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## Policy Brief

# Women in the Judiciary

A Stepping Stone towards Gender Justice

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

**Policy Brief**  
**Women in the Judiciary: A Stepping Stone**  
**towards Gender Justice**



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## Executive summary

The limited presence of women in the judicial branches of Arab States is an obstacle to the development of representative institutions and the achievement of gender justice. In recent years, Arab States have taken constructive steps to respond to this challenge, such as removing barriers to women's accession to and progression through the ranks of the judiciary and appointing an increasing number of female judges and public prosecutors to the bench – for the first time in some States. But despite these efforts, on the whole, women remain starkly underrepresented in the judicial branches of Arab States.

This policy brief explores the issue by examining how women's presence in the judiciary can contribute to achieving gender justice and recommends comprehensive policy actions to enhance their presence in judicial institutions, targeting an audience of policymakers, international bodies and civil society.

## Introduction

Equal participation, inclusive institutions and gender justice constitute key pillars of the 2030 Agenda, as captured in Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”) and Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”). All Arab States have pledged to achieve these goals.

On the regional level, Arab States have affirmed their commitment to gender justice by adopting the Muscat Declaration (“Towards the Achievement of Gender Justice in the Arab region”).<sup>1</sup> Through the Declaration, Arab States commit themselves to achieving gender justice by eliminating all forms of discrimination between men and women and supporting effective national accountability mechanisms, operationalizing their obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other instruments.<sup>2</sup>

In line with these commitments, all Arab States have taken visible steps to remove barriers to women’s presence in their judiciary systems. Such efforts, combined with the rising number of women entering the legal profession, have led to a rise in the number of female judges, public prosecutors and women in other key roles in the judiciary over the last decade. Nevertheless, evidence collected by the Economic and Social Commission for Western Asia (ESCWA) suggests that the distribution of the rising number of female judges remains uneven at both the regional and institutional level.

This policy brief outlines key elements of the normative framework regarding women’s presence in the judiciary, before going on to review global and regional evidence demonstrating why their presence matters. The brief then presents an overview of the status of women in the judiciary in the Arab region and offers policy actions to enable Arab States to meet their international commitments regarding the presence and participation of women in judicial institutions.

## I. NORMATIVE FRAMEWORK: WHY WOMEN IN THE JUDICIARY MATTER

### A. WOMEN’S RIGHT TO EQUAL PARTICIPATION

Women’s participation in public life is a fundamental component of gender justice. Provisions relating to women’s equal participation feature in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Political Rights of Women and the Vienna Declaration and Programme of Action (VDPA), among other instruments, as well as in United Nations General Assembly resolutions such as resolution 66/130 on women and political participation.

Article 7 of CEDAW binds States parties to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country”.<sup>3</sup> Article 7 also obliges States parties to ensure to women the right to “participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government” on equal terms with men. Article 7, like all obligations in CEDAW, applies to all branches of government, including the judiciary, as confirmed by the Committee in its General recommendation No. 23 on political and public life. The Committee further recommends in General recommendation No. 33 on access to justice that States parties “confront and

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<sup>1</sup> The Declaration defines gender justice as both a substantive outcome (a society in which women enjoy equality with men) and a formal process (the accountability mechanisms that limit discriminatory measures). For further discussion see <https://www.unescwa.org/news/muscat-declaration-towards-achievement-gender-justice-arab-region> and ESCWA, *The State of Gender Justice in the Arab Region* (Beirut, 2017). Available from <https://www.unescwa.org/publications/state-gender-justice-arab-region>.

<sup>2</sup> All Arab States, except Somalia and the Sudan, have ratified CEDAW.

<sup>3</sup> General Assembly resolution 34/180.

remove barriers to women’s participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers in justice related services”.<sup>4</sup>

This exceptional emphasis reflects the recognition of women’s participation as both a fundamental right and as an instrumental tool in guaranteeing other rights. Again, the CEDAW Committee emphasizes that women’s equal participation is a crucial step toward the realization of their rights in general, noting that “where there is full and equal participation of women in public life and decision-making, the implementation of their rights and compliance with [CEDAW] improves”.<sup>5</sup> The Beijing Platform for Action, adopted by all Arab States, further urges Governments to set “specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions” including the judiciary.<sup>6</sup>

Women’s participation in public institutions is recognized as a key component of sustainable development in the 2030 Agenda. The fifth target of Sustainable Development Goal 5 further commits States to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life”, while the seventh target of Sustainable Development Goal 16 binds States to “ensure responsive, inclusive, participatory and representative decision-making at all levels”, including the judiciary.<sup>7</sup>

Despite recent advances and a considerable degree of regional disparity, Arab States continue to trail behind global averages relating to women’s presence in public life, including in parliament, government, the judiciary, the civil service and local governance.<sup>8</sup> As regularly highlighted by observers, treaty bodies and women’s rights advocates, lackluster rates of women’s participation in the public sphere remain a prominent obstacle to the elimination of multiple forms of discrimination, the achievement of gender equality and women’s empowerment in Arab States.

## B. THE JUDICIARY AND GENDER JUSTICE

Strong, independent and inclusive judicial institutions are necessary for upholding the rule of law and eliminating all forms of discrimination, as affirmed in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law, adopted in 2012.<sup>9</sup> Article 2 of CEDAW recognizes the central role of the judiciary in eliminating discrimination and obliges States parties to “ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”<sup>10</sup>

In its General Recommendation No. 33 on women’s access to justice, the CEDAW Committee clarified the central role, and obligations, of courts in addressing all forms of discrimination and protecting women’s

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<sup>4</sup> CEDAW/C/GC/33. The Committee recommends that States parties “take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities”.

<sup>5</sup> CEDAW General recommendation No. 23. Available from <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>.

<sup>6</sup> United Nations Fourth World Conference on Women, Platform for Action, Strategic objective G.1., para. 190a. Available from <http://www.un.org/womenwatch/daw/beijing/platform/decision.htm>.

<sup>7</sup> <https://sustainabledevelopment.un.org/sdg5> and <https://sustainabledevelopment.un.org/sdg16>.

<sup>8</sup> ESCWA, *Women’s Political Representation in the Arab Region* (Beirut, 2017).

<sup>9</sup> General Assembly resolution 67/1.

<sup>10</sup> [A/RES/34/180](#).

human rights.<sup>11</sup> It highlighted that courts and other formal and informal judicial mechanisms have the obligation to protect women's rights, including by upholding women's rights that stem from international treaties, as well as general principles of equality.<sup>12</sup> Therefore, any woman who has seen her rights breached should be able to gain remedy and justice through independent and impartial judicial mechanisms.

As contemporary patterns of women's poverty, lack of economic opportunities, exclusion from the public sphere, increased exposure to violence and unequal rights are all rooted in gender-based discrimination, the importance of the judiciary as an accountability and remedial mechanism cannot be overstated.<sup>13</sup> The former Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, notes that achieving gender equality and empowering women "requires an independent judiciary able to exercise its role to uphold the rule of law and make all persons, institutions and entities, public and private, accountable to gender-sensitive laws".<sup>14</sup>

### C. ACCESS TO JUSTICE

Judicial systems constitute key accountability mechanisms for the elimination of all forms of discrimination and the protection of women's rights. Nevertheless, this potential can only be fulfilled if women are able to access such systems and if they can do so on a basis of equality with men. The principle of equal access to justice is well established in international frameworks. Article 14 of ICCPR provides that "all persons shall be equal before the courts and tribunals" and "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law",<sup>15</sup> while article 15 of CEDAW requires States parties to "accord to women equality with men before the law".<sup>16</sup>

The Declaration of the High-level Meeting of the General Assembly on the Rule of Law reaffirms that ensuring equal access to justice is an integral component of commitments to the rule of law and women's empowerment. The CEDAW Committee's General Recommendation No. 33 similarly stresses States parties' obligation to improve and guarantee women's equal access to justice. The Committee notes that "effective access to justice optimizes the emancipatory and transformative potential of law".<sup>17</sup> Former Special Rapporteur Knaul further underlines the pivotal importance of access to justice in the elimination of all forms of discrimination.

The right to equal access to justice applies to women in all situations, whether they are defendants in criminal trials or litigants in civil procedures. It requires States to ensure that women can access independent and impartial courts and that judges base their decisions on relevant facts, evidence and the law without discrimination or prejudice. However, in practice many factors can impede women from realizing this right.

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<sup>11</sup> CEDAW/C/GC/33. See also General recommendation No. 28 on the core obligations of States parties, in which the CEDAW Committee stresses that "courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under the Convention." When it is not possible to do so, "courts should draw any inconsistency between national law, including national religious and customary laws, and the State party's obligations under the Convention to the attention of the appropriate authorities." The General recommendation also emphasizes that "women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention." The emphasis reflects the general principle that domestic laws may never be used as justification for failures by State parties to carry out their international obligations under CEDAW. Available from [https://digitallibrary.un.org/record/711350/files/CEDAW\\_C\\_GC\\_28-EN.pdf](https://digitallibrary.un.org/record/711350/files/CEDAW_C_GC_28-EN.pdf).

<sup>12</sup> For further discussion on this subject, see also ESCWA, "Institutional mechanisms for gender accountability in the Arab region", Technical Paper, No. 3 (Beirut, 2017).

<sup>13</sup> For an extensive discussion see Rea Abada Chiongson and others, *Role of Law and Justice in Achieving Gender Equality* (Washington, D.C., World Bank, 2012).

<sup>14</sup> A/HRC/17/30.

<sup>15</sup> <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

<sup>16</sup> A/RES/34/180.

<sup>17</sup> CEDAW/C/GC/33.

In view of the CEDAW Committee, these obstacles amount to a “structural context of discrimination and inequality” and constitute “persistent violations of women’s human rights”.<sup>18</sup>

Such obstacles include stereotypes, which can distort perceptions and result in decisions based on preconceived beliefs and myths rather than relevant facts. For example, judges may adopt rigid standards about appropriate behaviour for women and penalize those who do not conform to these stereotypes.<sup>19</sup> Legal procedures can also contain discriminatory aspects, such as provisions that exclude or accord inferior status to the testimony of women, as parties or witnesses, or that require them to meet a higher burden of proof than men.<sup>20</sup>

In addition, the judicial system might not be well equipped to handle all cases in a gender-sensitive manner. Such sensitivity is particularly critical in issues relating to sexual and gender-based violence, for example if women are required to testify in public or to face their abusers in courts. This may discourage women from using judicial mechanisms that might expose them to uncomfortable experiences in court and social stigma, especially in conservative contexts. Finally, factors such as physical distance, lack of education and information or inability to afford legal procedures also limit women’s ability to access judicial mechanisms.

The obligation to ensure equal access to justice requires States parties to address all of the above obstacles, necessitating multiple and coordinated interventions. Among those, the CEDAW Committee underlines adherence to international standards for justiciability, availability, accessibility, good quality, provision of remedies and accountability of justice systems, as well as capacity-building to eliminate stereotyping and gender bias.<sup>21</sup>

#### D. WHAT DIFFERENCE DO WOMEN MAKE?

Inclusive public institutions tend to perform better in the delivery of services and public goods.<sup>22</sup> A more diverse composition enables public institutions to respond to the specific needs of various users and recipients. Organizational diversity has been linked to increased innovation, diminished corruption and closer adherence to good governance standards.<sup>23</sup> Public institutions in which all components of society are equitably represented are generally perceived as more legitimate, which in turn enhances their sustainability, notably in post-conflict settings.<sup>24</sup> Several studies have also highlighted that increases in women’s presence in public

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<sup>18</sup> Ibid.

<sup>19</sup> See also Simone Cusack, “Eliminating judicial stereotyping – Equal access for justice to women in gender-based violence cases”, Final paper submitted to the United Nations Office of the High Commissioner for Human Rights, 9 June 2014. Available from <https://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping.doc>.

<sup>20</sup> ESCWA, *The State of Gender Justice in the Arab Region* (Beirut, 2017).

<sup>21</sup> Although these recommendations fall outside of the scope of the present document, it is understood that they should be implemented as part of a holistic approach to develop a gender-sensitive judiciary that can function as an effective accountability mechanism. See CEDAW/C/GC/33 for a list of recommendations, as well as UN Women and others, *A Practitioner’s Toolkit on Women’s Access to Justice Programming* (2018). Available from <http://www.unwomen.org/en/digital-library/publications/2018/5/a-practitioners-toolkit-on-womens-access-to-justice-programming#view>.

<sup>22</sup> For a review of global evidence, see OECD, *Women, Government and Policy Making in OECD Countries* (Paris, 2014).

<sup>23</sup> See Vivian Hunt, Dennis Layton and Sara Prince, “Why Diversity Matters”, January 2015. Available from <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>; George Desvaux and others, *Women Matter: Time to Accelerate - Ten Years of insights on Gender Diversity* (McKinsey & Company, 2017); UNDP, *Global Report on Gender Equality in Public Administration* (New York, 2014); Transparency International, “Gender, equality and corruption: what are the linkages?”, Policy Brief, No. 1 (Berlin, 2014); Chandan Kumar Jha and Sudipta Sarangi, “Women and corruption: what positions must they hold to make a difference?”, *Journal of Economic Behavior & Organization* (New York, Elsevier, 2018); Julija Michailova and Inna Melnykovska, “Gender, corruption and sustainable growth in transition countries”, MPRA Paper, No. 17074 (Kiel, 2009); Mattias Agerberg, “Perspectives on gender and corruption”, The Quality of Governance Working Paper Series (Gothenberg, Quality of Government Institute, 2014); David Dollar, Raymond Fisman and Robera Gatti, “Are women really the ‘fairer’ sex? Corruption and women in government”, Gender and Development Working Paper Series, No. 4 (Washington, D.C., World Bank, 1999).

<sup>24</sup> See ESCWA, *Arab Governance Report No. 3: Institutional Development in Post-Conflict Settings - Towards Peaceful, Inclusive Societies and Accountable Institutions* (forthcoming).

institutions (when such increases are quantitatively significant and qualitatively meaningful) result in more gender-sensitive policies.<sup>25</sup>

Diversity is beneficial to all public institutions, but it is particularly important in the judiciary given its function as a nascent accountability mechanism. Accordingly, the limited presence of women in the judiciary is a common issue raised by the CEDAW Committee during its reviews of the periodic reports of Arab States.<sup>26</sup> The Committee has consistently called on individual Arab States to take more concrete steps toward increasing women's presence in the judiciary, including removing legal and sociocultural barriers to their participation and appointing women judges to all positions, including at the senior level.

Key international instruments recognize that the appointment of women to the bench contributes to the development of strong and independent judicial institutions. Article 10 of the UN Basic Principles on the Independence of the Judiciary for example provides that "there shall be no discrimination against a person" on any ground, including their sex, in the selection of judges.<sup>27</sup> Ms. Knaul, in her role of Special Rapporteur, further emphasizes that States must ensure adequate representation of women in order to "create the conditions necessary for the realization of gender equality within the judiciary" and for the judiciary to "advance the goal of gender equality".<sup>28</sup>

Although there is no decisive evidence that women judge differently than men, it is commonly accepted that women's presence in the judiciary makes a difference.<sup>29</sup> The appointment of women judges ensures that women's life experiences are reflected in the administration of justice. In turn, this enables the judiciary as a whole to respond to diverse social and individual contexts and experiences with fitting sensitivity.<sup>30</sup>

Research at the global level shows that a higher presence of women in the judiciary improves the quality of judicial decision-making both in general and for cases specifically affecting women.<sup>31</sup> Increasing the number of female judges creates a more conducive environment in court for women and even influences the resolution of sexual violence cases.<sup>32</sup> Reflecting the diversity of societies is also essential to building trust in the judicial system. As noted by Ms. Knaul, "women resorting to courts may feel that the judiciary is closer to them when it is composed of fair and impartial judges who represent the diversity of society".<sup>33</sup>

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<sup>25</sup> For a review of evidence, see UNDP, *Global Report on Gender Equality in Public Administration* (New York, 2014). In its General recommendation No. 23, the CEDAW Committee notes that when women's participation hits a "critical mass" (generally estimated at 30-35 per cent), there is a "real impact on political style and the content of decisions, and political life is revitalized".

<sup>26</sup> See for example the list of issues and questions and concluding observations of the CEDAW Committee for Bahrain (2014), Egypt (2001, 2010), Iraq (2014), Jordan (2017), Kuwait (2011, 2017), Oman (2011, 2017), Qatar (2014), Saudi Arabia (2018) and United Arab Emirates (2010). Available from [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18).

<sup>27</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 and 40/146. Available from <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>.

<sup>28</sup> A/HRC/17/30.

<sup>29</sup> For a complete review of theoretical and evidence on the impact of women's presence in the judiciary, see: Sally Jane Kenney, "Gender & justice: why women in the judiciary really matter", in *Perspectives on Gender, ed. 1* (New York, Routledge, 2013); Ulrike Schultz and Gisela Shaw, eds., *Gender and Judging* (London, Hart Publishing, 2013); Rosemary Hunter, "More than just a different face? Judicial diversity and decision-making", *Current Legal Problems*, vol. 68, Issue 1 (Oxford, Oxford University Press, 2015).

<sup>30</sup> A/HRC/17/30.

<sup>31</sup> International Commission of Jurists, "Women and the judiciary", ICJ Geneva Forum Series, No. 1 (2013). Available from <https://www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf>.

<sup>32</sup> UN Women, *Progress of the World's Women 2011-2012: In Pursuit of Justice* (New York, 2012), p. 61.

<sup>33</sup> A/HRC/17/30.

The appointment of women to the bench contributes to enhancing women’s access to justice. Their lived experiences as women may enable female judges to gain awareness of issues such as gender stereotyping and discriminatory procedural and evidentiary requirements and practices. This awareness may enable them to recognize and resist the influence of these factors on judicial outcomes.<sup>34</sup> At the institutional level, women in the legal system have been noted to act as agents of change in favor of developing a more gender-sensitive judiciary.<sup>35</sup> Women in judiciary institutions are well placed to identify and challenge problematic stereotypes, attitudes and behaviors and push for reform to negative institutional policies and practices. For example, associations of female judges in Jordan, Tunisia and Morocco have actively advocated for, organized and supported initiatives to make their respective judicial systems more gender-sensitive.

At the regional level, the presence of women in judicial institutions is generally too recent or too little to allow for a comprehensive study of its impact. Nevertheless, in Arab States in which female judges are comparatively well represented the impact of their presence is noticeable and overwhelmingly regarded as positive according to an upcoming ESCWA study.<sup>36</sup> Participants in the study noted in interviews and focus groups in some instances the presence of women has led to a more cordial atmosphere inside the courtroom and a more gender-sensitive handling of cases. For example, respondents suggested that female judges might have a higher sensitivity to the judiciary’s role in protecting women from violence.<sup>37</sup> Some respondents noted that in more conservative contexts, the presence of female judges encourages women to come forward and make use of judicial mechanisms when their rights have been breached. In addition, several respondents reported that in their experience female judges were less susceptible to corruption and political pressure.<sup>38</sup>

## II. WOMEN IN THE JUDICIARY IN ARAB STATES

### A. REGIONAL OUTLOOK

Women have been present in the judiciaries of all Arab States since 2016, the year the Kingdom of Saudi Arabia appointed a female commercial arbitrator for the first time. Substantial disparities are nevertheless notable between the Arab States. Some States, such as Algeria, Lebanon and Tunisia appear to be on track to achieve gender parity in the judiciary within a few years. Others, such as Jordan and Bahrain, have also achieved notable progress in this regard but are still far from gender parity. Elsewhere, however, women remain markedly underrepresented. In Kuwait and Oman, for example, no woman has yet served as a judge, although they have acted as public prosecutors. Table 1 illustrates the regional disparities.

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<sup>34</sup> Although there is no monolithic “female life experience,” Hunter notes that “all judges bring their life experience to the process of judging, and women’s life experiences—in particular, their experiences of pregnancy, child-birth, child-rearing, and juggling work and family responsibilities, as well as often of sexism and discrimination—are very different from men’s.” Therefore, the inclusion of women’s experiences makes law “more representative of the variety of human experience”. Hunter, “More than Just a Different Face? Judicial Diversity and Decision-making”, p. 6.

<sup>35</sup> UN Women, *Progress of the World’s Women 2011-2012*, p. 118.

<sup>36</sup> Evidence was gathered in the framework of an upcoming ESCWA study in five Arab States that have a relatively sizeable presence of women in the judiciary, namely Lebanon, Tunisia, Jordan, State of Palestine and the Sudan. Data were collected through a series of interviews and focus groups comprising male and female judges, prosecutors, lawyers and court officials in each of these States. The full findings will be made available in ESCWA, *Women in the Judiciary: Removing Barriers, Increasing Numbers* (forthcoming).

<sup>37</sup> For example, one female judge noted that she was more likely to use the full extent of legal provisions to protect and extract a woman from an abusive relationship compared to male colleagues, who would instead seek to reconcile the woman and her partner.

<sup>38</sup> Some of the participants explained this by the fact that women were less likely to conduct behind-closed-doors meetings with men as it is less socially acceptable in many places in the Arab region.

**Table 1. Women in the judiciary in Arab States<sup>39</sup>**

Country	Percentage of female judges	Year	Note
Algeria	42%	2017	
Bahrain	9%	2016	
Comoros	8%	2005	
Djibouti	38.6%	2009	
Egypt	<1%	2018	
Iraq	7%	2018	
Jordan	22%	2018	
Kuwait	0%	2017	No female judges, but there are 22 female deputy prosecutors.
Lebanon	49.3%	2018	
Libya	14%	Unknown	
Mauritania	1%	2018	
Morocco	23.5%	2018	
Oman	0%	2017	No female judges, but women account for 20% of public prosecutors.
State of Palestine	17.8%	2018	
Qatar	1%	2011	
Saudi Arabia	<1%	2018	There is one female judge (arbitrator in commercial court).
Somalia	0%	2018	No female judges, but there are 6 female prosecutors.
Sudan	12.6%	2018	
Syria	17.5%	2018	
Tunisia	43.1%	2018	
United Arab Emirates	<1%	2015	Only 4 female judges, but there are also female public prosecutors.
Yemen	1.7%	2004	

### Box 1. Women in the legal profession

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

<sup>a</sup> Ibtissem Jamel, “Women Make Gains as Judges in Tunisia”, Al-Fanar Media, 18 January 2018. Available from <https://www.al-fanarmedia.org/2018/01/women-make-gains-judges-tunisia>.

<sup>b</sup> Full statistical information available from <http://www.mohe.gov.jo/en/pages/Statistics.aspx>.

<sup>c</sup> Saudi Gazette, “29% increase in number of Saudi female lawyers,” 25 July 2018. Available from <http://saudigazette.com.sa/article/528668/SAUDI-ARABIA/29-jump-in-number-of-female-lawyers>.

<sup>d</sup> For Bahrain, see Bahrain Supreme Council for Women, statistics page, accessed September 2018. Available from <http://www.scw.bh/en/AboutCouncil/Pages/record2016.aspx>. Also see Laala Kashef Alghata, “Most lawyers ‘are women’”, GDN Online, 2 November 2016. Available from <http://www.gdnonline.com/Details/132161/Most-lawyers-%E2%80%98are-women%E2%80%99>.

<sup>e</sup> Badea Abu Naja, “163 new lawyers issued licenses”, Saudi Gazette, 25 July 2018. Available from <http://saudigazette.com.sa/article/539749/SAUDI-ARABIA/163-new-lawYERS-issued-licenses>.

<sup>39</sup> Data in the table are based on a variety of sources, including a questionnaire filled by ESCWA member States, States parties’ reports on the implementation of CEDAW, a desk review conducted by ESCWA and the ESCWA *Gender in Figures* series. The figure is the total percentage of female judges at all court levels. For States where separate data were not available, the figure also includes public prosecutors (or their equivalent). A handful of Arab States monitor the presence of women in the judiciary (such as Morocco, Tunisia and State of Palestine) and regularly make available the relevant data to stakeholders, constituting a positive practice to be emulated. The public availability of data on the presence of women in the judiciary in Arab States is, however, generally inconsistent.

Notable differences are also to be found at the state level, even in the Arab States that have a substantial presence of women in the judiciary. In all Arab States, the proportion of women in the judiciary decreases as seniority increases. There are generally many fewer women serving in higher courts (including appeals and constitutional courts) than in courts of first instance, where judges typically start their careers. Women are starkly underrepresented in the functions of court president or vice-president. The pattern applies even in those States that are moving towards a more equal representation of women in the judiciary. In Tunisia, for example, women make up only 28 per cent of the judges in the *Court de Cassation*, the State's highest court, compared to 56 per cent in the lowest-level courts.<sup>40</sup>

In addition to the pattern of vertical stratification, there is also evidence of horizontal stratification discernible in those Arab States that provide comprehensive data. Generally, female judges are less likely to be found in courts dealing with criminal, security or military-related matters and more likely to be in administrative courts or those dealing with juveniles. Similarly, women are less likely to sit on courts dealing with personal status issues, such as marriage, divorce, child custody and inheritance.<sup>41</sup> Some Arab States continue to ban women judges from practicing in such courts altogether, often citing the religious character of the issues. Nevertheless, there are positive examples of women judges in religious courts: in the State of Palestine three qualified female judges have been appointed to Sharia (Islamic) courts since 2009, with the approval and endorsement of the State's Chief Islamic Justice.

### **Box 2. Arab female judges in international courts**

Arab women are represented in some international courts. Examples include Micheline Braidy, a Lebanese national, who is a trial chamber judge at the Special Tribunal for Lebanon. Taghreed Hikmat, the first female judge in Jordan, sat on the International Criminal Tribunal for Rwanda from 2003 to 2011. Their numbers remain limited, however, largely due to the reduced pool of female judges in national judicial systems from which appointments are made.

## **B. BARRIERS**

With a few exceptions, most Arab States have adopted legal systems based on civil law (with elements of Islamic or religious law usually addressing personal status issues such as marriage, divorce, inheritance and child custody). In civil law systems, a judicial career is typically a specific career track within the law profession. A formal qualification, such as completing graduate education, training at a judicial training institute and/or passing a specific examination, is usually required.<sup>42</sup> In such systems, judges are public servants, with their career progression taking them from a court of first instance, in which legal proceedings are first heard, to appellate courts and high courts (or their national equivalents) as well as high-ranking positions of court president or vice-president.

The high number of female candidates for admission in judicial training institutes throughout the region shows that women in the Arab region generally consider working in the judiciary an attractive career option. Commonly cited motivating factors to enter the judiciary include a desire to serve the public, social status and prestige, job security and relatively flexible work conditions. In Lebanon, for example, there have been more women than men candidates for admission to the national judicial training institute in recent years.<sup>43</sup> Nevertheless, the mixed regional picture suggests that women continue to face specific challenges when pursuing a judicial career.

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<sup>40</sup> Ibtissem Jamel, "Women Make Gains as Judges in Tunisia".

<sup>41</sup> Exclusion from such courts is particularly critical given women are most impacted by decisions impacting marriage and family life.

<sup>42</sup> In some countries, it is also possible to join the judiciary after having gained experience as a lawyer or law professor.

<sup>43</sup> CEDAW/C/LBN/CO/4-5.

Historically, the exclusion of women from the judiciary has been driven by negative gender stereotypes, for example regarding women's inability to judge objectively due to supposed emotionality or biologically driven mood swings. Traditional stereotypes also deemed it undesirable for women to engage with the legal and criminal worlds.<sup>44</sup> Certain religious interpretations further contributed to excluding women from the public sphere.<sup>45</sup>

Such arguments have gradually lost acceptance, leading Arab States to remove formal blanket bans regarding women's presence in the judiciary. Nevertheless, women have not yet secured the ability to hold all judicial posts. In several Arab States, relevant authorities have yet to appoint women to family or religious courts. In Oman, no female judges have been appointed to date, although women can practice as public prosecutors. In Kuwait, women candidates had to mount a legal challenge to push the Justice Ministry to consider applications from women for entry into the judiciary. There are now several Kuwaiti female prosecutors, although no female judge has been appointed to date.<sup>46</sup> There are also examples of specific judicial institutions refusing the appointment of female judges: a notable example is Egypt's State Council, the country's chief administrative court, which has since become a focal point in Egyptian women's efforts to gain representation in all public institutions.<sup>47</sup>

Historical male domination creates additional barriers for women seeking to enter the judiciary. The absence of female role models might deter promising young women from pursuing a judicial career, particularly as few Arab States have pursued outreach efforts to female candidates (a notable exception is Jordan, as highlighted in part C below). The limited transparency of the examination processes to enter judicial training institutes has also been highlighted as a potential issue by female judges interviewed in the framework of ESCWA's research. Although written examinations are generally anonymous, oral examinations are not. Some respondents believed that men's longstanding control over judicial training institutes and unconscious bias against female students results in a degree of bias in favor of male candidates.<sup>48</sup>

The lack of female judges in higher judicial echelons is, in part, the result of women's later entry into the judiciary. Nevertheless, a "trickle-down" effect that would see women progressively bridge the gap in higher courts has not been observed even in the Arab States that have a longer history of women in the judiciary. In several Arab States, this lag is partly due to strict requirements regarding number of years served on lower courts before being eligible for appointment to intermediate and then higher courts, which exacerbate the effects of women's later entry. Across the board, however, limited diversity at the top suggests that women continue to face specific barriers to their career progression.

Such obstacles are often the result of gender-blind rules and regulations controlling the career progression of judges. Gender-neutral rules, which should apply equally to all, become gender-blind when

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<sup>44</sup> Ulrike Schultz and Gisela Shaw, *Gender and Judging*.

<sup>45</sup> ESCWA, *Women's Political Representation in the Arab Region*, p. 19.

<sup>46</sup> Human Rights Watch, "Kuwait: Court Victory for Women's Rights", 6 May 2012. See also the List of issues and questions in relation to the fifth periodic report of Kuwait (CEDAW/C/KWT/Q/5).

<sup>47</sup> See ESCWA, *Women's Political Representation in the Arab Region*. See also Sherine Hassan, "Egyptian judiciary: is there room for women?", *Raseef22*, 2 February 2018. Available from <https://raseef22.com/en/life/2018/02/02/egyptian-judiciary-room-women/>.

<sup>48</sup> These concerns are supported by global evidence regarding the role of stereotypes and implicit gender bias in hiring processes, particularly in male-dominated fields and institutions. See for example Corinne A. Moss-Racusin and others, "Science faculty's subtle gender biases favor male students", *Proceedings of the National Academy of Sciences of the United States of America* (New Jersey, Princeton University, 2012). Available from <http://www.pnas.org/content/109/41/16474>. In a study on admissions to the French judicial training institute, Anne Boigeol highlights concerns about built-in gender bias in the oral examination. She shows that, over the years, male candidates have consistently scored higher than female candidates, which leads her to ask whether men's oral skills are truly superior to those of women, or whether "a slight degree discrimination in [men's] favour is at work". See Anne Boigeol, "Feminisation of the French magistrature: gender and judging in a feminised context", in *Gender and Judging*, Ulrike Schultz and Gisela Shaw, eds.

they lead to unequal outcomes and reinforce inequalities. Typically, this happens when they fail to account for external factors. Chief among those are the differentiated gender roles and expectations for men and women, which translate into large gaps relating to economic participation and employment in most Arab States. Men continue to be perceived as the breadwinners within the household, while women are expected to carry the bulk of domestic and family life even if they work outside the house. In the absence of mitigating measures, such as the provision of childcare facilities or flexible working arrangements, the gender imbalance can have a severe negative impact on the progression and retention of women in the judiciary.<sup>49</sup> Career progression rules may also lack the degree of flexibility needed to ensure that periods of time spent on family care duties do not impede career advancement.

Beyond these institutional shortcomings, female judges in the Arab region repeatedly cite a working environment that remains marked by adverse sociocultural norms, in which their capabilities and authority are more often challenged than those of men, both by users of the legal system and colleagues.<sup>50</sup> Female judges are also generally less likely to benefit from the informal mentorship and patronage networks that can help ambitious judges to advance in their careers. In addition, lack of transparency in appointment processes may lead to lower rates of success for women, as the structures overseeing such processes (such as judicial councils and similar entities) may perpetuate a gender bias.<sup>51</sup>

### C. EMERGING POLICIES AND PRACTICES

#### 1. *A voluntarist model: Jordan*

In 2007, women accounted for only 5.3 per cent of Jordan's judges; by 2018, the proportion had more than quadrupled, to 22 per cent. This notable increase is the result of a voluntarist approach by the Jordanian authorities. The National Strategy for Women 2013-2017 (ratified by the Council of Ministers) defined a target of 20 per cent of women in the legal sphere and the judiciary.<sup>52</sup> As the 20 per cent target was achieved by 2015, the Judicial Council now aims to raise the percentage of women working as judges and prosecutors to 25 per cent in the coming years.

Comprehensive policy measures have been mobilized to achieve this progress. In 2005, the Institute of Judicial Studies introduced a 15 per cent quota for admission of female candidates. Women have made up 50 per cent of the Judicial Council's "Future Judges" training programme, which aims to attract, train and fast-track qualified young Jordanians into a judicial career (including through providing scholarships). Another positive step has been the appointment of female judges to high-profile positions, including to the Judiciary Council and the Court of Cassation, and the issuance of regulations giving the opportunity for all judges to apply to senior positions without discrimination.<sup>53</sup>

Civil society groups have also played their part in the process. The Arab Women's Legal Network, a regional organization based in Jordan, provides a platform for women in the legal sphere to exchange

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<sup>49</sup> For example, in several Arab States, progression through the ranks of the judiciary involves a temporary or permanent relocation to a court that might well be in a different geographical area or circuit. As noted by several respondents in ESCWA research, such policies have a disproportional impact on the career progression of women owing to differentiated family care expectations.

<sup>50</sup> International Commission of Jurists, "Women & the Judiciary".

<sup>51</sup> Corinne A. Moss-Racusin and others, "Science faculty's subtle gender biases favor male students".

<sup>52</sup> Quotas and targets for the judiciary are rare, however, as most States prioritize other policy tools for increasing women's presence in the judiciary. One exception in the Arab region is Iraq, where the National Action Plan for the Implementation of the United Nations Security Council resolution 1325 on Women, peace and security (2014-2018) calls for a 30 per cent quota for the presence of women in all decision-making positions, including the judiciary. As table 1 shows, however, the target remains aspirational. At the global level, calls for the introduction of judicial quotas have intensified in recent years in some States, particularly in those, such as the UK, where existing policy actions have failed to produce representative and diverse judicial institutions to date.

<sup>53</sup> Despite these advances, however, Jordan has yet to appoint a female judge to the Sharia or ecclesiastical courts. See CEDAW/C/JOR/CO/6.

experiences, network and discuss common issues, while also offering extensive training and capacity-building programmes for new and established judges.

## 2. A notable subregional exception: Bahrain

As table 1 shows, women remain markedly underrepresented in judicial institutions in the Gulf Cooperation Council (GCC) states. A notable exception is Bahrain, which has witnessed rapid progress in this regard. In 2006, Bahrain appointed its first female judge, the first GCC State to do so. A decade later, there were 21 women judges (and their equivalent) in Bahrain, constituting 9 per cent of the judiciary, including one female judge in the constitutional court.<sup>54</sup> Women have also been appointed as public prosecutors, and amount for more than half of registered lawyers.

These numbers can be expected to increase further, as women constitute over half of university law graduates. Young women have also been selected to take part in the elite “Judges of the Future” programme, implemented by the Supreme Judicial Council in partnership with the University of Bahrain and the Judicial Institute. The programme, first launched in 2014, aims to train between 30 and 35 young judges in order to prepare them for judicial positions.

This encouraging picture reflects the benefits of a comprehensive approach to encourage women’s participation in public life, develop a gender-sensitive judiciary and improve access to justice. Increasing women’s presence in decision-making positions, including in the judiciary, is a key objective and commitment of the National Strategy for the Advancement of Bahraini Women, the government’s main policy and mechanism toward gender equality.<sup>55</sup> In parallel, the government has also implemented training and awareness-raising programs on conventions and laws related to women’s rights, including CEDAW.

The Supreme Council for Women (SCW), Bahrain’s national women’s machinery, has been closely associated with such efforts. In 2016, SCW chose “Women in the law” as the theme for that year’s Bahraini women’s day to showcase women’s contribution to the field and encourage their further participation.

### III. CONCLUSIONS AND POLICY RECOMMENDATIONS

This policy brief has highlighted that women’s presence in the judiciary matters, with a focus on three key arguments. First, it fulfills women’s fundamental right to participate equally in all public institutions, as recognized in numerous international frameworks. Second, the equal representation of men and women is integral to the development of strong, inclusive and efficient judicial institutions, which can act as powerful accountability mechanisms. Third, women’s participation in the judiciary enhances access to justice for all women and enables them to fully use judicial mechanisms when they experience any form of discrimination.

In recent years, despite the gradual removal of barriers to women’s presence in the judiciary in Arab States, women remain underrepresented in judicial systems in the Arab region. In addition, deep disparities persist between Arab States and within national judicial systems. This picture suggests that Arab States need to tackle the substantial barriers that persist. Addressing such barriers requires coordinated and well targeted policy interventions, which are integral to Arab States’ efforts to develop sustainable and inclusive institutions and achieve gender justice.

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<sup>54</sup> Supreme Council for Women, *Bahraini Women in Numbers*, 2<sup>nd</sup> ed. (Manama, 2015). Available from <https://www.scw.bh/en/MediaCenter/Documents/Final-Numbers-May-2016.pdf>. See also Suad Hamada, “Women’s role in judiciary praised in Bahrain”, *Khaleej Times*, 17 January 2016. Available from <https://www.khaleejtimes.com/region/bahrain/womens-role-in-judiciary-praised-in-bahrain>. It is however noteworthy that no women have been appointed to the Sharia court that have jurisdiction over family and personal status matters.

<sup>55</sup> Available from [http://www.buheji.com/National\\_Plan\\_for\\_the\\_Advancement\\_of\\_Bahraini\\_Women.pdf](http://www.buheji.com/National_Plan_for_the_Advancement_of_Bahraini_Women.pdf).

Based upon analysis of the normative framework (including international binding commitments) and extensive review of evidence and best practice at the global and regional level, ESCWA recommends the following policy actions to Arab States, international organizations, and civil society organizations:

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

