



**2015 IN REVIEW:  
WOMEN'S RIGHTS**

**and**

**ACCESS TO JUSTICE IN JORDAN**

# 2015 in review: women's rights and access to justice in Jordan

The constitution of the Hashemite Kingdom of Jordan declares all citizens equal and entitled to equal protection under the law but there are still large gaps between these constitutional commitments and the reality of implementation. Some laws openly contradict this declared equality, most notably the personal status law or the Jordanian family law, which is based on Jordan's interpretation of Shari'a law and governs all matters of marriage, spousal roles, divorce, alimony, custody and eligibility to inheritance. At an even more fundamental level, Jordanian women are unable to pass on their Jordanian nationality to their children if they have non-Jordanian husbands.

Although Jordan is a signatory of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the international convention was ratified with some significant reservations. In particular Jordan has reservations on article 9 (paragraph 2), which pertains to equality between men and women in transferring nationality to their children and article 16 (paragraph 1c, d, and g), which was designed to protect women from discrimination in all matters related to family life. However, the public is generally unaware of the rights guaranteed to them under the constitution much less their rights stemming from international conventions. Also many Jordanians see their rights and ultimately justice deriving from Islam and the Quran and not from international agreements. This is something that ARDD-Legal Aid has observed through numerous focus group discussions and gender related programming like the Women Access to Justice Project. It is important to keep this in mind while designing any advocacy or awareness campaign so that the messaging is culturally relevant to the intervention's intended beneficiaries.

The state institutions that administer justice have structural barriers that deter women from asserting their rights. ARDD-Legal Aid previously identified court fees and the lack of access to affordable legal counsel as a primary reason for women not approaching the formal justice system in Jordan. Women often face unsympathetic and intimidating male officials when they approach the police, lawyers, court officials or judges when accessing their rights. All family law matters are under the jurisdiction of the Islamic Shari'a Courts, which unlike the civil court system have no women employees. The formal judicial system is also facing challenges of their own both financially and administratively, which result in overloading judges with cases, long waiting periods, and even after a positive judgement it can be difficult to enforce implementation of the verdict. Thus, providing pro-bono legal services is critical for women to access justice and to engage with justice providers in order to create a more inviting atmosphere for women. Connecting women seeking justice to existing economic empowerment institutions is critical to breaking the cycle of dependency and act independently. Psychosocial support sessions (PSS) and peer-to-peer groups also help better prepare women both emotionally and mentally with pressures they will face from both the formal justice system and from among their community.

Moreover, Jordanian women face immense social pressure when attempting to access their rights. Any attempt to resolve conflict outside of the family is often perceived as shameful and can result in the woman being stigmatized by the community or even ostracized by her family.

ARDD-Legal Aid has validated that this fear exists among women when they need to assert their rights in courts through experience in past projects and focus group discussions. Traditionally, conflict mediation is either handled within the family by male guardians or within the greater tribe or local elder structure. However, these informal mediation structures often put women at a disadvantage since it is the family's power or notoriety that is used to leverage an agreement and in sensitive issues the woman's own family may pressure her to accept a deal not in her best interest, but one which preserves the perceived honour of the family. The societal barriers that discourage women from accessing justice are among the most entrenched obstacles women face in Jordan. ARDD-Legal Aid seeks to approach these challenges by engaging with the community, addressing leaders and strengthening local actors to help reshape community perception on who has the right to access justice.

There were several important changes to the context of women rights in Jordan in 2015. Most significant is the lack of a resolution to the conflict in Syria. With the Syrian crisis set to continue for the foreseeable future prospects for expanding formal avenues for women to access justice seem more elusive. The crisis effects women's ability access justice in three specific ways. Firstly, with approximately 633,000 UNHCR registered Syrian Refugees and as the Government of Jordan claims at least double this number there are increased demands on all state institutions including the courts. In Zarqa the Shari'a courts were already backlogged before the crisis. Secondly, the attention of the media in Jordan is fixated on the conflicts across the region and the refugee crisis, making it difficult to sustain media attention on issues deemed not "pressing" by the state like women's rights. Thirdly, the increasing prioritization of security by policy makers is both limiting state resources that could be used to strengthen the justice system and squeezing the space in which civil society organizations can operate in.

In August 2015 the legal fees for the Shari'a courts in Jordan were changed. ARDD-Legal Aid's Legal Assistance Department issued a **report** analyzing these changes. Although some fees were decreased the report noted that most legal actions in which women could file included but not limited to alimony, custodianship, housing, education, claiming dowry, compensation due to arbitrary divorce, separation, filing for divorce and marriage certification witnessed an increase in fees. Any fee increase will have an effect on the ability of vulnerable women to access the courts, but it is yet to be seen how significant of an impediment it will be. As past findings by ARDD-Legal Aid have indicated the Shari'a court fees are an impediment to women accessing the formal legal system. While not as expensive as some neighboring countries it is important to note that there are many additional "hidden fees" in accessing the legal system. The World Economic Forum's 2014 Global Gender Gap report shows the inequality women face in Jordan in accessing resources with only 17 percent of women having an account at a formal financial institution.

The Shari'a court administrative system was also amended by royal decree in the spring of 2015 to establish the first Supreme Court for the Shari'a court system.<sup>1</sup>

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<sup>1</sup> [http://petra.gov.jo/Public\\_News/Nws\\_NewsDetails.aspx?Site\\_Id=1&lang=2&NewsID=196463](http://petra.gov.jo/Public_News/Nws_NewsDetails.aspx?Site_Id=1&lang=2&NewsID=196463)

This added an additional layer of oversight to the courts above the Shari'a Court of Appeals and would have final authority to make decisions on appealed Shari'a court cases. In addition, the decree set up Jordan's first ever specialized general prosecutor within the Shari'a court to prosecute civil status cases (especially cases dealing with minors). The exact ramifications of these structural changes are still unclear since the decree only recently went into effect after 6 months from its announcement. This is a new aspect that ARDD-Legal Aid's Legal Services Department will closely monitor to see if these changes lead to any substantive advantages for women or just another cosmetic addition to an already heavily bureaucratic system. It is clear that none of the new Supreme Shari'a Court justices or special Shari'a prosecutors will be women since they are still barred from employment in the Shari'a Court system. In 2016, the Shari'a Courts will attempt to add mediation centres to all Shari'a Courts. Although mediation is nothing new and has been a regular tool used by judges before the new concept is to provide pre-marriage trainings and pre-emptive mediations.

One of the most significant changes in the ability of Jordanian women to access justice in 2015 was the Jordanian government's decision to grant children of Jordanian women married to non-Jordanian men civil rights and access to state services. However, it stopped short of granting them formal citizenship. The government's new reforms are a formal acknowledgement of the consequences caused by not recognizing the citizenship of children from marriages between Jordanian women and non-Jordanian men. Despite the reforms the underlying issue of women not being allowed to pass on their citizenship to their children remains and the benefits provided to these children still do not put them on equal footing with children with formal citizenship. Some 84,000 Jordanian women are married to non-Jordanians and there are an estimated 330,000 children from such marriages.<sup>2</sup> The Ministry of Interior recently reported that some 56,000 new special IDs were issued to children of Jordanian women married to foreigners in 2015.<sup>3</sup> These IDs are supposed to facilitate better access to state services and the job market. It is still too early to determine whether these changes are large enough to bridge the gap for these families and ultimately these reforms still constitute discrimination towards women and their children. Considering the political nature of granting citizenship in Jordan it is unlikely the government will take any further action without strong evidence proving that the new ID system is not bridging the gaps it was intended to fill.

In 2015 the Government of Jordan introduced a draft bill that proposed wide-ranging reforms to the Penal Code of 1960. If the draft law passes it will be the 24<sup>th</sup> time the Penal Code has been amended and as the bill stands right now the most comprehensive with 170 articles either added or old revised provisions.<sup>4</sup> The government stated that these comprehensive reforms were necessary to address new types of crimes. The suggested reforms include the use of new "alternative punishments" like community services instead of jail time. The planned reforms also contain a change to the now infamous Penal Code article 308.

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2 <http://www.pewresearch.org/fact-tank/-27/05/08/2014countries-limit-a-womans-ability-to-pass-citizenship-to-her-child-or-spouse/>

3 <http://www.jordantimes.com/news/local/-56000special-ids-is-issued-children-jordanian-women-married-foreigners%E99%80%2>

4 <http://www.jordantimes.com/news/local/amendments-penal-code-seek-address-new-crimes-bolster-rule-law%E99%80%2>

As part of a larger reform process to the Penal Code a legal committee under the Ministry of Justice recommended draft revisions to the controversial Penal Code article 308, which allows a perpetrator of a sexual crime to be exempt from prosecution if he marries his alleged victim.<sup>5</sup> Women's rights organizations have been advocating for the removal of this article for over a decade so it was positive to see the government finally acknowledge these concerns. However, the proposed changes fall far short of what is required. Many of the changes are simply cosmetic and do not alter the substance of the law. The legal committee also did not consult any civil society organizations like ARDD-Legal Aid, nor did it involve the relevant government institutions that focus on women like JNCW. This has led to the creation of a coalition among women's rights organizations led by JNCW,<sup>6</sup> of which ARDD-Legal Aid is a leading member, to pressure the government to make more concrete changes. It should be mentioned that the proposed reforms do not modify the legal definition of rape to include marital rape. As the provision currently stands the phrase "other than his wife" excludes the consideration of rape inside the confines of marriage. Article 308 is at the nexus between the Penal Code and Personal Status Law. It includes crimes and punishments that are linked between the two laws and any revision in article 308 will have ramifications for the Personal Status Law.

In the spring of 2015 the government unveiled its plan for restructuring local, municipal and governorate administration through the decentralization draft law of 2015. The decentralization law is a good case study of the government's commitment or lack thereof for women's rights and women political participation. Originally women rights activist under the direction of the Jordanian National Commission for Women (JNCW) called for a quota of 30-25 percent for women in both municipality and decentralization draft law.<sup>7</sup> When the draft law was first passed by the Senate and sent it to the Lower House of Parliament the draft law included 15 percent quota for women on governorate councils. However, without debate or explanation the Lower House removed the quota entirely.<sup>8</sup> With intense pressure from civil society the Senate and Lower House agreed to return the quote, but reduced the amount to just 10 percent. This episode highlights the lack of interest and difficulty in pushing parliament into pursuing a more progressive agenda for women's rights.

JNCW and allied civil society organizations like ARDD-Legal Aid contributed to creating a draft national action plan for the implementation of United Nations Security Council Resolution 1325 (2000) addressing women in issues of peace and security. However, the draft action plan has not been ratified yet by the government. Under the leadership of JNCW, ARDD-Legal Aid along with other civil society organizations like the Arab Women's Union setup meetings to ensure the government's action plan not only is women focused but takes into account resolutions that expanded on UNSCR 1325 like: UNSCRs ,(2010) 1960 ,(2009) 1889 ,(2009) 1888 ,(2008) 1820 (2013) 2106) and (2013) 2122). These resolutions all follow the theme of women in peace and security and specifically address the need to expand the role women play in post-conflict reconstruction and to prevent the use of sexual violence against women in conflict settings.

5 <http://www.jordantimes.com/news/local/projected-penal-code-amendment-scraps-article-pardoning-rapists-who-marry-victims%E99%80%2>

6 <http://www.jordantimes.com/news/local/women-activists-call-cancelling-controversial-penal-code-article-entirely%E99%80%2>

7 <http://www.jordantimes.com/news/local/commission-wants-30-25-quota-women-municipalities-decentralisation-bills>

8 <http://www.jordantimes.com/news/local/women-activists-cry-foul-quota-removed-decentralisation-bill>

Overall 2015 was another disappointing year for women's rights advocates in Jordan. The government's initiatives are still limited to meagre sized quotas and half-hearted reforms. It is clear that the regional conflict, while serious, is distracting policy makers from advancing reforms with the attention they require and deserve. 2016 has many critical issues for women's rights and ability to access justice most notably with the debate and draft law to amend the Penal Code. While the prospective of finally removing Penal Code article 308, we must not neglect addressing other structural problems with the law that created article 308 including, the definition of rape under the Penal Code.

