THE COST OF JUSTICE

Exploratory Assessment On Women's Access To Justice
In Lebanon, Jordan, Egypt and Yemen

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Throughout this assessment, we have met with – and been immensely inspired by – rights holders and development workers that have provided us with valuable insights and information for which we are sincerely grateful.

We hope the report will be useful in shedding light on priority areas we have jointly identified and will contribute to the advancement of women's access to justice in the Middle East and North Africa.

List of Abbreviations and Acronyms

ARDD - LA	Arab Renaissance for Democracy and Development – Legal Aid
BA	Bar Association
CEDAW	United Nations Convention on Elimination of All Forms of Discrimination Against Women
CEWLA	Centre for Egyptian Women's Legal Assistance
CSO	Civil Society Organisation
FGD	Focus Group Discussion
FL	Family Law
JWF	Justice Without Frontiers
KII	Key Informant Interview
LECORVAW	Lebanese Council to Resist Violence Against Women
MENA	Middle East and North Africa
MoJ	Ministry of Justice
MoSA	Ministry of Social Affairs
NGO	Non-Governmental Organisation
PSL	Personal Status Law
WAJ	Women's Access to Justice in MENA Project
YWU	Yemeni Women Union

Executive Summary

Despite some relative progress, countries in MENA continue to be generally ranked amongst the worst performers on gender equality. Indeed, while the World Economic Forum's Gender Gap Report for 2016 assesses that the region has closed more than 60% of the overall gender gap, MENA, however, continues to rank last¹. Within the region, the country with the lowest ranking is Yemen, with 57% of its gender gap closed. Figures from the Organisation for Economic Cooperation and Development's 2014 Social Institutions and Gender Index also place the region at the bottom of the scale, with marked low performance in discriminatory family code and restricted civil liberties sub-indices. Egypt, Jordan, Lebanon, and Yemen (the four countries of focus in the present assessment) have all ratified CEDAW with reservations, and their personal status laws are widely seen to be among the primary sources of discrimination against women in legislation and practice. Women face various challenges in their attempts to seek and get justice. Despite some promising legal awareness initiatives (mostly led by the civil society), women's knowledge of their rights and family laws is still limited. They also lack social capital and financial means to claim their rights, and the systems set in place to provide financial support still remain insufficient and, at times, ineffective. Women's pursuit of justice is further limited by deeply-entrenched patriarchal values that are at play at community and court levels. Though some laws in the target countries have been positively amended in the recent past, women still face discrimination in the judicial system based on their sex, their religion, and their financial status.

Following a first phase carried out between 2011 and 2014, Oxfam is currently implementing the Women's Access to Justice in Middle East and North Africa Project (Phase II) in partnership with civil society organisations in Egypt, Jordan, Lebanon, and Yemen. The project aims at contributing to equitable access of poor and vulnerable women in the target countries to formal and informal justice, with a focus on personal status laws relating to divorce, child custody, alimony, and inheritance. To achieve the immediate objective of enabling poor and vulnerable women to claim their rights using formal and informal justice systems, Oxfam and partners have designed activities for four intervention levels: individual, community, policy, and regional learning and networking.

The present assessment has been commissioned to explore the impact of the cost of legal services on women's access to justice in personal status and family law proceedings in the four target countries. It specifically aims at providing an overview of the current situation of legal fees in Egypt, Jordan, Lebanon, and Yemen, looking at both formal and informal/hidden costs, and exploring the causes of high costs and the

“ Though some laws in MENA countries have been positively amended in the recent past, women still face discrimination in the judicial system based on their sex, their religion, and their financial status. Personal Status Laws are widely seen to be among the primary sources of discrimination against women in legislation and practice ”

¹ Global Gender Gap Report, World Economic Forum, 2016, available at: http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf

extended duration of the cases related to personal status and family laws. In line with the project's target populations, the assessment looked at Muslim courts in Egypt, Jordan (Zarqa), and Yemen (Hodeida); while, in Lebanon, it focused on the Sunni court in Tripoli and the Melkite Greek Catholic, Maronite, and Greek Orthodox courts in Mount Lebanon.

The methodology followed consists of a combination of literature review, key informant interviews, and focus group discussions in each of the target countries. Findings are presented by country using the three access-to-justice parameters identified in the terms of reference (Accessibility, effectiveness and affordability), and questions are asked for each. The sections on accessibility specifically focus on identifying bodies tasked with implementing personal status and family laws and exploring whether they have any provisions for support of low-income and/or socially marginalised individuals. The sections on effectiveness look at unpacking the different processes and procedures, identifying stakeholders, and determining the average length of procedures and the reasons for delays, if any. The sections on affordability attempt to provide an as-accurate-as-possible estimation of the overall costs of PSL cases, looks at three different types of costs, and correlates these to the overall cost of living and the average income per country. Costs were classified as: Formal costs (all known fees and payments that are, or can be, consigned by receipts); informal costs (all unofficial payments that may or may not be common practice paid to facilitate the judicial process. These include, for example, the costs of payment for summons and/or retrieval of documentation and the un-equivocated *quid pro quo* payments to influence the speed and/or outcome of the process); and indirect/hidden costs (all costs that are not paid to third parties and which include, for example, transportation to court and the cost of taking leave from work).

While the findings section provides an analysis by country, the findings are presented here by parameter, for ease of comparison.

Accessibility

Many countries in the region, including Egypt, Jordan, and Lebanon, have separate family and personal status laws for the different religious communities. Lebanon is unique in that it has fifteen for its different religious communities. While the present assessment does not aim at examining and comparing between each of these laws, it is certain that this legal setting is in and by itself of a discriminatory nature. Citizens have different rights and different pathways to justice depending on their religious community, and as such, accessing justice can be less or more complicated and more or less affordable.

PSL-related issues (divorce, alimony, custody, etc.) in the four countries are examined by separate specialised courts. First instance courts are usually located at the district level. Noting that, in Lebanon, Maronite and Melkite Greek Catholic Churches have unified first instance courts, i.e. one court for the whole country. While in Egypt, Jordan, and Yemen,

personal status courts sit under the government's hierarchy, in Lebanon, this is only the case for Muslim courts. Christian courts are independently governed each by their relevant Church. As such, their procedures differ. Personal status/family courts across the four countries are almost exclusively male-staffed and do not include team members tasked with providing guidance on navigating the process, which further increases women's vulnerability to potential swindling and exploitation by clerks, lawyers, and *semsars*.

Mechanisms for provision of support to poor and/or marginalised individuals differ among the four target countries. In Egypt and Jordan, there are no stipulations for reduction or cancellation of court fees, whereas these do exist in Lebanon and Yemen. In Lebanon, Christian courts have mechanisms in place for reduction, cancellation of fees, or payment in instalments based on individual assessments confirmed by parish priests. By virtue of articles 266 and 267 of the 1960 law on organising Sharia courts, Muslim litigants who cannot afford court fees have the right to request judicial aid. In reality, though, very few people know of and use this provision. This is possibly because it is perceived to be too long and not worth it, considering the relatively low court fees for Muslims, and it seems to be only used for marital rights cases. In Yemen, lawsuits related to separation and divorce, marital rights, alimony, child guardianship, and proof of child parentage are all exempt from a registration fee. Plus, the Ministry of Justice has a team of female lawyers who provide free legal support for women who are unable to pay lawyer fees. This is a unique model among the assessed countries. Although the present report did not look into its effectiveness, it undeniably represents a step in the right direction. Bar associations (and their relevant counterparts for family courts in Jordan) do not formally have legal aid mechanisms for PSL cases because it is assumed that lawyers are not needed for such cases. Yet in reality, reasons also include the fact that these lawsuits are usually lengthy and quite profitable and that they have their own procedures. The only instance recorded under the present assessment of pro-bono legal representation for personal status cases was in Lebanon upon the collaboration between the Greek Orthodox Church and the Bar Association. In the four target countries, civil society organisations, including Oxfam partners, fill the gap through providing legal awareness, consultations, and representation.

As noted already in WAJ project documents, women's access to justice is hindered by factors at the individual, social, and institutional levels. Women's awareness of their rights and procedures is generally still low despite some progress in recent years (especially in Lebanon). Women's ability to influence decisions in their favour was generally seen to be lower than that of men, across the four countries, for many reasons including social and financial capital. Social pressure entrenched in traditional patriarchal norms also acts as a deterrent, with a general shared perception that women seeking redress through formal justice processes are shamed and are generally not supported; if not by their immediate

family, then by the wider community. Expensive lawyer and court fees are also an obstacle for women, especially those with low income. At the level of institutions, conflict resolution and litigation processes are perceived to be slow, and the justice system is viewed as corrupt, notably in Lebanon, Egypt, and Yemen. Whereas in Jordan, corruption was not included among factors. While duty bearers across the four countries generally thought that justice was equally accessible for men and women, this perspective was not shared by interviewed women, project teams, organisations, or lawyers. It is interesting to note that the discriminatory nature of PS/family laws was rarely (if at all) mentioned across the four countries, perhaps because of their intimate relation to religion or, more pragmatically, because their amendment is very difficult and might not be considered an immediate priority in light of the many other more immediate challenges and current resources.

Effectiveness

Broadly speaking, procedures for Muslim PS courts across the reviewed countries are similar. The lawsuit is first registered at the court where it is assigned a judge and a date; noting that the period of time between the date of lawsuit registration and the date of first hearing is not set and can vary significantly. The defendant must be served a summons to appear before the court on the date of the hearing, and the first session usually includes a reconciliation attempt. The case is then heard, and depending on its specificities, witnesses and/or experts may be asked to appear before the court before a ruling is made. The ruling is then moved to the implementation court/department; unless it is appealed. In Egypt and Jordan, reconciliation offices have been set up and serve as a mandatory first step in an attempt to resolve conflicts faster without the need for a lawsuit. In general, these offices are not seen to be very helpful as they represent an additional step in the process, especially since women report that they decide to seek justice through the formal system when their situation is no longer bearable and, usually, after family and other informal reconciliation attempts have already been made, to no avail. It is important to keep in mind, however, that the present assessment does not focus on these offices, and as such, an evaluation of their effectiveness (especially in Jordan where they are newly-established) is not possible. Interestingly, a similar mechanism exists for Melkite Greek Catholic and Maronite Churches in Lebanon, whereby, after initial consultation with the local priest, conflicts are sought to be resolved at archdiocese level before being referred to the unified court. If the conflict persists, there is an attempt to get both parties to agree on rights ahead of going to court, a step that can save them time and money. Two differences with the Egypt/Jordan model are worth noting: First, these services are paid (even if it is apparently possible to waive them); and second, the process seems to be purposefully long to give complainants sufficient time to think their options through before proceeding with an

unchangeable decision. Once the case is referred to court, it follows a process similar to the one described above; however, when a ruling is made, it needs to go back for approval by the archdiocese before being taken to the civil implementation court. This is not the case for the Greek Orthodox Church.

While many actors are involved in the litigation process such as judges, lawyers, public prosecutors, arbitrators, experts, bishops, and clerks, fieldwork informants attribute a significantly high level of influence to court clerks and secretaries. They are tasked with facilitating the judicial process, such as serving summons or providing information on the defendant's income, as well as moving court decisions to the implementation stage. As such, they can either complicate or simplify procedures, usually depending on whether they receive financial incentives or not. In Lebanon specifically, clerks at the civil implementation courts are considered very powerful since they prepare case files for judges and sometimes advise (informally) on the course of action.

Gender mainstreaming is, despite some recent work with relevant authorities (especially in Jordan and Lebanon), still mostly absent. Courts do not take into account the fact that women and men have different realities. NGOs have collaborated with courts and bar associations, but the impact of this work is still confined to individual cases, and judges who are known to take women's perspectives into account are too few. Furthermore, courts and judges seem, to a certain extent, detached from the realities of litigants' lives and (perhaps expectedly) look at the marital bond as something that must be preserved, sometimes at any cost. To illustrate both the level of effectiveness of the personal status justice system in Lebanon and the inherent discriminatory nature of its laws, many litigants (usually middle to high income) resort to changing their confession to be able to file their lawsuits before courts that they consider to be more likely to grant them their rights.

The lawsuit duration varies depending on many factors that are generally shared across the four countries. It is important to keep in mind that one lawsuit is likely to lead to another (such as from divorce to alimony to child visitation and so on), thus, further prolonging the pursuit of justice. Factors influencing the length of procedures include the type of case brought forward and its specificities, the litigants' ability to pay fees, and, at times, the delay tactics used by one of the opponents. Factors linked to court systems themselves include high caseloads in certain family courts (with notable increase in divorce lawsuits across the four countries), judicial holidays, limited presence of judges in courts (specifically mentioned in Tripoli), lengthy reconciliation attempts, mandatory summons (including in the Official Gazette in Yemen), and other context-specific events (such as strikes in Lebanon and conflict in Yemen). Although the report includes estimates of the average duration of lawsuit proceedings in court, duration generally differs from one case to another. Length of lawsuits is a factor

for women dropping their cases or waiving their rights because of the emotional and psychological toll it takes on them, and also because of the financial and economic requirements that increase along with duration.

Affordability

Estimating costs of personal status/family law cases across the four countries is challenging because of differences among cases and the difficulty in estimating informal and hidden costs. Overall, for the Muslim courts included in the present report, the biggest share of formal costs seems to go to lawyers' fees, with the exception – of course – of cases where women have free legal counsel. In Lebanon's Christian courts, the situation differs. The three Churches under assessment have the highest recorded fees among the project target countries (the fees are high on purpose to discourage divorce). While lawyer fees are also the highest among WAJ countries, court fees may constitute the biggest share of the judicial process cost for Christians in Lebanon. Across the four countries, lawyers stated setting their fees on a case-by-case basis depending on women's financial ability, the projected length of the lawsuit, and how complicated the lawsuit is. Payments can sometimes be made in increments (payment per hearing, for example) and can at times be paid as a percentage of the claimed financial retribution (such as part of the perceived *muakhar* payment, for example). An interesting point to note is that, in general, women's estimation of average lawyer fees is often higher than the figures shared by lawyers themselves.

The informal costs recorded in this report refer to all unofficial payments paid to facilitate the judicial process and which may or may not be common practice. They include getting documentation of previous cases, making photocopies, and paying for summons, etc. While these payments are, for all intents and purposes, bribes, fieldwork informants do not consider these payments as such because they are not made to secure a positive outcome, but rather to ensure things are done. Contrary to what could be expected, these payments are not applied covertly but rather requested quite openly and have become part and parcel of the judicial process and planned in the projected expenses, even though they are not consigned by receipts. They seem to be accepted as such, especially in light of current inflation rates and increased cost of living. They are also differentiated from "real bribery" (i.e. what informants consider to be bribery), where an amount of money is paid to influence the court decision. To note, informants in Jordan stated that such practices are non-existent.

Finally, the assessment attempts to look at indirect/hidden costs as costs assumed by litigant women and not paid to third parties. Such costs include transportation to court, cost of taking leave from work to secure needed documentation, to attend court sessions, and/or withdraw

monthly alimony, and loss of personal capital (such as jewellery) especially in case of *khula*'.

Women fund their pursuit of justice mostly through financial assistance or loans from family and friends and through selling assets. Women who have an independent income use it to pay fees, though this is highly dependent on their income level. Most interviewed women who had received free legal support declared that were they not supported, they would not have gone to court or would have waited until they saved enough funds.

Looking at factors such as GDP per capita, women's participation in the labour market, minimum wage, etc., it is clear that seeking justice is an expensive venture for women, even more so for those who are poor and socially-excluded. While the same can be said of men, it is clear that justice is more affordable for them than it is for women. Personal status laws are heavily biased in their favour, and men are more likely to work and have an independent income, are less subjected to social pressure, are less afraid of the court, and have more space and social capital to access counsel and potentially influence decisions.

Finally, and with all this in mind, women still resort to formal litigation processes, even if social pressure is too heavy, even if the monetary cost is too high, even if the duration is too long, even if the law is biased, and even if the consequences (financial, social, and psychological) are too heavy, simply because they have no other choice. For women to go to court, it means that they have exhausted all other avenues and that going to court is worth the price they pay. Therefore, they always find a way to fund their path to justice.

In light of these observations, the below recommendations are made:

- Slowly phase out of service provision and legal awareness actions and scale up influencing work;
- Invest in knowledge production and management;
- Improve networking and alliance-building, both with organisations/entities specialising in law and justice and in gender justice and women's rights, including economic empowerment;
- Focus influencing work on assessing current fee-reduction mechanisms and/or state-mandated – or state-provided (using the Yemen model) – legal aid and, accordingly, call for their activation, amendment, and/or transparency to ensure they reach individuals in need;
- Target states in influencing work to increase the budget allocated for the overall personal status justice apparatus;
- Target donors in influencing work to increase funding of identified priorities and/or put pressure on states recipients of funds.

Introduction

Following a first phase carried out between 2011 and 2014, Oxfam is currently implementing the Women's Access to Justice in Middle East and North Africa Project (Phase II) in partnership with civil society organisations in Egypt, Jordan, Lebanon, and Yemen.

The project aims at contributing to equitable access of poor and vulnerable women to formal and informal justice in the target countries, with a focus on personal status laws relating to divorce, child custody, alimony, and inheritance. To achieve the immediate objective of enabling poor and vulnerable women to claim their rights using formal and informal justice systems, Oxfam and partners have designed activities for four intervention levels: individual, community, policy, and regional learning and networking.

In its problem identification and analysis, the project identifies women's limited capacity to claim their rights due to the high cost of legal services and litigation as a key factor hindering their access to justice. Assessment, research reports, and reviews conducted under the project in both its phases highlight the costly, lengthy and unpredictable nature of legal procedures, with no or few measures put in place by duty-bearers to alleviate part or all of the financial burden.

The present assessment has been commissioned to explore the impact of the cost of legal services on women's access to justice in personal status and family law proceedings in the four target countries. It specifically aims at providing an overview of the current situation of legal fees in Egypt, Jordan, Lebanon, and Yemen; looking at both formal and informal/hidden costs and exploring the causes of high costs and the long duration of personal status and family law related cases. The assessment also recommends areas for possible investment by Oxfam and partners.

Objectives and methodology

Objectives

As outlined in the terms of reference, the main objective of the assessment is to explore the impact of the cost of legal services on women's access to justice in MENA, with a focus on personal status and family laws. The report aims at providing insights on the links between accessibility, effectiveness and affordability of legal procedures within the formal justice system. For each country, the assessment was expected to:

- analyse the current legal situation (procedures and payments for placing and following up a personal status and family law case);

- survey the existing financial mechanisms, with a focus on both formal and informal costs;
- explore the causes of high costs and the long duration of personal and family law related cases;
- Suggest recommendations for advocacy-level action to Oxfam and partners.

Key questions

The assessment was expected to address the below key questions for each of the included countries:

Accessibility

- What are the relevant departments/sections charged with personal status and family related cases in each of the targeted countries?
- What are the existing mechanisms dealing with women cases in terms of personal status and family laws?
- Are there special mechanism and assistance services for poor and vulnerable women? (i.e. exemption from fees, appointment of a pro-bono lawyer, etc.)

Effectiveness

- What are the administrative and judicial procedures dealing with personal status and family law cases for women?
- Who are the influential actors involved in the administrative and judicial procedures?
- What are the factors determining the length of administrative and judicial procedures within courts? And how do these factors determine the cost of the lawsuit?

Affordability

- What is the cost, to an individual woman, of each step of the legal system in a personal status law case? What is the cost breakdown, including the cost of filing a lawsuit and ongoing expenses?
- Where do the costs accrue and who bears which costs (i.e., governments, courts administrative staff, clerks, etc...)?
- Are there obstacles to free/low cost services? If yes, what are they?
- How do the costs affect women and their willingness to go through the judicial process? What implications, if any, does this more broadly have on women's rights and gender justice (e.g. in terms of women's capacity to have financial autonomy etc.)?

It is important to keep in mind that, in looking at the above questions, the report specifically focuses on personal status and family law disputes or cases for which accessing justice is considered to be challenging; these are mostly related to separation/divorce. In reading this report, it is

important to keep in mind that most cases filed by women at Muslim personal status/family courts relate to divorce/separation. A Muslim man has the right to have four wives and to divorce his wife by repudiating her (saying “you’re divorced” three times), and as such his usage of personal status/family courts is different.

Description of methodology

The methodology followed for this assessment consists of a combination of literature review, key informant interviews, and focus group discussions to explore the three identified access-to-justice variables of accessibility, effectiveness, and affordability.

In accordance with the terms of reference, accessibility specifically focuses on identifying the bodies tasked with implementing personal status and family laws and exploring whether they have any provisions for supporting low-income and/or socially marginalised individuals. As for effectiveness, it includes unpacking the different processes and procedures, identifying stakeholders, and determining the average length of procedures and reasons for delays, if any. Finally, affordability provides an estimation of the overall cost of PSL cases, looking at three different types of costs, and correlates these to the overall cost of living and average income per country. Under affordability, costs were classified as follows:

- Formal costs: All known fees and payments that are, or can be, consigned by receipts. These include payments made to the court or to lawyers.
- Informal costs: All unofficial payments paid to facilitate the judicial process, that may be common practice, or that have to be negotiated individually, including for example costs of payment for summons to be served and/or retrieval of documentation, in addition to un-equivocated *quid pro quo* payments to influence speed and/or outcome of process.
- Indirect/hidden costs: All costs that are not paid to third parties. They include, for example, transportation to court, cost to produce needed documentation, and cost of taking leave from work.

In accordance with the terms of reference, the literature review mainly aims at identifying legal procedures, fees, and stakeholders, as well as collecting information on availability and effectiveness of support mechanisms. It also seeks to review existing studies and evidence of achievements and shortcomings of justice systems. A list of reviewed literature is available under annexes.

As for key informant interviews and focus group discussions, these have focused on confirming data gathered from the literature review regarding procedures, fees, actors, achievements, and shortcomings, as well as providing an opportunity to interpret literature review findings and further explore, and gain insights on, differences of experiences, attitudes, and

behaviours. Questionnaires were developed for each of the identified informants and were used to inform semi-structured conversations in key informant interviews and key questions used to facilitate focus group discussions. Interviews were conducted in Arabic as per the preference of informants. Fieldwork was conducted by Sarah Barakat in Jordan and Lebanon, Ali Saleh Mkaleh in Yemen and Sherif Mohy El Din in Egypt.

Interviews were conducted with the following groups:

- Women recipient of legal services provided under WAJ;
- Women non-recipient of legal services from WAJ;
- WAJ project lawyers;
- Lawyers;
- Clerks and court staff;
- Judges;
- Representatives of national organisations implementing WAJ in the target countries;
- Representatives of national and international organisations providing free legal services to women in the target countries.

The list of interviewed informants is available with Oxfam.

Limitations

The present assessment has some limitations. Firstly, reliable data and evidence on women's access to justice in personal status and family law cases in the target countries are generally lacking. This, of course, differs by country and thematic area. Fieldwork attempting to address some of these gaps came with varying success levels. Furthermore, partners have had to deal with last-minute changes to the fieldwork schedule because of changes in informants' availability and due to having to organise meetings, at times, with stakeholders that had not been originally identified; and thus, did not always have the needed level of information. In Mount Lebanon, only three women participated to the planned focus group discussion of women recipients of legal aid, while none showed up for the planned FGD with women who had not been targeted through WAJ. In Tripoli, only two women came to the FGD with women who had not been targeted through WAJ, and both these had been supported pro-bono by the same lawyer. Fieldwork in Jordan was most challenging since no judge accepted to be interviewed and since NGO representatives and lawyers did not attend planned meetings. Similarly, in Egypt, judges and clerks' limited willingness to engage in the assessments posed challenges to collecting comprehensive data. These gaps in primary data make it challenging to triangulate collected information and analyse trends. The assessment, however, seeks to validate data and provide an overview of the impact of legal fees on women's access to justice in the target countries.

“ Social pressure, absence of legal education, and lack of needed administrative structures within religious courts are key impediments to women's access to justice. ”

Background²

Despite some relative progress, countries in MENA continue to be generally ranked amongst the worst performers on gender equality. Indeed, while the World Economic Forum's Gender Gap Report for 2016 assesses that the region has closed more than 60% of the overall gender gap, MENA, however, continues to rank last³. Within the region, the country with the lowest ranking is Yemen, with 57% of its gender gap closed. Figures from the Organisation for Economic Cooperation and Development's 2014 Social Institutions and Gender Index also place the region at the bottom of the scale, with marked low performance in discriminatory family code and restricted civil liberties sub-indices.

As stated in the WAJ-Phase 2 project proposal, Egypt, Jordan, Lebanon, and Yemen have all ratified CEDAW with reservations (related to marriage and family life, divorce and child custody and nationality), and personal status laws are widely seen as among the primary sources of discrimination against women in legislation and practice. Social pressure, absence of legal education, and lack of needed administrative structures within religious courts that assist women who initiate legal procedures are key impediments to access to justice. Court costs and high lawyer fees pose additional barriers, and delays in legal procedures (including delays in implementation of court sentences) are also factors that can discourage women from seeking justice through formal judicial systems.

The project proposal summarises factors underlying the limited and inequitable access of women to justice as follows:

- *“Limited capacities of women to claim their rights due to:*
 - o *Limited ability to make well-informed decisions related to one's rights. While men may also lack capacity to stand up for their rights, women are more disadvantaged due to the fact that they are discriminated against by certain laws and culturally discouraged to claim their rights outside the family. There are several causes leading to women's limited capacities to protect and claim their rights. Firstly, there is limited quality information on individual rights and the existing legal systems and procedures in place. Access to quality information is particularly problematic for poor and vulnerable women, many among whom are illiterate, and for women in rural and peri-urban areas, camps or slums. Media and the education sector are not actively promoting information about rights and legal awareness. Secondly, informal legal advice provided by community leaders often perpetuate misconceptions*

² Paragraphs 2 and 3 of the Background section have been taken from WAJ-Phase 2 proposal.

³ Global Gender Gap Report, World Economic Forum, 2016, available at: http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf

about rights and responsibility, specifically in regard to personal status. Community leaders either do not have sufficient knowledge of the laws and women's rights or are themselves not supportive of women's rights. Thirdly, despite some limited availability of legal services provided by CSOs, referral systems are often weak or non-existent, preventing organisations from effectively directing vulnerable women to available support.

- *Limited affordability of legal services and litigation for women. The cost of legal services in target countries is too high for poor and marginalised women, furthermore, legal procedures are lengthy and the final cost of a case is often unpredictable. Pro-bono services are very limited, and in most cases guaranteed by law only for criminal cases. Information on available support and vulnerability criteria that can qualify women for free legal service is scarce and does not always capture all options provided by various CSOs. Women also suffer from very limited options for generating their own income. As discussed in the mid-term review of Phase 1 of the project, "few married women have economic alternatives to marriage"⁴. Access to paid work is limited, and working women with children are not always well accepted within the community. Access to work is naturally related to education levels, skills, but also influenced by employers' attitudes towards women (and divorced women in particular) and the availability of start-up capital for launching own business.*
- *Women are socially deterred from accessing the judicial system. Social stigma is attached to women attempting independently to access the judicial institutions especially pertaining to personal status issues. There is social, community, family and peer pressure against recourse to court, which is seen as a last resort only after all other mechanisms are exhausted – i.e. informal mediation and family intervention. Women are also deterred from claiming their rights through the judicial system because there is little protection for divorced women, including psychological, psycho-social or economic support. Lastly, many women distrust the judicial system and avoid resorting to it, an attitude that can largely be explained with the underfunding, bureaucracy and perceived bias of the judicial institutions.*
- *Formal and informal justice systems are perceived as gender-biased / discriminating against women. The causes for this bias are to be found in the limited gender sensitivity of court officials, ineffective implementation of existing laws, gender-bias within*

⁴ L. Maritano and E. Zambelli, *Women's Access to Justice in the MENA Region, Mid-term Review*, Oxfam, 2013.

certain laws (as discussed above) and lack of recognition of women's specific vulnerabilities by lawyers and institutions providing services to vulnerable citizens. In addition, the religious courts tasked with the implementation of the personal status laws in all target countries follow religious authority and are subject to variable but limited influence by the state. The informal justice provided by community leaders, religious leaders and lawyers in the form of mediation or arbitration, is rarely gender sensitive. In most cases the informal justice providers are themselves men, who are often driven by established cultural norms rather than recognition of women's rights. Among the deep-rooted causes are the predominant patriarchal culture, the prevalence of religious authorities over personal status issues and their resistance to change, and the weak and corrupt institutions that are often unable to enforce existing laws."

Findings

Egypt⁵

Accessibility

Personal status matters in Egypt are governed by separate laws for Muslims and Non-Muslims⁶. As is the case in the other target countries, PSL for Muslim individuals is based on Islamic Sharia. It is governed by law-decrees number 25/1920 and 25/1929, and laws 1/2000, 10/2004 on formation of family courts, 11/2004 on family insurance fund, and 4/2005 on custody. Two of these are important to note in the context of the present assessment: Law 1/2000 which has instituted the right of *khula*, thus granting women a way out of their marriage using a no-fault divorce procedure by which they waive their rights; and law 10/2004 by virtue of which family courts were established.

PSL-related issues (divorce, alimony, custody, etc.) for Muslims are thus examined by family courts. They are consolidated into one case and heard by one court, as opposed to the previous practice of each of these disputes being separately brought to different courts in different locations. Lawsuits are heard by a panel of three judges, and ensuing decisions can be appealed at the Court of Appeal. However, parties can no longer further raise their cases to the Court of Cassation. Before the lawsuits are heard by judges, a formal reconciliation process must be attempted, and PSL cases have to be submitted to a reconciliation office to attempt to

⁵ Unless otherwise specified, data included in Egypt section has been taken from the Egypt fieldwork report.

⁶ According to the Constitution, Islam is the official state religion, and Shari'a is the primary source of legislation. Christians follow the state's law. Personal Status Law is the only exception.

reach an agreement before the case is referred back to court⁷.

The main governmental bodies charged with personal status and family related cases are the following⁸:

- The office of the Attorney-General, especially public prosecutors for family affairs who are generally involved in cases related to divorce, *khula*⁹ and alimony, and are supposed to collect and substantiate information for court cases;
- The Ministry of Justice, especially the Conflict Resolution Office which is tasked with attempting to reconcile both parties before the case is referred to court if no agreement was reached;
- Family courts which hear all PSL-related cases;
- The Police which constitute the executive authority entrusted with enforcing court decisions.

As for any mechanisms of support to poor and/or marginalised individuals, no similar services are provided by the court nor by the Bar Association. Some organisations such as the Centre for Egyptian Women's Legal Assistance provide assistance by way of consultations and legal representation.

As is the case for other countries included in the present assessment and as noted already in WAJ project documents, women's access to justice is hindered by factors at the individual, social, and institutional levels. Women's awareness of their rights and procedures is generally still low: A 2004 Human Rights Watch report⁹ shares experiences of women who did not know they could include conditions in their marriage contract or had not even been given the possibility to read the contract before signing it. Furthermore, poor women cannot always afford to appoint a lawyer and may have to resort to appointing a less expensive attorney who may not be adequate enough to defend their case¹⁰, all while having little to no resources while they navigate the formal justice system. Social pressure entrenched in traditional patriarchal norms also acts as a deterrent. At the level of institutions, conflict resolution and litigation processes are perceived to be slow and the justice system viewed as corrupt¹¹.

Effectiveness

While a Muslim man can divorce simply by repudiating his wife (saying "you're divorced" three times) and registering the divorce with a religious notary within 30 days, things are not as simple for women who have to go through the justice system to get a divorce and/or claim their rights.

⁷ Bernard-Maugiron N., *Personal Status Laws in Egypt FAQ*, German Technical Cooperation, 2010.

⁸ *Egypt fieldwork report*, October 2017.

⁹ Human Rights Watch, *Divorced from Justice: Women's Unequal Access to Divorce in Egypt*, 2004.

¹⁰ Bernard-Maugiron N., *Personal Status Laws in Egypt FAQ*, German Technical Cooperation, 2010.

¹¹ Musawah, *Home Truths: A Global Report on Equality in the Muslim Family*, 2009.

Procedures are more or less similar to those applied for Muslim communities in other Arab countries and are as follows: First, the relevant conflict resolution office is approached with an application, and arbitrators attempt to reconcile between the two parties; should an amicable resolution not be reached, the case is referred to the relevant court fifteen days later. The lawsuit is then registered at the court where it is assigned a judge and a date, noting that the period of time between the date of lawsuit registration and the date of first hearing is not set and can vary significantly. The case is then heard, and depending on its specificities, witnesses and/or experts may be asked to appear before the court before a ruling is made. The ruling can be appealed within a period of 60 days and would then be raised to the Court of Appeal. Should the decision be accepted by both parties, it can only be moved to the implementation stage after a period of 60 days¹².

While many actors are involved in the litigation process (such as judges, lawyers, public prosecutors, arbitrators and clerks), women, lawyers and judges interviewed during fieldwork attributed a significantly high level of influence to court clerks and secretaries. They are tasked with facilitating the judicial process such as serving summons or providing information on the defendant's income as well as moving court decisions to the implementation stage, and as such, can either complicate or simplify procedures, usually depending on whether or not they receive financial incentives.

Lawsuit duration varies depending on many factors. A study commissioned by CEWLA in 2016 on litigation costs¹³ observed that the length of legal proceedings for lawsuits included in their study sample ranged from less than one month to four years. It is important to keep in mind that one lawsuit is likely to lead to another, such as from divorce to alimony to child visitation etc., further prolonging the pursuit of justice. The study indeed found that out of the total 300 surveyed women who had lawsuits at the time of the survey, 40% had already had previous lawsuits. A report analysing PSL cases statistics¹⁴ gives another manifestation of delays in procedures in Egyptian family courts by highlighting an issue noted by other reports and assessments: The percentage of cases for which the court had issued a ruling. Between 2008 and 2013, 81% to 92% of penal cases had been issued a ruling, whereas this percentage decreased to between 32.5% and 48% for civil cases and between 33% and 40% for personal status cases¹⁵. This proportion becomes more concerning when specifically looking at divorce cases. In 2013, the total number of petitions for divorce was 162,583 while

“ Women, lawyers and judges interviewed during fieldwork attributed a significantly high level of influence to court clerks and secretaries. They are tasked with facilitating the judicial process and as such, can either complicate or simplify procedures, usually depending on whether they receive financial incentives. ”

¹² *Egypt fieldwork report*, October 2017.

¹³ Elhenawy H., *The Litigation Costs of "Personal Status Lawsuits" in Greater Cairo*, Centre for Egyptian Women Legal Assistance, 2016.

¹⁴ Abulmajed A., *Analysis of Personal Status Law Cases* (in Arabic), Centre for Egyptian Women Legal Assistance.

¹⁵ *Ibid.*

the number of divorce decisions was 4,795 representing a rate of 3%. A similar percentage is noted for 2014¹⁶. As for delay factors, fieldwork has showed them to include the very high caseload in certain family courts; noting that this backlog of cases not only leads to a first delay when registering the case after the initial fifteen-day period dedicated for reconciliation attempts, but that the delay can then be increased if for a reason or another the case needs to be postponed. Judicial holidays between July and October are also a factor in and by themselves and at the same time contribute to increased caseloads, and so the cycle begins anew. Delays in court can also be used as a tactic by lawyers against women to push them to renounce their rights. Finally, as is the case in other countries, notification is done by clerks and necessitates a long time, especially if one of the parties (usually the husband/defendant) does not appear before the court, or, even worse, if they are outside the country at the time of the lawsuit.

Other factors that negatively affect family courts' effectiveness include the lack of specialisation of some judges, limited publication and dissemination of documents explaining the judicial system and its procedures, and insufficient engagement of prosecutors in collecting and substantiating information on the husband's income to guarantee adequate alimony.

Affordability

Formal litigation costs for PSL cases in Egypt are constituted of two broad categories: Court fees and lawyer fees. The former has been estimated to represent 5% of all litigation costs by fieldwork informants, whereas the latter represents the lion's share of consolidated costs (both formal and informal) with an estimated 50%¹⁷. Court fees are set to cost between 17 and 350 EGP (1 to 20 USD¹⁸) all in all, depending on each case and its needs. Lawyer fees were found to be of an average of 2,000 EGP (113 USD) per case. Fees vary significantly depending on type and specificity of cases, as well as the amount of effort lawyers are anticipated to exert and the number of subsequent lawsuits they are likely to lead to. CEWLA's analysis of litigation costs in Greater Cairo¹⁹ found that lawyer fees for the 300 surveyed cases range between 50 to 17,000 EGP (2.8 to 964 USD)²⁰ and highlighted two additional factors: clients' (in this case women's) financial capacity and lawyers' reputation. Payments can sometimes be made in increments, for example payment per hearing, and

“ Court fees represent 5% of all litigation costs, whereas lawyer fees represent the lion's share of the consolidated (formal and informal) costs. ”

¹⁶ Ibid.

¹⁷ *Egypt Fieldwork Report*, October 2017.

¹⁸ All applied exchange rates correct at time of writing report.

¹⁹ Elhenawy H., *The Litigation Costs of "Personal Status Lawsuits" in Greater Cairo*, Centre for Egyptian Women Legal Assistance, 2016.

²⁰ These fees include fees paid for one lawsuit as well as fees paid for several linked lawsuits, depending on whether the case included in the study sample was the first one filed by women or had already been preceded by others.

can at times be paid as a percentage of the claimed financial retribution, such as part of the perceived *mu'akhar* payment, for example. An interesting point to note (also observed in other countries included in the present assessment) is that women's estimation of average lawyer fees is often higher than the figures shared by the lawyers themselves. The study furthermore looks at the progression of lawyer fees and reveals that they have increased for all lawsuits except for "educational guardianship and school expenses." The highest increase is in child visitation cases with a variation of 366% from 300 to 1,100 EGP (17 to 62 USD); the average increase was estimated at 64%. This being said, lawyers are said to accept lower fees from women with lower incomes, sometimes balancing these with higher fees claimed for subsequent lawsuits. As such, Elhenawy argues that this increase trend is only partially related to the general rise in prices and cost of living; the other factor being the "phased" nature of personal status lawsuits themselves.

Data from fieldwork estimates informal fees to account for 45% of all litigation costs and categorises them as follows: Getting documentation of previous cases at 5%, paying bribes or "incentives" to clerks and court secretaries at 30%, paying bribes to the police to execute court orders at 5%, and other expenses that include paying transportation and meals for clerks at 5%.

Hidden/indirect costs were not included in informant feedback but are nonetheless existent; they had been categorised by Elhenawy²¹ as support received by women from family and other third parties to mainly fund their lawsuits and then their daily lives while waiting for court decisions (and sometimes after that). Hidden costs also include the cost of taking days off work, in the case of women who have jobs, to be able to attend to their lawsuit needs. By analysing the duration of lawsuits for the sample of working women²², the estimated days of leave, the average wages/salaries, the overall average costs (across all types of lawsuits) were estimated at 1,800 EGP per lawsuit (102 USD). Finally, these costs also include the loss of women's "capital" especially in cases of *khula'* where women are expected to pay their advance dowry back to their husbands: Depending on their financial status, women can either pay these back from their own earnings, or by selling assets, getting financial assistance from family/third parties or resorting to loans.

Figures for 2014 estimate that women in Egypt represent 23% of the labour force, and the 2012 Egyptian Labour Market Panel Survey found the rate of unemployed women to have reached 27.6%; almost half of working women are in the informal sector and have to endure poor

²¹ Elhenawy H., *The Litigation Costs of "Personal Status Lawsuits" in Greater Cairo*, Centre for Egyptian Women Legal Assistance, 2016.

²² For the purpose of calculating monetary loss due to absence from work, the term "working women" does not, in this specific context, take into account care and reproductive work.

working conditions and low wages²³. World Bank data for Egypt estimates the GDP per capita at 3,514.49 USD²⁴, while the national poverty line has been set at 482 EGP (27 USD) for the financial year 2014/2015, and 27.8% of the population live below that line²⁵. Looking at this data and at the overall cost of litigation as explained above, it is clear that justice is unaffordable for poor and marginalised women. While it is true that it also remains costly for men, the fact that they are more likely to be employed, that the PSL is heavily biased towards them, and that going to court for family dispute resolution is not as much a priority for them as it is for women, it is clear that the balance is tipped in their favour.

Finally, and with all this in mind, women still resort to formal litigation processes, even if social pressure is too high, even if the monetary cost is too high, even if the duration is too long, even if the law is biased, and even if the consequences (financial, social, and psychological) are too heavy, simply because they have no other choice. For women to go to court, it means that they have exhausted all other avenues and that going to court is worth the price they pay. Therefore, they always find a way to fund their path to justice.

“Traditional tribal and patriarchal norms weigh women down in their pursuit of justice in formal and informal systems because of the associated “shame” of claiming one’s rights and going to the courts.”

Jordan

Accessibility

In Jordan, personal status law cases are heard by religious courts of two broad types, one for Muslims and the other for non-Muslims. PSL cases involving parties of different religions are examined by civil courts. The Sharia court system has recently been amended. It used to be constituted of a hierarchy of two courts (court of first instance followed by court of appeal), but law number 20 of 2015 on the formation of Sharia courts was approved by royal decree and stipulated the creation of the Supreme court that now represents the highest authority on PSL cases for Muslims²⁶. Sharia courts sit under the supervision of the Supreme Judge Department that directly answers to the Prime Ministry²⁷. It is worth mentioning that judges in Sharia courts are required to study Sharia only, and that Sharia lawyers

²³ Nazier H. and Ramadan R., *Women’s Participation in Labor Market in Egypt: Constraints and Opportunities*, Working Paper number 999, Economic Research Forum, 2016.

²⁴ World Bank data for Egypt, 2016, available at: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=EG>

²⁵ UNDP data for Egypt, available at <http://www.eg.undp.org/content/egypt/en/home/countryinfo.html>

²⁶ http://petra.gov.jo/Public_News/Nws_NewsDetails.aspx?Site_Id=1&lang=2&NewsID=196463

²⁷ Organisational chart for Supreme Judge Department available at: <http://www.sjd.gov.jo/Pages/viewpage.aspx?pageID=154>

do not have a specific bar association; they instead follow the Supreme Judge Department. PSL cases are heard by a single judge.

Following national legislation, free counsel is appointed by the state, but only for criminal cases and following specific criteria. PSL courts do not have mechanisms of support to vulnerable populations of their own or for reduction of fees. Their headcount does not include any staff tasked with supporting defendants through the court process, though admittedly, this role is sometimes played by clerks. Noting that, 64% of guidance sector staff are women²⁸. Interestingly, when asked about what courts can do to support access of vulnerable populations to justice, the court staff member interviewed for the purpose of the present assessment thought there was nothing that could be done except encouraging people to help each other. The Bar Association similarly has legal aid provision, with article 7/100 of the Bar Association law stipulating that the BA president has the authority to assign lawyers for pro-bono cases once a year; though, in reality, this practice is not consistently followed²⁹, especially so for PSL cases. Yet, the lawyer interviewed during fieldwork did mention that some lawyers, including herself, actually reduce their fees depending on the financial status of their clients, particularly women, although most lawyers, in her opinion, do not take this into account and take advantage of the clients' need for legal representation³⁰. As for services provided by the non-governmental sector, the number of NGOs providing legal support has increased in past years, with most organisations providing legal counselling and a smaller number also offering representation in court, such as ARDD-LA (implementing partner for WAJ), Tamkeen, JCLA, etc. In Zarqa, women informants and the interviewed clerk stated that the only organisation providing legal aid that they know of is ARDD-LA, with some women (Syrian refugees) mentioning that they had been referred to ARDD through UNHCR. NGO work is however hindered by several factors such as the absence of a legislation that regulates legal service provision by CSOs, as well as opposition from the Bar Association itself, especially in terms of rules that regulate competition among lawyers and prevent advertising of free legal services. A study by the West Asia-North Africa Institute on status of legal empowerment³¹ reflects on the irony of such measures as people seeking free legal aid are from poor and marginalised communities and are therefore more likely not to seek justice (at least not through the formal system) than to approach a law practice whose services they cannot afford.

As is the case in other countries, the road to justice is long and treacherous, especially for women in general, and more so for those in

²⁸ Dr. Ashraf al-Omri, intervention during WAJ-Phase 2 Closing Event, Jordan, 2017.

²⁹ West Asia-North Africa Institute, *The Status of Legal Empowerment in Jordan: Evidence to Support the Post-2015 Development Agenda*, 2015.

³⁰ Interview with lawyer, Zarqa.

³¹ West Asia-North Africa Institute, *The Status of Legal Empowerment in Jordan: Evidence to Support the Post-2015 Development Agenda*, 2015.

situations of poverty and marginalisation. The literature review and fieldwork done for the present assessment have both confirmed that high lack of awareness of rights and court procedures constitutes a key obstacle, although women do know about the PSL courts. Furthermore, traditional tribal and patriarchal norms weigh women down in their pursuit of justice in formal and informal systems because of the associated “shame” of claiming one’s rights. A 2013 World Bank paper on gender and justice in Jordan³² reports that, according to a legal aid statistical survey, 26% of women (as opposed to 17% of men) are likely to avoid seeking justice in courts because of norms and traditions. While fieldwork also confirmed this observation with many informants confirming that women go to court only as a last resort after having exhausted all other avenues, it is worth noting that women included in focus group discussions in Zarqa made a distinction between the customs and traditions in rural and urban areas, with the former being “heavier” and more difficult to oppose and, in the case of Syrian refugees, between the social norms in Syria and in Jordan, with the latter perceived to be more acceptant³³. In addition to high court and lawyer fees which obstruct women’s access to justice, a review done by ARDD-LA in 2016 notes the total absence of female employees from Sharia courts and the fact that women often face intimidating male court staff³⁴.

Effectiveness

Procedures for PSL cases are stipulated by the procedural law for Sharia courts number 31/1959 and are implemented according to the following steps: The lawsuit is registered with the clerk after submission of the initiatory pleading (or the divorce petition if relevant) and payment of registration fees. The lawsuit is then given a serial number and assigned to a judge who appoints a date for the first hearing. The defendant must be served a summons to appear before the court on the date of the hearing; noting that the first session is usually a mediation session. Jordan has also recently instituted reconciliation offices (similar, broadly speaking, to the Egyptian model) to attempt to resolve family disputes without having to go to court. The women who participated to the two FGD sessions in Zarqa agreed overall on the lack of effectiveness of this office. In addition to its being insufficiently staffed with women, it fails to create a safe space for women. It seems that the employees sometimes seek to reconcile couples while totally disregarding women’s grievances, which further prolongs the process. Several women agreed that, for them to have decided to go through with divorce (with all its emotional, social and economic costs), it means that they have exhausted all other avenues.

³² Prettitore PS., *Gender and Justice in Jordan: Women, Demand, and Access*, in MENA Knowledge and Learning Quick Notes Series, Issue number 107, Word Bank, 2013.

³³ Focus group discussion with women recipient of legal aid through WAJ, Zarqa.

³⁴ Arab Renaissance for Democracy and Development - Legal Aid, *2015 in review: Women’s Rights and Access to Justice in Jordan*, 2016.

WAJ project lawyer shared this perspective stating that although some disputes are indeed resolved at this level, the office has mostly contributed to lengthening the process so far.³⁵ It is however important to keep in mind that, at the time of conducting the present assessment, these offices were still newly established, and thus, it is still too early to appropriately assess their effectiveness and impact.

Similar to other countries across the region, the premise is that a lawyer is not needed for PSL cases and that defendants can represent themselves. Reality is different, however, and the general view is that having a lawyer is essential as they know both the law and the judicial process and are thus more likely to get a positive ruling. Another factor for women in Jordan is that, because Sharia courts are not adequately equipped for women and are exclusively male-staffed, physically going to court is considered a burden that women expect their lawyer to relieve them from. Indeed, and differently from other WAJ target countries where women go with their lawyer to the court as an awareness and empowerment measure, once power of attorney is signed between project lawyers and women recipients of legal aid in Jordan, the women rarely go to court before the implementation stage; they are instead kept informed by their lawyer. While perfectly understandable, this practice is telling and reinforces issues explained under the accessibility section concerning social norms and the adequacy of courts (as “safe spaces” for women). That being said, some women who have completed their lawsuits and who have had bad experiences with their lawyers stated that if they had any PSL-related issues in the future, they would attempt to go to court on their own or possibly resort to ARDD-LA or similar organisations³⁶.

Considered as a step in the right direction, the Jordanian Ministry of Justice’s strategy for 2014-2016 included, under its first pillar (“Contribute to the development of the national integrity system through an independent and active judiciary”), a section on gender mainstreaming (“Introduce gender concepts in the litigation process”). It comprises outputs such as activating the Human Rights and Family Affairs Directorate, developing a plan for gender mainstreaming in judicial work, training judges, and providing appropriate infrastructure and equipment. Although these efforts and those made by the personal status courts and the Supreme Judge Department have been confirmed and applauded by ARDD-LA, it is still too early to see their impact on the ground; the women and lawyers interviewed during fieldwork expressed the same impression concerning the absence of gender perspective from court and from lawyers as the non-project interviewed lawyer saying that courts do not take the fact that women and men have different realities into account³⁷. This observation had already been noted under the project’s first phase

³⁵ Interview with WAJ project lawyer.

³⁶ FGD with women recipients of legal aid through WAJ, Zarqa.

³⁷ Interview with lawyer, Zarqa.

with the aforementioned-research stating that while some high-level judges have developed a certain degree of gender sensitivity following the King's directives, the same cannot be said for other court staff who may take advantage of women's lower level of knowledge of procedures. It is important to note as well that despite the information on cases of exploitation by court staff and/or lawyers³⁸, all women interviewed during fieldwork said they did not know of any cases where women were asked for favours (other than payment) in return for facilitated or accelerated procedures; only one woman recalled the case of a lawyer who married his female client. This does not necessarily mean that such practices do not exist; more targeted research will be needed for confirmation.

According to lawyers, the lawsuit duration could take up to one year on average, but duration may vary significantly depending on the type of case (divorce cases were found to be the longest), on the availability of evidence and witnesses, on the financial situation of defendants, on whether one of the parties is stalling, and on failure to find and notify one of the parties. As for factors related to the judicial system itself, these are mainly relevant to the limited number of judges compared to the high caseload and short working hours. Indeed, a review of national statistics compiled by the Supreme Judge Department for 2016³⁹ has confirmed observations made by all informants concerning high caseloads and increased divorce rates. In 2016, more than 80,000 marriages were registered in Jordan, out of which roughly 13% were in Zarqa (third highest governorate for marriage registration), and the consolidated divorce numbers have increased from 17,696 in 2012 to 21,969 in 2016. The additional step of attempting reconciliation described in the above section also prolongs the process. Since a timeframe for the implementation of court decisions is not stipulated by law, delays in implementation and/or failure to pay alimony (most often by husbands) increase the stress and financial burden women carry, further forcing them into poverty. Implementation of court decisions was also described by the interviewed lawyer (non-project) as humiliating for women since they have to go to the implementation department every month to receive their alimony, for example, and wait there for hours on end in small overcrowded rooms where they are easily harassed by staff and police officers.

In general, women seem to file a higher number of divorce cases (and/or related cases such as alimony and custody) than men. The previously-referenced World Bank paper⁴⁰ states that women were nearly four times more likely to have PSL-related disputes (41% of women versus 11% of men), suggesting that these cases have the highest impact on their lives

³⁸ In WAJ-Phase I and WAJ-Phase II project proposals, as well as in El-Zein F., *Women's Access to Justice in the Middle East, Challenges and Recommendations*, Oxfam, 2014.

³⁹ Supreme Judge Department, *2016 National Statistics Report* (in Arabic), 2017.

⁴⁰ Prettitore PS., *Gender and Justice in Jordan: Women, Demand, and Access*, in MENA Knowledge and Learning Quick Notes Series, Issue number 107, World Bank, 2013.

and are considered as a priority to spend their funds and time on. This observation was also confirmed by informants during fieldwork: In a focus group discussion, this was (partially) attributed to the fact that men do not need to divorce to get on with their lives as they are permitted to have four wives at the same time; or, as one woman participant put it: “Why would he pay to divorce me when he could use that money on his next wife?”⁴¹. Lawyers also clarify that most cases brought by women are related to alimony.

Women participants in focus group discussions considered the Jordanian personal status law to be quite favourable for them, especially for Syrian women who compare it to their national laws and consider the judges to be mostly fair even if intimidating, as this depends on the judge’s personality according to them. While money was considered the most important deterrent, the length of proceedings was mentioned as a frustrating factor, especially considering that the less they are able to pay, the longer their lawsuits are likely to last. With this in mind, most women participants to both FGDs stated that they do trust the formal judicial system for PSL-related conflict resolution.

Affordability

Affordability of justice for PSL-related matters has already been noted by national and international organisations working on legal aid in Jordan to be a key obstacle for women’s access to justice. Prettitore’s World Bank paper⁴² observes that women were more likely not to seek justice in court or to file a lawsuit without an appointed lawyer because of their inability to pay fees. This is the case now more than ever after the amendment of Sharia court fees number 61/2015. Indeed, while some fees were decreased or cancelled, an analysis done by ARDD-LA⁴³ confirms that the cases for which legal action is usually taken by women (such as alimony, claiming dowry and custody) had their fees increased, thus, further limiting women’s capacity to fund their pursuit of justice. The rationale behind this increase was not provided, and it is unclear why certain fees were decreased and others raised.

According to the revised fees system⁴⁴, registration fees for cases of alimony, custody, separation, divorce, divorce cancellation, inheritance correction, and visitation range between 5 and 30 Jordanian Dinars (7 and 42 USD⁴⁵), with the lowest (among the listed examples) being for alimony and custody, and the highest for divorce cancellation. Marriage and divorce registration each cost 25 JOD (35 USD), while application for expedited implementation is for 5 JOD (7 USD). Expert fees have also been stipulated by the afore-mentioned law and range between 10 JOD (14 USD) for the alimony expert and 30 JOD for medical expertise (42

⁴¹ FGD with women, Zarqa.

⁴² Prettitore PS., *Gender and Justice in Jordan: Women, Demand, and Access*, in MENA Knowledge and Learning Quick Notes Series, Issue number 107, Word Bank, 2013.

⁴³ Arab Renaissance for Democracy and Development - Legal Aid, *Opinion and Analysis for New Fees System to be applied at Shari’a Courts*, 2015.

⁴⁴ System number 61 for 2015 on Sharia Court Fees, as published in Jordanian official gazette (issue 6782).

⁴⁵ All applied exchange rates correct at time of writing report.

USD)., Keeping in mind that several fields of expertise and several experts per field may be requested, quickly doubling or tripling the costs. Registration of the power of attorney is priced at 10 JOD (14 USD). Getting the court's ratification of signatures costs 1 JOD; original copies of court decisions (in certain cases) is free of charge for the first copies and half of the sum originally-paid for registration for subsequent copies. Implementation fees are set at a percentage of 3% of the amount decided to be paid, with a maximum of 100 JOD (141 USD). To note, according to the interviewed court clerk, no list of fees is hung in the court, but all fees can be consigned by receipts; with the exception of expert fees which are not documented by receipts upon payment but are included on the final court decision document⁴⁶. Furthermore, although the above fees might seem small, they still represent a 100 to 150% increase to past fees according to the interviewed project lawyer. As for lawyer fees, these seem to range between 200 and 1,000 JOD (282 to 1,410 USD) depending on the type of case and the amount of work the lawyer projects it will require; knowing that alimony cases are usually the cheapest, and separation lawsuits the most expensive (can start at 400 JOD – 564 USD).

As for informal fees, they are mostly fees paid to clerks for notification/serving summons and have been estimated by the interviewed project lawyer and the interviewed clerk to vary between 3 to 5 JOD (3 to 7 USD). As is the case in other countries, these can be paid more than once should the defendant not receive the summons and/or fail to appear before the court. Women participants to the control group FGD mentioned having to pay up to 30 JOD for notifications. Plaintiffs rarely try to negotiate not making this payment, for if the court clerk does not serve the summons/notification, the case can easily be delayed a month. Clerks are also perceived to be protected by judges, leaving a limited margin for alternatives. Two interesting observations came out of interviews on this particular point. First, a clerk stated that if the plaintiff does not have the money to pay notification fees but has a car, clerks accept not to be paid in exchange for being driven to the place of residence or work of the defendant to notify them. However, this has been negated by the women in the focus group discussions who have dealt with this particular scenario and have had to pay either way. Second, the interviewed non-project lawyer has mentioned that notification can be done through Jordanian post⁴⁷ for 4.5 JOD (6 USD), a measure that can guarantee that the defendant would receive the notification/summons while also providing the plaintiff with a receipt. However, this service has not yet been made available across all governorates.

As for hidden/indirect costs, these include transportation fees for women themselves, but also for their witnesses at times, as well as for one or more family members that usually make the trip to court with them. It is important to note that these costs do not stop after the court's decision is

⁴⁶ Interview with court clerk, Zarqa.

⁴⁷ Interview with lawyer, Zarqa.

out; for example, implementation of an alimony decision requires women to go to the implementation department of the court on a monthly basis to get paid, and as such, they have to pay for transportation every month. Though ARDD-LA team has mentioned that a reform by virtue of which alimony could be paid by bank transfer is likely, thus allowing women to save both money and time⁴⁸, for the time-being, the 2014 Global Gender Gap report estimates that only 17% of women in Jordan have an account at a formal financial institution. So, this does not seem to be a solution that will have an impact on women who are in most need of support. Official stamps and photocopying costs are also not originally accounted for. The same goes for the documents that may be requested as evidence; these can reach 20 JOD (28 USD).

The lawyers interviewed during fieldwork estimate PSL cases to cost between 600 and 1,300 JOD, which is equivalent to 846 and 1,833 USD (with the exception of going for very high-profile lawyers), with the top of this band being for divorce cases (divorce for marital discord or sheqaq wa nezaa). These figures are high for the region, but the true cost of justice is even more staggering if we take into account the minimum wage in Jordan that has been raised in February 2017 from 190 JOD to 220 JOD (267 to 310 USD). This means that PSL cases cost anywhere between 3 to 5 times the monthly income of individuals living on minimum wage – keeping in mind that these individuals are not the poorest. One woman who was accompanying her daughter to the FGD explained that the whole household, comprised of the two parents and six children, had been living on a 109 JOD monthly payment by the Ministry of Social Development until her eldest and only son started working recently⁴⁹. When asked what they can do with the 10 JOD they pay for (formal or informal) fees, women participants to FGD agreed that they can buy food and cook for their family for two days. Participating Syrian refugee women shared that they receive a monthly food voucher of 40 JOD; meaning that what they sometimes have to pay to claim and get their rights in the formal justice system represents 25% of their monthly food budget. One participant has stated that her case is pending because she does not have the 60 JOD that have been asked of her, and several have shared that they let go of some rights (such as claiming back the gold jewellery that was given to them) simply because they do not have the resources needed to file a lawsuit to claim these rights. A very small proportion of women participants in both FGDs were employed; for those who are, taking days off work to attend to their numerous visits to the court can lead to lower pay and, in some instances, loss of job. One of the FGD participants said that this was exactly what had happened to her; she has now found a job and is paid the minimum wage. With her pay and that of her mother, who also has a job, she supports her family (including

“ The cost of access to justice for personal status cases goes beyond the costs (formal, informal, and hidden/indirect) paid to finance the process itself; it extends to life after divorce, during which women are more likely to sink into deeper poverty ”

⁴⁸ Interview with ARDD-LA, Amman.

⁴⁹ FGD with women, Zarqa.

brothers and sisters).⁵⁰ When asked whether they would decrease court or lawyer fees, most women opted for waiving court fees for thinking that some court procedures can be done without the need for lawyers.

Women fund their pursuit of justice mostly from support from family members (in cases where the families do accept taking legal action) or from selling their assets (usually jewellery), and in some cases through taking loans from friends. All the women recipients of free legal support from ARDD-LA who had participated in the FGD stated that, were they not supported, they would not have gone to court or would have waited until they had saved enough funds before going. This practice was confirmed by participants to the second FGD who have had to pause their proceedings until they managed to secure the needed amount⁵¹.

Bribery was not mentioned as a recurrent practice, with a woman participant to FGD stating: "It's not worth it to bribe for PSL case, men would better bribe for criminal cases". The interviewed non-project lawyer made reference to the possibility of bribery; but more in terms of influencing, nepotism, or doing favours as opposed to monetary compensation.

All informants agreed that justice is more affordable for men than it is for women because men are more likely to work and have an independent income, but also because they are less subjected to social pressure, are less afraid of the court and have more space and social capital to access counsel. ARDD-LA team has noted, however that while men have, in theory, higher incomes or purchasing power, the costs paid to access justice or to bear its consequences are significant for both men and women and needs to be taken into account.

Lebanon

Accessibility

Although it is common for countries in the region to have more than one set of personal status laws for Muslims and non-Muslims, Lebanon is unique in that it has fifteen for its different religious communities. For example, it has separate PSLs for Sunnis and Shias as well as for Melkite Greek Catholic, Maronite, and Greek Orthodox communities. Judicial prerogatives have been granted to the different religious confessions by virtue of article 2 of the decree 60LR of 2016. While the present assessment does not aim at examining and comparing between each of these laws, it is certain that this legal setting is in and by itself of a discriminatory nature. Citizens have different rights and different pathways to justice depending on their religious community, and as such accessing justice can be less or more complicated and more or less affordable, for no other reason than because the Lebanese state has proclaimed respect of religious diversity. As WAJ is specifically targeting

⁵⁰ Focus group discussion with women, Zarqa.

⁵¹ Ibid.

Sunnis in Tripoli and Christians in Mount Lebanon, the below section will focus on these two target locations and Sunni, Melkite Greek Catholic, Maronite, and Greek Orthodox courts.

Christian courts are totally independent from the state, they each refer to their own hierarchies and authorities. They are not funded from the state budget, although a relatively small amount of funding is allocated to the Church. Consequently, they enjoy little to no oversight from the state. The number of courts and procedures differ among Christian communities depending on their own structures. For example, the Maronite and Melkite Greek Catholic Churches have a system of delegated authority; that is, each archdiocese, which has judicial jurisdiction, delegates this authority to a central first instance court. The said court for the Maronites is in Zouk Mosbeh and for the Melkite Greek Catholics is in Sabtiyeh (both in Mount Lebanon). For this reason, once a ruling is made at the level of the first instance tribunal, it is sent back for validation of implementation to the archdioceses. Archdioceses then have the right to reject the court ruling, but in reality, this rarely happens: The bishop of Antelias, who was interviewed during fieldwork, recalled such instances occurring only twice in recent years⁵². The system is different for other communities, for example for the Greek Orthodox community, each diocese (and by extension, each region) has its own court⁵³. Melkite Greek Catholic and Maronite first instance courts have a three-judge panel in addition to a promoter of justice and a defender of the bond. Their decisions can be appealed before the relevant court of appeal and/or the Roman Rota located in the Vatican. The Rota also hears, in specific cases, appeals of rulings made by national courts of appeal. As for Greek Orthodox first instance courts, they are sections presided over by one judge or primary chambers comprised of a chief judge and two member-judges – noting that this structure varies in other Orthodox Churches. Courts of appeal hear the appeals of first instance rulings and have a chief judge and two senior judges. Their decisions are generally not further appealed. In the Melkite Greek Catholic and Maronite courts, two types of “lawyers” can practice: Lawyers who have studied both law and canon law⁵⁴, and “canon lawyers” who have only studied canon law and as such are not lawyers technically and cannot become members in bar associations. This is not the case for Orthodox courts.

The situation in Muslim courts is different. By virtue of several laws and decrees issued across the years, the state has established a Supreme Islamic Authority for each of the three main Islamic denominations: *Jaafari* (for Shias), Sunni and Druze. This body is tasked with overseeing the administrative and financial affairs of each of the three judicial systems. Contrary to Christian court systems, Muslim courts are directly funded by

⁵² Interview with Antelias bishop.

⁵³ Fieldwork interviews with judges of Melkite Greek Catholic, Maronite, and Orthodox courts and with Maronite bishops.

⁵⁴ Canon law is the ecclesiastical law, i.e. the law governing the Church.

the state though this does not translate into closer oversight; in fact, these courts operate independently and enjoy little to no oversight from the state. There are nineteen Sunni courts across Lebanon distributed among the different regions, each comprised of single judges. Yet, depending on the size of the court and its workload, it might have one or more judges. Rulings of first instance courts can be appealed before the Supreme Sunni Court which is located in Beirut and comprised of a chief judge and two member-judges.

Lebanon's highest-ranking court, the Court of Cassation, is responsible for examining the compatibility of religious codes with public order, but it has traditionally shied away from this prerogative, focusing instead on the jurisdictional and procedural aspects. This has recently started to change, with the Court of Cassation challenging religious court decisions when they conflict with child protection measures⁵⁵.

Mechanisms of litigation cost alleviation do exist, albeit disparately and not always confirmed in written procedures. For court fees, Christian courts all have mechanisms in place to support low-income or socially marginalised individuals unable to cover these costs on their own. Maronite, Melkite Greek Catholic and some Orthodox courts have a procedure called "judicial aid" that can be requested. If granted, judicial aid can relieve the grievant from a portion of or all court fees, in certain cases, and depending on courts. Other Christian courts that do not offer this service try to facilitate payment by allowing payment in instalments for example. For Maronite and Melkite Greek Catholic courts, judicial aid is granted based on a statement of poverty prepared and signed by the priest or diocese and subsequently validated by a social worker. For certain Orthodox courts, a statement by the local *mukhtar* is also needed. Interestingly, JWF WAJ lawyer interviewed during fieldwork stated that the Maronite court used to grant poor women, who were supported by the project and were represented in court by JWF lawyers, total reduction in court fees in some cases. This practice has now been altered and current cases are only granted a reduction by 50% at most⁵⁶. This could possibly be attributed to the court's misconception that JWF has the funds to pay for court fees. This practice not only does it reflect a worrying perspective whereby fees are reduced based on one's ability to secure funds from other sources (not their needs), but it also hints at a devolution of responsibility from duty-bearers to rights-holders. This could be dangerous as it jeopardises the sustainability of current access-to-justice interventions, thus, potentially harming low-income and socially-marginalised individuals in general, and women in particular, on the long run.

The case of Sunni courts is again different. While informants said that there are no mechanisms for court fee reduction or cancellation (except

“ Lebanon is unique in having fifteen sets of personal status laws for its different religious communities. Regardless of their confession, women face similar barriers in accessing justice: limited knowledge of their rights, laws and procedures and limited financial means. ”

⁵⁵ Human Rights Watch, *Unequal and Unprotected, Women's Rights Under Lebanese Personal Status Laws*, 2015.

⁵⁶ Interview with JWF project lawyer and project manager.

for marital rights cases in which payment can be deferred until the court decision is issued), the two interviewed Tripoli court judges said otherwise. Indeed, both referred to articles 266 and 267 of the 1960 law on organising Sharia courts by which judicial aid can be requested by all litigants who cannot afford court fees (or even court penalties); including non-national residents, provided their states allow the same reduction/exemption to Lebanese nationals. In reality, though, very few people know of and use this provision, possibly because it is perceived to be too long and not worth it considering that the court fees for Muslims are relatively low; and it seems to be only used for marital rights cases⁵⁷. Indeed, to get this aid, one must fill and submit a request along with documents from the local *mukhtar*, a proof of residence, and a tax statement. The receiving judge at the first instance court then refers the request to the Supreme court for examination and approval⁵⁸. To note, the Ministry of Finance has the right to claim fees back within a period of five years in case the financial situation of the litigant improves⁵⁹.

In terms of support provided by the Bar Association, although there are procedures for pro-bono cases, they are usually not used in PSL cases, since it is assumed that (similarly to other countries) litigants can represent themselves in religious courts. One of the interviewed lawyers working in Christian courts laughed this concept off saying: “Yes, in principle, but in reality, if you don’t have a lawyer [in Christian courts], you don’t stand a chance!”⁶⁰. Free legal support provided by the Bar Association is actually organised as follows: Interested lawyers sign up for provision of support and get paid 750,000 LBP (500 USD) per case from the bar. The JWF lawyer interviewed during fieldwork noted that the lawyers who are on the pro-bono list are mostly fresh graduates looking to gain experience by working with a few experienced lawyers. Lawyers are not encouraged to provide free services in PSL cases as they are long and require significant engagement⁶¹. In short, the Bar Association’s legal aid scheme is not used for Maronite and/or Melkite Greek Catholic courts. That being said, the interviewed Greek Orthodox judge did state that there is collaboration between the court and the Bar and that pro-bono schemes are offered for litigants who are deemed to be unable to pay lawyer fees⁶² since the Greek Orthodox court follows civil courts procedures. Furthermore, lawyers practicing in Maronite courts have to be registered at the court and are expected to take on between one and three cases per year in which litigants suffer from financial duress. This agreement is more of an unwritten rule and the Maronite judge

⁵⁷ Fees for these cases are calculated at 3% of the overall claimed amount and could then be too high for women to pay upfront; which is why deferred payment is usually requested.

⁵⁸ Interview with two Sunni judges, Tripoli court.

⁵⁹ Ibid.

⁶⁰ Interview with lawyer, Beirut.

⁶¹ Interview with JWF project lawyer and project manager.

⁶² Interview with Greek Orthodox judge.

interviewed during fieldwork did say that some of them take these cases seriously while others do not⁶³. In Tripoli, one of the interviewed judges stated that when litigants receive judicial aid approval, the Bar can then appoint them a free lawyer. The interviews conducted with lawyers from Tripoli did not allow us to confirm this practice, but the lawyers did say that they accepted fees to be paid, in certain cases, after the court decision is issued in the form of a percentage of the monetary compensation “won” in court. During the FGD with women recipients of legal aid through WAJ in Tripoli, one participant said, when asked whether they know of legal aid procedures: “If I do not trust the judge, how could I trust the lawyer they appoint?”⁶⁴. Finally, all the interviewed lawyers stated that, even if there are no official mechanisms at the Bar level, they take into account their clients’ resources and can lower or cancel their fees accordingly.

Support is also provided by other actors, such as the Ministry of Social Affairs which has a hotline for basic questions and does referrals to NGOs offering legal services. Several NGOs do provide legal assistance too; either through their own lawyers, or through contracted lawyers with whom they have agreements, or by doing referrals to other NGOs. These include Oxfam WAJ partners: Justice Without Frontiers and the Lebanese Council to Resist Violence Against Women; as well as *Rassemblement Démocratique des Femmes Libanaises* (the Lebanese Women Democratic Gathering), Kafa (Enough) Violence and Exploitation, and ABAAD – Resource Centre for Gender Equality. As long as they do not advertise that their services are free of charge, NGOs do not face any issues with the Bar Associations.

As for understanding the assistance and navigating through the judicial process, once again courts fall short of expectations. Some Christian courts have a social worker on their payroll, but their role is only limited to verifying the economic situation of those applying for judicial aid and, at times, advising on what would be best for the litigants’ children. Archdioceses cannot provide guidance themselves since, as shared by the interviewed Maronite bishop and Maronite and Melkite Greek Catholic judges: “it is not our role, we cannot support one party and not the other”. Guidance is thus left to court clerks and lawyers, leaving room for potential exploitation. The case seems to be different for the Greek Orthodox Church as the interviewed judge stated that the Court had certain hours in which it is open to the public to “dispel misconceptions”. In the Tripoli Sunni court, there are no social workers; “If only!” said a participant to the FGD with women supported through WAJ. Court staff and lawyers are consequently left to take advantage of litigants, especially women; in addition to what is traditionally called *semsar*: or a person, usually a man, who offers advice and help in the court in exchange for payment. The problem of *semsars* had grown to the extent

⁶³ Interview with Maronite judge.

⁶⁴ FGD with women recipient of legal aid through WAJ, Tripoli.

that judges have apparently forbidden them to enter the court. Yet, “we can only force them to stay out of the courthouse, we cannot say anything to them if they are outside the courthouse perimeter”⁶⁵.

Regardless of their confession, women face similar barriers in accessing justice. Limited knowledge of their rights, laws and procedures were cited by all fieldwork informants, and limited financial means were mostly prioritised by the women themselves and NGO representatives or lawyers. It is worth noting that the lawyers interviewed in Tripoli and Beirut/Mount Lebanon have observed an increase in the knowledge level of litigants in the last decade. Interestingly, this increased knowledge, along with higher visibility of women’s rights in the public and the media (following the anti-domestic violence law and the repelling of article 522⁶⁶), is not always considered by lawyers and judges to be positive. Some of them indeed believe that women have already gotten their rights, and men are increasingly the victims; this belief then shapes the provision of free support, or the lack thereof, as well as how some judges view women and their subsequent court decisions⁶⁷. Although social stigma was perceived to have decreased (taking into account the difference between rural/urban settings and socio-economic factors), traditional patriarchal social norms still discourage women from claiming their rights in both locations. JWF representative illustrated these ongoing pressures: “If you’re a man and you want a divorce, your family supports and encourages you to take your revenge. If you’re a woman, your family is ashamed of you”⁶⁸. A Christian woman supported by JWF also said: “My parents told me to come back home, but without my children. I couldn’t, I would never leave them”⁶⁹. Finally, and again similarly to what has been noted in other countries, the law itself was rarely mentioned as an obstacle, perhaps because of its intrinsic relation to religion.

Effectiveness

As can be expected, procedures differ among religious courts in Lebanon. While Orthodox courts follow the procedural law for civil courts, the Maronite and Melkite Greek Catholic courts have their own. For both the Maronite and Melkite Greek Catholics, the process is done according to the following steps: The first interlocutor is the priest who attempts to solve family disputes locally. Should this attempt fail, the complainant is

⁶⁵ Interview with judge at Tripoli Sunni court.

⁶⁶ Law 293 of 2014 on protection of women and family members from domestic violence, heavily campaigned for by Lebanese NGOs led by KAFA and repealing article 522 of the Lebanese penal code that allowed rapists to escape criminal prosecution by marrying their victims. Article 522 was repealed in 2017 following a campaign led by ABAAD.

⁶⁷ These points of view were noted, in various forms, during fieldwork from several interviewed legal actors including lawyers, judges, and bishops in both target locations. Reference to the same beliefs can also be found in the 2015 HRW report.

⁶⁸ Interview with JWF project lawyer and project manager.

⁶⁹ FGD discussion with women recipients of legal aid through WAJ, Mount Lebanon.

referred to the geographically-relevant archdiocese. The formal process is started at this level, first by listening to the complainant individually and then by calling the spouse for confrontation and reconciliation. Depending on the archdiocese and its capacities, this step is either done by “listening units” or individual priests or nuns. Should reconciliation be unsuccessful, the archdiocese attempts to get both parties to agree on certain rights, which will save them time and money throughout the process. Services provided by the archdioceses are all paid services whose prices range between 50,000 to 300,000 LBP (33 to 200 USD) depending on the archdiocese; such as the Antelias Maronite Archdiocese, which is known for its high fees. Nevertheless, the interviewed bishops stated that these payments can be waived, if needed, at the archdiocese’s discretion⁷⁰. The next step is at the court where the grievant first needs to register the lawsuit at the clerk office. Along with the lawsuit, and in case the plaintiff already has a lawyer, the power of attorney is also registered, and payment of court fees is made for both documents. The clerk then presents the lawsuit to the judge, who appoints a date for the first court hearing of which the defendant needs to be notified. Once the court reaches a decision, it is sent back to the archdiocese for validation of implementation before it is then taken to the civil implementation court. For the Greek Orthodox confession, since the archdioceses have their own courts, the process immediately starts with the registration of the lawsuit and, as mentioned above, the court decision is then validated for implementation by the implementation court. For the Melkite Greek Catholics and Maronites, one court ruling was not sufficient and, even if none of the two parties disagreed with the decision, going to the appeal court was mandatory. This is no longer the case since 2015 with the *Motu Proprio Mitis Iudex Dominus Iesus*⁷¹ that has amended the process; a first instance ruling is now considered sufficient, unless one of the litigants wants to appeal it. The objective of this measure that is set by the Pope is to simplify the process. All courts that answer to the Vatican have to follow it, but not everyone agrees with it as they see it as a facilitation (and, by extension, an encouragement) of divorce.

In the Sunni court, procedures are done according to the following steps: In case a lawyer is appointed, a power of attorney is signed then ratified at the court; the initiatory pleading (or divorce petition if relevant) is also written and submitted to the court, noting that this document can in theory be filled by the defendants themselves, but in reality is usually filled by the lawyer, in case appointed, or by the *semsar*. After registration by the clerk, the lawsuit is raised to the court president who then defers it to the relevant judge for approval and for setting a date for the first hearing. The defendant must then be notified, and the first session is usually dedicated (at least in part) to reconciliation. Once the judge has determined that the

⁷⁰ Interviews with Byblos and Antelias bishops.

⁷¹ Apostolic letter *Motu Proprio* of the Supreme Pontiff Francis *Mitis Iudex Dominus Iesus*, August 2015.

two parties do not want to reconcile, the lawsuit proceeds. Once a court decision is made, it needs to be taken to the implementation court for implementation.

The duration of litigation varies among the different courts included in the assessment. Of course, the length of proceedings depends on the type of case brought forward and its specificities. For Melkite Greek Catholics and Maronites, the procedural laws specify that first instance divorce lawsuits should take one year and their appeals six months, but both the relevant interviewed bishop and judges agree that it is not always the case⁷². The interviewed Greek Orthodox judge confirmed that lawsuits usually take up to one year and can reach three years if the case is particularly complicated. Other interviewed informants are less conservative in their assessment, with one lawyer even saying that it can vary “between one week to ten years”⁷³; making reference to the differences among courts, the Syriac court being known to have faster proceedings. In Sunni courts, the average was estimated at between one year to a year and half; this seems in line with the findings noted by Human Rights Watch⁷⁴ that set the average duration at a year and three months. As for the interviewed women themselves, their experiences differ with several of them stating that they have waited more than two years, and one woman claiming she has been trying to get a divorce for twenty-one years. This does not, however, mean that the lawsuit has been under examination for the whole period, but it was rather “paused” as the plaintiff could not afford the cost. Another point to keep in mind is that one lawsuit gives suit to another, so from divorce to alimony to custody to visitation, etc., which further prolongs the overall litigation duration.

Though length of process is attributed, in part, to the difference in procedures among the courts and among cases, many other factors are also at play. First, for Christians, the attempts to reconcile the couple at the archdiocese level can be too lengthy and take up to a year. The Byblos bishop explained this by saying that they sometimes delay the process intentionally because if “they [the couple] choose to go to court, there is no way back”⁷⁵. For other courts, including Sunni, reconciliation is also attempted, though not for such a long period of time. Women still feel frustrated by this step with many of them (both Muslims and Christians) agreeing: “If it hadn’t become unbearable, I wouldn’t have asked for the divorce in the first place!”⁷⁶ Another aspect that was noted by judges, clerks, and lawyers alike was the high caseload, particularly

⁷² Interviews with Maronite bishop of Byblos, Maronite judge and Melkite Greek Catholic judge.

⁷³ Interview with lawyer, Beirut.

⁷⁴ Human Rights Watch, *Unequal and Unprotected, Women’s Rights Under Lebanese Personal Status Laws*, 2015.

⁷⁵ Interview with Bishop, Byblos.

⁷⁶ FGD with women recipients of legal aid through WAJ, Tripoli and Mount Lebanon.

for the Maronite court which had registered the previous year 622 new cases and examined a total of around 1,500 cases (including those carried over)⁷⁷, and the Sunni court in Tripoli. The Greek Orthodox court in Mount Lebanon was estimated to have between 160 to 165 new cases per year while the Melkite Greek Catholic court counted 100 new cases per year approximatively⁷⁸. The two-month judicial holiday and Lebanon's official holidays (more than fifteen days a year) were also cited as factors; they were made worse in 2017 by the strikes held at the level of courts because of tax raises. In the case of the Maronite court, the interviewed Byblos bishop and court judges also made reference to the limited number of specialised judges, although, the Church seems to be addressing this issue. For the Sunni court especially, the fact that judges do not come on a daily basis, and that when they do, they sometimes only stay or examine cases for around three hours, is another contributing factor. The tactics used by litigants and their lawyers (especially the failure to appear in court) are also considered to be common by judges and clerks. The lawyers, for their part, thought that the duration of lawsuits also depends on judges and their personalities. Finally, money is also a factor to having cases sometimes paused while plaintiffs/women seek to save/borrow the needed funds.

Fieldwork interviews show that the gender perspective is almost systematically absent from the judicial process. NGOs have collaborated with the courts and the Bar Associations but the impact of this work is still confined to individual cases, and the judges who are known to take the women's perspective into account are too few. For the Maronite and Melkite Greek Catholic courts, informants made several comments on domestic violence, attempting to have a scale that ranges from "acceptable" to "unacceptable" acts of violence; knowing that for these courts, domestic violence in itself is not a valid-enough reason for divorce. Byblos bishop, though visibly understanding of certain vulnerability factors, said: "There is a difference between 'playing with hands'⁷⁹ and something else [more serious acts of violence]". This was, however, notably different for the interviewed Greek Orthodox judge; a reflection of the extent of the difference between personal status laws of both denominations. Furthermore, courts and judges seem, to a certain extent, detached from the realities of the litigants' lives, so, it is perhaps expected that they look at the marital bond as something that must be preserved, sometimes at any cost. As noted from primary and secondary data⁸⁰, the idea still prevails that the women requesting divorce are doing so in order for them to be able to enjoy their own freedom at the detriment of their

⁷⁷ Interviews with Byblos and Antelias bishop and Maronite judge.

⁷⁸ Figures shared by relevant judges in fieldwork interviews.

⁷⁹ 'Playing with hands' is a Lebanese expression that refers to small or insignificant physical fights.

⁸⁰ Interviews with Sunni and Melkite Greek Catholic judges, JWF lawyer, and RDFL representative and Human Rights Watch, *Unequal and Unprotected, Women's Rights Under Lebanese Personal Status Laws*, 2015.

families' comfort. Court rulings on alimony or custody often stem from this perspective. Women who go to court experience this point of view first-hand; it is further exacerbated if they do not have legal counsel. A woman recipient of WAJ legal services in Mount Lebanon shared her experience in attitude shifting: "Their attitude towards me when I went to court with JWF changed; they started to respect me and treat me differently"⁸¹. Additionally, the public's level of trust in religious courts is quite low across different confessions, and there is a general view that they are corrupt and care more about money and political ambitions than about justice and women's rights. Finally, to illustrate both the level of effectiveness of the personal status justice system in Lebanon and the inherent discriminatory nature of its laws, many litigants (usually middle to high income) resort to changing their sectarian affiliation to be able to file their lawsuits before the courts they consider more likely to grant them their rights.

Affordability

While fees at the Sunni courts are set by the state and unified across the different locations, the same cannot be said for the Christian courts that set their own fees; in the case of Greek Orthodox courts, fees are different in the different dioceses, with the Broumana dioceses being notoriously high. First, the procedural fees at the Christian courts are renowned to be high in Lebanon. Before giving examples of costs, an important point to note is that fees are intentionally high to discourage divorce. As summed up by the interviewed Maronite judge: "Fees are higher for things the Church wishes to discourage"⁸². Fees are also set to allow the courts to sustain themselves and to contribute to the Church's budget. They are not based on an analysis of the cost of living, poverty rates, or the minimum wage; courts that have smaller caseloads are thus likely to be more expensive (with some exceptions, such as the Greek Orthodox court in Beirut whose income is independent of the archdiocese and is able to maintain low fees). This confirms the afore-mentioned observation on courts as being (albeit to varying degrees) disconnected from litigants' realities and de-prioritising of any advocacy work aiming at reducing court fees, at least in the short to medium term. The judges and bishops interviewed during the fieldwork shared their perspective on the fairness of these fees since, even though they are high, people who actually need assistance can receive judicial aid and pay less. Looking at the fees, these range between 1,000,000 LBP and 2,000,000 LBP (666 to 1,332 USD⁸³) for marriage annulment petitions across the different courts included in the present assessment, with additional fees ranging from 325,000 to 750,000 LBP (216 to 500 USD) per presented reason; and alimony petitions range between 130,000 and 2,000,000 LBP (86 to 1,333

“ Informal fees are not described as bribery, as they aren't perceived as enabling access to better or fairer services, but rather as payments to get things done. ”

⁸¹ FGD with women recipients of legal aid through WAJ, Mount Lebanon.

⁸² Interview with Maronite judge.

⁸³ All applied exchange rates correct at time of writing report.

USD). There are also fees set for registering the power of attorney which range between 50,000 to 750,000 LBP (33 to 500 USD) as well as for any other request, including getting copies of the court decision. The consolidated cost can thus go as high as 7,000 USD⁸⁴. All payments made at all courts included in the assessment are consigned by receipts. To avoid having to pay informal fees, notifications/summons can be done via an official courier service (Aramex) and are thus more easily traceable and reliable. Fee lists are also hung in courts. It was not possible for us to verify this during fieldwork, as courts were still on judicial holiday, but it was confirmed by lawyers. Formal fees paid at Christian courts also include lawyer fees which usually range between 4,000 to 6,000 USD but can go much higher depending on the complexity of the case, the litigant's financial situation and the lawyer's reputation. To note, the Maronite court has attempted to regulate these fees by requesting lawyers to keep their fees between 2,000 and 5,000 USD, but in practice the court does not have any authority over them. Lawyers sometimes resort to having two agreements with their clients, one presented during registration at the court which includes fees within the suggested range, and another one that reflects the actual agreed amount. Women interviewed during fieldwork consider these fees as too high, even considering that they might be justified. A Mount Lebanon FGD participant stated: "3,000 [USD] is normal for them [lawyers], but for us, it is too much!"⁸⁵. In Tripoli, lawyer fees start at 1,000 USD and can go up to 7,000 USD, according to interviewed lawyers. They are similarly set based on complexity and the projected duration of the case, the litigant's financial situation and the lawyer's reputation.

“ In Lebanon, an employed woman who earn minimum wage have to pay between two to thirty-one times their monthly income to claim her rights in religious courts. ”

Formal court fees in the Sunni court are much lower overall and usually cost between 100,000 to 600,000 LBP (66 to 400 USD); for example, a divorce petition is set at 50,000 LBP (33 USD), custody at 17,000 LBP (11 USD), guardianship at 17,000 LBP (11 USD) – again, keeping in mind that one lawsuit leads to another. These fees are consigned by receipts, but the list of fees is not hung in the court house. When asked about the reason for this, one of the two interviewed judges said: "We had it hung before, but I think it has been removed. It is available online". Even assuming that women (or other litigants) have access to internet and know where to look for these fees, it is undeniable that this absence of information encourages ill practices, exploitation and bribery. To note, the price list available online includes a post scriptum stating that the fees are set "in principle" and that judicial fees and Sharia court procedure laws must be taken into account⁸⁶.

Exploring informal fees, these are mostly paid to court staff tasked with delivering notifications/summons. To avoid making these payments at

⁸⁴ El-Zein F., *Women's Access to Justice in the Middle East, Challenges and Recommendations*, Oxfam, 2014.

⁸⁵ FGD with women recipient of legal aid through WAJ, Mount Lebanon.

⁸⁶ Fee list available at: <http://slc.gov.lb/default.asp?MenuID=34>

Christian courts, it has been made possible to deliver notifications/summons through Aramex, but this service is not used by all; some lawyers preferring to maintain their networks and pay for certain papers to be delivered very quickly, or very slowly, depending on their needs. In fact, the interviewed Melkite Greek Catholic judge clearly stated that the problem with the notification process has been created and sustained by lawyers themselves⁸⁷. At the Sunni court, notifications and summons are still delivered in the traditional way, by clerks or the police. Though both are actually civil servants and are paid salaries, they generally still ask for payment in exchange for their services. The interviewed clerk at the Sunni court said that the money is paid for transportation and it is allowed by judges. He further said that sometimes they do not require payment; though this was found to be very rare, according to the interviewed women⁸⁸. There is an agreement among FGD participants that, in general, to ensure the notification is delivered to the defendant, you have to pay. Going even further, women shared their experience of having the clerk or police officer come back and tell them they had not found the defendant after being paid by the latter to say so. To ensure the notification reached the defendant, one woman explained what she had to do: "I gave the clerk 50,000 LBP (33 USD) and told him 'if he offers you more, tell me and I will give you the same amount'. That's how I got my notification delivered"⁸⁹. Another part of the informal fees, and potentially, the biggest one, happens at the civil implementation courts where any request (a photocopy, retrieving a file, etc.) has to be paid for; otherwise, you risk not getting what you are requesting. At the implementation courts that are usually very crowded, clerks are very influential as they are the ones who prepare everything for the judges (since they have to deal with massive caseloads) and who can "make or break" a case; they can thus be described as "judge whisperers".

As for hidden fees, in the case of Lebanon, which are fees that are unplanned or un-budgeted (at least by women) and include transportation costs and any fees to be paid to experts needed in the lawsuits (such as psychologists). Transportation costs are of particular relevance for the Melkite Greek Catholic and Maronite women, as there is only one first instance court for each denomination (one for the Melkite Greek Catholic Church and one for the Maronite Church). Their numerous comings and goings can get too expensive for them quite quickly.

In addition to the above-mentioned informal fees, bribery can take another form. In fact, none of the informants interviewed during fieldwork described these informal payments as bribery since, in their perspective, these payments are not made to ensure they get a better or fairer service, but to get things done. "This is how things are in Lebanon" and "here, there is no justice system of integrity, there is only money" were some of

⁸⁷ Interview with Melkite Greek Catholic judge.

⁸⁸ Interview with court clerk, Tripoli Sunni court.

⁸⁹ FGD with women recipient of legal aid through WAJ, Tripoli.

the statements made by women participating in the FGD⁹⁰. While lawyers seemed to sway between confirming the possibility of bribing judges and denying it, it is clear that such practices do exist. For example, while one of the two interviewed lawyers in Tripoli replied “no” when asked whether justice could be bought, he later gave the example of a case he was able to wrap up very quickly because his client was financially well-off⁹¹. Responses of other lawyers ranged between confirming such practices are done by others (but not by them) or are possible in implementation courts not in religious courts and a very blatant “yes, for judges are human after all”⁹². Judges in the Sunni court were adamant that judges are not bribed and that talks about bribing judges for favourable rulings were tactics used by unscrupulous lawyers to take more money from their clients. The same perspective was shared by the interviewed Melkite Greek Catholic judge, whereas the Maronite judge and bishops stated that it sometimes happens, “a human error”, and that the Church is taking measures to ensure these practices are stopped. For their part, women all agreed: bribing judges and buying justice is possible. A participant to the FGD in Mount Lebanon said: “You can of course buy justice, with money, or something else”. Agreement on this “something else” was also shared among women, and several of them gave examples of times when they had seen women dressed suggestively in court and had their requests immediately met. Women in the Tripoli FGD shared their opinions on the practicing Sunni judges; judges who could be influenced by women’s physical appearance were named (off-record) and the women seemed to have them already identified. JWF lawyer and project manager, for their part, were also blunt, specifically talking about the possibility of bribery at the implementation court: “You can buy justice with a sandwich, a cropped top, a smile”⁹³, referring again to the big role played by clerks in these courts.

Claiming one’s rights in Lebanon’s religious courts is definitely expensive, costing anywhere between 1,000 to 14,000 USD. The actual cost of justice for poor women is staggering if we take into account the Lebanese minimum wage, currently at 450 USD per month. This means that the employed women who earn minimum wage have to pay between two to thirty-one times their monthly income. These figures become even more concerning if we also take into account figures from 2010 study on gender in the labour market conducted by the Lebanese Central Administration of Statistics and the World Bank, according to which women only constitute 25% of labour force and earn 75% of their male counterparts’ pay. Employment rates of married women are also lower than those of

⁹⁰ FGD with women recipients of legal aid through WAJ, Mount Lebanon.

⁹¹ Interviews with lawyer, Tripoli.

⁹² Interviews with lawyers in Sunni and Christian courts.

⁹³ Interviews with JWF project lawyer and project manager.

unmarried women, 59% and 34% respectively⁹⁴. The majority of women interviewed during fieldwork were indeed unemployed. Traditional social views still box women in their reproductive role, further limiting their economic independence. A participant in the Mount Lebanon FGD stated that “when you get married, you become his property”⁹⁵.

Women fund their pursuit of justice mostly from support from their families or from selling assets (mostly jewellery), and in some cases through loans. All women recipients of legal aid through WAJ stated that, were they not supported, they would not have gone to court or would have waited until they had saved enough funds before going. For them, money was the biggest deterrent. Exploitation and swindling are also traps women fall more easily victims of. While in Tripoli, interviewed women had only heard of such cases, in Mount Lebanon, one of the FGD participants related how her first lawyer left her because: “he was getting neither money nor ‘something else,’ and he told me he could not help me anymore because there wasn’t anything in it for him. I paid 1,300,000 LBP (860 USD) for a lawyer to work on a document for me; when I went to court with this paper I was told it was worth nothing. I confronted him, he only gave me back 400,000 LBP (264 USD)”⁹⁶.

Yemen⁹⁷

Accessibility

As stipulated by the Constitution and the Law of Judicial Power, the court system is based on an independent and integrated judiciary. It is constituted of a hierarchy of three levels: courts of first instance, courts of appeal, and finally the supreme court. Courts of First Instance are located in each district, have a single judge or a three-judge panel, and hear civil, criminal, commercial, and family cases. The number of judges and court divisions depend on caseloads, population size, and availability of judges. Decisions can be appealed at the Courts of Appeal at the province level⁹⁸. Personal status matters are ruled by the Personal Status Law number 20/1992, subsequently amended in 1998, and follow procedures outlined in the 40/2002 court procedures law that applies for civil, personal, and commercial cases.

The Yemeni Ministry of Justice includes a Women and Children Department led by a female judge who has confirmed that the Ministry

⁹⁴ Human Rights Watch Submission to the CEDAW Committee of Lebanon’s Periodic Report, 62nd Session, February 2015.

⁹⁵ FGD with women recipients of legal aid through WAJ, Mount Lebanon.

⁹⁶ Ibid.

⁹⁷ Unless otherwise specified, data included in Yemen section has been taken from Yemen fieldwork report, prepared by Ali Saleh Mkaleh.

⁹⁸ Al-Zwaini L., *The Rule of Law in Yemen Prospects and Challenges*, Hiil Rule of Law Quick Scan Series, 2012.

follows up on certain cases filed by women in courts and appoints a lawyer providing free legal aid to women who are unable to afford the procedures on their own. The department includes two units for women, one for “protection of women affairs” and the other for “legal aid”⁹⁹. A similar department exists under the Ministry of Interior, and it particularly supports family dispute matters. This department, though not evaluated for effectiveness or efficiency under the present assessment, represents a unique model of duty-bearers’ response to women’s needs and deserves to be studied for possible replication in other countries.

In Hodeida, two courts currently hear and implement PSL cases, one in the north and the other in the south. They follow the typical hierarchy of courts of first instance, starting with the president of the court at the top, to the PSL judge, and finally the clerks. In light of the current conflict, physically accessing these courts has become more difficult especially for those who do not live close by, as some roads may be bombed. Fieldwork has noted that people prefer not to go to courts (and other locations where people assemble) for fear of bombs.

Courts do not include a specific mechanism or section that specifically deals with women’s cases. Female lawyers delegated by MoJ provide support on-site to poor women and offer legal aid for the whole process; this service is advertised within the court itself. However, it is important to note that, as observed during fieldwork, there are no clear guidelines for assessing cases and determining the level of vulnerability and need. The need for free support is determined by the judge who is the only person who evaluates needs and, consequently, requests that free assistance is provided. According to the interviewed lawyers, the Bar Association “encourages” free legal aid provided to women; there are, however, no formal mechanisms set in place. Support is actually provided on a case-by-case basis depending on the lawyer’s readiness and the woman’s situation. Absence of a formal legal aid scheme was justified with the current conflict in Yemen and dire economic conditions, as well as with the belief that supporting women cases without any financial compensation might give rise to potential suspicions. Provision of support by fresh-graduate lawyers was also rejected due to their lack of experience.

Discussions with women confirm findings of the research conducted under WAJ-Phase I that limited knowledge of rights and the judicial process as a whole, including fees and mechanisms for fee reduction or cancellation, hinders women’s access to justice. These gaps in knowledge were also noted by all fieldwork informants, including duty-bearers, but still remain unaddressed. Courts do not have any mechanism or staff member tasked with providing overall administrative guidance and support for navigating the process. This gap increases women’s vulnerability to exploitation by court staff, the absolute majority of whom

“ Courts lack adequate human resources and infrastructure. They are almost exclusively staffed by men, contributing to discriminatory attitudes and behaviours against women. ”

⁹⁹ Ministry of Justice of Yemen organisational chart, available at: <http://www.moj-yemen.net/corsector.aspx>

are all males, or other men present in court for their own business or cases. Yemeni Women Union was mentioned by all informants as being the only organisation they know of that provides free legal support. Judges confirmed that YWU's assistance was both effective and efficient and that cases are referred to them without the need for a formal agreement. The women interviewed during focus group discussions also reflected that they would only seek support from an organisation that has female employees.

Though access to justice is, in theory, guaranteed by law, it is in reality hindered by traditional and patriarchal social norms, for it is not customary or accepted by cultural values for women to claim. Other obstacles include women's high illiteracy and poverty rates, limited awareness of their rights and absence from public life and the workforce. Access is particularly difficult for poor and rural women without a male family member and/or who are from marginalised communities. The infrastructure of the judicial system, with its overcrowded courtrooms and the fact that they are inadequately equipped/staffed to meet women's needs, and the rampant corruption that plagues it, further discourage women from choosing the course of litigation. The ongoing conflict has also, of course, negatively impacted accessibility to the justice system. As mentioned above, physical access to courts was reduced due to the fear of bombing. In addition, the cost of living has significantly increased (including the cost of fuel and/or transportation), and the worsening security situation poses additional restrictions on women's movements; making the journey to the district court less affordable and more challenging for them. The informants also mentioned that priorities of life under conflict shift to focus more on livelihoods. As a result, women seem to resort more to informal tribal justice systems or seek conflict resolution from their families and communities in order to address their problems, thus, potentially increasing their exposure to family pressures and deepening their lack of protection from family abuse. Fieldwork also noted that women are dropping their cases in court and/or renouncing their rights because they are unable to afford the fees or have many other priorities to deal with. Interestingly, the judges interviewed during fieldwork noted an increase in the number of women using the formal justice system in recent years. They linked it to a shifting of social norms away from the culture of shame and towards an increased acceptance of women claiming their rights and appointing lawyers.

Effectiveness

As previously mentioned, the procedures for PSL and civil cases are the same and are done according to the following steps: In case a lawyer is appointed, a power of attorney is signed then ratified, first at the local authority level (*ma'amun*), then at court. The initiatory pleading (or divorce petition if relevant) is then written and submitted to the court; this document is usually produced/filled by the lawyer, or in case no lawyer

was appointed, by a local community or religious leader. The lawsuit is submitted to the court president who then defers it to the relevant judge for approval. After this stage, it is sent back to the clerk for registration before being referred to the relevant judge who sets a date for the first session.

According to the lawyers, judges, and clerks interviewed during fieldwork, the lawsuit duration varies depending on the nature of the case; some women gave examples of cases taking up to one year for alimony and two years for divorce. The length of the judicial process is attributed to many internal and external factors: The most recurrently-cited factors, considered of high impact, are the limited number of PSL judges (the North Hodaïda court, for example, only has one PSL judge) and the high number of cases brought to the court. The judicial holiday of two and a half months also contributes to this delay, especially in the previous period which has witnessed repeated strikes due to non-payment of salaries. The mandatory publishing of convening court sessions in the Official Gazette (published twice a month¹⁰⁰) is another procedural impediment, especially in cases where the defendant repeatedly fails to appear in court. Stalling by one of the two parties has indeed also been mentioned as one of the reasons for lengthy processes and is often used as a tactic to push the other party to waive their rights or drop the case (in some cases, while they reach an agreement). Lawyers working under WAJ at YWU also stated that lawsuits do not have a set duration; even for similar cases, one case can be resolved within a month, whereas the other could take up to two years. This can have an impact on associated costs, including lawyer fees, and psychological burden.

During the two-month judicial holiday, the court of urgent matters provides an avenue for expedited court decisions for two types of urgent PSL cases: Child custody and child alimony and visitation. It is important to note, however, that its decisions are not final and only temporary; for example, a ruling for an alimony is only valid for two months, after which the case has to be taken back to the normal court for final decision.

The length of lawsuits is a reason why women drop their cases or waive their rights because of the emotional and psychological toll it takes on them, but also because of the financial and economic requirements that increase along with duration. Several women were met in court during fieldwork, and they expressed their will to reconcile or drop their case because of associated costs, whether formal, informal, or hidden.

YWU consider the gender lens to be totally absent throughout the judicial process. Differences in the roles and responsibilities of women and men, and access to and control of resources are not taken into account. Most court staff, and for that matter employees of the judicial system, are males. The public opinion of courts and judicial procedures is negative, in general, owing to the perceived levels of corruption, bribery, and

¹⁰⁰ Republican decree of law 27/1992 on the Official Gazette.

nepotism¹⁰¹. When asked who (or whose behaviour) they would change, the women interviewed during focus group discussions unanimously stated that they would change the judges because they are perceived to be corrupt and to be the main reason for the lengthiness of judicial procedures. Most these women have additionally related that, after their experience, their trust in courts and judges has decreased.

As mentioned above, women's knowledge of the judicial process is low. Informants confirmed the same to be the case for men; albeit to a lesser degree as they admittedly have more freedom (and space) in both the private and public spheres. As such, they are more likely to be able to access information and to face less difficulties in filing lawsuits. Their capacity to influence decisions in their favour, informally, was unanimously agreed on thanks to their higher financial status (men are often the sole breadwinners). It is easier and socially more acceptable for them to both claim their rights and meet with judges and court staff in informal settings (such as *qat* sessions). They also have a bigger social network on which they can draw to exercise pressure on court staff and judges, if needed. When asked whether justice is more accessible for men than it is for women, all fieldwork informants agreed (for reasons laid out above); interestingly, no mention was made of the discriminatory nature of the personal status law itself.

Affordability

The court fees law number 26/2013 lays out the fees for PSL cases in its third section. While cases related to death and inheritance incur a cost of 1,000 Yemeni Riyals (equivalent to 3.99 USD¹⁰²), lawsuits related to separation and divorce (different types), marital rights, alimony, child guardianship, and proof of child parentage are all exempt from this fee¹⁰³; noting that this exemption is made irrespective of the sex and/or the financial/economic status of plaintiffs. This does not mean, however, that the process is free of charge, in terms of formal, informal, or hidden costs.

Looking at formal fees, costs incurred start first with the initial consultation with the lawyer for which a fee is not set but is reported to start at 3,000 YER (11.98 USD) and to go much higher depending on the case, lawyer, and plaintiff. Noting that in rare instances, this service is provided for free. Once decision to go to court is confirmed, ratifying the power of attorney costs 2,000 YER (7.99 USD) at *ma'mun* level and 3,000 YER in the court¹⁰⁴. Drafting the initiatory pleading is for around 1,000 YER and publishing the announcement in the Official Gazette to invite the

“ The overall economic and political situations and inequalities fuel corruption and bias against women ”

¹⁰¹ EVA Team, *Baseline Study “Women’s Access to Justice in the Middle East and North Africa Region - Phase II”*, Oxfam, 2015.

¹⁰² All applied exchange rates correct at time of writing report.

¹⁰³ Yemeni court fees law number 26/2013, section 3, articles 13 and 14.

¹⁰⁴ Mkaleh A., *Yemen fieldwork report*, October 2017.

defendant to court is 24,000 YER (95.90 USD). The announcement can be published for up to three times in case the defendant fails to appear in court¹⁰⁵. Lawyer fees for divorce, custody, and alimony cases vary between 50,000 and 90,000 YER (199.81 and 359.65 USD) and can reach up to 150,000 YER (599.43 USD), usually paid in three instalments at the beginning, middle, and end of the case at the court of first instance¹⁰⁶. Should the lawsuits be taken to the appeal court, the fees then increase. Fees may change when a case is manipulated or multiple cases filed at the same time to delay the process. This is also the case for lawsuits that are transferred from one district court to another based on geographic jurisdiction; for example, while marriage dissolution lawsuits are heard by courts with jurisdiction over the husband's place of residence, alimony cases are examined by courts with jurisdiction over the wife's place of residence, further increasing both costs and duration.

As for informal fees, they are incurred both inside and outside the court. According to informants, many payments are made to court clerks; they range between 8,000 and 25,000 YER (31.96 to 99.90 USD) per lawsuit and depend on the case itself, the court clerk and the judge. While these payments are, for all intents and purposes, bribes, they are referred to by lawyers, judges, and clerks as "facilitation fees" paid to facilitate and accelerate the handling of cases. Part of the payment made for ratification of the power of attorney is also informal¹⁰⁷. Similar to other countries included in this assessment, and contrary to what could be expected, these fees are not applied covertly, but are rather asked for quite openly and have become part and parcel of the judicial process and planned in the projected expenses, even though they are not consigned by receipts. They seem to be accepted as such, especially in light of the current situation in the country: soaring prices, increased inflation, and the non-payment of public servants' salaries. They represent, according to the assessment of the lawyers interviewed during fieldwork, around 90% of the overall costs incurred in court. So, while formal court costs are considered to be very suitable, and there is no need to further decrease them, these informal payments are what causes the overall cost of justice to increase, sometimes ten-fold. It is worth noting that these informal fees are recognised by judges themselves, with one of them stating during fieldwork: "What would you expect from a judge or clerk or court staff who can't provide for his children?"¹⁰⁸. This was not the case for the interviewed clerks who stated that the overall cost is low and that there are no informal fees. This denial could be attributed to fear of accountability or concerns of complaints from people who could possibly be in situations of financial precarity, themselves; highlighting the need to address access to justice issues from a holistic and cross-sectional

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

perspective.

Hidden costs include costs of transportation to and from the court (depending on distance), gas prices, and transportation means. They have been estimated by informants to reach 8,000 YER on average per case (this sum does not include additional transportation costs incurred upon the transfer of case to another court, both at first instance and appeal levels). Hidden costs also include the cost of case file copies that cannot be done at the courthouse for lack of electric power and for which lawyers estimate they pay around 10,000 YER per case (39.9 USD).

Caseload and corruption levels, added to the current security situation, make it very difficult to predict what the ultimate cost will amount to. Looking at figures provided under the present assessment, it is estimated that consolidated PSL lawsuit costs range between 85,000 and 273,000 YER (340 USD to 1,090 USD approximately) when a lawyer is appointed and between 59,000 and 107,000 YER (235.71 to 427.48 USD) in case legal representation was provided for free, either through the Ministry of Justice or through the Yemeni Women Union. In a country where GDP per capita for 2016, according to World Bank figures is 990.3 USD¹⁰⁹, these costs represent between 34% and 110% of the total average yearly income for women who appoint their own lawyers, and between 23.8% and 43.16% for women recipients of legal aid. It is important to keep in mind that women in Yemen are often unemployed and solely depend on their spouses for income and that, if other marginalisation and vulnerability factors are taken into account, these ratios are likely to be higher in reality. Looking at sources of funding for PSL cases, women participants in FGDs have shared that funds are usually advanced to them by their families and relatives, in addition to assistance from others. Yet, it is not clear whether this support is considered a donation or a loan. Women who had received free legal support from YWU all confirmed that had they not been provided free legal aid, they would not have sought to claim their rights in court and would not have filed lawsuits.

In addition to the fact that the costs seem to be exorbitant, especially for poor women and those in vulnerable/marginalised situations, accessing justice is further hindered by corruption. Additional payments that could be qualified as “blatant bribery” for the purpose of the present assessment (as opposed to “informal fees”) also seem to be fairly common in order to stall or tip the scales in favour of one party over the other; making justice even less attainable for women who cannot afford these costs or do not have the needed social capital to influence court staff or judges.

Money is recognised by all informants, especially interviewed women, as being the main driver behind justice, in general, and lawsuits, in particular. Women unanimously thought that paying bribery would ensure they got a ruling in their favour.

¹⁰⁹ World Bank data for Yemen, 2016, available at:
<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=YE>

One key point to take into consideration when looking at cost and affordability is the clear disparity in the figures shared by informants in this assessment and in others, such as the previously-referenced baseline survey and research. Though these differences make it challenging to actually price access to justice, they reinforce the assumption that costs are not fixed, depend on a series of factors at multiple levels, and leave an important margin for case-by-case negotiation and, potentially, exploitation.

Conclusion and recommendations

Looking at personal status laws and courts across the four countries, common themes emerge:

- Though differing among countries and confessions, personal status laws are all discriminatory against women.
- Courts lack adequate human resources and infrastructure. They are almost exclusively staffed by men, contributing to discriminatory attitudes and behaviours against women
- Widespread corruption and insider influence are common and contribute to further marginalising and discriminating against poor and marginalised individuals, especially women.
- Basic knowledge of personal status rights, laws, and procedures is still limited and contributes to the marginalisation of women.

In addition, it is important to take into account the following considerations:

- Women's access to employment or paid work is still lower than that of men.
- Marriage is considered a source of income for women; this is not only a social view but is also reflected in the personal status laws themselves.
- The cost of access to justice for personal status cases goes beyond the costs (formal, informal, and hidden/indirect) paid to finance the process itself; it extends to life after divorce, during which women are more likely to sink into deeper poverty.
- Traditional social norms and practices still, in general, shame women for claiming their rights.
- The overall economic and political situations and inequalities fuel corruption and bias against women and poor and marginalised individuals.
- While building relations with duty-holders and other stakeholders is key, it is important to make sure that the provided support is not co-opted and that responsibility is not devolved from duty-bearers to rights-holders.

With this in mind, the below recommendations are made.

- In general, while service provision and legal awareness continue to be a priority, it is recommended that these actions be slowly phased-out. Influencing work needs to be significantly scaled up if change is to be achieved at scale and sustainably.
- Knowledge production and management need to be invested in strategically. Research, assessments, and studies are needed to provide evidence on effectiveness, accountability, and fairness of the personal status justice systems in the target countries; and data needs to be generated to be used for advocacy. For this to happen, Oxfam needs to reach out beyond its current partnership base and consider working with other bodies, including think tanks, research institutions, universities, local and/or regional CSOs, and other INGOs.
- Networking and alliance-building with organisations/entities specialising in law and justice and in gender justice and women's rights are key to ensuring relevance, complementarity, and ultimately effectiveness and impact of access to justice work.
- Programmatic and influencing connections and networking with organisations working on economic empowerment is also key. Oxfam and its partners need to adopt a holistic (and more transformative) approach to women empowerment; and build programme and campaigning links with other organisations, since covering the immediate need for legal aid is not a sustainable solution, and response to the challenges of access to justice needs to also address wider strategic economic needs.
- Influencing lawyers and courts to reduce fees seems like an unlikely win, in the short to medium term. It might be more efficient and effective to focus influencing work on assessing current fee-reduction mechanisms and/or state-mandated or state-provided (using the Yemen model) legal aid. Accordingly, calling for their activation, amendment, and/or transparency to ensure they reach individuals in need.
- Knowledge production, advocacy, and campaigning work could also focus on targeting governments to increase state budget allocated for the overall personal status justice apparatus, including training of court personnel, amelioration of court infrastructure, and improvement and reactivation of the state funds dedicated to ensuring women are paid alimony and other relevant payments in case husbands are unable/unwilling to pay.
- Influencing work could target donors to increase their funding of identified priorities and/or to pressure the states recipients of these funds. This could be done by Oxfam with the donors it already works with as "partners," as well as with other INGOs (including Human Rights Watch).

Annexes

Annex I – References¹¹⁰

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