

Women's Access to Justice

A Framework for Inquiry



النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

Women's Access to Justice

A Framework for Inquiry 2017



النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

| EXECUTIVE SUMMARY

This report analyzes the status of women's access to justice in Jordan, with a particular focus on the Shari'a court system. Through a review of relevant laws, research, and international conventions, it identifies legal, social, and institutional barriers to women's access to justice. At the same time, it traces gaps in the justice system related to: legal aid services; economic and human resources; and gender sensitivity. The report proposes a framework of inquiry - based on international experiences - that allows for systematic analysis of women's access to justice in Jordan. Additionally, it offers key analytical recommendations for facilitating women's access to justice by way of increased gender sensitivity, enhanced dispute resolution and enforcement mechanisms, and quality legal support services. With continued coordination between institutional and civil society stakeholders, an enabling environment for women's access to justice can be established with an adequate supply of institutional resources to facilitate the process and meet current demands.

KEYWORDS

Women's rights, access to justice, personal status law, PSL, legal aid, justiciability, Shari'a courts, legal awareness, legal literacy, gender sensitive, justice institutions, legal system, accountability, accessibility, civil society, political justice, economic justice, social justice, dispute resolution, court execution, gender justice, litigation, court fees

ACRONYMS

ARDD: Arab Renaissance for Democracy and Development

CEDAW: Convention on the Elimination of all forms of Discrimination Against Women

CSO: Civil society organization

NGO: Non-governmental organization

PSL: Personal status law

ABOUT ARDD

ARDD is a civil society organization and a think tank that aspires to create all-inclusive intellectual and developmental change in the spirit of the Nahda - The Arab Renaissance through achieving social, economic, and political justice, and assisting vulnerable segments of society in acquiring their rights.

Our vision is to empower the people of the Arab world to create a democratic society where all have access to justice regardless of status, and the ARDD mission is to initiate a civilizational message of renewal and to revive an ethical and value-based society in Jordan and the Arab world.

TABLE OF CONTENTS

Executive Summary	3
Keywords	3
Acronyms	3
About ARDD	3
Introduction	6
About Women's Access to Justice	7
1. Women's Access to Justice: Elements for a Framework of Inquiry	9
1.1 The Establishment of an Enabling Environment	11
Political Justice.....	11
Economic Justice.....	12
Social Justice	12
1.2 The Supply of Legal and Institutional Resources	13
Availability of Legal Aid	13
Accessibility of Legal Aid	14
Human and Institutional Resources of Shari'a Courts	15
Timeliness of Shari'a Courts	16
Affordability of Shari'a Courts	17
Accountability and Transparency of Shari'a Courts.....	18
1.3 The Demand Side: Women as Right-Holders	19
Justiciable Issues.....	19
Legal Awareness and Literacy.....	19

Navigating the Legal System 21

Gender-Sensitive Courts 22

Satisfaction and Trust of Justice Institutions 23

2. Key Takeaways 24

 Facilitation of an Enabling Environment 24

 Enhanced Supply of Dispute Resolution Mechanisms 25

 Strengthen Enforcement Mechanisms for Execution of Court Ruling 25

 Ensuring the Availability of Quality Legal Awareness and Legal Literacy..... 25

3. Conclusion..... 26

4. References..... 27

INTRODUCTION

Access to justice “encompasses all the elements needed to enable citizens to seek redress for their grievances and to demand that their rights are upheld” ([UNWomen, Council of Europe, 2015](#)).” Its critical importance in enabling the fulfillment of social and state development goals has become increasingly recognized: Goal 16 of the post-2015 Sustainable Development agenda outlines the necessity to promote “peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” ([United Nations, 2017](#)).

Despite its importance vis-à-vis human rights, access to justice, however, remains elusive for many. This is especially true in the case of women. Across the world, the agency of women is restricted as they are often excluded as power-holders, decision makers, or influencers of change. Their access to dignified and sustainable livelihoods is hindered, and even women who have seemingly overcome these barriers, still face inequity and discrimination ([UNWomen, n.d.](#)). It is in light of these pervasive challenges, that in its General Recommendation No. 33 of 2015, the CEDAW Committee gave particular attention to women’s access to justice. As noted in the report: the right of access to justice is essential to the realization of the rights protected under CEDAW.

As per these recommendations, as well as the goals of human rights instruments, “a new space for justice” has emerged in which improving access to justice – especially for women - has shifted closer to the center of development initiatives. In this context and with a view to improve women’s access to justice, there is an urgent need to outline appropriate analytical instruments. To this end, and as part of our ARDD efforts in supporting women’s access to justice in Jordan, ARDD has developed this “framework for inquiry,” for a comprehensive bottom-up analysis of women’s access to justice in Jordan. The framework of inquiry is inspired by the categories outlined in the UNWomen and the Council of Europe in their 2015 report Framework for Measuring Access to Justice, as well as the lessons learned in the Women’s Access to Justice project, this report aims to foster the development of such a framework.

Women's Access to Justice (WAJ) is a programmatic priority for ARDD. It started as over six years ago as a regional project implemented in several states across the Middle East and North Africa, including: Egypt, Iraq, Jordan, Lebanon and Yemen. In partnership with Oxfam GB and CBOs, ARDD has been implementing WAJ with the aim of addressing the structural challenges that restrict women's ability to claim their rights.

The first phase of the project spanned from May 2011 until July 2014. Over the course of these three years, ARDD conducted several activities including delivering 3,245 consultations to women and litigating 53 cases on behalf of women. Further, over three years, community facilitators took part in training 3,022 women and 210 men in a total of 227 awareness sessions. Additionally, ARDD undertook a broad range of advocacy activities during the implementation of WAJ Phase I. These advocacy activities included (among other things): two films; events such as conferences, roundtable discussions, participation in Marathon; and drafting content for print media and online publications.

Building on the successes and lessons learned in WAJ Phase I, from 2014 to 2017, ARDD implemented the second phase of the Women's Access to Justice (WAJ) project, also in partnership with Oxfam and funded by the Ministry of Foreign Affairs of Finland. The second phase aimed at reducing the vulnerability and suffering of disadvantaged women by building on their human capital, facilitating their access to the legal system and securing just outcomes. At a regional level, WAJ Phase II introduced new programming in Egypt and Yemen, while expanding its prior programs in Jordan and Lebanon. In Jordan, WAJ Phase II was expanded to East Amman and Zarqa governorates in Jordan, and sought to create change at the individual, community, institutional, and regional levels, through a holistic approach that combined legal, psychosocial, and financial empowerment, in addition to capacity building and community engagement. The project connected various stakeholders from the community, media, and government, and decision makers like Shari'a court judges, municipal court personnel, NGOs, and women themselves in order to break down social and legal barriers that obstruct women's access to justice, and help them to amplify their voices and take on leadership roles in the community.

Additionally, on November 20th, 2017, an event to discuss the findings of the WAJ Phase II project was held, in which stakeholders and decision makers, such as representatives from the judicial, educational and media sectors, civil society organizations, and international organizations, gathered to examine the outcomes and recommendations of the project and address the current status of women's access to justice. Through learning from this event and extended interaction with beneficiaries of this project, as well as project results and research, an analysis of women's access to justice in Jordan was conducted. This paper seeks to explore institutional barriers to women's access to justice by looking into the current situation, and outlining the challenges in the enabling environment, supply, and demand of resources and proposing recommendations for mitigating these challenges. The paper also aims to trace and critique gaps in laws, in the day-to-day functioning of the Shari'a Courts and of the penal system, and in the unavailability of free legal representation, while proposing suggestions for a way forward. With this goal, a review of relevant laws, research, reporting, and NGO work were conducted to identify obstacles to women's access to justice and the provision of a supportive environment for justice.

A note on methodology

To inform this framework of inquiry, an extensive desk review of available literature on international frameworks governing women's access to justice was conducted. The desk review also sought to gather information about the status of women's access to justice in Jordan more specifically. In the prism of the WAJ II project, ARDD conducted several focus group discussions with women beneficiaries to collect firsthand insights about their experiences throughout their journey to access justice through Shari'a courts in Zarqa governorate. ARDD also conducted several semi-structured interviews with practitioners and legal experts including lawyers who provided legal counseling and representation to the project's beneficiaries. ARDD also conducted field visits to Shari'a courts in Zarqa to observe the physical location of the courts and assess its accessibility. In addition, the discussions which took place in the event held to conclude the WAJ II project were used to inform this framework of inquiry.

In addition to the above, this inquiry relied on the findings of ARDD's recent research project on Justice Sector Reform which was done with the support of the European Union during October, November, and December of 2017. As a part of the research, a survey was administered in several governorates across Jordan. The survey consisted of three parts: for those who have taken a legal matter to court, there is a section regarding satisfaction with the justice process. For those who did not take a legal matter to court (or did not have a legal matter to take to court), there is a section regarding perceptions of the justice process. The third part, which was directed to all survey respondents regards perceptions of both justice reform initiatives and justice-related issues. The survey also made distinction between the experiences of those who sought legal matters through Shari'a courts, and those who sought legal matters in Civil Courts. The current framework of inquiry will rely on findings based on the experiences of those who pursued legal matters in Shari'a courts, with specific focus of the experiences of women.

The following is a breakdown of the responses to the survey to facilitate understanding of the results and their implications in the context of this framework of inquiry:

- 1- Over 1700 respondents were targeted by the survey.
- 2- There were 1538 valid responses: Out of which 714 were women (46%); 798 men (54%)¹
- 3- A total of 190 declared not having any legal matter, including 31 female and 157 male respondents.
- 4- Out of the total number of valid responses, 373 people reported taking their legal matters to court; 174 women, 195 men.
- 5- A total of 136 reported taking their legal matters to Shari'a courts, out of those 77 were female, and 59 were male.
- 6- The three highest ranking legal matters which were taken to court by women were marriage registration, inheritance and divorce respectively.

Finally, this framework of inquiry also relied on data collected in the baseline research that took place between May and June of 2015 within the second phase of the WAJ project. The research targeted 149 women who received legal assistance from ARDD through a survey that examined the accessibility of the Justice system in Jordan.

¹The mirrors the percentages of the gender balance in the population as reported in the census of 2016

1. Women's Access to Justice: Elements for a Framework of Inquiry

An analysis of Women's access to justice must take into account six core principles, namely: justiciability, accessibility, availability, good quality, meaningful remedies, and accountability of the justice system ([UNWomen, Council of Europe, 2015](#)). These principles are interrelated and vital to ensure access to justice and are defined as below:

- Justiciability requires women to be able to effectively access justice and be empowered to claim their rights
- Accessibility requires that all justice systems are secure, affordable, and physically accessible to women, and cater to the needs of women including those who face forms of discrimination
- Availability requires courts and other judicial bodies to be established in urban and rural areas of the state
- Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence, and impartiality and provide effective remedies that lead to gender-sensitive dispute resolution for all women. It also requires that justice systems are contextualized to take account of the increasing demands for justice by women
- Meaningful remedies require women to receive protection and meaningful redress from justice systems for any harm that they may suffer
- Accountability of justice systems is ensured through monitoring their performance to guarantee that they are in accordance with the previous principles, which are justiciability, availability, accessibility, good quality and meaningful remedies. It also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law ([OHCHR, 2015](#)).

In the proposed framework of inquiry, the six guiding principles are integrated along three main categories of analysis that describe the elements of the justice chain from a system's analysis point of view, namely: enabling environment, supply and demand, in which:

- An enabling environment for women's access to justice refers to the full range of economic, social and political conditions in a society that enable or hinder access to justice
- Supply refers to the institutions and actors critical in the supply of justice,
- Demand refers to those to who have the right to be served by justice.

This tripartite categorization facilitates the understanding of the environmental factors affecting women's access to justice as well as the roles and responsibilities of key actors and stakeholders involved in the justice system. Furthermore, both supply and demand categories are easily identifiable from a rights-based approach as addressed to duty bearers and right holders.



1.1 The Establishment of an Enabling Environment

An enabling environment refers to full range of conditions in a society that enable or hinder access to justice. The conditions can be socio-cultural, political or economic.

Political Justice

Political justice refers to civic and legal awareness, as well as the right or access to political participation. Jordan has ratified CEDAW, which is a valuable framework for states to ensure women's rights and access to justice. Nevertheless, Jordan's reservations to articles 9 and 16 constitute a significant barrier to women's ability to enjoy their rights. At the political level, this is demonstrated by women's inability to pass nationality on to their husbands or children. Indeed, a Jordanian mother married to a foreigner (non-Jordanian) is not able to pass her nationality on to her children, even though a Jordanian father in the same position would be able to do so.

This poses a problem for many Jordanian women and their children. The children of these Jordanian women, even when living on Jordanian soil, are not able to claim certain fundamental rights of access to health services or to education, despite claiming certain civil rights through the Prime Ministry decision (For a detailed analysis see: ARDD Tools of Knowledge: Eliminating Violence Against Women and Girls in Jordan, 2018). Furthermore, another challenge on the political level is demonstrated by women's low political participation. To be sure, Jordan's quota system has been effective at increasing women's participation in elected bodies. For example, the parliamentary elections held in July 2016 saw the historic election of 20 women to Parliament, of whom, 5 won outside of the quota system. Nevertheless, women still only hold roughly 15 percent of all seats ([Cuthbert, 2016](#)).

Additionally, women's rights and issues are frequently subordinated to political stability concerns. With political instability surrounding Jordan and a large influx of refugees from Syria and other countries in the Middle East and Africa, the political advancement of women's empowerment has taken a backseat to issues of security. However, women's rights groups have called this reordering of priorities a pretext to avoid addressing issues of women's rights, claiming that women's empowerment remains just as, if not more important ([Husseini, 2016](#)). In times of crisis, many women and girls face increased risks of harm, exploitation, and abuse due to breakdowns in the rule of law, disruptions in family structures and livelihoods, and inadequate attention to their distinct needs as part of relief and recovery efforts ([USAID, 2017](#)).

Jordan has taken important steps to strengthen women's empowerment. Since 2007, the Jordanian government has criminalized workplace sexual harassment and human trafficking, increased penalties for violating women's and children's rights, and issued two family protection laws (2008, revised in 2017). However, it is important for Jordan to begin even more actively addressing women's rights concerns, starting with fostering an environment where women are able and encouraged to claim their rights, and ensuring all state laws are harmonized with critical human rights instruments, such as CEDAW.

Economic Justice

Economic justice refers to ability of individuals to obtain a sustainable and dignified livelihood to support their needs, and/or the needs of their families. It is often thought of as participation in the labor market and in the formal economy, but extends well beyond these realms. In Jordan, recent developments in gender equality have not translated to improvements in women's economic participation, which remains extremely low (WEF, 2016). Despite growth in women's professional participation, women employees are concentrated in lower-level positions and in sectors that perceived as "appropriate." In the segmented Jordanian labor market, the limited opportunities that do exist for women are concentrated in the civil service, particularly in the health and education sectors, which have had limited growth in recent years ([World Bank, 2014](#)). Married women in particular are considerably less likely to participate in the labor market, although educated unmarried women also face high levels of unemployment.

Moreover, women in Jordan are overburdened with unpaid care work. This unpaid and "invisible" contribution to the economy is manifested in women being the main party in a household responsible for ensuring the physical and mental well-being of its members (ARDD, 2017). Additionally, the burden of caring for a sick, elderly, or disabled member of the household falls almost exclusive on the shoulders of women, whose commitments to this care constrain their economic and employment opportunities (*ibid*).

Due to social customs and a high-rate of unemployment, women in Jordan are often financially dependent on men, usually their father or husband. When a woman loses this source of financial stability, whether it is due to death of a family member, divorce or separation, or another issue, she is left with few economic opportunities to support herself. As there is a direct correlation between gender equality and GDP per capita, Jordan's economy also stands to benefit from facilitating women's access to justice and promoting gender equality ([World Economic Forum, 2015](#)).

Social Justice

For the purpose of this paper, social justice refers to the social environment women live in Jordan, including socio-cultural norms and restrictions. Only a minority of employed and married women in Jordan reported that they made independent decisions on how to spend their earnings and 62% of women reported that they decide how to use their husband's cash earnings jointly with their husbands ([Department of Statistics, 2012](#)). This demonstrates a social environment in which women are not involved or permitted in making critical decisions about their own and their family's well-being and livelihoods. Further, customary laws, social norms, and stigma still prevent women from simple processes in accessing justice, such as visiting a police station or court to report a violation of rights. Although this stigma has lessened in recent years, women may still face backlash from their families and communities for being seen accessing these institutions (FGD, 2017). It is generally not accepted for a woman to resort to institutional means to solve family matters, as it is often seen as embarrassing and shameful to discuss family matters outside the home; traditionally, these matters are addressed within the family itself.

1.2 The Supply of Legal and Institutional Resources

While access to justice concerns a full range of actors, particular focus is owed to the formal justice sector. Indeed, when individuals have their rights violated, they must turn to the justice sector to seek grievance redress. Accordingly, it is the obligation of the justice sector to ensure that women have access to a means of redress, and to ensure that this means is affordable and easily navigated. The duty bearers in this case, include the Ministry of Justice, judges, lawyers, and all of the actors within the courts themselves. In addition to ensuring the equitable and fair supply of justice, and consider justice as a right to which all women are entitled.

Availability of Legal Aid

Availability of legal aid regards the extent to which legal aid is provided in Jordan, as well as the circumstances under which it is provided. The law in Jordan addresses the right of individuals to access justice in different ways. However, laws that safeguard this right are scattered and do not provide a comprehensive framework to enhance the right to access justice. This is particularly relevant in the absence of a comprehensive legislative framework that clearly and explicitly outlines legal aid, its rules and procedures.

For instance, Article 208 of Jordan's Criminal Trial Procedures Law provides that cases for crimes that are penalized by capital punishment, imprisonment with hard labor, life imprisonment, or temporary hard labor for a period of ten years can benefit from free legal aid if they cannot afford it ([Criminal Trial Procedures Law, 1961](#)). The provision of legal aid with regards to legal matters that particularly impact women in the context of personal status law-- Shari'a courts (marriage, divorce, child custody and alimony) — is provided by the Ministry of Justice through an MoU with the Shari'a courts to provide legal aid at the discretion of the judges.

Procedural regulations further compound these limitations by preventing applicants from filing a case or appeal without legal representation. For women who cannot afford a lawyer, and will not have one appointed to them, the requirement to obtain legal representation further constricts access to justice. Additionally, due to limitations on pro-bono cases, legal aid services are predominantly provided by non-governmental legal aid organizations ([JCLA, 2017](#)).

ARDD's most recent research into the justice sector revealed that 63% of respondents reported having had legal representation in court. When asked about the nature of this representation, however, just 3.8% reported receiving representation in the form of legal aid from an NGO. This demonstrates that although legal aid is available, most people do not benefit from it; this fact could be due to people's limited awareness regarding the availability of legal aid, or due to the limited reach of a legal aid system through the judicial authorities, as the legal aid is limited to certain cases, based on the Criminal Trial Procedures Law.

Accessibility of Legal Aid

Accessibility of legal aid refers to the real ability of individuals to access these aforementioned legal aid services. Although key providers of legal aid include the Ministry of Justice, the Jordan Bar Association, and some organizations in civil society, their reach is limited. Not only is the reach of this legal aid limited, but Jordanians are largely unaware of its availability. In fact, in a survey conducted in 2017, only 11% of respondents reported being aware of the availability of institution-provided legal assistance (i.e. the services provided by the bar association) (Hiil, 2017). Lack of awareness regarding Legal Aid prevents individuals from seeking legal aid in the first place. Both the limited availability and low accessibility of legal aid indicates that the institutional legal aid system in Jordan needs further support and expansion to be able to meet the needs of women and people in Jordan.

After she had become physically disabled due to an incident, Luma's husband filed a separation case at the court. "After I became immobilised, he thought I'm no longer fit to be his wife." Luma had to go back and forth to the court to keep up with the proceedings of the case, which has impacted her a great deal because of her health condition: "I had to go to the court regularly, and people had to carry me three floors because the court was on the third floor. It was exhausting."

Luma explains that she suffered a lot before finally she received legal assistance from ARDD, "I had to attend all the court sessions by myself and I'm physically disabled, so imagine going to the court room on the third floor on a regular basis, there are people who know about legal aid providers, but there are others who do not know, It is very important that vulnerable people get some directions and instructions on the available venues for legal aid and help, people should grow more aware of this."

Human and Institutional Resources of Shari'a Courts

Human and institutional resources refer to the availability, function, and efficiency of the staff operating in Shari'a courts, as well as the state-sanctioned structures put in place to facilitate justice. The Jordanian justice sector is currently facing administrative and financial hardships. Indeed, there are 64 Shari'a Courts in Jordan. All together, these courts are staffed by approximately 234 Shari'a judges and 931 court officers – all of whom serve Jordan's roughly 9 million residents.

An analysis of the Chief Justice Department Annual Statistical Report shows that the number of accumulated cases (unresolved cases carried to the next year) that are dealt with by Shari'a courts in Jordan has doubled between 2010 and 2016. In 2010, the number of accumulated cases from the previous year was 9,269 cases, while in 2016, the number of accumulated cases from the previous year reached 19,936. This could be partially due to the increased demand on Shari'a courts caused by the Syrian refugees' influx into Jordan between the years 2011 and 2016.

A further example illustrates this disproportionate lack of resources compared to the potential high demands of services: Zarqa's four Shari'a courts serve a population of 1.365 million residents (DoS Census 2017) and the staff consists of 20 judges, which leaves a ratio of 68,250 residents per judge. Additionally, conciliation offices, which are critical to women's access to justice, are not available throughout the country, although more are to be opened. In the event which was held to discuss the findings of the WAJ II project, a Shari'a court official said that the Shari'a court system is currently understaffed by one third; the official also explained that there are efforts to reengineer services to improve the litigation process.

ARDD's research showed that the lack of resources at Shari'a courts disproportionately affects women as they are the larger users of the system than men. This was clear as after marriage registration, the most common legal matter women encounter regards inheritance (28.1%) followed by divorce (24.1%), all of which are cases seen by Shari'a courts. For men, on the other hand, the second most common legal matter concerned traffic or road disputes (32.8%), followed by land or property matters (29.4%). These hardships have a negative impact on the overall provision of justice, resulting in overworked personnel, long waiting periods for individuals seeking justice, and difficult experiences at the court settings, such as long queues and lack of in-court support.

Timeliness of Shari'a Courts

Timeliness refers to the amount of time that passes from when a lawsuit is filed until a verdict is rendered and executed. Timeliness is particularly important for women, because their cases affect their dignity and ability to make decisions for her and/or her family's future. Furthermore, delays in divorce cases will inevitably lead to delays in related matters, such as alimony and custody cases. Additionally, women cannot remarry until the first marriage is dissolved, a fact that does not apply to men, unless stipulated in the marriage contract, as a man is allowed to enter multiple marriages. Timeliness is affected by structural issues affecting human and institutional resources at the court level, leading to a backlog in cases, and protracted time for justice to be served. As mentioned previously, the Shari'a court system in Jordan is currently very understaffed and is undergoing reorganization to respond to the complexity of court procedures; this reorganization is expected to improve services and timeliness of litigation. According to a report by The Hague Institute for Innovation of Law (Hiil), the indicator for satisfaction over the time spent to settle legal dispute scored among the three lowest indicators out of 10 together with the indicators measuring satisfaction over money spent, and stress and negative emotions caused by the dispute. (Hiil, 2017)

ARDD's research on justice sector reform demonstrates that only about 31% of females who responded to the survey were satisfied with the timeliness of the courts. This is comparable to the baseline research conducted during the inception of the second phase of the WAJ project, where only 2% of women surveyed reported being satisfied with the timeliness of Shari'a courts in Zarqa.²

Aziza was married to an Egyptian man, however, her husband met another woman, and decided to marry her. Soon after, her husband abandoned her and the children and left the country (Jordan) back to Egypt. After his departure, Aziza lost touch with him. Aziza's husband ceased to support her and their children, and ever since Aziza has been struggling to make ends meet.

Aziza tried years ago to file for divorce to no avail. When she went to the Shari'a court in Karak to file for divorce, she was told that since her marriage registration took place in Amman, she must file for divorce in the Shari'a court in Amman, where she originally registered her marriage. This lack of administrative flexibility, compounded with the cost of transportation, delayed Aziza's decision to pursue her divorce further. But the problems of her case did not stop there, "My case is still stuck in court because my husband is outside of the country, and he should authorise someone to initiate the divorce on his behalf, but he simply doesn't care to go through all that trouble."

Since no official divorce took place yet, Aziza cannot proceed with issuing any document for her children because she is not considered their legal guardian. "Whether I seek health services for me or my children, or try to send them to schools, or try to access any assistance, everyone asks me for a divorce paper, our lives depend on this divorce paper."

² It is worth noting that baseline research took place during May and June of 2015 among women who received legal assistance from ARDD, while ARDD's research took place during October, November, and December of 2017 and targeted randomly sampled households.

Affordability of Shari'a Courts

Affordability refers to the real ability of individuals to afford the numerous formal, informal, and hidden costs of pursuing justice. Formal costs are those charged by the courts, such as court filing fees. Meanwhile, informal costs are those that individuals must pay in the courts, such as the cost of getting documentation certified or issuing summons. Finally, hidden costs include all of the costs that individuals incur outside of the courts in their pursuit of justice, most notably, the cost of transportation to and from the courts. Many of these fees, particularly informal and hidden fees are not paid just once, but several times throughout litigation, further impacting the overall affordability of accessing justice. According to the same aforementioned report by HiIL, the indicator for satisfaction over the cost of justice in terms of money spent was among the three lowest indicators out of ten indicators. (HiIL, 2017)

In the case of many of the issues that women tend to take to court, such as divorce or child alimony, there are numerous procedures, forms and processes that must be completed before the legal matter is resolved which accumulates costs resulting from court fees. It is also important to note that even when court rulings are rendered in favor of women, additional fees are required to execute rulings. This process can further delay women's access to justice as women must navigate more bureaucratic and administrative procedures, requiring additional effort, time, and funds.

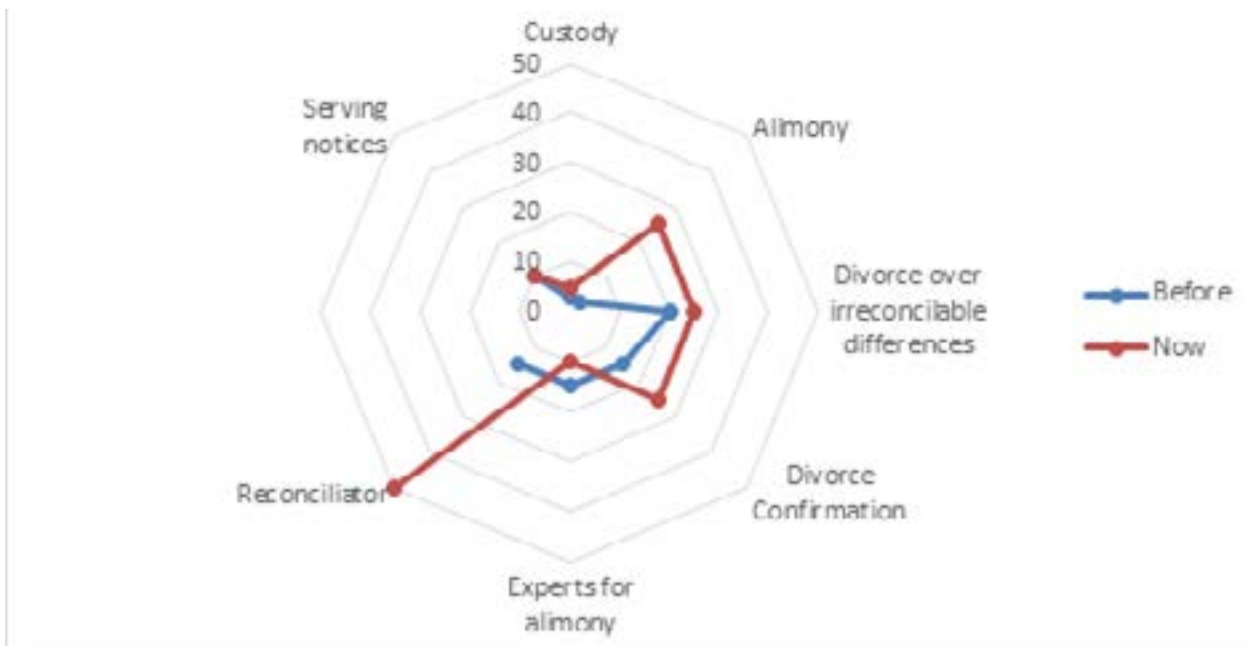
A World Bank note³ states that access to financial resources in addressing disputes is more of a constraint for women and more so for female-headed households. Citing a survey conducted in 2011 by the Department of Statistics⁴, the World Bank note asserts that women and female-headed households were more likely to avoid filing claims in court because of lack of financial resources. ARDD's justice sector reform research found that only 20% of women within households targeted by the survey had independent income. (ARDD, 2017) The baseline research conducted ahead of the activities of WAJ II shows that only 3.4% of women respondents to a survey that examined the accessibility of the Justice system in Jordan were satisfied with the cost of accessing Shari'a courts in Jordan.

Moreover, ARDD's research in Zarqa shows that only 36% percent of women surveyed were satisfied with the affordability of Shari'a courts, while almost 52% said that the court fees were too expensive. This was further echoed by participants in the FGD conducted with WAJ women beneficiaries who overwhelmingly agreed that the fees were too high. (ARDD, 2017).

Recently, the fee schedule for Shari'a courts was modified. While the cost of some services decreased, many services are now more expensive. In fact, most of the fees associated with legal matters that women tend to take to court were increased. The chart below is an itemized breakdown of the former and current costs a person would encounter in a divorce case. The total cost excludes the cost of a lawyer, however, as this varies from one lawyer to another.

³ Gender and justice in Jordan: women, demand and access, MENA Knowledge and Learning, Quick Note Series, September 2013, No. 107, World Bank, Washington, D.C.

⁴ Statistical Survey on the Volume of Demand for Legal Aid – conducted by the Department of Statistics in 2011



As the chart above shows, the cost of legal services can be quite high in Jordan, particularly for the financially poor. Nevertheless, it is reasonable for courts to charge fees to offset the real costs of administering justice. Accordingly, the question is not necessarily how much these services should be, but who should bear these costs in relation to their financial means. This is an important question to consider, as the cost of justice sector services is one of the most-cited reasons women do not take their legal matters to court.

Accountability and Transparency of Shari'a Courts

Accountability refers to the real ability of the court and its agents to be held responsible for their actions and decisions, while transparency regards the extent to which thorough information about the activities and spending of the courts, and its agents, is made accessible. At least two entities are responsible for ensuring accountability in the judiciary: The Integrity and Anti-Corruption Commission and the Judicial Inspection Department. Commitment #4 of the Jordan National Action Plan concerns complaint mechanisms in the judiciary. The plan calls for the establishment of an electronic database, which contains all complaints registered in Jordan, as well as enhanced follow-up on the complaints raised through the online system. At this point, further research is necessary to determine the extent to which the mechanism is used and to which reports are investigated and solved. A notable good practice, which could be replicated and expanded, is the website of the Chief Justice Department which oversees the Shari'a courts. This tool has the potential to be very valuable as it includes a frequently asked questions (FAQs) section, as well as a complaint section, although it is still 'under construction.'

1.3 The Demand Side: Women as Right-Holders

Women are rightful users of the justice system. A view of the justice chain from the perspective of its users provides the following information:

Justiciable Issues

Justiciability refers to whether it is appropriate for a particular issue to be resolved by the Shari'a courts. In the context of women's access to justice, it requires unhindered access to justice by women and their ability and empowerment to claim their rights as legal entitlements under CEDAW. Currently, this is not the case due to reservations to some articles in CEDAW, which Jordan ratified in 1992, and limitations in the personal status law. Jordan's reservations to CEDAW are to Article 9, concerning equal right to nationality and passing it to children, and Article 16, concerning equal rights in marriage. Article 3 of Jordan's Nationality Law states that, "any person whose father holds Jordanian nationality shall be considered Jordanian." Under this law, Jordanian women are relegated to de facto second-class citizens, while at the same time, posing challenges to the rights of children of Jordanian mothers and non-citizen fathers.

The Personal Status Law is the law that governs all family-related matters, including marriage, spousal roles, divorce, alimony, custody and inheritance. A recent 2012 amendment simplified and expedited procedures for accessing alimony and child support payments, which alleviated the burden of women in critical financial situations. Nevertheless, women are almost four times as likely as men to have a personal status-related legal dispute, and gaps in the personal status law remain a challenge ([World Bank, 2013](#)). ARDD, in its legal services provision, served women who were mostly seeking to file alimony, child custody, divorce, and separation cases. Generalized complaints among these women were that the allotted alimony amounts were insufficient to cover the costs of food, rent, medical care, and education for their children.

Legal Awareness and Literacy

Legal awareness and literacy are critical to promote consciousness of legal culture and the rights of the individuals. In Jordan, both women and men lack sufficient awareness of their rights; however, due to social norms, women are left at a particular disadvantage in terms of accessing their rights. From this point of view, ARDD offers some innovative solutions to this challenge, such as peer-to-peer support groups legal and psychosocial empowerment. Peer-to-peer support groups are facilitated by ARDD-trained community-based facilitators who provide critical legal awareness to communities targeted in the project, while also providing a peer-based support group for women pursuing justice to share their experiences and connect with others.

ARDD's approach to community-based facilitator sis based on five main elements:1) building on the human capital of experienced professionals from various backgrounds, including: education, health and community activism; 2) enhancing the capacity of community-based facilitators to understand normative frameworks dictating the rights and responsibilities of individuals under international human rights law and Jordanian law;

3) providing communities – and especially women - with the space and tools necessary to amplify their voices; 4) bridging protection gaps within the humanitarian response by providing timely, responsive, and effective communication channels between marginalized groups and relevant humanitarian and service delivery actors; and 5) promoting ownership through enhancing agency of beneficiaries and promoting trust and participation in the formal justice system.

In Phase II the Women’s Access to Justice project also continue providing legal and psychosocial empowerment to women to encourage them to be more assertive in exercising their agency. These sessions provided women with knowledge about their rights under personal status law, and also empowered them to become more confident to assert themselves within their families, ultimately facilitating their access to justice.

Through years of fieldwork with communities in Zarqa, ARDD observed a tangible impact of its work in increasing legal awareness among its beneficiaries. In a focus group discussion conducted in 2017 with beneficiaries of the project, women reported that societal stigma surrounding a woman going to a police station or a court was not as limiting as it once was (ARDD, 2017). This is in contrast to research conducted during the first phase of the project, where societal stigma was cited as a significant barrier to women seeking justice through the court and justice system (ARDD, 2015). Although these findings cannot be generalized to all women in Jordan, it signals the importance of empowerment and awareness programs implemented by various stakeholders and civil society.

Moreover, an analysis of the Chief Justice Department Annual Statistical Report done by ARDD, demonstrates a significant increase in the number of alimony cases brought to Shari’a courts between the years 2010 and 2016. The number of child alimony cases brought to Shari’a courts increased from 6,486 in 2010 to 10,943 in 2016. In similar fashion, the number of wife alimony cases brought to Shari’a courts increased from 7,369 in 2010, to 11,850 in 2016. This indicates that women are generally growing more aware of their rights, and are becoming more empowered to assert them.

After six years and two miscarriages, Jamila and her husband were finally blessed with a daughter. But that wasn’t enough, her husband’s family wanted a son, therefore he remarried when their daughter was 3 years old, neglecting Jamila and their daughter, and abstaining from supporting them financially.

“He spends his time with his second wife, and completely neglects us, it’s been like this for 11 years. During this time, he did not support me in any way after he married his second wife; financially, morally nor physically”.

Devastated and hopeless, Jamila filed an alimony lawsuit. However, mediators were involved, and she was asked to drop the lawsuit. In return, she was promised to receive a monthly alimony from her husband. “I dropped the lawsuit, and asked for the least amount of money. He only paid for one month, then refused to send us any money, this is unfair for me and my daughter, we’re punished because I’m unable to reproduce.”

Jamila was received legal assistance and psychological support from ARDD, "I wouldn't have been able to hire a lawyer on my own, I'm grateful for the lawyer that helped me, he assured me that I will not be subject to any harm, that the law protects me, and that no one will be able to assault me in any way. This motivated me even more to proceed with lawsuit".

Navigating the Legal System

For women, especially vulnerable women whose rights have been violated, navigating the legal system can be an overwhelming experience, especially if they lack the necessary psychological support needed. There are several barriers to navigating the legal system; these barriers can be divided into procedural and physical barriers.

Procedural barriers include the myriad of forms and procedures women must follow. Many of ARDD's women beneficiaries explained that in their first visit to the court, they were sent from one office to another, within multiple floors. ARDD's recent research found that almost 36% of women who dealt with Shari'a court didn't understand what to do in the courthouse. In addition to this, almost 58% of female respondents to the same survey reported difficulty in reading and understanding court documents. Although many offices are necessary to maintain a fully functioning court, the layout and order of operations must be explained, together with the responsibilities of the different departments within the court.

It is important to note that the whole experience of going to court can be intimidating and tiring for women, especially as they are going to be dealing with male staff that is not necessarily sensitized with women issues. Another procedural barrier noted by women is that the burden of proof usually falls on the woman attempting to access justice and this burden can delay or halt her court procedure entirely. For instance, women who initiate alimony cases face difficulties providing the court with information relating to proof of income for their husbands.

Physical barriers are exemplified in the large crowds and long waiting lines in courts, in addition to the aforementioned social stigma, which although has lessened, still can bring serious consequences for women seeking justice (ARDD, 2017). Notably, women who cannot read or write face additional barriers navigating the legal system, as they have to rely on others to fill in their paperwork. Without a way to validate or verify the paperwork, women may find that their cases are misrepresented in front of the judge and may be forced to begin the process again or drop their cases altogether (ARDD, 2017). Furthermore, not all courts are properly equipped to facilitate accessibility for people with disabilities.

Further, ARDD's recent research on the Justice Sector in Jordan revealed that women who took their legal matters to Shari'a courts were more likely to have a negative outlook on the navigability of Shari'a courts than women who didn't take matters to court (19.5%

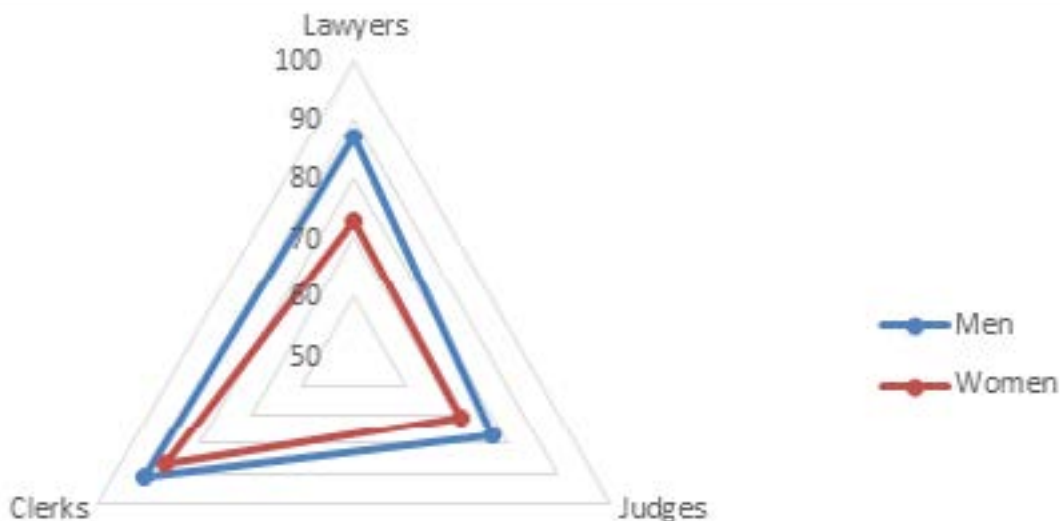
compared to only 7.6%). Moreover, a slightly fewer percentage of women than men reported being satisfied with the overall navigability of Shari'a courts. Moreover, of women who took their matters to Shari'a courts, 36.4% reported not understanding what to do in court, and 20.8% reported that it was not easy to read and understand court documents.

Gender-Sensitive Courts

In measuring women's access to justice, analyzing gender-sensitive staff is a central factor. Gender sensitive courts refers both to a gender balanced human resources in terms of staff as well as to the need for all staff to be adequately train to serve both male and female righteous users of the system. In terms of human resources, it would be important to share publicly gender disaggregated information regarding staff. In the absence of it, there is a common perception among users of the court that Shari'a courts in Jordan employ few women in general, with the majority of them working exclusively in the family reconciliation departments. In this regard, a Shari'a' Court official argued that nearly half of family reconciliation staff consists of women, 64% of guidance sector staff are women, and 30% of lawyers in the Shari'a court are women. Furthermore, it is important to note, that the Shari'a judiciary institute does not discriminate women from entering it to study Shari'a law. However, to date there are no female judges in Shari'a courts in Jordan (Tadamon, 2015). This stands in stark contrast to realities elsewhere in the region, such as Morocco and Palestine, where Shari'a courts employ female judges (PRI, 2015).

In a focus group discussion conducted with ten women beneficiaries of the WAJ project; most of the participants thought that judges demonstrated more sympathy towards them than their husbands, with only two women thinking that judges were biased against them.

Interestingly, ARDD's recent research shows overall, women are slightly less satisfied with their experience in Shari'a courts compared to men. Almost 73% of female respondents reported being satisfied with lawyers, 71% were satisfied with judges, and 87% were satisfied with court clerks. In comparison, 87% of Male respondents reported being satisfied with Lawyers, 77% reported being satisfied with Judges, and 91% were satisfied with court clerks.

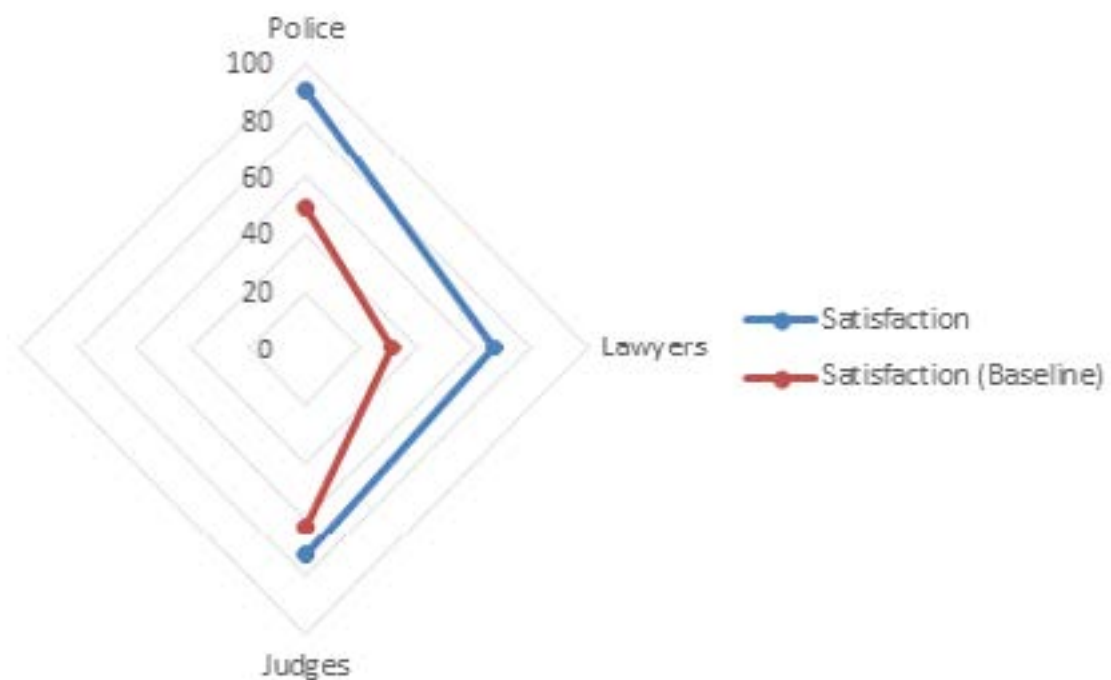


Based on the above chart, it is also worth noting that in the context of Shari'a court actors, judges scored the least in terms of overall satisfaction among both men and women, while clerks scored the highest across the board.

Hence, it is important to highlight that adequately trained female judges can be in a better position to address concerns brought by women, especially in cases involving intimate details that women wouldn't feel comfortable disclosing to a male judge. Based on this, it is imperative to recognize the need for gender awareness and sensitization at the university level among law graduates, and at court level, where women should be treated as right holders as opposes to being merely seen as pursuant of services.

Satisfaction and Trust of Justice Institutions

Satisfaction with services and trust in justice institutions is essential for facilitating access to justice for all individuals. Overall, there is a high level of trust in justice institutions in Jordan (Hiil, 2017). This was also clear in the baseline survey for the second phase of the WAJ project, whereamong women surveyed, trust in the Justice System was very high:in fact, 72% of women who were surveyed said they trust the justice system. In addition, 62% of women surveyed at the baseline hadhigh trust in judges, 49% reported feeling safe in a police station, and 31% trusted lawyers. ARDD's recent research in Zarqashowssimilar results (taking into consideration that it covered a wider sample of which most were not previous WAJ beneficiaries.) Almost 73% offemale respondents to the survey in Zarqa reported being satisfied with judges, 91% satisfied with police, 67% satisfied with lawyers, 85% were satisfied with clerks.



ARDD research with women beneficiaries from the WAJ project also highlights high levels of trust: ARDD's Syrian female refugee clients regard courts and laws in Jordan as fair to women and ARDD lawyers explained that the judiciary in Jordan is unbiased and impartial (FGD, 2017; ARDD, 2017). Furthermore, many women interviewed felt that judges were impartial when making rulings and did not favor men over women (FGD, 2017). However, women who obtained legal representation were more likely to report high satisfaction and trust in the courts; also reporting that cases were not always well rendered without legal representation, further emphasizing the need for the availability and accessibility of quality legal aid (ibid).

Women who had legal representation were more satisfied with the Shari'a courts. Like than women who didn't to say that based on their past experiences, if they had a legal matter in the future they will attempt to resolve it in court. 67% of women who had past legal representation, say that they would.

2. Key Takeaways

In the event that ARDD organized to conclude the Women Access to Justice Phase II project, stakeholders in the judicial and civil society sectors shared suggested interventions and recommendations to mitigate the above-mentioned challenges. Through the discussions at the event, and in light of ARDD's research, the following are four key takeaways to facilitate future work to enhance women's access to justice in Jordan:

1. Facilitation of an enabling environment;
2. Enhanced supply of dispute resolution mechanisms;
3. Enforcement mechanisms for execution of court rulings affecting alimony and child custody;
4. Ensuring the availability of quality legal awareness and literacy.

Facilitation of an Enabling Environment

Facilitating an enabling environment is critical to enhancing women's access to justice. To achieve this there are several issues that must be addressed. Firstly, it is necessary to adopt/revise national legal frameworks and harmonize them with international human rights standards, including granting women full citizenship rights.

Secondly, providing women with meaningful economic opportunities is vital to their economic empowerment, something that can greatly enhance their abilities to access justice and assert their rights. In this respect, women's contribution to the economy through their unpaid care and domestic work must be recognized, but also, women must be supported to overcome their unfair care and domestic work burden through social protection mechanisms, skills, and pathways to labor market.

Thirdly, sensitization to remove restrictive social norms is of utmost importance. To this end, it is necessary to foster a 'culture of marriage' based on equal rights between men and women, as well as laying out equal responsibilities in bearing the burden of 'honor.'

Enhanced Supply of Dispute Resolution Mechanisms

Enhancing the supply of dispute resolution mechanisms is crucial to facilitating women's access to justice. In the context of women's access to justice in Jordan, availability and access to legal aid is central to enhance women's access to justice. Access to proper legal representation enables women to overcome many challenges including assisting them in navigating the courts, provide them with the financial support necessary to take their cases to court, and ensures their ability to execute the court rulings once they are issued. Another important factor to enhancing dispute resolution mechanism is providing adequate numbers of trained human resources at the court level; especially in terms of decreasing the long waiting periods. In this regard, gender sensitization is necessary to ensure that courts staff are sensitive and are able to properly deal with issues brought to court by women.

Additionally, it is important to create (or reinforce existing) meaningful accountability systems to strengthen trust in justice institutions.

Strengthen Enforcement Mechanisms for Execution of Court Rulings

ARDD has learned that there is a need for enforcement mechanisms for the execution of court rulings, particularly affecting alimony and custody. For example, women are burdened with the responsibility of obtaining their alimony and child support payments directly from their ex-husbands, as opposed to directly from the courts.

In order to improve women's access to justice in this regard, it is important that the already-existing National Alimony Fund be developed and properly utilized, so that women can more easily access the money that they are owed. Further, it is important that the alimony fund be accessible to women of all faiths.

Ensuring the Availability of Quality Legal Awareness and Legal Literacy

Legal awareness and legal literacy are critical to promote access to justice and the rights of individuals. ARDD has noticed a tangible change in women's agency and confidence after the implementation of legal awareness sessions. The stories of the participants provides strong evidence for the expansion of legal awareness sessions that aim not only to increase knowledge, but provide the tools necessary for individuals to have the confidence and assertiveness required to ensure their rights are respected.

Further, civil society as well as other legal aid providers must engage in a concerted effort to expand the availability and accessibility of source of legal information. They must capitalize on traditional and new media platforms with the use of informative pamphlets, explanatory websites, social media and instructive guidance within the courts themselves. ARDD's approach of training community-based facilitators has proven particularly advantageous

in engaging marginalized groups like women and refugees on their rights, entitlements and responsibilities; engaging areas that often lack access to the legal system, such as rural communities and underserved urban neighborhoods; and enabling and strengthening legal agency among marginalized populations.

3. Conclusion

Women's access to justice is the foundation for gender equality and women's empowerment; and supporting women to assert and claim their rights promotes a just society. The process of facilitating women's access to justice in Jordan must be comprehensive, as obstacles preventing it range from political and civic inequalities to institutional and financial limitations. Socio-economic, cultural, and political issues must be addressed alongside institutional reform to achieve equality and equity in access to justice. The government, alongside key institutions, has undoubtedly made remarkable achievements in responding to a wide array of challenges within the justice sector with recent developments and achievements. For example, the personal status law based in Shari'a interpretation is detailed and fairly comprehensive. However, as this paper proposes, there is a need for re-analysis of the legal framework, to investigate gaps while simultaneously working to formulate policies and enforcement mechanisms to enable and ensure proper implementation of the law.

While Jordan has made progress in promoting women's access to justice, the lack of an enabling environment, limited supply of legal and institutional resources, and high demand of mechanisms still represent significant challenges. This paper serves to highlight these main challenges that pose obstacles to the delivery of and access to services within the justice sector while emphasizing the importance of an all-inclusive approach. Achieving political, economic, and social justice for women is just as necessary as providing legal awareness and literacy so that women are increasingly empowered from each component of their lives. This is particularly significant in a country like Jordan, as increased economic and political participation of women is directly linked to economic growth and reducing poverty.

Although significant challenges to women's access to justice remain, interventions and recommendations proposed in this paper can lead to sustained improvements and developments to the justice system in Jordan. Through aligning laws with human rights conventions and treaties, enhanced dispute resolution mechanisms, revision of court ruling execution policies, and coordination between institutional and civil society stakeholders, women's access to justice can be facilitated in Jordan, promoting a more equal and equitable society.

4. REFERENCES

- "CEDAW Shadow Report." Office of the High Commissioner United Nations Human Rights. January 2017. http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JOR/INT_CEDAW_NGO_JOR_26477_E.pdf.
- "Empowering Women in Crisis and Conflict." U.S. Agency for International Development. <https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment/addressing-gender-programming/crisis-conflict>.
- "Fact Sheet on the Importance of Women's Access to Justice and Family Law." United Nations System Staff College. <http://www.unssc.org/sites/unssc.org/files/UNWomenFactSheet.pdf>.
- Husseini, Rana. "Security Used as Pretext to Put Women's Rights on Back Burner." The Jordan Times. March 10, 2016. <http://ftp.jordantimes.com/news/local/security-used-pretext-put-womens-rights-back-burner%E2%80%9999>.
- Husseini, Rana. "Activists to 'Continue Struggle' for Rights of Jordanian Women Married to Foreigners." The Jordan Times. August 19, 2017. <http://www.jordantimes.com/news/local/activists-continue-struggle%E2%80%9999-rights-jordanian-women-married-foreigners>
- "Justice Needs and Satisfaction in Jordan." Hiil. October 13, 2017. [http://www.hiil.org/data/sitemanagement/media/JNS%20Jordan%202017_EN%20\(Online\).pdf](http://www.hiil.org/data/sitemanagement/media/JNS%20Jordan%202017_EN%20(Online).pdf).
- "Jordan Population and Family Health Survey." Demographic and Health Surveys Program. October 2013. <https://dhsprogram.com/pubs/pdf/FR282/FR282.pdf>
- "Jordan Shadow NGO Report." Office of the High Commissioner United Nations Human Rights. 2012. http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JOR/INT_CEDAW_NGO_JOR_51_9262_E.pdf.
- "Legal Aid in Jordan." Justice Center for Legal Aid. <http://www.jcla-org.com/en/legal-aid-jordan>.
- "Report of the Committee on the Elimination of Discrimination Against Women." Office of the High Commissioner United Nations Human Rights. 2015. http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_SED_61_23673_E.pdf
- "The Case for Gender Equality." World Economic Forum. 2015. <http://reports.weforum.org/global-gender-gap-report-2015/the-case-for-gender-equality/>.
- "The Global Gender Gap Report." World Economic Forum. 2016. http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf
- Warga, Jake. "Has Morocco's 'Family Code' Shown how Gender Equality can Coexist with Islam in the Courts?" Public Radio International. May 18, 2015. <https://www.pri.org/stories/2015-05-18/has-moroccos-family-code-shown-how-gender-equality-can-coexist-islam-courts>.
- "Women in Jordan – Limited Economic Participation and Continued Inequality." The World Bank. April 17, 2014. <http://www.worldbank.org/en/news/feature/2014/04/17/women-in-jordan---limited-economic-participation-and-continued-inequality>.
- ARDD Laki Fursa Report, 2017. ARDD, Tools of Knowledge: Eliminating Violence Against Women and Girls in Jordan, 2018. <https://ardd-jo.org/publications/research-reports/rethinking-women%E2%80%99s-economic-empowerment-jordan>



[facebook.com/ArabRenaissance](https://www.facebook.com/ArabRenaissance)



[twitter @AR_Renaissance](https://twitter.com/AR_Renaissance)

www.ardd-jo.org