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Gender Justice & Equality before the law

Analysis of Progress and Challenges in the Arab States Region

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The views and analysis in this publication do not necessarily reflect the views of the United Nations Development Programme, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA), its Executive Board Members, the United Nations Economic and Social Commission for West Asia (ESCWA), the United Nations, any of its Member States or any of its affiliated organizations.

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FOREWORD

This report marks the culmination of an ambitious four-year project that commenced in 2016. The Gender Justice and the Law project engaged governments, civil society organizations and UN agencies in 19 Arab States, as well as regional agencies.

In 2016 ESCWA member States adopted the “Muscat Declaration: Towards the Achievement of Gender Justice in the Arab Region” as a broad framework for the achievement of gender equality. This report documents the progress achieved to realize the aspirations of the Muscat Declaration and analyzes the remaining challenges that States face in their ongoing efforts to make gender justice a reality for all.

This report builds on the country summaries published by the project in 2018. It provides a valuable resource for Arab States because it brings a unique regional lens to the detailed examination of the specific legislative provisions included in the country summaries.

The report focuses on the laws and law enforcement practices that matter most for women and girls: protection from violence, rights within the family, property rights and rights at work. The report points to examples of good practice from across the region and encourages sharing of experiences and cross-fertilization of ideas. In so doing, it highlights what is achievable by building on the strengths of existing legal frameworks.

Importantly, the report also provides an overview of the social and economic contexts in which laws are made and access to justice is exercised. It does not shy away from naming the inequitable attitudes and conservative gender norms that are obstacles to women’s empowerment. It also addresses the devastating impacts of conflict on the human rights of women and girls, and what can be done to prevent and mitigate those impacts.

Helpfully, in its concluding chapter, the report proposes recommendations which define concrete measures for States to consider in their planning for the coming decade, 2020–2030. It includes specific examples of the legislative changes that are required to achieve gender justice and equality before the law. We trust that this report will thereby facilitate a more constructive public discourse on how best to improve the status of women and girls in this complex and diverse region.

This report is the result of an extensive collaborative process. We are truly grateful to all who were involved. It has been enriched by the technical expertise and passionate inputs of the members of the Expert Advisory Group who generously gave their time. Our thanks are also extended to the regional teams from UNDP, UN Women, UNFPA and ESCWA for their contributions, hard work and dedication, which were critical for the completion of the study.



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Gender justice will not be accomplished unless the obstacles preventing women from enjoying their human rights and contributing more fully to societies and economies are eradicated. For this endeavor to succeed, we look to societies where women and girls are participating, shaping and leading on equal terms with men and boys in our efforts to create a better world for all.

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Acronyms

CAWTAR	Centre of Arab Women for Training and Research
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW	Committee on the Elimination of Discrimination against Women
FGM/C	Female genital mutilation / cutting
ILO	International Labour Organization
IOM	International Organization for Migration
ISIL	Islamic State of Iraq and the Levant
MENA	Middle East and North Africa
NGO	Non-governmental organization
NWM	National Women's Machinery
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UN ESCWA	United Nations Economic and Social Commission for Western Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization

Terminology: migrant workers

The term 'migrant workers' as used in this report means a person who migrates from one country to another with a view to being employed otherwise than on his or her own account and includes any person regularly admitted as a migrant for employment (Migration for Employment Convention, 1949 (no. 97), article 11). The term includes, but is not limited to, workers described as 'expatriate workers' or 'foreign workers', who are typically contracted for a short duration (often in the domestic and construction sectors) and who are expected to leave the country at the end of their contract.

Arabic terms

fatwa	Ruling or pronouncement on a point of Islamic law
hadana	The responsibility for the day-to-day activities involved in raising a child such as feeding, clothing and bathing
'iddah	The period a woman must observe after divorce or the death of her spouse during which she may not remarry
iftida	'Ransom'; in the context of divorce, this term refers to a wife who obtains divorce by ransoming herself with a sum of money paid by her to the husband
ijbar	A marriage in which the guardian arranges the marriage of a woman or girl without her permission
khul'	Divorce process initiated by the wife requiring return of her <i>mahr</i>
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
misyar	Traveller's marriage (Sunni)
mut'a	Temporary marriage (Shia)
qiwamah	The obligations of spouses in a Muslim marriage under which a husband protects and provides for the family and a wife obeys her husband
talaq	Repudiation; divorce process whereby the husband verbally repudiates his wife
'urfi	Custom
wali	Guardian
wilayah	Guardianship; the duty of fathers or male family members to exercise guardianship over their dependent wards.
zina	Unlawful sex, including adultery and sex between unmarried persons

Part 1 Introduction

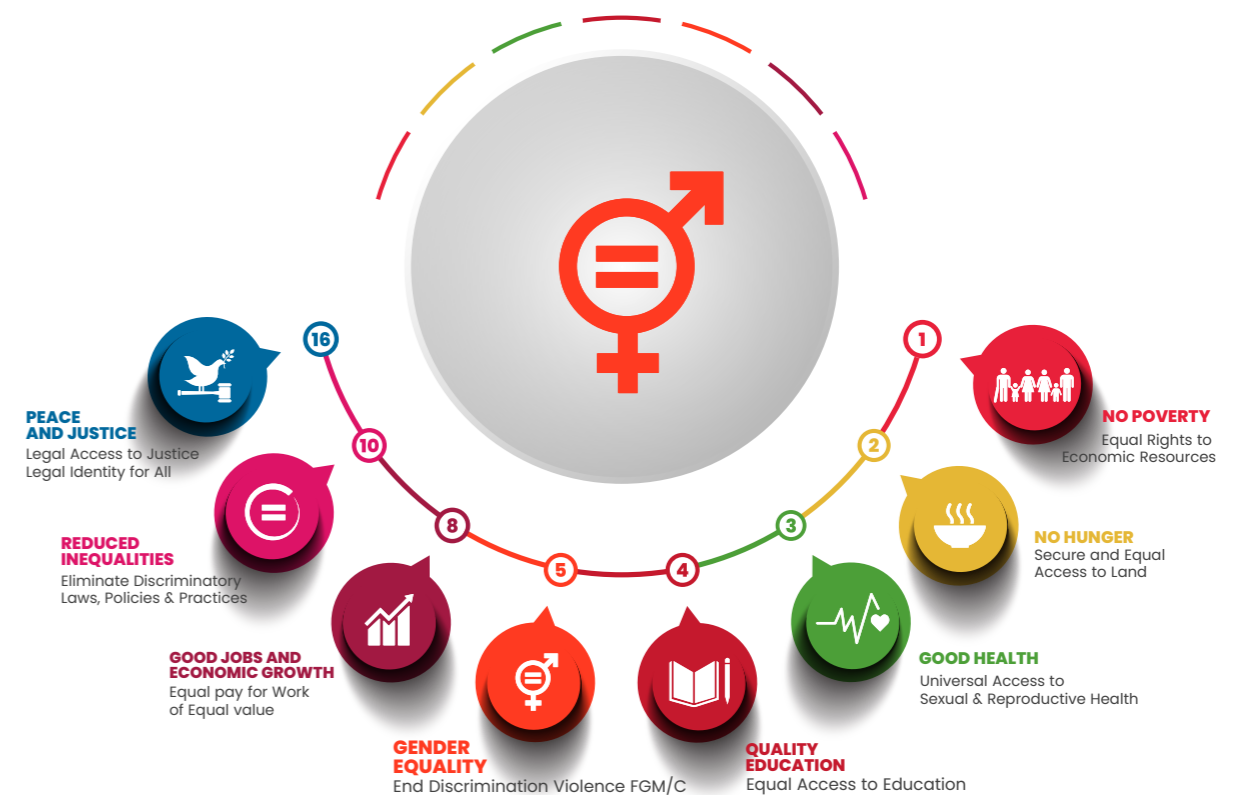
1.1 Gender justice and the 2030 Agenda

The 2030 Agenda for Sustainable Development is a commitment to eradicate poverty and achieve sustainable development worldwide by 2030, ensuring that no one is left behind. The adoption of the 2030 Agenda was a landmark achievement celebrated at the United Nations General Assembly in 2015, providing for a shared global vision towards sustainable development for all.¹ With this vision, all the governments of the world adopted the 17 Sustainable Development Goals (SDGs).

As governments have begun to implement their plans to achieve these goals, it is important to emphasize that development will only be sustainable if its benefits accrue equally to both women and men. Furthermore, women's rights will only become a reality if they are part of broader efforts to protect the planet and ensure that all people can live with respect and dignity.²

Achieving gender equality will require a combination of change from below, as the voices of women at the community level are increasingly heard, and change from above, as political leaders respond to changing norms by enacting progressive legislative and policy reforms. In addition to changes to laws and policies, social changes are also essential to address unequal gender power relations and to establish gender equality norms. However, many of the SDG targets will be unattainable without formal legal equality. This includes the gender equality targets of Goal 5, as well as the targets relating to poverty, health, education, decent work, economic growth, and peace and justice.

The SDGs cannot be achieved without addressing gender equality in the law and its practice



¹ United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015 (A/RES/70/1).
² UN Women, *Turning promises into action: gender equality in the 2030 Agenda for Sustainable Development* (New York, UN Women, 2018).

The landmark 2005 Arab Human Development Report 'Towards the Rise of Women in the Arab World' analyzed the situation of gender equality and women's empowerment in the Arab States region. The report noted: "Many laws in the Arab countries discriminate against women. Constitutional provisions for the protection of women's rights exist in nearly all countries but are often flouted, contradicted by other legislation or not enforced."³ While much progress has been made since 2005, some legal frameworks and institutions continue to reinforce women's subordinate status, promote gender-based stereotypes, and discriminate based on gender. There is a lack of community confidence in some legal systems, especially where existing accountability frameworks are weak and perceived to be biased against women.⁴

This report on the state of gender justice and equality before the law in the Arab States region provides a factual analysis of the **penal, personal status, nationality and labour codes** of each country and whether they promote or impede equality between men and women, in addition to whether they provide protection against gender-based violence.

The aim is to provide a baseline for governmental and non-governmental actors to use in efforts to ensure that gender-specific indicators of the SDGs are met across the region – particularly SDG indicator 5.1.1, which addresses **"whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex"**.

1.2 Methodology

This report presents a regional analysis of the findings of a systematic review of the laws relating to gender justice, and their implementation, across 19 countries of the Arab States region. The review was carried out by the United Nations Development Programme (UNDP), in partnership with the United Nations Population Fund (UNFPA), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Economic and Social Commission for Western Asia (UN ESCWA).

The countries included in the review were: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Somalia, State of Palestine, Sudan, Syria, Tunisia and Yemen.⁵ Collectively, this report refers to these countries as the Arab States region.⁶

The review and analysis were conducted in three phases:

1. A literature review was conducted in 2016–2017 of the different laws, regulations, policies and law enforcement practices related to gender justice in each of the 19 countries. The literature review also included consideration of peer-reviewed journal articles, policy reports and media reports. This formed the basis of draft country assessments.
2. Recognizing the limitations of a desk-based literature review, country validation processes were conducted in 2017–2018 to ensure the accuracy of each country report. These validation processes were led by UN Country Teams and national consultants (except in Qatar, where the National Human Rights Committee provided feedback). The country validation processes sought the views of government partners, non-

governmental organizations (NGOs) and other national stakeholders. In several countries, workshops were held to review the country reports and to identify priorities for future action. The validated country assessments were published separately in 2018.⁷

3. The regional analysis was conducted in 2019 to highlight themes emerging from the country assessments, examples of progress and common challenges. This included an analysis of gender justice in conflict-affected settings. The regional analysis was informed by a literature review and inputs from an Advisory Group of regional experts who reviewed the report for technical accuracy and developed consensus on the report's themes and recommendations. Members of the Advisory Group are recognized in the acknowledgements section of this report. They met twice in 2019 and included technical experts, academics and civil society representatives from Bahrain, Egypt, Iraq, Jordan, Lebanon, State of Palestine, Yemen and regional organizations (Arab Women Organization and Centre of Arab Women for Training and Research) as well as UNDP, UN Women, UNFPA and UN ESCWA.

This report provides a regional overview of the compliance of national laws with international human rights standards and the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee). It also provides a regional analysis of the laws of the 19 countries that conducted country assessments, based on information available as at October 2019.

This report highlights where progress has been made and the main challenges and opportunities under current legal frameworks to ensure access to justice and equality before the law. It recognizes that state fragility and undermining of the rule of law caused by conflict, occupation and war are ongoing challenges. It is intended as a snapshot of the laws relevant to gender justice and gender equality that apply in the Arab States region. It provides a tool for governments, civil society organizations, UN agencies and development partners to use in their advocacy for laws, policies and programmes that support gender justice and gender equality, based on a comprehensive understanding of the laws that apply in each country.

1.3 Analytical framework

Gender justice and human development

This study adheres to the concept of human development, which "focuses on improving the lives people lead rather than assuming that economic growth will lead, automatically, to greater wellbeing for all".⁸ Gender justice is fundamental to human development. It can be defined as ending inequalities between women and men that result in women's subordination to men, and the provision of redress for those inequalities.⁹

By focusing on people, their opportunities and choices, the human development approach aims to expand the richness of human life, rather than simply the economy.¹⁰ The analysis considers whether the legal environment allows women and girls to develop to their full potential and to have the opportunity to lead productive and creative lives that they value. The human development approach aims to improve the wellbeing of women and girls by ensuring gender equality and providing all people the opportunity to enjoy peaceful and prosperous lives. It is an approach that reflects the aspirations set forth in the 2030 Agenda, and the commitments made by member States towards achieving the 17 SDGs.

³ UNDP, *2005 Arab Human Development Report 'Towards the Rise of Women in the Arab World'* (New York, UNDP, 2006), p. 17.

⁴ ESCWA, *The state of gender justice in the Arab Region* (Beirut, ESCWA, 2017) (E/ESCWA/ECW/2017/4), p. 7.

⁵ These are the 19 countries where UNDP, UN Women and/or UNFPA were able to validate national reports. The 19 countries include members of the League of Arab States except for Comoros, Mauritania and the United Arab Emirates.

⁶ Where other reports and publications are cited that refer to the region as Middle East and North Africa the terminology used in those reports is adhered to.

⁷ Available from http://www.arabstates.undp.org/content/rbas/en/home/library/Dem_Gov/gender-justice-and-the-law-study.html

⁸ UNDP, "About Human Development". Available from <http://hdr.undp.org/en/humandev>

⁹ A. M. Goetz, "Gender Justice, Citizenship and Entitlements: Core Concepts, Central Debates and New Directions for Research", in: M. Mukhopadhyay and N. Singh (eds.), *Gender Justice, Citizenship and Development* (New Delhi and Ottawa, Zubaan and IDRC, 2007), pp. 30–31.

¹⁰ UNDP, *About Human Development*. Available from <http://hdr.undp.org/en/humandev>.

Gender justice and State accountability for achieving gender equality

In 2016, member States participating in the ESCWA Committee on Women adopted the *Muscat Declaration: Towards the Achievement of Gender Justice in the Arab Region*. The Declaration acknowledged the need to adopt a comprehensive approach to gender justice, with two principal components: **ensuring accountability** by determining national accountability mechanisms that limit discriminatory measures and **achieving equality** by eliminating all forms of discrimination between men and women.¹¹

Gender justice as a process involves developing and sustaining accountability mechanisms and providing redress for existing inequalities, including investing in institutions to dispense justice in a gender-sensitive manner. Gender justice as an outcome implies access to and control over resources, combined with the ability to make free choices¹². Gender justice is inextricably linked to gender equality and women's empowerment, which is achieved when men and women enjoy the same rights and opportunities across all sectors of society: economic, social, legal and political. Gender power relations affect all aspects of life and all levels of society including dynamics within the family, the workplace and political spheres. The achievement of gender equality depends on the complex web of gender norms prevailing at individual, relationship, community and societal levels.

Gender justice and international human rights instruments

The realization of gender justice should be guided by international human rights standards, notably those

outlined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Beijing Declaration and Platform for Action;¹³ and the Women, Peace and Security Agenda.¹⁴ According to international human rights law, when States become parties to international treaties, they have an obligation to respect, protect and fulfil human rights, and these include the rights of half of their population: women and girls. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights, the obligation to protect requires States to protect individuals and groups against human rights abuses, and the obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights. Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties.¹⁵

Gender justice and gender-based violence

Noting that gender-based violence is a major barrier to gender justice, this study addresses gender-based violence in its different forms, including sexual violence, physical violence, psychological violence, and economic violence.¹⁶ Gender-based violence in the Arab States region manifests in many ways including as domestic violence, rape and other forms of sexual assault, sexual harassment, child and forced marriage, female genital mutilation/cutting (FGM/C) and other harmful traditional practices, trafficking in persons and femicide.¹⁷ While women and girls are the main focus of this report, it is acknowledged that gender-based violence can be aimed at both men and women, and that victims and survivors of gender-based violence are also of both sexes. Some acts of gender-based violence may constitute international crimes (crimes against

humanity and war crimes) including the use of rape as a weapon of war, sexual slavery, enforced prostitution, forced pregnancy or other forms of sexual violence of comparable gravity.¹⁸

A gender justice approach highlights the due diligence obligations of States in relation to violence against women, as it challenges States to respond comprehensively to legal inequality and subsequent harms.¹⁹ Due diligence, as it relates to gender-based violence, is the obligation of a State to prevent, protect against, prosecute, punish and provide reparations for violence perpetrated by state or non-state actors, and is established under international law.²⁰ The application of the due diligence standard to gender-based violence is important because it focuses on prevention and effective remedies, requires States to address the root causes and consequences of violence and complements other human rights principles and frameworks.²¹

Gender justice and the rule of law

Gender justice requires States to ensure that the internationally accepted concept of 'rule of law' is understood and respected. The rule of law is a principle of governance in which all people are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. The rule of law requires equality before the law for all women and men and fairness in the application of the law.²² The rule of law, human rights and democracy are interlinked and mutually reinforcing and belong to the universal and indivisible core values and principles of the United Nations. Adherence to and implementation of the rule of law at the national and international levels and commitment to an international order based on the rule of law, human rights and the principles of justice are essential for peaceful coexistence and cooperation among States.²³

1.4 Structure of the report

Following the outlining of the report's scope, methodology and analytical framework seen in **part 1**, **part 2** of the report describes the overall social, cultural and political contexts that women and girls in the Arab States region are currently facing and explains how discriminatory laws and gender norms may impede human development.

Part 3 focuses on law reform. It presents data on country progress in reforming laws to achieve gender justice and identifies regional trends based on a synthesis of the key findings of the country assessments with a focus on

constitutional provisions, penal codes, personal status laws, nationality laws and labour laws.

Part 4 proposes regional recommendations for action of law reform, policy and programming priorities for consideration. Based on the regional and country analyses, proposals are suggested noting that changes in legislation can only happen at the country level and, therefore, it is important for national actors to reflect on their own country situation and develop initiatives which address their specific opportunities for change.

¹¹ *Muscat Declaration: Towards the Achievement of Gender Justice in the Arab Region* (Beirut, ESCWA, 2015). Available from <https://www.unescwa.org/about-escwa/governing-and-advisory-bodies/ministerial-sessions/resolution/muscat-declaration-towards>

¹² ESCWA, *The state of gender justice in the Arab Region* (2017).

¹³ *Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women* (Beijing, 1995). See: *Report of the Fourth World Conference on Women* (Beijing, 4-15 September 1995), United Nations (A/CONF.177/20) 17 October 1995.

¹⁴ United Nations Security Council, *Resolution 1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000* (New York, United Nations) (S/RES/1325).

¹⁵ OHCHR, "International Human Rights Law". Available from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>

¹⁶ Concepts of physical, sexual and psychological violence are defined by: UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993 (A/RES/48/104).

¹⁷ United Nations Population Fund (UNFPA), *Regional Strategy on Prevention and Response to Gender-Based Violence in the Arab States Region (2014-2017)*, (UNFPA, 2014); CEDAW Committee, *General Recommendation no. 35 on gender-based violence against women, updating general recommendation No. 19*, 14 July 2017 (CEDAW/C/GC/35).

¹⁸ Such conduct falls under arts. 7 and 8 of the *Rome Statute of the International Criminal Court*, Adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998.

¹⁹ Due Diligence Project, *Due Diligence Framework: State Accountability for Eliminating Violence against Women* (Malaysia, International Human Rights Initiative, Inc., 2014).

²⁰ CEDAW Committee, *General Recommendation no. 19: Violence Against Women* (11th session, 1992) (A/47/38).

²¹ J. Goldscheid and D. Liebowitz, "Due diligence and gender violence: Parsing its power and its perils", *Cornell International Law Journal*, vol. 48 (2015) 301-345.

²² See: UN Secretary General, "What is the Rule of Law?", available from <https://www.un.org/ruleoflaw/what-is-the-rule-of-law>

²³ See: UN General Assembly, *The rule of law at the national and international levels: Resolution adopted by the General Assembly on 11 December 2008* (A/RES/63/128).

Part 2 Gender justice in social, cultural and political contexts

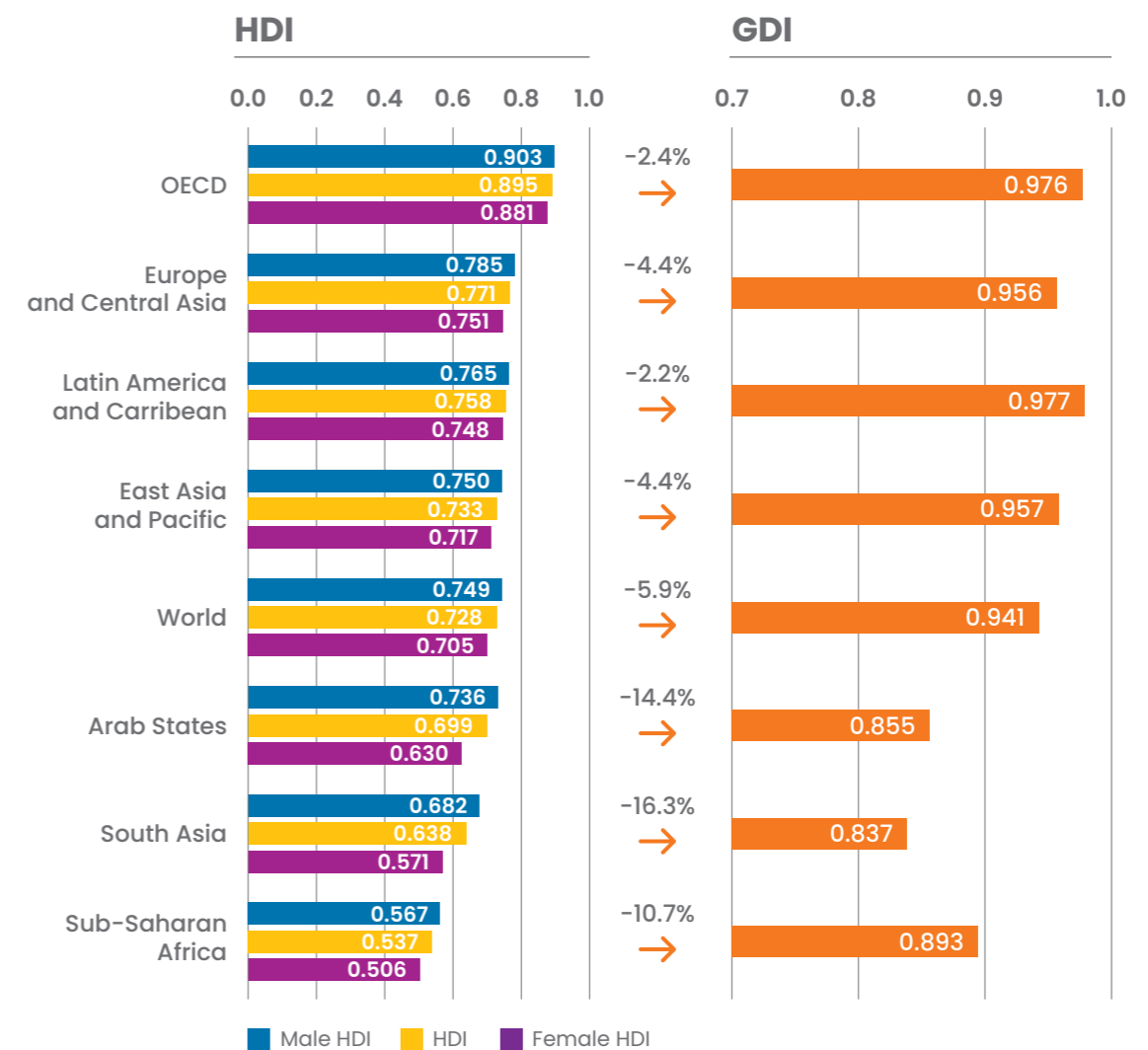
2.1 Gender inequalities in human development

2.1.1 Arab States and the UNDP Gender Development Index

The Human Development Index (HDI) is a measure of achievement in key dimensions of development: a long and healthy life, being knowledgeable and having a decent standard of living.²⁴ The Gender Development Index (GDI), which is the ratio of female HDI to male HDI, captures gender inequality in these measures of human development.

The Arab States region has a GDI value of 0.855 (where 1 indicates gender parity). This means that the gender gap between men and women in the Arab States region is 14.4 per cent, which is one of the largest gender gaps among world regions (figure 1). Gender inequality is particularly acute in the income dimension, where women's per capita income is on average 78.9 per cent lower than that of men in the Arab States region.

Figure 1: Ratio of female HDI to male HDI and percentage gaps between female HDI and male HDI, 2017



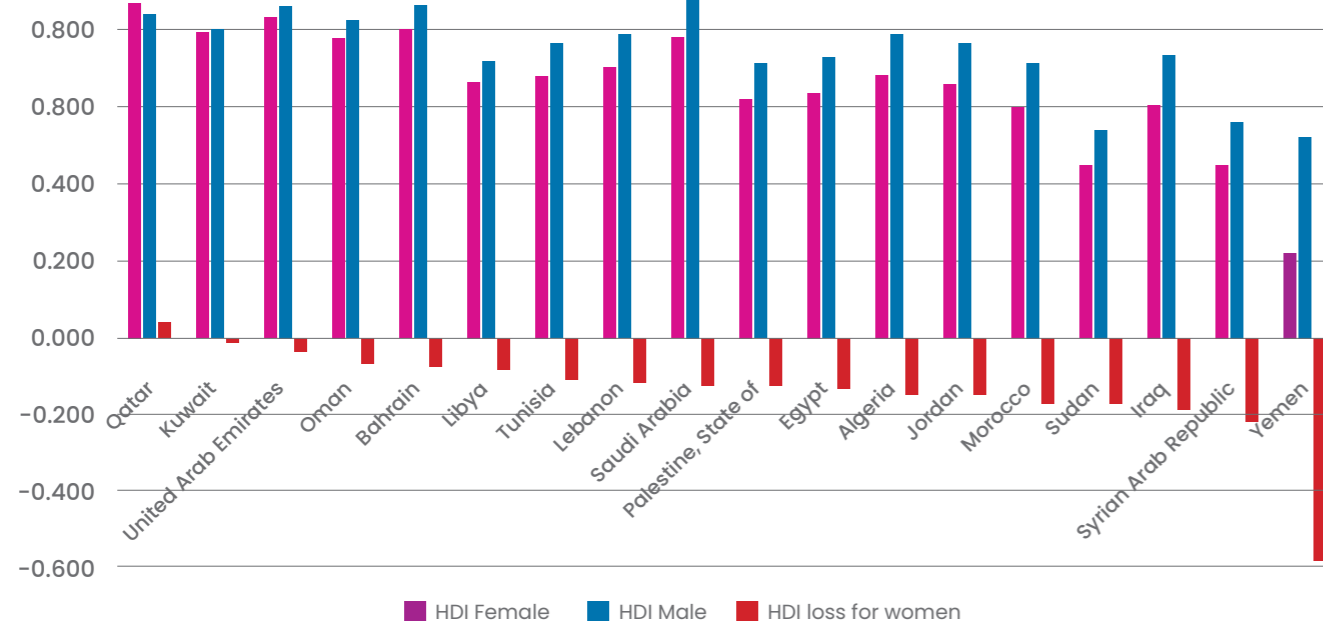
Source: UNDP Human Development Report Office

²⁴ See: UNDP, *Human Development Index*. Available from <http://hdr.undp.org/en/content/human-development-index-hdi>

While regional aggregate data show overall gaps in human development achievements between men and women, these gaps vary among countries (figure 2). For

example, while Qatar is the only country in the region where women's HDI is slightly higher than that of men, in Yemen, women's HDI is less than 50 per cent of men's.

Figure 2: Gender inequalities in HDI of Arab States, 2017



Source: UNDP Human Development Report Office. Data from Djibouti and Somalia is unavailable.

2.1.2 Arab States and the Global Gender Gap Index

The Global Gender Gap Index of the World Economic Forum, which is a more comprehensive index than the GDI and includes political representation, offers a similar picture of women's conditions in the region. The Index indicates that the Middle East and North Africa (MENA) region saw improvement from 2008–2018, with high levels of educational attainment, some improvement in political representation and some improvement in participation in the workforce.²⁵

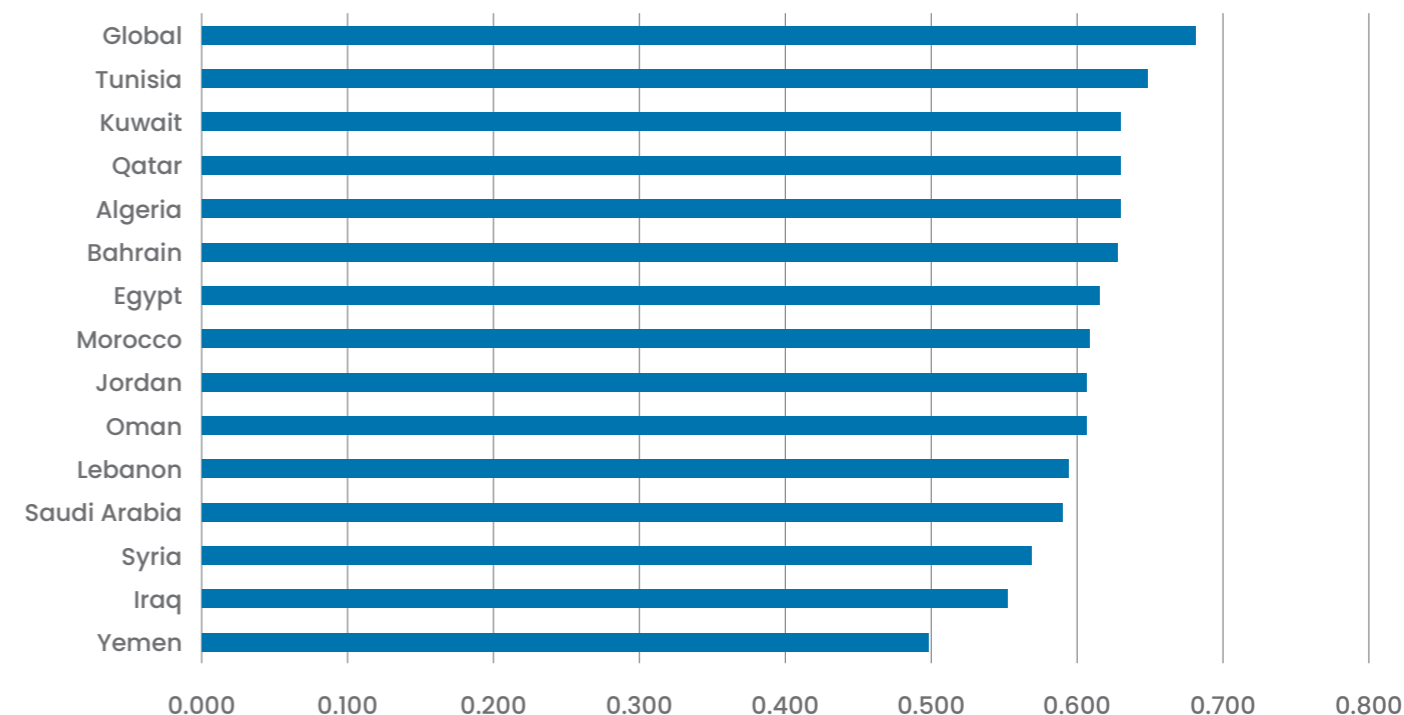
Nevertheless, the Arab States region remains among the lowest performing across the world, with each

country in the region below the global average. Figure 3 illustrates the gender gap closed so far by Arab States. Although the remaining gender gap for the MENA region as a whole is now 40 per cent, at the present rate it is estimated that it will take another 153 years to close.²⁶ There are significant disparities between the richer and poorer countries in the region, as well as those in a state of protracted conflict such as Syria, Iraq, Yemen, Somalia and Libya. All countries in the region have economic participation and opportunity gaps bigger than the median.

²⁵ World Economic Forum (WEF), *Global Gender Gap Report 2018* (Geneva, WEF, 2018). Iran, Israel, Mauritania and Turkey are included in the WEF's assessment of the Middle East and North Africa; Djibouti, Libya, State of Palestine, Somalia and Sudan are excluded.

²⁶ *Ibid.*, p.16.

Figure 3: The Global Gender Gap Index: Gender gap closed as at 2018 (highest possible score is 1.0)



Source: World Economic Forum, *Global Gender Gap Report 2018*

Note: No data available for Djibouti, State of Palestine, Somalia, Sudan and Libya.

2.1.3 Key regional trends: women and human development

Although female labour force participation rates have increased in many Gulf countries, on average Arab States have the lowest rates worldwide: 18.3 per cent in 2019 compared to the global average of 48 per cent.²⁷ Women in the Arab States region also make up the bulk of the non-paid, informal and part-time workforce. For example, women spend more hours than men on housework and caring for children and the elderly.²⁸

Most Arab States provide access to free school education, and educational attainment among women and girls has been expanding since the 1970s. While there are significant differences among countries, at the regional level the education gap between boys and

girls has almost been closed in primary education, and girls are outperforming boys in university attendance. Looking beyond regional averages, the Arab States region includes several low and middle-income countries with low rates of female literacy, such as 46 per cent in Somalia, 47 per cent in Sudan, 55 per cent in Yemen²⁹ and 58 per cent in Morocco.³⁰ Illiteracy represents a barrier in accessing work, accessing justice and interacting with institutions.

Gender equality also differs dramatically within countries. The urban-rural divide manifests itself in different levels of development and access to services, often disadvantaging women. Thirty-five per cent of the

²⁷ International Labour Organization (ILO), *World Employment and Social Outlook: Trends 2019* (Geneva, ILO, 2019), p. 101.

²⁸ World Bank, *Egypt: Women Economic Empowerment Study* (Washington DC, World Bank, 2019), p. 32; K. Dalacoura, *Women and Gender in the Middle East and North Africa: Mapping the Field and Addressing Policy Dilemmas at the Post-2011 Juncture* (Barcelona, MENARA, 2019), p. 12.

²⁹ UNESCO, *UNESCO Institute for Statistics (UIS) Data Centre* (Paris, UNESCO, 2015).

³⁰ Haut-Commissariat au Plan (HCP), *Recensement Général de la Population et de l'Habitat* (Rabat, HCP, 2014)

population of the MENA region live in rural areas where families suffer from higher poverty than urban areas.³¹ Rural poverty is linked with illiteracy, unskilled and poorly paid labour, and child marriage.³² As a result of all these factors, women and girls in rural areas experience greater gendered power imbalances compared to women and girls in urban areas.³³

One of the largest impediments to achieving economic growth and gender parity is the impact of the protracted conflicts besetting the region, particularly in Iraq, Libya, Syria, and Yemen, as well as the occupation of the Palestinian territories. War, conflict and occupation exacerbate many of the inequalities and vulnerabilities experienced by women. Without stability and security, it will prove challenging for States to achieve the progressive legislative and policy reforms required for achieving gender justice and the SDGs.

Gender gaps in human development are more pronounced in crisis countries, driven by the education and income indicators. For example, in Iraq, female years of schooling is 30.6 per cent lower than men, which is close to three times the difference in Algeria (11.5 per cent) and six times the difference in Lebanon and Jordan (4.8 per cent for both).³⁴ Conflicts are also

undermining previous educational achievements. Syria previously had high levels of access to education but is now experiencing declining educational levels. The mean years of schooling for girls declined from 5.7 years pre-crisis to 4.6 in 2017, which is a loss of over a year of education for girls.³⁵

Indicators describing the extent of progress enjoyed by women in labour force participation, education, literacy and income are helpful to understand the social and economic status of women in each country. However, these indicators only tell part of the story and do not provide a complete picture of the state of women's human development. It is also affected by the prevalence of gender discrimination, gender-based violence, child marriage and harmful practices such as FGM/C, as well as the degree to which women enjoy equal citizenship rights including equality under personal status laws, penal codes, nationality laws and labour laws. These factors need to be considered alongside the gains achieved in relation to literacy, education and income levels. Therefore, women's human development demands a determined and coordinated effort involving interventions on multiple levels including a focus on gender justice and equality before the law.

2.2 Women's rights to equal citizenship

2.2.1 The changing role of women's activism since the Arab uprisings

Women were highly visible participants in the Arab uprisings of 2011. Women's participation in protests across the region became a major site of contention, with narratives of emancipation clashing with experiences of mass and public sexual harassment.³⁶

In the aftermath of those uprisings, concerns have been raised about a backlash against women's rights, including those conceded by previous regimes. However, women's activism continued in countries experiencing unprecedented political change, and women's social and political mobilization remains marked in the context of protests seen in 2019 in Algeria, Lebanon and Sudan.

31 World Bank (2018). Available from <https://data.worldbank.org/indicator/SP.RUR.TOTL?view=chart>

32 ESCWA, *The state of gender justice in the Arab region* (2017), p. 10.

33 Ibid.

34 UNDP Human Development Report Office, Global Development Index. Available from <http://www.hdr.undp.org/en/composite/GDI>

35 Ibid.

36 The Project on Middle East Political Science (POMEPS), *Women and Gender in Middle East Politics* (Washington DC, POMEPS, 2016.)

2.2.2 Women's claims to equal citizenship

In this context, women's rights organizations are advocating for women and girls to enjoy full and equal citizenship in contemporary Arab societies. Gender justice requires a process by which women are recognized as citizens with equal autonomy and rights in the social and political order. Citizenship in the modern state involves a partnership of free and equal citizens who have the same individual rights under national constitutions and as defined by law. The concept of full and equal enjoyment of citizenship rights aligns with the egalitarian ethical principles and values of all major religions as well as universal human rights standards.³⁷

Laws on marriage, divorce, custody, inheritance, nationality and employment are key to equal citizenship rights because they have in common issues of legal autonomy for women. So too are rights to engage in the political process. Citizenship involves at least three related concepts: nationality rights (i.e. national identity and the right to a passport), basic personal rights (i.e. the right to marry, to divorce, or to have custody and guardianship of children) and political rights (i.e. such as the right to vote or be eligible to hold public office).³⁸ Historically, the citizenship rights of male citizens of Arab States have been relatively privileged, with greater

individual rights for men than women in each of these key areas.

The evolving concept of citizenship in the Arab States region needs to be understood in the context of the defining role that patrilineal kinship plays in the social and political life of Arab societies. Arab cultures value the father's extended family, presenting the family as an extended kin group built on strong ties uniting a community of male relatives. Within this power structure, it has been traditionally the responsibility of male kin to provide for and protect women. The extended patrilineal kin group provided women and children with care, security and identity. However, women were subordinated to men within these structures: "Severely limiting women's autonomy, lineages tend to impose choices on men as well as women on the basis of what is best for the lineage as a whole, and the imposition is greater on women."³⁹

Contemporary laws have reinforced these kin-based male power structures.⁴⁰ An example is the ability of a father to pass his nationality to his children automatically at birth, a right which is still denied to mothers in many Arab States (see 3.3.2).

2.2.3 Women's political participation

Women's representation in legislative bodies in the Arab States region remains one of the lowest globally, with an average of 18 per cent in 2018, compared to a world average of 24 per cent.⁴¹ This is despite the fact that, in many Arab States, women were granted the right to vote and participate in elections in the mid-twentieth

century.⁴² However, women in the Gulf countries have only recently been granted these rights, led by Oman which first allowed women the right to vote and stand for parliamentary elections in 1994. Saudi Arabia allowed women to vote and participate in municipal elections in 2015.⁴³

37 See e.g. Musawah, *Musawah Vision for the Family* (Musawah, 2016), p. 7.

38 M. Charrad, "Unequal citizenship: Issues of gender justice in the Middle East and North Africa", in: M. Mukhopadhyay and N. Singh (eds.), *Gender Justice, Citizenship and Development* (New Delhi and Ottawa, Zubaan and IDRC, 2007), p. 233ff; W. Jansen, Review of S. Joseph (ed.) *Gender and Citizenship in the Middle East*, *Bibliotheca Orientalis*, LXII (3-4) (2005) 378-383; S. Joseph, *Gender and citizenship in the Middle East* (Syracuse, NY, Syracuse University Press, 2005).

39 M. Charrad, "Unequal citizenship: Issues of gender justice in the Middle East and North Africa" (2007), p. 237.

40 Ibid.

41 Inter-Parliamentary Union (IPU), *Women in Parliament in 2018: The Year in Review* (Geneva, IPU, 2019).

42 M. Shalaby, "Women's Representation in the Middle East and North Africa", *Oxford Bibliographies*, 25 October 2018

43 Hatoon al-Fassi, "Is female suffrage in the Gulf important?" (London School of Economics Middle East Centre, 2017).

A few countries have attempted to bridge the gender gap in the political arena by means of constitutional and electoral mechanisms (e.g. Algeria, Iraq, Sudan and Tunisia) or executive decrees (e.g. Saudi Arabia, where a Royal Decree established a 20 per cent quota for women's participation in the Shura Council in 2012).⁴⁴ However, many Arab States continue to lag behind with some of the lowest percentages of women in national legislatures globally (e.g. Kuwait, Yemen).

Women's limited political participation has been identified as a factor in the dynamics which fueled the 2011 uprisings in some Arab States.⁴⁵ For the vast majority of women, increased access to knowledge is yet to result in significant enhancements of decision-making power to shape their own lives and the future of their nations.

2.3 Laws and gender norms that impede human development

The Organisation for Economic Cooperation and Development (OECD) estimates that gender-based discrimination in laws and social norms costs the economies of the MENA region USD\$575 billion per annum.⁴⁶

2.3.1 Laws that are barriers to gender equality and development

Women typically do not have the same legal rights as men to head a family, access finances, travel, pursue a profession, inherit wealth or to pass their nationality to their children or spouse. Laws and law enforcement practices present barriers to women's equal participation in the workforce and public life. Discriminatory laws that contribute to women's social and economic disempowerment and hold back human development and economic growth in the Arab States region include:

Personal status laws

- Family laws in most Arab States define men as the head of the household and imply that women's role is to focus on domestic duties (see 3.5.4). In most Arab societies, women's citizenship and relationship to the state are mediated by the institution of male guardianship (see 3.5.3). The husband's legal responsibility to provide for

the family confers authority on him and assumes that his wife will be financially dependent on him rather than pursue her own career or profession.

- A husband's unilateral right of divorce by verbal repudiation and the wife's legal obligation to obey her husband are barriers to women's entry into the labour force (see 3.5.5).
- Laws relating to property ownership often require separation of assets, rather than joint ownership of property, and most property is usually held in the husband's name.⁴⁷ Women contribute financially to family expenses directly and indirectly through unpaid domestic and care work. However, women are generally disadvantaged in property division during marriage and after divorce because their contributions are not recognized or given financial value by the law (see 3.5.5–3.5.6)

- Inheritance laws favour male heirs in most instances and there is a lack of protection for women against disinheritance in many countries, including as a result of family pressure on women to renounce their inheritance rights and 'land-grabbing' by male relatives (see 3.5.6).

Labour laws

- The majority of women's economic participation is in the informal sector. Labour laws generally do not apply to informal employment and redress mechanisms are absent for women who experience exploitative conditions in the informal sector.
- In many Arab States, labour laws that apply to people in formal employment are supportive of women, however enforcement of these laws is inconsistent. The laws of many Arab States provide for equal pay for equal work, maternity leave benefits and access to child care (see 3.6.3–3.6.4). However, in practice these labour laws are often weakly enforced and women lack practical recourse should they not receive these benefits.⁴⁸ In addition, women are often expected to carry out care roles in the workplace (also known as 'workplace housework').
- Women's employment options are restricted by the requirements imposed by guardianship rules for wives to obtain their husband's permission to work and travel (see 3.5.3) and by laws that restrict the types of work in which they can participate (see 3.6.2). These factors discourage employers from hiring or promoting women and limit women's ability to compete for jobs.
- In most cases, maternity leave entitlements are guaranteed for women in formal employment, but these entitlements often remain less than the international standard of 14 weeks and there are inadequate paternity

leave provisions to support shared roles in child care (see 3.6.4). In many cases, maternity leave is a responsibility of employers, rather than governments. This expense acts as a disincentive for companies to employ women.

- Early retirement ages for women were originally introduced with the intent to protect women, however the long-term impact of these laws has been to disadvantage women by excluding them from the workforce at a younger age than men (e.g. in Jordan and Saudi Arabia the retirement ages are 55 for women and 60 for men), depriving women of opportunities for promotion and reducing the number of women in decision-making and leadership roles.⁴⁹
- Some labour regulations discriminate against women because of the conditions that apply to non-wage benefits. For example, tax and employment benefits for families are usually channeled through men. A woman can generally only receive these benefits if she is officially recognized as the 'head of the household', which is often defined narrowly and restricted to circumstances where a woman is widowed or proves that her husband is incapacitated. Lack of access to these benefits reduces a woman's income, even when she holds the same kind of job as a man.⁵⁰ There is also a lack of legal protection from discrimination in terms and conditions of employment offered to women and access to promotion, pensions and other benefits enjoyed by men, as well as a failure to protect from dismissal for failing to carry out informal duties not laid out in a contract.

Legal protections against sexual violence and harassment

- While there has been some progress in addressing workplace sexual harassment and violence through legislation introduced in some countries (see 3.4.5,

44 Kingdom of Saudi Arabia, Shura Council Law, Royal Decree no. A/91 (1992) as amended by Royal Decree no. A/44 of 29/2/1434 H (2013).

45 E. Arampatzi, M. Burger, E. Ianchovichina, T. Röhrich, R. Veenhoven, *Unhappy Development: Dissatisfaction with Life on the Eve of the Arab Spring*, Policy Research Working Paper 7488 (Washington DC, World Bank, 2015).

46 G. Ferrant and A. Kolev, *The economic cost of gender-based discrimination in social institutions* (Paris, OECD Development Centre, 2016).

47 OECD, "Legal and social barriers holding back women's empowerment in Middle East and North Africa", 7 September 2017.

48 Euro-Mediterranean Network of Economic Studies (EMNES), *Institutions and Labour Markets in the Southern Mediterranean Countries: A Survey of Egypt, Jordan, Morocco & Tunisia* (EMNES, 2017).

49 Retirement age is defined in the Social Security Law in Jordan, rather than the Labour law. See: Trading Economics, "Retirement Age: Saudi Arabia" (2019). Available from <https://tradingeconomics.com/saudi-arabia/retirement-age-women>; ILO, "Social Protection: Jordan" (2017). Available from <https://www.social-protection.org/gimi/ShowCountryProfile.action?iso=JO>

50 World Bank, *Gender and Development in the Middle East and North Africa* (Washington DC, World Bank, 2004).

3.6.5), health and safety protections for women in the workplace are often poorly enforced.⁵¹ Women are less likely to remain in work if it is unsafe.

- Many women in this region struggle to find safe transportation to work. Laws and law enforcement

practices fail to adequately address the sexual harassment that women experience in public places such as transport hubs, trains or buses, the lack of female drivers and operators, and the failure to provide segregated options such as women-only train carriages and taxis.⁵²

2.3.2 Gender norms that are barriers to gender equality and development

Discriminatory legal frameworks reflect conservative gender norms, including that a woman will marry when young, that her most important contribution to the family and society will be as a homemaker and mother, that the household will be headed by a man, that a wife will depend on her husband for support, and that the man's responsibility for supporting and protecting his wife and family justifies his authority and control over his wife's interactions in the public sphere. These norms emphasize perceived 'family honour', which is based on protecting the reputation of women and girls, including by restricting public interactions between males and females.⁵³

In communities where the traditional system of male guardianship over adult women continues to operate (see 3.5.3), there is often an expectation that women be accompanied by or have the approval of a male relative acting as her guardian when attending the police, banks or courts. Male guardianship requirements for conducting official business are generally a tradition rather than a legal requirement, but can deter women from accessing the justice system to report family violence (particularly if the guardian is the abuser) and can prevent women travelling to courts if they feel they need a male companion to accompany them.

Gender roles associated with traditional norms limit women's decision-making power and therefore their economic opportunities, including their choice of the type of work and whether to engage in paid work. Often female formal labour is concentrated in the public sector, for example, in Jordan 82 per cent of positions held by women are in the public sector.⁵⁴ Another reason is the disproportionate share of unpaid domestic chores and care work borne by women. A survey conducted in Egypt showed that unpaid work is significantly more prevalent among females, with 91 per cent of surveyed women reporting spending time on unpaid household activities, compared to only 26 per cent of men.⁵⁵ An additional factor contributing to a lack of economic independence is that women usually do not have their names included on property deeds or tenure agreements, making them economically vulnerable.⁵⁶

The most widespread religious traditions of the region shape the norms, beliefs, attitudes and values held about the roles women and men should play in the family and in public spheres. There are divergent views within each of the major religions about the role of women in society, ranging from ultra-conservative religious fundamentalist views to modernist progressive views. Religious traditions influence attitudes about the

role of women in the family, the types of employment appropriate for women, and whether women should pursue further education or leadership roles in public life. Religious values are reflected in legal frameworks, particularly those applying to family life and personal status issues. However, norms are not fixed, and religious interpretations change over time. While adherence to conservative gender norms continues to be strong among faith communities in many parts of the region, attitudes towards gender equality are shifting and, in some countries, this is flowing through to public support for law reforms relating to women's empowerment and gender equality.

The International Men and Gender Equality Survey (IMAGES) was conducted in 2016–2017 in four Arab States (State of Palestine, some regions of Egypt and Lebanon, and one administrative region of Morocco). The study was based on interviews with 10,000 men and women. It found that the majority of interviewed men supported a wide range of inequitable attitudes, for example the view that a woman's most important role is to care for the household.⁵⁷ Many of the women who were surveyed were also found to hold inequitable attitudes.

Pervasive inequitable attitudes are detrimental to the men who are expected to monitor and control women's lives, for example by controlling what their wives wear and when they can leave the family house, in violation of women's fundamental human rights to dignity and security of the person. Many men may feel pressured into these roles by conservative gender norms that are harmful to both women and men, their family relationships and their children's welfare. These norms are increasingly out of step with the changing community attitudes of people living in areas undergoing modernization and rapid change.

The IMAGES survey found that there are a wide range of views held by men about gender roles, with some men describing spousal violence as being a thing of the past, saying that women's enhanced status has made

such violence less acceptable.⁵⁸ While some caution needs to be exercised in drawing conclusions from research focused on attitudes rather than behaviours, it is clear that gender norms change as societies and economies change.

The IMAGES study reported that a quarter or more of men who were surveyed supported at least some aspects of women's equality and empowerment. The factors associated with some men's apparent favourable attitudes towards gender equality included education, family influence and life circumstances. The research also showed that men were more likely to say that they participated in care work at home if their wives worked outside the home. While most women shared similar attitudes as men, younger women tended to have more progressive views.⁵⁹ The authors of the study observed that "younger women in the region are yearning for more equality, but their male peers fail to share or support such aspirations."⁶⁰

Conservative gender norms have a major impact on the realization of gender justice. This applies to national policies as well as to personal matters. These norms influence legislative agendas, create obstacles to the enforcement or implementation of laws designed to promote gender equality, allow impunity for perpetrators of gender-based violence and undermine service provision. At the macro-level, conservative gender norms have impacted the adoption of international instruments, as shown by the reservations entered to CEDAW by the majority of countries in the region, particularly article 2 which calls upon States to condemn discrimination against women in all its forms, article 9 on equal nationality rights, article 15 on equality before the law, and article 16 on equality in marriage and family life (see 3.2).

51 World Bank, *Hashemite Kingdom of Jordan: Understanding How Gender Norms in MENA Impact Female Employment Outcomes* (Washington DC, World Bank, 2018).

52 Bessma Momani, *Equality and the Economy: Why the Arab World Should Employ More Women: Policy Briefing* (Washington and Doha, Brookings Institute, 2016).

53 World Bank, *Gender and Development in the Middle East and North Africa* (Washington DC, World Bank, 2004).

54 UNDP, *Youth and the Prospects for Human Development in a Changing Reality: Arab Human Development Report 2016* (New York, UNDP, 2016), p. 93.

55 World Bank, *Egypt: Women Economic Empowerment Study* (Washington DC, World Bank, 2019), p. 32.

56 Ibid; See further: UN-Habitat, *Women and Land in the Muslim World: Pathways to increase access to land for the realization of development, peace and human rights* (Nairobi, UN-Habitat, 2018) (HS/043/18E), p. 60.

57 S. El Feki, B. Heilman and G. Barker (eds.), *Understanding Masculinities: Results from the International Men and Gender Equality Survey (IMAGES) – Middle East and North Africa* (Cairo and Washington DC, UN Women and Promundo-US., 2017), p. 14.

58 Ibid., p. 82.

59 Ibid., p. 15.

60 Ibid., p. 16.

2.4 Barriers to access to justice

2.4.1 Institutional weaknesses of the law and justice sector

While the gap in education levels between men and women is narrowing in most Arab States, illiteracy is still an issue in some countries, especially for poor women in rural areas, and information on laws and legal procedures is often complicated and not easy to access. Thus, even when the rights of women and girls are enshrined in legislation, people are often unaware of their rights. There is a lack of information tailored to women and girls on their legal options to seek protection from gender-based violence; to assert their rights in employment, education, nationality, property and inheritance; or to resolve family disputes.

The administration of the justice system in most countries does not respond well to the different needs of men and women. The lack of training of officials involved in the administration of justice on gender justice issues means that they often have limited understanding of recent developments in the law that affect women, such as reforms to personal status code and penal codes and the introduction of new domestic violence protections. Judges, police and prosecutors often lack understanding of the sensitivities surrounding gender-based violence or how to apply the law in a way that will provide equitable and just outcomes for women. Women are usually under-represented in prosecution and police services, and in the staffing of courts.⁶¹ Women may lack confidence in receiving a fair hearing from a court dominated by men because male judges often favour conservative interpretations of the law based on tradition and religion.⁶²

There have been recent efforts in a number of countries to increase the number of female police officers and prosecutors, and to establish special units to deal with cases of violence against women.⁶³ Some NGOs provide 'one stop' medico-legal centres, where clients can receive health care and legal assistance. This approach has resulted in an increase in prosecutions and convictions, however sustainability is a challenge since they often depend on donor funding.⁶⁴ A large proportion of Arab States have also established National Human Rights Institutions,⁶⁵ which in some cases provide an alternative to courts for women seeking redress for human rights violations.

The cost of legal services is another major barrier for poor women and men seeking justice through the formal legal system. Women generally have limited access to their family's financial resources and may be reluctant to file claims in court because of the cost. Public legal aid services are not well funded in Arab States and the quality is variable. Where government-funded legal aid is available, it is usually provided under strict eligibility criteria. In some countries, government-funded legal aid is only provided for defendants in criminal cases.

Recently, there have been gradual improvements in access to justice for women. In several countries, legal aid services for women are provided by a combination of government services, bar associations and/or civil society organizations (e.g. Bahrain, Egypt, Iraq, Jordan,

Lebanon, State of Palestine, Syria and Tunisia).⁶⁶ Some NGOs provide legal aid services in poor and conflict-affected areas. For example, in the West Bank (State of Palestine), NGOs provide legal advice, court representation, social support and emergency and long-term shelter. In Somalia, NGO legal aid providers provide court representation to clients, assisting survivors of gender-based violence in prosecutions and alternative dispute resolution through the customary system.⁶⁷

A study of access to justice in Egypt, Jordan, Lebanon and Yemen found that women go to court for personal status matters only as a last resort and that gender norms still shame women for claiming their legal rights through the courts.⁶⁸ The study found that gender mainstreaming in these court systems is still mostly absent and judges failed to understand the different social realities faced by men and women. NGOs have collaborated with courts and bar associations to support women to seek justice

through the courts, but the impact of this work is still confined to individual cases, and judicial consideration of women's perspectives is rare.

In some contexts, including countries where the rule of law has broken down due to conflict or in remote areas where formal courts are absent, the population relies on customary law systems. Informal justice mechanisms often reinforce existing norms of male dominance.⁶⁹ For example, in parts of Somalia, Yemen, Sudan and Djibouti most people rely on customary law mechanisms, administered exclusively by elderly men, which emphasize consensus, compromise and reduction of social shame. Due to power imbalances between survivors and perpetrators, such customary legal systems are poorly suited to responding to gender-based violence cases and are often unable to offer effective protection for women and girls, particularly those who are refugees or internally displaced persons, or who belong to other marginalized groups.⁷⁰

2.4.2 Women's participation in the judiciary

There is no official legal prohibition on women entering or progressing through the judiciary in any Arab State. However, conservative gender norms and social expectations about women's roles in society can prevent women from pursuing a career in the judiciary or from progressing from lower to higher levels of the judiciary. In all Arab States, "the proportion of women in the judiciary decreases as seniority increases. There are fewer women serving in higher courts than in the lower courts, where judges typically start their careers."⁷¹ Interestingly, there is no correlation between women's participation in the judiciary and their participation in other spheres of public life in the Arab States region.⁷²

Factors contributing to low participation of women in the judiciary include weak commitments to gender equality in national legislation and policy frameworks, conservative religious doctrines, poor levels of transparency and lack of fairness in appointments, the burden on women of unpaid care work and domestic work, persistent gender stereotypes, and fragmented support from National Women's Machinery and civil society. Rules for appointment and career progression often disadvantage women because they fail to account for the fact that women are often unable to practice as lawyers until much later in life than men, which delays their ability to enter the judiciary.⁷³

61 S. Barakat (2018), *The Cost of Justice, exploratory assessment on women's access to justice in Lebanon, Jordan, Egypt and Yemen* (Oxford, Oxfam International, 2018).

62 UNDP, *2005 Arab Human Development Report* (New York, UNDP, 2006), p. 197.

63 OECD and CAWTAR, *Women in public life: Gender, law and policy in the Middle East and North Africa* (OECD, 2014), p. 261

64 ESCWA, *Institutional Mechanisms for Gender Accountability in the Arab Region* (Beirut, ESCWA, 2017) (E/ESCWA/ECW/2017/Technical Paper.3).

65 Algeria (National Human Rights Commission of Algeria), Bahrain (National Human Rights Institution), Egypt (National Council for Human Rights), Djibouti (National Human Rights Commission), Iraq (Iraqi High Commission for Human Rights), Jordan (National Centre for Human Rights), Libya (National Council for Public Liberties and Human Rights), Morocco (Human Rights Advisory Council), Oman (National Human Rights Commission), State of Palestine (Palestine Independent Commission for Human Rights), Qatar (National Committee for Human Rights), Sudan (The National Commission for Human Rights of Sudan), Tunisia (Higher Committee on Human Rights and Fundamental Freedoms). The Global Alliance of National Human Rights Institutions in compliance with Paris Principles has accredited five of them with status A (Egypt, Jordan, Morocco, State of Palestine and Qatar) and six others with status B (Algeria, Bahrain, Iraq, Libya, Oman and Tunisia). Djibouti and Sudan have yet to request their accreditation.

66 P. Prettitore, *Delivery of justice sector services to the poor. How are Middle East governments addressing gaps?* (Washington DC, World Bank, 2013); S. Barakat, *The Cost of Justice: Exploratory assessment on women's access to Justice in Lebanon, Jordan, Egypt and Yemen* (Oxford, Oxfam International, 2018); OECD, Centre of Arab Women for Training and Research, *Women in public life: Gender, law and policy in the Middle East and North Africa* (OECD, 2014), p. 253.

67 Legal Action Worldwide, *Legal Aid Providers Supporting Gender Based Violence Survivors in Somalia* (Legal Action Worldwide, UNFPA, UNDP, 2014).

68 S. Barakat, *The Cost of Justice: exploratory assessment on women's access to justice in Lebanon, Jordan, Egypt and Yemen* (Oxford, Oxfam International, 2018).

69 ESCWA, *The state of gender justice in the Arab region* (2017), p. 28.

70 Ibid; Legal Action Worldwide, *Legal Aid Providers Supporting Gender Based Violence Survivors in Somalia* (Legal Action Worldwide, UNFPA, UNDP, 2014), p. 18.

71 ESCWA, *Women in the Judiciary in the Arab States: Removing Barriers, Increasing Numbers* (Beirut, ESCWA, 2019), (E/ESCWA/ECW/2019/2), p. 32.

72 Ibid, p. 37

73 For a more detailed discussion, see: *ibid*.

Despite these barriers, women are increasingly present in the judiciaries of Arab States. Lebanon has reached gender parity with 49.3 per cent of the judiciary being women. Algeria (42 per cent) and Tunisia (43.1 per cent) are also on track to achieve gender parity in the judiciary. Other States document rising numbers of female judges, notably Djibouti (38.6 per cent), Jordan (22 per cent) and Morocco (23.5 per cent).⁷⁴ The State of Palestine appointed women as judges in the Sharia courts, as a result of a 2009 Presidential Decree. In 2018, there were four women (three judges and a prosecutor) working in the Sharia courts of the State of Palestine. Sudan stands out as a country with long-standing history of women judges, including women Sharia court judges. In an historic development, a female Supreme Court Judge was appointed as head of Sudan's judiciary in 2019.⁷⁵

Quota systems have helped to advance women's participation in judiciaries. For example, Jordan's

National Strategy for Women 2013–2017 defined a target of 20 per cent of women in the judiciary. This target was achieved in 2015, and the Judicial Council has set a new target to raise the percentage of women in the judiciary to 25 per cent. States such as Bahrain and Jordan have proactively encouraged women's participation in their institutes of judicial studies and have implemented 'Judges of the Future' programmes, which have resulted in significant increases in the number of women pursuing a career path in the judiciary.⁷⁶

There have been several initiatives at the regional level to develop networks of women judges and to conduct training and education of the judiciary in gender issues, led by organizations such as Arab Women's Legal Network, Centre of Arab Women for Training and Research,⁷⁷ the International Commission of Jurists⁷⁸ and the International Development Law Organization.⁷⁹

2.5 Gender justice in conflict settings

2.5.1 Conflict, occupation, gender inequality and gender-based violence

In the past decade, the Arab States region has seen multiple conflicts that have resulted in an exacerbation of violence against women and girls. Perpetrators of violence benefit from increased impunity in conflict settings, with few formal justice mechanisms in place to mitigate the harms. This is coupled with displacement, which increases vulnerability. In such a context, access to justice for women and girls is elusive.

Gender inequalities are exacerbated by violent conflict, displacement and occupation.⁸⁰ During conflict, displacement and political upheaval, rule of law breaks

down. This is especially concerning in contexts where the law and law enforcement discriminate against women even during times of stability. In times of conflict, States often give higher priority to increased militarization and protection of the State rather than the promotion of gender equality and protection from gender-based violence. In some States, such as Iraq, Libya, Somalia and Yemen, conflict has led to political splintering within States with the result that the legal rights of women and girls vary geographically, determined in part by who has political power in each part of the country.

In 2019, the UN Security Council passed resolution 2467 on Women, Peace and Security: Sexual Violence in Conflict. The resolution emphasizes the need to combat impunity for sexual violence in war. It calls on member States to strengthen legislation and enhance investigation and prosecution of sexual violence in conflict and post-conflict situations, including by victim and witness protection laws, legal aid, specialized police units and courts to address such crimes.⁸¹

The sexual enslavement of women and girls during conflicts can also be linked to the increase of child marriage in the region.⁸² ISIL codified child and forced marriage in the territory it occupied in Iraq and Syria. Similarly, in Somalia, the al-Shabaab group has promoted child marriage as an organized practice amongst its fighters. For girls and young women who are not forced to marry, there is a fear of rape and having children out of wedlock. Families look to child marriage as a protective, albeit negative, coping mechanism during conflicts. This is seen in conflict-affected communities in Yemen and among Syrian refugee populations in Lebanon and Jordan, where girls are increasingly being married before reaching the age of 18.⁸³

For internally displaced or refugee women, there may be no legal guarantees of access to health care and, where services are present, they may be costly. Women and girls, including survivors of rape, may be denied access to essential health services including contraception and abortion care. In the case of refugee women from Syria, research shows that sexual and gender-based violence, reduced use of contraceptives, menstrual irregularity, unplanned pregnancies, preterm birth, and infant morbidity are of concern.⁸⁴ Palestinian women living under occupation face hurdles in accessing appropriate and timely medical care. This is especially true for women in Gaza who have limited access to

health services within the territory and are denied travel permits to seek life-saving medical care outside the Gaza Strip.⁸⁵

In times of instability, women's decision-making power at the household level may be compromised. Caregiving responsibilities often fall to women and girls, curbing their ability to work outside the home. Women-headed households can be among the most vulnerable. The threat of conflict and sexual violence often results in families limiting girls' mobility, which impacts upon their ability to engage with the public sphere and, most importantly, attend school. Often it is women who serve as the backbone of the economy, but this does not mean that they are treated fairly or are empowered. In States going through conflict, occupation or transition, there is often a continued regression in women's access to the public sphere, impacting women's economic participation and empowerment.

Military occupation is a form of structural and organized violence that presents a different set of obstacles for women and girls. Occupation seriously impacts the daily lives of women and girls in specifically gendered ways.⁸⁶ In the case of the occupation of the Palestinian territory, conflict, militarization, political and social fragmentation, policies of de-development, and a minimized role for grassroots civil society have severely

76 For a more detailed discussion, see: ESCWA, Policy Brief: *Women in the Judiciary: A Stepping Stone towards Gender Justice*, (ESCWA, Beirut, 2018) (E/ESCWA/ECW/2018/Brief.1), pp. 10–11

77 E.g. CAWTAR, *Regional Training Kit for Trainers on Building Capacities of Service while Working on Gender-Based Violence Elimination* (Tunis, CAWTAR, 2016).

78 See: International Commission of Jurists, <https://www.icj.org/regions/middle-east-and-north-africa/>

79 See: International Development Law Organization, <https://www.idlo.int/strengthening-women-judges-southern-and-eastern-mediterranean-region>

80 Georgetown Institute for Women, Peace and Security (GIWPS) and Peace Research Institute Oslo (PRIO), *Women, Peace and Security Index 2017/18: Tracking Sustainable Peace through Inclusion, Justice, and Security for Women* (Washington DC, GIWPS and PRIO, 2017), p. 11.

81 UN Security Council, *UN Security Council Resolution 2467 on Women and Peace and Security: Sexual Violence in Conflict*, 23 April 2019 (New York, UN Security Council, 2019) (S/RES/2467 (2019)).

82 United Nations Children's Fund (UNICEF) Middle East and North Africa Regional Office and the International Center for Research on Women (ICRW), *Child Marriage in the Middle East and North Africa* (UNICEF, Amman, 2017).

83 Ibid.

84 G. Somari, "Syrian Refugee Women's Health in Lebanon, Turkey, and Jordan and Recommendations for Improved Practice" *World Medical and Health Policy*, vol. 9, no. 2 (2017), pp. 255–274.

85 ESCWA, *Social and Economic Situation of Palestinian Women and Girls (July 2016 – June 2018)* (Beirut, ESCWA, 2018) (E/ESCWA/ECW/2019/TP.2), pp. 21–22.

86 Specific to the situation in the State of Palestine, see: N. Shalhoub-Kevorkian, *Security Theology, Surveillance and the Politics of Fear* (Cambridge, Cambridge University Press, 2015).

impacted Palestinian institutions, disrupted gender relations and interfered with national efforts to reform or pass legislation that benefits women and girls.⁸⁷

In post-conflict settings, it is rare for gender concerns to figure prominently in the reconstruction agenda. Women may experience difficulties gaining access to land, property, commodities and other productive resources. Likewise, policies may not include them in economic opportunities and benefits.

The impacts of conflict are complex, and there are also examples where women have gained greater equality in some aspects of their lives during or immediately after conflicts. For example, where many men of working age leave their homes to fight or are killed, women out of necessity may take a more prominent role in the workforce and public life. As pre-conflict gender norms are disrupted, opportunities may arise after the conflict for women and girls to improve their social and political status.

2.5.2 The Women, Peace and Security agenda

United Nations Security Council resolution 1325 and the broader Women, Peace and Security Agenda seek to ensure a gender perspective and women's participation, protection and rights in peace-making and peacebuilding. The Agenda calls on United Nations member States to strengthen their responses towards gender equality and peace and security, and recommends taking these actions through dedicated National Action Plans.⁸⁸ The aim is to ensure that gender justice is maintained as a key priority in efforts for conflict prevention, peace mediation, relief, recovery and reconstruction programming.

Detailed guidance for governments on legal and policy responses to ensure that women's human rights are protected before, during and after conflict is provided by CEDAW General Recommendation no. 30.⁸⁹ General Recommendation no. 30 calls upon governments to

develop and fund national action plans and strategies on the Women, Peace and Security Agenda.⁹⁰ It also calls on all parties to conflict to take special measures to protect women and girls from sexual and gender-based violence, particularly rape and other forms of sexual abuse. Beyond protection, it also calls for women's participation "in international negotiations, peacekeeping activities and all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation and peace negotiations at the national, regional and international levels, as well as in the criminal justice system".⁹¹ It also specifically calls for greater access to justice for women and girls impacted by conflict.⁹²

A handful of States in the region have drafted National Action Plans on resolution 1325 (Iraq, Jordan, State of Palestine, Tunisia and Lebanon).⁹³ The League of Arab States has also adopted an *'Executive Action Plan on*

the Regional Strategy on Protecting Women in the Arab Region: Peace and Security.⁹⁴ Iraq was the first Arab State to have a National Action Plan. Iraq also developed an emergency action plan in response to the military operations associated with the anti-ISIL offensive. Iraq is developing a second National Action Plan for 2019–2023 after revising the first plan with technical support of UN Women.⁹⁵ The State of Palestine is also in the process of developing its second National Action Plan. Civil society partners have played significant roles in the experiences of both Iraq and State of Palestine, including in the planning stage as well as the implementation and monitoring of interventions. National Action Plans present a platform for dialogue among civil society organizations and with government counterparts on gender equality, peace and security issues.

The Jordanian experience in development of its National Action Plan started in 2012 and was led by the Jordanian National Commission for Women. Priority-setting and validation processes were consultative and covered all governorates of the country, with civil society organizations playing a strong role. Jordan's plan makes a link to UN Security Council resolution 2250 on Youth, Peace and Security, and is framed around four priority areas: gender responsive security sector reform, preventing violent extremism, gender-sensitive humanitarian services, and building a culture of peace and gender equality.⁹⁶

2.5.3 Transitional justice

After conflict or political upheaval, transitional justice processes including truth seeking, prosecution, institutional reforms, reparations, and reconciliation, can contribute to gender justice if the focus is on legislative transformation rather than a return to the pre-conflict status quo. This is because sexual and gender-based violence and gender-based discrimination during and after conflict often have their origins in the socio-cultural norms that existed prior to conflict.⁹⁷ Efforts to reduce violence and discrimination against women and girls through transitional justice processes are essential to lay the foundations for greater overall peace-building efforts after transition, thus playing a role in mitigating against the militarization of society.⁹⁸

Recent transitional justice processes and legal reforms in the Arab States region have tended to include women and address gender-based concerns, such as violence against women, when women's movements have pressed for inclusion.⁹⁹ Egypt, Libya, Morocco, Tunisia and Yemen have all engaged with transitional justice processes to varying extents.

Morocco was the first Arab State, in 2004, to engage with a transitional justice process that focused primarily on truth-seeking. According to observers, women constituted around 27 per cent of those participating in public hearings.¹⁰⁰ For its part, Tunisia's National Constituent Assembly adopted the Law on Establishing

87 ESCWA, *Social and Economic Situation of Palestinian Women and Girls (July 2016 – June 2018)* (2019) (E/ESCWA/ECW/2019/TP.2) (2019); United Nations General Assembly, Economic and Social Council, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan. Note by the Secretary-General* (2019) (A/74/88–E/2019/72); United Nations Economic and Social Council, *Support for the Palestinian people: impact of the Israeli occupation and practice* (2018) (E/ESCWA/30/5).

88 See UN Security Council resolutions 1325, 1820, 1888, 1889, 1960, 2106, 2122, 2242 and 2467.

89 CEDAW Committee, *General Recommendation no. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013 (CEDAW/C/GC/30). For a detailed analysis, see: UN Women, *Guidebook on CEDAW General Recommendation no. 30 and the UN Security Council Resolutions on Women, Peace and Security* (New York, UN Women, 2015).

90 UN Security Council, *Resolution 1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000* (New York, United Nations, 2000) (S/RES/1325).

91 CEDAW Committee, *General Recommendation no. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013 (CEDAW/C/GC/30), art. 42.

92 Ibid, arts. 74–81.

93 For an assessment of the National Action Plans in Iraq, Jordan and the State of Palestine, see: A. Swaine, *Balancing Priorities: Lessons and Good Practices from Iraq, Jordan and Palestine for NAP-1325 Drafting Teams* (New York, UN Women, 2018).

94 S. Chaban and S. Trebelsi, "The role of the League of Arab States in the promotion of gender equality and the political empowerment of women", in: *Regional Organizations, Gender Equality and the Political Empowerment of Women* (International IDEA, Communities of Democracies and UNDP, 2017), p. 12.

95 Iraq, *National Action Plan for implementation of UN Security Council Resolution 1325, 2014–2018*. Available from https://www.peacewomen.org/sites/default/files/final_draft_Iraq-_nap_1325_eng.pdf

96 A. Swaine (2018), op. cit.

97 M. McWilliams and F. Ní Aoláin, "There is a war going on you know – Addressing the complexity of violence against women in conflicted and post-conflict societies", *Transitional Justice Review*, vol. 1, No. 2 (2013), pp 4–44.; A. Swaine, "Beyond strategic rape and between the public and private: Violence against women in armed conflict", *Human Rights Quarterly*, vol. 37, No. 3 (2015), pp. 755–786.

98 M. McWilliams and F. Ní Aoláin (2013), *ibid.*, p. 7.

99 See: S. Chaban, "Addressing Violence against Women through Legislative Reform in States Transitioning from the Arab Spring", in: J. Lahai and K. Moyo (eds.) *Gender in Human Rights and Transitional Justice: Crossing Boundaries of Gender and Politics in the Global South* (Palgrave Macmillan, 2018).

100 International Center for Transitional Justice and Foundation for the Future, "Morocco: Gender and Transitional Justice Process" (2011).



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Part 3 Law reform: Country progress and regional trends

and Organizing Transitional Justice in 2013, resulting in the creation of the Truth and Dignity Commission in 2014 for crimes from 1955 to 2013. A Women's Committee was established that was responsible for mainstreaming gender across the Commission's work and responding to women victims. Furthermore, the Commission's mandate made a clear reference to rape and sexual violence as systematic human rights violations.¹⁰¹

Institutional reforms, which include constitutional reform, can also be a part of transitional justice processes. The experience of Egypt in amending its

constitution provided an important opportunity to ensure that gender equality and non-discrimination were addressed in the constitution of 2014. In Yemen, discussions of the draft constitution, which were held by the National Dialogue Conference, also recommended that the new constitution should recognize women as equal citizens and ensure a quota system of 30 per cent in decision-making positions.¹⁰² However, many transitional processes in the region, while promising much, have yet to deliver sustained gender transformation.¹⁰³

¹⁰¹ ESCWA, *Policy Brief: Employing a Gendered Approach to Transitional Justice in the Arab Region: The potential role of National Women's Machineries* (Beirut, ESCWA, 2019).

¹⁰² Ibid.

¹⁰³ S. Chaban, "Addressing Violence against Women through Legislative Reform in States Transitioning from the Arab Spring" (2018).

3.1 Legal frameworks and recent reforms

Most national legal frameworks in the region are a combination of laws derived from each country's colonial legacy and religious codes. This mix in itself has led to some anomalies that contribute to gender inequalities, most notably in the State of Palestine where different legal systems apply to different parts of the State. These legal frameworks are typically complex and multi-layered, and traditional gender norms and religion continue to have a strong influence on laws relating to family matters. In some countries, such as Egypt and Lebanon, each religious community has its own personal status code.

Women's activism, as described in Part 2, is having an impact. In recent times, many Arab States have made progress in gender justice by removing legal provisions that discriminate against women and girls and introducing new laws that provide greater protections for them. As will be detailed below, there has been

significant progress in some countries over the last decade in a range of areas such as the introduction of domestic violence laws and sexual harassment laws, reform of personal status codes to provide women with more rights in marriage and divorce, removal of discrimination against women in some nationality laws, laws promoting women's labour force participation and laws prohibiting discrimination against women in employment and other areas of public life.

In many Arab States, penal codes have been updated in recent years, resulting in the removal of certain discriminatory provisions. Recent developments in reform of criminal laws include abolition of 'marry-your-rapist' laws, abolition of laws allowing for mitigation of punishment for crimes of femicide (so-called 'honour' crimes), introduction of laws prohibiting harmful traditional practices including FGM/C and child marriage, and strengthening of anti-trafficking laws.

3.2 Ratification of international instruments

International instruments dealing with gender equality and related issues are used as benchmarks to assess national progress. Table 1 illustrates the key international instruments relevant to the advancement of women and gender equality that apply to Arab States, as well as the degree to which they have been adopted in the region. This section also discusses the region's engagement with CEDAW, as the key international instrument relevant to this report, as well as the Geneva Conventions and regional instruments.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW is the international instrument of greatest importance to gender justice in the Arab States region. It provides a comprehensive framework for the

development of laws and policies to address gender justice. As of October 2019, the only states in the region yet to ratify CEDAW are Somalia and Sudan. Most other Arab States maintain reservations to article 2 (non-discriminatory policy measures), article 9(2) (nationality rights), article 15 (equality before the law) and article 16 (equality in marriage and family life) of CEDAW, as well as article 29 (mechanism for States to resolve inter-State disputes). Except for article 29, these reservations generally relate to concerns that national laws and policies remain consistent with Sharia principles.

Arab States use different terms in the way that they express their reservations to CEDAW. The arguments that States have used when entering reservations to CEDAW and in reports submitted to the CEDAW Committee include:¹⁰⁴

Table 1: Ratification of international instruments

	Convention relating to the Status of Refugees ² (1951)	ICCPR International Covenant on Civil and Political Rights (1966)	ICESCR International Covenant on Economic, Social and Cultural Rights (1966)	CEDAW Convention on Elimination of All forms of Discrimination Against Women (1979)	CAT Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	CRC Convention on the Rights of the Child (1989)	ICRMW International Convention on Protection of all Migrant Workers and Members of their Families (1990)	Palermo Protocol on Human Trafficking ³ (2000)
Algeria	1963	1989	1989	1996	1989	1993	2005	2004
Bahrain	-	2006	2007	2002	1998	1992	-	2004
Djibouti	1977	2002	2002	1998	2002	1990	-	2005
Egypt	1981	1982	1982	1981	1986	1990	1993	2004
Iraq	-	1971	1971	1986	2011	1994	-	2009
Jordan	-	1975	1975	1992	1991	1991	-	2009
Kuwait	-	1996	1996	1994	1996	1991	-	2006
Lebanon	-	1972	1972	1997	2000	1991	-	2005
Libya	-	1970	1970	1989	1989	1993	2004	2004
Morocco	1956	1979	1979	1993	1993	1993	1993	2011
Oman	-	-	-	2006	-	1996	-	2005
State of Palestine	-	2014	2014	2014	2014	2014	-	2017
Qatar	-	2018	2018	2009	2000	1995	-	2009
Saudi Arabia	-	-	-	2000	1997	1996	-	2007
Somalia	1978	1990	1990	-	1990	2015	-	-
Sudan	1974	1986	1986	-	1986	1990	-	2014
Syria	-	1969	1969	2003	2004	1993	2005	2009
Tunisia	1957	1969	1969	1985	1988	1992	-	2003
Yemen	1980	1987	1987	1984	1991	1991	-	-

Status of Signature/Ratification¹

■ Ratified	■ Signature only
■ Ratified with Reservations or Declarations	■ No Action

¹⁰⁴ See: Musawah, *CEDAW and Muslim Family Laws: in Search of Common Ground* (Malaysia, Musawah, 2011).

- Islamic law or Sharia is the principal source of law for the national legislation defining rights and responsibilities of men and women.
- Many Arab States view Sharia as unitary and fixed in its content. Several referred to “the Islamic Sharia” or “the Islamic law” (e.g. Syria, Bahrain) in justifying reservations.¹⁰⁵
- Some States argue that implementation cannot happen where CEDAW provisions are inconsistent with Sharia. A number of countries entered reservations on the basis of Sharia or religion generally, including Jordan, Lebanon, Libya, Saudi Arabia and Syria. For example, Saudi Arabia stated that its reservation related to the application of the Convention within a framework which does not conflict with the principles of the Islamic Sharia.¹⁰⁶
- Some States claim that Islam provides a different type of equality or superior justice for women, e.g. Egypt stated that to withdraw its article 16 reservations would “diminish the rights of women under Islamic law and Egyptian law”.¹⁰⁷ Several States asserted that Islam already provided for equality between men and women.
- Some States refer to local customs and traditions.
- Some States refer to the politically sensitive nature of issues related to marriage and family relations. Several States have pointed to the political instability in their country or region as reasons for non-compliance with CEDAW articles relating to non-discrimination and family life.

Of the States reviewed, Djibouti and the State of Palestine have taken the most progressive approach, having ratified CEDAW with no reservations. Tunisia and Morocco have both removed all reservations as well, but have maintained their declarations. Tunisia maintains a declaration that Tunisia shall not adhere to CEDAW when it contradicts its Constitution, and Morocco maintains a declaration relating to article 2, stating that the government of Morocco is ready to apply the provisions of the article as long as these do not conflict with Islamic law. Yemen only has a reservation to article 29, which deals with arbitration of disputes. Article 29 is an optional non-binding clause of the Convention.

Only two States in the region (Libya and Tunisia) have ratified the Optional Protocol to CEDAW, which allows people to submit complaints of violations of rights guaranteed by the Convention to international protection mechanisms when domestic remedies are limited or unavailable. However, this mechanism has yet to be successfully used in either State.

Geneva Conventions

The Geneva Conventions and their additional protocols establish standards for humanitarian treatment in war which accord women general protections equal to that of men. Women as members of the civilian population or of the armed forces are also given special protections by these treaties, according to their specific needs. Table 2 illustrates the degree to which the Geneva Conventions and their additional protocols have been adopted in the region.

Table 2: Ratification of Geneva Conventions¹⁰⁸

	1994 Geneva Convention I-IV	Additional Protocol (AP) I 1977	AP I Declaration art. 90	AP II 1977
Algeria	1960	1989	1989	1989
Bahrain	1971	1986	-	1986
Djibouti	1978	1991	-	1991
Egypt	1952	1992	-	1992
Iraq	1956	2010	-	-
Jordan	1951	1979	-	1979
Kuwait	1967	1985	2013	1985
Lebanon	1951	1997	-	1997
Libya	1956	1978	-	1978
Morocco	1956	2011	-	2011
Oman	1974	1984	-	1984
State of Palestine	2014	2014	2018	2015
Qatar	1975	1988	1991	2005
Saudi Arabia	1963	1987	-	2001
Somalia	1962	-	-	-
Sudan	1957	2006	-	2006
Syria	1953	1983	-	-
Tunisia	1957	1979	-	1979
Yemen	1970	1990	-	1990

State Parties/Ratifications

■ Ratified
 ■ No Action

¹⁰⁸The 1949 Geneva Conventions comprise: the first Geneva Convention protecting wounded and sick soldiers on land during war; the second Geneva Convention protecting wounded, sick and shipwrecked military personnel at sea during war; the third Geneva Convention applies to prisoners of war; whereas the fourth Geneva Convention affords protection to civilians, including in occupied territory. Two protocols were adopted in 1977, which strengthen the protection of victims of armed conflicts. Article 90 of Protocol I states: “The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize ipso facto and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the [International Fact-Finding] Commission to enquire into allegations by such other Party, as authorized by this Article.”

¹⁰⁵ Ibid., p. 12.

¹⁰⁶ Ibid., p. 12; Saudi Arabia State party report (CEDAW/C/SAU/2)(2007), p. 11.

¹⁰⁷ Ibid., p. 13; Egypt State party report, 5 September 2008 (CEDAW/C/EGY/7), p. 74.

Regional human rights instruments

Regional human rights instruments relevant to gender justice include the Arab Charter on Human Rights and the African Charter on Human and Peoples' Rights. Article 33 of the Arab Charter on Human Rights provides: "The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children". All Arab States included in this review are States Parties to the Charter.¹⁰⁹

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) calls on African States to take a range of measures to combat violence against women including to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.¹¹⁰ Members of the African Union that have acceded to the Maputo Protocol include Djibouti, Libya and Algeria. Tunisia, Sudan and Somalia have signed but not ratified the Protocol.

3.3 Gender equality in constitutions and nationality laws

Legal inequalities and SDG 10: Reduce inequality within and among countries

Targets that States are required to reach in order to meet their commitments to SDG 10 include:

- By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.
- Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

3.3.1 Constitutional protections

Embedding gender equality provisions in national constitutions is key to inform the overall legal framework of a country. Especially in the wake of the Arab uprisings, there has been an increased focus among Arab States on constitutional reforms that address human rights and gender equality. The national constitutions of most Arab States now recognize the gender equality principle. Some countries also include a specific prohibition on discrimination on the ground of sex or gender in their constitution. Discrimination on the

ground of sex or gender is expressly prohibited in the constitutions of Algeria, Bahrain, Djibouti, Egypt, Iraq, Libya (Constitutional Declaration of 2011), Morocco, Oman, State of Palestine (Basic Law), Qatar, Somalia, Sudan (Constitutional Declaration of 2019) and Tunisia.¹¹¹

However, the constitutions in Jordan, Kuwait, Lebanon and Saudi Arabia have no explicit provision guaranteeing equality between men and women or prohibiting discrimination because of sex. In the cases of Jordan,

Kuwait and Lebanon, there are constitutional guarantees of equality before the law for all citizens, however the application of these guarantees to gender equality is unclear. Under each of these constitutions, most personal status matters are decided by religious courts according to their own laws, which may nevertheless be in conflict with other aspects of the constitution.

Some constitutions also guarantee protection from violence, torture or degrading treatment, e.g. Algeria, Bahrain, Djibouti, Egypt (specifically prohibits violence against women), Iraq (specifically prohibits violence in the family), Morocco, Somalia (specifically prohibits violence against women and sexual abuse of women in the workplace) and Tunisia (provides for protection of human dignity and physical integrity, prohibits mental and physical torture, and commits to all necessary measures to eradicate violence against women).

Some constitutions prohibit trafficking in women (e.g. Egypt, Iraq and Somalia). Sudan's Constitutional Declaration of 2019 requires the State to combat harmful traditions that undermine the dignity and status of women. The Provisional Constitution of Somalia specifically prohibits female circumcision as a cruel and degrading practice.

The inclusion of constitutional guarantees is an important demonstration of leadership and commitment. However, to be effective, such guarantees require detailed legislation to be enacted that provides a mechanism for people to enforce their rights and seek recourse for violations of rights through the courts. Criminal laws, personal status laws, nationality laws and labour laws need to be reformed to ensure that people can fully enjoy these constitutional rights to equality, non-discrimination and protection from violence.

All constitutions of the Arab States included in this review, except Lebanon's Constitution of 1926 and Sudan's Constitutional Declaration of 2019, include an article identifying the State religion as Islam, or providing that Sharia is "a principal source" for legislation or "the

principal source" for legislation. For example, in Bahrain, where Sharia is "a principal source" for legislation, if there is nothing in Sharia to provide for a specific judgment on a particular case, room is left for custom, principles of equity and good conscience and the judge's discretion to fill the gap.

The formulation of Sharia as "the principal source" implies a strict interpretation whereby Sharia as a source overrides all other sources. In practice, however, courts have interpreted these clauses in light of the circumstances in which they were adopted and the broader constitutional and legislative scheme into which the clauses were embedded.¹¹² As a general rule, where the constitution describes Sharia as "the" principal source of legislation, States are barred from enacting un-Islamic legislation and if there are gaps in legislation in relation to any issue, Sharia principles fill the gap. The practical impact of such clauses depends on factors that differ from country to country including the degree to which constitutional judges embrace a policy of judicial restraint.¹¹³

Many Arab States have introduced systems of judicial review by specialized constitutional courts as a way of signalling the government's commitment to the rule of law. Some countries that have experienced a transition from authoritarian rule have established new courts with constitutional roles, including Iraq (Federal Supreme Court) and Tunisia (Constitutional Court, whose members are yet to be appointed). Constitutional courts of Arab States have roles that are key to achieving progress in gender equality and women's empowerment, including protecting individual human rights and promoting the rule of law.¹¹⁴ They can play a significant role in ensuring that constitutional principles relating to equality and non-discrimination are applied to support an interpretation of domestic laws (including personal status laws) that guarantees gender equality. However, access to these courts is often highly restricted, such that citizens in countries such as Jordan and Lebanon do not have the right to directly apply to the court to clarify their constitutional equality rights.

¹⁰⁹ States Parties to the Arab Charter on Human Rights are Jordan, UAE, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, State of Palestine, Qatar, Comoros, Kuwait, Lebanon, Libya, Egypt, Morocco, Mauritania and Yemen. See: League of Arab States, <http://www.lasportal.org/ar/humanrights/Committee/Pages/MemberCountries.aspx>

¹¹⁰ African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Maputo, 11 July 2003), art. 4(2).

¹¹¹ A similar prohibition is also included in the Draft Yemen Constitution of 2015, which has not been adopted.

¹¹² C. B. Lombardi, "Constitutional Provisions Making Sharia "A" or "The" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?", *American University International Law Review*, vol. 28, No. 3 (2013), pp. 733- 774.

¹¹³ *Ibid.*, p. 773.

¹¹⁴ S. Choudhry & K. Glenn Bass, *Constitutional Courts after the Arab Spring: Appointment mechanisms and relative judicial independence* (IDEA, 2014).

The role of women in constitutional reform in Tunisia¹¹⁵

Tunisia's experience demonstrates the impact of women in advocating for constitutional reform and transitional justice. Mobilizing quickly after the 2011 revolution, civil society organizations formed coalitions to support women's participation and to encourage women to vote for the Constituent Assembly. Women convinced the influential Islamist political party, Ennahda, and other parties to support electoral lists that alternated between men and women. Civil society organizations applied pressure in favour of gender parity. The resulting decree helped women gain one third of seats in the assembly that drafted the constitution.

Women's organizations created dialogues between Assembly members and civil society representatives and hosted workshops in which citizens could develop recommendations for the Assembly. Furthermore, they were at the forefront of keeping the process accountable to the people through demonstrations and protests, as well as initiatives that increased the Assembly's transparency. Several women exerted significant influence on the text of the Constitution, while others secured significant provisions for advancing women's representation in elected bodies, eradicating violence against women, and guaranteeing equality of opportunities between women and men in all domains.

In 2014, Tunisia ratified what is arguably the most progressive constitution in the Arab States region, marking a major milestone in its transition to democracy. Women's groups were vocal in challenging the first draft of the 2012 constitution which used the term 'complementary roles' to refer to relations between men and women within a family, rather than equality.

Women's rights activists were eventually successful, and article 46 of the 2014 Constitution guarantees equality of opportunities between men and women, parity between women and men in elected Assemblies and that the State shall take all necessary measures in order to eradicate violence against women.

Other successes of Tunisian women have been the withdrawal of reservations to CEDAW in 2014, the enactment of a Law on the Elimination of Violence Against Women in 2017, and the removal of ministerial decrees that prohibited Tunisian women from marrying non-Muslims. Tunisian women are also playing a key role in advocacy for amendment of Tunisia's unequal inheritance laws.

3.3.2 Nationality laws¹¹⁶

Discrimination between women and men in nationality laws is prohibited by article 9 of CEDAW. The CEDAW Committee recommends reform of nationality laws to enable women to transmit their nationality to their children and to their foreign spouse on an equal basis with men.¹¹⁷ In 2017, a regional meeting produced a statement, endorsed by the Secretary General of the League of Arab States, which called on League Member States to uphold equal nationality rights for all citizens, regardless of gender, and to promote the lifting of CEDAW reservations relating to nationality.¹¹⁸ The *Arab Declaration on Belonging and Legal Identity* was issued by the League of Arab States as a Ministerial Declaration in 2018. It calls for gender equal nationality legislation in all member States, and for all children in those States to enjoy their right to a legal identity.¹¹⁹

In recent years, reform of nationality laws to remove discrimination in passing nationality to children has occurred in Algeria (2005), Egypt (2004), Iraq (2006), Morocco (2007), Tunisia (remaining gaps addressed in 2010) and Yemen (2010).¹²⁰ However, several Arab States continue to enforce gender-based nationality laws and maintain reservations to article 9 of CEDAW. Gender-based nationality laws either deny women the right, under any circumstance, to confer their nationality to either their children or their foreign-born spouse, or limit women's ability to confer their nationality on their children and/or foreign-born spouse. Nationality laws that discriminate against women in restricting their

ability to pass citizenship to their children or a foreign spouse can result in denial of access to education and health services and also create the risk of statelessness.

Of the States reviewed, 11 do not yet grant equality to women with regard to the right to pass their nationality to their children. Arab States which do not allow mothers to confer their nationality on their children or only allow this to occur in very limited cases are Kuwait, Lebanon, Qatar and Somalia. According to the United Nations High Commission for Refugees, the nationality laws of these States create the greatest risk of statelessness.¹²¹ Arab States that allow mothers to confer their nationality on their children, but do so subject to stricter conditions than those that apply to fathers, are Bahrain, Jordan, Libya, Oman, Sudan, Syria and Saudi Arabia. The nationality laws of these States have some safeguards against the creation of statelessness, for example making exceptions for mothers to confer nationality if the father is unknown or stateless.¹²²

Of the States reviewed, women enjoy the same rights as men to pass their nationality to their children in Algeria, Djibouti, Egypt, Iraq,¹²³ Morocco, Tunisia and Yemen.

In some States it is also legally impossible or significantly more difficult for women than men to pass their nationality to their foreign spouse. In many cases the residency requirement for the foreign husband is longer than for a foreign wife, and other restrictions may apply.

¹¹⁶ See also: UN High Commissioner for Refugees (UNHCR), *Background note on gender equality, nationality and statelessness 2019* (Geneva, UNHCR, 2019).

¹¹⁷ CEDAW Committee, *General recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 14 November 2014 (CEDAW/C/GC/32).

¹¹⁸ Conference cosponsored by the United Nations Refugee Agency, UN Women, UNICEF and the Global Campaign for Equal Nationality Rights, *Final Declaration: Arab Conference on Good Practices & Regional Opportunities to Strengthen Women's Nationality Rights, League of Arab States Secretariat General, 1-2 October 2017*. Available from <http://equalnationalityrights.org/images/zdocs/Final-Declaration-Arab-Conference-on-Nationality.pdf>

¹¹⁹ League of Arab States, *Arab Declaration on Belonging and Legal Identity*, 28 February 2018. Available from <https://www.refworld.org/docid/5a9ffbd04.html>

¹²⁰ UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2019* (Geneva, UNHCR, 2019).

¹²¹ *Ibid.*, p. 6.

¹²² In Lebanon, there is also an exception for a child born in Lebanon where the father is unknown but the procedures for claiming nationality on this ground are complex and women can only confer their nationality if the child is born out of wedlock and recognized by the Lebanese mother while a minor. *Ibid.*

¹²³ Iraq's Nationality Law provides that a person born to an Iraqi mother or Iraqi father is considered Iraqi. If a person is born outside Iraq and the mother is Iraqi but the father is unknown or stateless, the person may apply for Iraqi nationality. The application must be made within one year of reaching majority and the person must be residing in Iraq at the time of the application. Iraq, Nationality Law, no. 26 of 2006, arts. 3 and 4.

¹¹⁵ Adapted from: N. Tamaru, O. Holt-Ivry and M. O'Reilly, *Beyond Revolution: How Women Influenced Constitution Making in Tunisia Case Study* (Washington DC, Inclusive Security and UNDP, 2018).

Of the States reviewed, only Algeria and Djibouti allow women to transfer their nationality to a foreign spouse in the same way as men.

In the State of Palestine, identity cards are issued to Palestinians registered in the Palestinian population registry, which is controlled by the Israeli military under a law pertaining to the occupation. This system does not make it possible for the Palestinian government to control how nationality is conferred.¹²⁴ It also impacts Palestinian refugees in the diaspora, particularly those not afforded citizenship in the host State.

Palestinian authorities are able to confirm residency status for Palestinians under the Palestinian Civil Status Law no. 2 of 1999, and Palestinian women can confer residency on their children. The absence of a discriminatory clause relating to conferral of residency in this Law has led, *de facto*, to the ability of Palestinian women to confer residency status on their children. This right is implied by the Law on Elections, which provides the definition of a Palestinian as a person born to a Palestinian parent, provided that the parent was born in Palestine as defined by the borders at the time of the British Mandate, or those who have acquired the right to Palestinian nationality by the laws implemented at the time.¹²⁵

Statelessness

Most Arab States have not ratified the Refugee Convention of 1951 or the Convention on Reduction of Statelessness of 1961. Lack of domestic legislation on statelessness and the status of refugees has led to particular difficulties for ethnic minorities and refugees across the region.

Gender inequality in nationality laws can create statelessness where the law does not enable children to acquire nationality from a foreign father. For example, cases arise of children born in Lebanon whose mother is Lebanese and father is Palestinian, where the children

are rendered stateless because the mother cannot pass her nationality to her child.¹²⁶ Similarly, children born in Jordan to Jordanian mothers and Palestinian fathers are rendered stateless because the mother cannot pass her nationality to her child, and the children are unable to access basic government services.

Statelessness can occur for a variety of reasons including where the father is unknown or not married to the mother. Discriminatory nationality laws, civil registration requirements, criminal penalties for adultery or *zina*, and societal attitudes prevent or deter unwed parents from registering their children's births or transmitting nationality to their children.¹²⁷ In many States in the region, sexual relations outside of marriage are criminalized, with the result that parents avoid registering the birth or applying to confirm a child's nationality.

The presence of foreign fighters in Iraq and Syria has further complicated the situation of nationality rights. Through choice or force, many local women and girls were married to foreign fighters in Syria and Iraq. In Syria, mothers are unable to pass on their nationality and children born of these unions are likely to become stateless. In Iraq, children whose parents were married during the conflict are often unable to prove their paternity because the marriage is undocumented. As a result, they are not recognized as Iraqi nationals and cannot obtain passports or national identification cards. Without nationality, they may be denied a right to access education and health care in the future.

The issue of stateless Bidoon people is a major concern in some Gulf countries. The Bidoon are an Arab minority who were originally members of nomadic tribes of the Arabian Peninsula. Bidoon women suffer from multiple and systemic discrimination throughout their lives. Many Bidoon women continue to be excluded from society, facing stigmatization and having access to poor quality education and health services and limited job opportunities.¹²⁸

¹²⁴ Norwegian Refugee Council, *Legal Memo: Child Registration in the Occupied Palestinian Territories (East Jerusalem, 2016)*.

¹²⁵ Law no. 9 of 2005 on Elections, art. 9(2), <https://aceproject.org/ero-en/regions/mideast/PS/palestine-elections-law-no.9-2005/view>; and see: *Law Regulating General Elections, 2 September 2007*, art. 27(1-b): http://www.elections.ps/Portals/0/pdf/Election_Law_%282007-Sept_02%29-EN.pdf

¹²⁶ OECD Development Centre, *Social Institutions and Gender Index: Lebanon* (OECD, 2019). Available from <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/LB.pdf>

¹²⁷ B. Fisher, "Why non-marital children in the MENA region face a risk of statelessness", *Harvard Human Rights Journal* (6 January 2015).

¹²⁸ Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Kuwait*, 24 May 2017 (A/HRC/35/29/Add.2).



3.4 Legal frameworks addressing gender-based violence

Gender-based violence and SDG 5: Gender Equality

Targets that States are required to reach in order to meet their commitments to SDG 5 include:

- End all forms of discrimination against all women and girls everywhere
- Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
- Eliminate all harmful practices, such as child marriage and forced marriage and female genital mutilation
- Ensure universal access to sexual and reproductive health and reproductive rights

3.4.1 Gender-based violence in the Arab States

Exposure to gender-based violence remains one of the most serious human development issues faced by women and girls across the region, particularly in conflict-affected States. In 2013, the World Health Organization (WHO) found that 37 per cent of women in the WHO Eastern Mediterranean Region had experienced physical and sexual violence perpetrated by an intimate partner.¹²⁹ A more recent survey conducted in 2016–2017 in regions of Egypt, Lebanon, Morocco and the State of Palestine found that between 10 per cent and 45 per cent of men who had ever been married reported having used physical violence against a female partner.¹³⁰ The percentage of women who indicated experiences of physical abuse from their spouse over their lifetime were 25.6 per cent in Egypt (2015), 19 per cent in Jordan (2018) and 20 per cent in Tunisia (2010).¹³¹

Sexual harassment in public is manifested mainly as sexual comments and stalking or following. In a survey conducted in regions of Egypt, Lebanon, Morocco and the State of Palestine, between 31 per cent and 64 per cent of men said they had carried out such acts, while 40 per cent to 60 per cent of women said they had experienced it.¹³²

Women and girls have been deeply affected by conflict and occupation. The conflicts in Syria, Iraq, Libya, Yemen, Somalia, Sudan and the occupation of Palestinian territory have had particularly severe impacts with increased levels of sexual violence.¹³³ In practice, internally displaced people, refugees and asylum seekers who are survivors of violence often have little, if any, access to the justice system or legal frameworks for protection and redress.

129 WHO, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council, *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence* (WHO, 2013). WHO Eastern Mediterranean Region comprises Afghanistan, Bahrain, Djibouti, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Pakistan, State of Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

130 Shereen El Feki, et al. (eds.), *Understanding Masculinities: Results from the International Men and Gender Equality Survey (IMAGES) – Middle East and North Africa: Executive Summary* (Cairo and Washington DC: UN Women and Promundo-US, 2017)

131 ESCWA, *Against Wind and Tides: A Review of the Status of Women and Gender Equality in the Arab Region (Beijing +20)*, 7 January 2016 (E/ESCWA/ECW/2015/3), p.53; Egypt Ministry of Health and Population, *El-Zanaty and Associates, and ICF International, Egypt Demographic and Health Survey 2014* (Cairo, Ministry of Health and Population; and Rockville, ICF International, 2015); Jordan Department of Statistics (DOS) and ICF, *Jordan Population and Family and Health Survey 2017–18* (Amman DOS; and Rockville, ICF, 2019).

132 S. El Feki, et al. (eds.), *Understanding Masculinities: Results from the IMAGES survey* (UN Women and Promundo-US, 2017).

133 ESCWA, *Against wind and tides: A Review of the Status of Women and Gender Equality in the Arab Region 20 Years after the Adoption of the Beijing Declaration and Platform for Action (E/ESCWA/ECW/2015/3)* (Beirut, ESCWA, 2016), p.58 ff; S. Chaban, L. Consuegra, H. Elten et al., *Regional organizations, gender equality and the political empowerment of women* (International IDEA, Community of Democracies, UNDP, 2017), p. 62.

3.4.2 Criminalization of rape

All countries in the Arab States region criminalize rape with severe penalties, typically imprisonment for periods ranging from five to 20 years or more. The legal definition of rape varies across the region, with some countries restricting it to acts of non-consensual vaginal penetration that are either forced or committed under threat of force. Some countries have adopted broader definitions that include all forms of non-consensual sexual violations. For example, Tunisia revised its definition of rape in 2017, and it is now defined as any act resulting in intercourse, regardless of the nature or the method used, against a female or male without the person's consent.¹³⁴

Penal codes include harsher penalties for rape committed against minors or other vulnerable persons. In some countries, corporal or capital punishment may apply to rape in such cases. It is important to punish rape with penalties that are proportionate to the nature of the crime. However, the imposition of corporal or capital punishment for rape offences violates international human rights treaty obligations and is considered unacceptable under international law in most circumstances.¹³⁵

In practice, many rape survivors do not report crimes of rape or sexual violence for a variety of reasons including fear of reprisals, the shame associated with the offence or because it would taint their family's reputation or so-called 'honour'. Disproportionately harsh penalties

may act as a deterrent to girls reporting a rape by a relative. Some survivors also fear being accused of zina, an offence that includes both adultery (committed by married persons) and fornication (committed by unmarried persons).¹³⁶

Survivors of sexual violence may also fear being pressured to marry the perpetrator in countries that have so-called 'marry-your-rapist' laws that exonerate perpetrators of rape or abduction if they marry the person they raped or abducted. These Penal Code provisions derive from colonial laws which were based on the French Penal Code of 1810.¹³⁷ The provisions were intended to protect minors who were seduced and deceived into marriage without the consent of the girl's parents.

The justification for the continued existence of such penal code provisions is that the marriage protects the 'honour' of the survivor's family. Traditionally, a woman or girl who was raped was considered to no longer be marriageable. Some penal codes still permit a rapist, abductor or kidnapper to marry his victim so that the family do not experience so-called 'dishonour' (e.g. Algeria, Iraq, Kuwait and Libya).¹³⁸

However, such provisions are inconsistent with international standards as they fail to provide an adequate legal response to the seriousness of the violation of the human rights of the survivor.¹³⁹ In some countries, exoneration of kidnappers or rapists who

134 Tunisia, Penal Code, art. 227.

135 UN Human Rights Committee, *General comment no. 20: Prohibition of torture or other cruel, inhuman or degrading treatment or punishment* (article 7) (1992) (A/44/40).

136 UN Working Group on Discrimination against Women in Law and Practice, *Background information on the statement issued by the Working Group on Discrimination against women* (2012), available from <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>; Abdel Salam Sidahmed, "Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women", *British Journal of Middle Eastern Studies*, vol. 28, No. 2 (2001), pp. 187–204; Liv Tønnessen and Samia al-Nagar, *Women and Girls Caught between Rape and Adultery in Sudan: Criminal Law Reform, 2005–2015* (Chr. Michelsen Institute (CMI), Bergen, 2015); Hina Azam, "Rape as a variant of fornication (Zinā) in Islamic Law: An Examination of the Early Legal Reports" *Journal of Law and Religion*, vol. 28 No. 2 (2013) pp. 441–466.

137 L. Welchman and S. Hossain, *'Honour': Crimes, Paradigms, and Violence Against Women* (London, Zed Books, 2013); France, Penal Code 1810, art. 357. Available from https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html

138 Algeria, Penal Code, Law no. 66–156, art. 326; Bahrain, Penal Code, Decree–Law no. 15 of 1976, art. 353; Iraq, Penal Code, Law no. 111 of 1969, arts. 398 and 427; Kuwait, Penal Code, Law no. 16 of 1960, art. 182; Libya, Penal Code of 28 November 1953, art. 424.

139 See e.g. Economic, Social and Cultural Rights Committee, *Concluding Observations: Iraq*, 27 October 2015 (E/C.12/IRQ/CO/4) para 39.

marry forms part of customary law, which is intended to protect the survivor from a life of shame (e.g. Somalia). In some countries, this provision of the penal code only applies where the survivor is a minor (e.g. Algeria, where the relevant offence relates to abduction of a minor). Egypt, Morocco, Jordan, Tunisia, State of Palestine and Lebanon have repealed the relevant articles of their respective penal codes, although Lebanon is yet to remove all articles that have this effect.

The CEDAW Committee recommends that criminal laws characterize rape as a crime against a woman's right to personal security and physical integrity based on lack of freely given consent.¹⁴⁰ In many Arab States the provisions relating to rape are included within parts of the penal code that deal with offences relating to

family honour or morality. For example, Algeria defines rape as a crime against morality, and Jordan, Libya and Morocco criminalize rape as an offence against honour and public morals.¹⁴¹ This emphasis means that issues relating to perceived family honour and public morality may be considered by courts in assessing whether a crime has been committed and the appropriate punishment. As a result, court rulings on rape and sexual violence sometimes focus on the importance of public morality and maintaining the integrity of the family unit, rather than focusing on the woman's rights to security and bodily integrity.¹⁴² This emphasis can be problematic for women because it risks creating a moral hierarchy of more or less worthy survivors, and can sometimes result in transfer of blame or contributory fault to the complainant.¹⁴³

Abolition of rape-exoneration laws in Morocco, Tunisia, Jordan, Lebanon and the State of Palestine¹⁴⁴

Morocco

In 2012, protests were held relating to the forced marriage of a 16-year old girl. When the case originally came before the court for kidnapping and rape of a minor, the judge invoked article 475 of the Penal Code, which allowed the perpetrator to marry his victim with the legal guardian's approval. Soon after she married, the girl committed suicide. Protest marches were held in response to these events which generated media interest and prompted the government to organize a roundtable bringing together the major women's activist organizations, the Minister of Family and Women's Issues and the Minister of Justice.¹⁴⁵ In 2014, the Moroccan parliament repealed article 475 of the Penal Code, removing the provision which allowed for a rapist to escape prosecution if he marries the victim.

Tunisia¹⁴⁶

In 2016, a Tunisian court authorized the marriage of a 13-year-old girl to the man who had raped her. Women's rights activists protested that this ruling violated the child's human rights, as established by international treaties on human rights and children's rights. Exoneration for

rapists who married their victims was available under articles 227 bis and 239 of the Penal Code of Tunisia. Following civil society pressure, the Justice Minister announced that the prosecutor general would file an objection to the legal authorization that was granted to the rapist to marry the girl and committed to review laws that predated the 2011 revolution to align them with the 2014 Constitution. The following year, these provisions of the Penal Code were removed by Law no. 58 of 2017 on the Elimination of Violence Against Women.

Jordan¹⁴⁷

Article 308 of Jordan's Penal Code allowed a rapist to avoid prosecution by marrying the victim. Advocacy to abolish article 308 was led by lawyers, journalists and women's rights activists. Civil society groups, parliamentarians and others formed a coalition in 2015 which demanded the adoption of better laws to protect survivors of rape and to punish the perpetrators to end impunity. They argued that marriage to the rapist should not be considered as the only option for rape survivors and that survivors should receive protection and physical and psychological support. The campaign sought to eliminate shaming of women who are survivors of rape. It raised awareness that rape should be viewed as a crime against women rather than an offence against a family's honour. The Jordanian National Commission for Women submitted a position paper to the Parliament backing legal reform in 2017. UN Women also organized a dialogue on the issue between Jordanian and Moroccan parliamentarians, since Morocco had abolished similar provisions from its laws. Jordan finally abolished article 308 in 2017. According to the Ministry of Justice, 159 men had relied on this article between 2010 and 2013 to avoid punishment.

Lebanon¹⁴⁸

Soon after Tunisia and Jordan, Lebanon also removed a similar provision (article 522 of the Penal Code), although other provisions that have a similar effect remain in the Penal Code (articles 505 and 518). This followed a nation-wide advocacy campaign led by ABAAD Resource Centre for Gender Equality, in partnership with UN Women Lebanon, to remove discriminatory legal provisions. The campaign mobilized public awareness to strengthen legislation to protect women and girls from sexual violence and exploitation, and to challenge gender norms relating to sexual violence. The campaign also included a national concert in 2016, to engage men and boys as advocates and agents of change for the achievement of gender equality.

140 CEDAW Committee, *CEDAW General Recommendation No. 35 (2017) (CEDAW/C/GC/35)*, p.11.

141 Algeria, Penal Code, art. 336; Jordan, Penal Code, art. 292; Libya, Penal Code, art. 407; Morocco, Penal Code, art. 486.

142 Y. El-Rifae, "Egypt's sexual harassment law: An insufficient measure to end sexual violence", *Middle East Institute*, 17 July 2014.

143 Equality Now, *The world's shame: The global rape epidemic. How laws around the world are failing to protect women and girls from sexual violence* (New York and Nairobi, Equality Now, 2017).

144 UN Women, "Reforming laws that forced women to marry their rapists", 16 July 2019.

145 N. Mesbahi, "The Victimization of the 'Muslim Woman': The Case of Amina Filali, Morocco", *Journal of International Women's Studies*, vol. 19, No. 3 (2018), pp. 49-59.

146 OHCHR, "End in sight for marry-your-rapist laws", 25 August 2017; Middle East Media Research Institute, "Tunisians Protest Law that Allows Men Who Rape Underage Girls to Marry Their Victims Instead of Being Punished", 10 March 2017.

140 CEDAW Committee, *CEDAW General Recommendation No. 35 (2017) (CEDAW/C/GC/35)*, p.11.

141 Algeria, Penal Code, art. 336; Jordan, Penal Code, art. 292; Libya, Penal Code, art. 407; Morocco, Penal Code, art. 486.

142 Y. El-Rifae, "Egypt's sexual harassment law: An insufficient measure to end sexual violence", *Middle East Institute*, 17 July 2014.

143 Equality Now, *The world's shame: The global rape epidemic. How laws around the world are failing to protect women and girls from sexual violence* (New York and Nairobi, Equality Now, 2017).

144 UN Women, "Reforming laws that forced women to marry their rapists", 16 July 2019.

145 N. Mesbahi, "The Victimization of the 'Muslim Woman': The Case of Amina Filali, Morocco", *Journal of International Women's Studies*, vol. 19, No. 3 (2018), pp. 49-59.

146 OHCHR, "End in sight for marry-your-rapist laws", 25 August 2017; Middle East Media Research Institute, "Tunisians Protest Law that Allows Men Who Rape Underage Girls to Marry Their Victims Instead of Being Punished", 10 March 2017.

147 UN Women, "Jordanian Parliament abolishes law that allowed rapists to avoid prosecution by marrying their victims", 4 August 2017.

148 UN Women, "Historic day for women in Lebanon as Parliament repeals rape law", 18 August 2017.

State of Palestine¹⁴⁹

In 2018, the State of Palestine also followed Jordan's lead by repealing article 308 of the 1960 Penal Code, which is enforced in the West Bank. It is not clear how many rapists have been able to escape prosecution or conviction under article 308 in the West Bank. One women's shelter confirmed that in the period 2011 to 2017 prosecution for rape has been halted in 60 cases – in which the shelter was helping the women – after the alleged rapist agreed to marry the victim. While the repeal of article 308 was a significant achievement, the Women's Centre for Legal Aid and Counselling warned that Palestinian families may still try to force girls to marry their rapists unless the authorities provide for safe, legal abortions and registration of children born outside of wedlock.

Marital rape

Many religions recognize mutual rights and obligations in marriage including the right to be free from violence or the threat of violence. However, non-consensual sex between married couples has long been excused under many religious codes, where it is argued that the marriage contract grants a husband the right to have unrestricted sexual relations with his wife. Marital rape was not a criminal offence under colonial laws, which reflected the traditional Christian understanding that marriage grants the husband conjugal rights over his wife,¹⁵⁰ based on the doctrine of 'the conjugal debt'.¹⁵¹

In classical Islamic legal texts (*fiqh*), marriage is defined as a contract and the marriage contract establishes rights and duties for each spouse, including the requirement of "mutual good treatment". A husband is required to pay dower (*mahr*) and to provide financial maintenance to his wife. In return, the wife is required to be sexually available to him in the marital home.

Reforms to some Muslim family laws have addressed this aspect of the marriage contract. For example, in an important step for women, reform of Morocco's Family Code separated the legal right to maintenance from the wife's duty of sexual availability. Instead, the list of mutual rights and duties of spouses includes lawful cohabitation on the basis of good conjugal relations and the right of mutual respect, love and affection.¹⁵²

None of the Arab States reviewed have penal codes that explicitly refer to marital rape as a criminal offence.¹⁵³ In some countries, rape is specifically defined by the relevant article of the penal code to not cover marital rape (e.g. Egypt, Lebanon and Syria).

The legal position regarding marital rape is ambiguous in Djibouti, Morocco and Tunisia. In Djibouti, authorities have confirmed that marital rape can be prosecuted under criminal law, however it is rarely prosecuted because there is a strong taboo associated with reporting this conduct.¹⁵⁴ Morocco's Law on Violence against Women, Law no. 103-13, did not amend the Penal

Code provision on rape, which does not list marriage among aggravating circumstances for sentencing rape offenders. In addition, prosecutions are not reported. The CEDAW Committee and the Working Group for Morocco's 2017 Universal Periodic Review have called on Morocco to amend the Penal Code to ensure that marital rape is criminalized.¹⁵⁵ In relation to Tunisia, authorities have stated that "marital rape is, like all other forms of rape, a crime under Tunisian law" in the country's official response to questions raised by the CEDAW Committee in 2010.¹⁵⁶ However, in practice prosecutions are rare given that custom considers sexual intercourse a marital duty enshrined in the marriage contract.¹⁵⁷

Lebanon passed a law on domestic violence in 2014.¹⁵⁸ In its initial draft, the law included a provision directly addressing the criminalization of marital rape. However,

inclusion of this provision received condemnation from Christian and Muslim religious leaders. Subsequently, the provision on marital rape was deleted from the draft. As a result, the text of the law remains unclear. It could arguably be used to prosecute rape within marriage, but the legal position is ambiguous.

In Kurdistan Region of Iraq, the law on domestic violence refers to "forced sexual intercourse" between spouses as an act of domestic violence.¹⁵⁹ This means that a survivor of marital rape can apply for a protection order.

In Bahrain, sexual violence against women within the family, whether perpetrated by a spouse or any other family member, is prohibited and subject to Law no. 17 of 2015 on Protection against Domestic Violence.

3.4.3 Sexual and gender-based violence in conflict

While laws against sexual violence exist in most Arab States, few national legal frameworks or national accountability mechanisms are in place to hold perpetrators to account for violence inflicted during conflict. Even when national legal frameworks are in place, they often have a narrow definition of sexual violence that fails to address certain forms of sexual violence during conflict, such as forced marriage or sexual enslavement.

Under international human rights law, acts of sexual violence qualify as crimes against humanity when they form part of a widespread and systematic attack

against a civilian population and may constitute war crimes when committed in connection with an armed conflict.¹⁶⁰ These provisions are codified in the Rome Statute of the International Criminal Court (1999), which was created to investigate and try crimes against humanity and war crimes. Of the Arab States subject to this assessment, only Djibouti, Jordan, State of Palestine and Tunisia are States Parties to the Rome Statute.¹⁶¹

In 2014, the CEDAW Committee recommended that Syria define rape as a war crime in its domestic law, which it has yet to do.¹⁶² In 2016, after State inaction, the UN General Assembly established the International

149 Human Rights Watch, "Palestine: Marry your rapist law repealed", 10 May 2018.

150 In Christian traditions, the concept of conjugal rights had its origins in canon law of the Roman Catholic Church: R. Ryan, "The Sex Right: A Legal History of the Marital Rape Exception" *Law and Social Inquiry*, vol. 20, No. 4 (1995), pp. 941-1001.

151 J. Hasday, "Contest and Consent: A Legal History of Marital Rape" *California Law Review*, vol. 88 (2000), p. 1397.

152 Morocco, Family Code 2004, art. 51. See: Musawah, *Who Provides? Who Cares? Changing Dynamics in Muslim Families* (Malaysia, Musawah, 2018), p. 16.

153 As a consequence of the stipulations on obedience in the marriage contract, some jurists and policymakers have concluded the concept of marital rape does not exist within the criminal law. See e.g.: H. Ala Hamoudi, M. Cammack, *Islamic Law in Modern Courts* (New York, Wolters Kluwer, 2018), p. 381: In Iraq, Shi'i jurists have by and large deemed (marital rape) to be permissible under the Penal Code. See also in relation to Sudan: L. Tønnessen "When rape becomes politics: Negotiating Islamic law reform in Sudan", *Women's Studies International Forum*, vol. 44 (2014), 145-153, p. 151.

154 United Nations Human Rights Committee, *Concluding Observations on the initial report of Djibouti, Addendum Information received from Djibouti on follow-up to the concluding observations*, 4 February 2015 (CCPR/C/DJI/CO/1/Add.1), p.7.

155 CEDAW Committee, *Morocco: Concluding comments of the Committee on the Elimination of Discrimination against Women*, 8 April 2008 (CEDAW/C/MAR/CO/4); Working Group on the Universal Periodic Review for Morocco, *Draft report of the Working Group on the Universal Periodic Review*, 26 May 2017 (A/HRC/WG.6/27/L4).

156 CEDAW Committee, *Written replies from the Government of Tunisia to the list of issues and questions with regard to the consideration of the combined fifth and sixth periodic reports*, 18 August 2010 (CEDAW/C/TUN/Q/6/Add.1). The introduction of Tunisia's Law no. 58 of 2017 on the Elimination of Violence Against Women supports this position.

157 Amnesty International, *Assaulted and accused: Sexual and gender-based violence in Tunisia* (London, Amnesty International, 2015), p.24: "the lack of recognition of marital rape in law means that acknowledging the crime in court is a matter of discretion. In some cases, individuals accused of marital rape have been prosecuted for physical assault."

158 Lebanon, *Law on the Protection of Women and Family Members Against Domestic Violence*, Law no. 293 of 2014.

159 Kurdistan Region of Iraq, *Law on Combating Domestic Violence in the Kurdistan Region of Iraq*, Law no. 8 of 2011, art. 2.

160 International Federation for Human Rights (FIDH), *Violence against Women in Syria: Breaking the Silence* (Paris, FIDH, 2013), p. 11.

161 Algeria, Bahrain, Egypt, Kuwait, Morocco, Oman, Sudan, Syria and Yemen are signatories, but have yet to accede to the Rome Statute.

162 CEDAW Committee, *Concluding Observations: Syrian Arab Republic*, 18 July 2014 (CEDAW/C/SYR/CO/2), para. 27(b).

Impartial and Independent Mechanism for Syria.¹⁶³ This Mechanism is mandated to collect, preserve and analyse evidence that can be used in the future to prosecute crimes committed in the Syrian conflict. In parallel, the Independent International Commission of Inquiry on the Syrian Arab Republic was established in 2011 by the United Nations Human Rights Council and mandated to investigate all alleged violations of international human rights law in Syria.¹⁶⁴ In 2018, the Commission released a report documenting sexual and gender-based violence against women, girls, men and boys allegedly perpetrated by state and non-state actors, noting that “women and girls have been disproportionately affected, victimised on multiple grounds, irrespective of perpetrator or geographical area.”¹⁶⁵

In 2017, the UN Security Council passed resolution 2379 to support Iraq’s efforts to hold ISIL accountable for war crimes, crimes against humanity and genocide. No stand-alone mechanism has been established. Instead, the Iraqi justice system has primarily utilized local courts and applied its Anti-Terrorism Law (Law no. 13 of 2005) to prosecute alleged members of ISIL, despite objections from the international community.¹⁶⁶ Additionally, many women and children who were previously affiliated with ISIL remain in camps, without access to justice or due process.¹⁶⁷ Several communications have been sent to the International Criminal Court by human rights and women’s rights organizations to seek justice for those

targeted for sexual and gender-based violence and other harms, particularly Yazidi women and people targeted because of their actual or assumed sexual orientation, gender identity or expression.¹⁶⁸

In 2009, Sudan took the important step of amending the country’s Criminal Act of 1991 to include genocide, war crimes and crimes against humanity, including sexual violence, in the domestic criminal law. However, as yet there has been little progress in employing the framework in the context of West Darfur and some mechanisms have ceased to exist. There were also efforts to ensure that alleged perpetrators from Sudan would not be extradited and tried by mechanisms outside of the country.¹⁶⁹

Libya’s National Transitional Council labelled sexual violence as a crime against humanity. The Bill Concerning Care for Victims of Torture and Violence (2011) recognized rape and sexual violence against women as a weapon of the uprising, and aimed to provide reparations, but it remained only a draft law.¹⁷⁰ Libya’s Decree no. 119 of 2014 on Addressing the Circumstances of Victims of Sexual Violence aimed to recognize victims of sexual violence during the Libya uprising as victims of war and provide them with a right to reparations, however it is unclear if anyone has benefited from the decree.¹⁷¹

163 UN Security Council, *Resolution 71/248: International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, 21 December 2016 (A/RES/71/248).

164 UN Human Rights Council, *Report of the Human Rights Council on its 17th special session*, 18 October 2011(A/HRC/S-17/2), which includes the resolution adopted by the Human Rights Council on the situation of human rights in Syria.

165 “I lost my dignity”: *Sexual and gender-based violence in the Syrian Arab Republic Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 8 March 2018 (A/HRC/37/72/CRP.3).

166 Human Rights Watch, *Flawed justice: Accountability for ISIS crimes in Iraq*, 5 December 2017.

167 National Public Radio USA, “Misery grows at Syrian camp holding ISIS family members”, 23 May 2019.

168 City University of New York School of Law, Madre, Organization of Women’s Freedom in Iraq, *Communication to the ICC Prosecutor Pursuant to Article 15 of the Rome Statute Requesting a Preliminary Examination into the Situation of Gender-Based Persecution and Torture as Crimes Against Humanity and War Crimes Committed by the Islamic State of Iraq and the Levant (ISIL) in Iraq* (2017).

169 S. Baldo, *Sudan: Impact of the Rome Statute and the International Criminal Court* (New York, International Center for Transitional Justice, 2010).

170 S. Chaban, “Addressing Violence against Women through Legislative Reform in States Transitioning from the Arab Spring”, in: J.I. Lahai, K. Moyo (eds.), *Gender in Human Rights and Transitional Justice: Crossing Boundaries of Gender and Politics in the Global South* (Palgrave, 2018).

171 Ibid.

Somalia responds to conflict-related sexual violence¹⁷²

Persistent insecurity, a fragile justice system, lack of protection by state authorities and the recurring humanitarian crises in Somalia expose civilians to heightened risks of sexual violence. Women and girls are particularly targeted, although cases against boys have also been documented. Dominant patterns include the abduction of women and girls for forced marriage and incidents of rape committed by state agents, militias associated with clans and unidentified armed men. Internally displaced women and girls are at particularly high risk. Impunity for perpetrators continues to be a concern. Mistrust of the criminal justice system, gender biases of police officers, the lack of financial resources and the survivors’ lack of knowledge of their rights impede their access to justice.

The Federal Government of Somalia has prioritized key measures to eliminate sexual violence in conflict through the implementation of the Government’s *National Action Plan on Ending Sexual Violence in Conflict*. The National Action Plan encourages the involvement of traditional and religious leaders in combating violence against women through the formal justice system.

In 2018, Somalia’s Council of Ministers approved the landmark Sexual Offences Bill, which was drafted in consultation with civil society and expert judges, prosecutors, investigators and police officers.

The Bill is currently awaiting consideration by the Federal Parliament. If enacted, rape would no longer be classified as a “crime against morality” or so-called “honour”. The Bill addresses sexual exploitation, sexual slavery, sex trafficking, forced marriage, sexual abduction, kidnapping for sex or sexual slavery purposes, and sexual slavery of an adult person. The Bill sets out clear duties for police, investigators and prosecutors, and imposes penalties on those who fail to adequately investigate or prosecute sexual crimes, or who interfere with investigations and prosecutions.

The Bill also provides specific protections for vulnerable groups such as internally displaced people. The Bill envisages the establishment of specialized Sexual Violence Units comprised of specialized police, investigators, prosecutors and judges to investigate, prosecute and hear all sexual offence cases. The Sexual Offences Bill provides a model for consideration by other conflict-affected countries.

172 United Nations Assistance Mission in Somalia, “Head of UN in Somalia Marks International Day For the Elimination of Sexual Violence in Conflict”, 19 June 2019; Legal Action Worldwide, “Council of Ministers Unanimously Adopts the Sexual Offences Bill”, 30 May 2018; UN Secretary-General, *Conflict related sexual violence: Report of the United Nations Secretary-General*, 29 March 2019 (S/2019/280).

3.4.4 Laws relating to abortion

There are legal restrictions on obtaining an abortion in Arab States and, as a result, in most countries abortions are technically illegal for survivors of rape.

In most countries, abortion is legal only where it is necessary to save a woman's life. Abortion on demand is prohibited by penal codes in all countries reviewed except Tunisia (where it is permitted in the first three months of pregnancy) and Oman (where it is permitted within 40 days from gestation, provided that the husband and wife consent).¹⁷³ Sudan includes a specific exception to the crime of abortion in cases where the pregnancy results from rape, provided that the duration

of the pregnancy does not exceed 90 days and the survivor requests the abortion. In Algeria, Bahrain, Jordan, Kuwait, Morocco, Qatar and Saudi Arabia, abortions are permitted to preserve health or if there is a possibility of health complications.

In some cases, there is a conflict between the literal prohibition of abortion in penal codes and a more flexible approach applied in practice. For example, in the State of Palestine, abortion is criminalized by the penal codes, however in practice authorities allow abortions in the first four months of pregnancy in situations of rape or incest, or if the mother has a disability or her life is at risk.¹⁷⁴

3.4.5 Criminalization of sexual harassment

Several countries have introduced laws that specifically penalize sexual harassment. Algeria, Egypt, Iraq, Jordan, Libya, Morocco, Qatar, Somalia, Saudi Arabia, Sudan and Tunisia penalize sexual harassment in public and/or the workplace. General Penal Code provisions provide some protections from sexual harassment in public in countries that have not introduced legislation specifically to

address sexual harassment of women. Bahrain, Djibouti, Kuwait, Lebanon, Oman, State of Palestine, Syria and Yemen have some penal code provisions that apply to some forms of sexual harassment. For example, Djibouti's Penal Code penalizes 'public insult' and Yemen's Penal Code penalizes a 'disgraceful act with a female'.

Laws addressing on-line sexual harassment through social media

Sexual harassment through use of social media to target women and girls is an issue of increasing concern, particularly for young people. In response, some countries now include electronic communications within the definition of sexual harassment.

Egypt's Penal Code was amended in 2014 to criminalize persons who use sexual or obscene words or gestures in any manner to harass another person, including by modern means of communication.¹⁷⁵

¹⁷³ UNESCO, *Ethics and law in biomedicine and genetics: An overview of national regulations in the Arab States* (Cairo, UNESCO, 2011), p. 71.

¹⁷⁴ Human Rights Watch, "Palestine: 'Marry your rapist' law repealed", 10 May 2018.

¹⁷⁵ Egypt, Penal Code, Law no. 58 of 1937, art. 306 bis.

In **Morocco**, the Penal Code was amended in 2018 by the Law on Violence against Women to include a criminal offence for sexual harassment, which is defined to include persistent harassment of another person by phone or electronic messages, records or images of a sexual nature for sexual purposes.¹⁷⁶

Saudi Arabia criminalized sexual harassment in 2018. The Saudi law defines 'harassment' as any word, act, or sign with a sexual connotation by a person to any other person that harms their body or modesty by any means, including through modern technology.¹⁷⁷ This law protects against sexual harassment including in the workplace, schools and public places.

3.4.6 Domestic violence laws

Domestic violence laws are necessary because existing penal code provisions are generally inadequate to address violence in the private sphere. Penal code provisions often do not criminalize all forms of violence affecting women, and do not address prevention, access to effective protection or reparations.

There are differences between countries with regard to the types of conduct that are considered to be punishable under the general penal code. Some penal codes allow for violence to discipline spouses or children if the act is committed in 'good faith' and falls within the limits prescribed by Sharia.¹⁷⁸ In Iraq, the Penal Code specifically refers to the right of husbands to discipline their wives.¹⁷⁹ In Libya, the Penal Code provides that a man who beats his wife, daughter or sister without causing serious harm when he finds her in the act of committing adultery or unlawful sexual intercourse shall not be punished.¹⁸⁰

Features of domestic violence laws of Arab States

Domestic violence can be criminalized through several legislative means. However, general provisions in penal codes that criminalize violence are not enough to address the unique gender dynamics of domestic violence, which requires an acknowledgment that women are disproportionately impacted by violence in the home and in intimate relationships. Therefore, it is good practice to address domestic violence through gender-sensitive stand-alone legislation that acknowledges violence against women as a manifestation of unequal power relations between men and women.

Six Arab States (Bahrain,¹⁸¹ Jordan,¹⁸² Lebanon,¹⁸³ Morocco,¹⁸⁴ Saudi Arabia¹⁸⁵ and Tunisia¹⁸⁶) have enacted stand-alone domestic violence laws, with diverse provisions covering prosecution and punishment as well as prevention,

¹⁷⁷ Saudi Arabia, Royal Decree no. M/96 of 2018 (16/9/1439 Hijra).

¹⁷⁸ See: Egypt, Penal Code, Law no. 58 of 1937, art. 60: "The provisions of the Penal Code shall not apply to any deed committed in good faith, pursuant to a right determine by virtue of the Sharia."

¹⁷⁹ Iraq, Penal Code, Law no. 111 of 1969, art. 41: "There is no crime if the act is committed while exercising a legal right. The following are considered to be in exercise of a legal right: (1) The punishment of a wife by her husband".

¹⁸⁰ Libya, Penal Code, art. 375.

¹⁸¹ Bahrain, Law no. 17 of 2015 on Protection against Domestic Violence.

¹⁸² Jordan, Law no. 15 of 2017 on Protection from Family Violence (amending Law no. 6 of 2008).

¹⁸³ Lebanon, Law no. 293 of 2014 on the Protection of Women and Family Members from Domestic Violence.

¹⁸⁴ Morocco, Law no. 103-13 of 2018 on Violence against Women.

¹⁸⁵ Saudi Arabia, Law on Protection from Abuse, Royal Decree No. M/52 of 2013.

¹⁸⁶ Tunisia, Law no. 58 of 2017 on the Elimination of Violence against Women.

¹⁸⁷ Algeria, Law no. 19 of 2015 (15-19) on Domestic Violence.

¹⁸⁸ Kurdistan Region of Iraq, Law no. 8 of 2011 on Combating Domestic Violence.

protection and reparations. Such legislation outlines legal, social and medical interventions to address domestic violence. Other countries, including Egypt, Iraq and the State of Palestine, have prepared draft laws on domestic violence, family violence or violence against women

that have not yet been passed into law. Other notable responses include Algeria, which made amendments to the Penal Code to address marital violence, though it is not stand-alone legislation,¹⁸⁷ and the Kurdistan Region of Iraq, which also has stand-alone legislation.¹⁸⁸

Table 3: Legal definitions of domestic violence

		Physical and sexual violence	Psychological violence	Economic violence
Algeria¹⁸⁹	2015	• Effects on physical health	• Verbal or emotional violence that harms dignity or emotional health	• Intimidation to dispose of property or financial resources
Bahrain¹⁹⁰	2015	• Sexual and physical abuse	• Any act resulting in psychological injury to the victim, including verbal assault	• Any act resulting in depriving persons of their right or freedom to dispose of their property, and causing them injury
Kurdistan Region – Iraq¹⁹¹	2011	• Beating of children or family members • Child and forced marriage • Female genital circumcision • Abortion due to domestic violence • Physical punishment • Forced sexual intercourse	• Humiliating • Insulting • Belittling • Intimidating • Psychological pressure • Suicide due to domestic violence • Cutting off social relations • Marriage to settle feuds	• Forcing to leave employment • Forcing children to beg, work and leave school • Forced prostitution
Jordan¹⁹²	2008, updated in 2017	• Narrow definition based on penal code: a crime committed by a family member against any of its members	• Narrow definition based on penal code: a crime committed by a family member against any of its members	

189 Algeria, Law no. 19 of 2015 (15-19) on Domestic Violence, arts. 266 bis, 266 bis (1) and art. 330 bis.

190 Bahrain, Law no. 17 of 2015 on Protection against Domestic Violence.

191 Kurdistan Region of Iraq, Law no. 8 of 2011 on Combating Domestic Violence.

192 Jordan, Law on Protection from Domestic Violence, Law no. 15 of 2017, art. 2.

		Physical and sexual violence	Psychological violence	Economic violence
Lebanon¹⁹³	2014	• Death or physical or sexual injury • Use of force or threats to obtain sex	• Psychological injury • Adultery	• Forced begging • Forced sex work
Morocco¹⁹⁴	2018	• Physical and sexual harm	• Psychological harm	• Economic harm
Saudi Arabia¹⁹⁵	2013	• Actual or threatened physical or sexual abuse	• Psychological abuse or exploitation	• Failure to provide for the basic needs of a family member
Tunisia¹⁹⁶	2017	• Physical or sexual assault resulting in suffering or bodily or sexual damage	• Moral assault resulting in suffering or psychological damage. • Discrimination resulting in prejudice and damage	• Economic assault resulting in economic damage

Laws on domestic violence should be complemented by national action plans or strategies to eliminate violence against women. A national action plan can assess strengths and weaknesses, set goals, identify civil society organizations including women's organizations, medical and legal organizations that can partner with government in national responses, and plan for future prevention and protection initiatives.

Furthermore, domestic violence laws of Arab States should be based on good practice as outlined in the UN Handbook for Legislation on Violence against Women,¹⁹⁷ and should be informed by the provisions of the Model Law on Combating Violence against Women and Girls in Arab Countries and the principles of the draft Arab Convention against Violence against

Women and Girls and Domestic Violence.¹⁹⁸ The Model Law was drafted by a Lebanese non-government organization (KAFA: (Enough) Violence & Exploitation) and is based on CEDAW and the Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence,¹⁹⁹ which is open to accession by South Mediterranean countries. The laws should be comprehensive and survivor-centered, and engage with the due diligence standards of prevention, protection, prosecution, punishment and the provision of reparations, including access to medical and psychological care and other services.

On paper, the stand-alone domestic violence laws of Arab States generally align with good practice, although there are some gaps and inconsistencies. For

193 Lebanon, Domestic Violence Law (Law no. 293 of 2014 on the Protection of Women and Family Members Against Domestic Violence), arts. 2 & 3.

194 Morocco, Law no. 103-13 of 2018 on Violence Against Women, art. 1.

195 Saudi Arabia, Law on Protection from Abuse, Royal Decree no. M/52 of 2013.

196 Tunisia, Law no. 58 of 2017 on the Elimination of Violence Against Women, art. 3.

197 UN Women, *Handbook for Legislation on Violence against Women* (New York, UN Women, 2012).

198 UN Women (2012), *ibid.*; KAFA: Enough Violence & Exploitation, *Model Law on Combating Violence against Women and Girls in Arab Countries* (Beirut, KAFA, 2017).

199 Council of Europe, *Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence*, (Council of Europe Treaty Series no. 210, Istanbul, 11.V.2011)

example, some legislation focuses on violence within the family without acknowledging that females are disproportionately impacted by violence in the home. This approach privileges the family unit as opposed to the individual, with an aim to preserve the family's integrity even if it comes at the cost of the individual's rights. This was a controversial issue in the drafting of Lebanon's Law no. 293 on the Protection of Women and Other Family Members from Domestic Violence, which was originally titled 'Bill for the Protection of Women against Family Violence'. The original draft aimed to protect only women from family violence (including marital rape). Many women's rights activists argued that this approach was necessary given that the Lebanese legal system discriminates based on gender.²⁰⁰ Instead, lawmakers used gender neutral language, with the result that Law no. 293 failed to unambiguously criminalize marital rape.²⁰¹

Most of the domestic violence laws of Arab States apply a narrow definition of violence which focuses on selected types of violence perpetrated by household members and which excludes violence perpetrated by former partners or spouses. An exception is Algeria's amendment to its Penal Code in 2015, which applies regardless of whether the perpetrator and the survivor live together or separately.

Tunisia's Law no. 58 of 2017 on Elimination of Violence against Women uniquely addresses a wide range of forms of violence against women including physical violence, moral violence, sexual violence, political violence, economic violence as well as discrimination against women.²⁰² While several domestic violence laws explicitly mention sexual violence, none of the domestic violence laws of Arab States explicitly criminalizes marital rape.

All the stand-alone domestic violence laws in Arab States provide for protection orders, including emergency protection orders made in the absence of the alleged perpetrator of violence (ex parte orders). These domestic violence laws generally contain provisions allowing the following types of orders to be made:²⁰³

- Bar perpetrators from contacting or harming survivors, their children and other family members either directly or indirectly (through a third party)
- Require perpetrators to stay a specified distance away from survivors and their children
- Bar perpetrators from damaging survivors' personal property or property held jointly or in common (car, house, furniture)
- Bar perpetrators from accessing assets held jointly or in common with survivors
- Allow survivors to access the family dwelling or to seek refuge elsewhere, if needed
- Compel perpetrators to leave the family home for a fixed period
- Compel perpetrators to provide financial assistance for support and costs incurred from violence, including medical treatment and shelter.

In general, there is no fee associated with obtaining a protection order and the orders can be requested outside of normal working hours. These laws contain varying provisions on the duration of protection orders, the evidence required to obtain an order, the provision of support services and rehabilitation, and penalties for violating the order.²⁰⁴

In States that have not yet introduced stand-alone domestic violence legislation, if a perpetrator has committed a crime of violence, a public prosecutor may be able to seek an order that restrains the defendant from committing further acts of violence.²⁰⁵ However,

this relies on the willingness of the prosecutor to exercise their power and the practice varies considerably across the region.

In certain contexts, protection orders may be lifted if the survivor chooses to reconcile or pursue mediation with the perpetrator. This is the case in Jordan, where cases are referred to reconciliation and mediation services.²⁰⁶ In Saudi Arabia, the law seeks to facilitate reconciliation by requiring provision of family and social counseling to couples,²⁰⁷ and Morocco allows protection orders to be cancelled in the case of reconciliation.²⁰⁸ Tunisia's law is more focused on protection of the survivor and prohibits the police from attempting reconciliation after a domestic violence incident.²⁰⁹

Most domestic violence laws in the region do not clearly address a mother's right to retain custody of her children while a protection order is in place. Exceptionally, Tunisia's law provides that a woman who is under the protection of a court order maintains custody of her children and that a visitation schedule with the perpetrator must be based on the best interests of the children.²¹⁰ However, in Lebanon, the personal status laws are given a higher priority than the domestic violence law. As a result, the children included in a protection order are limited to those for whom the mother is entitled to have legal custody in accordance with the personal status laws, which restrict a mother's custody rights to children below specified ages. A separate protection order for children who are not in a mother's legal custody can be made through another Lebanese law.²¹¹

Many women fear that reporting domestic violence will bring social disapproval and so-called 'dishonour' to herself and her family. When women do seek legal protection, police are sometimes reluctant to become involved in what is perceived as a family matter and

may be unwilling to exercise powers of arrest and to pursue criminal prosecutions in response.

The domestic violence laws of Lebanon and Tunisia include sanctions for interfering with a survivor's right to make a complaint. Lebanon's law prohibits a judicial officer from coercing or applying pressure to a survivor to drop charges.²¹² In Tunisia, the law requires judicial police as well as professionals in the areas of health, education and social affairs to respond immediately to any demand for assistance and protection, and they are required to inform the woman of her rights, and to secure lodging for her if needed.²¹³ Provisions that require police and professionals to respond without delay to requests from women for assistance are important to counter reluctance to intervene. However, laws should respect the autonomy of women and not require professionals to report violence if a woman requests that no report be made.

Confidentiality is critical to allow parties and witnesses to testify freely in domestic violence cases without fearing retaliation. Recognizing the importance of confidentiality, in Lebanon, the law requires court hearings for domestic violence cases to be held in private,²¹⁴ while in Bahrain the public prosecutor and the police cannot disclose the name and identity of complainants.²¹⁵

Some domestic violence legislation calls for the establishment of specialized units within institutions, with trained and sensitized personnel. For example:

- In Tunisia, each National Security and National Guard precinct is required set up a specialized unit to investigate cases of violence against women.²¹⁶
- In Morocco, the domestic violence law requires the state to set up specialized cells in courts to respond to cases of violence against women. Dedicated cells

200 Human Rights Watch, *Unequal and Unprotected: Women's Rights under Lebanese Personal Status Laws*, 19 January 2015.

201 There is debate within Lebanon as to whether Law no. 293 criminalizes marital rape. Some lawmakers argue that it does criminalize marital rape; however, women's rights activists and some legal scholars disagree.

202 Tunisia, Law no. 58 of 2017 on the Elimination of Violence Against Women, art. 3.

203 Analysis taken from: ESCWA, *Beyond Boundaries: Utilizing Protection Orders to Cultivate a Holistic Response to Domestic Violence in the Arab Region* (Beirut, ESCWA, 2019) (E/ESCWA/ECW/2019/1), p. 42.

204 For a discussion of protection orders in the Arab States region, see: ESCWA (2019) *Ibid.*

205 ESCWA, *Combating violence against women in the Arab region: Multisectoral efforts* (ESCWA, Beirut, 2013) (E/ESCWA/ECW/2013/3), p.11. Another option is for the judiciary to invoke the provisions of CEDAW: C. McCrudden, "Why do national court judges refer to human rights treaties? A comparative international law analysis of CEDAW", *American Journal of International Law*, Vol. 109, no. 3. (2015).

206 Jordan, Law no. 15 of 2017 on Protection from Domestic Violence, art. 8.

207 Saudi Arabia, Law on Protection from Abuse, Royal Decree No. M/52 of 2013, art. 6.

208 Morocco, Law no. 103-13 on Combating Violence against Women (2018), art. 5; Morocco, Penal Code, art. 88.

209 Tunisia, Law no. 58 of 2017 on the Elimination of Violence Against Women, art. 25.

210 *Ibid.*, art. 33.

211 Lebanon, Law no. 422 of 2002 on the Protection of Juveniles in Conflict with the Law or at Risk.

212 Lebanon, Law no. 293 of 2014 on Domestic Violence, art. 8.

213 Tunisia, Law no. 58 of 2017 on the Elimination of Violence Against Women, arts. 25, 26.

214 Lebanon, Law no. 293 of 2014 on Domestic Violence, art. 19.

215 Bahrain, Law no. 17 of 2015 on Protection against Domestic Violence, art. 9. See also art. 127 bis of Decree Law no. 53 of 2012 amending certain provisions of the Code of Criminal Procedure promulgated by Decree Law no. 46 of 2002.

216 Tunisia, Law no. 58 of 2017 on the Elimination of Violence Against Women, Chapter IV.

also exist in police stations and hospitals.²¹⁷

- In the State of Palestine, Family and Juvenile Protection Units within the police service focus on domestic and family violence and sexual assault cases, specialized public prosecutors are assigned to work on cases of violence against women, and the High Judicial Council assigns specialized judges to work on cases related to violence against women and gender-based violence.²¹⁸
- The law of the Kurdistan Region of Iraq requires the establishment of specialized Domestic Violence Courts.²¹⁹
- Lebanon's law requires the establishment of a special fund to assist survivors of domestic violence and rehabilitate perpetrators, although the fund has not yet been established.²²⁰

Gender-sensitive legislation and access to gender-sensitive services for survivors are part of a larger comprehensive response to domestic violence. Laws in the region also require the provision of access to timely medical care, shelter, counselling services, and rehabilitation for survivors of violence.²²¹ However, there is rarely any provision to ensure that such services are well-funded and survivor-centered. Legal and policy frameworks that address shelter for survivors of domestic violence include specific legislation or a combination of legislation (provisions in penal codes, stand-alone domestic violence laws, or shelter laws), national action plans and institutional mandates.²²²

- Bahrain has established Family Protection Offices in all governorates, special Family Courts and shelters for survivors of domestic violence.

3.4.7 Femicide, adultery and sex outside of marriage

Femicide

'Femicide' refers to the killing of women and girls because of their gender – it is an extreme form of gender-based violence. So-called 'honour' crimes happen when the perpetrator seeks to justify or excuse an act of violence based on their belief that the victim has brought dishonour upon the family or clan. This perceived 'dishonour' is often the result of engaging in or being suspected of engaging in adultery or *zina*, failure to enter or maintain an arranged marriage, choosing to marry by own choice, adopting a dress code unacceptable to the family, or engaging in sexual relations with a person of the same sex.²²³ The perception that a woman's conduct has brought dishonour to the

family or clan is often used as an excuse for a range of forms of violence and exploitation of female family members.

In some Arab States, the perpetrators of femicide receive more lenient sentences than people convicted of other murders due to judicial discretion and laws that prescribe special leniency or mitigation for murders committed in the so-called "heat of passion". Such provisions have their origins in the Ottoman Penal Code of 1858, which was based on the French Penal Code of 1810.²²⁴

Many of the penal codes of Arab States criminalize both adultery and consensual sex between unmarried adults. Under Sharia principles, the *zina* offence includes

both adultery (committed by married persons) and fornication (committed by unmarried persons).

Adultery or fornication offences committed by women are more likely to be viewed as dishonorable and shameful than the same offences committed by men. Judges who consider such supposedly 'shameful' conduct as a relevant consideration in deciding penalties sometimes impose harsher sentences on women than men, even when the adultery offence is expressed in the penal code to apply equally to men and women. In some States, the wording of the adultery offence is gendered because men only face punishment for adultery if it occurs within the family home, whereas women face punishment regardless of the location (e.g. Iraq and Syria).²²⁵ These discriminatory adultery provisions also have their origin in colonial laws.²²⁶

The CEDAW Committee recommends the repeal of all laws that criminalize adultery because they often allow, tolerate or condone various forms of violence against women.²²⁷ Similarly, the United Nations Working Group on Discrimination against Women in Law and Practice has concluded that prosecutions for adultery are a violation of women's rights to dignity, privacy and equality.²²⁸

Morocco's Council on Economic, Social and Environmental Affairs has recommended abolishing the law criminalizing consensual sexual relations outside of marriage, thereby distinguishing such consensual conduct from rape.²²⁹ Women may be reluctant to report rape if they are concerned about being charged with extra-marital sex.

Protective detention of women and girls

There is an alarming practice of detaining women under the guise of protection from domestic violence or femicide. In some States this has been implemented as a legal requirement. However, this is not a protective measure. Rather, it is a violation of the human rights of women and girls to liberty and freedom of movement.

For example, in Jordan, women and girls who were deemed to be at risk of a so-called 'honour-based' crime or other violence were forcibly detained for the purpose of protection by regional governors under the Crime Prevention Law no. 7 of 1954.²³⁰ In 2018, the government introduced a new programme for women at risk of so-called 'honour' crimes, which is intended to replace this system of protective detention with a system of women's shelters. This is problematic as it still places the burden of seeking protection on women.

Another case is Libya, where the government operates Social Rehabilitation Centres for "women who are vulnerable to engaging in moral misconduct," including "raped adolescent girls; misled adolescent girls whose decency was assaulted," or "women abandoned by their families because of illegal pregnancy."²³¹ These so-called 'shelters' in effect serve to penalize survivors without holding perpetrators accountable or challenging the culture of impunity. These centres have been described as *de facto* prisons.²³²

217 Morocco, Law no. 103-13 on Combating Violence against Women (2018).

218 Palestinian Police. Available from <http://www.palpolice.ps/en/content/specialized-departments/family-protection-unit>

219 Kurdistan Region of Iraq, Law no. 8 of 2011 on Combating Domestic Violence.

220 Lebanon, Law no. 293 of 2014 on the Protection of Women and Other Family Members from Domestic Violence.

221 Tunisia, Law no. 58 of 2017 on the Elimination of Violence Against Women, arts. 5 and 17; Morocco, Law no. 103-13 of 2018 on Combating Violence against Women, arts. 9-16; Saudi Arabia, Law on Protection from Abuse, Royal Decree No. M/52 of 2013, art. 7; Jordan, Law no. 15 of 2017 on Protection from Family Violence, arts. 6 and 16; Bahrain, Law no. 17 of 2015 on Protection against Domestic Violence, art. 7.

222 See: ESCWA, *Shelters for Survivors of Violence: Availability and Accessibility in the Arab Region* (forthcoming).

223 EuroMed Gender Equality, *Women's human rights and gender equality, National situation report: Jordan* (EuroMed Gender Equality, 2010), p. 30; Andrzej Kulczycki and Sarah Windle, "Honor Killings in the Middle East and North Africa: A Systematic Review of the Literature", *Violence against Women*, vol. 17 No. 11 (2011).

224 Ottoman Penal Code of 1858, art. 188; France, Penal Code of 1810, art. 324 (repealed for France in 1975). See: Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives* (Dordrecht, Springer, 2007), p. 132.

225 Iraq, Penal Code, art. 377; Syria, Penal Code, arts. 473-474.

226 Penal Code of France of 1810, arts. 338, 339. Available from https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html

227 CEDAW Committee, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, 14 July 2017 (CEDAW/C/GC/35).

228 *Statement by the United Nations Working Group on discrimination against women in law and in practice: Adultery as a criminal offence violates women's human rights* (18 October 2012).

229 Conseil Economique, Social et Environnemental (CESE), *Les Dimensions Sociales de l'Egalité entre les Femmes et les Hommes: Constats et Recommandations* (Rabat, CESE, 2016), p.122 (recommendation 16). Available from <http://www.ces.ma/Documents/PDF/Auto-saisines/2016/av24/rpas24f.pdf>.

230 Asia Pacific Forum of National Human Rights Institutions, "Jordan: NCHR releases study of women in detention," 4 August 2015.

231 Human Rights Watch, "A revolution for all – Women's rights in the new Libya", 27 May 2013, p. 28-29; Human Rights Watch, *Libya: A Threat to Society? Arbitrary Detention of Women and Girls for 'Social Rehabilitation'*, 27 February 2006.

232 Department of Foreign Affairs and Trade (Australia), *DFAT Country information report: Libya*, 14 December 2018, p. 42.

3.4.8 Child marriage

Analysis of regional data from 2008–2014 found that 18 per cent of women aged 20 to 49 years were married before the age of 18, and 3 per cent were married before the age of 15, with large variations between countries.²³³ The highest numbers are found in the least developed countries. In Yemen, for example, more than two thirds of girls are married before the age of 18 (compared to 50 per cent before the conflict). Child brides are common in parts of Yemen that host large numbers of displaced people.²³⁴ Boys as well as girls are subjected to forced marriages, particularly in conflict-affected communities.

In middle-income countries, child marriage is much less prevalent: in Algeria the figures are 0.4 per cent (married before 15 years) and 2.5 per cent (married before 18 years), in Jordan 0.3 per cent and 8.4 per cent and in Tunisia 0 per cent and 1.6 per cent respectively.²³⁵ Many countries are thus making steady progress in reducing child marriage compared to a decade ago. However, there is some evidence of increasing levels of child marriages amongst Syrian refugee populations in Lebanon and Jordan, where families choose marriage “to protect girls from the dishonour of being raped and having children out of wedlock”.²³⁶ Adult women are sometimes also forced into marriage without their consent, for example due to the practice of families or tribes exchanging women for marriage.²³⁷ Forced marriages and child marriages are common practices in many rural areas.²³⁸

It is the obligation of States parties to the Convention on the Rights of the Child and CEDAW to set the minimum age of marriage at 18 years. The CEDAW Committee has recommended that the minimum legal age of marriage be established at 18 and that when a marriage at an earlier age is allowed in exceptional circumstances, the absolute minimum age must not be below 16 years. Further, the Committee recommends that grounds for obtaining permission for marriage where one or both parties are below 18 years must be strictly defined by law and the marriage must be permitted by a court based upon the full, free and informed consent of the child or both children.²³⁹

Although most countries included in this assessment have set the legal age of marriage at 18, there is discretion to allow marriage at a younger age, with a diversity of criteria. In some cases, judges or the child’s guardian have a very broad discretion to allow a girl to marry, so long as she has attained puberty. In countries where judges must approve the marriage, personal status laws establish the criteria for judges to consider, such as the needs served by the marriage or the benefits that the marriage will bring.

Lebanon, Saudi Arabia and Yemen have not set the legal age of marriage at 18 and the law allows girls under 18 to marry under certain circumstances. In Lebanon, the legal age of marriage varies depending on religious sect and some laws allow girls younger than 15 to marry.²⁴⁰ In the case of Iraq, article 41 of the Constitution,

which allows for freedom of religion, has been utilized as a loophole for some religious authorities to advocate for the legalization of child marriage.²⁴¹

In many Arab States, national laws do not affect the validity of a religious marriage and families can arrange religious marriages of children without risk of penalty.²⁴² For example, in Egypt, the minimum legal age of marriage is 18. However, child marriages are not

criminalized so no penalty applies if a family arranges for a child to enter a religious marriage. If the bride is under 18, families can choose a religious marriage and subsequently register the marriage with the state when the girl turns 18.²⁴³ Marriage of girls under 18 years of age is common in rural areas of Egypt, and because these marriages are not registered, child brides are unprotected should their husband die or leave her before she reaches the legal age of marriage.²⁴⁴

3.4.9 Female genital mutilation/cutting

In recent years there has been a shift from tolerance of FGM/C, to its medicalization and then to its formal criminalization. Yet the practice persists in several Arab States.²⁴⁵ FGM/C is practiced in Djibouti, Egypt, Kurdistan Region of Iraq, Somalia, Sudan and Yemen, and it is also found in some tribal and migrant communities in other countries in the region, including Oman.²⁴⁶ Somalia is the country with the world’s highest prevalence of FGM/C (98 per cent) (see table 4).

Several Arab States have provisions in their penal codes prohibiting FGM/C, although some have more severe

provisions than others. For example, Djibouti’s law prohibits FGM/C and also provides for up to one year’s imprisonment and a fine for failure to report FGM/C to the authorities. The Law against Domestic Violence of Kurdistan Region of Iraq provides that the punishment is more severe if the perpetrator of FGM/C is a doctor, pharmacist, chemist or midwife or their assistants and that the court must order that the offender be disqualified for a maximum of three years.²⁴⁷ While some States have criminalized the practice, enforcement is highly challenging and deaths of girls and young women as a result of the practice continue to be reported.²⁴⁸

Table 4: Percentage of females aged 15 to 49 years who have undergone FGM/C

Country / region	FGM prevalence
Djibouti	93%
Egypt	87.2%
Kurdistan Region of Iraq	59%
Somalia	98%
Sudan	87%
Yemen	18.5%

Source: UN Global SDG Database (2018), data for Djibouti and Somalia are from 2006; Sudan and Yemen are from 2013; Egypt from 2015; for Kurdistan Region of Iraq: B. Yasin et al. (2013) “Female genital mutilation among Iraqi Kurdish women: a cross-sectional study from Erbil city”, *BMC Public Health* 13:80.

233 MENA data for 2008–2014. UNICEF, *State of World’s Children 2016* (New York, UNICEF, 2016), p. 153, Table 9. Available from https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

234 UNICEF, *Falling through the cracks, the Children of Yemen* (UNICEF, March 2017).

235 UN Department of Economic and Social Affairs, Global SDG Indicators Database. Available from <https://unstats.un.org/sdgs/indicators/database/>

236 UNICEF and International Center for Research on Women, *Child Marriage in the Middle East and North Africa – Executive Summary* (Amman, UNICEF, 2017), p. 4.

237 UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 31 May 2012 (HCR/EG/IRQ/12/03), p. 38; Organization of Women’s Freedom in Iraq, MADRE and the International Women’s Human Rights Clinic at the City University of New York School of Law, *Women’s Human Rights Violations in Iraq*, 31 August 2015. Available from https://tbineternet.ohchr.org/Treaties/CESCR/Shared%20Documents/IRQ/INT_CESCR_CSS_IRQ_21592_E.pdf

238 ESCWA, *The state of gender justice in the Arab Region* (Beirut, ESCWA, 2017) (E/ESCWA/ECW/2017/4), p. 10.

239 CEDAW Committee, *Joint general recommendation/general comment no.31 of the Committee on the Elimination of Discrimination against Women and no. 18 of the Committee on the Rights of the Child on harmful practices* (2014) (CEDAW/C/GC/31/CRC/C/GC/

240 Human Rights Watch, *Lebanon: Pass Bill to End Child Marriage*, 12 April 2017.

241 Human Rights Watch, *Iraq: Parliament Rejects Marriage for 8-Year-Old Girls*, 17 December 2017.

241 Human Rights Watch, *Iraq: Parliament Rejects Marriage for 8-Year-Old Girls*, 17 December 2017.

242 K. Stilt, S. Waheedi and S. Griffin, “The ambitions of Muslim family law reform”, *Harvard Journal of Law and Gender*, vol. 41 (2018) 301–341, p. 340.

243 UNICEF and the International Center for Research on Women, *Child Marriage in the Middle East and North Africa – Egypt Country Brief* (UNICEF and the International Center for Research on Women, 2017).

244 World Bank, *Egypt: Women Economic Empowerment Study* (Washington DC, World Bank, 2019), p. 30.

245 UNICEF, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (New York, UNICEF, 2015).

246 UNICEF data on FGM/C, available from <https://data.unicef.org/topic/child-protection/female-genital-mutilation>

247 Kurdistan Region of Iraq, *Law Combating Domestic Violence in the Kurdistan Region of Iraq*, Law No. 8 of 2011, art. 6(4). 248 Reuters, “Death of teenage girl casts doubt on Egypt’s efforts to end FGM: activists”, 1 June 2016.

248 Reuters, “Death of teenage girl casts doubt on Egypt’s efforts to end FGM: activists”, 1 June 2016.

3.4.10 Trafficking in persons

There has been increased attention to efforts to address human trafficking in the Arab States region over the last decade. Of the countries included in the assessment, Somalia and Yemen are the only two countries that are not States parties to the Palermo Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons).²⁴⁹

Countries that have adopted comprehensive laws that include punitive, protective and preventive measures against trafficking include Bahrain, Djibouti, Egypt, Iraq, Jordan, Morocco, Oman, Qatar, Sudan, Syria, and Tunisia. Algeria, Kuwait, Lebanon, Libya, State of Palestine, Saudi Arabia and Somalia have penal measures criminalizing trafficking in persons, but their laws do not also address prevention and protective measures. Yemen does not have laws prohibiting all forms of trafficking in persons, although slavery is an offence under the Penal Code.

Despite those provisions, multiple examples of trafficking of women and girls have been recorded in the region. Some female migrant domestic workers (who are referred to as 'expatriate workers' or 'foreign workers' in Gulf countries) are subject to human trafficking in circumstances where their passports are withheld. They are effectively enslaved as domestic servants, and some are subjected to sexual exploitation and abuse. To counter such cases, the International

Labour Organization (ILO) recommends that countries include domestic workers under labour laws and create a standardized contract of employment that defines the roles and responsibilities of both parties, including wages, hours of work, time off and access to phones.²⁵⁰ An ILO report has identified four other common ways that women are subject to trafficking for sexual exploitation in the Arab States region:²⁵¹

1. Migrant domestic workers who leave their employers, and are subsequently forced by their 'boyfriends', taxi drivers or other intermediaries into sexual exploitation.
2. Migrants working as nurses, teachers, waitresses or in domestic work who are abducted upon arrival by freelance agents and required to provide sexual services.
3. Recruitment of migrant women to work in nightclubs and bars who are deceived about the real nature of the work and required to provide sexual services.
4. Women who are deceived by relatives through the false promise of marriage and a better life in another country, or whose relatives are deceived by husbands or agents into allowing a daughter to travel abroad to work. In both scenarios, on her arrival in the destination country the daughter is coerced to sell sex.

249 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

250 H. Harroff-Tavel and A. Nasri, *Tricked and trapped: human trafficking in the Middle East* (Beirut, ILO, 2013).

251 Ibid.

3.4.11 Sex work and anti-prostitution laws

Sex work is prohibited in all Arab States under anti-prostitution laws that penalize soliciting for sex, engaging in prostitution or selling sex. In some countries, sex workers may be prosecuted for extra-marital sex (*zina*), as well as anti-prostitution offences.

The CEDAW Committee recommends the decriminalization of women in prostitution because it creates vulnerability to gender-based violence and increases risks to the security and health of women.²⁵² The CEDAW Committee

has stressed that women in prostitution are especially vulnerable to violence because of the illegal status of prostitution, which marginalizes them, and has called on States to afford them equal protection of laws against rape and other forms of violence.²⁵³ The stigma associated with sex work means that sex workers are particularly vulnerable to gender-based violence and may be reluctant to report rape or assault to police. Trafficking women for sexual exploitation should be criminalized under anti-trafficking legislation.

3.4.12 Sexual orientation, gender identity and gender expression

Human rights treaty monitoring bodies have urged States to reform laws criminalizing homosexuality or consensual sexual conduct between partners of the same sex.²⁵⁴ The CEDAW Committee has called for the decriminalization of consensual sexual conduct of lesbian, bisexual and transgender people because criminalization creates vulnerability and the risk of exposure to gender-based violence.²⁵⁵ The Special Rapporteurs of the United Nations Human Rights Council have also called attention to the ways criminalization of homosexuality exposes people to hate crimes and family violence.²⁵⁶

Most penal codes in the region criminalize homosexual acts. The death penalty applies for sodomy in Saudi Arabia, Sudan (for a third offence)²⁵⁷ and Yemen (for

married men). In some countries, there are specific criminal offences for sexual conduct between women (e.g. Yemen) and 'cross-dressing' (e.g. Kuwait).

Arab States where homosexual conduct between adults in private is not a specific offence are Djibouti, Egypt, Iraq, Jordan and State of Palestine (West Bank) (it remains a criminal offence in Gaza). In some of these countries, although homosexual conduct is not a specific criminal offence, a variety of criminal offences are sometimes used by police to arrest people for suspected homosexual conduct and to disrupt meetings and social gatherings, including offences relating to immoral conduct, acts against nature, debauchery, outrages against decency, immoral conduct and extra-marital sex.

252 CEDAW Committee, *General Recommendation no. 35 on gender-based violence against women, updating general recommendation no. 19*, 14 July 2017 (CEDAW/C/GC/35); CEDAW Committee, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, 25 November 2016 (CEDAW/C/CAN/CO/8-9).

253 CEDAW Committee, *General Recommendation no. 19 on Violence against Women* (11th session, 1992) (A/47/38), para 15.

254 United Nations High Commissioner for Human Rights, *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity*, 17 November 2011 (A/HRC/19/41); Office of the High Commissioner for Human Rights (OHCHR), *Born free and equal: Sexual orientation and gender identity in international human rights law* (Geneva, OHCHR, 2012).

255 CEDAW Committee, *General Recommendation no. 35 on gender-based violence against women, updating general recommendation no. 19*, 14 July 2017 (CEDAW/C/GC/35).

256 See: *Report of the Special Representative of the Secretary-General on Human Rights Defenders* (E/CN.4/2002/16/Add.1), at para. 154; *Report of the Special Rapporteur on violence against women*, (E/CN.4/1999/68), at para. 15; *Reports of the Special Rapporteur on torture* (C/CN.4/2002/76) and (A/56/156).

257 Sudan, Criminal Act 1991, art. 148. The penalty for a first or second conviction is flogging of one hundred lashes and imprisonment for five years. On the third conviction, the punishment is death or life imprisonment.

The Working Group on the Universal Periodic Review for Lebanon has noted that some members of the judiciary are playing a significant role in preventing and opposing acts of violence against homosexual and transgender persons.²⁵⁸ In 2018, a Lebanese appeals court found that Penal Code provisions should not be applied to cases of consensual sexual conduct between men, and several other judges have made similar decisions.²⁵⁹ However, the applicable sexual offence has yet to be amended or removed from the Penal Code and the UN Human Rights Committee has noted with concern reports of a rise in arrests under the relevant article.²⁶⁰

In Tunisia, the Tunis Court of Appeals issued a ruling in 2019 allowing for the establishment of an association to

advocate for the rights of persons not to be criminalized or discriminated against based on their sexual orientation, gender identity or gender expression.²⁶¹

Conflict increases the vulnerabilities of persons who are at risk of arbitrary arrest and execution because of their sexual orientation, gender identity or gender expression. This was witnessed during the rise of ISIL in Iraq, when people were persecuted based on their assumed sexual orientation. Many people targeted by such violence and persecution have been forced to seek asylum outside the region.²⁶²

3.5 Family matters and personal status laws

National commitments on family matters and SDG 5: Gender equality

States are required to reach the following targets in order to meet their commitments to SDG 5:

- Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate
- Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national law
- Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

258 UN General Assembly, *Report of the Working Group on the Universal Periodic Review, Lebanon*, 22 December 2015 (A/HRC/31/5), p. 8.

259 "Court upholds landmark ruling for LGBTQ Community", *Daily Star Lebanon*, 16 July 2018.

260 Lebanon, Penal Code, art. 534. See: OHCHR, *Human Rights Committee concludes its examination of civil and political rights in Lebanon*, 22 March 2018. The Penal Code penalizes "unnatural" sexual relations without further definition.

261 "Tunisian Court Defends Advocacy of Homosexual Rights", *Legal Agenda*, 22 August 2019.

262 "Syria crisis: What is it like to be a gay refugee?", *BBC news online*, 28 October 2014.



3.5.1 Family laws and women's role in society

The family plays a central role in society in the Arab States region. The laws that regulate family relationships determine the opportunities that women and men have to participate in public life. As a result, they shape how power is distributed between men and women throughout the entire society and within key social and economic institutions. The social impacts of family laws extend well beyond the private sphere and permeate all

aspects of a woman's life including opportunities to work, travel, access finance, pursue education and participate in leadership positions including in the judiciary and politics. Family laws that include discriminatory provisions can impede female workforce participation and women's access to property and financial resources, and constrain women's opportunities to engage on equal terms with men in political life and the formal economy.

3.5.2 Codification of family laws and the influence of religion

The significance of family laws to women's status in society more broadly is partly a consequence of the very strong influence of religion on this area of the law. This arises because of historical factors. When Arab States commenced the process of codifying their laws after independence in the twentieth century, family matters were addressed separately from other areas of the law such as criminal, civil and administrative matters. Personal status issues (such as marriage, divorce and inheritance) were addressed in legislation derived from religious norms. Other areas of the law were addressed in secular codes drawing on international models. Through the separate codification process applied to personal status issues, the religious laws of the dominant religious sects were incorporated to varying degrees into the personal status codes of each State.

After the codification of the first family law in the region in Egypt in 1920, the first wave of codification of personal status law occurred from the 1950s to the 1980s in countries such as Algeria, Iraq, Jordan, Morocco, Syria and Tunisia, and these laws were subsequently reformed in the 1990s and 2000s. A new wave of codifications has taken place in the past 15 years in the Gulf countries (e.g. Qatar, Bahrain), with the exception of Saudi Arabia which has yet to codify its Sharia family laws. In some countries, different personal status laws operate concurrently and there is no single unified code (e.g. Egypt, Lebanon and Syria).

The personal status codes of each State differ as to their content and how they are applied through the courts. For complex historical reasons, a diversity of models has emerged. While the structures of the court systems and their relationship to religious authorities are diverse, in all States the content of the law is based on principles that have their origins in religious jurisprudence, among other sources.

Family matters are addressed in specialist family courts or family divisions which form part of the national court system in Algeria, Bahrain, Egypt, Iraq, Morocco, Qatar and Tunisia. In some other countries, religious courts have jurisdiction over family matters and they operate separately from the civil courts. The different recognized sects apply their own religious personal status rules through a system of religious courts in Bahrain, Jordan, Kuwait, Lebanon, Saudi Arabia, State of Palestine and Syria.²⁶³ In some cases, these religious courts are effectively under the control of the government, whereas in others the religious courts are fully autonomous. The ongoing influence of a conservative religious discourse on personal status laws means that the content of these laws is often inconsistent with constitutional guarantees of gender equality. The conservative traditional rules relating to family matters of all the major Islamic and Christian religious sects treat men and women differently. Some legislators have sought to address

²⁶³ See e.g. L. Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam, Amsterdam University Press, 2007), p. 13.

these inconsistencies through the law reform process. However, the influence of the dominant conservative religious discourse makes reform a challenging process.

Morocco and Tunisia provide examples of States that have applied an egalitarian approach to Islamic jurisprudence to justify the introduction of wide-ranging reforms to their personal status codes, which provide models for consideration by legislators of other countries. Features of these countries' reforms include

prohibiting polygamy (which has been illegal in Tunisia since 1957) or strictly restricting polygamy (Morocco); removal of divorce through the husband's unilateral verbal act of repudiation; removal of the duty of wives to obey their husbands; the granting of equal rights to men and women in most aspects of divorce and property ownership; establishing equal minimum ages of marriage for men and women at 18 years; and legal equality between spouses with regard to most family obligations.

3.5.3 Male guardianship over adult women

Some countries maintain guardianship systems in which a male guardian has authority to act on behalf of the woman under his guardianship. The guardianship system operates in different ways across the region, depending on local traditions, the cultural context and political climate. Traditionally, the male guardian's role extended to include the power to make or approve decisions in relation to entering into contracts, accessing legal services, and giving permission to work and travel. Although generally not a legal requirement, the approval of a male guardian for women to engage in such activities remains a strong social norm in some communities.

Often such norms are institutionalized in policies and procedures such as rules on access to finance from banks. As these procedures are generally not legislated, they can be changed at the institutional level. For example, the Bank of Palestine has lifted financial restrictions that previously applied only to women, for example, by no longer requiring a male guardian's consent to allow a woman to open a bank account for her children.²⁶⁴

Primarily, the institution of guardianship impedes women's empowerment within the family and specifically within marriage. In most Arab States, there is still a legal requirement for a male guardian to consent to a woman's marriage. In some States (e.g. Saudi Arabia and Yemen),

women must obtain permission to marry a foreign man from both the Ministry of Interior and their male guardian.

In some cases, the law relating to the marriage guardian includes limitations that protect women, such as not forcing a woman to marry against her will (e.g. Algeria, Bahrain, Djibouti, Kuwait, Lebanon, Libya, Oman and Syria). As a result of reforms to personal status laws, some Arab States have abolished the role of male marriage guardian or limited the marriage guardian's role so that it is largely symbolic. Tunisia does not require a guardian to consent to marriage. In Morocco, a woman can choose to marry with or without the consent of a guardian. Iraq has abolished the role of a marriage guardian, except for approval of underage marriages.

In some countries, such as Saudi Arabia and Sudan, the male guardianship system still operates in contexts outside of consent to marriage. However, the male guardianship system was modified in Saudi Arabia in 2017 as a result of an order instructing all government entities to refrain from requiring a woman to obtain a guardian's permission when accessing services and procedures, except where justified by law.²⁶⁵ In 2019, Saudi Arabia announced that women over the age of 21 no longer require a male guardian's permission to obtain a passport and travel abroad.²⁶⁶

²⁶⁴ S. Hillis and S. Constant, *Second Country Gender Action Plan (C-GAP II) for Palestinian Territories (FY2018-2021)* (Washington DC, World Bank Group, 2018).

²⁶⁵ Kingdom of Saudi Arabia, Supreme Order No. 33322 of 21 Rajab A.H. 1438 (18 April 2017).

²⁶⁶ Okaz, "There is no jurisdiction over women in travel", 3 August 2019. Available from <https://www.okaz.com.sa/article/1739868>

Case study: Reform of Morocco's Family Code (The Moudawana)²⁶⁷

The Moudawana was first adopted in Morocco in 1958. It was based on conservative interpretations of Islamic religious law. By the early 1990s, many women considered the Moudawana to be oppressive.

A women's rights group known as l'Union de l'Action Féminine (the Women's Action Union) (UAF) spearheaded the Moudawana reform movement. In 1992, the UAF launched the One Million Signatures campaign and exceeded their target by collecting over one million signatures in support of reform.

In following years, women's organizations and activists mounted a national campaign that appealed both to universal human rights principles and Islamic values of justice, equality and tolerance to argue the case for reform. King Hassan II responded to the campaign by ordering that a new code be drafted in consultation with women's groups. Women's groups continued to lobby the government by raising awareness of other issues affecting women such as rape and domestic violence.

In 2003, King Mohammed VI announced a draft family law in the Moroccan Parliament and it was made available for consultation. Women's rights groups formed the Spring of Equality network, organized workshops, roundtables, and discussion groups to prepare for renewed lobbying efforts in Parliament.

The final text of the new Moudawana (2004) secured important rights for women, including rights to divorce and child custody, restrictions on polygamy, ending of male guardianship over adult women, and raising the legal age of marriage to 18. The new Moudawana also allows spouses to sign a contract to be attached to the marriage contract establishing the terms under which the financial assets of the husband and wife are shared. One option is a community property regime, whereby assets acquired during the marriage are jointly owned and divided evenly upon divorce.

3.5.4 Equality in marriage

CEDAW provides that States shall ensure equality of men and women in marriage, including equal rights to enter into marriage with free and full consent, equal rights and responsibilities during marriage and divorce, and equal rights with regard to guardianship of children and in respect of the ownership of property.²⁶⁸ Family law in Arab States has undergone tremendous change over the past century, and this process is ongoing.²⁶⁹ There has been substantial progress in removing discriminatory provisions in Morocco and Tunisia. Many other countries have strengthened protections for women and children, including by restricting polygamy and raising the minimum age of marriage, but inequalities remain and almost all family laws of Arab States retain some provisions that discriminate against women in marriage.

Christian marriages

Provisions that disadvantage women in Christian marriages include discriminatory provisions relating to the minimum age of marriage and the very narrow grounds available for divorce or annulment of the marriage (see 3.5.5). The Christian denominations are governed by the religious laws of the various Churches of Egypt, Jordan, Lebanon and Syria. According to Christian theology, marriage is regarded primarily as a sacrament rather than a legal or contractual matter. This means that there are limited options to insert contractual stipulations into the marriage contract. Catholic communities do not allow for any stipulations to be included in the marriage contract. Marriage is treated as a holy union of one man and one woman, and polygamy is prohibited. Obligations of spouses under each denomination's laws include that the couple lives together under the same roof and that

the husband supports his wife and children. Armenian Orthodox wives are required to seek their husband's approval to employment.²⁷⁰ There are no requirements regarding marriage guardians for Christian wives, but witnesses must be present. There are variations between denominations in relation to the minimum age of marriage, with most Christian denominations providing flexibility in the religious laws to permit marriage of children under 18 years in certain circumstances, with the minimum age for girls younger than boys.²⁷¹

Druze marriages

In Syria and Lebanon, Druze apply their own Druze Personal Status Law. Marriages must be registered with the religious court. Two witnesses, a man and a woman, must witness the ceremony and sign the marriage contract. The minimum age of marriage is 17 for women and 18 for men. The Druze Personal Status Law prohibits polygamy.²⁷² Divorce is available after a court hearing during which both parties are heard. Remarriage to a new spouse after divorce is permitted.²⁷³ The Personal Status Law for Druze was amended in Lebanon in 2017. Changes include provisions on consulting a social worker or psychologist in cases of conflicts between spouses, awarding of damages if a spouse commits adultery, the right of women to inherit an entire estate if the deceased has no male children, and strengthening the mother's rights to custody of children.²⁷⁴

Muslim marriages

Equality in marriage in Muslim personal status laws is discussed below with a focus on polygamy, duty of obedience, stipulations in marriage contracts, property ownership, and unofficial or temporary marriages.

²⁶⁸ CEDAW, art. 16.

²⁶⁹ See: K. Stilt, S. Waheedi and S. Griffin, "The ambitions of Muslim family law reform", *Harvard Journal of Law and Gender*, vol. 41 (2018) 301-341.

²⁷⁰ P. Fournier, F. Malek-Bakouche and E. Laoun, "The State, the household and religious divorce in Lebanon: Women's everyday struggles", in: C. Holtmann, N. Nason-Clark (eds.) *Religion, Gender, and Family Violence: When Prayers are Not Enough* (Lieden, Brill, 2018), pp. 191-192.

²⁷¹ Landinfo, *Syria: Marriage legislation and traditions* (Oslo, Landinfo, 2018), p. 18.

²⁷² *Ibid.*, p. 19.

²⁷³ *Ibid.*

²⁷⁴ L. Karame, "Lebanon's Druze Personal Status Law: Developing Deference to the Constitution", *The Legal Agenda*, 16 February 2018.

²⁶⁷ Adapted from: F. Sadiqi, "Morocco", in S. Kelly and J. Breslin (eds.), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (New York, Freedom House; Lanham, MD: Rowman & Littlefield, 2010); Centre for Public Impact (London), "Reforming Moroccan family law: the Moudawana", 2 May 2016.

Polygamy

Polygamous marriages are recognized by the personal status laws for Muslims in all countries in the region except Tunisia, where polygamy was prohibited in 1956.²⁷⁵ Polygamy has been found to be associated with reports of violence perpetrated by husbands against wives in several studies.²⁷⁶ Therefore, the CEDAW Committee has concluded that polygamy is contrary to CEDAW and must be discouraged and prohibited.²⁷⁷

Restrictions on polygamy vary between countries. Most States have enacted regulations and procedures that protect the rights of the existing wife in the event of the husband's second marriage. A husband in a polygamous marriage is required to support all his wives financially. In many countries the law also requires that the husband inform his existing wife if he intends to marry another woman and/or that he treats his wives equally. Some Arab States require a judge to approve a polygamous marriage, however this is not a requirement in the Gulf States.

Morocco imposes strict restrictions on polygamy that require the husband to provide a court with evidence of an exceptional justification for the marriage and to prove he has sufficient financial resources to cover family expenses, housing and to ensure equal treatment of his wives.²⁷⁸ However, in practice, this legal requirement can be circumvented by taking advantage of legal loopholes and there are current efforts to reform this part of the law in Morocco to further restrict polygamy.²⁷⁹ Kurdistan Region of Iraq also imposes strict conditions on polygamy.²⁸⁰

Duties and obligations of spouses

Muslim family laws incorporate Sharia principles which define the obligations and duties of Muslim spouses including cohabitation, companionship, mutual respect,

caring for the best interests of the family and raising children to ensure their proper upbringing. The husband pays bridal money to the wife (*mahr*). As the head of the household, the husband is required by law to protect and financially support the family, supervise the home and preserve the family assets. The wife retains full rights over her property and is entitled to financial support (maintenance) from her husband in return for her obedience and therefore is not obliged to support herself from her own funds.

Most contemporary Muslim family laws of Arab States incorporate the Islamic jurisprudence (*fiqh*) concepts of *qiwamah* and *wilayah*. *Qiwamah* is the set of obligations and rights of men and women in marriage which classical jurisprudence constructed as the husband's obligation to protect and provide. In exchange, it became the duty of wives to obey their husbands. *Wilayah* refers to the duty of fathers or male family members to exercise guardianship over their dependent wards (female or male).²⁸¹

Women who are found to be disobedient may forfeit their rights to maintenance. Disobedience may also be used as grounds for divorce in some countries. In Yemen, women are required to obey their husband and must request the husband's permission to leave the home, unless for a legitimate excuse or for a purpose not prejudicial to honour or to her duties towards him. She may leave the home to perform a mutually agreed job that does not conflict with Islamic law.²⁸²

Some Arab States have reformed their personal status codes to remove the duty of obedience based on new Islamic jurisprudence that breaks the classical equation of maintenance in exchange for obedience. For example, Tunisia removed this provision in 1993 and Morocco in 2004.²⁸³

The application of the rule that 'husbands provide and wives obey' has been criticized by women's rights activists as inappropriate for the current social and economic conditions of Arab States:

Many men are not able to earn enough to support their families; many women contribute financially and also undertake most of the unpaid labour and caregiving responsibilities at home. Yet often men retain their rights to make decisions and control their wives, even though they cannot undertake their prescribed responsibilities, whereas women take on responsibilities of providing for and protecting the family but are not accorded any additional rights.²⁸⁴

Stipulations in the marriage contract

In most countries, Muslim women can request stipulations within their marriage contract, such as the right to complete their education or work outside the home. The husband can delegate the right of divorce by repudiation (*talaq*) to his wife as a stipulation in the marriage contract.

This provides an opportunity to have a marital contract that is explicit about equal rights in some important areas. In Algeria, Morocco and Tunisia, this includes the option to stipulate joint ownership of real estate.²⁸⁵ However, prevailing customs discourage women from taking advantage of these rights and women are often not in a strong position of power to request stipulations. Women would be in a much stronger position if equal rights in relation to property ownership and other matters were required by the personal status law, rather than being an issue for contractual negotiation.

Marriage and property ownership

Muslim marriage contracts require payment to the wife of a gift which becomes the wife's property (*mahr*). Wives are legally entitled to the *mahr*, which may be paid at the time of marriage or deferred until divorce.

Joint ownership of property by spouses is rarely practiced but is legally possible in most countries and codified in some. For example, Tunisia instituted an optional community property regime for married couples in 1998. Spouses may choose this option at the time of the marriage contract or at a subsequent date. The aim is to ensure that the spouses have joint ownership of property intended for the family's use.²⁸⁶ Similarly, reforms to the Family Code of Morocco allow married couples to enter a contract to establish a community property regime whereby assets of the marriage are jointly-owned and divided evenly after divorce.²⁸⁷ Joint property ownership is also permitted in the marriage contract or a separate contract entered into by the spouses in Algeria.²⁸⁸ Joint ownership of property acquired during a marriage can provide financial security to women who are not in paid employment.

Unofficial or temporary marriages

Unofficial marriages that are unregistered or undocumented provide an additional level of complexity in the analysis of women's rights within marriage. These marriages can take several different forms and, in some circumstances, can increase the vulnerability of women and girls to violence and sexual exploitation. Unofficial marriages include the '*urfi* (customary) marriages and *misyar* (travellers') marriages among Sunni Muslims. Among some Shia Muslims, *mut'a* (temporary) marriage is practiced.²⁸⁹

275 Tunisia, Personal Status Code of 1956, art. 18.

276 H. Azhar Ahmed, A. Zahrah Abid, A. Alsadah et al. "Prevalence and Risk Factors for Abuse among Saudi Females, KSA", *Egyptian Journal of Hospital Medicine*, vol. 68 No. 1 (July 2017), p. 1086.

277 CEDAW Committee, *General Recommendation no. 21: Equality in Marriage and Family Relations*, 1994.

278 Morocco, Family Code, arts. 40, 41.

279 Submission to the Committee on Economic, Social and Cultural Rights for the 56th Session (21 September – 9 October 2015) by the Advocates for Human Rights, and Mobilising for Rights Associates. Available from https://www.theadvocatesforhumanrights.org/uploads/morocco_esc_shadow_report_august_2015.pdf

280 Kurdistan Region of Iraq, Law no. 15 of 2008 amending the implementation of the Law of Personal Status no. 188 of 1959.

281 Musawah, *Who provides? Who cares? Changing dynamics in Muslim families* (Malaysia, Musawah, 2018).

282 Yemen, Personal Status Law no. 20 of 1992, art. 40.

283 "Bridging the gap between women's rights and practice in Tunisia", *The Arab Weekly*, 31 March 2019.

284 Musawah, *Who Provides? Who Cares? Changing Dynamics in Muslim Families* (Malaysia, Musawah, 2018), p. 2; and see: Ziba Mir-Hosseini, Mulki Al-Sharmani and Jana Rumminger (eds.), *Men in Charge – Rethinking Authority in Muslim Legal Tradition* (London, One World Publications, 2014).

285 Global Rights, *Conditions, Not Conflict. Promoting Women's Human Rights in the Maghreb through Strategic Use of the Marriage Contract* (Rabat and Washington DC, Global Rights, 2008), p. 18.

286 Tunisia, Law on the Community Property Regime, Law no. 98-91 of 9 November 1998.

287 P. Prettitore, *Ten Years After Morocco's Family Code Reforms: Are Gender Gaps Closing?*, MENA knowledge and learning quick notes series no. 121 (Washington DC, World Bank, 2014).

288 Algeria, Family Code, Law no. 84-11 of 1984, art. 37.

289 ESCWA, *Combating domestic violence against women and girls: policies to empower women in the Arab region*, 11 October 2013 (E/ESCWA/ECW/2013/4), p. 21.

Misyar marriages are often entered into by men living away from their families in another country or who are tourists seeking a temporary sexual partner. A *misyar* marriage involves a marriage contract in which the woman is usually required to renounce her rights to financial maintenance and a family home. In such cases, the wife often remains living with her parents, as the husband is under no obligation to live with the wife or provide a home. This form of marriage is often entered primarily to permit a man to engage in sexual relations in a lawful manner.²⁹⁰ *Misyar* marriages may in practice be short term, as the husband typically divorces the wife when the marriage no longer serves the husband's sexual needs.

Mut'a marriages are practiced by some Shia Muslims. The marriage contract in a *mut'a* marriage specifies the duration of the union, which may be as short as a few days. The husband is legally obliged to provide a payment to the wife and financial support to any children from such a union. However, as *mut'a* marriage contracts are not registered, the wife may be unable to secure any rights through the courts including protection against domestic violence.

Unofficial marriages are often entered into by wealthy male tourists seeking sexual relations with women

and girls. Given that these marriages are not formally registered, the groom's legal obligations are limited. Girls from poor families are married to older wealthy men from other countries. The marriage is usually intended by the groom to be for a limited duration, but this may not be clearly communicated to the parents or bride. Women and girls in unregistered marriages face risks of abandonment or inability to prove paternity of their children. In some cases, girls might be taken to the groom's country and exploited as a domestic worker or for sexual purposes.²⁹¹ Unofficial marriages are not always exploitative and can also be sought after by couples seeking a consensual sexual relationship outside of a traditional marriage structure.²⁹² Some are between students who cannot afford an official marriage.

In Egypt, there have been reports of *'urfi* marriages between foreign tourists and local girls from poor families facilitated by parents and marriage brokers.²⁹³ Young girls are provided to wealthy foreigners through brokered arrangements. These 'marriages' last for a few weeks or less in return for financial compensation. The bride has limited recourse if she is abandoned. While the paternity of children of these unions is recognized and children retain their rights to obtain support from their fathers, enforcement of rights can be impractical if the father no longer resides in Egypt.

POSITIVE DEVELOPMENTS IN PERSONAL STATUS LAWS: MARRIAGE²⁹⁴

Equality of spouses in marriage

Algeria: The Family Code requires spouses to live together in harmony, to afford mutual respect and kindness, and to contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education, and to mutually agree in the management of the family's affairs, including the spacing of births.

Morocco: The Family Code recognizes marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: cohabitation, mutual respect, affection and the preservation of the family interest; both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and consultation on decisions concerning the management of family affairs.

Consent to marriage / Forced marriage

Algeria, Bahrain, Iraq, Jordan, Lebanon, Morocco, Oman, State of Palestine, Qatar, Tunisia: Regardless of their age, the bride and groom must consent to the marriage. Consequently, *ijbar* marriages, in which the guardian arranges the marriage of a woman or girl without her permission, are prohibited.

Algeria: The law prohibits a *wali* (guardian) from compelling a minor under his guardianship to marry.

Bahrain: The law forbids a woman's *wali* to compel her to marry.

Iraq: The law prohibits relatives and non-relatives from forcing any person, whether female or male, to marry.

Morocco: The law requires a minor's parents or legal representative consent to a marriage.

Oman, Qatar: The law provides that the *wali* may only conclude a woman's marriage with her consent.

Mandatory registration of marriage

Algeria, Bahrain, Iraq, Jordan, Lebanon, Oman, State of Palestine, Qatar, Tunisia: The official registration of marriages is mandatory.

Women's capacity to enter into marriage

Egypt, Iraq, Morocco, Tunisia: The consent of a marriage guardian is not required for adult brides.

Capacity of adult women to enter into subsequent marriages

Jordan, Lebanon (Shia), State of Palestine (West Bank): The consent of a guardian is not required for the subsequent marriages of an adult woman who has been previously married. The State of Palestine (Gaza), Syria: The marriage of an adult woman who enters into a marriage contract without the consent of a *wali* is considered valid unless the husband is found to be incompatible.

²⁹⁰ Ibid.

²⁹¹ International Organization for Migration (IOM) and Colburn Consulting International, *Pilot Study: Tourist Marriages in Yemen* (IOM and Colburn Consulting International, 2014), p. 20.

²⁹² S. Badran and B. Turnbull, "Contemporary Temporary Marriage: A Blog-analysis of First-hand Experiences" *Journal of International Women's Studies*, vol. 20, No. 2, (2019), pp. 241-256; T. Jassim Al-Nasr, "Gulf Cooperation Council (GCC) Women and Misyar Marriage: Evolution and Progress in the Arabian Gulf", *Journal of International Women's Studies*, vol. 12, No. 3 (2011), pp. 43-57.

²⁹³ United States Department of State, *Trafficking in Persons Report: Egypt*, 28 June 2018. Available from <https://eg.usembassy.gov/egypt-2018-trafficking-in-persons-report>

²⁹⁴ Adapted from: Musawah, *Positive developments in Muslim family laws* (Malaysia, Musawah, 2019). Available from https://www.musawah.org/wp-content/uploads/2019/02/Positive-Developments-Table-2019_EN.pdf

3.5.5 Equality in case of divorce

Most personal status codes do not provide equal rights to divorce for women and men.

Divorce options for Christians

Divorce is generally prohibited by the Christian Churches, but in exceptional cases divorce or annulment may be granted. In Christian marriages, while it is difficult for both husband and wife to dissolve their marriages, there are instances that allow men more grounds for divorce or annulment than women.

There are significant variations between Christian denominations. For example, in the Syrian Catholic Church marriages may be terminated through annulment, but only those that were never considered by the Church to be valid in the first place. The annulment procedures of the courts are time-consuming and can last for over a year. Examples of acceptable grounds include circumstances where one of the parties was not qualified to marry because of impotence, one of the parties had not been baptized or the existence of a close family relationship between the spouses. In addition to annulment, a court may also grant separation in the event of infidelity or in situations where a wife is subject to violence and abuse from her husband. Upon separation, spouses are no longer obliged to live together, but the marriage between them will not be dissolved.²⁹⁵

Syria's Orthodox Churches permits divorce subject to certain conditions. The procedures followed by the courts are normally easier than those followed by the Catholic courts. For Protestant Christians, such as the Evangelical Churches in Syria and Egypt, divorce is permitted subject to certain conditions.²⁹⁶ Grounds for divorce have been restricted to adultery by Egypt's Coptic Orthodox Church

since the 1970s, but are undergoing review with a more liberal approach being adopted since 2012.²⁹⁷

Analysis of Lebanon's personal status laws for Christians found that domestic violence is in itself insufficient to obtain an end to marriage, except in attempted murder cases.²⁹⁸ Further, Christian men in Lebanon can unilaterally convert to Islam, which affords them the right to marry up to four women and allows them to enter into new marriages without obtaining divorces. No similar process exists for Christian women to bypass Christian personal status laws after their marriage. This means that women's options are very limited, and many remain in abusive marriages rather than pursuing a lengthy and costly divorce or annulment.²⁹⁹

Divorce options for Muslim men

In most Arab States, it is much easier for men to obtain a divorce than women. In most cases, Muslim men either have the right to unilateral divorce through verbal repudiation (*talaq*) or the right to apply for a court ordered divorce without being required to provide evidence or a justification. A verbal pronouncement of the divorce formula by the man is sufficient for the divorce to be effective in most Arab States, even if the law requires the husband to register the divorce. If the man does not register the divorce it is still considered effective in many countries (e.g. Egypt). Only Tunisia has abolished divorce by verbal repudiation.³⁰⁰

Divorce options for Muslim women

A Muslim woman can apply to a court for divorce due to specific reasons that are listed in the personal status laws such as harm, abandonment, absence or imprisonment

of her husband. The burden of proof is on the woman to prove the relevant harm or burden. The grounds for divorce are very specific and can be difficult to prove. In most countries, violence and abuse within marriage can be used as grounds for divorce, but the legal process may be lengthy and costly.

Another option for women is to seek a *khul'* divorce. There is no requirement to prove harm or burden to obtain a *khul'* divorce, however the wife is required to financially compensate the husband, usually by returning the *mahr*.

It is also possible in many Arab States for a woman's divorce rights to be addressed through a stipulation in the marriage contract by which the husband delegates his right of repudiation to his wife.

Tunisia is an exception, in that it has established equal legal rights in divorce for women and men. Tunisia's divorce laws illustrate how reform to achieve gender equality can occur within an Islamic framework. Morocco has also reformed its divorce law to allow for divorce on the grounds of marital discord, which can be accessed by both women and men equally.

POSITIVE DEVELOPMENTS IN PERSONAL STATUS LAWS: DIVORCE³⁰¹

Equal right to divorce:

Tunisia: All divorces must go through the court. The grounds for divorce are equally available to either spouse. Divorce through *talaq* by the husband is not recognized

Judicial divorce due to irreconcilable differences:

Jordan, Morocco: A wife may petition the court for a divorce on the ground of "irreconcilable differences" or irretrievable breakdown of the marriage.

Divorce through repudiation by the husband (*talaq*):

Algeria: A divorce by way of repudiation by the husband can only be effectuated through the court.

Bahrain (Shia): A divorce by way of the repudiation by the husband cannot be finalized unless both parties appear before the court to register the divorce.

Morocco: Divorce by repudiation can only be effectuated under judicial supervision. The wife and children must have received all their vested rights before it is authorized.

The State of Palestine (West Bank): A husband must register a divorce by way of repudiation before a judge. In case he divorced his wife outside the court and did not register it, he must report to the religious court for the registration of the divorce within 15 days. Failure to register the repudiation is penalized. The court must notify the wife who is absent within one week from its registration.

Egypt: A husband must register his divorce by way of repudiation within 30 days for its pronouncement. If the wife is not present at the registry office, the civil registrar is tasked with the responsibility of notifying the wife of her divorce.

²⁹⁵ Landinfo, *Syria: Marriage legislation and traditions* (Oslo, Landinfo, 2018), p. 18.

²⁹⁶ Ibid.

²⁹⁷ S. Elsasser, "The Coptic divorce struggle in contemporary Egypt", *Social Compass*, vol. 66, No. 3 (2019).

²⁹⁸ Human Rights Watch, *Unequal and Unprotected: Women's rights under Lebanese Personal Status laws*, 19 January 2015.

²⁹⁹ Ibid.

³⁰⁰ Divorce by verbal *talaq* is controversial among Muslim communities internationally. In some countries, it is restricted by law. For example, the law in Malaysia requires *talaq* to be pronounced in court and it is a criminal offence to pronounce *talaq* outside the court. The Supreme Court of India declared *talaq* divorce to be unconstitutional in 2017: *Shayara Bano v. Union of India*, 2017 (9) SCALE 178: Writ Petition (C) No 118 of 2016 (August 22, 2017).

³⁰¹ Adapted from: Musawah, *Positive developments in Muslim family laws* (Malaysia, Musawah, 2019). Available from https://www.musawah.org/wp-content/uploads/2019/02/Positive-Developments-Table-2019_EN.pdf

Delegated right of divorce to the wife:

Bahrain, Egypt, Iraq, Jordan, Lebanon (Sunni), Morocco, Oman, State of Palestine (West Bank), Qatar, Syria, and Yemen: A husband may delegate his unilateral right of divorce to his wife through the marriage contract, thus permitting her to pronounce talaq upon herself. The wife's right to financial entitlements remains preserved.

Divorce by redemption (*khul'*):

Algeria: A wife can obtain a *khul'* divorce in court without the consent of the husband upon payment of compensation to the husband. If the parties cannot agree on the amount of compensation, a judge determines the sum to be paid.

Egypt: A wife can negotiate with her husband for a divorce by relinquishing some or all of her financial rights. If both parties are unable to reach a mutual agreement on the divorce, a wife may bring a court case to seek a *khul'* divorce. In such a case, the wife needs to: (i) declare in court that she detests life with her husband, the continuation of married life between them is impossible and she fears that she will transgress against the 'limits of God' due to this detestation; (iii) pledge to return her *mahr*; and (iv) renounce all her financial rights. In such a case, the court must order a reconciliation process, and if it fails it must then rule for divorce.

Jordan: If the parties are unable to reach a mutual agreement on a *khul'* divorce, a wife may bring a court case for an *iftida* ('ransom') divorce, where she needs to: (i) declare in court that she detests life with her husband, the continuation of married life between them is impossible and she fears that she will transgress against the 'limits of God' due to this detestation; (ii) pledge to return her *mahr*; and (iii) renounce all her financial rights. In such a case, the court must order a 30-day reconciliation process, and if it fails, the court must then rule for divorce.

Morocco: A wife can obtain a *khul'* divorce through mutual agreement and payment of compensation to the husband. If the parties agree to the *khul'* divorce but disagree on the amount of compensation, the court may determine the appropriate amount of compensation to be paid by the wife to the husband.

Gulf countries:

Bahrain (Sunni), Qatar: A wife can obtain a *khul'* divorce by making a payment to the husband to repay gifts received from the husband at marriage. If the husband refuses to agree to the divorce, the judge has the authority to grant the divorce on condition that the wife makes a payment and renounces her financial rights. The court may refer the couple for reconciliation before making a final decision. *Khul'* regulations differ between countries as to the duration of the reconciliation process. In Oman and Kuwait, *khul'* divorce still requires the consent of the husband.³⁰² In Saudi Arabia, *khul'* is available, but there are no codified guidelines and decisions are based on the judge's discretion.³⁰³

Wife's right to seek divorce following a polygamous marriage by her husband

Algeria, Bahrain, Egypt, Jordan, Lebanon, Morocco, State of Palestine: A woman can stipulate in the marriage contract that her husband cannot take another wife. If her husband breaches this term of the marriage contract, the woman has the right to divorce.

Algeria: A woman may petition the court for a divorce if she is able to show that her husband has failed to meet the requirements that he must meet under the law with regard to polygamous marriages.

Egypt: A woman may petition the court for a divorce if she is able to show that her husband's polygamous marriage is causing her harm.

Post-divorce guardianship and custody of children

Islamic law makes a distinction between a parent's role in bringing up children (*hadana*) and the supervisory role as guardian (*wilayah*). *Hadana* involves the necessary activities involved in raising a child such as feeding, clothing, bathing and grooming, which is usually associated with the mother. *Wilayah* is the supervision or guardianship of the child, which is associated with the father.³⁰⁴ The guardian has authority to protect the child and make decisions in regard to the child's person and property, including decisions regarding health, financial affairs, education, travel and other affairs outside the home.

Rules about the role of the guardian and the responsibilities of parents in raising a child vary between countries and there are exceptions. Most Arab States provide that only men have the right to exercise guardianship over their children. Exceptionally, in Tunisia and Algeria, women also enjoy guardianship rights. Since reform of Egypt's Child Law in 2008, divorced mothers have 'educational guardianship' of children in their custody, which gives them some decision-making rights with regards to their children's choice of school.³⁰⁵

The duties of the guardian continue after divorce. This means that the father has an ongoing financial responsibility for the children after divorce and it is his role as guardian to make decisions for them on issues such as obtaining a passport, registration for or change of school, or to undergo surgery. Upon divorce, mothers are granted custody of their children and are responsible for raising the children up to a prescribed age, unless they remarry, in which case they often forfeit their rights to custody. The ages when the children are in the mother's custody vary for male and female children. For example, it can range between 7 years of age (e.g. Lebanon Shia) to 15 (Egypt).

Some Arab States award custody to a parent based on a court's assessment of the 'best interests of the child'. Jurisdictions have adopted the 'best interests' standard in a variety of ways including as an overriding principle that must be considered in all decisions concerning parental care (e.g. Tunisia, Algeria) or as an exception in selected rules on custody to allow a change from the general rule, such as extending age limits for custody (e.g. Qatar, Bahrain, Lebanon).³⁰⁶

In most jurisdictions with codified personal status laws, countries have not yet adopted the 'best interests' standard

302 Musawah and Abolish Article 153, *Joint Report on Article 16, Muslim Family Law and Muslim Women's Rights in Kuwait*, 68th CEDAW Session Geneva, Switzerland November 2017, available from https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KWT/INT_CEDAW_NGO_KWT_29225_E.pdf; Musawah, *Thematic Report on Article 16, Muslim Family Law And Muslim Women's Rights in Oman* 68th CEDAW Session Geneva, Switzerland October 2017, available from https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/OMN/INT_CEDAW_NGO_OMN_29224_E.pdf

303 Musawah, *Thematic Report on Muslim Family Law and Muslim Women's Rights In Saudi Arabia* 69th CEDAW Session Geneva, Switzerland February 2018, available from <https://www.musawah.org/wp-content/uploads/2019/02/Saudi-Arabia-Thematic-Report-2018-CEDAW69.pdf>

304 A. Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An Analysis)", *International Journal of Humanities and Social Science*, vol. 4, No. 5 (2014), pp. 267-277 at 268.

305 Musawah, *Who Provides? Who Cares? Changing Dynamics in Muslim Families* (Malaysia, Musawah, 2018), p. 46; Egypt, Law no. 12 of 1996, as amended by Law no. 126 of 2008, art. 54(2).

306 Musawah, *Who Provides? Who Cares? Changing Dynamics in Muslim Families* (Malaysia, Musawah, 2018), p. 21.

in relation to guardianship and custody. Exceptions include Tunisia and Algeria, in which guardianship and custody are both determined based on the best interests of the child.³⁰⁷ The reform of Algeria's family law in 2005

provides that, after divorce, guardianship is awarded to whoever holds custody, which ended the divide between guardianship and custody.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS: CHILD CUSTODY AND GUARDIANSHIP³⁰⁸

Algeria, Iraq, Qatar, Tunisia: Ultimately, child custody is determined by the courts on the basis of the "best interests" of the child. This has led to an expansion of mothers' rights.

Algeria: Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child.

Egypt: A mother has the right to manage the educational affairs of her children in her custody.

Morocco: A mother may manage urgent affairs of the children if the father is prevented from doing so. She may also assume guardianship of her children if: (i) she is over 18; and (ii) the father is not present due to his death, absence or incapacity.

Saudi Arabia: Mothers who have custody of their children after divorce can obtain documents and conduct government business for their children. Mothers are thus able to register their children in schools, take them to health centres, and obtain identity documents for them.

Tunisia: Mothers who have custody of their children also have guardianship rights. The mother has an equal right to supervise the child's affairs.

Financial rights and obligations (alimony, child maintenance, share in matrimonial assets)

Islamic law provides that husbands and wives generally have separate financial identities throughout the marriage. Therefore, after divorce they retain the property registered in their own name. Husbands are usually obliged to pay maintenance (alimony) to wives after divorce, at least during the *'iddah*, which is the period that a woman must observe after the death of her spouse or after a divorce, during which she may not remarry.

Husbands are also required to provide financial maintenance for their children. Men are generally

required to maintain their children until they reach the age of majority, or until their female children marry.

Divorced women are entitled to a compensation payment for injury caused by the divorce depending on the circumstances, but they are not entitled to a share in their husband's wealth to recognize their non-financial contributions to the marriage, such as childcare or domestic work. In some countries, such as Morocco and Tunisia, a couple can enter a separate contract to regulate the sharing of assets. If a woman initiates the divorce, her right to maintenance may be lost if she is unable to prove harm or one of the other reasons provided for in the law.

307 Tunisia, Personal Status Law of 1956, art. 76.

308 Adapted from: Musawah, *Positive developments in Muslim family laws* (Malaysia, Musawah, 2019).

Establishing the amount of maintenance and child support owed by the husband and enforcing payment to the wife through the courts can be very difficult. Women often do not receive child support payments in a regular and timely manner, and child support payments ordered by courts are usually insufficient to cover the child's expenses.³⁰⁹ In conflict-affected communities, where marriages may not be registered, women's access to financial rights on divorce are

further compromised. It can be almost impossible for refugees and displaced women to claim their rights.³¹⁰

Some countries have established alimony funds to ensure wives receive financial support when a husband fails to make payments. Husbands are obliged to repay the funds, but the wife is assured payment.³¹¹ However, these alimony funds are not well resourced and there are practical difficulties in enforcing alimony entitlements.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS: FINANCIAL RIGHTS³¹²

Women's rights to matrimonial assets after divorce

Tunisia: Spouses have the option of choosing a matrimonial asset regime that ensures that they have joint ownership of assets which are specifically intended for the family's use.

Consolatory gift or compensation

Egypt, Jordan, Morocco, Oman, Qatar: The court has the power to order a man to pay his former wife a consolatory gift or 'compensation' in addition to the financial maintenance he has to pay her during the waiting period after the divorce (*iddah*). The amount of compensation varies in each country and may be based on a multiple of the *iddah* maintenance or the amount the court deems as fair and just.

Compensation for unreasonable divorce

Algeria, Iraq, State of Palestine (West Bank), Syria: If the court finds that a man has divorced his wife in an arbitrary, unfair or unreasonable manner, the court can order him to pay his former wife compensation for the divorce in addition to the financial maintenance he has to pay her during the *iddah* period.

Compensation for harm suffered by the wife

Algeria: If a judge finds that a wife has suffered harm during her marriage, the judge can order her former husband to compensate her for the harm she suffered in addition to the financial maintenance he has to pay her during the *iddah* period.

Tunisia: If the court finds that a wife has suffered harm during her marriage, it will determine the appropriate level of maintenance and compensation due to her upon divorce. The level of maintenance and compensation is based on the standard of living that the wife was accustomed to during her marriage. The maintenance and compensation take the form of regular monthly payments that continue until she remarries, dies or no longer requires them.

309 National Council for Women, *National Strategy for the Empowerment of Egyptian Women 2030 Vision and Pillars* (Cairo, National Council for Women, 2017), p. 53.

310 Z. Albarazi and L. van Waas, *Understanding statelessness in the Syrian refugee context* (Institute on Statelessness and Inclusion, 2016).

311 Egypt, Family Provision Law no. 11 of 2004; Palestine, Alimony Fund Law no. 6 of 2005. Alimony funds have also been established in Jordan and Morocco.

312 Adapted from: Musawah, *Positive developments in Muslim family laws* (Malaysia, Musawah, 2019).

3.5.6 Inheritance and property

CEDAW requires the adoption of inheritance laws that ensure equal treatment of surviving females and males and the criminalization of property dispossession of widows by relatives of a deceased husband.³¹³

The personal status laws of all Arab States apply Sharia principles to define the rules of inheritance for Muslims. Female relatives have a right to a fixed share of the estate of the deceased.³¹⁴ Sunni and Shiite sects have different inheritance rules, but both systems favour the deceased's descendants over the surviving spouse and in most cases allocate twice as much to male heirs compared to female heirs who have the same relationship to the deceased.³¹⁵ The inheritance is shared among children of the deceased and near relatives according to the rule that the male heir receives twice the share of the corresponding female heir.

There are some exceptional situations in which men and women are entitled to equal shares under Sharia principles. For example, the mother and father of a deceased person both receive a one-sixth share, if the deceased had children. However, the most common situation that families confront is division of assets between children after the death of a parent. In this situation, a surviving son receives twice as much as a surviving daughter.

The rationale for men's right to inherit twice as much as women, when both are in equal relation to the deceased, is that men bear legal responsibility for payment of the *mahr*, providing housing and financial support to their wives and children, and for supporting other female family members. However, this rationale fails to recognize social and economic changes that mean that

there is an increasing number of women who are not financially dependent on men. More women are heads of households than in previous generations. There is a significant proportion of families in which women are the main breadwinners, for example, as a result of being widowed, divorced or being a single parent of children born outside of marriage. This may be especially true in conflict-affected areas.

In some countries, non-Muslims have inheritance rights under their own personal status laws. For example, Lebanon has codified inheritance for non-Muslims in a law that provides equal rights to inheritance for women and men.³¹⁶ In Egypt, Sharia inheritance rules apply to non-Muslims as well as Muslims, but non-Muslims have the option of seeking a court order to enforce the inheritance rules of their own religion. For example, a recent ruling of the Cairo Court of Appeals applied the rules of the Coptic personal status law and held that Coptic Orthodox men and women inherit equal shares.³¹⁷ However, Sharia inheritance rules apply to all persons in Jordan regardless of their religion and so are binding on the various religious courts of Christians.³¹⁸

Some countries have attempted to reform inheritance laws to remove or reduce gender discrimination, but such attempts have met with resistance from religious authorities. When Iraq's Personal Status Law was introduced in 1959, it included a new system of inheritance that provided equal rights to women. Under this new system, non-discriminatory inheritance rules that applied to agricultural lands were extended to all forms of property. However, the inheritance rules introduced in 1959 were abolished in 1963, when article 74 of the Personal Status Law was repealed

and Islamic inheritance rules were restored in Iraq.³¹⁹ Somalia's Family Code of 1975 provided for equal shares of inheritance between men and women, but these provisions were never accepted as legitimate by religious authorities or the broader community and are not enforced by the courts.

Tunisia's Personal Status Code was amended in 1959 to permit girls to receive the full inheritance of their father or mother if there are no male heirs. Further reforms to remove all discriminatory provisions from the inheritance laws of Tunisia were proposed by the President in 2017 and are the subject of ongoing community debates.³²⁰ Tunisia's Commission on Individual Liberties and Equality submitted its recommendations to the President in June 2018. Based on the report, the Cabinet endorsed a draft law to allow people to choose inheritance rules that provide for gender equality. It has been submitted to the parliament for consideration.³²¹ The proposed law lets Tunisian families choose whether to leave their assets according to rules that require male and female heirs to receive equal shares, or to apply the traditional system based on Sharia principles under which the general rule is that male heirs inherit twice as much as female heirs.³²²

Morocco's National Human Rights Council recommended reform of inheritance laws to remove discrimination against women in 2015.³²³

Women's inheritance rights

Although women have the legal right to a defined share of inheritance under Sharia principles, in practice, in

some Arab States women are sometimes prevented from exercising this right due to customary laws and cultural norms that deny women the ability to claim ownership of property or cause women to renounce their inheritance rights. These norms are sometimes enforced through social pressures and threats.³²⁴ As a result, the dispossession of women's inheritance is a widespread problem, particularly in rural areas. Land grabbing by male relatives following the death of a husband or father is a problem in many rural areas. Widows are sometimes deprived of access to their husband's land if they have no children. Agricultural land is often split up among male heirs, without consideration of the rights of women.³²⁵

Egypt addressed these problems by amending its Inheritance Law in 2017 to introduce penalties for persons who refrain from handing over inheritance to the heirs or who intentionally refrain from giving the property documents to the heir.³²⁶ Enforcement of this law is crucial to the economic empowerment of women, especially in rural areas, where women are often deprived of their rightful inheritance.³²⁷

Jordan introduced a law in 2011 imposing a three-month waiting period after a death before a female can waive her inheritance rights to provide protection for women from being pressured by male family members to give up their lawful share of the inheritance.³²⁸ Libya's Law on Women's Right to Inheritance of 1959 provides a penalty of imprisonment for anyone withholding a lawful share of inheritance from a woman.

313 CEDAW Committee, *General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women*, 26 February 2013 (CEDAW/C/GC/29).

314 According to Islamic law, a person who leaves an inheritance may leave up to one-third of their estate as a gift to a person who is not an heir under the Sharia rules or a charity. The rest of the estate must be distributed to the person's relatives according to Sharia inheritance rules.

315 N. Yassari, 'Intestate succession in Islamic countries', in: K. Reid, M. de Waal and R. Zimmermann (eds.) *Comparative Succession Law. Volume II: Intestate Succession* (Oxford University Press, 2015).

316 Lebanon, Inheritance Law for Non-Muslims of 23 June 1959.

317 "Court ruling: equal inheritance for men and women", *Watani*, 28 May 2019. Available from <http://en.wataninet.com/opinion/editorial/court-ruling-equal-inheritance-for-men-and-women/29392/>

318 UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief on his mission to Jordan*, 27 January 2014 (A/HRC/25/58/Add.2)

319 N. Yassari, 'Intestate succession in Islamic countries', in: K. Reid, M. de Waal, and R. Zimmermann (eds.), *Comparative Succession Law. Volume II: Intestate Succession* (Oxford University Press, 2015), p. 434; Suad Joseph, Afsāna Nagmābādī, *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics* (Leiden, Brill, 2005), p. 299.

320 "Equal inheritance for daughters is key to Tunisian women's empowerment", *The New Arab*, 19 October 2017.

321 Human Rights Council, *Fortieth session: Visit to Tunisia, Report of the Special Rapporteur on freedom of religion and belief*, 1 March 2019 (A/HRC/40/58/Add.1).

322 "Bridging the gap between women's rights and practice in Tunisia", *The Arab Weekly*, 31 March 2019. Available from <https://theArabweekly.com/bridging-gap-between-womens-rights-and-practice-tunisia>

323 "Morocco's CNH calls for equality between women and men in inheritance", *Morocco World News*, 17 October 2015. Available from <https://www.morocoworldnews.com/2015/10/170856/moroccos-cndh-calls-for-equality-between-women-and-men-in-inheritance>

324 S. Adnani, "Women's Land Ownership in Morocco: Current State & Challenges", paper presented at Annual World Bank Conference on Land and Poverty 19-23 March 2018 (World Bank, Washington DC, 2018).

325 UNDP, *Gender in Somalia Brief* (UNDP Country Office for Somalia, 2012), p. 5. Available from https://www.undp.org/content/dam/rbas/doc/Women's%20Empowerment/Gender_Somalia.pdf

326 Egypt, Law on Inheritance, art. 49, inserted by Law no. 219 of 2017 amending Law no. 77 of 1943.

327 World Bank, *Egypt: Women Economic Empowerment Study* (Washington DC, World Bank, 2019), p. 19.

328 Jordan, Personal Status Law, no. 36 of 2010, arts. 318, 319; Jordan, Sharia Supreme Court, Registration of Exit Transactions Instruction of 2011.

POSITIVE DEVELOPMENTS IN MUSLIM INHERITANCE LAWS³²⁹

Right to inheritance:

Iraq, Tunisia: Daughters can inherit the entire estate in the absence of sons, thus excluding male agnates (i.e. excluding other male relatives descended from the same male ancestor as the daughters).

Bahrain, Kuwait, Lebanon: Shia daughters can inherit the entire estate in the absence of sons, thus excluding male agnates.

Right of orphaned grandchildren to inherit:

Algeria, Egypt, Morocco, State of Palestine (West Bank), Tunisia: If a parent dies before their own parent, the children of the deceased can inherit from their grandparent through an obligatory bequest.

Divisions of property through bequests, agreement:

Jordan, Tunisia: Bequests can be made in favour of an heir beyond the one-third limit if the other heirs agree to it. (In other Arab States, sharia rules restrict bequests made in a will to a maximum of one-third of the whole estate, and other restrictions apply).

3.6 Labour laws and equality in economic opportunities

National commitments on labour rights and SDG 8: Decent work and economic growth

States are required to reach the following targets in order to meet their commitments to SDG 8:

- By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.
- Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

3.6.1 Overview

The disparity between women's and men's incomes in the Arab States region is an indicator of unequal economic opportunities, which are rooted in the different traditional roles of men and women in society and are reflected in unequal legal provisions.

While there is a growing number of women entrepreneurs who run their own businesses in Arab countries, their potential is limited by the obstacles that women experience in accessing skills and capital³³⁰. From this perspective, legal provisions are relatively homogeneous among Arab countries. In all countries assessed, a woman can legally sign a contract in the same way as a man, register a business in the same way as a man, and open a bank account in the same way as a man. Yet, on average, only 26 per cent of women in Arab countries have an account at a financial institution, compared to 65 per cent worldwide.³³¹

Women are disadvantaged by legal provisions according to which sons and daughters do not have equal rights to inherit assets from their parents, female and male

surviving spouses generally do not have equal rights to inherit assets and the law does not provide for the valuation of non-monetary contributions to a marriage, for example when women provide child care, perform domestic work or contribute to a family business.

Even where the law does not discriminate against women in land ownership rights, in practical terms women are often excluded from ownership. For example, the Egyptian Civil and Commercial Code gives women the equal right to own and access land, however, an ownership gender gap is prevalent. Women own only 5.2 per cent of the land in Egypt, because of social factors such as the pressure that rural families impose on women to sell land to male relatives.³³² An inability to apply for credit because a woman cannot prove property ownership is a barrier to entrepreneurship.

Another obstacle to women's economic opportunities is linked to their participation in the labour market, which is one of the lowest in the world. Women are disproportionately represented in the informal



329 Adapted from: Musawah, *Positive developments in Muslim family laws* (Malaysia, Musawah, 2019). Available from https://www.musawah.org/wp-content/uploads/2019/02/Positive-Developments-Table-2019_EN.pdf

330 "Women Entrepreneurs in the Middle East and North Africa: Characteristics, Contributions and Challenges" (International Finance Corporation, 2007).

331 A. Demircuc-Kunt et al., *Global Financial Inclusion Database* (Washington DC, World Bank, 2018).

332 World Bank, *Egypt: Women Economic Empowerment Study* (Washington DC, World Bank, 2019), p. 32.

economy. Women are engaged in unpaid work for family members and spend an inordinate amount of time doing such work.³³³ It has been estimated that the value of women's unpaid care work for family members in Egypt alone amounted to EGP 496 billion (USD 30 billion) in 2015.³³⁴ Recognition of the economic value of women's contributions to the economies of Arab States provides an additional basis on which to claim legal equality for women.

In many Arab States, women participate heavily in public sector employment. Reasons include the assumption that public sector professions such as teaching and nursing are appropriate for women, as are the favourable conditions of work in the public sector, including generous maternity leave benefits in some countries.³³⁵ In the private sector, by contrast, women have faced significant disadvantages.

Most countries in the region have a policy commitment to increase the rate of female labour force participation. This requires challenging traditions and cultural norms that restrict women's employment choices. Traditionally, women's role was to carry out domestic duties with limited engagement in the public sphere. Women's ability to work is limited by laws and traditions that require a woman to obtain permission of the husband or a male guardian to leave the home to work or travel, as sanctioned by the Yemen personal status law.³³⁶ The lifting of the restriction on women from holding a drivers' license in Saudi Arabia is an example of a reform that supports women's participation in employment. Facilitating women's labour force participation also requires removing legal restrictions on women's occupations and introducing laws that ensure equal pay for work of equal value, maternity and paternity leave entitlements, child care entitlements and laws prohibiting discrimination against women and workplace sexual harassment.

3.6.2 Laws restricting women's occupations

In terms of laws facilitating women's access to the labour market, the situation in the Arab region is very diverse. Gender equality is supported by legal frameworks that permit a woman to get a job or pursue a trade or profession in the same way as a man, the existence of laws mandating non-discrimination based on gender in employment, and prohibition of sexual harassment so that women feel safe in the workplace.

Some discriminatory rules within labour laws still exist in countries imposing restrictions on women's ability to work in mines and other roles considered to be arduous or hazardous, as well as in night work or roles deemed morally inappropriate (see table 5).

Table 5: Legal prohibitions on women's occupations

Country	Prohibition for women to perform morally inappropriate work	Prohibition for women to perform night work ³³⁷	Prohibition for women to work in mining or arduous jobs
Algeria		✓	
Bahrain ³³⁸			✓
Djibouti			✓
Egypt	✓	✓	✓
Iraq		✓	✓
Jordan		✓	✓
Kuwait	✓	✓	✓
Lebanon			✓
Libya			✓
Morocco	✓	✓	✓
Oman		✓	✓
Palestine, State of		✓	✓
Qatar	✓		✓
Saudi Arabia	✓	✓	✓
Somalia		✓	✓
Sudan		✓	✓
Syria	✓	✓	✓
Tunisia		✓	✓
Yemen	✓	✓	✓

Many of these restrictions apply standards that were in the past promoted by the ILO through conventions on underground work and night work that have since been superseded or updated.³³⁹ For example, the Night Work Convention originally applied only to women but was updated in 1990 to protect both women and men. Gender-specific restrictions on night work assume that women should be attending to domestic duties rather

than night employment. Most workplace restrictions that apply only to women contradict women's rights to choose employment guaranteed by CEDAW.³⁴⁰ International standards now require gender neutral laws that protect the health and safety of both men and women equally, and allow women to choose the type of work they want without discrimination.

333 Ibid., p. 15.

334 Ibid., p. 16.

335 M. Kamel Nabli and C. Nadereh, *Gender and Development in the Middle East and North Africa: Women in the Public Sphere* (Washington DC, World Bank, 2004).

336 Yemen, Personal Status Law no. 20 of 1992, art. 40.

337 The definition of 'night work' varies by country and in some it does not include night work in hospitals, airports, cinemas, commercial, communication services, administrative, supervisory or technical roles.

338 Minister of Labour, Ministerial Order no. 32 of 2013, available from <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/95435/112349/F1810084000/95435.pdf>

339 ILO Convention Concerning the Employment of Women in Underground work in Mines of all Kinds, 1935 (Convention no. 45); ILO Convention Concerning Night Work of Women Employed in Industry, 1919 (Convention no. 4), revised in 1934 (Convention no. 41), and 1948 (Convention no. 89). The 1990 Night Work Convention is non-discriminatory as it only requires restrictions on women's participation in night work if they are pregnant or nursing: ILO Night Work Convention, 1990 (Convention no. 171).

340 CEDAW, art. 3.

The ban on women working in mines and arduous roles is intended to protect women but is based on inaccurate stereotypes rather than medical evidence. It is reasonable to restrict pregnant women's participation in some roles based on medical evidence of risk to the mother or the foetus, however bans prohibiting all women from participating in work roles are discriminatory and in effect treat women as minors who are unable to make decisions regarding their own safety.³⁴¹

The provision of a work environment free from violence and sexual harassment is critical to encouraging women's increased participation in the workforce. Several countries have introduced laws that specifically

penalize sexual harassment in the workplace (see 3.4.5). Women in most countries can file workplace discrimination complaints with government agencies, but these bodies often lack the capacity to investigate complaints or impose penalties for violations by employers. The labour laws of some countries allow employees to resign without notice if they are sexually harassed in the workplace (e.g. Jordan and Syria). Safe transportation to work is also critical to encouraging women to participate in the workforce. Some countries have adopted practical measures to increase women's safety. In Morocco, the Safe Cities programme conducts awareness raising with bus and taxi drivers to prevent sexual harassment of women travelling to work.³⁴²

3.6.3 Equal pay

Another factor discouraging women from participating in the labour market is the disparity between men and women in the income that can be expected through formal employment. While wage inequalities for women remain the common experience, from a legal perspective, equal pay for equal work is guaranteed in most national labour laws, with the exception of Saudi Arabia.

In countries that have introduced legislation on equal pay, the wording of the relevant provision varies between countries, with some laws referring only to equal pay for doing the same work, while in other countries a broader definition of equal pay is applied to include work of equal value (this is the case in Algeria, Djibouti, Iraq, Morocco, Syria and Tunisia).

Equal pay for work of equal value, even if it is a different type of work, is required by ILO standards.³⁴³ Laws that apply the definition of equal pay for 'work of equal value' guarantee greater equality because they account

for types of jobs that are mostly done by women and which historically have been poorly paid. Factors that can be considered to determine if the work is of equal value include the level of skill, effort and responsibility required by the job and the working conditions provided to employees. It may also be possible to compare work which may involve different types of qualifications, skills, responsibilities or working conditions but which is nevertheless work of equal value overall (see box).

Some countries have established mechanisms to promote equal pay. In Jordan, the ILO, the Ministry of Labour and the Jordanian National Commission for Women created the National Steering Committee for Pay Equity in 2011. The Committee reviews policies and legislation on equal pay and makes recommendations. The Committee also undertakes research on wage gaps in the private education sector.³⁴⁴ Jordan amended its Labour Law in 2019 to prohibit gender discrimination in payment of wages.³⁴⁵

The concepts of 'equal pay for equal work' and 'equal pay for work of equal value'³⁴⁶

What is equal work?

Equal pay for "equal work" means that similarly qualified women and men will be paid equally when they perform the same or similar work under the same or similar conditions. This limits the application of the equal pay principle to work undertaken by women and men in the same area of activity and in the same enterprise. In some countries the law provides for equal pay where work is performed under similar conditions, or requiring similar qualifications and skills. Such an approach, while included in the concept of equal value, is limited to comparing like with like.

What is work of equal value?

Equal pay for work of equal value covers not only cases where men and women do the same or similar work, but also the more usual situation where they do different work. Women continue to be concentrated in a limited number of work roles, and the jobs held predominantly by women tend to be undervalued.

When men and women perform work that is different in content, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value, they should receive equal pay. This concept is critical to eliminating discrimination and promoting equality, since women and men often perform different jobs, under different conditions and often in different establishments.

Some countries also have laws that address discrimination against women in aspects of employment additional to pay, such as promotion, training and conditions of employment. For example, in Djibouti, discrimination against job applicants and employees on the grounds of their sex or family status is a criminal offence under the Penal Code.³⁴⁷ Similarly, in Algeria

discrimination on the grounds of sex (and other grounds) including in employment is a criminal offence under the Penal Code.³⁴⁸ In Tunisia, discrimination against women in employment is prohibited by the Law no. 58 of 2017 on Elimination of Violence against Women. In most Arab States, dismissal on the grounds of pregnancy is prohibited by the labour codes.

341 S. Kelly and J. Breslin (eds.), *Women's rights in the Middle East and North Africa, Progress and resistance* (New York, Freedom House, 2010), p. 7.

342 UN Women, "Making stepping out of home safer for women and girls in Marrakech", 14 November 2017. Available from <https://www.unwomen.org/en/news/stories/2017/11/feature-marrakech-safe-cities>

343 ILO Convention no. 100, Equal Remuneration Convention (1951).

344 C. Mcloughlin, *Women's economic role in the Middle East and North Africa, GSDRC Helpdesk Research Report* (Birmingham, Governance and Social Development Resource Centre, University of Birmingham, 2013), p. 17.

345 Jordan, Labour Law no. 8 of 1996 as amended by Law no. 14 of 2019.

346 ILO, *Equal Pay: An Introductory Guide* (Geneva, ILO, 2013).

347 Djibouti, Penal Code, Law no. 59/AN/94 of 1995, arts. 390, 391.

348 Algeria, Penal Code, Law no. 66-156 of 1966, art. 295 bis (1) (2014 amendment).

3.6.4 Equal access to social protection: parenting and paid leave

Provision of maternity leave at the ILO standard of not less than 14 weeks paid leave helps to ensure equality for women in labour market opportunities.³⁴⁹ Gender equality is supported by legal frameworks that require maternity leave or parental leave benefits paid by the government rather than employers, the existence of paid paternity leave, and the prohibition of dismissal of pregnant workers.

All countries in the region have labour laws that provide women with paid maternity leave entitlements, although the amount of the entitlement (per cent of normal pay) and duration of payments varies. States in which labour laws provide for 14 weeks maternity leave include Algeria, Djibouti, Iraq, Libya, Morocco, Somalia, Tunisia and Syria. Some countries also provide paid nursing breaks for breastfeeding mothers during working hours. For example, in Bahrain women working in the government sector receive maternity leave for 60 days with pay, plus two hours of care per day for two years, and women working in the private sector receive maternity leave for 60 days with pay and two hours of care per day for the first six months and one hour of care per day for the subsequent six months during the child's first year.³⁵⁰

In most countries, maternity leave is fully paid by the employer, whereas in some the payment is made by the government through the social security system. To avoid discrimination against women, it is preferable for governments to require payment of maternity leave through social insurance schemes rather than

by direct employer payments. For example, Jordan's Social Security Code provides maternity benefits of ten weeks paid by the social security administration.³⁵¹ The employer liability schemes are less supportive of gender justice than social insurance schemes. In some cases, employers who are under a direct legal obligation to pay maternity leave may be reluctant to hire, retain or promote women of childbearing age to avoid paying the costs of maternity leave.

Other measures that support women to remain in the workforce include the requirement for employers (other than small businesses) to provide childcare facilities, or alternatively, subsidies for childcare for working mothers.³⁵² A few countries in the region provide paternity leave entitlements, although limited to between one and three days, which is a first step towards recognizing the role of men in supporting the family.³⁵³ Paternity leave of three days is available in Algeria, Djibouti, Jordan, Morocco and Saudi Arabia. In Tunisia, paternity leave is one day (private sector) or two days (public sector); and in Bahrain it is one day.³⁵⁴

The 2009 International Labour Conference resolution concerning gender equality³⁵⁵ recognizes that work-family balance measures concern both women and men, and provision of paternity leave enables men to be more involved in family responsibilities. Paternity leave supports greater equality between men and women in relation to parenting roles and helps to breakdown stereotypes relating to the roles of men and women in providing childcare and in paid employment.

349 ILO, Maternity Protection Convention, 2000 (ILO Convention no. 183).

350 Bahrain, Prime Minister's Decision no. 51 of 2012 issuing the executive regulations of the Civil Service Law issued by Decree Law no. 48 of 2010; Law no. 36 of 2012 promulgating the Labour Law in the Private Sector, arts. 32 and 35.

351 Organization for Economic Cooperation and Development (OECD), *Women in Public Life* (Paris, OECD, 2014), p. 23.

352 Ibid., p. 26.

353 S. Belwal and R. Belwal, "Work-Life Balance, Family-Friendly Policies and Quality of Work Life Issues: Studying Employers' Perspectives of Working Women in Oman", *Journal of International Women's Studies*, vol. 15, No. 1 (January 2014).

354 Bahrain, Labour Code, no. 36 of 2012, art. 63; Djibouti, Labour Code Law no. 133/AN/05/5 of 2006, art. 100; Jordan, Labour Law no. 8 of 1996 as amended by Law no. 14 of 2019; Morocco, Labour Code, Law no. 65-99 of 2003, art. 269; Saudi Arabia, Royal Decree No. M/46 of 05/05/1436H (2016); Tunisia, Labour Code, Law 96-62 of 15 July 1996, art. 122.

355 General Conference of the International Labour Organization, *Resolution concerning gender equality at the heart of decent work, adopted by the ILC at its 98th Session* (Geneva, ILO, 2009).

Women are more likely to have opportunities to remain in employment if society supports men to play a role in parenting.

Finally, other provisions that can determine if women and men can obtain the same benefits from formal

employment are related to entitlements under pension schemes that can provide some security when leaving the labour market. Gender equality requires laws that provide an equal retirement age for men and women, and laws that provide pension care credits for periods of childcare.

3.6.5 Protection of migrant domestic workers

Migrant workers often fall outside the protections of labour laws or only benefit from limited legal protections. Migrant workers who are contracted for a short duration are referred to as 'expatriate workers' or 'foreign workers' in the Gulf countries. There are large populations of migrant domestic workers in the Arab States, and female migrant domestic workers are particularly vulnerable to sexual harassment, abuse and exploitation. Female migrant domestic workers face particular challenges in accessing justice, due to language barriers, social isolation, marginalization from mainstream society and a lack of legal rights.

In some countries, special laws have been enacted that provide some protections from abuse to domestic workers and rights to health and safety.³⁵⁶ Algeria, Bahrain, Jordan, Kuwait, Morocco, Oman, State of Palestine, Qatar, Saudi Arabia, Sudan and Syria provide some protections under special laws, decrees or regulations for domestic workers, but they do not enjoy full protection under labour laws. Migrant domestic workers lack legal protections in Egypt, Lebanon, Somalia, Tunisia and Yemen.

Domestic workers are protected by provisions of the labour codes in Iraq and Libya. For example, the Iraqi Labour Law provides protections to domestic workers including by prohibiting discrimination and forced

labour. A key challenge is to ensure migrant domestic workers are educated about their rights and that these legal protections are enforced.

States that have acceded to or ratified the International Convention on the Rights of Migrant Workers include Algeria, Egypt, Libya, Morocco and Syria.³⁵⁷ None of the Arab States have ratified the ILO Convention on Domestic Workers, which states: "Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence".³⁵⁸

ILO Recommendation 201 requires States to consider establishing mechanisms to protect domestic workers from abuse, harassment and violence, such as:³⁵⁹

- establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence;
- ensuring that all complaints of abuse, harassment and violence are investigated, and prosecuted, as appropriate; and
- establishing programmes for the relocation from the household and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care.

356 E.g. Qatar, Law no. 15 of 2017 on Domestic Workers, art. 7; Kuwait, Domestic Worker Law no. 68 of 2015 on Employment of Domestic Workers; Syria, Law no. 65 of 2013 Regulating the Recruitment and Employment of Foreign Domestic Workers.

357 UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990 (A/RES/45/158)).

358 ILO, Convention no. 189 on Domestic Workers, 2011, art. 5.

359 ILO, Recommendation concerning decent work for domestic workers, ILO Recommendation no. 201 (Geneva, 100th ILC session, 16 Jun 2011).

Part 4 Recommendations for action

4.1 Purpose of the Recommendations

The recommendations for action which follow are proposed as a set of ideas for consideration by governments and civil society stakeholders as they explore ways to advance equality before the law in their respective contexts. Based on the contents of Parts 1 through 3 of this report, it is intended to support legislative and policy advances to address gender justice within the framework of international commitments made in the SDGs and the Beijing Declaration and Platform for Action.

Stakeholders can consult these recommendations and the findings of the gender justice country assessments to augment their stock of information about legal frameworks to use in reviewing progress against international commitments over the coming decade.

Laws are enacted nationally and applied locally, in specific contexts. The country assessments provide national actors with an analysis of gaps in laws related to nationality, family relations, gender-based violence and workplace rights. The evidence base that the country assessments offer can support stakeholders in planning their advocacy to achieve gender equality in their respective contexts. Options for engagement can include consensus-building dialogue around an agreed national law reform agenda, consultation and coordination among stakeholders on legal change priorities and coalition building for legal advocacy.

4.2 Accountability and the gender justice agenda

In their gap analyses, the regional and country assessments use as their point of reference internationally agreed standards enshrined in key instruments of international law. Aligning national and regional legal reform efforts with a global agreed agenda affords additional credibility and support.

Beijing +25

The Beijing Declaration and Platform for Action was issued by the Fourth World Conference on Women in 1995. It defined a visionary agenda for the empowerment of women and remains the most comprehensive global policy framework and blueprint for action on gender equality and the human rights of women and girls. A high-level meeting of UN Member States will be held in September 2020 to mark the 25th anniversary of the Fourth World Conference on Women (“Beijing +25”). Governments have been called on to present actions and commitments to the 2020 high-level meeting to accelerate the realization of gender equality and the empowerment of all women and girls by 2030. The recommendations herein can complement references consulted by governments prepare for this historic meeting.

2030 Agenda for Sustainable Development

These recommendations can also support States in reporting progress towards the globally agreed Agenda 2030 for Sustainable Development. Of particular relevance are:

- SDG Goal 5: “Achieve gender equality and empower all women and girls”
- SDG Goal 8: “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”
- SDG Goal 10: “Reduce inequality within and among countries”.

States have agreed to meet global targets for these SDGs by 2030. Particular attention may be given to target 5.1, which is to “end all forms of discrimination against all women and girls everywhere.” SDG indicator 5.1.1 is “whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex”.

At the international level, reporting of progress against SDG targets is an important accountability mechanism.

Several countries in the region have submitted Voluntary National Reviews of country progress in achieving the SDGs,³⁶⁰ but few have used the opportunity to create a baseline of data for measuring progress against the SDG indicators.

Measurement of this SDG indicator is based on an assessment of legal frameworks that promote, enforce and monitor gender equality. The assessment can be carried out by the National Women's Machinery and other national partners using the internationally agreed questionnaire for this indicator, which comprises questions on overarching legal frameworks, violence against women, marriage and family, and employment and economic benefits. The areas of law and questions are drawn from international legal and policy frameworks on gender equality, in particular CEDAW and the Beijing Platform for Action.³⁶¹

Changes to legislation, policies and programming

A set of recommendations for gender justice in Arab States could encompass both changes to legislation and recommendations for specific policy and programming areas that ensure State accountability for achieving gender justice outcomes. The reform of existing laws to remove discriminatory provisions can be more effective when accompanied by the strengthening of institutional capacities to enforce laws that provide for gender equality and protection from gender-based violence and to provide expanded access to justice for women and girls.

Legal frameworks can empower women to participate as full and equal citizens of Arab States, and thereby accord dignity and respect to women and girls. Promoting gender justice requires multipronged efforts and the engagement of multiple stakeholders. A key principle is to ensure support to national and local actors who can embrace this goal and make it sustainable.

Measures are required to ensure that laws that protect and empower women and girls are translated into practice, at all levels, from the individual to society at large. Even if women achieve equal legal rights, gender justice may still not be realized because of the ongoing impacts of discriminatory gender norms in society.

Broader initiatives should accompany revisions of laws to ensure society moves toward gender equality. For example, it is important to work with men and boys to challenge harmful attitudes towards women that perpetuate violence and discrimination.

Achieving gender justice is highly challenging in States affected by protracted crises. In some cases, state authority is disputed, and public institutions do not have the capacity to enforce laws and administrative provisions in the entire territory. Women's vulnerability to violence, human trafficking and other harms increases as protection mechanisms become less available, building on pre-conflict inequalities. Structural gender inequalities are at the heart of the differential impact conflict has on women and girls.³⁶² Addressing these inequalities requires women's full and equal participation in peace, justice and security mechanisms.

All Arab States have established a National Women's Machinery (NWM) in response to national reform developments and in line with the Beijing Platform for Action. There are also many civil society organizations focused on women's rights that are natural partners in the promotion of gender justice.³⁶³ NWMs play a pivotal role in ensuring that policies, programmes and institutions incorporate gender equality considerations and are guided by principles of equality and non-discrimination. NWMs take various forms ranging from governmental ministries to councils and semi-governmental organizations. NWMs collect data and monitor the situation of women, enhance coordination among stakeholders and establish linkages with civil society.

At the regional level, the Arab Human Rights Committee of the League of Arab States and ESCWA are well positioned to facilitate the sharing of lessons on laws, policies and practices that promote gender justice and to support legislators and political leaders to act on gender justice as a regional priority.

Many Arab States including Algeria, Bahrain, Egypt, Iraq, Jordan, Oman, State of Palestine, Sudan and Tunisia

have a national plan or strategy to address gender-based violence or violence against women. National plans or strategies on women provide another entry point for defining policy and programme priorities for achieving gender justice. Such plans and strategies can be used by civil society to hold governments to account for meeting their policy commitments.

Global Equality in Law Strategy

The recently agreed, multi-stakeholder **global strategy** on "Equality in Law for Women and Girls by 2030" provides a significant anchor point for the legal reforms advocated by this report. This strategy, coordinated by UN Women, presents practical guidance on levels of engagement and accelerators for implementation. The Strategy has six themes: comprehensive reforms, economic empowerment, age of marriage, discrimination in nationality laws, discriminatory rape laws and equality in family relations. The Strategy is being implemented through four levels of engagement:³⁶⁴

1. Regional and interregional bodies formally agree to join the effort to repeal discriminatory laws and promote accountability of member States.
2. Governments possess national commitment and political will to repeal discriminatory laws and design reform roadmaps.
3. Civil society organizations promote accountability of governments for implementing commitments to repeal discriminatory laws. Communities agree to eliminate harmful social norms.
4. Law reform commissions, ministries, the judiciary and parliaments possess knowledge and capacities to respond to societal demands and implement reform roadmaps.

³⁶⁰ Jordan conducted its Voluntary National Review in 2017. In 2019, Voluntary National Reviews were being conducted in Algeria, Iraq, Kuwait, Oman and Tunisia. See: UN Sustainable Development Goals Knowledge Platform, available from <https://sustainabledevelopment.un.org/nlpr/2019/#vnrs>

³⁶¹ See UN SDG datasets, available from <https://www.sdg.org>.

³⁶² UN Secretary-General, *Conflict Related Sexual Violence report of the United Nations Secretary-General*, 29 March 2019 (S/2019/280).

³⁶³ At country level, UN Women, Iraq office is advocating with the three State powers, to have a functional and efficient women machinery.

³⁶⁴ UN Women, *Equality in law for women and girls by 2030: a multi-stakeholder strategy for accelerated action* (New York, UN Women, 2019).

4.3 Addressing legal bottlenecks

Changes in legislation can only happen at the country level and will probably happen in a gradual manner, subject to dynamics in the public sphere and legislative bodies. It is therefore important for national actors to reflect on their own country findings and develop an ways forward which address their own country needs. Key challenges that these recommendations aim to address are:

- gaps in legislation relating to protections from sexual violence including sexual harassment, and family violence including marital rape;
- the continued existence of discriminatory provisions in personal status codes that disadvantage women in marriage, divorce and inheritance;
- the need to strengthen protections for women under labour codes to support increased female participation in the workforce; and
- the importance of removing discriminatory provisions in nationality laws so that women can pass their nationality to their spouse and children in the same way as men.

Ways forward for legal reforms can be clustered in the following areas:

Legal protections against gender-based violence

When developing or reviewing laws on gender-based violence, States should consider adopting the provisions of the Model Law on Combating Violence Against Women and Girls developed for Arab States³⁶⁵ and the principles of the draft Arab Convention against Violence against Women and Girls and Domestic Violence, in addition to each State's international obligations.³⁶⁶

States revising legislation can follow the best practices of others in the region (indicated by the countries in brackets) through reform to articles of penal codes and

related violence prevention laws in the following areas:

1. Criminalize sexual harassment in any public context, defined broadly as any unwelcome physical, verbal or on-line social media conduct of a sexual nature (Egypt, Morocco, Saudi Arabia).
2. Enact a stand-alone law on violence against women that protects against physical, sexual, psychological or economic harm or suffering, and which enables rapid interventions to protect women in urgent cases. Such laws could apply a broad definition of violence against women which is not restricted to domestic violence (Tunisia, Morocco).
3. Revise family laws regarding obligations of spouses and penal code provisions to ensure they are aligned with legislation on violence against women.
4. Define rape to include all forms of non-consensual sexual violations (Tunisia).
5. Criminalize all types and forms of rape including marital rape.
6. Repeal provisions that exonerate offenders if they marry the woman or girl who they raped or kidnapped (Morocco, Tunisia, Lebanon, Jordan and State of Palestine).
7. Eliminate protection of so-called 'honour' as a factor considered by courts to reduce penalties in case of femicide or other violent crimes against women (Lebanon).
8. Remove criminal penalties for consensual sex between adults in private in a manner consistent with international human rights principles and the nature of the country, its sovereignty and constitution.
9. Enact comprehensive, clear and specific laws on trafficking in persons that encompass punitive, prevention and protection measures (Bahrain, Djibouti, Egypt, Jordan, Oman, Qatar, Saudi Arabia, Sudan).
10. Criminalize harmful traditional practices, including FGM/C (Djibouti, Egypt) and child and forced marriage.
11. Refrain from criminalizing people based on their sexual orientation (Jordan).

³⁶⁵ See: KAFA (enough) Violence and Exploitation (2017), *Model Law on Combating Violence against Women and Girls in Arab Countries*. See also the model laws developed by the League of Arab States (e.g. Model Law to Combat the Crime of Trafficking in Persons; Model Law on Crimes within the Jurisdiction of the International Criminal Court).

³⁶⁶ Draft Arab Convention against Violence against Women and Girls and Domestic Violence, see: <https://www.wfd.org/2017/11/30/women-mps-arab-countries-review-efforts-end-gender-violence/>



Reproductive health

Legal frameworks should include the right for women and girls to access comprehensive sexual and reproductive health services. Rape survivors should be supported in accessing safe abortion services. It should not be a criminal offence for a survivor of rape to have an abortion.

Personal status laws

Reform of personal status laws is of paramount importance because these laws affect the implementation of other laws affecting women, such as labour laws and penal code provisions. Progress in ensuring gender equality in the public sphere such as the workplace and in access to education will be limited if laws relating to family matters are not reformed.

Arguments and tools exist within the legal traditions of all faiths that support egalitarian family laws and practices based on the principle of equality between spouses. Amendment of personal status laws is required to bring about equality in power relations between men and women in private and public life. The principle of equal citizenship enshrined in national constitutions will be rendered more effective if incorporated into personal status laws. Reforms and development of personal status laws are required to align domestic laws with the general recommendations of the CEDAW Committee.

Personal status laws could be codified, and codes that exist could be revised so as to enshrine the principles of gender equality. Consideration could be given to enacting a uniform civil code to address family matters and allowing people the freedom to choose between a secular civil code or a religious code for family matters, noting that some countries already have systems in which family matters are addressed in the civil courts (Algeria, Egypt, Iraq, Morocco and Tunisia).

States can follow the best practices of other States (indicated in brackets) through reforms of relevant articles of personal status codes in the following areas:³⁶⁷

1. Declare the equality of spouses as an underlying philosophy for family law (Morocco, Algeria).
2. Prohibit polygamy (Tunisia), or strongly restrict polygamy (Morocco).
3. Remove the duty of the wife's obedience (Morocco, Tunisia).
4. Remove provisions related to divorce that discriminate against women (Tunisia, Morocco), and abolish or restrict the husband's right to divorce by verbal talaq (unilateral repudiation) (Algeria, Bahrain, Morocco, Tunisia).
5. Require all divorces to occur through a court process and ensure that the grounds for divorce are equally available to both spouses, including no fault divorce (Tunisia).
6. Remove guardianship provisions that limit the rights of women (Bahrain, Egypt, Iraq).
7. Ensure that laws regulating custody and guardianship of children in case of divorce are based on the principle of protection of the best interests of children, without discriminating between the parents (Algeria, Iraq, Qatar, Tunisia).
8. Define the minimum age of marriage to be at least 18 years and provide strict and narrow grounds to allow for exceptions to the minimum age of marriage (Tunisia, Jordan).
9. Allow for sections in the marriage contract for the spouses to include conditions such as a wife's delegated right to divorce, work, education and travel (Egypt, Jordan).
10. Regulate the division of matrimonial assets in the case of divorce or death of either spouse (Tunisia, Morocco). The law could allow for joint ownership of family assets. In the case of divorce, the wife's non-financial contributions to the marriage such as child care and housework could be considered in the division of assets.³⁶⁸

11. Consider reform of inheritance rules to provide for gender equality, as has been proposed in Tunisia. Raise awareness among women of their inheritance rights. Provide penalties for family members who refrain from handing over inheritance to female heirs or who pressure women not to claim their lawful share of inheritance (Egypt).

Labour laws

Most Arab States have labour codes in place that provide rights and entitlements for men and women in formal employment, however there are gaps relating to gender equality and limitations in relation to coverage of informal workers. States should follow the best practices of other States (indicated in brackets) by considering reforms to articles of labour codes in the following areas:

1. Address women's vulnerability to labour exploitation in the informal sector by extending the reach of legal and social protections to the informal workforce.
2. Ensure all women are able to access a retirement pension, recognizing the value of care work and house work that women contribute to the economy.
3. Enhance laws that prohibit discrimination against women in employment including measures to prevent dismissal or other forms of discrimination on the grounds of pregnancy (Iraq).
4. Strengthen laws that prohibit workplace sexual harassment (Iraq, Saudi Arabia, Tunisia).
5. Ensure laws specify the right of women to equal pay for work of equal value (Algeria, Djibouti, Iraq, Morocco, Syria, Tunisia).
6. Remove laws that provide unnecessary restrictions on the occupations of women, so that women can decide for themselves the type of work they want to do (Algeria).
7. Enhance laws that provide paid maternity leave entitlements to meet the ILO standard of 14 weeks (Algeria, Djibouti, Iraq, Libya, Morocco, Somalia, Tunisia) and childcare rights for employees (Egypt, Iraq, Jordan, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia).
8. Provide paternity leave entitlements, recognizing that paternity leave supports greater equality in parenting roles.

9. Address conditions of employment for migrant domestic workers to ensure protection and redress in case of violence, abuse and exploitation.

Nationality laws

Of the States reviewed, only two were identified where the law guarantees women the right to pass nationality to both their children and to a foreign spouse in the same way as men (Algeria, Djibouti). Other countries reforming their nationality laws in this way would be an important step in the official recognition of equal nationality and citizenship between men and women.. Nationality laws should also be reviewed to ensure that they do not render people stateless.

International treaties

The ratification of treaties implies commitments and provides a framework to reform national legislation consistent with these commitments.

Gender justice would benefit from the ratification of treaties and optional protocols related to gender equality, the harmonization and alignment of national legislation with the spirit and objectives of these treaties, and the withdrawal of reservations.

As discussed in 3.2, States that have not already done so could lift reservations to CEDAW and accede to its Optional Protocol, and particular attention should also be given to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Convention on the Status of Refugees, the Geneva Conventions, the Rome Statute of the International Criminal Court, the Anti-Trafficking Protocol, the Arab Charter on Human Rights in the case of Arab States which are members of the African Union, the Maputo Protocol to the African Charter on Human Rights and People's Rights.

States could advocate for gender sensitive amendments to the Arab Charter on Human Rights and the establishment of an accountability mechanism for compliance with the Charter. One option for consideration is for States to agree a protocol to the Arab

³⁶⁷ For more examples of egalitarian jurisprudence from around the Muslim world, see: Musawah, *Positive developments in Muslim family laws* (Malaysia, Musawah, 2019). Available from https://www.musawah.org/wp-content/uploads/2019/02/Positive-Developments-Table-2019_EN.pdf.

³⁶⁸ There are examples from Malaysia and Indonesia of this approach.

Charter (similar to the Maputo Protocol) addressing the elimination of all forms of discrimination against women including protection from sexual and gender-based violence, elimination of harmful practices including FGM/C, equal rights in marriage and divorce, and protection of women and girls in armed conflicts. The following actions could support efforts to comply with the terms of such a charter:

- special procedures to enable individual complaints of human rights violations to be submitted; and
- a mechanism for a regional body to award reparations to individuals whose rights have been violated, drawing from lessons learned from the African Court on Human and Peoples' Rights.

States could also adopt and implement National Action Plans on Women, Peace and Security, as recommended by the UN Security Council resolution 1325.

In the area of labour rights, States could consider the recommendations of the 2009 International Labour Conference resolution concerning gender equality at the heart of decent work, and ratify:

- The Maternity Protection Convention of 2000 (No. 183)
- The Domestic Workers Convention of 2011 (No. 189)
- Night Work Convention of 1990 (No. 171)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

• Engage men and boys as partners in preventing gender-based violence and build the capacities of justice, health and education services to engage with men and boys through violence prevention interventions.

- Implement legal empowerment programmes targeting vulnerable women and girls, including use of paralegals to provide legal information and to conduct community education and raise awareness on how to access the protection of laws against sexual and gender-based violence.
- Ensure access to justice for people who experience gender-based violence or other abuses based on their sexual orientation or gender identity.
- Implement measures to assist survivors of gender-based violence in legal proceedings, including through gender-sensitive court procedures for women seeking protection, reparations or other remedies including measures to protect privacy and safety in the courtroom.
- Ensure protection measures provided by the legal system do not impose an undue financial, bureaucratic or personal burden on survivors.
- Provide access to medical, psychosocial and counselling services, education, affordable housing, land, child care, training and employment opportunities for survivors of gender-based violence and their family members. States could provide specialist women's support services such as 24-hour helplines, shelters, and crisis, support and referral centres.

4.4 Gender justice in practice

To guarantee the enforcement of existing and suggested laws for the protection and empowerment of women as full and equal citizens, States could consider the following policy and programming areas:

National plans

- Develop comprehensive national strategies and plans that specify actions to be taken by key national actors to improve gender justice through coordinated efforts in law reform, law enforcement and expanded access to justice.
- Mainstream gender quality in all national action plans, and provide the necessary budgets for implementation of the strategies, laws and measures to guarantee women's access to justice.

Access to justice, prevention and protection services

- Provide access to legal aid for women and girls including for personal status matters and for survivors of gender-based violence to enable them to seek protection orders, reparations and other legal remedies.
- In cases of gender-based violence, shift the social stigma from the survivor to the perpetrator by ensuring criminal prosecution of perpetrators, zero tolerance for impunity and promoting new norms with negative social consequences for perpetrators of violence.

- Provide referral mechanisms to ensure that survivors of gender-based violence can access comprehensive health and social services, in cooperation with non-governmental women's organizations.
- Ensure all legal proceedings, protection and support services for survivors of gender-based violence respect their dignity and autonomy.

Conflict-affected populations

- Ensure compliance with international human rights law and international humanitarian law in relation to the rights of women and girls in the context of conflict, including rights to special protections against sexual and gender-based violence.
- Provide services to address the consequences and causes of sexual violence faced by women in times of conflict. Recognize this violence as a war crime, hold the perpetrators accountable and deny them impunity.
- Empower women to participate in peacebuilding, reconstruction and negotiations. Include women in official peacebuilding processes and mainstream gender in post-conflict reconstruction programmes.
- Incorporate gender equality and gender justice approaches in all transitional justice programmes. Promote the compliance of transitional justice processes and mechanisms with international norms and standards relating to gender equality and protection from sexual and gender-based violence.
- Ensure that States undertake investigations and prosecutions of gross violations of human rights and serious violations of international humanitarian law affecting women and girls.

Occupation

- Ensure that international human rights law and international humanitarian law are rigorously adhered to by any occupying power and ensure that accountability mechanisms are in place to counter acts of impunity, especially concerning women and girls in the State of Palestine.
- Recognize that the humanitarian crises resulting from prolonged occupation increase vulnerability to violence and ensure special protections against sexual and gender-based violence are available to people living under occupation.
- Ensure that the State of Palestine adheres to

international human rights law to ensure that the human rights of Palestinian women and girls are fully respected, protected and fulfilled.

- Ensure that women play an essential role in peacebuilding, reconstruction and negotiations to mitigate the impact of occupation. Include women in official peacebuilding processes and mainstream gender in post-conflict reconstruction programs.

Gender justice for internally displaced persons, migrants, refugees and asylum seekers

- Ensure that internally displaced persons, migrant workers, refugees and asylum seekers are able to access justice including police protection, legal aid services and an accessible and confidential process for lodging complaints to enable protection orders to be made and prosecution of perpetrators of violence. Ensure all legal proceedings, protection and support services for survivors of gender-based violence are available to all, irrespective of residence status.
- Address factors that increase the risk of exposure to serious forms of gender-based violence, such as availability of firearms and pervasiveness of impunity, which may be increased by armed conflict or heightened insecurity.
- Provide information on the legal and social resources available to survivors of gender-based violence which is accessible to people who have no or limited knowledge of the official language of the country.
- Ensure that women who lack identification documents are able to seek justice through the court system.
- Create livelihood opportunities for women who are internally displaced persons, migrants, refugees and asylum seekers with a focus on long term sustainable employment.
- Provide anti-violence educational and behaviour change communication interventions aimed at men and boys residing in camps.
- Ensure that women and girls who have been subjected to human trafficking have access to legal representation and are not further victimized by law enforcement authorities.
- Ensure migrant ('expatriate') domestic workers who are subject to abuse, violence or exploitation have access to shelters and are able to enforce their legal rights to protection.

Building the capacity of the justice sector to deliver gender justice

- Appoint special judges and prosecutors for domestic violence cases who are sensitized to the needs of women and girls to ensure they are treated with dignity and respect.
- Actively recruit and encourage the appointment of female judges and prosecutors. The obligation under international law to ensure full and equal participation of women in the judiciary applies to all legal systems including religious tribunals, courts and councils that exercise judicial functions. Restrictions on women's full and equal participation as judges in religious tribunals could be removed.
- Provide training and resources to strengthen the capacity of the justice sector to address gender justice issues effectively and sensitively. This should include training on gender justice for police, judiciary, prosecutors, court officials, lawyers and National Human Rights Institutions. Ensure that laws that provide for gender equality and protect women from gender-based violence are properly enforced by ongoing training of judges and monitoring of court decisions.
- Build the capacity and knowledge of state officials and the judiciary on reformist approaches to addressing legal issues based on egalitarian principles drawn from religious teachings. Promote gender equality and human rights standards as complementary to religious teachings of all faiths and national guarantees of equality and non-discrimination.

Supporting civil society engagement on law reform

- It is important to ensure space for civil society organizations to work on gender justice issues and thereby support the efforts of governments to reform laws, policies and practices. Women's organizations and other civil society organizations, such as bar associations and human rights organizations, are uniquely placed to play a transformational role in advancing law reform through advocacy, capacity development, rights awareness, strategic litigation and monitoring of women's rights. Civil society organizations also provide avenues to engage men and boys on gender justice issues, and entry points for women and

girls to participate in law reform, sustain the momentum of reform and advocate for implementation of laws that protect and empower women and girls. Civil society actors can hold governments accountable for the repeal of discriminatory laws.

Further research

- Research priorities include:
 - Analysis of the specific gender justice issues for women and girls living in conflict-affected areas and under occupation and the legal, policy and social interventions that are most effective in preventing and responding to violence and ensuring human rights are respected, protected and fulfilled.
 - Explore how discriminatory provisions of personal status laws impede women's social and economic empowerment and life opportunities in different countries and to what extent the removal of discriminatory provisions has advanced women's position in society in the Arab States that have reformed personal status laws and removed discriminatory provisions.
 - Analysis of the benefits that flow to women from providing for gender equality in laws on inheritance and property, including laws and administrative measures providing for joint ownership of property acquired during marriage, and the arguments for and against further reforms in these areas.
 - Assessment of weaknesses and strengths of legislative responses to violence against women and how to promote greater use by women of the new systems for obtaining protection orders, reparations and other remedies that have been introduced in Arab States by laws on domestic violence, family violence and violence against women.
 - Assessment of the obstacles that prevent women who have experienced gender-based violence and discrimination from accessing the justice system to inform country-specific legal and policy reforms and programming priorities.
 - Comparison of country approaches to reporting on SDG indicator 5.1.1 "whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex" to capture and share lessons, highlight good practices and strengthen accountability.



**Gender Justice &
Equality before the law**