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**Women in the judiciary in the Arab region:  
removing barriers, increasing numbers****Summary**

Women's right to participate fully and equally in all aspects of public life, including the judiciary, is a fundamental human right. Women's presence in the judiciary is also a catalyst for the development of strong, independent, accessible and gender-sensitive judicial institutions and the achievement of gender justice.

In recent years, Arab States have appointed an increasing number of female judges and public prosecutors – for the first time in some. Despite these efforts, women remain starkly underrepresented in the judicial branches in the region. There are also substantial disparities between countries: some, such as Lebanon and Tunisia, appear to be on track to achieve gender parity within a few years. In other countries, notably in the Gulf, female judges and prosecutors remain rare. There are also clear gender disparities within national judicial systems, with far fewer women serving in intermediate and higher courts than in lower ones. Religious courts, which deal with personal status issues in several Arab States, remain an exclusively male preserve.

Drawing upon recent publications by the Economic and Social Commission for Western Asia (ESCWA), the present document details commitments of Arab States toward women's equal presence in the judiciary and provides an overview of women's presence in Arab judicial institutions. The document also identifies barriers to women's participation in the judiciary and recommends policy actions to enhance women's presence in this field.

The Committee on Women is invited to discuss the present document and advise on the way forward to increase women's participation in the judiciary.

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## Introduction

1. Women’s right to participate fully and equally in all aspects of public life, including the judiciary, is recognized as a fundamental human right. Women’s presence in the judiciary is a catalyst for the development of strong, independent, accessible and gender-sensitive judicial institutions and, more broadly, the achievement of gender justice.<sup>1</sup>

2. Arab States have affirmed their commitment to eliminating barriers to women’s access to decision-making and to achieving gender justice by ratifying various international human rights instruments, including the [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#).<sup>2</sup> All Arab States have also adopted the [Beijing Declaration and Platform for Action](#) and pledged to achieve the [2030 Agenda for Sustainable Development](#) and its 17 Sustainable Development Goals (SDGs), of which women’s right to equal participation and inclusive institutions are key pillars. At the regional level, Arab States have reaffirmed their commitment to gender justice by adopting the [Muscat Declaration: Towards the Achievement of Gender Justice in the Arab Region](#).

3. In line with these commitments, all Arab States have taken steps to remove barriers to women’s presence in their judiciary systems. Such efforts, combined with the increasing entry of women into the legal profession, have led to rising numbers of female judges, public prosecutors and women in other key judicial roles. Nevertheless, the distribution of the rising number of female judges remains uneven at the regional and institutional levels.

4. The present document summarises key findings of two recent ESCWA publications. The first is a policy brief entitled “Women in the judiciary: a stepping stone towards gender justice”,<sup>3</sup> and the second is a flagship regional study entitled “*Women in the Judiciary in the Arab States: Removing Barriers, Increasing Numbers*”, which provides extensive data and analysis on women’s presence in Arab judicial institutions and was developed by ESCWA in partnership with the International Commission of Jurists (ICJ) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>4</sup> The present document was also informed by the findings of case studies in five Arab States that have a relatively sizeable presence of women in the judiciary, namely Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia. Data were collected for each case study through desk research, structured interviews with female judges and standardized discussions with focus groups of male and female judges, prosecutors, lawyers and court officials.

5. The present document outlines the normative framework for women’s presence in the judiciary and reviews global and regional evidence demonstrating why their presence matters. The document then overviews women’s representation in the judiciary in the region and obstacles to their entry and career progression. Finally, it offers policy recommendations to enable Arab States to meet their commitments regarding the equal participation of women in judicial institutions.

## I. NORMATIVE FRAMEWORK: WHY DOES WOMEN’S PRESENCE IN THE JUDICIARY MATTER?

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

6. Women’s right to equal participation in all aspects of public life is a fundamental component of gender justice, which derives from the right to non-discrimination. Provisions relating to women’s equal participation feature in instruments such as the [Universal Declaration of Human Rights](#), the [International Covenant on Civil](#)

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<sup>1</sup> [A/HRC/17/30](#), para 18.

<sup>2</sup> With the exception of Somalia and the Sudan, all Arab States have ratified CEDAW.

<sup>3</sup> [E/ESCWA/ECW/2018/Brief.1](#).

<sup>4</sup> [E/ESCWA/ECW/2019/2](#) (forthcoming).

and Political Rights (ICCPR), the [Convention on the Political Rights of Women](#) and the [Vienna Declaration and Programme of Action](#) (VDPA), as well as in United Nations resolutions such as General Assembly resolution 66/130 of 19 December 2011 on women and political participation.<sup>5</sup>

7. Article 7 of [CEDAW](#) binds States parties to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country” and ensure women’s right to “participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government” on equal terms with men. Article 7, like all obligations in CEDAW, applies to all branches of government, including the judiciary, as confirmed by [General recommendation No. 33](#) of the Committee on the Elimination of Discrimination against Women (hereafter CEDAW Committee) on women’s access to justice. In paragraph 15(f) of the same recommendation, the Committee recommends “that States parties... confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers in justice related services, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities”.

8. This consistent emphasis in various instruments reflects the recognition of women’s participation as both a fundamental right and a tool to guarantee other rights and achieve sustainable development. Target 5.5 of the SDGs commits States to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life”, while target 16.7 binds States to “ensure responsive, inclusive, participatory and representative decision-making at all levels”, including the judiciary.

#### B. THE ROLE OF THE JUDICIARY IN ACHIEVING GENDER JUSTICE

9. Strong and independent judicial institutions are necessary for upholding the rule of law and eliminating all forms of discrimination. Article 2 of [CEDAW](#) recognizes the central role of the judiciary in eliminating discrimination and obliges States parties to “ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”. In [General recommendation No. 33](#), the CEDAW Committee clarified the central role, and obligations, of courts in addressing all forms of discrimination and protecting women’s rights. It highlighted that courts and other formal and informal judicial mechanisms have the obligation to protect women’s rights, including by upholding women’s rights that stem from international treaties, as well as general principles of equality. Therefore, any woman who has seen her rights breached should be able to gain remedy and justice through independent and impartial judicial mechanisms.

10. As patterns of women’s poverty, lack of economic opportunities, exclusion from the public sphere, increased exposure to violence and unequal rights are rooted in gender-based discrimination, the importance of the judiciary as an accountability and remedial mechanism cannot be overstated. The former Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, notes that achieving gender equality and empowering women “requires an independent judiciary able to exercise its role to uphold the rule of law and make all persons, institutions and entities, public and private, accountable to gender-sensitive laws”.<sup>6</sup>

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<sup>5</sup> Article 25 of [ICCPR](#) protects the rights of every citizen without discrimination to take part in the conduct of public affairs and to have access to public service. As per the [United Nations Human Rights Committee’s General comment No. 28](#) (para. 29), these rights include participation in the judiciary. Women’s right to participate in public life also includes their rights to equal pay for equal work and equal opportunity for promotion to higher level within the judiciary. In article 7, the [International Covenant on Economic, Social and Cultural Rights](#) emphasises “the right of everyone to the enjoyment of just and favourable conditions of work” and to “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence”.

<sup>6</sup> [A/HRC/17/30](#), para. 45.

11. The principle of equal access to justice is well established in international frameworks. Article 14 of [ICCPR](#) provides that “all persons shall be equal before the courts and tribunals” and “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”, while article 15 of [CEDAW](#) requires States parties to “accord to women equality with men before the law”.

12. The right to equal access to justice requires States to ensure that women can access independent and impartial courts and that judges base their decisions on relevant facts, evidence and the law without discrimination or prejudice. However, in practice many factors can impede this right. As the CEDAW Committee states in [General recommendation No. 33](#) (para. 3), such obstacles amount to a “structural context of discrimination and inequality” and constitute “persistent violations of women’s human rights”. Obstacles include stereotypes, which can distort perceptions and result in decisions based on preconceived beliefs and myths rather than relevant facts. Judges may for example adopt rigid standards about appropriate behaviour for women and penalize those who do not conform to these stereotypes.<sup>7</sup> Legal procedures can also contain discriminatory aspects, such as provisions that accord inferior status to the testimony of women or require them to meet a higher burden of proof than men.<sup>8</sup>

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

### C. WHAT DIFFERENCE DO WOMEN MAKE?

14. Inclusive public institutions tend to perform better in the delivery of services and public goods.<sup>9</sup> A diverse composition enables public institutions to respond to the specific needs of various users and recipients. Organizational diversity has been linked to increased innovation, diminished corruption and closer adherence to good governance standards.<sup>10</sup> Public institutions in which all components of society are equitably represented are generally perceived as more legitimate, which in turn enhances their sustainability, notably in post-conflict settings.<sup>11</sup> Several studies have also highlighted that increases in women’s presence in public institutions, in quantitative and qualitative terms, result in more gender-sensitive policies, thereby improving the status of women.<sup>12</sup>

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<sup>7</sup> See Simone Cusack, “Eliminating judicial stereotyping: equal access for justice to women in gender-based violence cases”, Final paper submitted to the United Nations Office of the High Commissioner for Human Rights on 9 June 2014. Available at <https://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping.doc>.

<sup>8</sup> [E/ESCWA/ECW/2017/4](#).

<sup>9</sup> For a review of global evidence, see Organisation for Economic Co-operation and Development (OECD), *Women, Government and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth* (Paris, 2014).

<sup>10</sup> See Vivian Hunt, Dennis Layton and Sara Prince, “[Why diversity matters](#)”, January 2015; George Desvaux and others, *Women Matter: Time to Accelerate – Ten Years of Insights into Gender Diversity* (McKinsey&Company, 2017); Transparency International, “[Gender, equality and corruption: what are the linkages?](#)”, Policy Brief, No. 1 (Berlin, 2014); Chandan Kumar Jha and Sudipta Sarangi, “[Women and corruption: what positions must they hold to make a difference?](#)”, Journal of Economic Behavior & Organization, vol. 151 (July 2018); Julija Michailova and Inna Melnykova, “[Gender, corruption and sustainable growth in transition countries](#)”, MPRA Paper, No. 17074 (Kiel, Munich Personal RePEc Archive, 2009); Mattias Agerberg, “[Perspectives on gender and corruption: gender differences in regard to corruption in Europe from an individual and institutional perspective](#)”, Quality of Governance Working Paper Series, No. 14 (Gothenberg, The Quality of Government Institute, 2014).

<sup>11</sup> See [E/ESCWA/ECRI/2017/4](#).

<sup>12</sup> For a review of evidence, see United Nations Development Programme (UNDP), *Gender Equality in Public Administration* (New York, 2014). In its [General recommendation No. 23](#) on political and public life, the CEDAW Committee notes that when women’s participation hits a “critical mass” (generally estimated at 30-35 per cent), there is a “real impact on political style and the content of decisions, and political life is revitalized”.

15. Although there is no evidence that women judge differently than men, it is commonly accepted that women's presence in the judiciary and judicial diversity in general make a positive difference in the administration of justice.<sup>13</sup> The appointment of women judges ensures that women's life experiences are taken into account in judicial decision-making. In turn, this enables the judiciary as a whole to respond to diverse social and individual contexts and experiences with fitting sensitivity.<sup>14</sup> Key instruments, including the United Nations Basic Principles on the Independence of the Judiciary, accordingly recognize that the appointment of women to the bench contributes to the development of strong, independent and accessible judicial institutions.<sup>15</sup>

16. Evidence at the global level shows that a higher presence of women in the judiciary improves the quality of judicial decision-making both in general and for cases affecting women.<sup>16</sup> Increasing the number of female judges creates a more conducive environment in court for women and can influence the resolution of cases.<sup>17</sup> Reflecting the diversity of societies is essential to building trust in the judicial system. As noted by Ms. Knaul, "women resorting to courts may feel that the judiciary is closer to them when it is composed of fair and impartial judges who represent the diversity of society".<sup>18</sup>

17. The link between judicial diversity and the advancement of gender equality is well acknowledged. Ms. Knaul emphasizes that States must ensure adequate representation of women to "create the conditions necessary for the realization of gender equality within the judiciary" and for the judiciary to "advance the goal of gender equality".<sup>19</sup> The CEDAW Committee has also consistently called on Arab States to increase women's presence in the judiciary as part of their commitment towards gender equality.<sup>20</sup>

18. The appointment of women to the bench contributes to enhancing women's access to justice. Their lived experiences as women may enable female judges to gain awareness of issues such as gender stereotyping and discriminatory procedural requirements and practices, which in turn might enable them to recognize and resist the influence of these factors on judicial outcomes.<sup>21</sup> At the institutional level, women in the legal system have been noted to act as agents of change for a more gender-sensitive judiciary.<sup>22</sup>

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<sup>13</sup> For a complete review of evidence on the impact of women's presence in the judiciary, see: Sally Jane Kenney, *Gender & Justice: Why Women in the Judiciary Really Matter*, 1st ed. (New York, Routledge, 2013); Ulrike Schultz and Gisela Shaw, eds., *Gender and Judging* (London, Hart Publishing, 2013); Rosemary Hunter, "More than just a different face? Judicial diversity and decision-making", *Current Legal Problems*, vol. 68, Issue 1 (April 2015); Erika Rackley, *Women, Judging and the Judiciary. From Difference to Diversity* (New York, Routledge, 2013).

<sup>14</sup> [A/HRC/17/30](#), para. 48.

<sup>15</sup> Principle 10 of the [Basic Principles on the Independence of the Judiciary](#) provides that "in the selection of judges, there shall be no discrimination against a person on the grounds of... sex".

<sup>16</sup> International Commission of Jurists, "[Women and the judiciary](#)", Geneva Forum Series, No. 1 (September 2014).

<sup>17</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Progress of the World's Women 2011-2012: In Pursuit of Justice* (New York, 2012), p. 61.

<sup>18</sup> [A/HRC/17/30](#), para. 49.

<sup>19</sup> *Ibid.*, para. 47.

<sup>20</sup> See for example the list of issues and questions and concluding observations of the CEDAW Committee for Bahrain (2014), Egypt (2001, 2010), Iraq (2014), Jordan (2017), Kuwait (2011, 2017), Oman (2011, 2017), Qatar (2014), Saudi Arabia (2018) and the United Arab Emirates (2010).

<sup>21</sup> Although there is no monolithic female life experience, Hunter (2015) notes that "all judges bring their life experience to the process of judging, and women's life experiences—in particular, their experiences of pregnancy, child-birth, child-rearing, and juggling work and family responsibilities, as well as often of sexism and discrimination—are very different from men's". Therefore, the inclusion of women's experiences makes law "more representative of the variety of human experience" (Rosemary Hunter, "More than just a different face?" (see footnote 13), p. 6).

<sup>22</sup> UN Women, [Progress of the World's Women 2011-2012](#), p. 118.

19. At the regional level, the impact of women's growing presence is overwhelmingly regarded as positive according to respondents in the national case studies undertaken in Jordan, Lebanon, the State of Palestine, the Sudan and Tunisia. In their view, the higher presence of women has led to a more cordial atmosphere inside the courtroom, more gender-sensitive handling of cases and higher awareness of the judiciary's role in protecting women from violence.<sup>23</sup> The presence of female judges encourages women to make use of judicial mechanisms when their rights have been breached. Female judges were viewed as less susceptible to corruption and political pressure, thereby contributing to increasing the independence of the judiciary and the quality of judgements.<sup>24</sup>

## II. WOMEN IN THE JUDICIARY IN ARAB STATES

### A. OVERVIEW

20. There are large disparities between the Arab States in terms of women's representation in the judiciary. Some States, such as Algeria, Lebanon and Tunisia, appear to be on track to achieve gender parity in the judiciary within a few years. Others, such as Bahrain and Jordan, have achieved notable progress in this regard through the last decade but are still far from gender parity. Elsewhere, women remain markedly underrepresented. In Kuwait and Oman, for example, no woman has yet served as a judge, although they have acted as public prosecutors. In Saudi Arabia, there is one female commercial arbitrator, which is considered as a quasi-judicial position – but there are no female ordinary judges or prosecutors. Overall, the average for Arab States reaches only 14 per cent, compared with 54 per cent in 2014 OECD countries.<sup>25</sup>

WOMEN IN THE JUDICIARY IN ARAB STATES

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

<sup>23</sup> One female judge noted that she was more likely to use the full extent of legal provisions to protect and extract a woman from an abusive relationship compared with male colleagues, who would instead seek to reconcile the woman and her partner.

<sup>24</sup> Some respondents explained this by the fact that women were less likely to conduct behind-closed-doors meetings with men as it is less socially acceptable in the local context.

<sup>25</sup> Kate Brooks, "Women in the judiciary: what solutions to advance gender-responsive and gender-diverse justice systems?", 10 March 2017. Available at <http://oecdinsights.org/2017/03/10/gender-responsive-and-diverse-justice-systems/>.

Country	Percentage of female judges	Year	Notes
Mauritania	1	2018	
Morocco	23.5	2018	Women account for 16 per cent of public prosecutors.
Oman	-	2017	No female judges, but women account for 20 per cent of public prosecutors.
State of Palestine	17.8	2018	
Qatar	1	2011	
Saudi Arabia	<1	2018	There is one female arbitrator in a commercial court, considered as a quasi-judicial position.
Somalia	-	2018	No female judges, but there are six female prosecutors.
Sudan	12.6	2018	
Syrian Arab Republic	17.5	2018	
Tunisia	43.1	2018	
United Arab Emirates	<1	2015	Only four female judges, but there are also female public prosecutors.
Yemen	1.8	2006	
Average	14		

*General notes:* Only a handful of Arab States monitor the presence of women in the judiciary (including Morocco, Tunisia and the State of Palestine) and regularly make the relevant data available, constituting a positive practice to be emulated. Data in the table are therefore based on a variety of sources, including a questionnaire filled by ESCWA member States, States parties reporting on the implementation of CEDAW, detailed data obtained during fieldwork for the case studies, and the ESCWA *Gender in Figures* series. The figure is the total percentage of female judges at all court levels within the State's judicial system (excluding religious courts in States where such courts are separate entities not under the authority of the State). For States where separate data are not available, the figure also includes public prosecutors (or their equivalent). The average for Arab States is not weighted and provided for indicative purposes only, owing to the highlighted limitations.

### Women in the legal profession

The rising representation of women in the judiciary needs to be understood in the context of the increasing presence of women in the legal profession in the Arab region. In Tunisia, for example, women made up 75 per cent of law students in 2016.<sup>a</sup> In Jordan, 44 per cent of all students admitted to study law at the undergraduate level in 2015/2016 were women.<sup>b</sup> In the Sudan, over 70 per cent of graduates of the Faculty of Law at the University of Khartoum in the academic years 2015-2016 and 2016-2017 were women.<sup>c</sup> In Saudi Arabia, where women have been allowed to practice as lawyers only since 2013, 28 per cent of trainee lawyers are women.<sup>d</sup> As a result, the representation of men and women in the legal profession has become more equal: in Bahrain and Tunisia, respectively 55 and 45 per cent of lawyers are women.<sup>e</sup> In Saudi Arabia, there are now 304 female lawyers (out of a total of 5,364).<sup>f</sup> Despite this increase, however, women remain generally underrepresented at senior levels in law firms and bar associations.

<sup>a</sup> Ibtissem Jamel, "Women make gains as judges in Tunisia", *Al-Fanar Media*, 18 January 2018.

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

<sup>c</sup> Faculty of Law, University of Khartoum, personal communication with author in the context of the national case study, June 2018.

<sup>d</sup> Saudi Gazette, "29% increase in number of Saudi female lawyers", 25 July 2018.

<sup>e</sup> For Bahrain, see Bahrain Supreme Council for Women, Statistics, available at <http://www.scw.bh/en/AboutCouncil/Pages/record2016.aspx> (accessed on 15 September 2018). Also see Laala Kashaf Alghata, "Most lawyers 'are women'", *GDN Online*, 2 November 2016.

<sup>f</sup> Badea Abu Naja, "163 new lawyers issued licenses", *Saudi Gazette*, 25 July 2018.



21. Notable differences are found at the State level. In all Arab States, the proportion of women in the judiciary decreases as seniority increases. In Tunisia, for example, female judges represent 55.3 per cent of judges at the First (lowest) Grade but only 29 per cent at the Third (highest) Grade. There are generally far fewer women serving in higher courts (including appeals and constitutional courts) than in courts of first instance, where judges typically start their careers. Women are underrepresented in the functions of court president or vice-president. The pattern also applies in States that have a more equal representation of women in the judiciary. In Lebanon, women account for 71 per cent of judges at the First Instance Courts, but the proportion drops at the levels of Appeals (47.8 per cent) and Cassation (40.4 per cent). In Jordan, female judges represent 45 per cent of all judges at the Conciliation Courts but only 16 per cent of judges at the Courts of First Instance, 4.3 per cent of judges at the Courts of Appeal and 2.7 per cent of judges at the Court of Cassation. In Morocco, in 2016, women held only 10 out of the top 200 positions in the judiciary.<sup>26</sup>

22. Women's presence in senior decision-making functions within the judiciary is limited, although progress has been observed in some States. In Lebanon, Judge Helena Iskandar is the only woman out of the 10 members of the Supreme Judicial Council, which oversees the judiciary. Judge Iskandar automatically became a member of the Supreme Judicial Council after being appointed Head of the Committee of Cases at the Ministry of Justice in 2017. In Jordan, the President of the Irbid First Instance Court, Judge Nawal al-Jawhari was appointed to the 11-member High Judicial Council in 2017. In Bahrain, Judge Fatima Faisal Hubail, Deputy at the Civil Court, was appointed to the 12-member Supreme Judicial Council in 2016. In Libya, the 2016 elections organised for the Supreme Judicial Council resulted in the election of Judge Widad al-Hamali to the Supreme Judicial Council, representing the Benghazi Court of Appeal. In Tunisia, the 2014 Constitution broadened the membership of the High Judicial Council to 45 members – 19 women joined the body following its formation in 2016. In Morocco, the 2011 Constitution requires that the representation of women at the Supreme Council of the Judiciary must be secured in proportion to their overall presence in the judiciary. As a result, there are currently 3 women among the 10 elected members of the Council.

23. In addition to the pattern of vertical stratification, there is evidence of gender-based horizontal stratification in Arab judicial institutions. Female judges are less likely to be found in courts dealing with criminal, security or military matters. In Lebanon, 37 per cent of judges in the criminal field are women, compared with 62 per cent in the civil justice field.<sup>27</sup> In Jordan, women judges represent 50 per cent of judges at the Youth Courts but only 4.3 per cent of judges at the Customs Courts. There are no female judges on the Jordanian Court of Grand Felonies, Police Court, State Security Court, Land Settlement Court and State Property Court. Apart from Lebanon, where women amount to 28.5 per cent of military judges and public prosecutors, the presence of female judges in the region's military courts is negligible.

24. Women's presence in courts dealing with personal status issues (such as marriage, divorce, child custody and inheritance) varies depending on the set-up of the national judicial system. In States where family matters are adjudicated by civil courts, for example in Tunisia, women tend to be well represented in such courts. However, in States where personal status matters are resolved in religious courts, female judges remain excluded. One notable exception is the State of Palestine, where 3 qualified female judges have been appointed to sharia (Islamic) courts since 2009, with the approval and endorsement of the State's Chief Islamic Justice, out of 245 judges.

25. Available data also suggest that women remain underrepresented in prosecutorial services. Women hold only 9.5 per cent of all public prosecution posts in Tunisia, 14 per cent in Libya, 16.3 per cent in Morocco and 30 per cent in Lebanon. The same division lines as for the judiciary in general hold true in prosecutorial services. In Bahrain, for example, women make up only 14 per cent of the General Prosecution, 5 per cent of Partial Prosecution services but 27 per cent of Special Prosecution (covering cases related to family and children, public bodies, enforcement, traffic).

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<sup>26</sup> E/ESCWA/ECW/2019/2 (forthcoming).

<sup>27</sup> E/ESCWA/ECW/2018/TP.2, p. 18.

26. A gender-based geographic divide in the distribution of judges is observable in all Arab States that provide data on judicial composition at the level of regions, governorates or other administrative divisions. Female judges tend to be concentrated in courts in cities rather than in rural areas. In Lebanon, for example, women amounted to 56.5 per cent of judges in the Beirut circuit, but only 35.5 per cent and 16.5 per cent of judges in the South and Nabatieh governorates respectively (and mostly in these governorates' urban centres). The same trend is noticeable in Morocco and Tunisia.

27. Female Arab judges have occupied prestigious positions in international courts, such as Micheline Braidy, of Lebanon, who is a trial chamber judge at the Special Tribunal for Lebanon. Taghreed Hikmat, of Jordan, sat on the International Criminal Tribunal for Rwanda from 2003 to 2011. In 2017, Chafika Bensaoula, of Algeria, was elected to the African Court on Human and Peoples' Rights. The presence of female Arab judges in international courts remains limited, however, in line with a global trend of overall low numbers of female judges in such courts.<sup>28</sup> Underrepresentation is particularly acute for Arab female judges due to several factors. These include the reduced pool of female judges in national judicial systems from which appointments are made as well as the limited participation of Arab States in international courts and tribunals, which restricts the number of appointments made from these States.

#### B. BARRIERS TO WOMEN'S PRESENCE IN THE JUDICIARY

28. Arab States have adopted different modes of admission into the judiciary, reflecting the variances between national legal systems in the region.<sup>29</sup> Appointment to the bench usually requires a formal qualification, such as completing graduate education, training at a judicial training institute and/or passing a specific examination. The career progression of judges typically takes them from a court of first instance, in which legal proceedings are first heard, to appellate courts and high courts (or their national equivalents) as well as high-ranking positions of court president or vice-president. In several Arab States, judges may also be appointed on a discretionary basis from the ranks of legal professionals or legal scholars, usually on the condition of fulfilling set seniority requirements.

29. The high number of female candidates for admission in judicial training institutes throughout the region shows that women in the Arab region generally consider working in the judiciary as an attractive career option. In Lebanon, for example, most candidates for admission to the national judicial training institute have been women in recent years. In Jordan, the last decade has witnessed an increase in the proportion of female students enrolled at the Judicial Institute, which exceeded that of men in the 2017-2018 session. In Tunisia, women represent the majority of future judges studying at the High Judicial Institute.

30. Although Arab States have removed formal blanket bans regarding women's presence in the judiciary, women have not yet secured the ability to hold all judicial posts. In Oman, no female judges have been appointed to date, although women can practice as public prosecutors. In Kuwait, women candidates had to mount a legal challenge to push the Justice Ministry to consider applications from women for entry into the judiciary. There are now several Kuwaiti female prosecutors, although no female judge has been appointed to date. There are also examples of specific judicial institutions refusing the appointment of female judges, including Egypt's State Council, the country's administrative court.<sup>30</sup>

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<sup>28</sup> See Priya Pillai, "[Women in international law: A vanishing act?](#)", *OpinioJuris*, 3 December 2018.

<sup>29</sup> Legal systems in Arab countries are particularly rich and diverse, reflecting the influence of multiple sources, including civil continental law and common law traditions (primarily introduced to the region during Ottoman and European rule), Islamic law and other religious legal doctrines. In the majority of Arab States, most aspects of legal systems are now governed by secular legislation, except matters related to personal status and family law, inheritance and religious endowment, where Islamic jurisdiction is the main legal source. Saudi Arabia and other Gulf countries are a notable exception to the above trend, as their respective judicial systems remain primarily based on Islamic law.

<sup>30</sup> See [E/ESCWA/ECW/2017/3](#).

31. The lack of female judges in higher judicial echelons is, in part, the result of women's later entry into the judiciary. This lag is exacerbated in some States by strict seniority requirements regarding number of years served on lower courts before being eligible for appointment to intermediate and then higher courts. Nevertheless, a "trickle-down" effect that would see women progressively bridge the gap in higher courts has not been observed even in the Arab States that have a longer history of women in the judiciary, suggesting that other forms of discrimination remain in place.

32. In most Arab countries, women's career progression remains impeded by gender-blind rules and regulations controlling the career progression of judges. Gender-neutral rules, which should apply equally to all, become gender-blind when they lead to unequal outcomes and reinforce gender-based inequalities. Typically, this happens when they fail to account for external factors. Chief among those are the differentiated gender roles and expectations for men and women. Men continue to be perceived as the breadwinners within the household, while women are expected to carry the bulk of domestic and family life even if they work outside the house.<sup>31</sup> In the absence of mitigating measures, such as the provision of childcare facilities or flexible working arrangements, the gender imbalance can have a severe negative impact on the progression and retention of women in the judiciary.<sup>32</sup> Career progression rules may also lack the degree of flexibility needed to ensure that periods of time spent on family care duties do not impede career advancement.

33. Female and male judges interviewed in the national case studies believed that the lack of transparency in judicial appointment processes was a crucial obstacle to the development of diverse judicial institutions. In most Arab judiciaries, vacancies are not necessarily advertised, nor do they come with clear criteria for selection. Most Arab States have not put in place legal or regulatory safeguards to limit the influence of gender bias in appointment decisions. Stereotypes about female judges remain common within the judiciary, for example regarding women's suitability for higher office, their ability (or willingness, due to family commitments) to hold office in provincial areas and the desirability for them to interact with criminal or "sensitive" matters. Political interference by the executive in the appointment processes, and appointment processes that are based on political affiliation rather than merit, also have an impact on women's representation, particularly at the top of the judicial hierarchy.

34. Several female judges reported a working environment that remains marked by adverse sociocultural norms, in which their capabilities and authority are more often challenged than those of men, both by users of the legal system and colleagues. Some interviewees, male and female, also noted that women are less likely to benefit from the mentorship and patronage networks that can help judges to advance in their careers. The lack of role models was also identified as an obstacle to women's entry and progression within the judiciary, as was the fragmented support from national women's machineries and civil society organizations.

## C. GOOD POLICIES AND PRACTICES

### 1. *Fair and transparent pathways for entering the judiciary: Lebanon and Tunisia*

35. Lebanon and Tunisia have achieved a comparatively high proportion of women's representation in their judicial institutions. Women amount to 49.3 per cent of Lebanese and 43.1 per cent of Tunisian magistrates. Based on retirement projections and enrolment figures at national judicial training institutes, the proportion of women is likely to increase further in coming years. In Lebanon, women are expected to comprise the majority of judges by the end of 2019, a first in the region. Although barriers to women's full and equal participation in the Lebanese and Tunisian judiciary endure, as highlighted previously, the two countries nevertheless set a

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<sup>31</sup> Based on available time-use surveys, it is estimated that women undertake as much as 80 to 90 per cent of unpaid care work in Arab countries. See Jonathan Woetzel and others, *The power of Parity: How Advancing Women's Equality Can Add \$12 Trillion to Global Growth* (McKinsey Global Institute, 2015), p. 29.

<sup>32</sup> For example, in several Arab States, progression through the ranks of the judiciary involves a temporary or permanent relocation to a court that might well be in a different geographical area. Such policies have a larger impact on the career progression of women compared with that of men, owing to differentiated family care expectations.

positive example for the Arab region. In both countries, women's right to pursue a judicial career has been hard won. Lebanese and Tunisian women mounted legal and administrative campaigns to secure the right to enter the judiciary, basing their demands on constitutional and legal provisions and their State's international commitments towards gender equality.

36. Despite different constitutional, legal and institutional frameworks, recruitment to the judiciary takes place under broadly similar conditions. The conditions for access to a judicial career are to fulfil clearly advertised criteria (regarding diplomas, age, nationality, etc.), pass a competitive examination (written and oral) and complete a training at the national judicial institute. Such a process can starkly limit the influence of bias and discrimination in the recruitment of judges, in comparison to systems where judicial appointments are largely discretionary. Accordingly, other Arab countries that feature a relatively fair and transparent entry process, such as Jordan, Morocco and the Syrian Arab Republic, also register a comparatively high presence of women in judicial institutions.

37. In addition to the ordinary admissions process, there are alternative mechanisms for entry into the judiciary in Lebanon and Tunisia, such as direct appointments of qualified legal professionals and scholars. Although only a small proportion of judges are admitted through them, data suggest that such mechanisms have been overwhelmingly used for the recruitment of men.

## *2. A voluntarist model: Jordan*

38. In 2007, women accounted for 5.3 per cent of Jordan's judges; by 2018, the proportion had quadrupled, to 21.3 per cent. This notable increase is the result of a voluntarist approach by the Jordanian authorities. The National Strategy for Women (2013-2017), which was ratified by the Council of Ministers, defined a target of 20 per cent of women in the legal sphere and the judiciary. As the 20 per cent target was achieved by 2015, the Judicial Council now aims to raise the percentage of female judges and prosecutors to 25 per cent in the coming years.

39. Comprehensive policy measures have been mobilized to achieve this progress. In 2005, the Institute of Judicial Studies introduced a 15 per cent quota for admission of female candidates. Another positive step has been the appointment of female judges to high-profile positions, including to the Judiciary Council and the Court of Cassation, and the issuance of regulations guaranteeing that all judges can apply to senior positions without discrimination.<sup>33</sup>

40. A key driver of the increase in women's presence in the field was the Judicial Council's "Future Judges" training programme, which was implemented from 2008 to 2014 as the first initiative of its kind in the Arab region. The programme aimed to identify, attract, train and fast-track talented young Jordanians, male and female, into a judicial career. Participants were selected on basis of transparent, objective and clearly advertised criteria; women accounted for 68 per cent of all participants. The programme provided full scholarship to the students as well as educational opportunities in Jordanian and foreign universities and the Judicial Institute. The programme also included skill development, including in English and French.

41. Jordan also provides a positive example of the involvement of civil society groups in the development of an inclusive judiciary. The Arab Women's Legal Network, a regional organization based in Jordan, provides a platform for women in the legal sphere to exchange experiences, network and discuss common issues, while also offering extensive training and capacity-building programmes for new and established judges in Jordan and other Arab countries.

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<sup>33</sup> Despite these advances, however, Jordan has yet to appoint a female judge to the sharia or ecclesiastical courts (CEDAW/C/JOR/CO/6).

### 3. A sub-regional exception: Bahrain

42. Women remain markedly underrepresented in judicial institutions in the Gulf. A notable exception is Bahrain, which has witnessed rapid progress in this regard. In 2006, Bahrain appointed its first female judge, the first Gulf State to do so. A decade later, there were 21 women judges (and equivalent positions) in Bahrain, constituting 9 per cent of the judiciary, including 1 female judge in the Constitutional Court.<sup>34</sup> Women have also been appointed as public prosecutors, and amount for over half of registered lawyers.

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

44. This encouraging picture reflects the benefits of a comprehensive approach to encourage women’s participation in public life, develop a gender-sensitive judiciary and improve access to justice. Increasing women’s presence in decision-making positions, including in the judiciary, is a key objective of the [National Plan for the Advancement of Bahraini Women 2013-2022](#). The Government has also implemented training and awareness-raising programmes on conventions and laws related to women’s rights, including CEDAW. The Supreme Council for Women (SCW), Bahrain’s national women’s machinery, has been closely associated with such efforts. SCW chose “Women in the law” as the theme for Bahraini Women’s Day in 2016 to showcase women’s contribution to the field and encourage their further participation.

### III. POLICY RECOMMENDATIONS

45. Based on analysis of the normative framework (including international binding commitments) and extensive review of evidence and available best practices, the following policy recommendations are made to Arab States, international organizations and civil society organizations. The Committee on Women is invited to discuss those recommendations and assist in advocacy efforts in that regard.

(a) *National targets and accountability*: Define precise targets for women’s presence in the judiciary and ensure accountability through the regular collection, publication and analysis of data on women’s presence at all levels of judicial institutions. Identify and hold accountable branches of the national judiciary where disproportionately large gender gaps persist. Consider the introduction of temporary special measures, such as gender quotas, for future recruitments to such entities, as well as for appointments to judicial decision-making positions, including judicial councils;

(b) *Outreach*: Conduct outreach and media campaigns highlighting the importance of women’s presence in the judiciary. Develop guidelines to eliminate negative stereotypes regarding the depiction of women in the media, including in the legal profession. Showcase the personal experiences of female judges who might act as role models for women considering a judicial career. Work in partnership with schools, universities and law schools to identify promising students, female and male, encourage them to pursue a judicial career, and provide training and support to facilitate their entry into the judiciary. Reach out to women in the legal profession and facilitate the entry of qualified candidates into the judiciary;

(c) *Transparency and fairness*: In partnership with relevant institutions, such as judicial councils or judicial training institutes, take measures to improve transparency and eliminate gender bias in appointment processes, both at entry level and for appointments to intermediate and senior judicial posts. Ensure that position openings are publicly posted, written in gender-neutral language, with objective criteria, and that

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<sup>34</sup> Bahrain, Supreme Council for Women, *Bahraini Women in Numbers*, 2nd ed. (Manama, 2015). See also Suad Hamada, “Women’s role in judiciary praised in Bahrain”, *Khaleej Times*, 17 January 2016. No women have been appointed to sharia courts that have jurisdiction over family and personal status matters.

selection processes are clear and transparent. Introduce gender and implicit bias training for all recruiting judges and ensure equal representation in recruitment panels for all positions, including at the most senior levels. Require candidates of both sexes to be featured on short lists, where applicable;

(d) *Career progression*: Conduct a gender audit within the judiciary to identify specific challenges and assess implications of institutional policies on women, for example requirements for judges to relocate at regular intervals. Where applicable, add flexibility to seniority requirements for appointment to intermediate and higher courts. Promote the participation of female judges in continuous training and research programmes. Update career advancement rules and regulations to ensure that periods of time spent on family care leave do not hinder career progression;

(e) *Gender-sensitive workplace*: Introduce gender-sensitive working arrangements such as flexible working hours, remote working (for aspects of judicial work that do not require face-to-face contact with colleagues or users of the judicial system) and the provision of childcare facilities. Implement zero-tolerance policies against workplace discrimination and harassment, including by members of the judicial institutions and their users;

(f) *Mentorship and networking*: Promote and encourage women's presence in professional associations, particularly in leadership positions. Support the development of national and regional associations of female judges, prosecutors and lawyers. Provide networking and mentorship opportunities for women seeking to enter or advance in the judiciary;

(g) *Coordination*: Ensure that actions to increase women's presence in the judiciary are implemented in coordination with efforts to promote women's participation in public life and their access to justice, challenge harmful gender stereotypes and ensure a fair distribution of unpaid care work between men and women. Incorporate these actions in relevant national action plans and strategies, if applicable, and ensure accountability towards related mechanisms. Conduct consultations with stakeholders within the judiciary, government and civil society to develop guidelines and national action plans toward a gender-sensitive judiciary, including through revision of curricula at judicial training institutes and provision of relevant training on gender equality and human rights for all judges. Where relevant, initiate dialogue with religious authorities regarding women's presence as judges in religious courts, based on the successful Palestinian example.

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