. States are under obligation to respect, protect and fulfil the right of access to justice for women as well as men. In order to comply with these obligations, States must guarantee the availability, accessibility, adaptability

and affordability of judicial mechanisms, and ensure that women are able to seek effective remedies to discrimination.

The national constitutions of most Arab countries enshrine the principles of equality and non-discrimination. However, not all constitutions incorporate explicit reference to the prohibition of gender discrimination. National constitutions further include all elements of the right of access to justice. However, these constitutional guarantees are not always effectively translated into non-discriminatory national legislations. Discriminatory laws and the non-criminalization of gender-based discrimination are the main obstacles hindering women's access to justice in the Arab region. Moreover, the non-harmonization of existing laws leaves room for impunity and hampers women's ability to seek effective remedies.

B. Institutional and procedural frameworks

The legal orders in the Arab region are both civil and religious. The numerous and sometimes contradictory orders make Arab women's access to justice a challenge. Women may not be aware of their rights under different legal orders, and may face difficulty in navigating the complexity of the multiple orders. Complicated, lengthy and expensive legal procedures hinder women's enjoyment of their right to obtain remedies. The lack of a gender-sensitive justice chain, both in terms of women's representation and of the sensitization of personnel to gender-related issues, also contributes to

women's limited access to justice. These issues are compounded by women's lack of legal empowerment. All of these factors impede women's ability to navigate the justice chain effectively and efficiently.

A number of initiatives have been undertaken by Arab States, NWMs and civil society organizations to fill in the legislative institutional and procedural gaps that impede women's ability to access justice and achieve just remedy. Reform initiatives focus on the abolishment of discriminatory laws, the criminalization of gender-related discrimination, the provision of legal aid counselling and services, the legal empowerment of women, and the reform of justice and police sectors. However, the abovementioned initiatives are usually not undertaken in a holistic approach and, instead, tackle individual components of the justice chain in isolation from other components. As a result, such initiatives have limited impact. In order to rectify such limitations, the study argues for adopting a holistic approach to reforming the justice chain.

C. Recommendations

As the study has stressed, access to justice is not limited to accessing courts; rather, it entails obtaining a just remedy. The policy suggestions presented below, which are aimed at enhancing women's access to justice and achieving just remedy, are based on the framework of a holistic approach. They target all stakeholders in accordance with their respective roles and mandates.

1. General level

At the general level, the recommendations are as follows:

- a. Lift reservations to all provisions of international human rights instruments. In particular, lift reservations to important articles of CEDAW, including

article 2, obliging States to enshrine equality between men and women in the legislative framework; and article 16.1(c), (d), (f) and (g), granting women equal right with men with respect to rights and responsibilities during marriage and at its dissolution, and in matters relating to their children, guardianship, and adoption;

- b. Ratify the Optional Protocol to CEDAW, thereby allowing women to seek redress through international mechanisms once national legal mechanisms have been exhausted;
- c. Ratify the 1951 Convention on the Status of Refugees;
- d. Adopt a comprehensive and holistic approach to reform the justice chain.

2. Legislative level

At the legislative level, the recommendations are as follows:

- a. Amend national constitutions to prohibit explicitly discrimination on the basis of sex;
- b. Harmonize national legislation and legal orders to eliminate all contradictory elements;
- c. Amend discriminatory provisions of national legislations, particularly personal status codes, and promote equal legal capacity by removing all discrimination regarding legal capacity, whether in civil or religious courts;
- d. Enact new laws and amend existing legislation on the protection of women from family violence, promoting the accountability of perpetrators;
- e. Introduce provisions in labour codes to protect women at work by sanctioning harassment, both psychological and physical in nature;
- f. Amend labour codes to provide protection measures for women at the workplace in accordance with ILO convention;



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- g. Amend labour code provisions to extend protection to domestic workers and migrant domestic workers;
 - h. Amend clauses with regard to the provision of legal aid services to all types of cases (criminal and civil);
 - i. Introduce severe punishment of law-enforcement officials who interfere in legal proceedings by pressuring women to withdraw complaints.
- 3. Institutional level**
- At the institutional level, the recommendations are as follows:
- a. Increase the number of courts in order to ensure physical access to courts in urban and rural areas;
 - b. Increase women's representation in the judiciary and the law-enforcement sectors, and ensure an equal distribution of women and men in positions within these sectors;
 - c. Provide sufficient funds for legal aid services in the national budget;
 - d. Waive fees for legal proceedings related to personal status issues;
 - e. Develop gender-sensitized training programmes for the judiciary and for the police;
 - f. Develop programmes to legally empower women by providing simple and clear information regarding their rights and available channels of recourse should these rights be violated;
 - g. Engage in capacity-building activities to raise the legal awareness of women in general, and rural women in particular.

Endnotes

Chapter I

- ¹ Mohamadieh, 2012.
- ² See, for example, United Nations Development Programme (UNDP), 2005a.
- ³ See Brotman and others, 2008.
- ⁴ Moghadam and Roudi-Fahimi, 2005, p. 1.
- ⁵ The obligation to “protect, respect and fulfil” human rights is indicated in Human Rights Committee, General Comment No. 31; and Committee on Economic, Social and Cultural Rights, General Comment 3.
- ⁶ Somalia and the Sudan are not States parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). On 2 April 2014, the State of Palestine acceded to seven international human rights treaties, among them CEDAW. By this accession, the State of Palestine is bound by CEDAW as of that date. See United Nations High Commissioner for Human Rights, 2014.
- ⁷ The topic of reservations by Arab States to CEDAW has been exhaustively studied. Most Arab States have entered reservations to substantive Articles 2, 9(2), 15, and 16. These tackle, respectively, eliminating discrimination against women in all forms, granting nationality to children, equality before the law, and equality in marriage. Most Arab States indicate sharia as a basis for their reservations. For more details see Freeman, 2009.
- ⁸ UNDP, 2005a.
- ⁹ Sudarshan, 2013.
- ¹⁰ International Development Law Organization, 2013.
- ¹¹ The background papers consist of by Kandil, 2014; Oudeh, 2014; and Saghie and Saghie, 2014.
- ¹² See the general comments and recommendations of the Committee on Economic, Social, and Cultural Rights (available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11); the Human Rights Committee (available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11); and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) (available from <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>).
- ¹³ International Development Law Organization, 2013, p. 11.
- ¹⁴ Human Rights Committee, General Comment No. 28.
- ¹⁵ The principle of “equality of arms” is guaranteed

in article 14 of ICCPR. Equality of arms ensures all parties have access to the same procedural rights, and that individuals are granted all elements of a fair trial. It requires that each person has equal access to information on a case brought against them, as well as adequate time and facilities to prepare a defense, and that each person has access to, and is able to comment on, the evidence against them. Human Rights Committee, General Comment No. 32, p. 2.

¹⁶ Ibid.

¹⁷ The Human Rights Committee emphasizes that “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State”. Human Rights Committee, General Comment No. 31, p. 3.

¹⁸ Commission on Legal Empowerment of the Poor, 2008.

¹⁹ Sepulveda Carmona, 2013, p. 1.

²⁰ See Sudarshan, 2003; and Human Rights Watch, 2015, p. 37.

²¹ Human Rights Committee General Comment No. 31, para. 34, affirms that States parties must “further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate”.

²² See CEDAW Committee, General Recommendation No. 28.

²³ Ibid. Paragraph 32 indicates that such remedies “should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women”.

²⁴ CEDAW Committee, General Recommendation No. 26.

²⁵ Ibid., p. 12.

²⁶ United Nations General Assembly, 2005.

²⁷ The Arab Charter on Human Rights, which is available from www1.umn.edu/humanrts/instrtree/arabcharter.html.

²⁸ Ibid.

²⁹ The African Charter on Human and Peoples’ Rights, which is available from www.achpr.org/instruments/achpr/.

³⁰ UNDP, 2005b.

³¹ Milieu, 2011, p. 6.

³² Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW).

- ³³ Committee on Economic, Social and Cultural Rights, General Comment No. 16, p. 3.
- ³⁴ Human Rights Committee, General Comment No. 32, p. 1.
- ³⁵ UNDP, 2005b.
- ³⁶ Bahdi, 2007.
- ³⁷ Ibid., p. 3.
- ³⁸ Ibid.
- ³⁹ United Nations Development Fund for Women, 2010, p. 3.
- ⁴⁰ Human Rights Committee, General Comment No. 4.
- ⁴¹ United Nations Development Fund for Women, 2010, p. 3.

Chapter II

- ¹ Human Rights Committee, General Comment No. 32.
- ² Sepulveda Carmona, 2013, p. 4.
- ³ Davis and Turku, 2011, p. 1.
- ⁴ Ibid.
- ⁵ The United Nations Universal Declaration of Human Rights (1948), which is available from www.un.org/en/documents/udhr/ (accessed 14 February 2015).
- ⁶ Human Rights Committee, General Comment No. 32, pp. 2-3.
- ⁷ Ibid. The term equality of arms refers to the right of all parties to a proceeding to have access to “the same procedural rights” and thereby to be able to present their case under conditions that do not set them at a disadvantage.
- ⁸ Ibid.
- ⁹ Human Rights Committee, General Comment No. 28, p. 1.
- ¹⁰ See CEDAW Committee, General Recommendation No. 28.
- ¹¹ Byrnes, 2012, p. 83.
- ¹² CEDAW Committee, General Recommendation No. 28. Paragraph 34 notes that States parties must “further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate”.
- ¹³ Ibid. p. 7.
- ¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 9, para. 9.
- ¹⁵ Ibid.
- ¹⁶ See Ortoleva, 2011.
- ¹⁷ See the Committee on the Elimination of Racial Discrimination, General Recommendation No. 20;

- and the Committee on the Rights of Persons with Disabilities, General Comment No. 1.
- ¹⁸ CEDAW Committee, General Recommendation No. 28, para. 18.
- ¹⁹ Sepulveda Carmona, 2013, p. 1.
- ²⁰ Ibid., p. 4.
- ²¹ CEDAW Committee, General Recommendation No. 28, para. 9.
- ²² Ibid.
- ²³ Ibid., paras. 32-33.
- ²⁴ Ibid.
- ²⁵ *Erga omnes* is a legal term derived from the Latin for “towards all”.
- ²⁶ Human Rights Committee, General Comment No. 31, para. 2.
- ²⁷ Human Rights Committee, General Comment 32, pp. 2-3.
- ²⁸ Human Rights Committee, General Comment No. 31, para. 10.
- ²⁹ See Human Rights Committee, General Comment 32.
- ³⁰ CEDAW Committee, General recommendation No. 28.
- ³¹ Ibid., para. 34.
- ³² The Committee on Economic, Social and Cultural Rights, which defines these core elements in the context of economic, social and cultural rights, provides the basis for the analysis presented in this study.
- ³³ Committee on Economic, Social and Cultural Right, General Comment No. 13, para. 6.
- ³⁴ Ibid.
- ³⁵ Article 5 of the 1976 Optional Protocol to the International Covenant on Civil and Political Rights, which is available from www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx (accessed 14 February 2015).
- ³⁶ The Human Rights Committee emphasizes that “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State”. Human Rights Committee, General Comment No. 31, p. 3.
- ³⁷ The Arab Charter on Human Rights has been ratified by the following ESCWA member States: Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, the State of Palestine, Qatar, Saudi Arabia, Syrian Arab Republic, the United Arab Emirates and Yemen.
- ³⁸ The following ESCWA member States adhere to the African Charter on Human and Peoples’ Rights: Egypt, Libya, the Sudan and Tunisia.
- ³⁹ The Arab Charter on Human Rights, which is available from <http://www1.umn.edu/humanrts/instree/loas2005.html> (accessed 14 February 2015).
- ⁴⁰ Ibid.
- ⁴¹ Ibid.
- ⁴² Ibid.
- ⁴³ Ibid.
- ⁴⁴ Ibid.
- ⁴⁵ Ibid., article 22.
- ⁴⁶ The African Charter on Human and Peoples’ Rights, which is available from www.achpr.org/instruments/achpr/ (accessed 14 February 2015).
- ⁴⁷ Ibid.
- ⁴⁸ Ibid.
- ⁴⁹ Ibid.
- ⁵⁰ Ibid.
- ⁵¹ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which is available from www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf (accessed 14 February 2015).
- ⁵² United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), 2012, p. 83.
- ⁵³ See the jurisprudence of the International Criminal Tribunal of Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the International Criminal Court.
- ⁵⁴ CEDAW Committee, General Recommendation No. 30, para. 74.
- ⁵⁵ Human Rights Committee, General Comment 32, p. 3.
- ⁵⁶ “Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfill a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion)”. Human Rights Committee, General Comment No. 29.
- ⁵⁷ United Nations General Assembly, 2005.
- ⁵⁸ United Nations Security Council, 2000.
- ⁵⁹ Ibid., p. 3, para. 11.
- ⁶⁰ United Nations General Assembly, 2005.
- ⁶¹ CEDAW Committee, General Recommendation No. 30, p. 22.
- ⁶² Ibid., p. 20.
- ⁶³ Ibid., p. 22.
- ⁶⁴ Algeria, Egypt, Morocco, the Sudan, Tunisia and Yemen have ratified the Convention Relating to the Status of Refugees.
- ⁶⁵ *Cautio judicatum solvi* refers to payment of security for legal costs.
- ⁶⁶ See Akram, 2013; UN Women, 2013; and Shafi, 2014.
- of CEDAW, provided that it does not conflict with sharia. Oman and Saudi Arabia placed a general reservation indicating that they would not comply with those provisions of the Convention that were in contradiction with sharia. The declarations and reservations are available from https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en (accessed 14 February 2015).
- ² Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999) establishes the competence of the CEDAW Committee “to receive and consider communications submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent”. See the Optional Protocol, which is available from: www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx (accessed 14 February 2015).
- ³ Ibid.
- ⁴ CEDAW Committee, General Recommendation No. 28, pp. 7-8.
- ⁵ Raday, 2012, p. 1.
- ⁶ Ibid.
- ⁷ Constitution of the Kingdom of Bahrain, 2002, Article 18, which is available from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=BHR&p_classification=01.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (accessed 14 February 2015).
- ⁸ The Constitution of Iraq, 2005, Article 14, which is available from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IRQ&p_classification=01.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (accessed 14 February 2015).
- ⁹ The Constitution of the Hashemite Kingdom of Jordan, 1952, Article 6, which is available from www.kinghussein.gov.jo/constitution_jo.html (accessed 14 February 2015).
- ¹⁰ The Palestinian Basic Law, 2003, which is available from www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law (accessed 14 February 2015).
- ¹¹ The Sudan currently operates under the Interim National Constitution, which needs to be replaced following the secession of South Sudan.
- ¹² The Interim National Constitution of the Republic of the Sudan, Article 15 (2), which is available from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=SDN&p_classification=01.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (accessed 14 February 2015).
- ¹³ Constitution of the Arab Republic of Egypt, 2014, which is available from www.sis.gov.eg/Newvvr/Dustor-en001.pdf (accessed 14 February 2015).
- ¹⁴ Libya’s Constitution, 2011, which is available

Chapter III

- ¹ Reservations were placed by the following ESCWA member States: Bahrain, Iraq, Libya, Qatar, Syrian Arab Republic and the United Arab Emirates. Morocco made a declaration expressing its commitment to apply article 2

- from www.constituteproject.org/constitution/Libya_2011.pdf (accessed 14 February 2015).
- ¹⁵ The Women National Committee in Yemen has been active in mainstreaming gender perspectives in the Constitution's proposed provisions.
 - ¹⁶ The Constitution of the Republic of Yemen, 2001, which is available from www.refworld.org/docid/3fc4c1e94.html (accessed 14 February 2015).
 - ¹⁷ See Institute for women's studies in the Arab World of the Lebanese American University, 2005-2006.
 - ¹⁸ The Constitution of the United Arab Emirates, Article 25, which is available from <http://uaecabinet.ae/en/UAEGovernment/Pages/UAE-Constitution.aspx#.U-Jqub94www> (accessed 14 February 2015).
 - ¹⁹ The Constitution of the State of Kuwait, Article 7, which is available from www.kuwaitconstitution.org/kuwaitconstitutionenglish.html (accessed 14 February 2015).
 - ²⁰ The Basic Law of Oman, 1996, Article 12, which is available from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=OMN&p_classification=01.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (accessed 14 February 2015).
 - ²¹ Constitution of Qatar, which is available from <http://portal.www.gov.qa/wps/wcm/connect/5a5512804665e3afa54fb5fd2b4ab27a/Constitution+of+Qatar+EN.pdf?MOD=AJPERES> (accessed 14 February 2015).
 - ²² The Basic Law of Saudi Arabia, Article 36, which is available from www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx (accessed 14 February 2015).
 - ²³ United Nations Economic and Social Commission for Western Asia (ESCWA), 2013a, p. 19.
 - ²⁴ Ibid., p. 20.
 - ²⁵ Guenena and Wassef, 1999, p. 20.
 - ²⁶ Welchman, 2007, p. 93.
 - ²⁷ Würth, 2004, p. 18.
 - ²⁸ The discussion surrounding the legality of the "crime of adultery", as manifested in international law, is beyond the scope of this study.
 - ²⁹ Article 562 of the penal code of Lebanon, and articles 98 and 340 of the penal code of Jordan.
 - ³⁰ Article 351 Bahrain penal code, which is available from www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf
 - ³¹ Hijab, 2013, p. 14.
 - ³² Addati, Cassirer, and Gilchrist, 2014, p. 10.
 - ³³ The labour code in Morocco grants three days of paternity leave.
 - ³⁴ Hijab, 2013, p. 14.
 - ³⁵ Jordan, Social Security Law No.1 of 2014, which is available in Arabic from www.ssc.gov.jo/Arabic/SocialSecurityLaw/Documents/temp_law2014.pdf (accessed 14 February 2015).
 - ³⁶ Decisions of the Cassation Court: Decision No. 14/2000; Decision No. 18/2000; and Decision No. 37/2001. Saghie and Saghie, 2014.
 - ³⁷ League of Arab States, ESCWA and UN Women, 2014.
 - ³⁸ ESCWA, 2012a.
 - ³⁹ See Briggs, 2014; and Human Rights Watch, 2013.
 - ⁴⁰ Jordan, Law No. 48 of 2008 amending the Labour Law, which is available in Arabic from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=JOR&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.
 - ⁴¹ Bahrain, Law No. 36 of 2012, promulgating the Labour Law in the private sector, which is available from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=BHR&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (accessed 14 February 2015).
 - ⁴² ESCWA, 2012a, p. 4; and the World Bank, 2009, p. 6.
 - ⁴³ International Labour Organization, 2014, p. 17.
 - ⁴⁴ Raday, 2012, p. 4.
 - ⁴⁵ It has been argued that while "the law criminalizes a spouse's use of threats or violence to claim a 'marital right to intercourse'", it does not "criminalize the non-consensual violation of physical integrity itself". Human Rights Watch, 2014a.
 - ⁴⁶ Mokheiber, 2014.
 - ⁴⁷ International Federation for Human Right, and others, 2014, p. 35.
 - ⁴⁸ Saghie and Saghie, 2014.
 - ⁴⁹ Oudeh, 2014.
 - ⁵⁰ Ibid.
 - ⁵¹ Kelly, 2010, p. 4.
 - ⁵² Ibid.
 - ⁵³ The study addresses other categories of non-citizens and the legal protection available to female trafficked persons and migrant workers in previous sections.
 - ⁵⁴ United Nations High Commissioner for Refugees, 2014, p. 11.
 - ⁵⁵ See, generally, International Labour Organization, 2013; and Al Karama, 2013.
 - ⁵⁶ International Labour Organization, 2013, pp. 8-9.
 - ⁵⁷ Harroff-Tavel and Nasri, 2013.
 - ⁵⁸ Ibid., p. 29.
 - ⁵⁹ ESCWA, 2013c, p. 20.
 - ⁶⁰ Ibid., p. 22.
 - ⁶¹ Ibid.
 - ⁶² Article 8 of Law No.293 of 2014 stipulates that a judicial officer who exercises pressure to force a person who has been subjected to violence to withdraw his or her complaint will face one month to three-year imprisonment, and will pay a fine ranging from Lebanese pounds 20,000 (\$14) to 200,000 (\$140).
 - ⁶³ Saghie, 2014a.
 - ⁶⁴ UN Women, 2014, p. 24.
 - ⁶⁵ The World Bank, 2013, p. 78.
 - ⁶⁶ Kandil, 2014.
 - ⁶⁷ Bahrain, Labour Law No. 36 of 2012, which is available from www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2045#.VCvw2fmSzTp.
 - ⁶⁸ Saghie and Saghie, 2014.
 - ⁶⁹ See ESCWA, 2012b.
 - ⁷⁰ Detailed examples on legal aid and counselling services in the region are provided in chapter V.
 - ⁷¹ Qafisheh, 2012, p. 180.
 - ⁷² Ibid., p. 179.
 - ⁷³ Findings of an Oxfam project entitled "Women's access to justice in the Middle East and North Africa Region" implemented in Iraq, Jordan, Lebanon and Yemen in 2014.
 - ⁷⁴ Ibid.
 - ⁷⁵ Saghie and Saghie, 2014.
 - ⁷⁶ The High Judicial Council, which was established in accordance with article 98 of the amended Constitution in 2011, comprises 11 judges, namely: the President of the Court of Cassation, the President of the Supreme Court, the Attorney General to the Court of Cassation, the two most senior judges of the Court of Cassation, the three presidents of the Courts of Appeals, the most senior inspector of the ordinary courts, the Secretary General of the Ministry of Justice, and the President of the Court of First Instance of Amman. Accordingly, none of the members of the Council is elected, and certain members are directly appointed by the executive branch. The President of the Court of Cassation, who is also the President of the Judicial Council, and the President of the Supreme Court, are both appointed and dismissed by royal decree. Furthermore, the Secretary General of the Ministry of Justice is appointed by the Judicial Council upon the recommendation of the Minister of Justice.
 - ⁷⁷ The High Judicial Council is composed of the following 10 members: three ex-officio members, two judges elected for three years by all the presidents and associate judges of the Court of Cassation, and five members appointed by decree upon the proposal of the Minister of Justice. The Higher Judiciary Council and the Minister of Justice thus share authority in recruiting, promoting and transferring judges.
 - ⁷⁸ In Palestine, the High Judicial Council consists of nine members, none of whom are elected. The judicial authority is split into two sections: one in the West Bank, led by the High Judicial Council; and the other in Gaza, led by the High Council of Justice.
 - ⁷⁹ The Supreme Judicial Council consists of the

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- ¹ Cusack, 2013.
- ² UN Women, 2012, p. 61.
- ³ International Bar Association Human Rights Institute, and the Open Society Foundations Arab Regional Office, 2014, p. 30.
- ⁴ Woodrow Wilson International Center for Scholars, 2013, p. 12.
- ⁵ UNDP, 2012.
- ⁶ Kirdar, 2010.
- ⁷ Associated Press, 2009.
- ⁸ Saghie and Saghie, 2014.
- ⁹ CEDAW Committee, 2006, para. 388.
- ¹⁰ Office of the High Commissioner for Human Rights, 2012, p. 10.
- ¹¹ United Nations Human Rights Council, 2012, para.

President of the Republic (represented by the Justice Minister), acting as Chairman; the President of the Court of Cassation; the two most senior deputies of the President of the Court of Cassation; the Deputy Minister of the Ministry of Justice; the Public Prosecutor; and the Director of the Department of Judicial Inspection. None of these are elected from among the judges.

³⁰ Saghie and Saghie, 2014.

³¹ See Human Rights Watch, 2014b; and Hamill, 2011, p. 42.

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¹ Constitution of the Arab Republic of Egypt, 2014, which is available from www.sis.gov.eg/Newvvr/Dustor-en001.pdf (accessed 14 February 2015).

² Constitution of Tunisia, 2014.

³ The Moroccan Family Code.

⁴ ESCWA, 2013b, p. 22.

⁵ See International Development Law Organization, 2013.

⁶ UNDP, 2004, p. 10.

⁷ The National Council for Women (NCW), which is available from www.ncwegypt.com/index.php/en/ (accessed 14 February 2015).

⁸ Detailed information on the Ombudsman Office programme is available from www.ncwegypt.com/index.php/en/services/ombeng (accessed 14 February 2015).

⁹ Egypt, the National Council for Women, 2013, p. 10.

¹⁰ Detailed information on the Women's Legal Rights Project is available from www.ncwegypt.com/index.php/en/programmes/legal-rights-of-women/19-egyptian-women-s-legal-rights-project-in-electronic-format (accessed 14 February 2015).

¹¹ Article 78 of the Criminal Procedures Law.

¹² Article 426 of the Civil Procedures Law.

¹³ Saghie and Saghie, 2014.

¹⁴ Sibai, 2013.

¹⁵ Swanson, 2009.

¹⁶ Article 308 of the Criminal Procedures Law.

¹⁷ This includes the Palestinian Bar Association, human rights organizations and academic institutions.

¹⁸ Law Decree No. 29/2013.

¹⁹ UN Women, 2012, p. 50.

²⁰ Kelly, 2010. According to the Supreme Council for Women in Bahrain, in the judiciary branch, "the percentage of women judges out of the total number of judges in Bahrain has gradually increased over the years during 2007-2010 from 0.81% to 4.72%". Bahrain, Supreme Council for Women, 2013.

²¹ Morocco, Higher Planning Commission, 2009.

²² The Moroccan Family Code (Moudawana) of 2004, which is available from www.hrea.org/moudawana.html (accessed 14 February 2015).

²³ Byrne, Mirescu and Müller, 2007, p. 10.

²⁴ Ibid., p. 6.

²⁵ A number of NGOs have issued reports on their dissatisfaction with the protection provided under Law No. 293 of 2014 on the Protection of Women and Family Members from Domestic Violence. See, for example, see critics of Baydoun, 2011; and Saghie, 2014b.

²⁶ Saghie, 2014c.

²⁷ A number of protective judicial decisions were advanced on the basis of the new law. Four judges have adopted gender-sensitive approach in their rulings. Wansa, 2014.

²⁸ The World Bank, 2013.

²⁹ Euromed Gender Equality Programme, n.d.

³⁰ UNDP, 2004, p. 4.

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¹ Ibid., p. 3.

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Access to justice is not only a right in and of itself, applicable in all contexts and for all people; it is also a requisite for the achievement of equality and human rights. The present study examines women's right of access to justice in the Arab region. Focusing on women in the 17 countries covered by the ESCWA mandate – namely Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, the State of Palestine, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen – the study examines the ability of women in these countries, both citizens and non-citizens, to access judicial processes and gain just remedy for violations of their rights.

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