

# “Women and Access to Justice: Obstacles and Opportunities”

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## **Women and Access to Justice: Obstacles and Opportunities**

Like other patriarchal societies in the world, in the Middle East deeply entrenched cultural norms are used to justify gender inequalities and the denial of women their rights. While the majority of the Arab countries are signatories of the Convention for the Elimination of all forms of Discrimination against Women (CEDAW), ratifying CEDAW has thus far not had a concrete impact on the status and situation of women in the region. The majority of countries, which have ratified CEDAW, have done so with reservations to Article 2, which stipulates equality before the law and prohibits discrimination against women in national constitutions and legislation.

Jordan is one country that has witnessed the same pattern of inequality and gender discrimination and has failed to fulfill its commitment to reduce discrimination, as stipulated in international conventions and treaties such as the Beijing Platform of Action and CEDAW. Although the Jordanian Constitution requires equality among all citizens, such provisions have not translated into applicable laws and into equality in private or public spheres. The gap between the government's constitutional commitments to equality and the reality of women's lives remains large, particularly in light of the Personal Status Law (which governs all matters pertaining to family life). In Jordan and across the region, personal status laws are widely perceived as one of the primary sources of discrimination against women in legislation and practice.

In addition to the discriminatory legal provisions themselves, women encounter many obstacles that impede their access to justice generally and the law and formal justice system in particular. These obstacles exist at the individual level, at the community level, and the institutional level, as well as at the policy level. Many women lack the basic knowledge of their rights and of the proper channels available to them in order to claim them. The social stigma or “shame” attached to women who “wreck” their homes in resorting to the law is another obstacle – usually resulting in shunning the woman by her family and community and affecting her daughters’ image in the community as well. At the formal justice institutions, women receive similar treatment to those they receive at the hands of the rest of the community, in addition to other obstacles related to the financial fees of the courts and lawyer, which renders accessing the courts impossible for the poor. A main concern and reason for the persistence of such obstacles and inequality is the lack of women’s participation in decision making in the public and political forums.

Despite such challenges, progress has been made in regards to women’s status in Jordan over the years. The fight for women’s rights started in the nineteen forties and has continued since. The gains included the right to vote and then the right to run as a candidate in the parliament, and in the twenty first century the ratification of CEDAW and then lifting some reservations, the promulgation of the Family Protection Law, and

the amendments to the PSL in 2001 and more recently in 2010.<sup>1</sup> Discrimination looms large nevertheless, in particular in the family law and the Shari'a court system – when women are postulated to have left their “natural” place in the family when demanding justice.

### ❖ Personal Status Law

PSL sanctions and lays out the rules on such matters as marriage, divorce, custody of children, alimony, and inheritance. Jordanian laws are based on the French (Napoleonic) civil code and Islamic law (Shari'a) and have been influenced by tribal laws and traditions. Jordan's PSL was promulgated in 1976 and is litigated in the religious court system in Jordan, vis-à-vis “regular” courts which are concerned with non-PSL matters. For most Jordanians, this means that Shari'a (Islamic law) courts are the ultimate authority over legal issues that impact the family and relations within the family structure.<sup>2</sup> The Shari'a courts, which are completely independent from the civil and criminal courts system, are headed by the Islamic Chief Justice (Qadi Al-Qudah in Arabic), who is appointed directly by the King.<sup>3</sup>

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<sup>1</sup> *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010).

<sup>2</sup> *MENA Gender Equality Profile: Jordan Report*, UNICEF. (Jordan: UNICEF, 2009).

<sup>3</sup> Ibid

In 2001, the first amendments were made to the PSL and in 2010 came the most important amendments to the modern PSL implemented in Jordan. The new PSL was passed by the Cabinet on September 2010 in the form of a temporary law consisted of 327 articles, 141 of which are new. Despite the progress the amendments indicated, they fell short of the women's movement expectations and ambitions.

Several positive changes were affected in the new temporary law, including establishing an alimony fund for divorced women and their children (not actually activated yet). Its purpose is to allow divorced women to access their entitled allowances directly through the fund if their ex-husbands refuse to do so on their own accord. In theory, a woman is able to receive her dues through the fund, which then goes after the husband to pay it back to the fund. In reality, this law has never been activated to the disappointment of women's groups.

As for divorce, the law manifested more sensitivity towards the cultural stigma attached to divorce, especially its expedited form where women waves all of her rights in exchange for divorce without having to prove any mistreatment or dire cause for divorce. Thus, the law replaced the legal word *khuloe* (to indicate this right), and replaced it with the term *iftida'*-- a term used in Islamic Shari'a and the Islamic texts, lending the practice religious legitimacy and thus undermining the shame attached to it by society.

Another main amendment concerns inheritance rights. The property of the deceased should be immediately registered in the name of the female, mandating a three-month period before she can in turn waive her inheritance rights.

This is meant to safeguard against women losing out on their inheritance, as is sometimes the case, for they are immediately approached by male relatives after the death and asked to sign waivers during a confusing time.

The amended PSL has, much to the satisfaction of women's groups, raised the custody age of boys to 15 years and girls to 18 years, to remain with their mother in the case of a divorce. Another positive change is the clause stipulating that divorced parents can visit with their children in their homes instead of only at police stations or at local organizations.

Most importantly, the amended law raised the minimum legal marriage age for both men and women to 18. However, a controversial clause was maintained in the temporary law that allows girls to get married at an age less than 18 and over 15 under certain conditions. The law does not explain the criteria for this exception and it is kept up to the discretion of the judge as long as s/he is convinced that the marriage is in the best interest of the child. Early marriage runs against core components of the Convention on the Rights of the Child. The early marriage hinders a variety of rights including freedom of choice, the opportunity for personal development, health, well-being, education and participation of the child.

The law failed women's movements in other areas. It lacked serious restrictions on polygamy, did not address sufficiently the issue of joint marital property, men still have sole guardianship of their children, and women have to obtain written approval from

their husbands if they want to leave the country with their children under 18, otherwise they would be barred from leaving. And in other instance women cannot make important decisions for their children, such as allowing them to undergo surgery, choosing where they go to school and managing their finances without their husbands' written consent.

The law fails to include regulation to govern the issue of joint matrimonial property and its division during a divorce. In many cases, the wife is working and contributing financially to the assets and loans that the family gains during the course of a marriage, but to which she has no claim after a divorce," she further explained. According to the latest figures, Jordanian women own less than 15% of all residences in Jordan and under 5% of land. However, they carry 55.1% of all loans taken out.

Generally, reforms have been perceived by civil society organizations as positive if incomplete. Governments still do not ensure adequate legislation to fully protect women's rights, and state structures such as the judiciary and police force fail to implement laws that do exist, threatening to negate the positive impact of these reforms.

### *Obstacles to Justice*

In Jordan, as in other countries, many poor and underprivileged women in particular tend to attach little importance to formal legal reforms because they see no opportunity ever to go to court and claim any rights or benefits to which they may be

entitled.<sup>4</sup> Civil society organizations, moreover, point that ordinary women are not sufficiently consulted in legislative reform process. As a direct result, vulnerable women most in need of legal aid, poor uneducated women, women abandoned by their husbands, left without child alimony or physically abused, are unable to find the legal guidance to protect them. For women to get a divorce, to claim alimony or custody, and to claim their rights to property and inheritance requires a functioning and gender sensitive justice system. In the absence of access to justice, women are unable to exercise their rights and secure their rightful place as equal members of society.

Access to justice for women is limited in a variety of ways, especially in the Shari'a courts. In Shari'a courts, at the policy and legal levels for instance, the testimony of two women is equal to the testimony of one man, and female expert witnesses and translators are not allowed into the Shari'a courts. Other obstacles are related to the discriminatory implementation of the law and exist at the institutional level, even if it was meant to give her equal status. The judgment and treatment of court officials are often influenced by the cultural and social norms with which they have been raised in the Jordanian society, which are patriarchal. The negative attitude of men who dominate police, judiciary and legal institutions hinders women's access to fair and timely justice. The police can hinder access to justice by refusing to take such claims seriously by, for example, refusing to investigate or prosecute.<sup>5</sup>

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<sup>4</sup> *On the Way to Improved Legal Reality*, GTZ, 2008

<sup>5</sup> 'Background Paper on Women's Access to Justice in the MENA Region', paper presented by Reem Bahdi for IDRC, Regional Consultation, December 9-11<sup>th</sup>, Cairo, Egypt



They lack the proper training and knowledge in international conventions and human rights tools ratified by Jordan and to which they have an obligation.

At the social and community level, mainly, women often fear social retribution – and by extension economic and financial consequences – if they were to complain or testify against family members – especially male relatives who have power over them. The social stigma attached to women seen in police stations and courts of law, and for divorced women, hinders women from wanting to access justice and raises the cost of accessing the formal justice system. Even where the rights of women are formally granted in both the constitution and legal codes, these rights are not being fully implemented due to customary laws and social norms. Informal customary practices can override formal legal provisions so that state legislation is frequently ignored, undermining women’s capacity to formally seek justice through formal means.<sup>6</sup>

Other obstacles that exist at the individual level but are caused by structural and institutional shortfalls are several. One example is the limited legal knowledge and awareness of women. They are unaware of their rights and of the channels they can resort to in order to claim their rights if willing to brave the society and social consequences. They are not aware of legal measures that protect their rights and are unable to access services in case of rights violation.

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<sup>6</sup> Women’s Rights in the Middle East and North Africa 2010, Rana Hussaini find:  
<http://freedomhouse.org/template.cfm?page=384&key=256&parent=24&report=86>

The UN Committee on the Elimination of Discrimination against Women has also repeatedly recommended the governments of Jordan<sup>7</sup>, to enhance women's awareness of their rights through sustained legal literacy program and legal assistance. The fact that literacy is a prerequisite to initiating legal proceedings in many countries is particularly disadvantageous to uneducated females.

Additionally, the prohibitive costs of court proceedings and litigation prevent women who are not financially independent – most women that is – from pursuing justice without securing support from their families. This difficulty is compounded by the fact that mechanisms such as support for legal costs, free legal aid, or financial schemes are virtually nonexistent in Arab countries. The Islamic Chief Justice Department does not sanction the provision of pro bono services and lawyers taking up *pro bono* cases for poor women are also rare since most women's cases deal with time-consuming family law cases. Where lawyers can be found, they are not always “gender sensitive” and do not see or understand the discriminatory dimensions of a given law, hindering further women's access to justice.

### ❖ Opportunities

Article 6 of Jordan's constitution stipulates that all Jordanians are equal before the law, and discrimination is prohibited on the basis of race, language, or religion. The same article requires the government to ensure equal opportunity for all Jordanians. While the constitution's repeated reference to the rights of "every Jordanian" is generally

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<sup>7</sup> Jordan: Concluding comments of the Committee on the Elimination of Discrimination against Women, 2007.

understood to include both men and women, the document even after the amendments fails to specifically prohibit gender discrimination. Many laws governing women's lives are not consistent with the concept of equality among Jordanian citizens, including those related to retirement and social security.

However, the recent reform efforts in Jordan has let in a ray of hope for women rights movements as it portrays an opportunity to engage in the decision-making process and forums (like the new parliament) in order to affect a positive change in women's status and facilitate their access to justice. Another related opportunity is the recent instatement of a constitutional court, which will finally enable women to legally contest the constitutionality of discriminatory laws, including but not limited to the Personal Status law.