

## Accessing Justice in Arab Countries Beyond Covid-19: A View from Civil Society



Edited by:  
Maria del Mar Logrono Narbona and Yousra Hasona



النهضة العربية للديمقراطية والتنمية  
Arab Renaissance for Democracy & Development

## Accessing Justice in Arab Countries Beyond Covid-19: A View from Civil Society

Edited by:

Maria del Mar Logrono Narbona and Yousra Hasona



## Table of Contents

Acknowledgments	4
About ARDD and Access to Justice Program	4
About the Editors and Authors	5
Introduction: Why a Civil Society's Reflection on Access to Justice in Arab Countries?	7
The Justice Sector Response to Covid-19: The Case of Egypt	12
The Iraqi Justice Sector Under Siege: ISIL, Covid-19, and Internal Challenges	34
The Justice Sector and Access to Justice in Jordan: Towards People-Centered Justice	48
The Lebanese Justice Sector at a Time of Crisis: Vulnerable Populations' Right to Access to Justice	72
Justice with (out) Security: An Analysis of Access to Justice in Libya	101
The Justice Sector in Morocco: Reality, Challenges, and Prospects	118
The Justice Sector in the oPt: Barriers to Access Justice	139
The Right to Access Justice in Tunisia	163
Conclusion and the Way Forward	196

## Acknowledgments

This edited volume is part of the project “Strengthening Public Trust in the Justice Sector through Social Dialogue,” funded by the French Embassy in Jordan and conducted by the Arab Renaissance for Democracy and Development (ARDD). The editors want to thank colleagues at The Embassy of France in Jordan for their support, they also want to thank Emilie Desormiere, Legal and Judicial Attachee for the Middle East at the Embassy of France in Jordan and coordinator of the project.

The project was also possible thanks to the collaboration of the members of the Justice Sector Forum. The Forum was established in 2017 by ARDD, in partnership with Durrat Al-Manal for Development and Training (DMDT), to advance efforts toward justice sector reform. In 2018, the Forum was involved in the dissemination of ARDD’s research on the public’s perceptions of the justice sector, examining the satisfaction with, and perceptions of residents in Jordan in relation to key actors and processes related to the chain of justice, as well as perceptions regarding justice reform initiatives and justice-related issues. Since its foundation, the Forum has regularly met with justice sector stakeholders in Jordan, including representatives from the Ministry of Justice.

The editors want to thank our colleague Joel Orozco Alfonso, research officer at ARDD, for his editorial inputs and support.

## About ARDD and Access to Justice Program

Founded in 2008 in Amman-Jordan, the Arab Renaissance for Democracy and Development (ARDD) is a women-led national civil society organization registered under the Ministry of Social Development. ARDD seeks to foster a new Nahda (Arab renaissance) project by putting disenfranchised people at the center of development and reform efforts to achieve a balanced and equitable social, economic, and political order. ARDD supports individuals and communities — including refugees and migrants — in acquiring and enjoying their social, political, and economic rights, through legal aid and psychosocial support services, media and grassroots mobilization, education, and research and advocacy to raise stakeholders’ awareness locally, regionally and internationally about the challenges those vulnerable persons face in Jordan and the Arab Region. ARDD has a capable and passionate team, with about 80 members and ten branches across Jordan in Amman, Zarqa, Irbid, Mafraq, Karak, Al-Zaatari Refugee Camp, and Al-Azraq Refugee Camp.

For further information contact:

**Address:** Third Circle, Jabal Amman - Zuhair Malhas St #8, Amman- Jordan

**Email:** [consult@ardd-legalaid.org](mailto:consult@ardd-legalaid.org)

**Telephone:** +96264617277, +96264617278

## Disclaimer

The words and ideas expressed in this volume do not represent those of The Embassy of France in Jordan. The authors claim full responsibility for their own narratives.

## About the Editors and Authors

### **Abu Haya, Ashraf.**

Licensed lawyer by the Palestinian Bar Association.

He has many research papers in the field of international human rights law and international humanitarian law, prepared investigations on human rights violations, specializes in international human rights conventions, participated in many international, regional, and local conferences in the field of human rights, and has contributions in capacity building of human rights defenders in Palestine and the Arab world.

### **Al-Horr, Abdel Moneim Mansour.**

(Ph.D. Institute of Arab Studies – Cairo)

Expert Trainer in the field of human rights accredited to several institutions such as the Office of the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, and the Arab Organization for Human Rights. He has several publications on human rights and refugees, including: The role of international organizations in settling armed conflicts, 2010, Illegal immigration: causes and effects (Libya as an example), and Improving the capacity of Libyan civil society to submit reports to United Nations human rights mechanism.

### **Badawi, Ahmad.**

President of the Egyptian Foundation for Refugee Rights, and he is the Kuwait Society for Human Rights consultant.

He is an expert specializing in asylum, migration, and human rights issues. Specialized in designing training programs in human rights issues, democracy, peacebuilding, migration, and asylum.

### **Chekir, Hafidha.**

(Ph.D. in Law) Professor of Public Law at the Faculty of Law and Political Science.

She has held several institutional positions, including membership of the Panel of Experts in the High Commission for the Achievement of the Goals of the Revolution, Political Reform and Democratic Transition, and the Consensus Committee, which was formed within the National Constituent Assembly to review the latest version of the constitution. She has publications in Arabic and French on issues of law, human rights, women's rights, women's political participation, and civil society.

### **Chelebian, Brigitte.**

A licensed Lawyer at Beirut Bar Association since 1995. She is the Director and Founder of Justice Without Frontiers, which is a nongovernmental, juristic organization, incorporated in November 2005 and headquartered in Beirut.

**Hasona, Yousra.**

(Ph.D. Candidate at Durban University of Technology)

Lawyer and Research Officer at ARDD, Access to Justice and Inclusive Social Protection. Her main research interests are child soldiers and restorative justice in the Arab Spring countries generally and Iraq specifically, access to justice, social protection, conflict analysis, and resolution. She has publications in law, human rights, child recruitment, and restorative justice in the Arab World.

**Jamai, Abderrahim.**

A licensed lawyer at the Rabat Bar Association.

He held several positions throughout his legal career; he was the former President of the Bar Association of Morocco, and the former Vice-President of the International Union of Lawyers. He has several studies and research in the field of justice, judiciary, trials, and criminal policy.

**Logrono Narbona, Maria del Mar.**

(Ph.D. University of California, Santa Barbara, 2007) Expert Consultant and Senior Advisor at ARDD on Access to Justice and Inclusive Social Protection & Economic Development.

She has served as Assistant Professor at Appalachian State University (North Carolina), and Florida International University (Miami). She has been the Principal Investigator of two Social Science Research Council (SSRC- Carnegie Endowment) grants and has authored specialized articles and an edited volume (Texas University Press, 2015). As a consultant, she has undertaken sociopolitical analysis assignments for US government agencies; gender analysis among Palestine refugees with UNRWA; life skills and citizenship education in MENA countries with UNICEF; and analysis of satisfaction with local administration in the context of decentralization in Jordan (Madad Fund-AECID), among others. At ARDD she is leading the organization's research for advocacy on access to justice (women's access to justice, perceptions and experience of the justice sector in Jordan), and social protection (care economy, right to social protection for PwDs).

**Salih, Ayad.**

Director of The Iraqi Institution for Development, IID.

He has worked in the humanitarian field since 2003 with several organizations, internationally, nationally, and locally. He worked on different issues, such as is to monitor community needs during conflicts, planning and heading humanitarian aid programs for vulnerable groups during periods of displacement and return, and organizing advocacy campaigns after monitoring obstacles found in the government measures.

## Introduction: Why a Civil Society's Reflection on Access to Justice in Arab Countries?

**Maria del Mar Logrono Narbona,**  
Senior Advisor ARDD

The turn towards renewed authoritarianism in several Arab countries, compounded by the socio-economic impact of the COVID-19 pandemic and the economic crisis that has followed, has added urgency to unpack the meaning of the rule of law concerning the challenges facing the right to access justice.

According to the World Justice Project Rule of Law Index, except for the United Arab Emirates, Arab countries analyzed in this volume rank globally between position 61 (Jordan) to 135 (Egypt) out of 140 countries. The Rule of Law index measures four “principles” (accountability, just law, open government, and accessible and impartial justice) through eight different “factors,” namely: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.<sup>1</sup>

Already in its fifth edition, the World Justice Project has highlighted how the rule of law has consistently declined in most countries around the globe. The Arab countries analyzed in this volume are not immune to this trend. When examined individually, factors such as fundamental rights, absence of corruption, and constraints on government powers have experienced a steady decline in some of the countries analyzed in this volume since the Rule of law index was first issued in 2015.

**Table 1. Three Factors from the Rule of Law Index, 2022**

Country/ Global Rank in 2022	Fundamental Rights	Absence of Corruption	Constraints on Government Powers
<b>Egypt</b>	138	104	138
<b>Iraq</b>	NA	NA	NA
<b>Jordan</b>	102	47	100
<b>Lebanon</b>	103	108	90
<b>Libya</b>	NA	NA	NA
<b>Morocco</b>	114	89	73
<b>oPt</b>	NA	NA	NA
<b>Tunisia</b>	81	67	62

<sup>1</sup> World Justice Project on Rule of Law Index. Available at <https://worldjusticeproject.org/rule-of-law-index/about#ataglance>



## Rule by Law without Rule of Law

The *WJP Rule of Law Index* states that “a system of positive law that fails to respect core human rights established under international law is at best “rule by law,” and does not deserve to be called a rule of law system.” (WJP) While there is not a single definition for *the rule of law*, scholars argue that the term “connotes the principle or practice of the primacy of legal provisions, processes, or actors, such as judges, over leaders’ authority or particular acts.”<sup>2</sup> When adopting this definition, respect for principles of accountability and fundamental rights, and access to impartial justice, help mark an important distinction between societies under the *rule of law* and those *ruled by law*.

The Arab countries under study navigate between those two fundamental qualitative concepts. As noted by most authors in this volume, the pillars upon which the rule of law stands operate in suboptimal conditions at best. Concerning governance, judicial independence does not exist in some countries, nor is it a strong check on the actions of government authority in others; furthermore, legal frameworks in Arab countries operate at the intersection of religious, Ottoman, Western colonial, and post-colonial legacies, producing unresolved legal tensions that lead to unmet legal needs.<sup>3</sup>

At the implementation level, the supply of justice services is overstretched. It is afflicted by deficiencies regarding accessibility, affordability, and navigability of courts, and in some instances, such as Libya and Lebanon, do not even operate regularly due to security concerns (threats to life) or utter lack of material resources to keep services functioning. Demand for justice, on the other hand, is hampered by factors such as diminished trust regarding the justice system’s effectiveness, lack of awareness regarding rights, or the existence of alternative dispute resolution mechanisms that operate parallel to the justice system.

## Looking Back: Post-2011 Efforts towards Improving Access to Justice in MENA

The social revolutions that took place in 2011, collectively known as *the Arab Spring*, led to a series of renewed efforts on the side of donors to activate agendas for social justice, including access to justice programs, through what was prematurely envisioned as a “new era of civic activism with eased restrictions on civil society.”<sup>4</sup> Over a decade later and three devastating conflicts in Syria, Libya, and Yemen, each with a strong regional impact, along with the ongoing occupation in the occupied Palestinian territories, Arab governments have moved to restrict the space for civil society and justified gradual curtailing freedoms in the name of national security. This restriction has left lingering hopes for civic engagement and social justice.

Despite setbacks in democratic governance, international donors have continued their financial support to programs aiming at strengthening the *rule of law* in different Arab countries.<sup>5</sup> While financial aid provides a lifeline to ill-funded Ministries of Justice in many Arab countries and funds some efforts by civil society actors in the field of legal aid, it is difficult to assess its impact

<sup>2</sup> Mednicoff, 481

<sup>3</sup> See Mednicoff, Ibid.

<sup>4</sup> See for instance IREX 5-year program on social justice, Available at <https://www.irex.org/sites/default/files/pdf/advancing-social-justice-closing-middle-east-environments.pdf>

<sup>5</sup> See for instance OECD Rule of Law program; USAID Rule of Law (ROL) program; or the European Neighborhood Program (ENP), under which funding to strengthening the rule of law occur.

on the ground. Simply put, it is not easy to discern whether such contributions lead towards improved access to justice for those demanding it or, instead, help advance agendas in the field of enhanced legal security for investments or technology-based e-justice solutions.<sup>6</sup> Be that as it may, financial support remains a drop in the ocean for those demanding justice, strengthening in some cases, as an unintended result, *rule by law* in the region.

### The Perils of Recovery without Access to Justice and the Role of Civil Society

In the words of the OECD, “lack of legal accountability allows local corruption to undermine economies, diverting resources from where they are most needed; delays in processing legal cases inhibit economic activity, while the inability to enforce contracts deters people from entering into them; women, who often face discrimination, violence, and sexual harassment, are particularly affected by legal exclusion; [and] poorly drafted legislation also creates legal ambiguity and insecurity, and poses challenges to the cost-justified, cost-effective and consistent delivery of policy objectives.”<sup>7</sup> While programs designed to strengthen the rule of law, such as the OECD, establish a direct relationship between the rule of law and human development, the reality is that human rights and democratic governance are slipping down the development agenda concerning Arab countries, as the international community is entrenched in deepening security and economic crises.<sup>8</sup>

In this context, independent civil society organizations and human rights activists play an important role. They monitor developments on the ground, raise their voice against the *rule of law*, and, equally important, envision how to strengthen the *rule of law* in ways that enhance accountability, protect fundamental rights, and it is inclusive to everyone.

### About the Volume

This volume is written in the spirit of a collaborative effort toward strengthening the rule of law at a time when the political and economic context is not favorable. In practice, it is the product of a conversation over a six-month period among practitioners and experts in the field of access to justice in Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestine, and Tunisia. As a starting point, authors were asked to provide an analytical view of the status of the justice sector and the right to access justice in their countries by exploring three main dimensions of analysis: governance of the justice sector, supply of justice services, and demand for justice. It was agreed upon that the timeframe of the analysis should start post-2011, with particular emphasis on the disruptions brought by the COVID-19 pandemic. As the analytical work progressed, authors realized that as disruptive as it was, COVID-19 has been superseded in some national contexts by other major events, some of which constitute the majority of the analysis.

6 See for instance USAID RoL programs in Jordan and West Bank and Gaza (oPt). See report available at [https://pdf.usaid.gov/pdf\\_docs/PA00ZHVD.pdf](https://pdf.usaid.gov/pdf_docs/PA00ZHVD.pdf)

7 See <https://www.oecd.org/mena/governance/rule-of-law/>

8 For a regional assessment, see <https://arabcenterdc.org/resource/a-bleak-landscape-for-democracy-and-human-rights-in-the-mena-region-in-2022/>; for an assessment on Southern Europe and their engagement see <https://carnegieeurope.eu/2023/02/27/reassessing-southern-eu-democracy-support-security-dilemma-pub-89070>

Overall, the value of the volume resides not only in its geographical coverage, as it includes an analysis of eight countries from the Maghreb and Mashreq, but also in the varied expertise in different legal fields, such as women's rights, refugee rights, personal status law issues, and constitutional law. The result is a volume that provides a glimpse into different geopolitical realities and highlights different analytical dimensions of access to justice.

**In the first chapter,** "The Justice Sector Response to Covid-19: The Case of Egypt," Ahmed Badawi, President of the Egyptian Foundation for Refugee Rights, discusses the reality of the justice sector in Egypt and provides a critical overview of the systemic challenges facing the supply of justice services (overstretched systems that result in delayed rulings and need dignified infrastructure and increased human resources); challenges related to governance in the form of legal frameworks in need of review. The article describes the challenges related to the closure of courts during COVID-19 but also reflects on the role of 'digital justice' and remote litigation brought by the emergency.

**In the second chapter,** "The Iraqi Justice Sector under Siege: ISIL, Covid-19, and Internal Challenges," Iyad Salih, Director of the Iraqi Institution for Development, provides an overview of the Iraqi legal system to then delve into the challenges facing access to justice in Iraq in general, with particular focus on the period related to ISIL occupation and then the COVID-19 pandemic. The author provides a sobering reflection on efforts by the Iraqi government after ISIL's occupation to consolidate the rule of law and justice system through the re-establishment of institutions to offer access to justice and, equally important, provide justice to those subject to the occupation as a path to achieving community peace, especially in the areas that were occupied.

**In the third chapter,** "The Justice Sector and Access to Justice in Jordan: Towards People-Centered Justice Delivery," Maria del Mar Logrono, Senior Advisor at ARDD, provides an overview of the justice sector in Jordan and reforms efforts in the past years, with a critical reflection on the limits of these reforms in relation to its challenges. The analysis moves then to describe the challenges facing women, children, and refugees in accessing justice, focusing on the situation under COVID-19. The contribution concludes with recommendations based on a people-centered approach that relies on individuals and their rights as a basis for restructuring the sector.

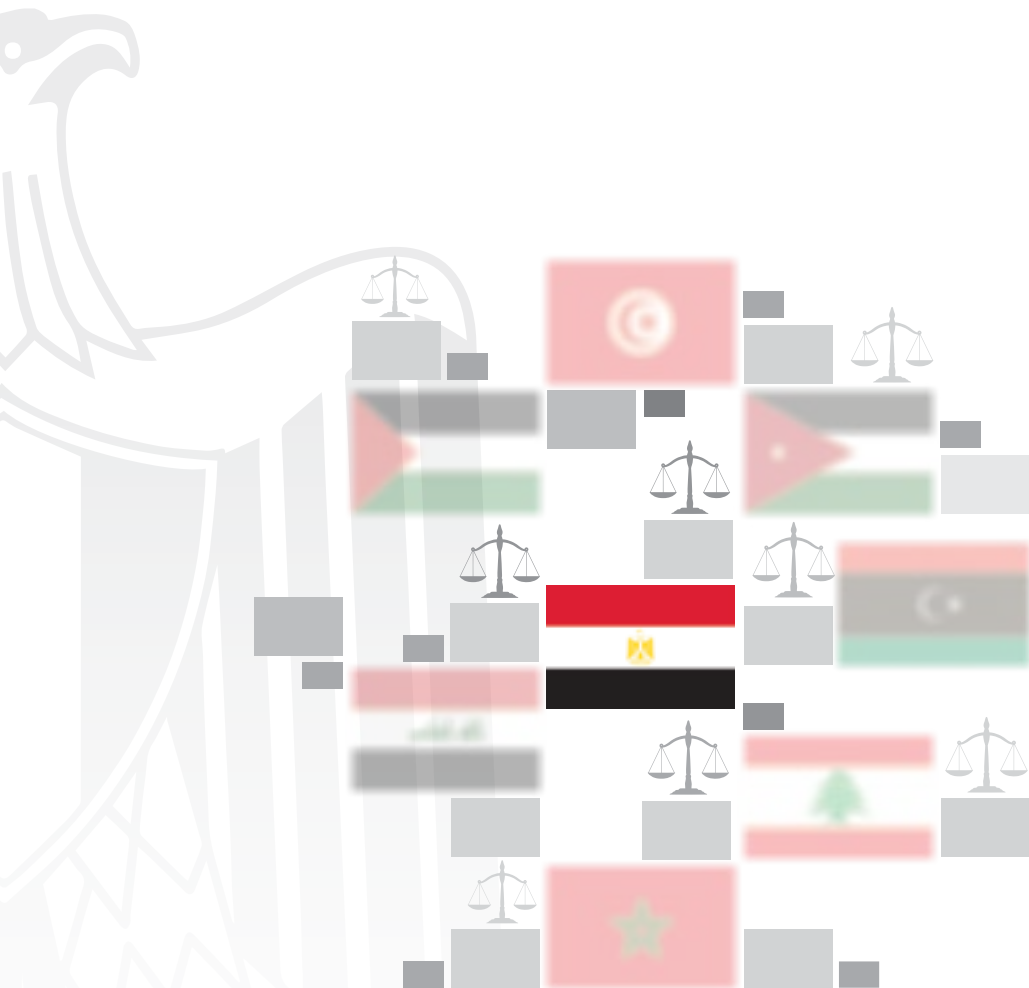
**In the fourth chapter,** "The Lebanese Justice Sector at a Time of Crisis: Vulnerable Populations' Right to Access to Justice," Bridget Chelabian, Director and Founder of Justice Without Frontiers, provides a detailed description of the judicial system in Lebanon to provide then a critical analysis of the challenges facing the right to access to justice through a legal analysis of the most prominent laws, strategies and agreements in effect in Lebanon, which govern the right to access justice and the protection of marginalized groups such as women: children, foreign workers, and refugees. Her contribution delves in-depth into analyzing challenges facing women at individual, community, and institutional levels.

**The fifth chapter**, “Justice with(out) Security: An Analysis of Access to Justice in Libya,” by Abdel Moneim Al-Horr, an expert trainer in the field of human rights, discusses the reality of the justice sector in Libya by presenting an analytical vision of the historical context of the justice sector under the previous regime, during the war that has been ravaging the country since 2011, and through the COVID-19 pandemic. The article focuses on the impact of the political and security instability in Libya in further restricting and neutralizing the judiciary’s role and the right to access justice. The contribution provides an overview of the challenges facing refugees and irregular migrants’ access to justice as one of Libya’s most vulnerable and marginalized groups.

**In the sixth chapter**, “The Justice Sector in Morocco: Reality, Challenges, and Prospects,” Abd al-Rahim al-Jami, former President of the Bar Association of Morocco, discusses the reality of the justice sector in Morocco by providing a historical and legal analysis of the judicial authority in Morocco and the most notable changes and challenges facing the legal system and the judiciary since Morocco’s independence. The article critically reflects on the paralysis brought by COVID-19 and the legislative ambiguity that followed under the state of emergency. The analysis is particularly critical of the e-justice solutions brought by COVID-19 at three levels: procedural legitimacy, courts, and the right of defense.

**In the seventh chapter**, “The Justice Sector in the oPt: Barriers to Access Justice,” Ashraf Abu Hayya, a licensed lawyer by the Palestinian Bar Association, discusses the reality of the justice sector in Palestine. The contribution provides a historical and analytical vision of the justice sector in Palestine and the impact of legal systems, especially the Ottoman, Israeli, Jordanian, and Egyptian. The article explores the challenges regarding women’s access to justice in Palestine, especially within civil and criminal law and personal status laws.

Last but not least, “The Right to Access to Justice in Tunisia,” by Prof. Hafiza Choukri, gives a general overview of the judicial organization in Tunisia to discuss the principles that enable the right to access justice in Tunisia along with the legal frameworks that guarantee this right. The chapter describes the challenges some groups, including women, face in accessing justice. Written in 2022, after the dissolution of the government after July 2021 and the constitutional and political transformations that have ensued, the chapter is a significant contribution to understanding the impact of these political transformations concerning the independence of the judiciary.



## The Justice Sector Response to Covid-19: The Case of Egypt

Ahmed Badawi

## Table of Contents

Introduction	14
The First Axis: Justice Sector and Access to Justice	15
Types of Courts in Egypt	18
The Second Axis: The Context of Justice in Egypt Between Reality and Crises	19
Internal challenges	19
Slow litigation	20
Shortage of judges	20
Invalid courtrooms	21
External Challenges	21
Political changes	21
Too many contradictory pieces of legislation	22
Failure to implement judicial rulings	22
The Third Axis: The Impact of the Corona Pandemic on the Justice Sector in Egypt and the Mechanisms Taken by the Egyptian State	22
The Court of Cassation's Opinion on Force Majeure	24
Implications of the suspension of courts, their sectors, and institutions concerned with the administration of justice	25
The Fourth Axis: The Access to Justice Crisis during COVID-19	25
The Fifth Axis: The Egyptian State and Development Mechanisms to Face Crises	26
What are Digital Courts or Remote Digital Litigation?	27
Digital litigation	27
Laws and Regulations	30
Recommendations	33

## Introduction

Since the end of 2019 and the emergence of the Covid-19 virus in the Chinese city of Wuhan, the countries of the world have suffered from this pandemic at the health and economic level, and the Corona pandemic has provoked waves of shocks that swept the world and caused the most significant global financial crises. This crisis led to a sharp increase in inequality within countries where the spread of the Coronavirus has changed the shape of the world in which we live entirely, because it is the major global crisis that appeared and spread in the whole world and which was not planned to face it and did not have a form of international solidarity or from countries to each other, causing a disruption in many sectors of countries and services and affected many citizens in many sectors within countries that came in The first of them is the health, education and other sectors due to the imposition of the closure and ban that was made during the period of Covid-19 “Corona” in light of the existence of crises in the system of services in general before Covid-19, but the crisis showed the real face where it created striking and exceptional conditions that destroyed all sectors, whether fragile or firm, and imposed many health transformations in the world, and these transformations resulted in many measures and steps aimed at repelling the spread of the Corona virus, including the adoption of some measures to limit the activity and movements of individuals in order to protect them, which included social distancing, the complete or partial closure of institutions and bodies, the closure of all places and facilities where congestion and congestion could occur, and the cancellation of gatherings and life activities with crowds.

These measures, although mainly aimed at protecting the human being, preserving his health and preventing the spread of the virus, were one of the dilemmas that prevent individuals and groups from obtaining their rights, these measures imposed the complete or partial closure of the courts and prevented them from the right to litigation to obtain their rights, where many groups were affected in the issue of access to justice, especially the most needy groups for judicial and administrative rulings such as women who have cases pending in the courts or legal procedures related to entitlements or rights I have, third parties and other categories such as refugees and migrants, especially those who were serving judicial rulings or administrative detention pending cases, unlike many other cases that suffered during the period of Covid-19 from the closure of the courts and various legal bodies or the repeated postponement of their hearings or the delay of their legal procedures, which forced a movement that accelerated intellectual pressure to find quick and practical solutions to achieve the public interest, which is to prevent the spread of the virus and maintain the health of individuals and groups and also to obtain their right to litigation Immediate and fast, not to disrupt this right and not to disrupt the interests of the people.

Therefore, many countries, including Egypt, have turned to the so-called digital justice, or digital litigation and the presence of a digital court according to the Corona crisis imposed the pace of progress in the presence of a digital court that responds to the requirements of justice and the right of litigants to exercise their right to litigation remotely in order to invest all technological means of the possibility of disseminating legal and judicial information and adopting the option of promoting and disseminating legal and judicial procedures and remote litigation as effective means that contribute to achieving speed. There is no doubt that joining the digital court has become an urgent necessity and is not a strategic option aimed at developing justice, but it has become a

turning point to change the concept of classical courts in their traditional concept to remote courts, which are digital courts, which enables individuals and groups to obtain their right to litigation as well as enables judges to continue their lawsuits without their physical presence in the court's facility, and this solution will also contribute to reducing the burden on courts at the lowest costs where it faced. The justice sector in Egypt during the past decades has many challenges that have had a direct impact on the right to litigation and access to justice, which varied between internal challenges and external challenges, which is what the study aims to try to highlight the challenges and obstacles faced by this sector, both for the practical reality and the solutions taken by the Egyptian countries to work on reforming the judicial system and the justice sector in its various sectors.

### The First Axis: Justice Sector and Access to Justice

The general concept of justice is a human conception that focuses on achieving a balance between all members of society in terms of rights, and this perception is governed by systems and laws that more than one person cooperates in developing in an accessible manner without any control or interference, so that justice ensures the achievement of equality between all persons within society with the aim of providing access to justice for all citizens present on the territory of the state, which is represented by the "judicial authority" and It is one of the three authorities that make up the legal entity of the modern state in contemporary times and one of the fundamental pillars of the manifestations of the sovereignty of the state over its territory, where this authority assumes the tasks of achieving justice by adjudicating disputes and establishing fairness in various fields between members of citizens and everyone - and thus it is the authority that must exist and be established to complete the legal structure of the state, which it is committed to forming according to objective and abstract controls and criteria - which are the criteria established throughout history - and the state is at the same time the guarantor of the performance of the state. Its role in the commitment to the application of the law and the establishment of right, justice and fairness among the members of society represented within the framework of its spatial scope or its substantive competence, and from this point of view and in pursuit of this goal, the national authority (the State) is committed to facilitating access to the judiciary, bringing its headquarters closer to individuals, ensuring its independence and impartiality, not interfering in its affairs or influencing its members or judgments and fully committing to the implementation of its rulings.<sup>9</sup>

It is represented in the Egyptian Ministry of Justice, which is the administrative umbrella of judicial bodies and bodies, and is specialized in organizing and developing justice affairs and the work of the auxiliary organs of the judicial bodies and their control (experts - forensic medicine - real estate registration and documentation authority). It aims to strengthen the role of the judiciary to ensure the performance of its mission in the administration of justice among people and the protection of their rights, which consists the following sectors:

<sup>9</sup> <https://hrightsstudies.sis.gov.eg/%D8%AF%D8%B1%D8%A7%D8%B3%D8%A7%D8%AA-%D9%88%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1/%D8%AF%D8%B1%D8%A7%D8%B3%D8%A7%D8%AA/%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-%D9%88%D9%85%D8%A8%D8%A7%D8%AF%D8%A6-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86/>



- **Office of the First Assistant Minister of Justice and Conciliation Commissions in Disputes:**

To achieve greater speed and fairness in the conciliation of such disputes, and to alleviate the burden of courts of all kinds and degrees.

- **Technical Office of the Minister of Justice:**

Technical examination of many of the files presented to the Minister, including the files of disciplinary councils' cases and investigations of all employees.

- **Legislation Sector:**

The Legislation Sector of the Ministry of Justice is responsible for studying, preparing, and drafting draft laws and expressing opinions.

- **Buildings Sector of Court Houses and Real Estate Month**

This sector is responsible for supervising the process of establishing new courthouses and real estate months, developing existing ones, equipping and establishing them, and setting the rules to ensure the proper use, maintenance, and reconciliation of assets owned by the Ministry periodically.

- **Real Estate Month and Documentation Sector:**

The Real Estate Month Sector at the Ministry of Justice is responsible for following up on the work of the Real Estate Registration Authority, documenting and facilitating the services it provides to citizens.

- **Expert and Forensic Sector:**

The expert and forensic sectors are responsible for supervising the work of expertise and forensic medicine and working to improve its technical and administrative level and organize the work of experts and forensic doctors before the judicial authorities.

- **Obedience to graft:**

The graft sector of the Ministry of Justice, through its various departments, is responsible for applying the provisions of Law No. 62 of 1975 on Illicit Graft.

- **Planning, Administrative Development, and Follow-up Sector:**

The sector aims to develop a comprehensive plan for administrative development to make the administrative apparatus integrated, homogeneous, and parallel in its comprehensiveness with the comprehensive national development plan.

- **Legal Departments Sector:**

The sector is responsible for supervising the legal departments of public bodies, institutions, and companies.

- **Technical Development, Information Systems, and Digital Transformation Sector:**

The Technical Development Sector and the Judicial Information Center at the Ministry of Justice are responsible for developing and automating the work system of all judicial bodies, bodies, auxiliary departments, the Ministry's General Office, and the courts.

- **Court Affairs Sector:**

The Courts Affairs Sector of the Ministry of Justice shall be responsible for the administrative supervision of the proper functioning and organization of the courts of the first instance and their districts.

- **General Diwan Sector:**

It is responsible for supervising all administrative work in the Ministry.

- **Sector of the National Center for Judicial Studies:**

The National Center for Judicial Studies aims to train, qualify and train judges, prosecutors, and other members of judicial bodies and their assistants in Egypt and the Arab, Islamic, and international world.

- **International and Cultural Cooperation Sector:**

The sector is specialized in preparing the international judicial cooperation program and studying the draft agreements on judicial and cultural cooperation with foreign countries and international bodies and organizations.

- **Human Rights, Women, and Children Sector:**

The Human Rights Sector of the Ministry of Justice was established by the Minister of Justice's Decree No. 3081 of 2002 and is responsible through its departments for the follow-up of all legislation related to combating violence against women in its various forms.

- **Specialized Courts Sector:**

The General Directorate of Specialized Courts Affairs is responsible for supervising and following up on the work of the economic courts, identifying the technical, legal, and administrative problems that result from them, taking the necessary measures to avoid them, training the judges of the court, an administrative inspection of all employees of these courts, supervising the offices of the settlement of family disputes in the family courts and everything that would ensure the proper performance of those offices of their tasks and follow-up of the progress of work in them to ensure that they are well managed. Regularity and removal of any problems that may encounter and administrative inspection of those offices, and selection of the best elements of specialists and legal experts to work in them.

- **Health and Social Services Fund Sector:**

Law No. 36 of 1975 was issued, establishing the Health and Social Services Fund for Members of Judicial Bodies.

- **Anti-Corruption and Complaints Sector:**

The General Directorate of Anti-Corruption and Complaints Affairs shall be competent to receive all citizens' complaints and send them to the Department or the competent authority for consideration and taking the necessary measures thereon.

- **House of Representatives Affairs, Public Relations, and Media Sector:**

The sector is specialized in receiving requests for briefings, interrogations, questions, and urgent statements.

## Types of Courts in Egypt

- **Supreme Constitutional Court**

Founded in 1971, it is an independent judicial court based in Cairo Governorate. It is specifically responsible for judicial oversight over the constitutionality of laws and regulations, interprets legislative texts, and many other competencies.

- **Court of Cassation**

Defined as the top of the judicial hierarchy and the head of the judicial authority in the system of government in Egypt, and was established on May 2, 1931, and is competent to hear appeals that may be filed by a member of the litigants or that may be submitted to it by the Public Prosecution, and consists of several chambers headed by the President of the Court of Cassation or one of his deputies and includes a sufficient number of members, provided that judgments are issued by 5 of them, in accordance with Article 3 of the Law on the Judicial Authority in Egypt.

- **Appeals Governor**

It is defined as a court competent to hear judgments rendered by the courts of first instance in whose chamber these judgments are subject to appeal and, in exceptional cases, to hear cases brought before it, in which case it operates as a court of first instance and not a court of second instance.

- **Courts of First Instance**

It is defined as the courts that have jurisdiction in all civil and commercial cases in Egypt, except those that Egyptian law has introduced into the jurisdiction of other courts, as well as the competent to issue judgments in cases of limited importance that fall within their jurisdiction in the field and time. The decisions issued are subject to appeal.

- **Magistrates' Courts**

Magistrates' courts are defined as courts that are competent to render judgments in cases of limited importance that fall within their jurisdiction spatially and economically, and it is indicated that their decisions are subject to appeal.

- **Family Court**

Defined as courts that are competent to hear all personal status, which includes alimony, divorce, and wages for each wife, children, or relatives in addition to the custody of children, was established in 2004.

- **Court of Urgent Matters**

It is defined as the summary judiciary competent to adjudicate disputes feared to be out of time. The judgment is limited to taking temporary action binding on the parties to preserve the existing conditions, respecting the apparent rights, or safeguarding the interests of the disputing parties.

### • Court of Administrative Justice

It is known as part of the judicial section. It is specialized in the judiciary in adjudicating disputes of an administrative nature or those to which the administrative body is a party. It is worth noting that the Egyptian state has taken duplication in the judiciary - that is, the existence of an administrative court and an ordinary judiciary - since 1946.

## The Second Axis: The Context of Justice in Egypt Between Reality and Crises

Access to justice is a fundamental principle in the rule of law that describes how citizens and others in the territory of the state have equal access to legal systems, which is a basis for living in security under the justice system of all its sects. The justice system has suffered by cutting it off for several internal and external challenges, which represented multiple problems associated with the internal situation of judicial institutions, including the increase in the number of cases and litigants, invitations pending before courts, and the small number of judges. The assistants in charge, which was a significant reason for the slowdown in litigation, the length of the period of consideration of cases, the lack of capacity of courtrooms and buildings for a large number of litigants and tendencies, in addition to the various political periods that the Egyptian state has gone through since 2011 and the events that have significantly affected the justice sector during these periods, and which the state and its agencies began to develop programs to develop the litigation system, develop buildings and modernize the programs used to facilitate citizens and achieve access to justice, which started in the period of Covid-19.” Corona “This period, which has been suffered by many segments of society within the Egyptian state, caused much increase in the periods of litigation and detention due to the general closure that occurred in the whole world and caused a state of congestion and delay of many sessions, and here the state began to develop a plan that suits the special conditions of the justice sector and its institutions, which began to introduce the system of “remote litigation” in the judicial system “digitization” plan under Law No. 146 of 2019. The coordination between the Ministry of Justice and Communications to achieve “digital justice” to reduce human gatherings and keep pace with development and modernity was the beginning of the implementation of that plan with the amendments made by the legislator to the Law of Courts, especially the Economic Courts No. 120 of 2008 under Law No. 146 of 2019 published in the Official Gazette in No. 31 bis (f) issued on August 7, 2019, and allowed for the first time the use of information technology means in providing services for filing and managing lawsuits electronically. At the beginning of the pandemic, labor courts suspended their sessions in line with the decisions issued by the government as a first step in confronting the Coronavirus, and to limit its spread, and criminal chambers postponed the hearing of cases over the course of more than once and for a long time apart.

### Internal challenges

This was represented by the lack of mechanisms within the justice sector and its various institutions at the level of speed of litigation, the accumulation of cases, the poor government services, the lack of electronic systems that facilitate access to justice and information, the lack of workers in the justice sector, whether judges or administrators with the presence of many litigants and the invalidity of courtrooms or prosecutors, which varied as follows:

## Slow litigation

One of the most critical problems facing the judicial system is the problem of slow litigation, although this problem exists in all countries of the world, but it is becoming more complicated in Egypt day by day, until some cases and cases have reached the point of remaining before the courts for long decades, and others up to a quarter of a century, which was revealed by one of the recent studies from the circulation of one of the appeals pending before the Court of Cassation on a particular ruling on the dispute over the ownership of a piece of land to what extent Nearly 20 years, which confirms that there is a real crisis inside Egypt regarding the slow pace of litigation, which was indicated by the Minister of Justice, Counselor Omar Marwan,<sup>10</sup> who confirmed the existence of «slow justice», was true at one time, explaining that there are good indicators despite the large number of cases with the small number of judges, pointing out that they have not reached the stage he is satisfied with, but this is governed by several considerations, including the need for a judge for every 14,000 citizens, and we have A decrease in the number of judges, stressing that the number of civil and criminal cases heard by the courts annually is about 11 million.

Despite the attempts of the Egyptian legislator on more than one occasion to intervene and resolve this crisis through the introduction of legislation that addresses the problem of slow litigation, such as the establishment of the Law on Dispute Conciliation Committees No. 7 of 2000 and the Law on Litigation Procedures before Family Courts No. 10 of 2004 establishing family courts, it is ineffective. Sometimes it also turns into one of the reasons for the slow pace of litigation rather than a solution to it.

The factors of the phenomenon of the judicial slowdown may lie in the:

- Reasons related to legislation and laws.
- Reasons related to those in charge of implementing laws, whether at the level of numbers or mechanisms.
- Reasons related to the role and buildings of the courts and the possibilities of the facilities and systems used.
- Enforcement Procedures for Judgments.

## Shortage of judges

The first cause of this problem is the increase in the number of cases circulating and pending within the criminal, first instance, district, and family courts, which according to the estimates of the judges themselves, range from 16 to 18 million cases, as well as about 250,000 cases and appeals pending before the Supreme Administrative and Administrative Court of Justice of the Council of State, in contrast to the number of judges who do not exceed 15,000 judges, including those who are seconded abroad, and others who are seconded at home in government bodies, and some whose health conditions do not allow He has considered a large number of issues.

---

<sup>10</sup> <https://www.elwatannews.com/news/details/5733946>

### Invalid courtrooms

One of the significant obstacles facing the justice system is the crisis of court buildings in Egypt, where courtrooms are considered unusable, most of which were palaces and old buildings. Over time they became obsolete and fulfillable at any moment. The state still needs to establish courts capable of accommodating the number of litigants, judges, and judges present daily in the courts.

In addition, since the revolutions of January 25 and June 30, approximately 25 courts have been burned down after the Brotherhood set them on fire. Many of them have yet to be equipped to receive judges and litigants. Despite the attempts of the Ministry of Justice, which is primarily responsible for the courts, to repair and restore them, they are still under restoration. Only eight courts have been completed because the restoration process needs expensive money, and some of them are worn out and do not benefit from their restoration but must be demolished and built. Again.

### External Challenges

Which varied and varied past periods between political, social, and international situations that affected significantly, the latest of which was the Corona crisis Covid-19, which was followed by more challenges for political reasons and changes in the ruling regimes, and since the judiciary has been the last refuge of the citizen, there have been many confrontations during the previous periods, which is worth researching on the governance of the justice sector and access to justice completed.

#### Political changes

During the past years, the Egyptian state has suffered from several political changes that directly affected many services, the most important of which was the judicial system in its various sectors, due to political reasons and various ministerial changes, which began to stabilize well during the previous three years in light of the state's orientations in reforming the judicial system and making changes on the mechanisms used, developing the courts and introducing the system of completed justice.

The Covid-19 period "Corona" also added more external challenges, which affected the postponement of many lawsuits and the circulation of hearings, caused the suspension of litigation procedures, which involved many citizens, especially the Family Court, which annually hears about 950 thousand cases annually other than cases of detention and renewals, where Mr. Chancellor / President of the Egyptian State Council issued on 15/3/2020 his decision to postpone all court sessions at all headquarters of the Council of State at the level of the Republic except some urgent cases that Appreciated by the Court, this decision has been extended several times.

### **Too many contradictory pieces of legislation**

An actual problem facing judges is the existing legislation, which represents a dense and intertwined forest of laws, some of which have been issued for 100 years. It is difficult for the specialist to understand or limit them in a way that allows him to give the appropriate judgment. Some of its articles and provisions are contradictory, to the extent that there is legislation that may acquit an accused and another legislation that convicts him.

### **Failure to implement judicial rulings**

After the suffering that the litigant finds before the courts in filing his case and obtaining a judgment in it, which may extend for decades at times, he finds himself unable to execute the final decision because of the existence of many obstacles from the executive procedures or because of the procrastination of the opponents and the games of their defense, which the litigant finds himself unable to reach his right.

## **The Third Axis: The Impact of the Corona Pandemic on the Justice Sector in Egypt and the Mechanisms Taken by the Egyptian State**

The Corona pandemic has caused waves of various and multiple shocks that have swept the world and caused the largest global economic crisis in over a century. This crisis has led to a sharp increase in inequality within and between countries and a significant increase in the suffering of citizens within countries because of the lack of plans prepared previously to deal with this crisis and the difficulty of solidarity and support, whether from organizations or major countries, has added significant burdens, especially on the developing country, because all countries are preoccupied with the crisis and the beginning of The mother shutdown, which was done in a single way for all countries of the world without alternative plans ready to reduce the suffering of citizens within countries, which represented a great challenge for countries to prevent the spread of the Coronavirus "Covid-19" and provide urgent medical services in light of the lack of readiness of ministries of health to prepare what was expected and the needs of countries to combat the virus in an attempt to slow the infection, governments in most countries have taken strict practices that require all residents, to stay at home, and closed large sectors both of service institutions Educational institutions and large and small economic institutions, which posed a problematic and great challenge for different categories of citizens, especially those who work and receive their wages on a daily basis in other sectors.

And since the most populous countries have the largest share of fear, especially developing countries, including the Egyptian state, where the government has sought great attempts and efforts to limit the spread of the virus within society out of fear of rapid spread due to the crowding of streets, service institutions and means of transportation, which forced the Egyptian government to issue quick decisions that started.

The Egyptian government decided to impose a curfew in March 2020 from 7 pm to 6 am for 15 days. It announced a set of new measures to be applied for 15 days to reduce the spread of the Coronavirus, most notably "banning the movement of citizens on all public roads from 7 pm to the next morning." He added that it was also decided to "stop all means of public and private



mass transport during the same period.” “From five p.m. to six the next morning, all shops, crafts, and malls that we call malls, service shops, and the sale of goods will be closed with full closure on Friday and Saturday,” he said. As attempts to limit gatherings to prevent the spread of the virus, and it did not stop at that, the state was forced to take additional higher decisions to confront the Covid-19 virus, where President Abdel Fattah al-Sisi issued on January 20<sup>th</sup> 2020, extended the application of the emergency law for three months to complete the state of emergency three years since it was first imposed at the level of the Republic.

He explained that the government is imposing precautionary measures to reduce the spread of Corona gradually because it is aware of the impact of these decisions on “the opportunities for employment and livelihood of people so many that we do not harm those who depend for their livelihood and livelihood on irregular work.”

Several bodies and institutions have begun to make and take other decisions to regulate each sector separately and according to the needs of citizens for their various services, including the sector of the Ministry of Justice, which the **Egyptian Ministry of Justice announced on March 15, 2020, the postponement of all cases before courts of all kinds within two weeks in line with the state’s plan to confront the Coronavirus.**

On Sunday, the minister said in a statement that administrative work in the courts is continuing to meet requests within their legally prescribed dates without holding hearings.

She added that coordination had been established between the Minister of Justice, Chancellor Omar Marwan, the President of the Supreme Judicial Council, the President of the Council of State, the Attorney General, and the presidents of the courts of appeal and courts of first instance, to take the necessary legal measures to postpone the cases and not to write off any case.

For its part, the Court of Cassation also decided to suspend its hearings, starting Monday, for two weeks.

Judge Mohammad Reza, vice president of the Court of Cassation and adviser to the president of the court for public relations and media, said the decision includes the postponement of court sessions, explaining that the administrative work of the court is continuing.

In the meantime, the Council of State decided to postpone its sessions for two weeks as well, and the Administrative Prosecution will work with half the force within two weeks to confront the Coronavirus.

On Saturday, President Abdel Fattah al-Sisi directed the suspension of studies in universities and schools for two weeks, starting from Sunday, and for two weeks, as part of the state’s comprehensive plan to confront the Coronavirus.<sup>11</sup>

11 <https://www.alarabiya.net/arab-and-world/egypt/2020/03/15/%D9%85%D8%B5%D8%B1-%D8%AA%D8%B9%D8%B7%D9%84-%D8%A7%D9%84%D8%B9%D9%85%D9%84-%D8%A8%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85-%D8%A3%D8%B3%D8%A8%D9%88%D8%B9%D9%8A%D9%86-%D9%84%D9%85%D9%88%D8%A7%D8%AC%D9%87%D8%A9-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7>



These decisions came to preserve the health of citizens, which the law defined as “force majeure,” which is every incident that is outside of something, cannot be foreseen, and can never be paid.

A particular definition of the situation of force majeure has been given in special contracts and agreements as follows: “Force majeure is what occurs in judgment and destiny or any rebellion, disobedience, riot, war, strike and other labor disturbance, fire, flood or any other cause that is not the result of the fault or negligence of the contractors.”

### The Court of Cassation’s Opinion on Force Majeure

The Egyptian Court of Cassation has defined force majeure within the meaning of article 165 of the Civil Code as a war, earthquake, or fire, as well as an enforceable administrative order provided that it meets the impossibility of expectation and the impossibility of payment.

And this is what was repeated a lot inside the Egyptian state, in which Egypt resorted to the theory of force majeure.

Instead, the decisions included several measures to be taken during the period of adjournment of the hearings, namely, the pronouncement of judgments at their specified sessions, and the heads of the chambers to take such decisions as they deem appropriate in favor of work and continue to hear cases without human gatherings and crowding, taking into account that the judiciary does not harm the rights of citizens by the lapse of the appeal or by considering the case as if it were not or written off, as well as the right of litigants and their agents to appeal the rulings on the dates prescribed by law, as well as the issuance of certificates to the concerned parties, which have passed through Egypt. Such readings during the events of January 2011 and the fires and destruction that hit the country, especially the courts, entailed that the Minister of Justice issued a decision to suspend the work of the courts on February 29, 2011, which is decision No. 50 of 2011, and resorted to the force majeure base in the October War of 1973 and the setback of 1967. These are the times that Egypt resorted to theory in the modern era after the abolition of mixed courts.

This is one of the great challenges facing many beneficiaries of the services of the judiciary and its various institutions, where there are many people detained pending cases or dates of **renewal procedures, which is one of the biggest challenges during the closure period due to Covid.** The matter here deals with the problem of pre-trial detainees and the dates of renewal of their detention before the judiciary and the investigations of the Public Prosecution. The conduct of the investigator and the facilitation of his interrogation or confrontation, whenever the investigation so requires, and to prevent him from being able to escape, tamper with the evidence of the case, influence witnesses, threaten or retaliate against the victim, and calm the general feeling of revolt because of the gravity of the crime, that is, it is a precautionary measure towards the accused, and falls within the powers of the prosecution or the judge of the criminal investigation; therefore, it is a procedure and not a trial, so the decisions came that the renewal of detention and related matters are considered, provided that the presence is limited to the accused and his lawyer only. In addition, decisions may be taken to renew pre-trial detention administratively to avoid missing the renewal date, the consequent invalidity of detention, and the consequent procedures tainted by invalidity.

Otherwise, many litigants before the courts faced other crises in that period due to the closure that began with a decision of the Minister of Justice, the most affected of which were women who had lawsuits specific to personal status laws, where the crisis caused delays in several judicial rulings or the receipt of their legal dues and access to justice legally prescribed for women. It cannot implement the provisions of expenses issued by the Family Court; it can be implemented by seizing the defendant's salary by alimony by deducting from his monthly salary and resorting to the judge of temporary matters in the Family Court, to obtain an order for the educational guardianship of women over their children or a judicial order to ban travel, methods of grievance, and appeal of judgments either by ordinary or unusual methods such as seeking review of the case and the same crisis of refugees and migrants during this period where they faced several challenges that were:

- Closure by official international organizations concerned with refugee services.
- Suspension of legal, social, and health services.
- Aid Receiving Stops.

This has arranged for them to terminate their identity papers and their inability to complete any legal procedures or take any administrative measures such as receiving financial assistance, completing marriage contracts, or proving the registration of newborns delayed in their legal invitations, the suffering of many detainees because they entered the country illegally or facing judicial or administrative rulings.

### **Implications of the suspension of courts, their sectors, and institutions concerned with the administration of justice**

- Backlog of hearings and accumulation of internationalized cases.
- Difficulty taking urgent legal action, such as making a report or filing a new lawsuit.
- Lengthy litigation periods due to adjournment of several hearings.
- Many of the procedures of refugees and migrants have been delayed due to the closure of the concerned organizations, especially at the level of identity papers and their renewal to expire.

Crises of execution of sentences for many of those who have received judicial rulings and an increase in the suffering of certain groups, including women, especially in cases of personal status and judicial expenses.

### **The Fourth Axis: The Access to Justice Crisis during COVID-19**

The decisions taken by government institutions to limit the spread of the Covid virus have affected several challenges to reaching justice, where all state institutions have been closed for not long periods but have caused considerable overcrowding of beneficiaries. Even after lifting the closure

decision and organizing institutions for those who visit them in terms of numbers and working hours, there was also suffering for citizens, and the reasons are:

- Population increase that causes an increase in the number of visitors to institutions.
- Lack of applications and electronic systems to facilitate citizens.
- Difficulty finishing service from the first visit.
- Multiple single service spaces and lack of one-stop-shop.
- Performance of unqualified government employees.

Whereas, to achieve the concept of access to full justice, it is necessary to have an integrated and interconnected system to facilitate the citizens to achieve the goal of access to justice among all state institutions, which is represented in:

- Ministry of Interior and its Organs.
- Ministry of Justice and its Sector.
- Specialized National Institutions and Councils.
- International organizations concerned with categories of non-citizens.
- Local institutions concerned with the provision and delivery of services.

This is what the Egyptian state sought with its institutions, especially during the Covid-19 crisis, in starting to develop electronic systems, changing service institutions, developing programs, developing buildings, and establishing citizen services offices.

### **The Fifth Axis: The Egyptian State and Development Mechanisms to Face Crises**

The Corona pandemic “Covid-19” imposed various changes on the whole world; it was a disaster and a global crisis. Still, it hit the countries of the world with a great slap about its services, plans, programs, readiness, and readiness of its governments for such pandemics and crises, which is what the Egyptian state has done during and after the crisis in many of its institutions and services, especially in the system of justice of all kinds, especially at the levels of achieving complete justice and providing services worthy of Egyptian citizens in the “new republic,” whose title is keen to be to keep pace with the political leadership The age, development, construction and ending the chronic and deep-rooted problems and crises that have long plagued the citizen for decades, and his right to receive a distinctive service without obstacles.

This forced a movement that accelerated intellectual pressure to find quick and effective solutions to achieve the public interest, which is to prevent the spread of the virus and preserve the health of individuals and groups and also their access to their right to immediate and rapid litigation and not to disrupt this right and not to disrupt the interests of people, so many countries, including Egypt, have turned to the so-called digital justice, or digital litigation and the presence of a digital court according to the Corona crisis imposed the acceleration of the pace of moving forward in the pres-

ence of a digital court that responds to the requirements of justice and the proper Litigants in exercising their right to litigation remotely with the aim of investing all technological means of the possibility of disseminating legal and judicial information and adopting the option of strengthening and generalizing the immaterial procedures and procedures of law and judicial and remote litigation as effective means that contribute to achieving speed, there is no doubt that joining the digital court has become an urgent necessity and is not a strategic option aimed at developing justice, but it has become a turning point to change the concept of classical courts in their traditional concept to courts for After which they are digital courts, which enables individuals and groups to obtain their right to litigation as well as enables judges to continue their lawsuits without their physical presence in the court facility, this solution will also contribute to reducing the burden on the courts at the lowest costs.

## What are Digital Courts or Remote Digital Litigation?

Many names are called for remote litigation, which is built by completed justice, electronic judiciary, digital litigation, digitization of the judiciary, and other names, but what is the concept of all these names can be defined as remote litigation or digital litigation as follows:

### Digital litigation

It is a judicial information system under which all litigation procedures are applied through computers connected to the Internet and electronic databases to speed up the adjudication of cases and facilitate their processes for litigants, a new judicial system based on legislative bases and rules and judicial rulings capable of facing all challenges that may hinder the achievement path of citizens in the exercise of their right to litigation.<sup>12</sup>

While jurisprudence defines electronic litigation as “the process of transferring litigation documents electronically to the court via e-mail, where the competent official examines these documents, and a decision is issued on them to accept or reject and send a notice to litigants informing him of what has been done about these documents.”

However, this definition is limited to transferring documents for litigation electronically to the competent court without other litigation procedures, such as investigation and trial, which need to be revised.

Part of the jurisprudence defines electronic litigation as the authority of a specialized group of regular judges who hear the case and initiate judicial proceedings through electronic means developed within integrated information judicial systems, means based on the global Internet and electronic computer file programs used to consider and adjudicate cases and execute judgments to reach a speedy dismissal of cases and facilitate litigants.

12 (Hisham Al-Araj (2020), The Need for Remote Litigation in the Time of the Pandemic and the Digital Court Question, No. 51, Journal of Business Disputes pp. 79, 82

From the previous definitions, electronic litigation can be defined as the transformation of the authority of the judicial court competent to adjudicate cases from the classical, traditional system to a new electronic system based on the adjudication of cases electronically and the conduct of all litigation procedures electronically through the international Internet and relying on electronic systems and super-technical mechanisms in order to speed up the procedures for the adjudication of cases, speed up the adjudication of disputes and facilitate the parties to the dispute.

To shift to electronic litigation, it is necessary to link all judicial courts to one electronic circuit, and this requires computerizing the work of each judicial court separately and then linking them together to perform their work through electronic means and for databases to take the place of documents, paper files and information between judges, lawyers, litigants, the Public Prosecution and other bodies, in a way that allows quick access to information, the speed of retrieval and linking between them and the alleviation of burdens on all parties to the judicial process.<sup>13</sup>

Egypt has had many steps around digital transformation over the past few years in all the services provided by Egypt, which has become one of the basics of life and an indispensable necessity in the transactions needed by the public within government and even judicial departments, Egypt has announced the completion of 9 technological services within the Digital Justice Egypt project to develop the judicial system and achieve complete justice using modern technology through the establishment of a unified digital judicial system that contributes to the development of litigation mechanisms, before the courts.

This project comes within the Egyptian state's quest to digitize judicial services and rely on digital technology in the application of all litigation procedures in a way that contributes to raising the efficiency of the judicial system, speeding up the adjudication of cases, increasing the productivity of courts, and simplifying processes for citizens, lawyers and parties to the conflict in a way that contributes to reducing and reducing costs, governance of performance, reducing paper circulation and easing congestion in prosecutors and courts, which has been shown in the light of the precautionary measures adopted to face the Corona pandemic crisis and one of the most important The services that have been digitized within the framework of the Digital Egypt Justice Project include:

Services digitized within the framework of the Digital Egypt Justice Project:

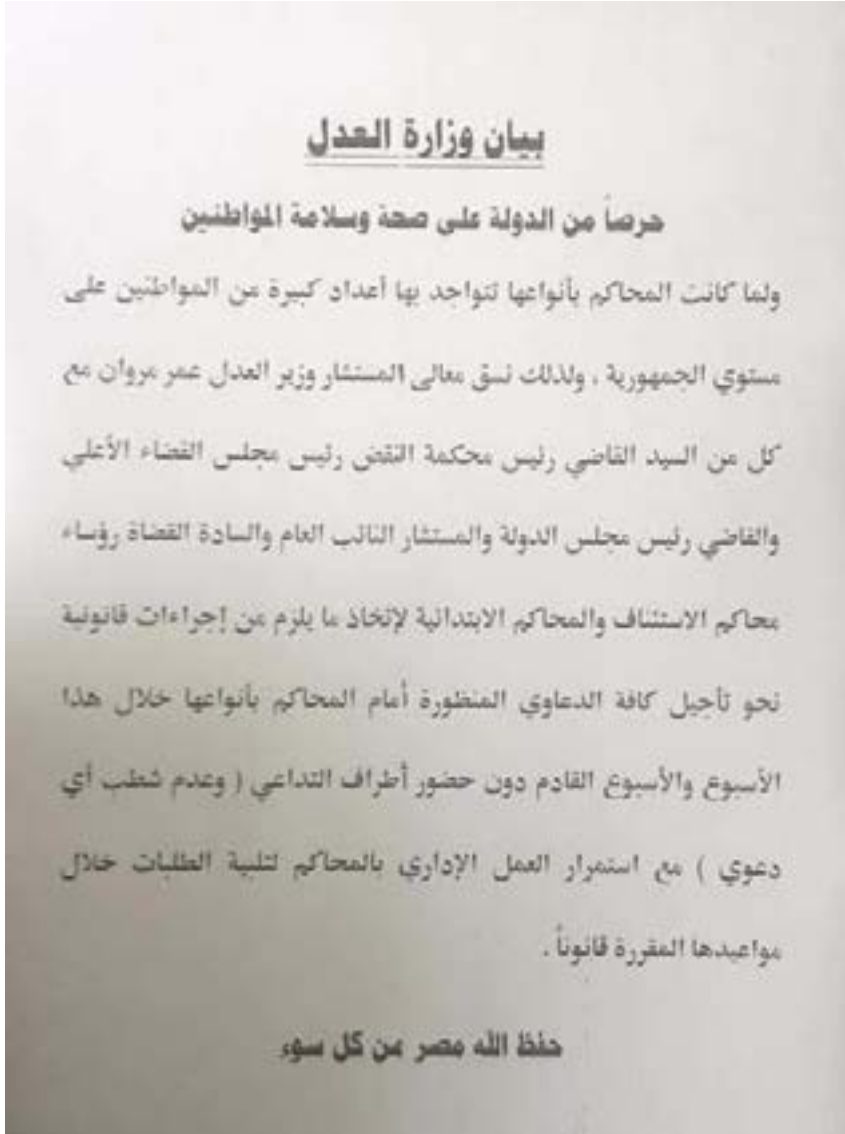
- **Remote litigation service in civil and economic courts:** The procedures for filing and initiating lawsuits have been converted online.
- **Write your editor service:** enabled the user to write the subject of his power of attorney himself by entering the editor's data by choosing the editor and its type and then agreeing to the terms and conditions.

13 (Meroue El Sayed El Jessaoui (2021), Means of Electronic Litigation and the Authenticity of its Procedures in the Light of the Novel Corona Pandemic A Comparative Study, Volume 2, Issue 1, Algerian Journal of Business Law, pp. 14, 15

- **Electronic In-kind Registry System:** It is a service that links real estate databases with geographical maps.
- **Electronic Court Management System Service:** It has been applied in 136 courts and allows filing case newspapers in civil, family, and economic courts.
- **Remote Pretrial Detention Renewal Service:** This service is done through video conferencing technology linked to prisons.
- Real estate registration service and electronic documentation through Egypt's digital platform in addition to the service of secure issuance of documents and the role of courts.
- Mobile Car Service for Documentation Services
- **Law Rescue Service to allow the initiation of cases remotely:** This service allows lawyers to file cases remotely through Egypt's digital website and pay fees electronically instead of going to court and cases are initiated through two stages:
  - o First Stage: Registration of the lawyer on the system of managing the files of civil cases.
  - o Second Stage: Remote Filing of Lawsuits, in which the lawyer can file a civil lawsuit through the Court Services page of the Egypt Digital Portal.<sup>14</sup>

<sup>14</sup> (Report issued by the Egyptian Council of Ministers, Information and Decision Support Center, dated January 22, 2022, entitled 7 Years of Achievements in Community Development Justice and Security Sector, Digitization of Justice Services pp. 71:80 )

## Laws and Regulations



  
**جمهورية مصر العربية**  
**محكمة استئناف القاهرة**  
**مكتب**  
**المستشار ورئيس المحكمة**

**قرار رقم (١١٣) لسنة ٢٠٢٠**

**المستشار/ بدري عبد الفتاح بدري رئيس محكمة استئناف القاهرة**

- بعد الاطلاع على القانون (٤٦) لسنة ١٩٧٢ بشأن السلطة القضائية والقوانين المعدلة له .
- وعلى التفويض الصاهر من الجمعية العمومية لمستشاري المحكمة المنعقدة في ٢٠١٩/٩/٢٨ .
- تماشياً مع التوجيهات الصحية والإجراءات الاحترازية للحد من التجمعات البشرية في هذه المرحلة.

**قررنا**

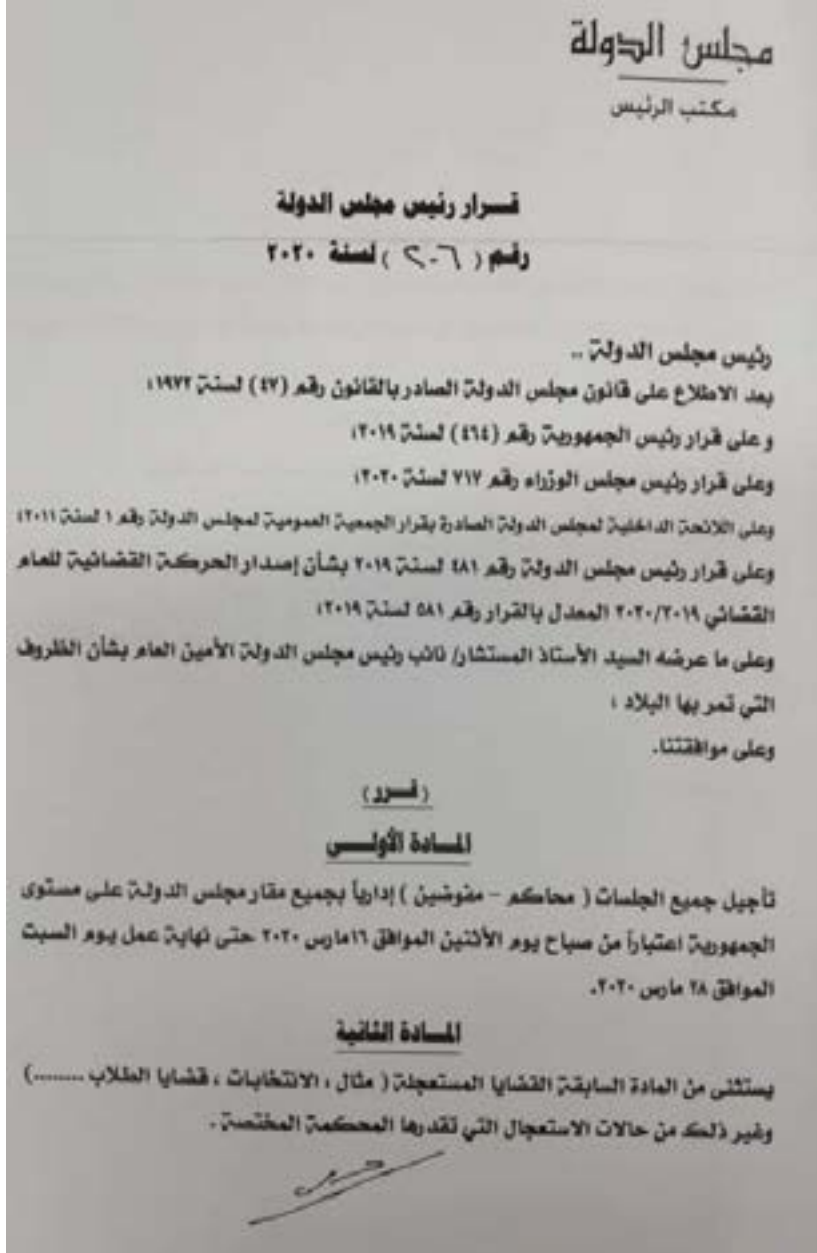
ببستمر السادة القضاة في الحضور طوال أيام جلساتهم المحددة على أن يقوم السادة رؤساء الدوائر بتأجيل نظر القضايا المدنية والتجارية والأسرة والجنائية بمحكمة استئناف القاهرة إدارياً وتحديد جلسات تالية مناسبة تجنباً لحضور وتراحم المتقاضين تعقيداً للهدف المبين بصدر ذلك القرار، على أن لا يخل ذلك بالالتزامات:

- ١- التطق بالأحكام في جلساتها المحددة والتظر في تجديد العيى وما يتصل به على أن يقتصر الحضور على المتهم ومحاميه فقط وللسادة رؤساء الدوائر اتخاذ ما يرونه مناسباً من قرارات تنفق وصالح العمل ومقصود هذا القرار ولسيادته الاستمرار في نظر قضاياهم متى تحقق الهدف من ذلك القرار (التجمعات البشرية والتراحم) مع مراعاة عدم الإضرار بحقوق المواطنين بالقضاء بسقوط الطعن أو باعتبار الدعوى كأن لم تكن أو شطبها.
- ٢- حق المتقاضين ووكلائهم في الطعن في الأحكام في المواعيد المقررة قانوناً .
- ٣- إصدار الشهادات لأدوى الشأن .
- ٤- ببستمر العمل بدوائر نقض الجنح في نظر الطعون المثلورة أمامها بجلساتها المحددة.
- ٥- ينفذ هذا القرار اعتباراً من الاثنين ٢٠٢٠/٣/١٦ وحتى الخميس ٢٠٢٠/٣/٢٦ .

صدر في : ٢٠٢٠/٣/١٥

**رئيس محكمة استئناف القاهرة**  
  
**المستشار /**  
**بدري عبد الفتاح بدري**  
**عضو مجلس القضاء الأعلى**





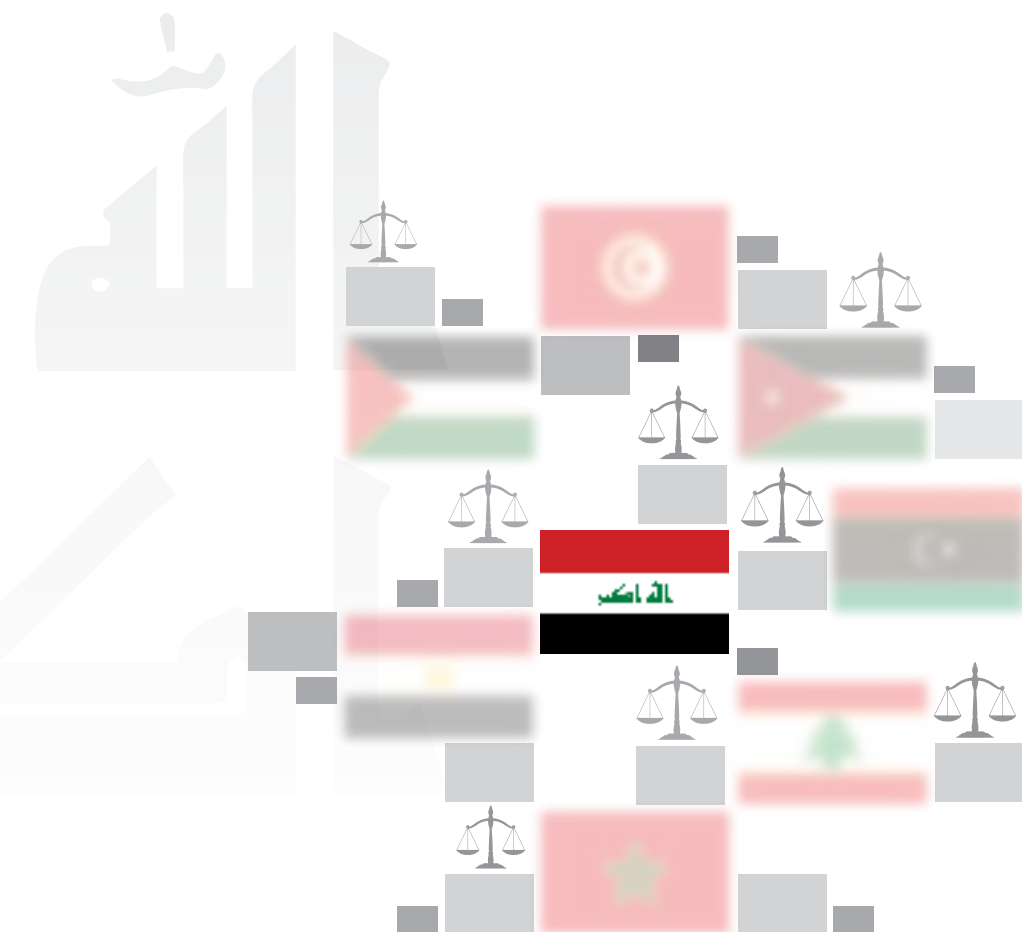
## Recommendations

By monitoring the study of the challenges that affected the world in general and the Arab region in particular during the Covid-19 crisis, which the Egyptian state had a large share during this period due to the economic and political conditions that the country was going through, and prompted the government to redouble its efforts to reduce the crisis and provide the necessary needs for citizens and residents in the Egyptian state.

As the government succeeded in containing the crisis well, filling the gaps at the level of the medical and service sector, and developing programs and plans to facilitate citizens during periods of closure and ban, until it was able to contain the crisis, limit the spread of the virus, and provide services and facilitation to citizens.

Since the study focused on analyzing the impact and damage faced by certain groups of society most affected by the sudden closure crisis, especially in the justice sector, the recommendations came as follows:

- Develop alternative plans for women's issues within the justice sector in terms of time periods, especially in personal status cases.
- Raising the awareness of the administrative staff about the categories of refugees and immigrants within the community, which is what the study monitored in the suffering of refugees and immigrants whose identity papers and residence dates have expired during the closure period.
- Increasing integrated legal assistance and empowerment programs for people who suffer from weakness within society (at the level of fees and attorney fees, which can be contributed by specialized councils for this role, such as the National Council for Women - the National Council for Human Rights - the National Council for People with Special Needs).
- Enhancing the legal capacity of individuals to use digital technology to limit their exploitation.
- Expanding electronic services in the regions, not only in the major provinces.
- Activating the role of the specialized national councils in achieving justice.
- Coordination with international organizations concerned with specific groups within the country.
- Work to eradicate legal illiteracy through civil society organizations and the media.
- Activating the role of the dispute settlement committees with guarantees of equality between the parties.



## The Iraqi Justice Sector Under Siege: ISIL, Covid-19, and Internal Challenges

Iyad Saleh

## Table of Contents

<b>First: The Concept of Access to Justice</b>	<b>36</b>
Legal organization of the judiciary	36
Financial Budget of the Judiciary	37
Department of Judges and Prosecutors ‘ Affairs	38
Department of Administrative Affairs and Judicial Guards	38
Department of Public Relations and Legal Affairs	38
Department of Financial Affairs	38
<b>Second: The Challenges of Access to Justice</b>	<b>40</b>
First: Lack of awareness of constitutional rights	40
Second: The blurring of the concept of citizenship	40
Third: The existence of parallel societal justice (tribal system)	41
<b>Third: Access to Justice During the Period of ISIL Occupation</b>	<b>41</b>
Establishing ISIL	42
Challenges of Access to Justice for Those Trapped by ISIL	43
Access to justice challenges for IDPs outside the city	43
Access to justice after the liberation of Iraq from ISIL	44
<b>Fourth: The Spread of the Covid-19 Pandemic and the Challenges of Access to Justice</b>	<b>45</b>
<b>Conclusions</b>	<b>47</b>

## First: The Concept of Access to Justice

There is no doubt that the principle of the rule of law can only be effective with requirements that move it from stillness to movement, and the most important of these requirements is the right to access justice.

The right to access justice can be defined as the path determined by the state to ensure citizens' access to justice institutions in order to defend their rights that have been violated.

Hence, the enshrinement of human rights in legal texts is not enough without ensuring that these rights are delivered to the citizen through institutions that safeguard them, as well as the existence of programs and plans designed to ensure the smooth flow of citizens' access to such institutions.

## Legal organization of the judiciary

In Iraq, the legal framework for human rights is based on the constitution, which typified a very good package of human rights, especially regarding criminal justice. For example, the Iraqi constitution of 2005 states in Article 19: "Third: Litigation is a right protected and guaranteed for all. Fourth: The right to defense is sacred and guaranteed in all stages of investigation and trial. Sixth: Everyone has the right to be treated fairly in judicial and administrative procedures. Eleventh: The court shall appoint a lawyer to defend the accused of a felony or misdemeanor for those who do not have a lawyer to represent them, and at the expense of the state".

Furthermore, article 89 of the constitution stipulates the institutions concerned with justice, which indicated that "the federal judiciary consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Service, the Judicial Oversight Authority, and other federal courts that are organized in accordance with the law."

Iraq also has a set of legal texts that regulate the work of the judiciary and litigation procedures, including the Code of Criminal Procedure No. 23 of 1973.

The Iraqi legal system is full of features to ensure the work of the judiciary by adopting the principles that regulate the profession of the court, such as independence and oversight. Article 88 of the Iraqi Constitution of 2005 sets out that "no authority shall interfere in the judiciary and the affairs of justice. At the same time, Article 2 of the Judicial Organization Law establishes that "the judiciary is independent and has no power over it except the law". Non-interference here is the prevention of interventions with the work of the judiciary when practicing its functions or pronouncing its decisions.

Interference in the work of the judge includes whether the intervention is in the interest or harm of one of the litigants, or if it is done directly or indirectly by using newspapers and satellite channels to influence the judge to issue an unfair ruling that violates the law.

Although these acts of interfering in judicial affairs are penalized according to Articles 233-235 of Penal Code No. 111 of 1969, they also constitute a breach of justice. In this context, intervening in favor of one of the litigants means that that litigant is not proper in his claim or his defense, and responding to it means harming the other litigant and, thus, creating difficulty in achieving justice.

Therefore, the impartiality of the judiciary must be respected in order to keep it away from any influence that distances it from applying the law and achieving justice. This means that all individuals or authorities must refrain from interfering with the affairs of the judiciary and let it apply the laws faithfully and impartially, and then resort to legal means of appeal if they find that the ruling issued by the judge is contrary to the law. The principle of the judge's independence is the safest way to reach justice and guarantee it in applying the law to everyone at the same level.

Among this impartiality, the judiciary is the only competent one to choose and appoint judges, members of the public prosecution, and assistants and to manage all their affairs without interference from other authorities, according to transparent criteria, foremost of which is competence and integrity.

One of the priorities of the judge's impartiality is to belong to the judicial power and to be far from political parties, as their impartiality would be affected if those political parties would choose or appoint them. The judiciary, under its mission, is found to serve the entire community and not a specific group of it. Therefore, the constitution prohibits the judge from belonging to any political party or organization or engaging in any political activity (Article 98.2).

## Financial Budget of the Judiciary

One of the guarantees of the independence of the judiciary is that it has an independent budget drawn up by the judiciary itself, taking into account the contexts followed by other authorities and in the light of the financial situation of the State. Otherwise, setting the financial budget by a non-judicial authority for the judiciary is a form of interference in the affairs of the judiciary, affecting its independence, distorting its strategies and plans for expansion and development, thus moving justice away from people, and confiscating options for determining judges' salaries in a way that preserves their dignity and protects them from temptations and need.

Among the practical applications of the previous principles, and in order to consolidate its powers after the Supreme Judicial Council was re-established in 2003 and its jurisdiction was defined by Order No. 35 of 2003 and Order No. 12 of 2004, the independence of the judiciary from the executive power was stipulated through the separation of courts, the prosecution, and the Judicial Oversight Authority entirely from the Ministry of Justice. Ergo, its management has become in the hands of the Supreme Judicial Council, which is composed of:

- President of the Federal Court (President).
- President of the Federal Court of Cassation (Deputy President).
- Vice-Presidents of the Federal Court of Cassation.
- Head of Public Prosecution and Head of the Judicial Oversight Authority.
- And the heads of the sixteen appellate regions (members).

Moreover, members of courts and judicial bodies, including employees, judicial guards, and technicians, have been linked to the Supreme Judicial Council, and their financial allocations have been transferred from the Ministry of Justice to the Supreme Judicial Council. Ownership of buildings occupied by courts and judicial organs has also been transferred as well.

Therefore, it was necessary to form departments to carry out these tasks. Accordingly, the General Administration of the Supreme Judicial Council was created, which manages the judiciary in Iraq. The public administration is linked to the head of the judicial authority - the head of the Supreme Judicial Council. Within the general administration, specialized departments have been formed, each of which is headed by a general manager who is assisted by a sufficient number of employees. These departments are:

### **Department of Judges and Prosecutors ' Affairs**

It is focused on regulating everything related to the affairs of judges and members of the Public Prosecution, starting from appointment, through promotions, until retirement, forming courts and issuing judicial orders in this regard, as well as organizing the holding of periodic sessions of the Judicial Council, which takes decisions related to managing the affairs of judges and members of the Public Prosecution.

### **Department of Administrative Affairs and Judicial Guards**

Based on the approach taken by the Supreme Judicial Council to manage personnel affairs and to ensure the proper functioning of the Council's work, it has taken the initiative to increase the number of employees as needed.

He also is a body specialized in judicial guards, entrusting all of this to the Department of Administrative Affairs and Judicial Guards. The department works on developing the program of human resources management, office administration, and services-related works. It is considered one of the crucial departments in supporting human resources and arranging the staff needs of the Supreme Judicial Council.

The department consists of 4 sections. The number of its employees within the courts and judicial bodies is 5845 employees, while the number of judicial guards reached 5292 guards.

### **Department of Public Relations and Legal Affairs**

The department aims is to regulate internal and external relations between the Judicial Council and external and internal institutions. It also provides legal opinions, represents the Supreme Judicial Council before the courts, and prepares comprehensive statistical reports on the work of the Council, judges, and courts, in addition to publishing and updating the activities of the judicial authority on its website. The department consists of 5 subdepartments, and the number of its employees is 39.

### **Department of Financial Affairs**

One guarantee of the independence of the judiciary is that it has an independent budget drawn up by the judiciary itself, taking into account the contexts followed by the rest of the authorities and in the light of the financial situation of the State. Otherwise, the formulation of the financial budget for the judiciary other than the judiciary would be a form of interference in the affairs of the

judiciary, influencing its independence, distorting its strategies and plans for expansion and development, keeping justice away from people, and confiscating the options for determining the salaries of judges, members of the public prosecution, and employees of the judiciary, in a manner that may lead to dealing with them in a way that does not preserve their dignity, does not protect them from temptations, and slips behind satisfying the necessary needs.

Therefore, the Iraqi constitution in Article 91.3 was entrusted with the elaboration of the annual financial budget for the judiciary to the Supreme Judicial Council. The House of Representatives role is limited to its approval by special law. At the same time, the Ministry of Finance participates exclusively by providing the judiciary with the necessary money according to the budget.

In order to implement the provisions of Article 91.3 of the Constitution and to ensure the financial independence of the judiciary to immunize it from external interference and influence, the Supreme Judicial Council established a specialized department called “The Department of Financial Affairs”, headed by a general director and staffed with a sufficient number of employees of recognized competence. They have integrity, as they were trained and qualified on the latest methods of preparing annual financial budgets in coordination with the World Bank in 2014.

Since that date, this department has been responsible for preparing the budget after referring to the courts and judicial bodies to determine its needs in terms of judges, employees, buildings, and furniture, and then submits the plan to the House of Representatives, which discusses and approves it.

The Department of Financial Affairs undertakes the implementation of the budget, either directly or by supervising its implementation by courts and other judicial bodies. The Department also sends financial allocations to spend them depending on the needs and according to very accurate mathematical rules, and under the supervision of the Audit Department in the Department of Financial Affairs, the Judicial Supervision Authority, and the Oversight Bureau Finance.

The experience of preparing and implementing the annual financial budget for the judiciary has been implemented for six years (2004-2010), both regular and investment ones (buildings and furnishings), and no defect has appeared neither in the preparation of the budget nor in its implementation. The regulatory bodies did not record any financial or administrative corruption with the judiciary. Additionally, this budget is published at the end of each year with all its details on the website of the judicial authority.

The Department of Financial Affairs includes several sections and branches according to the department’s functions. The number of units in the Department of Financial Affairs is 9, and the number of its employees in the main center is 118 employees. The General Administration of the Supreme Judicial Council is also in charge of involving them in development courses and seminars to raise their efficiency and keep abreast of developments in the field of specialization.

The independence of the judiciary in preparing its independent annual budget and implementing it according to its choices and under the supervision of the judicial oversight bodies and the Board of Supreme Audit, constitutes an integral image in strengthening the independence of the judiciary in Iraq.



Despite these laws guaranteeing the independence of the judiciary's work, they have been unable to uphold the rule of the law in Iraq. Recently, it is no longer possible to talk about the existence of an Iraqi democratic system. What is the value of political and civil rights if there are no guarantees around them? And what is the value of these guarantees if there are no links between the citizens, their rights, and guarantees? Hence, Iraq is still suffering from enormous challenges, which we will discuss in the second section.

## **Second: The Challenges of Access to Justice**

Despite the existence of a legal framework for justice and the presence of legislative provisions that guarantee the exercise of justice by citizens, the country experiences many challenges that impede access to justice, including personal factors related to awareness and empowerment, security and displacement issues, citizenship challenges, and the absence of a so-called mechanism of electronic litigation.

### **First: Lack of awareness of constitutional rights**

Because of historical and social factors, Iraqi citizens still need continuous and systematic awareness of their constitutional rights and the mechanism for defending them.

The social reality and the political sectarianism that Iraq lived in exceptionally occupied the Iraqi citizens and kept them away from the interest in searching for ways to access justice effectively; moreover, they do not consider the justice system as the best way to defend their rights in order to achieve the rule of law.

More, the institutions whose main purpose is raising awareness of access to justice still need to be included. In spite of the fact that the existence of some programs by civil society organizations, these programs are not continuous or regular, and most of them do not reach citizens who really need awareness of their rights and how to enjoy them through access to justice.

### **Second: The blurring of the concept of citizenship**

The desired goal of securing access to justice is the achievement of social peace, but it is not easy to achieve this peace without fulfilling its requirements. Among the most important of these requirements is reaching an advanced state in the social structure. Still, it is also not possible to think about building the social structure without reaching the consolidation of the citizenship idea.

If the concept of citizenship is fostered, then society is moving towards sustainable security in all respects. Citizenship reflects the path of trust between citizens and state institutions, particularly the justice sector, where their institutions play an active role in preserving human rights and creating an equality status among citizens in terms of rights and duties, which could lead to discussing the path of social peace and citizenship.

Citizenship is not just slogans or songs. Instead, it represents the result of more crucial systematic work programs in preserving and applying human rights and activating the role of institutions concerned with access to justice. However, despite this, Iraq still suffers from ambiguity in the concept of citizenship at the implementation level. This is a result of the emergence of other sub-identities based on clan, national and sectarian affiliation.

Thus, the principle of citizenship has yet to receive significant attention in governments' general activities, leading to a lack of interest in adopting access to justice programs that promotes citizenship.

### Third: The existence of parallel societal justice (tribal system)

Because of the location of Iraq and the nature of Iraqi society, which is characterized by tribes, many citizens resort to the so-called tribal justice system. It is an ancient social arbitration system that arose before the emergence of the state in its current concept. It contains scattered clan-specific texts that apply them in order to resolve disputes between citizens who belong to the same tribe or different tribes.

Consequently, there is no great desire among many citizens to resort to official justice institutions to claim their rights. What is even sadder is the presence of members of the Iraqi parliament who resort to the tribal system in order to resolve a particular conflict<sup>15</sup>.

With the existence of this system parallel to the formal justice system, the matter becomes more complicated as it increases the overall functions of the state. Instead of being focus on establishing programs that guarantee access to justice, one should first plant the desire in the citizen's soul to resort to the official justice system.

As a result, the justice system mainly faces obstacles in terms of implementation, which makes us in a very urgent need to adopt effective institutions to access justice and facilitate the paths leading to it.

### Third: Access to Justice During the Period of ISIL Occupation

Iraq is one of the countries most affected by massive security shocks, represented by the terrorist attacks that began with Al-Qaeda and ended with the emergence of the terrorist organization ISIL.

Iraq has been subjected to a major terrorist attack by the Islamic State in Iraq and the Levant, known as ISIL, which calls itself the Islamic State. This armed organization is described as a terrorist and adopts Salafi-Jihadi ideology; its members aim to restore the "Islamic caliphate and the application of Sharia" as it mainly extended in Iraq and Syria under the leadership of its leader, Abu Bakr al-Baghdadi.

<sup>15</sup> According to Al Jazeera website: A member of the Iraqi Council of Representatives fined the spokesman of one of the parties one hundred million dinars in connection with televised statements, the amount was entitled "Separation or tribal rule." For more details see the location of the island:

<https://www.aljazeera.net/knowledgegate/2018/1/29/%D8%A7%D9%84%D9%81%D8%B5%D9%84-%D8%A7%D9%84%D8%B9%D8%B4%D8%A7%D8%A6%D8%B1%D9%8A-%D8%A8%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82-%D8%BA%D8%B1%D8%A7%D8%A6%D8%A8-%D9%88%D8%AA%D8%BA%D9%88%D9%84>

ISIL has occupied vast areas of Iraq, constituting a fatal bullet to human rights, whose situation was already a concern in Iraq. This occupation led to the suspension of legislative texts concerned with justice, and the abolition of many institutions with regard to the consolidation of justice, especially since the organization had its system and did not believe in the global concept of justice.

The formation of the Islamic State in Iraq began on October 15, 2006, following a meeting of different groups of armed factions within the Mutaybeen Pact, and “Abu Omar” was chosen as its leader. Where it adopted many specific operations inside Iraq at the time, and after the killing of Abu Omar Al-Baghdadi on Monday, 19/4/2010, Abu Bakr Al-Baghdadi became the leader of this organization; his reign witnessed an expansion of simultaneous qualitative operations (such as the Central Bank operation, the Ministry of Justice, and the storming of Abu Ghraib and Al-Hout prisons).

After the current events in Syria and the fighting between the revolutionary groups and the Free Army against the regime of Bashar al-Assad, Jabhat al-Nusra for the People of the Levant was formed in late 2011, and its capabilities quickly grew to become, within months, one of the most prominent fighting forces in Syria. On 09/04/2013, through an audio message broadcast via the Shumoukh al-Islam network, Abu Bakr al-Baghdadi announced the merger of the organization’s branch, Jabhat al-Nusra, with the Islamic State of Iraq under the name of the Islamic State in Iraq and the Levant.

## Establishing ISIL

After the formation of Al-Tawhid wal-Jihad under the leadership of Abu Musab al-Zarqawi in 2004 and after announcing his loyalty to the former al-Qaeda leader Osama bin Laden, he became the al-Qaeda in Iraq. It intensified its operations until it became one of the most influential organizations in Iraq.

In 2006, Al-Zarqawi went out to the public on videotape, announcing the formation of the Muja-hideen Shura Council led by Abdullah Rashid Al-Baghdadi. After Al-Zarqawi was killed in the same month, Abu Hamza Al-Muhajir was elected as the organization’s leader.

At the end of the year, the Islamic State of Iraq was formed under the leadership of Abu Omar al-Baghdadi, who began implementing a plan to establish a bloody state that exploited religion as a cover for it without respecting human rights or the institutions of justice formed according to Iraqi law. Therefore, they sought to abolish all those institutions and target their members.

The main feature of the new justice system designed by ISIL is the hardness of the adopted punishment, which depends mainly on killing and physical disciplines such as flogging. This could lead to naming that period “the years of human rights violations.”

This terrorist attack by ISIL isolated large segments of society and subjected them by force to their system. It also led to the displacement of thousands of citizens escaping from ISIL. At that time, Iraq faced an enormous challenge in ensuring that justice reaches the displaced in the camps and areas of displacement.

As the United Nations announced that the number of displaced persons exceeded two hundred thousand people, it is possible to imagine how difficult it may be to guarantee the exercise of rights and reach the institutions of justice for this vast number. Especially since the Iraqi justice system can be described as a rigid and inflexible system that relies on traditional paths established decades ago, lacking the ability to absorb fast variables. For instance, the justice system lacks an electronic automation system or platforms to educate citizens on websites.

## Challenges of Access to Justice for Those Trapped by ISIL

The Iraqi citizens who lived in the areas of conflict between the terrorist organization ISIL and the Iraqi forces were the primary victims, particularly those who could not get out of the regions that became under the occupation of ISIL.

What distinguished ISIL from previous organizations is that it had the vision of establishing a state that embraced its extremist concepts. So, when it settled in those areas, it sought to isolate the Iraqi citizens from the rest of the regions and imposed the death penalty on those who tried to escape, apart from using civilians as human shields.

Because of the belief on which the organization was based, it refused to submit the population to the provisions of the Iraqi constitution or the Iraqi justice enforcement institutions; they considered them as prohibited institutions that should be fought. It also targeted university professors, in particular law professors. The organization also addressed the deletion of the Iraqi state's name from the curricula and replaced it with the name "Islamic State Organization."

At that point, Baghdad faced a significant challenge represented by the fact that hundreds of thousands of citizens were not subject to the official justice system in accordance with the Iraqi constitution, particularly since the state was preoccupied with leading military actions to achieve victory and restore lands, which was not an easy feat at all.

During this time, many residents suffered from grave violations by the organization, specifically women and children, and those belonging to other religions or sects. Maybe what happened to the Yazidi community in terms of major violations is considered one of the clearest examples of the inability of justice institutions to work and access justice in that era.

It can be said that justice in that era was absent and access to justice institutions were on the agenda of the official authorities.

## Access to justice challenges for IDPs outside the city

One of the biggest challenges the Iraqi government has faced is reintegrating the displaced into the structure of the justice system. Notably, since the government was very busy trying to meet the humanitarian needs and safe shelter for them, a task that took work due to the vast number of displaced people. The number of displaced Iraqis was estimated at six million, most of whom were suffering from harsh conditions represented by the lack of access to essential services.

Many of the displaced fleeing ISIL did not carry their official documents. Therefore the primary concern of the Iraqi government and United Nations organizations was to secure the minimum daily requirements of shelter, water, food, and education.

Thus, the prioritization of humanitarian aspects, as well as the reality that preceded the existence of ISIL, represented in the absence of institutions concerned with access to transitional justice, constituted one of the biggest challenges facing the justice sector. This made the process of establishing and reviving these institutions during the period of ISIL rule or the period following its defeat very difficult. Subsequently, Iraqis did not notice a substantial improvement in the justice institutions during that period either.

### Access to justice after the liberation of Iraq from ISIL

*“A fair and equitable criminal justice system is an essential element of a democratic way of life, a key factor in building trust and legitimacy and the promotion and protection of human rights - Michelle Bachelet.”<sup>16</sup>*

The period of ISIL’s dominance is essential to highlight the need to re-put the focus on strengthening the judicial system and establishing effective institutions for access to justice. The main reason for this importance is that citizens themselves were subjected to serious violations by ISIL. As a result, they had to resort to the judicial system to restore those rights in order to redress them and hold the actual perpetrators accountable.

Furthermore, building an effective justice system contributes to moving away from the tendency towards revenge against the families of members of the organization and, thus, establishing a justice system that represents the only path to building social peace, especially in the areas that were occupied.

It is worth noting that Iraqi law considers ISIL a terrorist organization; consequently, mere affiliation with it is regarded as a crime, in addition to being held accountable for actions that in themselves represent clear violations of human rights.

Throughout the years of ISIL’s occupation of Iraqi territory, a vast number of criminal acts were recorded, including murder and abuse in the form of beatings, rape, kidnapping...etc. Therefore, Iraq found itself facing a significant challenge represented in adjusting the pace of justice application to comply with the principles of the constitution and the modern state, and keeping the Iraqi citizen away from revenge, which may constitute an alternative to justice in case of weak enforcement.

However, despite the rebuilding of courts in those areas, and the widespread application of judicial rulings against those proven to have committed crimes, there was no clear interest in establishing access to justice formations, other than the announcement of the existence of hotlines for communication and information about individuals joining ISIL (a step that is very primitive compared to the volume of violations that were recorded during the period of ISIL occupation of Iraqi regions).

In fact, Iraq was facing a huge challenge at that time. The justice system was supposed to be applied to ensure that justice will be applied properly, taking into account all procedures consistent with the law.

<sup>16</sup> “A new UN report on ISIS trials in Iraq”, Adal Center for Human Rights (January 29, 2020). For the full text, see: <https://adelhr.org/portal/9087>

Nevertheless, according to a UN report “Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL” issued on January 28, 2020, the Iraqi justice system needs to “undertake a comprehensive review of trial practices; compliance with fair trial rights and procedural guarantees; and sentencing with a view to strengthening criminal justice procedures, including consistent with the Constitution of Iraq and the country’s obligations under international law; and provide effective protection of human rights”.<sup>17</sup>

Thus, before considering establishing links between justice institutions and citizens, we must first think about making radical reforms in the ways of applying justice. Then, it would be possible to think about setting up bodies that take upon themselves the activation of access to justice programs.

It must be noted that these steps are still in their infancy in Iraq because the current justice system is unable to deal with any new situation or emergency crisis.

#### Fourth: The Spread of the Covid-19 Pandemic and the Challenges of Access to Justice

As the COVID-19 pandemic spreads in Iraq, justice is on the line. During that period, the justice sector faced challenges related to the prevalence of a specific type of crime. There has been significant interest in studying the legal responsibility of individuals who spread the disease intentionally or by mistake. Some crimes of a family nature have also emerged, such as domestic violence, abuse, murder, and rape<sup>18</sup>.

Consequently, many human rights have become vulnerable to violations due to the spread of the Covid-19 pandemic. It is expected that efforts will be directed toward adopting new paths to ensure access to justice, especially since the pandemic has prevented the courts from working regularly, and even at some times, the courts were closed and suspended; apart from imposing a curfew in order to limit the spread of the pandemic<sup>19</sup>.

17 United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights, *Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL* (Baghdad, January 2020), for the full text see <https://reliefweb.int/report/iraq/human-rights-administration-justice-iraq-trials-under-anti-terrorism-laws-and>

18 For example, in a unique incident in Basra, the police said in a statement that “after investigating, collecting information, and in-depth investigations, the circumstances of the murder were revealed after 4 hours had passed, and the killer was identified, who is her father. He was arrested, and after interrogation, he admitted to committing the murder by beating.” It is sharpened using an electric wire.” Alaa El-Dein Ataweel, “Increasing crime rates in Iraq due to Corona, the economic situation and the fragility of security”, *Erem News agency*, 10 September 2020, see: <https://www.ereemnews.com/entertainment/legal-cases/2282800>

19 “Iraq announces the suspension of official working hours due to the Coronavirus”, Muhammad Abdel-Azim, article published on 15 March 2022, for the full text, see: <https://www.youm7.com/story/2020/3/15/%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82-%D9%8A%D8%B9%D9%84%D9%86-%D8%B9%D9%86-%D8%AA%D8%B9%D8%B7%D9%8A%D9%84-%D8%A7%D9%84%D8%AF%D9%88%D8%A7%D9%85-%D8%A7%D9%84%D8%B1%D8%B3%D9%85%D9%89-%D8%A8%D8%B3%D8%A8%D8%A8-%D9%81%D9%8A%D8%B1%D9%88%D8%B3-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7/4672038>

The disruption of the courts and the imposition of curfews more than once disrupted the traditional paths of access to justice. At the same time, there was no movement towards determining new routes or finding new solutions that guarantee access to justice, especially for the victims of crimes resulting from the spread of the pandemic, especially women and children.

Women and children have become the vulnerable party in light of the Covid-19 pandemic, as a result of the increasing volume of attacks that these groups were subjected to, in particular under the name of domestic violence crimes, represented by abuse, beating, slander, insult, harassment or rape. The Iraqi Supreme Judicial Council indicated this explicitly by stating that the courts registered during 2021, the year in which the Corona pandemic spread significantly, 1141 cases of domestic violence against children, being the Baghdad Court of Appeal the one with the largest share with 267 cases. The number of violence cases involving women amounted to 18,602 cases, and cases of abuse of the elderly amounted to 2,622 cases, of which 426 were registered by the Babylon Court of Appeal. The statistics for the first half of the current year 2022 show that the number of domestic violence cases amounted to 10,143 cases distributed Between 500 cases of violence against children, 7947 cases of abuse of women, and 1696 cases of abuse of the elderly.<sup>20</sup>

Although there is knowledge of the alarming numbers of domestic violence crimes in Iraq during the pandemic, the response to it is almost zero. During the preparation of this study, no indicators were found issued by the Iraqi government with the aim of assisting these vulnerable groups in accessing justice.

For example, links capable of linking vulnerable groups with justice institutions have not been established, nor have hotlines been set up to communicate and report violations, especially since it was possible to create an electronic litigation platform regarding minor crimes to ensure the conduct of justice procedures.

Ultimately, the Iraqi legislative system lacks what are called reformist penalties, i.e. those penalties that provide for the imposition of alternative sentences to liberty deprivation sentences, which are penalties whose main purpose is to serve society and to restrict movement, penal restrictions or to extend the imposition of a financial fine.

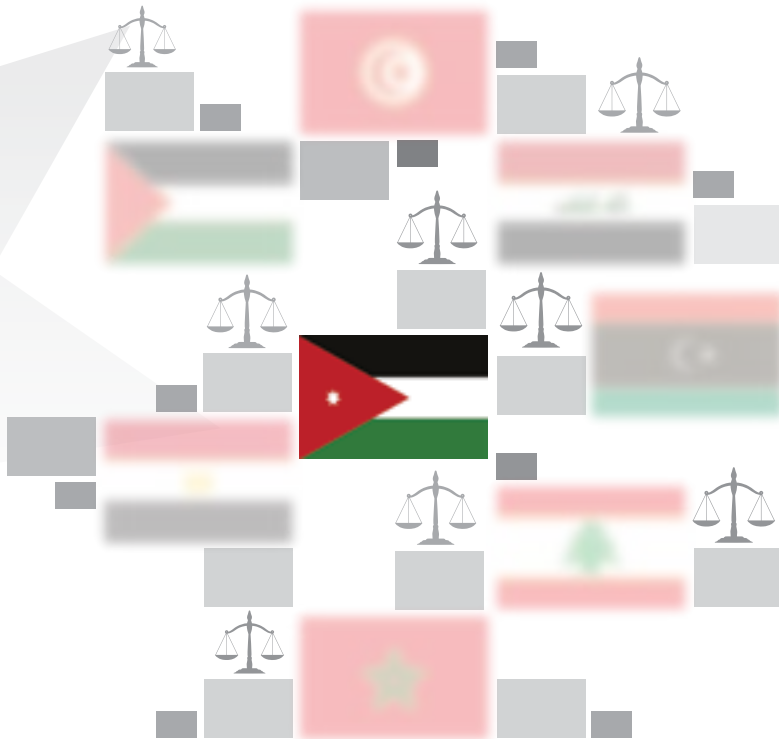
20 The judiciary: Violence rates in Iraq have risen to more than 18,000 cases against women, article published on 9/22/2022, for the full text, see: <https://n.annabaa.org/iraq/80201>

## Conclusions

The justice system in Iraq needs many reforms to comply with international standards. Moreover, it is vital to establish institutions to enhance access to effective justice and support its work effectively to preserve human rights and keep the rule of law. Examples of these reforms are:

- A comprehensive review of litigation mechanisms to mitigate the inflation of judicial procedures and the increase in the number of lawsuits before the judiciary, the most important of which are malicious lawsuits.
- The necessity of amending the Iraqi penal code and adopting a system of alternative penalties to improve legal procedures.
- The need to adopt formal or semi-official institutions that mainly aim to improve access to justice mechanisms and to represent vulnerable groups that cannot access the judiciary.
- The need to lead a comprehensive awareness-raising process on the concept of access to justice.





# The Justice Sector and Access to Justice in Jordan: Towards People-Centered Justice

Maria del Mar Logrono, Ph.D.

Senior Advisor, Access to Justice and Social Protection at ARDD

The author thanks Ms. Samar Muhareb, Ms. Sozan Mohareb, and Mr. Rami Qwader for their technical inputs and Ms. Yousra Hasona for her editorial contributions and Arabic translation.

## Table of Contents

<b>Introduction: An Overview of the Justice Sector in Jordan</b>	<b>50</b>
Justice Sector Reforms in Jordan	51
Reform Strategies and their Limits	52
<b>Access to Justice in Jordan</b>	<b>54</b>
Unmet Legal Needs: Low Reliance on Courts and Diminished Legal Capability	54
Women's Access to Justice	56
Children in Conflict with the Law	56
Refugees	58
The Role of Legal Aid	59
<b>Justice in Time of Crisis: Covid-19 and its Effects on the Justice Sector</b>	<b>60</b>
Delivery of Justice	60
Increasing Demand for Access to Justice	61
Financial Disputes	62
Violation of Defence Order No. 2 in the Context of the Defence Law No 13, 1992	63
Labor Disputes	63
Women's Access to Justice	64
<b>Recommendations: Towards People-Centered Justice</b>	<b>65</b>
A Conceptual Shift: A Comprehensive Delivery of Justice Services	66
Digital Solutions for All: The Need to Enhance People's Legal Capabilities	66
Strengthening Access to Justice: Building on Past Success through Dialogue	67
Expanding Alternative Dispute Resolution (ADR) Mechanisms while Ensuring Access to Justice for All	68
Enhancing Analytical Capacities within the Justice Sector	68
<b>References</b>	<b>69</b>

## Introduction: An Overview of the Justice Sector in Jordan

The Justice sector in Jordan illustrates the country's links to its Ottoman past and the legacy of postcolonial nation-state formation processes. As per its 1952 Constitution, under Article 99, courts in the Kingdom are divided into three categories: Civil, Religious, and Special Courts.

Under this tripartite order, the Judicial Council oversees the appointment of civil judges, the development of the judicial authority, and presenting legislative suggestions related to the judiciary, prosecution, and litigation to guide the government when drafting various laws and by-laws. The Ministry of Justice presents itself as the executive arm of the Jordanian judiciary, working to promote the independence of the judiciary and safeguard the rule of law.<sup>21</sup> Civil courts in Jordan adjudicate all civil and criminal cases not explicitly reserved for other courts. The civil court system consists of Magistrate Courts, Courts of First Instance, Courts of Appeal, High Administrative Courts, and the Court of Cassation (Supreme Court).

Regarding religious courts, they have jurisdiction over all matters of “personal status,” which includes family law matters such as marriage, divorce, child custody, and guardianship. Matters of the Sharia courts are overseen by the Chief of Justice (*Qadi al Quda'*) and the president of the Sharia Council, operating with the support of different offices.<sup>22</sup> The former is an independent position that reports directly to the Prime Minister. The Chief Justice Department also supervises the Sharia Courts of First Instance and the Appeal Court in East Jerusalem, as they follow the Jordanian Sharia courts in everything related to them. For its part, the Sharia Council oversees all affairs related to the appointment, promotion, and dismissal of Sharia judges, in addition to legislative issues related to the council.<sup>23</sup> Various Christian religious “Councils” within the main Christian denominations (including Greek Orthodox, Roman Catholic, and Armenian Catholic) handle similar cases involving members of their church communities. Religious courts also handle all inheritance matters, although, in the absence of a legal framework related to inheritance, Sharia law is applied by all the courts.

Finally, Special Courts refer to the State Security Court and are composed of military and civilian judges. The court tries both military and civilians, and its jurisdiction includes offenses against the external and internal security of the state as well as drug-related and other offenses. The findings of this court are subject to appeal before the High Court.<sup>24</sup> During the COVID-19 lockdown, violations of Defense orders were overseen by Criminal Courts.

In 2012, a Constitutional Court was established as an independent judicial body consisting of at least nine members, including the court's chairman, appointed by His Majesty. The Constitutional Court was created as an institution to play a role in the process of reform and to be “a major step to promote the principle of separation between powers and authorities, and defending the people's liberties and rights as stated in the provisions of the constitution, especially after its amendments which are compatible with the international standards of exercising these rights and

21 Who are we? The Jordanian Ministry of Justice, access date 9/20/2022, see:

<https://services.moj.gov.jo/About>

22 For full structural organization, see: <https://sjd.gov.jo/EchoBusV3.0/SystemAssets/PDFs/AR/SJDORG.pdf>

23 Sharia Judicial Council, see <https://sjd.gov.jo/Pages/viewpage.aspx?pageID=158>

24 <http://www.kinghussein.gov.jo/government4.html>

freedoms.”<sup>25</sup> However, ten years after its establishment, “the Jordanian legal community is concerned that the constitutional review process is unnecessarily cumbersome, that many provisions of the Constitutional Court Law are vague and ambiguous, and that the lack of direct access to the court makes it difficult for individuals and civil society to use the constitutional judicial review effectively and productively.”<sup>26</sup>

Further to the court systems, other institutions and actors that define the justice sector in Jordan include: the Jordanian Judicial Institute, which qualifies and accredits individuals to assume senior positions in the justice sector;<sup>27</sup> the Jordanian Bar Association, established under the Law of the Bar Association of 1972, is led by a council that is elected every three years and consists of a president and ten members;<sup>28</sup> the Public Prosecution, the body responsible for establishing and following up the criminal case before the courts of different degrees, as regulated by the Code of Criminal Procedure and related laws; and last but not least, civil society organizations active in the rule of law sector in Jordan, which have an essential role in raising awareness of human and legal rights and providing legal assistance to various vulnerable groups, including refugees and migrant workers.

## Justice Sector Reforms in Jordan

The functioning of civil courts in Jordan is the subject of periodic sectorial reform strategies. International donors, including the European Union and USAID, regularly support these strategies and development projects. The last two Justice Reform Sector Strategies (2017-2021 and most recently 2022-2026) have identified measures to enhance the judiciary’s independence, accountability, and specialization, in addition to improving capacities and the effectiveness of the judiciary’s administration. These measures are based on a set of national strategies, most notably Jordan’s 2025 vision, but also on recommendations of *ad hoc* commissions, such as the Royal Commission for the Development of the Judiciary and Strengthening the Judiciary, which in the year 2017, recommended: Strengthening the independence of judges and the judiciary.

- Modernization and development of the judicial administration.
- Updating and developing human rights lawsuit procedures and implementing judgments.
- Modernization and development of criminal justice and the implementation of judgments.

Building on principles of availability, efficiency, modernization, and professionalization of the justice sector, the 2022-2026 strategy revolves around five main axes.<sup>29</sup>

25 <https://cco.gov.jo/en-us/About-Us/Definition-of-the-Court>

26 Eyadat and Nasrawin (2022). Available at <https://www.kas.de/en/web/rspno/single-title/-/content/the-constitution-court-of-jordan-evaluating-10-years-of-service-future-expectations>

27 Brief, the Jordanian Judicial Institute, access date 9/20/2022, see:

[https://jjj.gov.jo/View\\_Article.aspx?type=2&ID=22](https://jjj.gov.jo/View_Article.aspx?type=2&ID=22)

28 Jordan Bar Association Law No. 11 the year 1972 and its amendments No. 6 the year 2019, published in Official Gazette 5561/page 566, Article 86/A.

29 Full strategy available in English at [http://moj.gov.jo/EchoBusV3.0/SystemAssets/PDF/AR/%D8%A8%D8%B1%D9%88%D8%B4%D9%88%D8%B1%D8%A7%D8%AA/%D8%A7%D8%B3%D8%AA%D8%B1%D8%A7%D8%AA%D9%8A%D8%AC%D9%8A%D8%A9%D9%82%D8%B7%D8%A7%D8%B9%20%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9\\_En.pdf](http://moj.gov.jo/EchoBusV3.0/SystemAssets/PDF/AR/%D8%A8%D8%B1%D9%88%D8%B4%D9%88%D8%B1%D8%A7%D8%AA/%D8%A7%D8%B3%D8%AA%D8%B1%D8%A7%D8%AA%D9%8A%D8%AC%D9%8A%D8%A9%D9%82%D8%B7%D8%A7%D8%B9%20%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9_En.pdf)

- Developing litigation and procedures regarding Civil, Commercial, Criminal, Administrative, and Juvenile Justice, aiming to increase the efficiency and effectiveness of the performance of justice.
- Continuous professional development of judicial bodies and their personnel, including the General Secretariat of the Judicial Council, the Public Prosecution, the Judicial Inspection, the Judicial Institute, the Courts, and the Ministry of Justice.
- Facilitating access to justice by increasing the efficiency and effectiveness of legal aid by Developing legislation that regulates legal aid, activating both optional and mandatory legal aid in courts, and developing the Legal Aid Directorate at the Ministry of Justice. Developing infrastructure and raising awareness for service recipients, beneficiaries, and partners.
- Developing structural and technological infrastructure for the institutions within the justice sector, and raising their efficiency and effectiveness, to simplify and improve procedures and meet the requirements of stakeholders, beneficiaries, and partners.
- Updating and developing the legislation that regulates civil and commercial judiciary, the Economic Chamber, and other forms of justice.

For their part, the Office of the Chief of Justice overseeing Sharia courts is also engaged in sector reform, the most recent strategy of 2015-2019.<sup>30</sup> The plan aimed at “enhancing confidence in the Sharia judicial system; enhancing the environment of creativity and excellence; and enhancing the effectiveness and efficiency of performance.” The Office submits yearly performance reports of the Sharia courts to His Royal Highness.

## Reform Strategies and their Limits

While these strategies have many merits in improving access to justice through the use of new technologies and strengthening the rule of law, essential gaps and challenges remain. In its analysis of the internal and external Environments of the Justice Sector, the 2022-26 strategy identifies the following set of weaknesses and threats affecting the justice sector:<sup>31</sup>

- Lack of judicial specialization in most specialized topics.
- High workload of judges based on specific criteria according to the type of case.
- Insufficient institutional capacities of sector institutions in processes, procedures, services, and systems.
- Weak structural and technological infrastructure of the sector.
- Poor demand for alternative dispute resolutions.
- Limited number of beneficiaries of legal aid.

<sup>30</sup> See full strategy at <https://sjd.gov.jo/EchoBusV3.0/SystemAssets/PDFs/AR/%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%B1%D8%A7%D8%AA%D9%8A%D8%AC%D9%8A%D8%A9.pdf>

<sup>31</sup> Pages 20 and 21 of the strategy

- Weak electronic readiness of several key partners in the sector, especially concerning activating electronic transformation (such as remote trials).
- Weak cooperation of some of the leading partners in supporting and implementing the strategic directions of the sector.

Out of these analytical points, four issues deserve further reflection. **First**, these sector strategies present efficiency through technology as a silver bullet; on this particular issue, it is essential to remember that “technology is not, in itself, the silver bullet to making the justice and the legal system more accessible.”<sup>32</sup> In fact, as recommended by the Law Society in its report on Technology, Access to Justice and the Rule of Law, in order for technology “to achieve its potential, it is important that a blueprint for innovation is developed. This blueprint should be centered on the person with legal needs and framed by the principles and resources” available.<sup>33</sup>

**The second critical issue** relates to how the strategies conceptualize legal aid as an underdeveloped field in need of development. In reality, systematic implementation of legal aid in Jordan has been advanced by civil society organizations with support from international donors for the past 15 years. These strategies, however, disregard any accumulated experience in this sector and refrain from containing any calls for engagement with experienced actors in the field.

**A third issue** refers to the fact that most opportunities for professionalization relate to programs usually implemented through donor support that adopt a top-down approach based on expert training to given individuals. While career development programs are critical, professionalization should also consider strengthening analytical capacities within the sector. For instance, much of the analysis concerning the justice sector happens at its periphery rather than at its core. This means that most analyses are outsourced to external consultancy firms rather than building capacities within the system and/or coordinating efforts with other national actors in the justice field, such as civil society organizations and schools of law.

Last, the 2022-2026 strategy identifies ‘weak cooperation of some of the leading partners’ as a threat. In fact, except for the COVID-19 lockdown when the Judicial Council coordinated efforts with the Bar Association and other stakeholders to implement remote work measures, there is very little cooperation and dialogue at the institutional level that aims to engage in a meaningful manner different stakeholders in the justice sector, leaving the brunt of dialogue to project initiatives emanating from international donors’ requests.

The following pages provide a critical analysis of key issues regarding the justice sector from a civil society point of view, active in the field of access to justice. The study, thus, is not meant to be an institutional performance evaluation but rather an overview of poignant issues from an end-user point of view. The study ends with a set of recommendations aimed at strengthening the justice sector in a way that builds trust among its users.

<sup>32</sup> The Law Society, 2019.

<sup>33</sup> Ibid.

## Access to Justice in Jordan

### Unmet Legal Needs: Low Reliance on Courts and Diminished Legal Capability

Before the national health crisis brought up by COVID-19, research into issues related to access to justice in Jordan pointed towards a critical justice system situation vis-à-vis its users. Two reports analyzing access to justice—one investigating the “justice journey” of citizens and residents by HiiL (HiiL, 2017) and a second one analyzing the perceptions and level of satisfaction of citizens and residents regarding the Justice sector by ARDD (ARDD, 2018), arrived at similar conclusions: reliance on the courts as a means of grievance redress is low in Jordan.

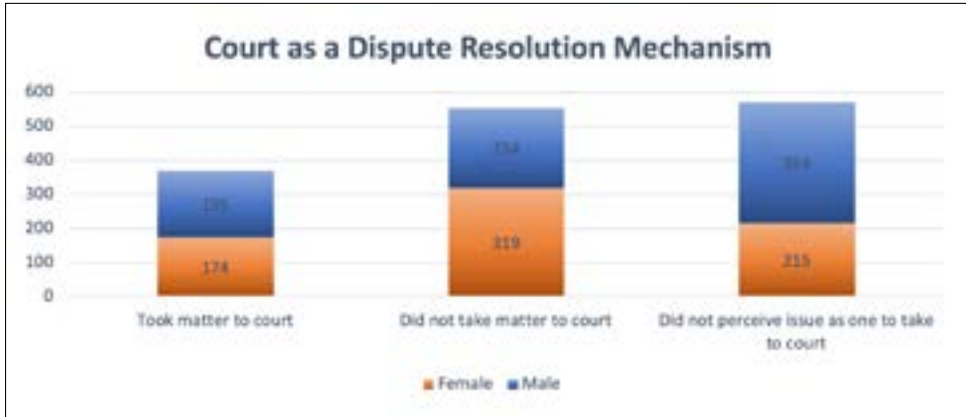
As illustrated by Hill in the graph below, when confronted with disputes or legal problems, most respondents acknowledged they resorted to self-action or the help of personal networks to resolve their disputes.



**Fig. 1** Source: <https://justice-dashboard.hiil.org/> Data collected in 2017.

ARDD’s survey regarding perceptions and satisfaction of citizens of and residents in Jordan with the justice system shed light on some of the factors explaining the reluctance of men and women to use the courts. The survey explored different experiences and opinions that exist between individuals who had taken legal matters to court (who can provide their satisfaction with the justice system) and those who had not taken legal issues to court (who can provide perceptions of the justice system). As explained in the report, the distinction between satisfaction and perceptions is essential because they are equally important factors in whether individuals attempt to address their legal matters formally. Perceptions of the justice sector influence what kind of legal matters

an individual considers worth taking to court. If formal grievance redress via court is perceived as slow, expensive, and unfair, individuals are seriously disincentivized to litigate their legal matters. However, if they perceive the courts as effective, expedient, and fair, they may be more encouraged to seek formal grievance redress. On the other hand, satisfaction is a vital measure of whether or not individuals will return to formal venues of grievance redress if they have a legal matter in the future (ARDD, 2017).



**Fig. 2 Source:** *Public Perceptions and Satisfaction Regarding the Justice Sector in Jordan (ARDD, 2017).*

Among the group who took matters to court, dimensions of fairness, execution of court rulings, and affordability were among the highest-rated dimensions. In contrast, the time it took to settle legal matters (timeliness) and navigability were the lowest-rated dimensions. Among those who did not take legal matters to court (perception), the execution of court rulings, fairness, and navigability was the highest-rated dimensions of the court, while timeliness and affordability were among the lowest rated in terms of perception. The survey thus concluded that there is a significant need to improve the efficiency of all courts concerning timeliness, as this was the lowest-rated dimension of the courts. Furthermore, the report highlighted room for improvement concerning the ease with which individuals – especially women – can navigate the courts (navigability) and the cost of settling legal matters in court.

Studies have shown that “in all jurisdictions, only a tiny fraction of disputes are addressed through formal courts” (OECD & WJP, 2019). In Jordan, the analysis of the perceptions and satisfaction regarding the justice sector and governmental institutions highlighted diminished institutional trust as one factor explaining the reluctance of men and women to resort to the courts. Adding to the perceptions and experiences regarding court work and undermining the overall trust in the Justice sector, the survey found that nearly 80% of all respondents felt that, regardless of whether they were aware of previous reforms in the justice sector, the justice sector needed further reforms. Compound to this perception, over 80% of all respondents believed using Wasta (personal connections) is a severe problem in Jordan.



When considered from the point of view of its users, a critical factor for accessing access to justice refers to people's legal capability and access to legal information. According to the OECD White Paper on Access to Justice, "People are considered legally capable when they can recognize legal issues, navigate the law and justice services and processes, and deal with law-related problems."

According to the Hill study, three in ten Jordanian residents reported experiencing at least one legal problem in the previous four years (Hill, 2017). Of those who experienced legal problems, 42 percent did not seek any legal information or advice, and many reported that they did not look for information and advice because they did not think anything could be done. ARDD's findings supported Hill's findings, according to which, while organizations and practitioners of the law were the highest regarded source of legal information, the majority of people resorted to informal channels of information such as family and friends.

## Women's Access to Justice

Women's access to justice is the foundation for gender equality and women's empowerment; supporting women to assert and claim their rights promotes a just society.<sup>34</sup> In contrast with this right, the reality for women around the world is that "it is, on average, harder for [them] to gain access to institutional spaces to negotiate and protect their rights and obtain a fair resolution of their grievances."<sup>35</sup>

While Jordan has made much progress in promoting women's access to justice, the lack of an enabling environment (i.e., limited citizenship rights, unequal rights in marriage...), limited supply of legal and institutional resources (i.e., lack of a gender-sensitive court, limited supply of legal aid, psychological barriers...), and limitations in legal capability (difficulty in recognizing justiciable issues and accessing legal information...) still represent significant challenges to the achievement of access to justice for women.<sup>36</sup>

In addition, according to ARDD's experience with women's access to justice<sup>37</sup>, insufficient awareness of their legal rights and psychological barriers lies at the root of women's disadvantaged position concerning access to justice. The 2017 ARDD survey findings corroborated women's general lack of legal awareness and literacy and a diminished sense of empowerment. Moreover, it highlighted how women are less likely than men to resort to courts and not resort to any other means to solve their disputes. According to the survey, while women reported to the survey more legal issues than men, they did not take these matters to court or elsewhere.<sup>38</sup>

## Children in Conflict with the Law

Jordan has achieved vital legislative benchmarks in protecting children and children in conflict with the law (CICL). Jordan was among the first signatory countries in MENA of The Convention on the Rights of the Child (CRC) in 1991. As part of its commitment, Jordan has enacted several

34 ARDD, 2017

35 See Framework for Measuring Access to Justice, 2015

36 ARDD, 2018

37 From 2013 until 2018 ARDD implemented, in partnership with OXFAM, a regional program to improve Women's Access to Justice.

38 ARDD, 2018

important pieces of legislation and mechanisms to protect the rights of children in conflict with the law (CICL); amongst them to date is Juvenile Law No. 24 of 2014 and the establishment of the National Council for Family Affairs (2001). On January 14, 2020, Jordan published a Draft Bill for Children's Rights, to be promulgated pending the legislature's approval. The Bill stipulates respect for all rights listed in international conventions, and regional and local legislation on human rights, in general, and children's rights, covering all children in Jordan, irrespective of their nationality, including refugees and asylum seekers. Further, the Draft Bill asserts the need to take all required measures to protect children from all forms of violence, abuse, and exploitation – and mentions explicitly the necessary measures to ensure their growth, well-being, upbringing, and health and to ensure that they receive education and other social rights.<sup>39</sup>

Despite these achievements, the situation of CICL concerning access to justice still needs to be addressed. An analysis regarding informal juvenile justice conducted by Terre des Hommes (TdH) in 2017 highlighted the following issues regarding the four core principles of the CRC, namely:<sup>40</sup>

- **Participation of children in conflict with the law:** Children are not adequately involved in the customary process based on the practices and customary actors' beliefs. The majority of parents consulted agrees that the child's opinion is not essential to be taken into consideration in the customary process.
- **Survival and development of children in contact with the law:** This concept was not taken into consideration by the customary actors. As such, cases of child marriage, child labor, domestic violence, or child beggars are dealt with to end an existing conflict between adults but are not dealt with to address the issues of child development and survival by protecting the children themselves against these harmful coping mechanisms.
- **Non-discrimination of children in conflict with the law:** Most parents admitted treating girls differently. For example, they believe the child should not be heard or involved in the customary process, but there would be more restrictions if the child is a girl. According to social gender stereotypes, "it is shameful when a girl is part of disputes and a person out of the family knows about it and interferes."
- **The best interests of children in conflict with the law:** Respondents not only did not consider this notion but also admitted not knowing the meaning of this concept either.

Further analysis provided by UNICEF and NCFA on the formal actors and mechanisms involved in access to justice highlights the need for a child-friendly justice system with independent and effective complaints mechanisms available to children and alternative detention measures. In this regard, diversion, as an alternative measure to detention, still needs to catch up, and Juvenile Law is often criticized for lacking alternative measures to detention. Regarding public perceptions, findings of the Access to Justice Survey conducted by ARDD in 2017 showed that less than 50% of respondents believed that the justice sector is effective at rehabilitation and reducing recidivism among CICL.

<sup>39</sup> ARDD 2020 on Child Justice

<sup>40</sup> (TdH)Otoom, 2017

## Refugees

Jordan is not a signatory of the 1951 Refugee Convention, and there needs to be a comprehensive domestic legal framework covering refugees with dedicated implementation mechanisms. The normative framework for the treatment of refugees consists of Law No 24 of 1973 on Residence and Foreigners Affairs, that is, legislation governing the entry and residence of foreign nationals that applies to all foreigners equally, with the only difference related to the recognition and issuance of travel documentation; and a Memorandum of Understanding (MoU) with UNHCR in 1998, in which Jordan committed to treating asylum seekers and refugees under international standards and confirms their rights to education, health, religious practice and freedom of movement, plus access to courts and the right to legal assistance.

As a result of the absence of a national legal framework setting out the rights owed to refugees, refugees are subject to different directives, policies, and rules that change frequently and only sometimes address the protection concerns faced by refugees. Furthermore, within the refugee and asylum seeker communities in Jordan, different nationalities are subject to different rules applying to them, resulting in a fragmented and ever-changing system that erodes fundamental rights.

While regulations governing legal representation in Jordan allow for the provision of legal aid services for persons in financial hardship at the request of the court or through the relevant Bar Associations, in practice, the majority of legal aid services for refugees are provided by non-governmental legal aid providers generally funded by international donors.

Legal support to refugees and migrants in Jordan has occupied much attention from specialized legal aid organizations in Jordan, which have received support from several international donors and multilateral UN agencies, including UNHCR. Specific challenges regarding work with refugees and migrants mainly relate to their vulnerable legal status in the country, lack of awareness of local normative frameworks, risk of statelessness, their impoverished financial situation and the abuses that ensue, arbitrary detention, etc. In the case of Syrian refugees, their geographical location represents an added challenge. Syrian refugees living in camp settings face restricted mobility which has added a new challenge to the delivery of justice.

In this context, legal aid providers are critical in liaising with government officials, accompanying refugees to obtain documents, negotiating disputes, and providing legal awareness services. Lawyers serve a vital intermediary role for refugees who fear approaching authorities, going to court, or doing anything that might attract attention to their situation. This allows marriage certificates to be reissued, births to be registered, disputes to be resolved, detention to be minimized, and deportations to be challenged.

For its part, institutional actors such as the Shari'a Council have met restrictions in mobility by establishing a court within the Za'atari refugee camp to provide legal solutions to issues of personal status law. This has been a first-time experience.

## The Role of Legal Aid

Availability and access to legal aid are central to enhancing access to justice. Legal aid is a public good essential to strengthening trust in the rule of law. The very principle of legal aid is to ensure that everyone has equal access to advice and representation to uphold their rights. Access to proper legal representation enables people to overcome many challenges, including assisting them in navigating the courts, providing them with the financial support necessary to take their cases to court, and ensuring their ability to execute the court rulings once the judges issue them.

Legal Aid services in Jordan are defined as having an “incomplete regulatory framework.” While the constitution contains no reference to legal aid, the right to legal representation is included in Article 100\ 7 of the Bar Association law of 1972, which outlines the form and function of pro-bono legal services and grants power to the President of the Bar to assign any lawyer to provide legal services. However, the legal aid offering services in Jordan has traditionally been met with resistance even among practitioners of the law.

As part of the previous reform strategy, the Ministry of Justice has strived to incorporate legal aid services for citizens in 2018. In coordination with the Jordan Bar Association, MoJ has offered legal assistance to 1,569 defendants who could not afford an attorney. The number includes services provided to 279 accused people, 993 defendants in 2019, and 297 until August 2020. According to Minister of Justice Bassem Talhouni, as quoted by the Jordan Times, “to get assistance, defendant’s monthly income should be less than JD400, owing (sic) no movable properties (...), noting that home equity does not affect eligibility for legal aid.” According to the same source, the system prioritizes juveniles, the elderly, women, and persons with disabilities, as well as any category decided by the Minister of Justice. The ministry has established a fund for legal aid to pay attorneys’ fees ranging from JOD25 to JOD30 for each court hearing. Fees are paid after the issuance of a final ruling in the case, while the lawyer’s right to fee payment is waived if two or more court hearings were missed without an acceptable reason.

While the institutionalization of legal aid services in Jordan is very new, the work of civil society organizations over the past 15 years, with support from international donors, has helped advance the field, constituting the bedrock of legal aid experience in Jordan. Indeed, citizens and residents in Jordan have embraced the very essence of legal aid in facilitating access to justice. When asked whether financially wealthy and financially poor people have equal access to justice, 39% of women and 41% of men agreed with the statement. In comparison, 44% of women and 48% of men disagreed, and 15% of women and 10% of men reported being unsure. When asked whether people within lower income ranks should have access to low-cost legal services or free legal aid, 80% of women and men in Jordan reported positive answers.

Civil society organizations have recently become critical providers of free legal aid in Jordan. Unlike programs under the Minister of Justice and Bar Association, civil society legal aid providers cover all the expenses related to the case brought by an individual who matches their criteria. These expenses include the costs of pre-litigation legal assistance (including legal advice, mediation, and arbitration) and all court-related fees, including the charges of legal representation and implementation of court decisions.

Civil society providers of legal aid in Jordan follow one of the following assistance models: the *judiciary* and the *staffed* models. The judiciary model is built on the concept of an extensive referral system whereby providers deliver their legal services through private lawyers, often based on geographical outreach. The *staffed* model contrasts the *judicare* model, whereby salaried lawyers are employed to work for legal aid offices or service providers and are hired directly by and answerable to the organizations' administration. According to the 2017 ARDD Survey on access to justice, 100% of men and women who took legal matters to court with the help of NGOs/legal aid providers would do so again should they have a legal issue.

## Justice in Time of Crisis: Covid-19 and its Effects on the Justice Sector

The COVID-19 pandemic has negatively affected Jordanian society and economy and has not left the justice sector unscathed. The closure of the courts on two different occasions (April and November 2020), along with the establishment of the State of Emergency on March 17, 2020, under Defense Law No. 13 of 1992 and the defense orders that have ensued, stand among the two most remarkable events at an institutional level resulting from COVID-19.

The declaration of a state of emergency on March 17, 2020, through the enactment of Defence Law No 13 of 1992 and the Defence Order No. 2 of March 20, resulted in an immediate total lockdown for all citizens in the country (except a few sectors) for over 30 days. The lockdown included the closure of all public administration services, including courts. Throughout the state of emergency, still, in place, several Defence Orders (36 orders to date) have been enacted to respond to the health crisis but also to its social and economic impact on citizens and residents.

While the closure of the courts has prolonged litigation time for those resorting to courts as a means to address their grievances, the decision adopted by the Prime Minister's office and not the Judicial Council, for a second closure on November 15, 2020, called into question the independence of the judiciary from the executive power. Adding to it, reinstating the state of emergency has emphasized the role of the executive authority vis-à-vis the status of democracy in Jordan.

## Delivery of Justice

As part of the response to the state of the emergency and the lockdown that followed on March 17, 2020, the Judicial Council decided to suspend courts' work in all pending cases. It also limited its sessions during the period between 16/3/2020 and 15/4/2020. However, a few days later, the Judicial Council backtracked and announced that the public prosecution departments should continue their activities during the court holiday that had been planned to ease the imposition of the curfew. Other measures adopted to mitigate the negative impact of the lockdown included forming a committee consisting of a group of senior judges and a representative of the Bar Association to develop practical proposals to continue the consideration of criminal cases not included in the exception of the suspension of work (felonies of all kinds and misdemeanors). In the context of the mobility restrictions resulting from the lockdown, the application of e-justice solutions, such as remote trials, was considered. Equally important, it was decided that, depending on current experiences, remote trials could be applied to different types of criminal and civil cases.

Despite these measures, the disruption of the court system had immediate implications regarding delays of court rulings and execution of rulings, particularly in cases of divorce where alimony was due, which was a matter of bitter debate between the Judicial Council and practitioners of law. Professionals publicly raised their voices against the disruptions, mostly related to the backlog in cases it had created and how it affected access to justice among those most vulnerable.

Further to this, lawyers noted how court closures led to financial losses among professionals, as court proceedings, follow-up of government transactions, collection of funds for the client's account, and other procedures ceased. Among the measures adopted to mitigate this situation, the Judicial Council, Bar Association, and MoJ granted special permits to lawyers to enable them to perform their duties. This aimed to minimize the impact of the justice delivery and helped ease the financial burdens on the lawyers. Lawyers were allowed to work through the electronic services package the Ministry of Justice provided. Also, they were allowed to visit the security centers and the public prosecutor's offices and prisons within the approved health protection and prevention controls and protocols. In addition, the Bar Council allocated 400 dinars in financial support to those who wish to join the emergency relief fund under a delivery mechanism as permitted by the Bar Association's regulations. Also, to be noted, the Judicial Council decided to donate 30% of the salary of each of the presidents of the Court of Cassation and the Supreme Administrative Court, as well as to hold any salary increase to judges for the year 2020.

After these first extraordinary measures, in 2021, the Judicial Council adopted a particular strategy to deal with the consequences of the Covid-19 pandemic on the justice sector, which the joint committee issued per Judicial Council Resolutions No. 72 and 73 of 2021. The objectives of the strategy were to run the justice sector during the ban period, after the ban, and during the post-crisis phase, to preserve rights, freedoms, and principles of a fair trial in cooperation between the Judicial Council, the Ministry of Justice, the Bar Association, and the Public Security Directorate. The strategy focuses on enhancing digital solutions such as remote trial technology; paying fees technically through the Ministry of Justice applications; digital notification of accused persons; digital reporting departments or lawyers; and tracking trial procedures through the Ministry's website and mobile application for Lawyers.

## Increasing Demand for Access to Justice

The Defence Orders adopted to date within the framework of the Defence Law enacted to respond to the COVID-19 health emergency crisis had an impact on increased demand for access to justice. As a way to showcase this increasing demand, during the three months from March to May 2020, ARDD received over 7,000 phone calls requesting legal counseling and aid, compared to a total of 5,500 phone and in-person consultations provided from March to May 2019.

According to legal practitioners in the field, including ARDD legal aid lawyers, among the most relevant areas demanding access to justice so far have been: financial disputes, labor disputes, situations arising from violation with regards to violation of curfew and restrictions of mobility, and women's access to justice.



## Financial Disputes

Returned checks were one of the most poignant sources of financial disputes to reach courts. Before COVID-19. As explained by professor of sociology at Al-Balqa, Hussein Al-Khuzai, “In Jordan, 67% of the crimes committed are economic crimes directed against money, and people usually carry them out for economic purposes in light of the difficult economic conditions in which society lives.”

Before Covid-19, checks have been fundamental in increasing purchase capacity. While advance payments through checks have helped many people, who cannot borrow from banks, checks have also been exploited in illicit ways. Experts have reported that common frauds perpetrated before the COVID-19 emergency response related to husbands who had coerced their wives into writing checks with no funds under their names to flee the country later or merchants who have achieved huge profits by raising sale prices for purchases done through installments and paid through checks, as they could use the threat of imprisonment for collecting the value of the returned checks if their owners refrained from settling them.

As of early 2023, unpaid debt in Jordan is widespread. Most recent estimates regarding people with unpaid debt in Jordan include 157,367 individuals who are wanted in civil debt cases and 30,669 individuals who have issued checks bounced due to insufficient funds. According to Jordanian legislation, failing to repay debt is a reason for imprisonment. Under Jordanian Execution Law (JEL) no. 25 of 2007 (amended in 2019), individuals who fail to repay their debts for whatever reason, including lack of income, can be sentenced to up to 90 days in prison per debt per year if a formal or informal creditor provides proof of a loan contract and a notice to the debtor in question.

Before COVID-19 and the issuing of the State of Emergency, JEL was under review along with imprisonment sentences, however, this review process has been paused by the issuing of Defense Order No. (28) 2021 (March 28, 2021). Under this order, imprisonment has been postponed for debtors whose debts do not exceed JD 100,000 and people who have written checks without sufficient funds whose values do not exceed JD 100,000. The Defense Order’s decisions were enacted on March 29 and have remained effective through periodic extensions until January 31, 2023. On January 31, 2023, Prime Minister Dr. Bishr Al-Khasawneh issued an official communication regarding the amendment of Defense Order No. (28) of 2021 and a further extension until April 30, 2023. According to the amended Defense order, the value of debt that allows for postponing the implementation of the debtor’s imprisonment decisions issued under JEL and the penal code has been reduced from JD 100,000 to JD 20,000.

Within the realm of financial disputes, issues regarding rent payment also emerged during the closure period that Jordan witnessed in the Spring of 2020, as many tenants demanded delaying the payment of rent. Article 698 of the Jordanian Civil Code states: “If the competent authorities issue something that prevents the full use of the property without reason from the lessee, the lease shall be dissolved, and the rent shall be forfeited from the time of the prohibition. The contract is rescinded, and the fee forfeited from the time he informs the lessor.” Moreover, Article 11 of Defense Law No. 12 of 1992, “If it is not possible to implement any contract or obligation due to observance of the provisions of this law or any order, assignment or instructions issued under it, or due to compliance with these provisions, the person associated with this contract shall not be considered as violating its terms, but rather considered the contract suspended to the extent that

the performance of the contract is impossible, and this is considered a defense in any lawsuit filed or instituted against that person or any actions taken against him as a result of his failure to implement the contract or obligation.”

Proceeding from this argument that the law provides to tenants in cases of force majeure or emergencies. A verdict No. 252/2021 was issued on 22nd February 2021 by the Amman Court of Appeal; the court upheld the decision issued by the Court of First Instance to exempt tenants from paying the rent of commercial establishments during the period of the comprehensive ban imposed on them by the Kingdom between March and May 2020. As a result of this verdict, tenants under these circumstances were not obliged to pay rent during the lockdown period. While this decision considered the loss in revenues affecting business owners, it potentially has detrimental effects on small landlords, as they are waiting to be paid to pay their tax obligations, among others.

## **Violation of Defence Order No. 2 in the Context of the Defence Law No 13, 1992**

Defense order no. 2, imposing curfew and restrictions on the mobility of the population, had an immediate impact on children who were found by security forces violating the curfew as they played outside their residences and on adults who moved during curfew hours to reach their workplace. In the cases documented by ARDD, children were represented by lawyers and managed to eliminate the financial penalty associated with such violations. However, in the cases where there was no advocacy by lawyers, the financial penalties could lead to further problems for those accused of violating the order. Indeed, as explained by Lawyer Without Borders, Moaz al-Momani, fair trial guarantees were affected during the crisis, stressing that many cases related to breaching the defense lawyers, in particular, have referred the people convicted of them to the judiciary without the presence of a lawyer to represent them.<sup>41</sup>

## **Labor Disputes**

As a result of the restrictions imposed, ARDD documented in April 2020 how labor rights cases were suspended before the courts, thus stopping procedures for disbursing relevant funds to be paid and preventing claims of labor rights. This was also true for many different finance-related cases.

Adding to the backlog that this temporary halt of the court works on labor and financial cases has created, the forthcoming caseload on labor and financial issues is expected to be high. On May 1, 2020, Ahmad Awad, Director of Phenix Center for Economic Studies and long-time labor rights analyst, alerted that the Jordanian Labor Observatory had recorded hundreds of labor violations against workers during these first months. According to Awad, “Many establishments have fired large numbers of their workers, while others have reduced salaries by 50% or 30%, and some of them have suspended their employees permanently for several months under the pretext of the repercussions of the Corona pandemic.”

---

41 Al-Qudat, 2020.



Regarding labor rights, defense orders enacted between April and May 2020 harmed workers' rights and protections in Jordan. As reported by Human Rights Watch (HRW), under the new legislation, "private employers in sectors most affected by the pandemic [could] fire or cut the salaries of employees who [could not] work remotely by up to 60 percent – as long as their total salary [did] not fall below 150 Jordanian Dinars (JDs) (US\$211) per month – all without government approval or oversight."

Under international human rights law, Jordan must ensure that workers have 'just and favorable' working conditions, including fair wages sufficient to provide a decent living for workers and their dependents. Although Defence order no. 6 protecting workers' rights during the lockdown is still in place, workers' rights in Jordan are at their lowest. In its ninth edition, the ITUC Global Rights Index documents violations of internationally recognized labor rights by governments and employers, highlighting the Middle East and North Africa, including Jordan, as "the world's worst region for workers' rights." This means that workers in this region face systematic violations of their rights or no guarantee of their rights. Further to this, the recent government decision to incorporate the functions of the Ministry of Labor under the work of the Ministry of Trade is a precise blow to enhancing workers' rights.

## Women's Access to Justice

Women's access to justice has been particularly limited regarding issues falling under the jurisdiction of Personal Status Law. On April 2020, ARDD documented how women were facing delays in obtaining their financial rights in light of the suspension of proceedings in both the civil and Shari'a courts. These included expenses of all kinds, including the wife's expenses, children's expenses, and housing, as well as requests for deferred dowry, compensation for arbitrary divorce, and even custody and viewing of cases.

Regarding alimony, although the Supreme Judge Department set different mechanisms for disbursing the legal expenses through electronic family cards or sending funds through Jordan Post, challenges remained regarding the issue of legal costs that were not paid due to the first official lockdown, even as the department worked to cover an amount of one and a half million dinars from the alimony credit fund to fill the shortfall in the sums collected to be able to disburse expenses for that month.

As with labor-related cases, and due to the restrictions imposed, finance-related cases were halted. With regards to their impact on women, during the first lockdown, ARDD documented challenges related to arbitrary foreclosure of property and inheritance rights for women, which all led to increasing economic burdens on women. Adding to these growing financial difficulties, women's participation in the labor market in Jordan ranks among the lowest in the world. As such, they are more vulnerable than men to debt accumulation and repayment. As a result, of the numerous financial hardships facing women in Jordan, women have accumulated a high level of debt. This phenomenon has been compounded by the COVID-19 pandemic and the restrictions imposed as a result. Before COVID-19, the Jordanian Minister of Justice, Ahmed Al-Zaydat, stated that the number of women in debt increased tenfold between the years 2014 to 2019, with the number of women sentenced in civil enforcement departments in cases of less than 1,000 dinars has reached 32,000, which result in the imprisoned oh many of them.

Last but not least, women's rights groups in Jordan, as elsewhere in the world, have been keen to highlight the 'hidden pandemic' affecting women in Jordan: domestic violence. A rapid needs assessment conducted by UN WOMEN among the beneficiaries of its Oasis Centers in Jordan reported that "62% of women respondents [felt] at increased risk of suffering physical or psychological violence; as a result of either/or increased tensions in the household and increased food insecurity, both of which have been caused by the crisis."<sup>42</sup>

## Recommendations: Towards People-Centered Justice

According to the 2019 White Paper by OECD, "evidence shows that the lack of access to justice has an estimated cost in a range going from 0.5 to 3 % of GDP in most countries." The study also highlights that "the lack of access to justice has a disproportionate impact on lower income groups, recipients of public benefits, and other disadvantaged individuals." On the other hand, as the study argues, "well-targeted access to justice interventions can entail considerable benefits in terms of alleviated costs of legal problems, contributions to more inclusive societies, reductions in violence and its effects, and support for legal and institutional reform and better governance. The key to these benefits is to address the needs of those who are least able to vindicate their rights, first and foremost through adapted support and empowerment actions."

From a human rights perspective, individuals are rights holders, and it is the responsibility of states as duty bearers to facilitate the expression of their legitimate claims. Ensuring that every individual has the practical capacity and means to enforce their rights is, therefore, a fundamental duty for all States and has intrinsic value beyond its cost.

With its heavy emphasis on the use and integration of new technologies, the current justice reform strategy in Jordan risks missing the SDG 16 goal of "providing access to justice for all." As with most innovations within the justice sector, technology-based initiatives aiming to promote access to justice will only be successful if its users are ultimately able to:

- 1) recognize they are facing a legal problem;
- 2) understand the legal problem they are facing (legal capability);
- 3) find a satisfactory manner to address their grievances.

In the context of Jordan, this means that reforms targeting legal reforms and the modernization/increased efficiency of judicial institutions have to be complemented by bottom-up approaches seeking to address the practical deficiencies of the justice system so that people can claim their rights.

<sup>42</sup> UN WOMEN, 2020, p 2.

## A Conceptual Shift: A Comprehensive Delivery of Justice Services

The current 2022-26 justice sector strategy looks at the delivery of justice services from the point of view of enhancing institutional systems performance, disregarding legal capacities and realities on the ground. In Jordan, dispute settlement encompasses a combination of the formal justice system, which consists of courts, judges, lawyers, prisons, police, and, to some extent, official alternative dispute resolution systems, but also customary and informal justice systems, along with a heavy reliance on self-help mechanisms through neighbors, family or local personalities.

These systems coexist in a complete imbalance, in which most dispute resolutions happen within informal systems, and only a tiny fraction relies on courts and other formal mechanisms. With strong accountability mechanisms, informal justice systems and self-help mechanisms can be protected from corruption and the unwarranted influence of different political or social actors within the community. As a result, those in a situation of vulnerability have a higher chance of abuse or, at least, have their legal needs unmet. In Jordan, women, CICL, and refugees, are among those considered to be more likely to be affected by lack of access to justice.

Moreover, excessive reliance on informal dispute mechanisms and self-help solutions risks questioning the very existence of the rule of law. This is particularly critical if we consider the role of customary and tribal law in Jordan since they have the potential to conflict with the principles of the rule of law and public governance. This reality became even more poignant in light of Prime Minister's Defence Order No. 21 imposing a second temporary closure of Courts (November 2020). As argued by ARDD, the closure of courts for a second time during the COVID-19 crisis at a moment when only 'vital sectors' were operating could mistakenly be interpreted by society at large as an institutional weakness or irrelevance of the work of the justice sector, deepening the lack of trust in government institutions and the justice sector.

In this context, it is thus critical that formal justice providers acknowledge that the ability of people to claim their rights must be supported through a continuum of justice services that stress the role of formal justice mechanisms provided by a range of legal professionals. The interventions could range from providing legal information and advice to various forms of limited legal assistance and finally to full representation in different alternative dispute resolution processes (i.e., mediation). The more access to quality services that are easily understood and produce satisfactory resolutions, the more likely trust in justice institutions will grow. To this end, the current legal aid scheme adopted by the MoJ, while it is a welcome step in the right direction, remains insufficient, as it only seeks to provide legal assistance at a limited court level under Article No. 208 Criminal Procedures law No. 9 the year 196, namely death penalty and over ten years imprisonment lawsuits.

## Digital Solutions for All: The Need to Enhance People's Legal Capabilities

While e-services will ease the way of legal information in the future, currently, studies conducted in Jordan have highlighted the minimal reliance of people on educating themselves through online sources. According to the survey by HiiL, "only 3% of the individuals who had to deal with a serious legal problem searched on the internet" (HiiL, 2017).

While people in Jordan are savvy internet and social media users, this percentage points to the fact that when confronted with a legal problem, they do not search for information on the internet. As the level of institutional trust could be more robust and legal digital literacy is still in its infancy for most of the adult population in Jordan, assuming that legal literacy will happen by posting legal information on websites represents a very uncertain bet.

To this end, digital solutions within the justice sector must be part of a more extensive range of legal empowerment and literacy initiatives. According to the OECD, these type of initiatives (such as training on access to information or advocacy support) has led to a range of positive effects, including increases in the participants' willingness and ability to act, enhanced legal knowledge, and improved access to remedy, entitlement or information. In this regard, the OECD notes how legal empowerment initiatives contribute to improved health, strengthened education, increased income, and more effective and transparent institutions. Legal professionals, paralegals, and organizations working on legal empowerment have a crucial role in improving the functioning of formal and informal justice institutions.

### **Strengthening Access to Justice: Building on Past Success through Dialogue**

While legal aid has traditionally focused on the provision of lawyer services for full legal representation, experiences around the world have shed light on the importance of developing a variety of legal assistance services that go from the provision of advice on legal issues such as debt, employment, and housing, to specialized assistance in areas such as family law, to mediation, and full legal representation.

Legal awareness and literacy, along with tools of self-empowerment, are critical to promoting consciousness of legal culture and the rights of individuals. These enhanced legal services combined with psychosocial support contribute to a greater success rate and satisfaction among people in situations of vulnerability. Women, youth, refugees, PWD... or anyone in distress is likely to face lower levels of psychological readiness when facing legal problems. Integrated services help ease people into the process of claiming their rights. Along with legal reforms such as the ones undertaken concerning PWDs and children, support mechanisms should be facilitated to provide people with the possibility of these integrated services.

Only a few legal aid organizations in Jordan provide these integrated services, mainly in the context of the humanitarian response to the Syrian refugee crisis in Jordan. As the justice sector seeks to enhance Legal Aid, and the humanitarian response will diminish the scope of its interventions in the country, justice institutions must engage with practitioners through systematic dialogue to enhance access to justice for those most in need.

## **Expanding Alternative Dispute Resolution (ADR) Mechanisms while Ensuring Access to Justice for All**

Mediation and other ADRs have been shown to produce positive results, especially when parties were willing participants and of equal strength. While Jordan is still a long way from implementing online civil resolution tribunals, mechanisms such as the Small Conflicts Initiative enacted by MoJ present attractive opportunities where people can quickly learn to make their claims with the support of professional help. As with all ADRs, however, it is essential to establish mechanisms to ensure parties are of equal strength and have adequate legal capabilities, to avoid abuses and ensure that people feel satisfied with the process.

## **Enhancing Analytical Capacities within the Justice Sector**

Professionalization of the justice actors should also consider strengthening analytical capacities within the sector. Much of the analysis concerning the justice sector happens at its periphery rather than at its core. This means that most studies are outsourced to external consultancy firms rather than building capacities within the system and/or coordinating efforts with other national actors in the justice field, such as civil society organizations and schools of law.

To this end, it is critical that programs aiming at the sector's professional development also include opportunities to enhance research capacities within justice sector actors (institutional and non-institutional). Building a resilient justice sector means the capacity to identify emerging trends and challenges facing the implementation of strategies, paying attention to those in the situation of vulnerability to provide timely solutions that will ensure the success of its performance.

## References

### Reports and Articles:

- AECID. 2018. *Access to Justice and Legal Empowerment in Jordan: Towards an Effective and Sustainable Legal Aid System*. Available at <https://www.aecid.gob.es/es/TablonAnuncios/Documents/ConvenioJordania/Annex%20I.%20Description%20of%20the%20Action.pdf>
- ARDD. 2018. *Women's Access to Justice in Jordan: A Framework for Inquiry*.
- ARDD. Forthcoming. *Children's Access to Justice: An Empowering Legal and Social Ecology for Child Protection*.
- ARDD. April 2020. *The Impact of COVID-19 on Women's Access to Justice in Jordan*. [Online] Available at [LINK](#). Accessed on October 18, 2020.
- Clutterbuck et al. (July 2021). "Alternative protection in Jordan and Lebanon: the role of legal aid" in *Force Migration Review*. Available online at <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/issue67/clutterbuck-hussein-mansour-rispo.pdf>
- Eyadat and Nasrawin (2022). *The Constitutional Court of Jordan: Evaluating 10 Years of Service & Future Expectations*. Available at <https://www.kas.de/en/web/rspno/single-title/-/content/the-constitutional-court-of-jordan-evaluating-10-years-of-service-future-expectations>
- Hiil. 2017. *Justice Needs and Satisfaction in Jordan: Legal problems in daily life*. [Online] Available at [https://www.hiil.org/wp-content/uploads/2018/07/JNS-Jordan-2017\\_EN-Online.pdf](https://www.hiil.org/wp-content/uploads/2018/07/JNS-Jordan-2017_EN-Online.pdf)
- Hiil. 2020. *Charging for Justice. SDG 16.3 Trend Report 2020* [Online] Available at <https://www.hiil.org/projects/charging-for-justice/>
- The International Trade Union Confederation. 2022. 2022 ITUC Global Rights Index. Available at [2022-ITUC-Rights-Index-Exec-Summ-EN\\_2022-08-10-062736.pdf \(mutualcdn.com\)](#)
- The Law Society. 2019. *Technology, Access to Justice, and the Rule of Law: Is Technology the key to unlocking access to justice innovation?* [online] Available at: <https://www.lawsociety.org.uk/topics/research/technology-access-to-justice-and-the-rule-of-law-report>
- National Council for Family Affairs/UNICEF. 2018. *Situation Analysis of Juvenile Justice*. [online] Available at: <https://www.unicef.org/jordan/media/361/file/Situation%20Analysis%20of%20Juvenile%20Justice%20System%20in%20Jordan.pdf>

- OECD. 2019. *Global OECD Roundtable on Equal Access to Justice*. [Online] Available at <https://www.oecd.org/gov/summary-record-2019-global-oecd-roundtable-on-equal-access-to-justice.pdf>
- OECD. 2019. *Building a Business Case for Access to Justice: An OECD White Paper in collaboration with the World Justice Project*. [online] Available at: <https://www.oecd.org/gov/building-a-business-case-for-access-to-justice.pdf>
- Oxford Business Group. 2020. *Legal Reforms In Jordan Focus On The Judicial Branch, Corruption, And Regional Governments*. [online] Available at: <https://oxfordbusinessgroup.com/analysis/legal-matters-reforms-focus-improving-judicial-branch-addressing-corruption-and-bolstering-regional> [Accessed 17 Oct 2020].
- Phenix Center for Economics and Informatics Studies. 2020. *Impact of the COVID-19 Crisis on the Economic Conditions of Families in Jordan*. [Online] Available at <https://en.phenix-center.net/survey-study-impact-of-the-covid-19-crisis-on-the-economic-conditions-of-families-in-jordan/>
- Strategic Document of GoJ. 2017. *Justice Sector Reform Strategy*. [Online] Available at <http://www.moj.gov.jo/DetailsPage/MOJ/NewsDetails.aspx?ID=756>
- UN WOMEN. April 2020. *Rapid Needs Assessment*. [Online] Available at: <https://jordan.unwomen.org/en/digital-library/publications/rapid-assessment-of-the-impact-of-covid19-on-vulnerable-women-in-jordan> [Accessed 18 Oct 2020].

## Newspaper/News Articles:

- Al Arabi Al Jadid. May 1, 2020. انتهاكات حقوق عمال الأردن: ترقب الأسوأ في ظل كورونا. [online] Available at: [LINK](#)
- Al Arabi Al Jadid. June 25, 2020. الأردن: تواصل فصل العمال بذريعة كورونا. [online] Available at: [LINK](#)
- EEAS - European Commission. 2020. *€50 Million Programme To Support Jordan's Justice Sector Reform Efforts*. [online] Available at: [https://eeas.europa.eu/delegations/peru/52628/%E2%82%AC50-million-programme-support-jordans-justice-sector-reform-efforts\\_mn](https://eeas.europa.eu/delegations/peru/52628/%E2%82%AC50-million-programme-support-jordans-justice-sector-reform-efforts_mn) [Accessed 17 November 2020].
- Al Ghad. November 21, 2019. مركز العدل يدعو نقابة المحامين لإصدار نظام المساعدة القانونية. [online] Available at: [LINK](#)
- Al Ghad. February 5, 2020. مختصون: يجب أن تترافق الإصلاحات التشريعية بقطاع العدالة مع التطبيقية. [online] Available at [LINK](#)
- Al Ghad . May 17, 2020. كورونا.. "تعطل المحاكم" يهدر حقوق الناس. [online] Available at: [LINK](#)
- Al Ghad, May 7, 2020. توضيح من المجلس القضائي حول إجراءات إدامة قطاع العدالة في ظل كورونا. [online]. Available at: [LINK](#)
- Human Rights Watch, June 14, 2020. *Jordan's Vulnerable Will Pay the Price for Protecting Businesses*. Available at <https://www.hrw.org/news/2020/06/14/jordans-vulnerable-will-pay-price-protecting-businesses>
- Al Jazeera Net. November 17, 2019. محاكمات إلكترونية تسرع إجراءات التقاضي في الأردن. [online] Available at [LINK](#)
- Jordan Times. September 26, 2020. Justice Ministry offers legal aid to 1,569 defendants [online] Available at: <https://www.jordantimes.com/news/local/justice-ministry-offers-legal-aid-1569-defendants>
- Khabarni. April 19, 2020. المجلس القضائي: المباشرة بتطبيق المحاكمة عن بعد. [online] Available at: [LINK](#)
- Al Youm. May 21, 2020. العدل الأردنية تقرر إعادة فتح المحاكم وفق جدول محدد. [online] Available at: [LINK](#)



# The Lebanese Justice Sector at a Time of Crisis: Vulnerable Populations' Right to Access to Justice

Brigitte Shelbian

## Table of Contents

<b>Introduction</b>	<b>75</b>
<b>Section I: A Reading of Lebanon's Obligations at the International Level and the Lebanese Judicial System</b>	<b>76</b>
Chapter One: The Lebanese Constitution	76
Chapter Two: Lebanon's Obligations under the International Human Rights Framework	77
First: International efforts on human rights and development issues in which Lebanon participated or joined	77
Second: Non-binding international conventions related to the independence of the judiciary and the role of lawyers	78
Chapter Three: The Judicial Authority in Lebanon	79
Chapter Four: The Legal Aid	83
Legal aid in civil and criminal cases and personal status cases	83
The role of the Bar Association in granting legal aid and assigning lawyers	85
Legal aid provided by NGOs operating in Lebanon	85
<b>Section II: The Right of Access to Justice</b>	<b>86</b>
Chapter One: Efforts and Gaps Level of Legislation and Strategies	87
First: The State's Efforts at the Legislative Level	87
Second: The State's Efforts at the Level of Strategies / Circulars / Memoranda	90
Third: The most important gaps in national laws that impede access to justice, especially women and children, and some marginalized groups such as foreign workers, and refugees	92
The Law on the Protection of Women and Other Persons from Domestic Violence	92
Personal Status Laws	94

The Penal Law	94
Sexual Harassment Criminalization Law and Victim Rehabilitation	95
Labor Law	95
Anti-Trafficking in Persons Act	96
Shelter centers for survivors of gender-based violence	96
Chapter Two: Obstacles that hinder women from accessing justice	98
The Individual Level	98
The Community Level	99
The Institutional Level	99
Chapter Three: Recommendation	100

## Introduction

“Access to justice” is a broad concept of the ability of persons to obtain, through judicial proceedings and processes, timely remedies in compensation for discrimination and violations of human rights of which they have been victimized based on equality and impartiality. It, therefore, requires ensuring equality before courts and tribunals and granting individuals. The right to a fair and public trial before a competent, independent, impartial, and *de jure* tribunal. It also requires guaranteeing the fundamental right to compensation in the event of judicial error, particularly in criminal proceedings.

The Beijing Declaration and Platforms for Action set out actions to be taken to prevent and eliminate violence against women, the most important of which was the provision of funded shelters for women and girls victims of violence and the strengthening of the importance of the condition of protection services, including medical, psychological and other free and low-cost counseling and legal aid services, as well as the provision of appropriate assistance to enable them to find and emphasize livelihoods as part of the <sup>43</sup>State’s commitment to protecting women from violence.

General recommendation No. 35 on gender-based violence against women issued by the Committee on the Elimination of All Forms of Discrimination against Women in July 2017 stressed the need to protect survivors of violence and the responsibility of the State to provide support services to women such as round-the-clock toll-free helplines, adequate numbers of safe and adequately equipped crisis and referral centers, as well as sufficient shelters for women, their children, and other family members, as needed.

In April 2020, the UN Secretary-General urged all governments to place the prevention and reparation of violence against women at the heart of their national plans to address the COVID-19 pandemic, including increasing investment in remote services and civil society organizations, ensuring that judicial systems continue to prosecute aggressors, establishing emergency warning systems in pharmacies and grocery stores, announcing the inclusion of shelters and shelters in the primary service category, and finding safe ways for women and girls to seek support services.<sup>44</sup>

In Lebanon, despite significant achievements in terms of equality, empowerment, and rehabilitation, women continue to face violence in all its forms and suffer from inequality in society, politics, legal affairs, and the labor market, in addition to the lack of full and unconditional equality between men and women to access justice.

Violence against women is a form of discrimination and a violation of their human rights. It is a manifestation of the unequal balance of power between men and women that is reflected in public and private life and constitutes an obstacle to achieving equality, development, and peace. Women subjected to violence need access to justice, shelters, medical and psychological support, and other services.

Access to justice is not only a right but a prerequisite for achieving equality and guaranteeing human rights.

This study will address access to justice in Lebanon with a focus on vulnerable groups, particularly women, children, and refugees. The methodology adopted in the preparation of this study focused on the following:

<sup>43</sup> Item 125 of the Beijing Platform for Action Declaration

<sup>44</sup> <https://arabstates.unfpa.org/ar/publications/Violence-against-the-women-girls-COVID-19-pandemic-in-the-Arab-region>

## **Section I: Lebanon's Obligations at the International Level and the Lebanese Judicial System**

- Read the Lebanese Constitution in terms of ensuring justice and non-discrimination.
- A presentation of Lebanon's efforts at the international level.
- A presentation of some non-binding international covenants related to the independence of the judiciary and the role of lawyers.
- Lebanese Judicial System.
- Legal aid.

### **Section II: Access to Justice in Lebanon:**

- A critical presentation of the efforts of the Lebanese state in ensuring access to justice through legislation, memoranda, and circulars.
- The most prominent challenges of access to justice, especially in light of the crises that Lebanon is going through.
- Proposed solutions and recommendations.

## **Section I: A Reading of Lebanon's Obligations at the International Level and the Lebanese Judicial System**

### **Chapter One: The Lebanese Constitution**

The Lebanese Constitution guarantees at the forefront the equal rights and duties of all citizens without discrimination or preference. It stipulated that Lebanon was a founding and active member of the United Nations and committed to its charters and the Universal Declaration of Human Rights. Lebanon is a parliamentary democratic republic based on respect for public freedoms, foremost among which are freedom of opinion and belief, social justice, and equality of rights and duties among all citizens without distinction or preference.<sup>45</sup>

Article 7 of the Lebanese Constitution stipulates that all Lebanese are equal before the law and enjoy equal civil and political rights and assume public duties and duties without distinction. Article XII also guarantees citizens to assume public office, and no one has any advantage over the other except in terms of merit and merit.

Article 20 of the Lebanese Constitution stipulates that the judiciary shall be vested in the courts of all degrees and jurisdictions within a system provided for by law and under which the necessary guarantees shall be reserved for judges and litigants. The conditions and limits of judicial security are determined by law. Judges are independent in the conduct of their functions, and decisions and rulings are issued by all courts and implemented on behalf of the Lebanese people.

<sup>45</sup> [https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the\\_lebanese\\_constitution\\_arabic\\_version.pdf](https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the_lebanese_constitution_arabic_version.pdf)

Concerning all of the above, and despite the importance of the articles mentioned above, there are gaps in the Lebanese Constitution as it does not contain a provision that defines discrimination as contained in international conventions and prohibits it based on them, on the one hand. On the other hand, article 7 of the Constitution provided for equality before the law but did not explicitly provide for equality in the law. Much legislation still contains discrimination, as well as weak effective remedies for victims of discrimination. On the other hand, although articles 7 and 9 of the Constitution provide for equality, articles 9 and 10 give each religious community the right to regulate the affairs of its subjects. This is fertile ground for discrimination against certain groups, especially women and girls, and between women belonging to different religious communities. Moreover, the Lebanese Constitution did not establish a system of protection for the judiciary so that the legislator would not violate it.

## Chapter Two: Lebanon's Obligations under the International Human Rights Framework

### First: International efforts on human rights and development issues in which Lebanon participated or joined

Lebanon contributed to drafting the Universal Declaration of Human Rights in 1948.

- Joined the International Covenant on Civil and Political Rights in 1972. However, although he signed in 2007 the Optional Protocol to the Special Covenant on the acceptance of individual complaints procedures, he did not join the Second Optional Protocol to the abolition of the death penalty.
- Joined the International Covenant on Economic, Social, and Cultural Rights in 1972 but did not accede to the Optional Protocol to the Mechanism for Accepting Individual Complaints.
- Joined the International Convention on the Elimination of All Forms of Racial Discrimination in 1971.
- Joined the Convention on the Rights of the Child in 1991. In addition to signing the Optional Protocol attached to it on the sale of children, child prostitution, and child pornography in 2004. The Optional Protocol on the involvement in armed conflict was signed in 2002.
- The Lebanese state concluded the Convention on the Elimination of All Forms of Discrimination against Women in 1996 by virtue of Law No. 592, which became effective on 1/8/1996. Still, this conclusion included reservations on critical issues, which are the second item of Article 9 related to nationality and items (c), (f), (d), and (g) of Article 16 relating to personal status, in addition to a reservation to Article 29 thereof. Nor has it acceded to the Optional Protocol.
- Lebanon acceded to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in 2000. It also joined the Optional Protocol to it in 2008.

- Lebanon has joined only seven of the eight ILO conventions that deal with significant human rights issues, including forced labor, child labor, freedom of association, equal opportunities, and treatment at work.
- Lebanon acceded to the Geneva Conventions and their protocols, with the exception of the third protocol issued in 2005.
- Lebanon joined the Arab Charter on Human Rights, and the charter was concluded through Law No. 1, issued on 5/9/2008. The charter guarantees the right to equality through more than one article and on more than one level. It affirms in Article 11 that all persons are equal before the law and have the right to enjoy its protection without discrimination. In Article 33, it is required that the state and society guarantee the protection of the family, strengthen its ties, protect individuals within it, and prohibit various forms of violence and abuse among its members, especially against women and children. It also guarantees motherhood, childhood, old age, and people with special needs the necessary protection and care. Also, it guarantees youth and youth the greatest opportunities for physical and mental development.

On the other hand, Lebanon has not ratified or acceded to some of the primary international agreements, including:

- The Convention on the Rights of Persons with Disabilities, which he merely signed in 2007 without joining the Optional Protocol attached to it.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Lebanon was satisfied with signing the International Convention for the Protection of Enforced Disappearances a year after its adoption in 2006.
- Lebanon has not acceded to the 1951 Asylum Convention and its protocols.
- Lebanon has not joined the Rome Statute that established the International Criminal Court.

## **Second: Non-binding international conventions related to the independence of the judiciary and the role of lawyers**

### **Charters emanating from the bodies of the United Nations**

Fundamental principles relating to the independence of the judiciary to ensure and strengthen the independence of the judiciary. These principles are now universally recognized, mainly as they are based on evaluating judicial systems, especially at the level of the work of relevant international bodies and some non-governmental organizations<sup>46</sup>.

<sup>46</sup> <https://www.ohchr.org/ar/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

Guidelines for the Role of Public Prosecution Judges aim to assist states in ensuring and enhancing the effectiveness, impartiality, and fairness of the Public Prosecution Office in criminal prosecutions. Governments should respect them and consider them within the framework of national legislation and practices<sup>47</sup>.

The United Nations Basic Principles on the Role of Lawyers, in its preamble, stated that the full protection of human rights and fundamental freedoms for all persons, whether economic, social, cultural, civil, or political, requires that all persons have access to legal services provided by independent legal professionals. Lawyers, along with independent and impartial judges and prosecutors, constitute the third fundamental pillar that enables the preservation of the rule of law in a democratic society and ensures adequate protection of rights<sup>48</sup>.

### Principles and Guidelines of Non-International Entities

Some international associations and organizations contributed to the drafting and adoption of a document aimed at defining principles and guidelines that should foster the effective application of the concepts of independence and integrity, specifically:

The Bangalore Principles of Judicial Conduct were adopted by the Judicial Group to support and strengthen the judiciary<sup>49</sup>. These principles include independence, impartiality, integrity, decency and equality, ability, and diligence.

## Chapter Three: The Judicial Authority in Lebanon

The judiciary is an independent authority vis-à-vis other authorities in investigating and adjudicating cases. Its independence is not limited by any restriction not provided for in the Lebanese Constitution. Courts must adhere to the principle of hierarchy of rules - when the provisions of international treaties to which Lebanon has ratified or acceded - conflict with the provisions of ordinary law. In this case, the application of the first progresses over the second<sup>50</sup>. In other words, the courts can apply the provisions of the treaties ratified by Lebanon every time the internal legislation contradicts these rules.

The functioning of the judicial system in Lebanon is a victim of the continuous interference of the legislative and executive branches and of the individuals who compose them. The Lebanese judiciary suffers from regular violations of the principle of separation of powers through the interference of politics and clientelism in its affairs.

Political corruption is considered one of the most dangerous phenomena that can impede political and human development and prevent the realization of democracy, the protection of rights and freedoms, and the building of the rule of law.

47 <https://www.ohchr.org/ar/instruments-mechanisms/instruments/guidelines-role-prosecutors>

48 <sup>1</sup> <https://www.ohchr.org/ar/instruments-mechanisms/instruments/basic-principles-role-lawyers>

49 [https://www.unodc.org/documents/corruption/Publications/Bangalore\\_principles\\_AR\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/Bangalore_principles_AR_eBook.pdf)

50 Article II of the New Code of Civil Procedure



The structure of the Lebanese judiciary is divided into several main pillars according to the following:

### A. Regular Judiciary

This body possesses a broad mandate and jurisdiction, encompassing all disputes unless expressly excluded by a specific provision. Additionally, it adjudicates administrative disputes as part of its general purview. .

This body consists of the following courts in particular:

#### 1) Courts of First Instance

Which includes:

- **Single judge:** who hears certain civil cases or of limited value, and criminal cases (misdemeanors and infractions). In each of the Lebanese districts, there are one or more judges.
- **The Chamber of Trial:** which considers civil cases without limitation, whether in type or value. And the center of the primitive chamber is originally at the center of each of the seven governorates in Lebanon.

#### 2) Courts of Appeal

The Court of Appeal is the court of second instance. It considers appealing the judgments of the courts of the first instance affiliated to it when the value of the case exceeds a certain limit or in the special cases stipulated in the law. The Court of Appeal also hears as a court of first-instance felony cases. The center of the Court of Appeal is in the center of each province.

#### 3) The Court of Cassation

The Supreme Court monitors the correctness of the application of the law. If an appeal was brought to it by an appellate ruling and it found this ruling in accordance with the rules of the law, it supported it and rejected the appeal. The judgments of the Court of Cassation are final and final and do not accept any form of appeal. The center of the Court of Cassation is the capital, Beirut.

### B. Administrative Judiciary

The administrative judiciary is represented by the State Consultative Council, which has a general mandate to consider administrative disputes. He is also considered the appeal or discriminatory reference in administrative cases for which the law has appointed a special court.

The State Consultative Council system guarantees the independence of its judges. Paragraph 3 of Article 4 stipulates that administrative judges are independent in carrying out their judicial functions, and they may not be transferred, dismissed, or taken any measure that would prejudice their behavioral conditions except within the limits of the law.

Despite the positive impression in terms of the work of this judicial body as it relates to the rights of citizens in the face of the administration, the question arises about the extent to which it is subject to political authority and the extent to which guarantees of fair trials are available before it, which is on the same level of trials.

Moreover, the State Consultative Council is not immune from the interventions of the executive authority, which has more than once amended laws due to political and sectarian considerations.

Article 5 of the State Consultative Council system states that he appoints the head of the State Consultative Council by a decree issued by the Council of Ministers based on the proposal of the Minister of Justice, which allows political and sectarian interference in his appointment.

### C. Sectarian Judiciary

The sectarian judiciary, or what is known as the personal status courts, includes:

- Sharia courts for Muslims: Sunni Sharia courts, Jaafari Sharia courts, and Druze sectarian courts.
- The spiritual or doctrinal courts of the Christian denominations, and where each denomination has its courts.

The jurisdiction of the courts mentioned above is limited to some personal status issues: marriage, its nullity or dissolution, divorce, desertion, adoption, guardianship, alimony, custody, and others.

### D. Constitutional Council

According to Article Nineteen of the Constitution, “A Constitutional Council shall be established to monitor the constitutionality of laws and to decide on disputes and appeals arising from the presidential and parliamentary elections.

The right to review this Council with regard to monitoring the constitutionality of laws belongs to the President of the Republic, the Speaker of the House of Representatives, the Prime Minister or ten members of the House of Representatives, and the heads of legally recognized sects with regard exclusively to personal status, freedom of belief and the practice of religious rites, and freedom of education religious.”

In several of its decisions, the Constitutional Council has taken this direction. However, the effectiveness of this Council still suffers from a number of flaws, most notably that the appointment of half of the members of the Constitutional Council by the House of Representatives and the other half by the Council of Ministers allows them to choose judges close to them, which makes it possible to influence the members of the Constitutional Council and thus loses its independence and impartiality.

Moreover, the interference of the political authority in the activity of the Constitutional Council may amount to its permanent suspension from work by not taking the initiative in appointing its members.

### E. Supreme Judicial Council

The Supreme Judicial Council ensures the proper functioning of the judiciary, its dignity and independence, and the appropriate functioning of the courts, and takes the necessary decisions in this regard.

However, the fact that the Supreme Judicial Council embodies is that, whether in terms of its composition or its functioning, it does not promote the principles of judicial independence.

The Supreme Judicial Council has raised many criticisms over the years, especially in naming and transferring judges and judicial formations.

The accusations focused on the need for more transparency and clear and objective criteria when making formations, which would make the judge not independent.

## **F. The Exceptional Courts**

The exceptional courts in Lebanon include:

### **1) Supreme Council for the Judgment of Presidents and Ministers**

Article 80 of the Lebanese Constitution stipulated the establishment of this council. It consists of seven representatives elected by the House of Representatives and eight of the highest-ranking Lebanese judges, according to the ranks of the judicial hierarchy or according to seniority. If their levels are equal and they meet under the presidency, the highest level of these judges is.

Decisions incriminating the Supreme Council are issued by a majority of ten votes.

The composition of the Council does not suggest any effectiveness of accountability, especially since summoning any minister to appear before it requires the approval of two-thirds of the members of the House of Representatives, the meeting of the general assembly, and the signing of the indictment by one-fifth of the members of the House.

This means that the accusation before this council is political because it is issued by the majority of deputies, in addition to the fact that decisions require 10 votes out of 15, which hinders the trial of ministers and deputies.

### **2) Military Judiciary**

Military courts are organized according to Law No. 24 of April 13, 1968. It is subordinate to the Ministry of Defense, over which it exercises the same powers as the Ministry of Justice over civilian courts. All military court judges are appointed by the executive branch.

The trial sessions are, in principle, public, but other lawyers and citizens are prohibited from attending the trial sessions, except for those who are a party to them.

Hiring a lawyer is stipulated by law, but the court's president can prevent a lawyer from entering the military court for one month for unspecified and clear "disciplinary reasons." In such a case, the court assigns a military officer to defend the defendant without obtaining the latter's prior consent.

Defense rights are significantly restricted. The Military Public Prosecution has the right to appeal the investigative judge's decision to prevent the defendant from being tried. In contrast, the accused cannot appeal the indictment issued against him.

The law still allows civilians to be tried before military courts, which do not provide the necessary judicial guarantees and do not justify their decisions, which makes them outside the concept of legal oversight over the work of the judiciary.

Exceptional courts, such as the Publications Court, also exercise powers that should be subject to ordinary criminal courts whose rulings are subject to appeal.

Since the military court is exceptional, it is exempted from justifying its decisions, and rulings are issued as soon as the session is concluded.

### 3) Judicial Council

The Judicial Council acquires its jurisdiction from the referral decree issued by the government.

A judicial investigator is appointed by a decision of the Minister of Justice; the members of the Judicial Council are also appointed by a decree based on the proposal of the Minister of Justice after consulting the Supreme Judicial Council.

The practical reality showed that the political authority interfered in his work by opening files or referring them to the council. In addition to being an exceptional court, and after the decisions of the Council were not subject to any method of review, it became subject to objection and retrial but under restrictive conditions.

## Chapter Four: The Legal Aid

The concept of legal aid involves granting assistance to litigants by providing a lawyer to defend them free of charge and exempting them from all court expenses against the background of their financial inability.

Legal aid is included in the “right of defense” enshrined in the constitution, positive law, and international covenants.

### Legal aid in civil and criminal cases and personal status cases

Judicial aid is a measure established by the legislator in favor of a person whose financial condition does not enable him to pay court fees and expenses. Legal aid is granted to natural persons of Lebanese nationality, as well as to foreigners ordinarily residing in Lebanon, on the condition of reciprocity.

Exceptionally, this aid may be granted to legal persons who do not aim for profit and whose center of management or business is in Lebanon.

The request for aid is submitted by a petition exempt from fees and the financial stamp, drawn up in three copies and deposited with the court registry that will consider the case. The clerk keeps a copy and sends the second copy to the opponent, who has the right to express his written observations within five days, and sends the third copy to the Public Prosecution, which can also express an opinion in Five days.

If the case is to be brought to the Single Judge, the request for aid shall be submitted to the Chamber of Trial, where the judge is located. A certificate from the Department of Revenues and Treasury at the Ministry of Finance (Public Finance City) indicating the direct taxes paid by the aid applicant and a certificate from any local authority proving his insolvency shall be included in the application.

The decision to grant legal aid shall be notified to the President of the Bar, who shall appoint a lawyer to defend the interests of the person who received such aid.

The penal transactions concerned with aid shall be free of charge, and the expenses of the necessary measures concerned with the investigation shall be the responsibility of the state treasury.

In all cases, even before filing the original case, the court that granted the legal aid may reverse its decision on its own or at the request of the Public Prosecution or the Ministry of Finance if the circumstances for which the aid was granted change, or it turns out that they are incorrect. In the latter case, the aid is canceled retroactively.

It must be noted that the spiritual courts of the Christian denominations also grant legal aid to insolvent litigants.

In this case, the litigant must present to the court a statement of poverty status issued by the parish priest, and some spiritual courts may require that this statement be certified by the bishop. In light of this statement, the court decides to grant the litigant full or partial judicial aid, in other words, a complete exemption from judicial fees or a relative exemption.

It should be noted here that the spiritual court of the Maronite denominations has a social counselor who conducts the necessary investigations and submits her report to the president of the court, who decides whether to accept or reject the request for granting legal aid and in the event of the affirmative, determine the percentage of legal aid. Also, these courts have a list of lawyers to delegate to insolvent litigants based on their request.

In addition, the organization of the Sharia judiciary in Lebanon has stipulated that any party of litigants who is not able to pay the resulting fees, fines, and all legal expenses due in connection with a lawsuit, investigation, procedure, or transaction at the various courts and executive departments may seek legal aid.

Legal aid is granted to insolvent Lebanese or foreigners residing in Lebanon, provided that the law of their country grants the Lebanese such a right. The date for examining the request is immediately set at the foot of the summons. A copy of it is sent to the Public Prosecution and the opponent to indicate their observation.

The applicant for legal aid shall include in his application a certificate from the financial department indicating the direct taxes that he pays, a certificate from the administrative authority to which he belongs indicating his family status, living conditions, income, and the impossibility of paying the expenses.

If the student is a foreigner, he must also present a certificate from the representative of his country proving his hardship and the legal text that grants the Lebanese in his country legal aid. The court may, even if the insolvency of the applicant is proven, reject the request when it becomes

apparent to it that the case is invalid or forfeited by the expiration of the legal time limits or the existence of malicious intent.

The court's decision to accept or reject the request does not receive any review except the appeal of the Public Prosecution. The first instance judge must inform the Public Prosecution of the rulings he issues regarding judicial aid.

The state legally covers the costs and fees of legal aid, except the case filed before the personal status courts of the Christian denominations - while the two syndicates cover lawyers' fees through the syndicate's fund and the fees paid by lawyers.

### **The role of the Bar Association in granting legal aid and assigning lawyers**

The law has placed the bar associations in Lebanon primarily tasked with securing legal aid. The Beirut Bar Association has set up a special legal aid committee to study aid requests and suggest the names of lawyers to the president, who issues the assignment decision.

There are no objective scientific criteria for assigning lawyers to legal aid files, so the Legal Aid Committee is keen to distribute files to the largest number of lawyers registered on the aid lawyers list.

As for the follow-up mechanism and control over the progress of aid files, the union, in general, and the committee, in particular, do not exercise their role in this regard.

The Syndicate's work in this regard is limited to appointing a lawyer and handing over the file attached to a one-page document to fill in the information on the progress of the case, bearing in mind that the information requested is limited to brief data.

The committee's failure to closely monitor the progress of cases and adopt the role of the recipient will negatively affect the quality of aid, especially since the suffering litigants, unlike ordinary clients, often do not know what their legal rights are in this regard.

### **Legal aid provided by NGOs operating in Lebanon**

It is also necessary to highlight in this context the free legal services provided by some NGOs in Lebanon, which include legal advice and free or semi-free legal representation for victims of violence and those in conflict with the law.

Often these free legal services are specialized and related, for example, to cases of violence against women and girls, juveniles, and torture.

It is provided by specialized lawyers who have undergone various training related to the concepts of human rights, and violence against women and children.

The continuation of these services is linked to the continuation of the projects implemented by the competent NGOs, as well as the sustainability of funding.

## Section II: The Right of Access to Justice

The term “access to justice” is not explicitly mentioned in international human rights treaties. However, the bodies designated to monitor the implementation of these treaties consider the pursuit of justice a right and a prerequisite for safeguarding all human rights.

According to the committees appointed to interpret international human rights treaties and monitor their implementation, the right to access justice is considered an essential foundation for the realization of full human rights, whether political, civil, economic, social, or cultural.

The Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights in its General Comment No. 32, highlights access to justice as an essential means of protecting rights and “an essential tool for reducing poverty and inequality, including gender equality.”

International human rights treaties confirm the complex nature of the right to seek justice, as it includes many other rights. These rights have (a) the right to equality before the law and the courts, (b) the right to equal legal personality before the law, (c) the right to seek and obtain a remedy, and (d) the right to a fair and impartial trial.

These rights were formally proclaimed for the first time in Article 7 of the Universal Declaration of Human Rights, which states that all people are equal before the law and have the right to enjoy equal protection without discrimination. They all have the right to equal protection against any discrimination that prejudices with this advertisement.

Article 8 stresses that every person has the right to resort to the national courts for redress for acts that violate the fundamental rights granted to him by law.

The tenth article of the declaration also affirms that every person has the right to have his case heard before an impartial court fairly, whether his accusation is civil or criminal.

Article 14 of the International Covenant on Civil and Political Rights also provides for the right to equality before the courts and the right to have access to the courts.

The Human Rights Committee notes in its General Comment No. 32 that “the right to equality before the courts guarantees the principles of equality of arms and equal access to justice and ensures that the parties concerned are treated without any form of discrimination.”

Thus, it can be said that access to justice rests on the following main pillars:

1. The right to sue.
2. The right to equal legal personality before the courts.
3. The right to equality before the law and the courts.
4. The right to a fair and impartial trial.
5. The right to seek effective remedies.

As for access to justice during armed conflicts, it must be noted that Lebanon is witnessing various turmoil and crises at the security, political, social, economic, and health levels, which often have a negative impact on citizens, especially women, and children.

During these crises, women are exposed to violence, sexual exploitation, and other violent practices that spread during wars.

The lack of security and the rule of law in conflict and crises prevents women from accessing justice, claiming their rights, and applying for protection.

In General Recommendation No. 30, the Committee on the Elimination of Discrimination against Women notes that challenges related to access to justice are characterized by order and severity in conflict and post-conflict situations, given that justice systems no longer exist or can operate with any degree of efficiency or effectiveness.

Security Council Resolution 1325/2000 on Women, Peace, and Security sets out the obligations of Member States to take significant steps and measures to safeguard women's rights in times of peace and war, as well as in transitional periods.

With regard to the right and guarantee of access to justice in Lebanon, no country should mention that the Lebanese Constitution stipulated in its preamble the equality of rights and duties between all male and female citizens and also stipulated that citizens are equal before the law. They enjoy equal civil and political rights and bear the obligations And general duties without difference between them.

However, the Lebanese Constitution does not include a definition of discrimination as stated in international conventions and prohibits it based on them; although it stipulates equality before the law, it does not guarantee equality in the law, and this leads to the continuation of work and the application of legislation that still includes discrimination, and the absence of anti-discrimination legislation Discrimination, weak effective remedies for victims and guarantee and access to justice, especially for vulnerable and marginalized groups.

In the following, we will review the most prominent efforts undertaken by the Lebanese state in terms of strategies and legislation, as well as the most prominent gaps in the applicable laws that limit ensuring access to justice, especially for vulnerable groups.

## Chapter One: Efforts and Gaps Level of Legislation and Strategies

### First: The State's Efforts at the Legislative Level

- 1- The law establishing the National Human Rights Commission, including the Committee for the Prevention of Torture, in compliance with the Paris Principles.

The House of Representatives approved Law No. 62 on October 27, 2016, establishing the National Human Rights Commission.

According to the law, the National Commission is responsible for monitoring the human rights situation by reviewing laws, decrees, and administrative decisions. It also investigates complaints of human rights violations and issues periodic reports on its results.

And they linked to the obligations arising from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which Lebanon had previously ratified.



Within the National Human Rights Commission, a permanent committee called the “Committee for the Prevention of Torture” was established, and it works to protect the rights of detainees and persons deprived of their liberty. It enjoys an independent legal personality in everything related to torture and its prevention.

- 2- The law to punish torture and other cruel, inhuman, or degrading treatment or punishment. In 2017, the Lebanese government passed a law to punish torture and other cruel, inhuman, or degrading treatment or punishment. The law entered into force on October 26, 2017, after its publication in the Official Gazette.
- 3- The Missing and Forcibly Disappeared Person Act. On November 30, 2018, the House of Representatives approved a proposed law on missing and forcibly disappeared persons, which includes critical points related to establishing the right to know and be informed of the families of victims of enforced disappearance. And the formation of a competent, independent national commission in selecting its members, the representation of women and men (Article 11 of Law No. 105 dated 11/30/2018)<sup>51</sup>.
- 4- Right to Information Act. On 1/2/2018, the law was issued on the “right to access information”<sup>52</sup>, which guarantees the protection of citizens’ right to access and peruse the information and documents in the administration’s possession.
- 5- Cancellation of Article 522 of the Penal Code: On 16/8/2018, the Lebanese Parliament repealed Article 522 of the Penal Code, which had stipulated stopping the prosecution or suspending the execution of the sentence if a valid marriage contract was concluded between the perpetrator of one of the crimes (rape, kidnapping for the purpose of marriage, etc.). ) and the victim (Law 53 issued on September 4, 2017).

However, the effects of the repealed article have moved to article 505 when the elements of the crime specified in this article are available, i.e., in the case of sexual intercourse with a minor who has completed fifteen years of age but not yet eighteen, so that if the offender marries his victim, the prosecution or trial stops.

Also, if a judgment is issued in the case, the execution of the sentence imposed shall be suspended, provided that the judge’s decision to suspend is not issued except based on a report prepared by a social assistant that takes into account the social and psychological conditions of the minor.

The latest amendment also retains the effect of the provisions of Article 522 in relation to the offense stipulated in Article 518 Penalties, so that whoever has committed the virginity of a girl, an adult or a minor, by seducing and promising to marry, is exempted from the penalty if he marries her.

- 6- The Right to Information Act was ratified on January 19, 2016.
- 7- Personal Status Law of the Unitarian Druze Community: In 2017, the Law on Personal Status of the Unitarian Druze Community issued on February 24, 1948, was amended in terms of:

<sup>51</sup> Published in the Official Gazette No. 52 of 6/12/2018

<sup>52</sup> Law No. 28 issued on 1/2/2018

- The issue of inheritance: if the deceased did not have male children but rather female children, then in this case, one or more daughters are considered a clan on their own, and they cut off the inheritance and inherit the entire estate of her bequeather after the owners of the hypotheses take their homework. If they are more than one, the shares shall be divided equally.
- The issue of the dowry: determining how to calculate the value of the dowry, which is specified in paper currency when it is due, in the number of (ounces) of gold on the date of the contract, according to the restrictions of the Banque du Liban.
- Raising the age of custody for the mother from 7 to 12 for the boy and from 9 to 14 for the girl.
- Consolidate the judge's right to assign an experienced and qualified psychologist or social worker to reconcile the relationship between spouses.
- The right to watch: A paragraph was added to Article 64 of the law stipulating that one parent should not be allowed to prevent the other from observing the child in custody and the judge, in the event of disagreement between the parents, left the power to determine the place and time of viewing according to the child's interest, provided that viewing should not be less than once a week.

It should also be noted that the confessional council of the Unitarian Druze sect - which has the authority to study the proposal or amendment of bills related to the affairs of the sect - has, since the last elections, included five women in the general assembly, including a woman who is also a member of the board of directors of the confessional council.

- 8- The Supreme Islamic Sharia Council approved Resolution No. 62 to amend the family rules system and add a chapter related to the marriage of minors.

This decision came to unify the age of marriage for men and women, setting the condition that each of them complete eighteen years of age and limiting the exception to those who have reached fifteen years of age.

The previously applicable text, i.e., the Sunni Family Law, had set a condition that the suitor had completed the eighteenth year. The fiancée had completed the seventeenth year, with the ruler (the Shari'a judge) granting the possibility of permission to marry the nine-year-old girl and the seventeen-year-old minor when it turns out that they have reached puberty and their condition can bear it.

What increases the importance of the decision to limit the exception to those who have reached the age of fifteen is that it has taken into consideration several controls, including the acceptance of a minor (a) and his guardian (a) and the verification that his (a) physical and mental/psychological condition is tolerable under a medical examination.

It is noted that the reasons for the decision indicated that physical puberty itself is insufficient to state a person's maturity and ability to marry, as it also assumes the availability of mental and psychological preparation.

- 9- Law criminalizing sexual harassment and rehabilitating victims: On December 30, 2020, the House of Representatives approved Law No. 205 on the criminalization of sexual harassment and the rehabilitation of its victims.

## Second: The State's Efforts at the Level of Strategies / Circulars / Memoranda

- 1- National Strategy for Gender Equality 2017-2030. The Ministry of State for Women's Affairs (which has been replaced by the Ministry of State for Economic Empowerment of Women and Youth) has prepared the National Strategy for Gender Equality to accelerate the implementation of Lebanon's commitments regarding women's empowerment and gender equality.

The strategy was based on the current National Strategy for Women in Lebanon (2011-2021).

The work areas of this strategy have been adapted to fit the strategic objectives of the new 2030 Agenda for Sustainable Development and with Lebanon's global commitment to sustainable development goals.

- 2- The National Strategy to Combat Violence against Women 2019-2029. The national strategy to combat violence against women and girls was prepared, where violence was defined, the vision and mission were defined, and the strategy's action plan was prepared.

This strategy targets all Lebanese women and girls and all women and girls on Lebanese soil. It also targets men and youth to raise their awareness about the harms of forms and types of violence against women and girls and its negative effects on the victim, family, and society.

However, this strategy did not include any special paragraph related to girls and did not consider the specifics of this category.

- 3- National Strategy to Prevent Violent Extremism. It was approved by the Council of Ministers on 27/3/2018. Initially, the National Strategy to Prevent Violent Extremism presented a general background on the reality of violent extremism in the Lebanese Republic, the reasons for its establishment, and the steps taken to formulate it.

Then she explained the government pillars that the strategy adopts, its general framework, the procedural definitions of the concepts of violent extremism and prevention, and the controls that were taken into account when developing it.

Finally, the document sets out the axes and the nine areas of activity for the strategy agreed upon by the ministries.

This document included nine strategic axes, the fifth of which dealt with gender equality and women's empowerment.

- 4- A national action plan for Security Council Resolution 1325. In compliance with the general recommendation No. 30 issued by the Committee on the Elimination of All Forms of Discrimination against Women, and based on the concluding observations issued by the Committee to the Lebanese state in 2015 after reviewing the national report and after its

assignment by the Lebanese government, the National Commission for Lebanese Women took the initiative to develop an action plan to implement Resolution 1325.

The Commission adopted a participatory approach with other governmental institutions and civil society organizations, with the support of United Nations organizations, to develop the action plan.

The process of developing the national action plan included conducting a realistic analysis to document national efforts to implement Security Council Resolution 1325, which included best practices and lessons learned from other countries, and a review of the consultative meetings held to date at the national and local levels with the concerned authorities.

During 2018, six sectoral meetings were organized with ministries, key institutions, and civil society to develop the national action plan. The National Commission submitted the plan to the Prime Minister, awaiting discussion, and the Council of Ministers approved it.

Currently, the National Commission for Lebanese Women is holding consultative sessions in preparation for formulating the national plan for the Security Council resolution from 2022-2040.

- 5- A Strategy for the Internal Security Forces 2018-2020 Towards Ensuring a Safer Society “The General Directorate of the Internal Security Forces has adopted a comprehensive strategic plan for 2018-2022.

This strategy aims to enhance stability, safety, security, and partnership with civil society; protect human rights and increase accountability; Building the capabilities and effectiveness of the professional security forces.

The foundation’s vision was defined as “Together towards a safer society.” It also included four strategic goals aimed at developing the professional competence of the elements of the internal security forces while respecting human rights and activating accountability and partnership with society, especially organizations concerned with human rights, women’s and children’s affairs.

Among the programs included in the five-year strategic plan: are the program to strengthen the capacity to combat crimes against vulnerable groups and crimes based on sex or gender and the program to build the necessary partnership in all areas, especially participation in the drafting of Law 193/2014 (Protection of Women from Domestic Violence), in addition to a program to disseminate the rules of respect for human rights at all levels.

- 6- Cabinet Decision issued on February 8, 2018, related to the registration of Syrian births On February 8, 2018, the Cabinet approved Resolution 93, which stipulated the registration of any Syrian newborn born in Lebanon, even if he is over a year old, in the Foreigners’ Registry and the Foreigners’ Departments in the governorates as of January 11, 2011, until the date of this decision.

This decision also stipulated sending lists of those births to the Ministry of Foreign Affairs and Emigrants, which informs them to the competent Syrian authorities, based on the letter submitted by the Minister of State for Displaced Affairs, the Ministry of Foreign Affairs and Emigrants and the Ministry of Interior and Municipalities.

According to the decision, Syrian refugees no longer need a judicial decision to register their one-year-olds. This decision was renewed until February 2022.

- 7- A special circular to mention the mother's name and nickname on the passport of Lebanese citizens. In 2017, the Director General of Public Security decided that the mother's name and surname must be recorded on passports.
- 8- Circular to include the names of children of divorced women on their family registration data: on August 29, 2018. The Director General of Personal Status issued a circular regarding the inclusion of observations and the issuance of affidavits regarding the children's records of divorced women.

Where the circular states that when a divorced Lebanese woman who has been re-registered to her parents' field applies for family registration, mention the names of her children and their registration number in the notes field after communicating with the Registry of the Personal Status Department.

A divorced Lebanese woman is also given - if she desires - a certificate of record listing the names of her children from her Lebanese divorcee in the event of more than one divorce, provided that the application is submitted to the Registry of the Director General of Personal Status directly by the divorced woman or through her legal representative.

- 9- Memoranda on the principles of handling and investigating human trafficking crimes based on Lebanon's accession to the Convention against Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which complement it, and on the issuance of the 2014 Anti-Trafficking Law.

In 2014, the government issued a ministerial decree establishing an anti-trafficking office in the Internal Security Forces Directorate to manage investigations into human trafficking.

On 9/25/2017, a service memorandum No. 339/204sh4 was issued on 9/25/2017 regarding the principles of abuse, investigation of human trafficking and sexual assault crimes, and providing support to their victims.

**Third: The most important gaps in national laws that impede access to justice, especially women and children, and some marginalized groups such as foreign workers, and refugees**

### **The Law on the Protection of Women and Other Persons from Domestic Violence**

The Law on the Protection of Women and Other Family Members, promulgated No. 293/2014, entered into force on 5/15/2014, and some articles of this law have been amended by virtue of Law No. 204 dated 12/30/2020.

The Law on the Protection of Women and Other Family Members constituted an essential step in combating violence against women and protecting women victims of domestic violence. This law contains some loopholes that some judges were able to overcome through jurisprudence.

This law defines the family as any of the spouses, the father and the mother of either of them, the brothers, sisters, ascendants, and descendants, whether they are legal or not, and those who are joined by the bond of adoption or intermarriage up to the second degree, guardianship, guardianship, orphan sponsorship, stepfather or stepfather.

Domestic violence is defined as any act, omission, or threat of acts committed by a family member against one or more family members according to the concept set out in the definition of the family that occurs during or because of marital life and deals with one of the crimes stipulated in this law and results in killing or harming Physical, psychological, sexual or economic.

Perhaps the most significant amendments to the Law on the Protection of Women and Other Family Members included in Law 204 are:

- Amending the definition of domestic violence to include violence that occurs due to marital life, to include divorced women.
- Minors are allowed to apply for protection alone and without their guardian. Still, this amendment did not present the mechanism for implementing these amendments to ensure juveniles reach the law.
- Criminalization of domestic violence, and where a paragraph was added to the Penal Code stipulating that he shall be punished by imprisonment from three months to three years and a fine ranging from the minimum wage to three times, or one of these two penalties, whoever practices violence within the family that causes moral or economic harm to a family member, or It deprived someone of basic needs.
- Raising the age of children who are legally included in the protection order to 13 years and under after they were of legal custody age in accordance with the provisions of personal status laws and all other applicable laws.
- A list of social workers/specialized workers/s drawn up by the Ministry of Social Affairs who attend investigations before the judicial police at the victim's request. However, given the conditions the country is going through, the ministry has not yet drawn up this list.
- Establishing a piece specialized in domestic violence crimes that include female elements, and its members are trained in conflict resolution and family guidance.

Article 6 of this law stipulates that the general attorney in charge of receiving complaints related to domestic violence, and before the issuance of the protection decision, entrust the judicial police and under his supervision to take one or more of several measures, including moving the victim to any safe place at the expense of the complainant according to his ability.

Article 14 of this law stipulates that the protection decision includes several measures, including the removal of the victim and those who live with them who are covered by protection when they sense any real danger to them that may result from their continuing to occupy the family home to safe and appropriate temporary housing.

This law also stipulates that a special account shall be established in the Ministry of Social Affairs to assist victims of domestic violence, provide safe care for them, and provide means to reduce, prevent, and rehabilitate domestic violence crimes.

## Personal Status Laws

The personal status system in Lebanon is characterized by a unique peculiarity. It is not just a part of the “civil system” but rather a special constitutional framework, the peculiarity of which is that the forms of discrimination in the field of family planning are expressly enshrined in Lebanese sectarian laws that take into personal account status; In fact, the uniqueness of religious sects in legislating and regulating family affairs in Lebanon has resulted in the perpetuation of multiple and complex forms of discrimination that often suffer, especially women and children.

For Christians, marriage is considered one of the seven sacraments of the Church on which the Christian faith is based. In it, a man and a woman are legally united to cooperate in married life, bear the burdens of the family, have children, and raise them.

The Lebanese constitution recognizes religious sects as legal persons. It enshrines legislative and judicial pluralism in personal status – i.e., issues of marriage, divorce, alimony, and custody for all sects.

Article 9 of the Lebanese Constitution enshrined the affiliation of the Lebanese to spiritual families. It recognized each of these families with self-administration and the right to legislate and judge exclusively in matters related to personal status. This article also guaranteed religious freedoms and the practice of rituals<sup>53</sup>.

Personal status laws, in general, are discriminatory laws par excellence, not only between men and women but also between women and women of two different sects. Each sect has its personal status laws, and in Lebanon, there are 19 sects and 15 personal status laws.

Among the most prominent aspects of discrimination in personal status laws, in general, is related to the issue of custody, parental authority, alimony, compensation, the specific conditions for requesting divorce, annulment or nullity, guardianship, and inheritance among Islamic sects, since the Christian sects have equalized the inheritance of men and women. Discrimination in personal status is not only limited to legal texts but also includes the application and interpretation of the law, and the implementation of justice.

It should be noted here that the Lebanese state recognizes civil marriages held outside the country and permits their registration in the personal status departments without subjecting them to any religious treatment but only to normal administrative procedures, and all their effects are recognized while remaining subject to the local law where the marriage was concluded (Article 25 of Resolution 60 of the year 1936).

## The Penal Law

Lebanese law does not define crimes of sexual violence, their forms, and elements, which leads to impunity for some types of these crimes.

The Lebanese Penal Code or the Code of Criminal Procedure does not guarantee a mechanism to protect victims and witnesses, which leads to the fact that some laws remain insufficient in providing full and effective protection to victims, which negatively affects ensuring their access to justice.

<sup>53</sup> The text of Article 9 of the Lebanese Constitution states: “Freedom of belief is absolute, and the state, by performing the duties of reverence for God Almighty, respects all religions under its protection, provided that there is no breach of public order.



Some judges still rely on giving mitigating excuses to the criminal in domestic violence crimes. It requires a comprehensive re-reading of the laws to ensure protection and end this impunity on the one hand, and on the other hand, work to modify the behavior of judges and law enforcement men and women.

Despite the abolition of Article 522 of the Penal Code, which exempted the aggressor from punishment in the event of a valid marriage contract with the victim, the effects of this article are still applied to minors since the amendments did not extend to the provisions of Articles 505 and 518 of the Penal Code.

Marital rape: Rape of the wife is still permitted under the provisions of Article 503 of the Lebanese Penal Code.

### **Sexual Harassment Criminalization Law and Victim Rehabilitation**

On December 30, 2020, the House of Representatives approved Law No. 205 to criminalize sexual harassment and rehabilitate its victims, in a step that marks progress by criminalizing sexual harassment and establishing protection for those who report it.

However, it falls short of the Convention on the Elimination of Violence and Harassment, which stipulates that governments address violence and harassment at work through a “comprehensive, integrated and gender-sensitive approach,” including through laws relating to employment, occupational health and safety, equality and non-discrimination, In addition to criminal law.

Also, this law does not meet international standards. He merely treated sexual harassment as a crime, ignoring preventive measures, labor law reforms, monitoring, and urban remedies. Protection of victims and witnesses.

### **Labor Law**

The Lebanese Labor Law does not include in its provisions a definition or prohibition of discrimination as defined by the International Covenant on Economic, Social and Cultural Rights as “discrimination in the ability to obtain and maintain a job because of: race, color, sex, language, religion, political or other types of opinion, or national origin.” or social status, wealth, lineage, physical or mental disability, health condition including HIV infection, sexual orientation, civil, political, social or other status that is intended to undermine or nullify the exercise of the right work based on equality or have such an effect.

The Lebanese labor law excludes domestic workers, women, and men working in the agricultural sector from its provisions.

It also excludes workers in domestic work, agricultural unions that have nothing to do with trade and industry, institutions in which members work under the management of a father, mother, or guardian, daily and temporary employees, and workers in government departments who are not covered by the personnel system.

The Labor Law prohibits discrimination based on sex between male and female workers. Still, it limits it to the type of work, the number of wages, employment, promotion, promotion, professional qualification, and clothing.

The reality confirms the existence of other problems affecting women from the most marginalized groups in the field of work.



### **Anti-Trafficking in Persons Act**

This law defines trafficking in persons, the victim, the forms of trafficking, and the penalties. Article 586 (9) of this law stipulates that the Minister of Justice may conclude agreements with specialized institutions or associations to provide assistance and protection to victims of trafficking in persons.

The conditions to be met in these associations and institutions and the principles for providing assistance and protection are determined by a decree issued by the Council of Ministers based on the proposal of the Minister of Justice. However, to date, this decree has not been issued, noting that the Ministry of Justice had submitted a complete draft law related to amending the Trafficking in Persons Law, which has not been approved to date.

This law also stipulates that a special account shall be established in the Ministry of Social Affairs to assist the victims of these crimes, in which the confiscated funds resulting from these crimes shall be deposited, provided that the regulations relating to the account shall be determined by a decree issued by the Council of Ministers upon the proposal of the Minister of Social Affairs. But this fund still needs to be established.

This law is punitive, not a preventive and protective one. Although adopting a law penalizing the crime of human trafficking is an important step, it is incomplete. The law, although it punishes the perpetrators of the crime of human trafficking, does not provide the required protection for the victims of this crime, and it also places the responsibility on the victim to prove that she has been exploited.

### **Shelter centers for survivors of gender-based violence**

Violence against women is considered a form of discrimination and a violation of their human rights. It is a manifestation of the unequal balance of power between men and women, reflected in public and private life.

It constitutes an obstacle to achieving equality, development, and peace. Women exposed to violence urgently need access to justice, shelters, medical and psychological support, and other services.

The Special Rapporteur on Violence against Women, its causes and consequences, defined shelters broadly and considered that “a shelter or shelter (shelter center) is a safe, emergency and temporary housing for women and children who have experienced violence or are at risk of violence (usually at the hands of males) within a family context. Shelters (i.e., shelters) can provide support to women and girls who have been or are at risk of other forms of violence, such as trafficked women, migrants, asylum seekers, and those fleeing conflict to refugee and IDP camps where they are at increased risk of gender-based violence<sup>54</sup>.

<sup>54</sup> <https://www.unescwa.org/sites/www.unescwa.org/files/publications/files/shelters-arab-region-availability-accessibility-arabic.pdf>

Shelter centers are an essential component of a comprehensive response to violence against women, and access to them should be linked to national legislation, especially legislation related to the protection of women from violence in all its forms, including domestic violence.

In line with the approach focused on survivors of gender-based violence<sup>55</sup>, the safety and protection of the survivor must come first<sup>56</sup>.

Civil societies and women's organizations in Lebanon have played an important and prominent role in protecting women and girls from gender-based violence, especially through the establishment of shelters aimed primarily at safeguarding and sheltering women survivors of violence and/or at risk.

However, most of these centers are not qualified to receive women with different disabilities, and women with immunodeficiency.

Also, there are no unified standards upon which these centers are based, in addition to the absence of laws or other legal texts, such as decrees and decisions, regulating the establishment and management of shelter centers.

It should be noted that the rate of violence against women and girls during the Corona pandemic increased by more than 100%.

An essential number of measures have been taken to ensure that women and girls have access to justice, as follows:

- Establishing the hotline 1745 to receive complaints of domestic violence with the Internal Security Forces.
- The initiative of the Internal Security Forces to listen to the victims over the phone instead of taking them to the police station. However, this initiative was temporary and linked to a specific period.
- Sending protection requests via e-mail, holding sessions electronically, and issuing protection decisions accordingly. Despite the importance of this step, it is a temporary step that was adopted within a short period, and the following observations are recorded on it:
  - This step was not generalized but remained within a narrow framework. It would have been better to organize campaigns to ensure that all women are aware of this new temporary judicial procedure.

<sup>55</sup> This approach is called the "survivor-centered approach."

<sup>56</sup> <https://lebanon.unfpa.org/ar/publications/%D8%A7%D9%84%D9%85%D8%B9%D8%A7%D9%8A%D9%8A%D8%B1-%D8%A7%D9%84%D8%AF%D9%86%D9%8A%D8%A7-%D9%84%D8%A5%D9%86%D8%B4%D8%A7%D8%A1-%D9%88%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9-%D9%85%D8%B1%D8%A7%D9%83%D8%B2-%D8%A5%D9%8A%D9%88%D8%A7%D8%A1-%D8%AF%D8%A7%D8%B5%D8%A9-%D8%A8%D8%A7%D9%84%D9%86%D8%A7%D8%AC%D9%8A%D8%A7%D8%AA-%D9%85%D9%86-%D8%A7%D9%84%D8%B9%D9%86%D9%81-%D8%A7%D9%84%D9%82%D8%A7%D8%A6%D9%85-%D8%B9%D9%84%D9%89-%D8%A3%D8%B3%D8%A7%D8%B3-%D8%A7%D9%84%D9%86%D9%88%D8%B9>

- Some women do not have an e-mail or are not familiar with using the electronic platform to access their rights and claim protection, or they cannot write a protection request or something else.
- Adoption of the Bar Association of Beirut and the North electronic platform to facilitate the submission of requests for release and some reviews in criminal cases.

What Lebanon is currently going through in terms of economic, social, health, and security crises, the devaluation of the national currency, in addition to the high rates of poverty among citizens, and the suspension of court and official administration employees for a long time.

And then, the conditional return to work for two or three days a week, and later the judges stopped working because of their low wages.

It can be said, unfortunately, that justice in Lebanon is dying and is no longer the primary demand for some groups due to the high cost of justice, the loss of confidence in it, and the inability to access it.

All of the above requires adopting an emergency plan of action to achieve justice and put it at everyone's disposal. Without justice, there is no security or peace.

## Chapter Two: Obstacles that hinder women from accessing justice

Access to justice entails a series of steps to end impunity, particularly with regard to violations motivated by discrimination.

Existing discrimination against women and some marginalized groups is one factor that deprives women of access to justice.

Women experience some difficulties in filing complaints or proceeding with judicial procedures and often need to be made aware of their rights stipulated in laws.

Among the most prominent obstacles that prevent women from accessing justice are:

### The Individual Level

#### Legal Awareness

Most women need to be made aware of their rights stipulated in the laws and of the procedural rules that require their behavior to reach justice to claim their rights and demand protection and compensation.

The strategies adopted by the International are Lebanese. Although they dealt with the importance of awareness and training, they still need to set plans or allocate budgets to work to spread legal awareness of women and girls in various Lebanese territories.

Also, some working NGOs, although they are working to spread awareness, are not enough and only cover some groups. It is linked to the funding they receive, which requires the Supreme to work out a participatory national plan between the state and civil society institutions to ensure women's access to legal information and justice.

## Legal Aid

Despite the existence of legal texts regulating and sponsoring the legal aid system in Lebanon, there are some challenges and loopholes, as follows:

- Some women are not familiar with the legal aid law and how to apply for this either before the courts or the Bar Association.
- The lack of specialization of most lawyers for the Judicial Aid Committee in the Bar Association. Most of the lawyers are trained and do not have the conceptual background on the concept of violence against women, gender, protective laws, etc., which hinders the provision of specialized legal services to women victims of violence.
- The legal services provided by some NGOs are temporary and linked to funds and programs funded by international bodies.
- The high fees for some lawsuits, especially personal status lawsuits, especially among the Christian denominations.

## The Community Level

Although there are efforts to work with local leaders and all civil society institutions to ensure that marginalized groups have access to justice by building their capacities and increasing their knowledge about various issues related to human rights, especially women and children issues, and laws and judicial procedures, these efforts remain insufficient and require focus on :

- Working to sustain coordination and partnership with civil society institutions.
- Building a referral system between all civil society institutions and the relevant ministries to ensure women's access to justice.
- Involving all civil society organizations in advocacy campaigns related to the access of women and marginalized groups to justice.

It must be noted that the Directorate of the Internal Security Forces, being in contact with women victims of domestic violence, has issued several service memos outlining the role of internal security in protecting women, the duties of the investigation arrangement, and the penalties to which they are subjected in the event of reluctance or violation.

These memos also included the role of the security forces in referring women to shelters for survivors of gender-based violence and associations that can be contacted.

## The Institutional Level

Some laws in Lebanon still contain clear discrimination against women on this one hand. On the other hand, the absence of laws and mechanisms to end impunity in some crimes committed against women and to protect victims and witnesses is recorded.

Also, there needs to be a comprehensive legislative mechanism based on international standards and conventions when amending laws, especially those related to women and children.

In addition, the behavior of some judges and law enforcement men and women is patriarchal, which prevents women from accessing justice and their rights, especially those stipulated in laws.

## Chapter Three: Recommendation

To ensure access to justice, we suggest the following recommendations:

- Ensuring the dissemination of awareness and knowledge of legal rights and duties in accordance with what is stipulated in the laws and the legal procedures that must be followed to ensure access to justice.
- Enhancing specialized legal aid and creating a network of specialized lawyers on various issues related to marginalized groups and human rights.
- Adopting a national legal hotline to ensure access to legal information.
- Building a referral network between all civil society institutions and the relevant ministries to ensure that marginalized and vulnerable groups have access to justice and services.
- Building the capacities of the local community and local leaders on various legal and human rights issues and involving them in various advocacy campaigns to ensure access to justice.
- Working on amending laws and/or adopting new laws or policies aimed at eliminating discrimination, ensuring access to justice, and protecting victims and witnesses.
- Work to change the behavior of law enforcement men and women.
- Work to ensure the enforcement of laws, monitor their implementation and ensure speedy justice procedures.
- Ensuring fair trial procedures.
- Building a relationship of trust between the public and law enforcement officials. (And by the public, we mean: citizens / that, foreigners, refugees / it...).
- Adopting the electronic platform and ensuring its sustainability to ensure protection and access to justice.
- Encouraging the funders to work on the justice issue and ensure the sustainability of services therein.
- Ensuring the comprehensiveness of the shelters, based on the comprehensiveness of protection and access to justice. And the establishment of specialized shelters for women with various disabilities, addicts, and those with immunodeficiency.
- Adopting a national emergency plan to ensure continued access to justice and increased protection, especially during crises.



## Justice with(out) Security: An Analysis of Access to Justice in Libya

Abdel Moneim Mansour Al-Horr

## Table of Contents

<b>Introduction</b>	<b>103</b>
First: Introducing the justice sector in Libya	103
A Historical Look at the Security and Justice Sectors Before and After the February 2011 Revolution	103
Structural composition of the Ministry of Justice and its administrative apparatus	105
Second: Challenges facing the justice sector in Libya	107
Third: The impact of the Corona pandemic on the justice sector in Libya and the Libyan COVID 19 Response Plan	110
A look at the Libyan scene during the Corona pandemic	110
Fourth: Protection and assistance needed by irregular migrants in detention centers of the Ministry of Justice	114
Healthcare discrimination towards migrants in Libya	115
<b>Conclusions</b>	<b>117</b>

## Introduction

The Libyan state has suffered from worrying challenges and obstacles during the past decade, between an increasingly frequent armed conflict and suffocating economic challenges, a political division, which led to the existence of more than one government at the same time, and health challenges with the arrival of the Covid-19 pandemic, at a time when the country is suffering from a collapsed health care system that has exacerbated the health care crisis of the most vulnerable, as the humanitarian space available to local and international organizations has been reduced due to restrictions on travel and security. The justice sector is one of the hardest hit as a result of the political and security situation first, then the pandemic. The imposition on work and the functioning of the sector of holding trials, and the situation of prisoners in terms of providing vaccines, medicines, treatment, and isolation has also undermined the Libyan justice sector.

This research aims to shed light on the challenges and obstacles faced by this sector in Libya and whether it was able to fulfill its obligations under the country's situation, which is on a hot plate. The importance of this stems from documenting the essential difficulties by studying them on the most vulnerable groups in society, represented by irregular immigrants.

Here the following question arises:

What are the main challenges and obstacles facing the justice sector in Libya, and how has the COVID-19 pandemic affected the context of justice?

## First: Introducing the justice sector in Libya

### A Historical Look at the Security and Justice Sectors Before and After the February 2011 Revolution

Libya's institutional security and justice sectors were intentionally weakened during Gaddafi's forty-two-year regime. Parallel structures were formed within the institutions of security and justice, there was a transfer of power from the primary institutions of the state to non-state actors, and limited oversight and accountability, which led to the general perception that formal systems were useless and sham on the ground.

The main function assigned to the police was the maintenance of civilian security, nevertheless, this task remained unmet due to their lack of legal powers and resources. Furthermore, the police forces' association with the repressive regime, generated reluctance and fear among the Libyan population. The actual security providers in Libya were reduced to a small group of internal security and secret police, being instrumentalized by Gaddafi's officials to manipulate the Libyan citizens and suppress any kind of political opposition. As the military was the unique possible domestic contesting actor to the dictatorial system, and in the view of a hypothetical military coup d'état, Gaddafi's policies towards the Libyan Armed Forces were focused on their dismantling.

In contrast with the security sector, the function of the justice system has been eroded by corruption, political influence, poor judicial education, and the establishment of parallel people's courts staffed by regime loyalists.



With the outbreak of the February 2011 revolution, Libya's fragile security and justice system began to emerge virtually along various lines of loyalty. Some police and army personnel turned their backs on the regime, joined the rebels on the front lines, and handed over equipment and weapons, while others fought with the regime. Many abandoned their jobs and stayed at home, the courts were suspended, and the state-provided security and justice were stopped.

Immediately after the revolution outbreak, a rejection feeling came up across all Libyan social sectors. Hence, the former institutional security and justice frames were not acceptable anymore, as they have been proven to be unable to reinstate control in the Libyan territory.

In the face of power and security gaps, armed groups emerge to fill them, such as the so-called *alThuwaar* (Revolutionaries in Arabic) in Libya. Before the incapability of the Governmental authorities to hold control, well-known figures in militias and other armed groups were seen as reliable security providers.

Following the popular expression "If you cannot beat them, join them", the new Libyan state sought to take advantage of the legitimacy of these new non-state actors, subjecting them to governmental scrutiny. However, this approach has not fulfilled the security demands of Libyan citizens, as the rebel groups still remain uncontrolled across the country. General Khalifa Haftar-led Operation Dignity in Western Libya is a clear reaction to the state's lack of control over armed rebel groups.

Not only Libyan statal forces have failed the Libyans, but rebels as well. They, eventually, seem to be a movement of opportunistic rather than heroes: Far from protecting and fighting for their people, rebels have prioritized their own interests, looking for gaining more power and aligning with the political and economic establishment. In terms of security, "frustration" can summarize the view of Libyans towards the state and armed groups.

The security situation has had a direct impact on the justice sector. The dysfunctioning of the judiciary led the Libyan society to restore traditional dispute settlement mechanisms, particularly, at the local level (tribal leaders, local councils, religious personalities...).

Regarding the formal legal system, it has suffered few reforms, although positive. For instance, the separation of the Supreme Judicial Council from the Ministry of Justice, led to a relative improvement in the independence of the judiciary, and they are currently working to return prisons to state control. Notwithstanding, judiciary independence cannot be ensured as the security situation is still critical. In comparison with the civil and administrative law proceedings, criminal and transitional justice cases have shrunk sharply, given that judges, prosecutors, lawyers and other legal officers are afraid for conducting their work due to potential retaliations they may face by the different active armed groups.

Several reforms to the security and justice sector have been tried to be implemented in Libya, but unsuccessfully:

- **Disarmament:** In a country where weapons flood the streets, and the state apparatus is unable to grant security, disarmament is not a feasible option.
- **Integration of armed groups into state security institutions,** although the Government authorities do not have actual control over the militias.

- **Tensions between pre-revolutionary officers and recruits**, as the weakened military structure cannot absorb the new figures.
- Since the revolution, **new security institutions have been formed**, whether temporary or permanent. However, their efficiency, level of control and integration into the state security structure remain uncertain for the State and the population.
- **Purge:** In May 2013, pressured by the rebels, the Libyan parliament passed the Political Isolation Law that prohibits former Gaddafi officials from holding public offices in the new government, purging the political dissidence and slowing down any kind of security and justice system reforms.

In sum, the lack of popular trust in the current hybrid security and justice sectors and the institutional incompetency by the Libyan Government and the rebel armed groups are at the core of the insecurity and injustice among Libyans.<sup>57</sup>

### Structural composition of the Ministry of Justice and its administrative apparatus

Looking at Article IV of Cabinet Resolution No. 50 of 2012 on the adoption of the organizational structure and competencies of the Ministry of Justice and the organization of its administrative apparatus, we find that its structure consists of the following organizational divisions:

- 1- Judicial bodies: courts, prosecutors, the Department of Inspection of Judicial Bodies, the Department of Government Cases, the Department of People's Lawyers, and the administration of law. These bodies exercise their competencies in accordance with the legislation governing them.
- 2- Department of Administrative and Financial Affairs.
- 3- Training Department.
- 4- Management for planning.
- 5- Manage relationships and collaboration.
- 6- Office of the Minister.
- 7- Office of the Undersecretary of the Ministry.
- 8- Legal Office.
- 9- Office of Internal Audit.

Article (5) stipulates that the Ministry of Justice shall report to the following bodies:

- 1- Judicial Police Service.
- 2- Center for Judicial Expertise and Research.

<sup>57</sup> Fiona Mangan, and Christina Murtaugh, *Security and Justice in post revolution Libya: Where to return?* ( US Institute of Peace, 2014), see: [https://www.usip.org/sites/default/files/PW100-Security\\_and\\_Justice\\_in\\_Post-Revolution\\_Libya.pdf](https://www.usip.org/sites/default/files/PW100-Security_and_Justice_in_Post-Revolution_Libya.pdf)

- 3- Higher Institute of the Magistracy.
- 4- Managing government issues.
- 5- Documentation and Information Center.

These bodies carry out their functions under the supervision of the Minister in accordance with the legislation governing them. The Ministry of Justice is responsible for a) developing the necessary plans and programs for the implementation of the general policy of the State related to justice affairs, b) proposing the public policy of the State that leads to the development of judicial work in coordination with the Supreme Council of the Judiciary and the relevant authorities, c) reviewing the legislation governing the work of the Ministry and other legislations, and d) proposing the necessary thereon to achieve the required, e) issuing decisions, publications, and instructions for the work of the Ministry and its affiliated bodies, and f) carrying out information support, archiving, electronic documentation and the development of databases and information systems.

Related to the work of the Ministry, it is in charge of the development of its own work programs to implement the assigned competences and submit them to the Council of Ministers for approval, and follow-up the performance of the entities affiliated with the Ministry. As well as preparing and reviewing draft laws, preparing, and reviewing draft executive and regulatory regulations related to the work of the Ministry, and providing the necessary needs for the Ministry and judicial bodies to lead to the development of judicial work.<sup>58</sup>

It is worth mentioning that the first judicial body of the Libyan Supreme Court was formed on 11/01/1954; where it began work at the headquarters of the National Assembly in Benghazi and consisted of:

- Consultant Mahmoud Saber Real Estate - President - Egyptian.
- Counsellor Ali Mansour Member - Egyptian.
- Counselor Osman Ramzy - Member - Egyptian.
- Counselor Hassan Abu Alam - Member - Egyptian.
- Chancellor Aurelio Vince - Member - Italian.
- Chancellor Jens Now Bell - Member - English.
- Chancellor Carlo Ma Tiratso - Member - Italian.
- Chancellor Vito Janturco - Member - Italian.

Libya suffered a lot in the colonial period and before its independence in 1951, where Libyans went through many wars and experienced the scourge of colonialists and invaders abroad, being prevented from education. Upon Libya's independence, the official authorities found themselves forced to use Arab and foreign judges (Italy, Britain, Egypt and other Arab countries).

A few years later, all judges became Libyan nationals, Arab and foreign judges left, and Libyan judges took over the reins of everything related to the judicial and justice sector.

---

<sup>58</sup> Libyan Ministry of Justice, see <https://aladel.gov.ly>

## Second: Challenges facing the justice sector in Libya

The desire to establish a society based on justice and the rule of law was among the factors that fueled the events of February 2011 in Libya, which eventually led to the fall of the regime of Colonel Muammar Gaddafi. The 2011 Constitutional Declaration, endorsed by the self-proclaimed National Transitional Council (NTC), enshrined that desire at least at the beginning of the transition when Libyan dignitaries expressed their commitment to justice and the restoration of the rule of law.

Perhaps most important for the rule of law is the Libyan Constitutional Declaration's enshrinement of the independence of the judiciary, as well as various successive legislative reforms aimed at achieving the independence of the judiciary. Drafts of the Libyan Constitution and the Libyan Agreement signed in December 2015 recognize the importance of an independent judiciary.

The judiciary in Libya faces many challenges, especially in light of the deterioration of the political and security situation since 2011, and the judicial system is barely able to conduct its work due to the role of the armed actors and the unclear legal framework. To be sure, this confusion is the result of the current governance crisis. An independent judiciary is essential for the protection and realization of human rights and for the referral of adequate conditions of accountability and access to justice.

International law enshrines the right to an independent and impartial judiciary. An independent judiciary is an essential aspect of the rule of law in general and the principle of separation of powers in particular. It is also fundamental to the right to a fair trial, as typified in the 1966 Covenant on Civil and Political Rights and other regional conventions to which Libya is a state party, including the Arab Charter on Human Rights and the African Charter on Human and Peoples' Rights.

Other international bodies and mechanisms, including regional human rights courts and United Nations special procedures, have emphasized the obligation of States to ensure the independence and impartiality of the judiciary in law and its preservation in practice.

For decades, Libya has failed to meet its obligations under international law to respect and protect the independence of the judiciary. The judicial system has been subjected to constant interference by the executive, corruption, and poor education and training.

The Minister of Justice chaired the Supreme Council of Judicial Bodies (the former body of the Supreme Council of the Magistracy), which was charged with overseeing the functioning of judges, including training, appointment, transfer, and discipline. Inter-transfers were often used to reward or punish judges for acts that were either consistent with or contrary to the regime's interests. As a result, transfers involving government and loyalists were not decided according to qualifications.

Furthermore, the process of selecting candidates for senior judicial positions was generally influenced by the nature of the relationship with the system. In addition to tightening the executive's control over the court system, Gaddafi established a parallel court system by establishing the People's Court in 1971 with the explicit goal of prosecuting members of the royal family, followers of the monarchy, and other political opponents accused of manipulating elections and "corrupting public opinion."

These courts did not adhere to the minimum due process standards and were not independent. Besides the “People’s Court”, Gaddafi set up other courts, such as military courts and so-called revolutionary committees and courts, to adjudicate political crimes against the state. Those parallel judicial systems were used as a mechanism for the extension of control, not justice. It has undermined the independence of the ordinary judiciary, particularly confidence in the judiciary as a whole.

Some reforms to Libya’s judicial system began before the events of 2011, for example, the abolition of the People’s Court in 2005, but necessary steps were taken to reform the judiciary and preserve its independence in the first phase of the transitional period under the supervision of the National Transitional Council. In particular, article 32 of the 2011 Constitutional Declaration proclaimed the independence of the judiciary and reformed the Supreme Council of the Judiciary to allow for the election of its members by judges in the Supreme Courts. Moreover, it abolished the role of the Minister of Justice as a member and president. Notable progress was made in April 2013, with the General National Congress (GNC) abolishing the jurisdiction of military courts to hear civilian cases.

The judicial reform process has been hampered by the deterioration of the security and political situation in the country since 2014. The main legislative body that organized the judiciary under the Gaddafi regime remains in force today, despite the issuance of several reforms by the National Transitional Council, the GNC, and the House of Representatives.<sup>59</sup>

Whenever an environment of fear and intimidation exists, it often paralyzes the criminal justice system and leads to crimes not being investigated and prosecuted. In such a scenario, although there is an adequate system of justice, it does not function because of fear of reprisals.

The State is responsible for protecting judicial actors from attacks, intimidation, threats, reprisals, and retaliation. There is a need for the State to understand the root causes of attacks, threats, and intimidation, to identify the actors who make such threats, to conduct a thorough investigation of all allegations and complaints, and to ensure that there is accountability if the complaints are substantiated. During the transitional period, many judiciary members were violently attacked by insecurity and the proliferation of armed groups and militias, amounting to killings, kidnappings, and arrests.<sup>60</sup>

These abuses against members of the judiciary began in 2013 when a member of the North Benghazi Prosecution was arrested, detained for five days and beaten. The physical violence turned into deaths: Mohamed Najib Huwaidi, a judge of the Jabal al-Akhdar Court of Appeals, was killed immediately after he left his office at the Derna Court of Appeals, and the assassination of the Attorney General of the Jabal al-Akhdar Court of Appeal, Mohammed Khalifa al-Na’as, with an explosive device planted under his car in the city of Derna.

In 2014, former Attorney General and Supreme Court Judge Abdelaziz al-Hasadi was shot dead; Miloud Ammar al-Rajhi, a judge at the South Benghazi Court of First Instance, was assassinated with an explosive device; and an assassination attempt on Judge Tawfiq al-Hassi, president of the Ajdabiya court, and Judge Hilal Boufares, as well as the abduction of Assistant Attorney General of the South Benghazi Prosecution, Abdel Nasser al-Jaroushi, by an armed group.

59 International Commission of Jurists, *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality* (2016), see: <https://www.refworld.org/pdfid/57ee8f9f4.pdf>

60 International Commission of Jurists, 2016, op. cit.

In 2015, Counselor Mohamed Salem al-Namli was assassinated near Sirte city, and the prosecutor of the South Tripoli Prosecution kidnapped the college Talib Hussein Ajaj by an unknown group.

In 2016, the head of the North Tripoli Court, Judge Mahmoud Abu Ameer, was kidnapped by an armed group.

In 2017, three cases of abduction were recorded during February and March, where Zawiya Public Prosecutor Osman al-Ajami was abducted by an armed group in connection with a pending criminal case; Tobruk Court of First Instance Judge Nasser al-Drissi by the Counterterrorism Department at um al-Razm Gate, and Brega Prosecutor Salem al-Meshri by a military group.

On top of that, some judicial headquarters were targeted; for example, the First Instance Court in Derna was targeted with improvised explosive devices from an armed group in 2013 following a group of judges demanding that the courts return to work; the Ajdabiya Court of First Instance was targeted with improvised explosive devices (IEDs) in 2014; the Tarhuna court was bombed in early 2016; and ISIS carried out a suicide bombing attack inside the Misrata Court complex in October 2017.<sup>61</sup>

Given the severe blows to members and headquarters of the judiciary, especially after the attacks on the Jabal al-Akhdar Court of Appeal and the Prosecutor's Office in Benghazi, several senior judges threatened to suspend the work of the courts if they did not have security guarantees.<sup>62</sup>

From 15 January to 5 May 2020, Libya's courts only heard civil and personal status cases, and criminal cases were postponed because prosecutors refrained from investigating or were unable to do so due to fear of reprisals by armed groups.

Following the declaration of a state of emergency due to COVID-19 pandemic, on March 14, 2020, the Supreme Judicial Council decided to postpone the proceedings of civil and criminal cases until the end of May 2020, with the possibility of further delay. This decision involves restrictions on the attendance of trial proceedings, including the appearance of defendants in criminal cases.<sup>63</sup>

This environment also has implications for lawyers and police officers responsible for accepting reports of crimes committed.

In an interview with a lawyer from Tripoli, she reported that she would prefer not to accept the cases where victims would have been abused by armed groups or militias for fear of threats or harm. She gave us an example of this when she was asked to accept the agency for a person kidnapped by the order forces. A judicial decision was issued to release him, but it was not implemented. She refused to file a complaint with the Public Prosecution because the group involved in the violation was the protector of the Public Prosecutor<sup>64</sup>. Additionally, in the previous instances, she was insulted and degraded in treatment within the Tripoli Prosecution by protection militias and unable to file a complaint for their safety<sup>65</sup>.

61 Marawan Al Tashani, *The Libyan judiciary: an authority that operates from the heart of the conflict*. (Cairo: Cairo Institute for Human Rights Studies, 2020).

62 Al Tashani, 2020, op. cit.

63 Al Tashani, 2020, op. cit.

64 Al Tashani, 2020, op. cit.

65 Al Tashani, 2020, op. cit.

In another interview with a lawyer from the city of Sabha, he stressed the difficulty of taking over the agency in criminal cases because the victims refused to do so due to their lack of confidence in the judicial system and fear of prosecution by armed groups. This is in addition to their conviction of the limited role and effectiveness of lawyers in a state that is absent from the law due to the ongoing conflicts in Libya.<sup>66</sup>

### Third: The impact of the Corona pandemic on the justice sector in Libya and the Libyan COVID 19 Response Plan

#### A look at the Libyan scene during the Corona pandemic

On April 4, 2020, the Libyan capital Tripoli realized a full year from the beginning of Khalifa Haftar's military campaign against the internationally recognized Government of National Accord (GNA) to seize economic institutions and the center of political decision-making. The operation has resulted in a profound humanitarian catastrophe in light of the deterioration of the country's institutional reality. It has not brought about any military resolution, as the debate continues to prevail between the parties to the conflict. However, the humanitarian cost of the conflict continues to escalate, foreshadowing a more severe threat after the first cases of COVID-19 were detected in the country's western region.

Despite some international attempts to impose a temporary truce, the continuation of the battles and the intervention of regional actors demonstrate indifference to the humanitarian situation. The first coronavirus cases began to appear in Libya on March 24, more than three weeks after it appeared in their neighbors Egypt, Tunisia, and Algeria, bringing the number of confirmed cases and three deaths on May 19 after analyzing 3,762 samples. (<https://arabic.rt.com/>, 2020)

The World Health Organization (WHO) and many other organizations, such as the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the Office of the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM), have expressed major concerns about the developments of the health crisis in light of the Libyan reality and the weak implementation of the measures adopted by the Libyan authorities to confront the Coronavirus<sup>67</sup>.

The most important challenges that may contribute to the worsening of the situation include the weakness of border control of the health situation in March, in particular, which caused many people to leak from border crossings without checking their health status<sup>68</sup>. Weak health infrastructure also limits the ability to manage communication between health centers and track cases, as well as the lack of rigor in carrying out isolation cases, with only limited isolation possibilities recorded in hospitals.

66 Mohammed Al-Ansari, "Challenges to the right to a fair trial in Libya", authored by *Human Rights and Justice Challenges in Libya 10 Years After the Revolution*, pp. 45-47, (Paris: Centre for Human Rights Defenders, November 2021)

67 Libya: COVID-19 Situation Report no. 4, OHCHR, (12 May 2020), see <https://reliefweb.int/report/libya/libya-covid-19-situation-report-no-4-12-may-2020>

68 The Health Sector-Libya, *Coronavirus disease 2019 (COVID-19) preparedness and response plan for Libya*. (Tripoli, Libya: 26 March 2020). See [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/health\\_sector\\_libya\\_covid-19\\_response\\_plan.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/health_sector_libya_covid-19_response_plan.pdf)



A disagreement at the institutional level also emerged in the first phase of crisis management between the central authority and municipalities over the competence of monitoring. The Ministry of Health estimated that municipalities need more tools for accurate monitoring and analysis. In contrast, several municipalities acknowledged the need for a more central authority to take early measures to avoid the spread of infection. This is what the municipality of Tajoura, in particular, demanded, which took the initiative to take advantage of the powers contained in the Emergency Law and Law No. 59 of 2012 to impose a curfew on March 13, days before the ban imposed by the authorities of the GNA.

In several media statements, the mayor of Tajoura criticized the GNA's lack of cooperation with local entities in the early stages of managing the pandemic, its failure to provide a sufficient number of masks, medical instruments, and ambulances, and the delay in disbursing emergency grants.

Regarding investigation, the authorities have established one to three analysis centers in Tripoli, they are preparing two more and several other centers in the regions. However, medical equipment in Libya remains lacking in the sufficient number of intensive care beds nationwide of only 482 beds, mainly in the western region with a small number in the east and center (8, for example, in al-Kweifiya hospital and 4 in Sirte hospital), and a complete vacuum in the south.

The absence of an integrated national coordination strategy undermines the optimal use of these limited initial capacities as well as the lack of six rapid response teams in the country's three regions. If the pandemic continues to spread, other medical services are expected to be affected to the point of suspending prenatal examinations and noncommunicable disease treatment services such as dialysis and physiotherapy<sup>69</sup>.

The plan adopted by the two governments controlling the Libyan sphere also sees a disparity in implementation between regions, as the pace followed is fairly evident in the western region of the country, where many preventive means have been taken, such as the placement of six quarantine centers in Tripoli (Mitiga centers, Souk Al-Tulais Island, Zawiya al-Dahmani, Airport Road, Abu Salim Treatment Center, a center in the ship "Ibn Auf" at sea off the Abu Sitta naval base, as well as a center in Misrata and several others in the Zlitan, Zuwara, Zawiya, Nalut, Khoms, and Ghadames.

In eastern Libya, political division remains an influential factor hindering medical efforts. There needs to be more cooperation and exchange of information between the regional government structures and the health network of the GNA, except the Tobruk center. The committee tasked with combating the pandemic in the east is also led by the military authority and headed by General Abdul Razzaq al-Nadhouri, chief of staff of the Libyan Arab Armed Forces, which may reflect negatively on the transparency of dealing with international organizations and the circulation of information on the status of the virus in areas under the control of Haftar's forces.

69 Khayreddine Basha, *COVID-19 and a Deepening Conflict Worsen Libya's Humanitarian Situation* (Arab Reform Initiative, 27 May 2020), see <https://www.arab-reform.net/publication/covid-19-and-a-deepening-conflict-worsen-libyas-humanitarian-situation/>



The epidemiological situation in the south is uncertain, where the pro-Haftar “Temporary” governments are contesting the civil service teams in the area allocated to combat the pandemic, given the different supervision of hospitals and health care centers. Weak border controls could worsen the health situation in the region, which has historically been known as a crossing point for irregular migrants towards the Mediterranean coast if a number of infected people enter from outside Libya.

On the other hand, international organizations have monitored a number of negative consequences of the pandemic on the humanitarian situation of thousands of migrants from sub-Saharan Africa retain in detainee centers in Tripoli and Zawiya, especially those close to the frontline combat zones. As a consequence, the IOM and the UNHC have suspended many of their resettlement and voluntary return programs, which include about 15,000 migrants detained in Libya. They were limited to a temporary urban assistance program that provided some protective equipment and financial assistance to detainees. These programs are met with strong and sustained opposition from migrants who, in return, demand effective and definitive solutions such as legal migration resettlement to their own countries or European countries.

Among other vital measures put in place to protect against the virus, the Ministry of Justice of al-Wefaq on March 28th released 466 prisoners from Tripoli prisons as a first step to reducing overcrowding. Some human rights organizations, including Human Rights Watch, have also developed a number of recommendations to reduce the risk of transmission inside prisons, including the release of children, perpetrators of minor offences, nonviolent crimes, people who have served most of their sentences, as well as wives and children of fighters suspected of belonging to ISIS.<sup>70</sup>

Overall, the health crisis and its consequences threaten the state’s absorptive capacity and perception of managing public affairs in light of inherited problems, including the impact of continued military action on vital facilities such as energy supplies and the supply of basic materials.

To slow the infection, governments in most countries have adopted draconian practices that require all residents to stay at home and have shut down large sectors of their economies. Not only have hundreds of thousands given up to illness, but millions have also found themselves unemployed or floundering in a mired global economy.

Perhaps the countries most affected by this pandemic are conflict-torn countries where state institutions are weak, given that the past or ongoing repression and where society grapples with a legacy of mass atrocities. In these fragile and often unstable states, marginalized communities and vulnerable social groups such as victims of human rights abuses, refugees, and displaced persons are most vulnerable to coronavirus infection and most affected by the fallout from the economic lockdown.

Libya is one of those countries overshadowed by the coronavirus crisis and is on the brink of a war known as the Tripoli War. Coinciding with the closure of oil ports, Libya finds itself facing conflicting emergencies represented by the increasingly frequent conflict and the spread of the coronavirus COVID-19; it is challenging to manage each of the emergencies alone in a country suffering from the collapse of its health system, but how much of these factors come together?

<sup>70</sup> Human Rights Watch, *Libya: Detainees at Risk of Coronavirus Spread*, 29 March 2020, <https://www.hrw.org/news/2020/03/29/libya-detainees-risk-coronavirus-spread>

According to the World Health Security Index 2019, Libya was among the countries least prepared to prevent, detect or respond to health crises. In a March 2020 report, the index placed Libya among 27 of the 195 countries that were “most vulnerable to emerging disease outbreaks.”<sup>71</sup>

Areas affected by the pandemic include judicial sectors around the world. Libya is one of them where trials have been postponed, judicial proceedings have slowed down, and work has been halted. Actions taken by the Libyan authorities and the Ministry of Justice include:

- 1- On March 28, the Justice Ministry of the GNA issued a decision to release 466 prisoners from Tripoli prisons controlled by the Ministry of Justice to reduce overcrowding. The list will include pre-trial detainees and detainees who meet the rules of parole.<sup>72</sup>
- 2- In Tripoli, on March 22, the GNA imposed an indefinite curfew from 6 p.m. to 6 a.m., with exceptions for medical staff. Mitiga Airport, the only airport currently used for commercial air traffic in Tripoli, suspended all domestic and foreign flights on March 16.<sup>73</sup>
- 3- In a statement on March 15, the head of the Presidential Council of the GNA, Fayeza al-Sarraj, announced emergency measures in place to prevent the spread of the pandemic in the country. These included closing all entry points into Libya for three weeks, disrupting all schools and institutions of higher education, suspending all events, including sporting events, closing restaurants and cafes starting at four o'clock in the afternoon each day, calling on religious authorities to order people to pray at home, and forming a crisis response team to help connect people and health facilities. In the east, authorities on March 23 announced a daily curfew from 3 p.m. to 7 a.m. in all areas under Haftar's control, including eastern cities, the southern city of Sabha and Sabratha on the west coast. On March 22, Benina Airport, the main airport in the east, suspended all domestic and foreign flights for three weeks.<sup>74</sup>
- 4- The Supreme Judicial Council decided Resolution No. (32) of 2020 on confronting the Coronavirus, which stipulated that the holding of hearings in the courts should be limited only to the body or judge without the presence of the conflicting parties and in the presence of the lawyer for the parties, provided that the postponement is made to the next week each time until a decision is issued to return life to normal. The number of alternate judges in each court shall be at least four per day. Work in prosecutors is also carried out on a rotating basis, and the head of the Supreme Council of the Judiciary may, if necessary, suspend work altogether to avoid risks.<sup>75</sup>
- 5- Decree No. (35) of 2020 was issued on the complete suspension of work in courts, public prosecutions, and other judicial bodies.<sup>76</sup>

71 Global Health Security Index, *COVID-19: Identifying the Most Vulnerable Countries Using the GHS Index and Global Flight Data*, March 2019.

72 Khayreddine Basha, 2020, op. cit.

73 International Center for Transitional Justice, *Special Report on COVID-19: Keeping Justice in Sight* (19 May 2020), see <https://www.ictj.org/news/special-report-covid-19-keeping-justice-sight>

74 Human Rights Watch, op cit.

75 Database of legal texts related to the security sector Libyan, 2020 <https://security-legislation.ly/ar/law/101361>

76 Decision of the Libyan Council of Ministers, for the full text see <https://lawsociety.ly/legislation/Decision-No.-35-Year-2020-M-on-Stop-Work-Prevention/>

- 6- Issuing a series of successive decisions on the imposition and continuation of the curfew (whether for a few hours or a complete ban), on the whole of Libya, until the lifting of the curfew on 31/08/2021.
- 7- The Ministry of Justice has set the presence rate of the Ministry's employees and all its sectors at 25% to prevent the spread of the Coronavirus. In a decision in particular, the Ministry stressed the need for all employees and hesitates to adhere to precautionary measures and not to hold greetings and gatherings.

All of the above relates to the official measures of the Libyan state, which theoretically include all members of society, citizens or residents, including refugees and irregular immigrants, in the face of the Coronavirus. Still, all government measures to try to contain the Coronavirus have disrupted most of the justice processes and paralyzed the economic life of many segments of society or vulnerable groups. The pandemic has emphasized the phenomena of latent inequality, including those related to access to health care, among all residents. For instance, the ongoing conflict in Libya has fragmented the country, and the procedures for dealing with the pandemic have diverged. In Benghazi, the authorities have taken a military approach to contain the coronavirus; any public criticism of their response to the pandemic is treasonous. In April 2020, a young ophthalmologist was arrested after making comments on television that she deemed critical of the authorities' response to the health crisis, only to be later released, according to official authorities.<sup>77</sup>

#### **Fourth: Protection and assistance needed by irregular migrants in detention centers of the Ministry of Justice**

Migrants are among the groups that have been severely affected and whose rights to life, health, work, and social protection have been subjected to persistent and extremely serious threats. A new report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) has highlighted the situation in Libya and noted that risks that were already threatening the human rights of migrants, such as enforced disappearance, physical and sexual violence, arbitrary detention, discrimination, xenophobia, exploitation, and human trafficking, have multiplied as a result of the COVID-19 outbreak<sup>78</sup>.

While thousands of migrants continue to cross the Mediterranean by boat via perilous routes from Libya to Europe in search of safety, dignity, and work, those trapped in Libya, including those who have been intercepted and forcibly returned, face a precarious and uncertain future. This reality has been exacerbated by the continuing effects of the pandemic.

<sup>77</sup> International Center for Transitional Justice, op. cit.

<sup>78</sup> OHCHR, *A Pandemic of Exclusion The impact of COVID-19 on the human rights of migrants in Libya*, (2021), see [https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/A\\_pandemic\\_of\\_exclusion.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/A_pandemic_of_exclusion.pdf)

Figure 1

Map showing detention centers for illegal immigrants in Libya



Source: <https://www.msf.org/>

### Healthcare discrimination towards migrants in Libya

Even before the COVID-19 pandemic, medical care experienced a critical phase as a result of overcrowding of the country's health systems and severe shortages of resources. Migrants in Libya had less access to health care than the rest of the population. An assessment by the OCHA found that about two-thirds of migrant and refugee families reported difficulties in accessing health care, compared to 50 percent of Libyan households. With the onset of the pandemic, medical facilities were overburdened, and all of the tests, prevention, and treatment were limited.

When vaccines became available worldwide, they remained rare in Libya, and they are still rare to this day. The previous UN report explains in detail that hospitals and health authorities in Libya have publicly discriminated against migrants, refusing to provide medical services or care to them based on their immigration status<sup>79</sup>. Many migrants fear seeking health care because of the risk of arbitrary arrest and detention due to their status as “irregular” migrants. In its report, the OHCHR called on the Libyan government to ensure effective and timely access to health care for all, regardless of their immigration status. She also urged ensuring that migrants are included in vaccination programmes, and that priority is given to those at high risk of contracting COVID-19. The report also found that the COVID-19 pandemic had “fueled the flames” of already high levels of racism and xenophobia in Libya.

<sup>79</sup> OHCHR, op. cit.

Migrants have been and continue to be held responsible for the spread of HIV and other infectious diseases and therefore face deliberate discrimination in access to health care, adequate housing, and other essential services. Statements posted by Libyan authorities on their official social media accounts said the spread of the virus could be stopped while “illegal immigration” stopped.

In Tripoli, several protesters, including a nearby mayor, tried to prevent the opening of a health-care facility to provide care for migrants and Libyan citizens<sup>80</sup>.

The dramatic rise in the number of people detained in immigration detention centers in Libya, coupled with the increase in COVID-19 cases due to overcrowding, unsanitary conditions, and limited medical examinations and supplies. Since April 2021, it has been estimated that at least 4,000 people have been held in a range of formal and “unofficial” detention centers in Libya, which are arbitrary, ‘dehumanizing’ and do not meet minimum practice standards and conditions of detention.

---

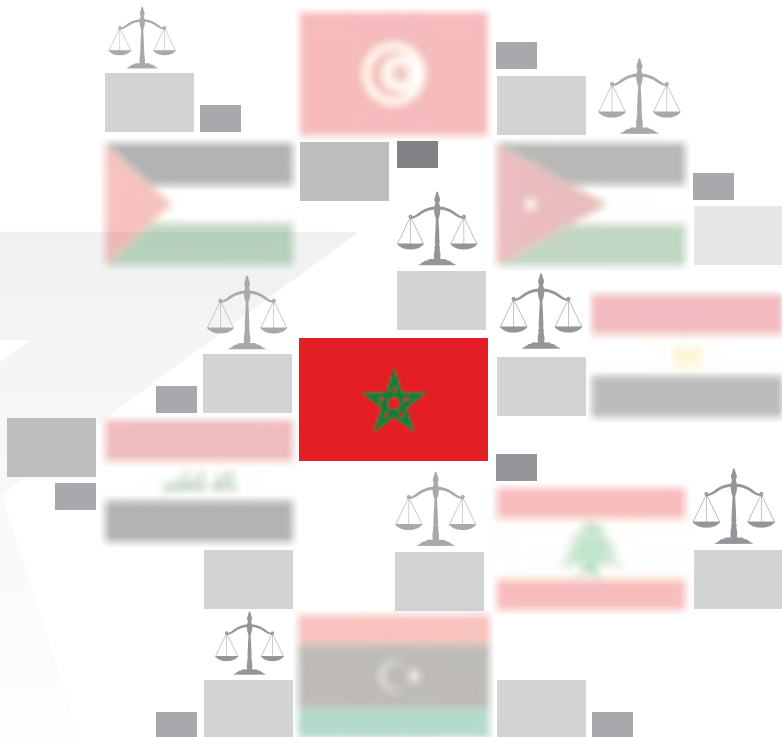
<sup>80</sup> OHCHR, *op. cit.*

## Conclusions

1. The most vulnerable groups of the population are most vulnerable to coronavirus infection and most affected by the economic, social, and health consequences of adhering to home quarantine orders and closing businesses.
2. The humanitarian situation in Libya is dependent on the obstacles of lack of coordination between the two governmental parties and the lack of tight implementation of the strategies adopted in the fight against the pandemic in conjunction with local authorities, which have often taken the initiative and become an effective pressure force in the development of public policies during the health crisis.
3. The Ministry of Justice or the justice sector in Libya has suffered, as well as other sectors, from the reflection of the political, security, and health situation on their work.
4. The pandemic has clearly exacerbated the inequality, discrimination, and foreign-hatred dilemma in Libya, with the Justice Ministry's apparent failure to resolve it. It has been evident in the overcrowding of detention centers and the lack of interest in conducting coronavirus tests and providing vaccines.
5. Reports from the United Nations and human rights organizations explain in detail that hospitals and health authorities in Libya have publicly discriminated against migrants, refusing to provide medical services or care to them based on their immigration status. Many migrants also fear seeking health care, at risk of arbitrary arrest and detention due to their status as "illegal" immigrants.
6. There is an escalation in racism and xenophobia against migrants. The COVID-19 pandemic has also fueled the already high levels of racism and xenophobia in Libya.

From the foregoing, we find that to build a society in which justice prevails, and all residents enjoy their full rights. Given the Libyan situation, we find that for a community free of all manifestations of injustice and inequality, it is imperative:

1. First, the establishment of a strong State with its institutions, especially legal institutions at all levels,
2. Achieve political and security stability, end the state of warfare and conflict, and unify state institutions in all parts of the country,
3. The elimination of corruption, which, although not explicitly mentioned in the research, is strongly present in every corner of the state and in all its sectors, and the justice sector is no exception to this as a result of the absence of a strong state capable of imposing deterrent punishment on every transgressor.



## The Justice Sector in Morocco: Reality, Challenges, and Prospects

Abdul Rahim Jami

## Table of Contents

<b>Introduction</b>	<b>121</b>
<b>The first axis: the Judicial structure in Morocco</b>	<b>123</b>
First: The Conditions of Justice Institutions and the Challenges of the Moroccan Judicial Experience at the beginning of the Independence	123
Second: The Institutional Status of the Judiciary Since 1974	124
Third: The Constitutional Rooting of the Judiciary and the Independence of the Public Prosecution since 2011	125
On the first level	125
On a second level	126
On a third level	126
On a fourth level	126
On the fifth level	126
Fourth: Judicial Structure After July 2022	128
<b>The second axis: Covid and the Manifestations of the Pandemic Crisis on the Facility of Justice and the Judiciary</b>	<b>128</b>
General Precautionary Measures in Government Decrees Declaring a State of Emergency with Security and Repressive Accompaniment	129
Measures of the Judicial System	129
On the one hand: the Measures of the Supreme Council of the Judicial Power, Near-general Disruption and Fatal Paralysis:	130



On the other hand: Decree No. 293 and the Issue of Retroactive Laws 131

On the third hand: Suspending the Deadlines for Judicial Appeals 131

Remote Trials Between Legality and Fair Trial and Criticism of Detainees 132

Manifestations of danger to justice on the occasion of Covid and in parallel with the remote trial 136

Imbalances related to procedural legitimacy 136

Imbalances at the level of the remote court measure 137

Imbalances at the level of respect for the rights of the defense 137

In conclusion: How is justice in the future, and what is the future of intelligent justice? 138

## Introduction

The relationship of law to history is a dialectical one, or, as Montesquieu says in his book *The Spirit of Laws*, “History illuminates laws and laws illuminate history”... Both feed the other and influence its industry.

With all its components, the judiciary in Morocco has a history full of failures, surprises, and achievements, influenced by the facts and events that have passed over more than sixty years of post-independence Morocco since 1956.

Justice, as paths, concepts, and stages known by the state and the legal professional community since the era of French protection until today, has a share in the life of society with its various sensitivities.

However, the most important developments, or what was considered Moroccan masters over his judiciary, began with Morocco’s independence in the late fifties of the last century with the establishment of the Supreme Judicial Council and through the enactment of laws framed politically and socially, including the regulation of parties, the law of the press, the law of associations, the law of public gatherings and demonstrations, and the law of criminal procedure, which were imposed and accompanied by significant events and severe conflicts between actors from the state and the regime on the one hand, and opposition parties and live political forces, on the other hand, in addition to trade unionists and students.

The politicians sought to dominate the judiciary and succeeded in their quest, as the judiciary was instrumentalized in many stages. Because of this, it lost its independence, impartiality, and prestige and became the subject of harsh direct criticism.

Politics imposed the legal and organizational structure of the institution of the Supreme Judicial Council, which is the framework that determines the status of judges, their appointment, transfer, discipline, and everything related to their professional path, and the general political situation as well. It established a culture of judicial subordination and loyalty to politics. The independence of the judiciary and the independence of the judges became blown away when trials of politicians and students relinquished instructions and the power of money instead of the power of law, which opened the doors of nepotism and bribery in the justice and judicial sector.

The deep state and its authorities did not wake up to the gravity before such a “Holocaust”, which “killed” the confidence of citizens and litigants in the judiciary, despite the reports of lawyers, legal bodies, and civil and human rights organizations, but only they do so after international organizations launched studies indicating structural, legislative and judicial imbalances that did not allow either to foster areas of development and investment or to establish a culture of human rights nor establishing and strengthening the elements of a state of just and law.

But with the advent of the “New Testament,” with the new king in Morocco in 1999 assuming the reins of power, the judiciary issue was presented strongly. The concern of the independence of the judiciary and the need for urgent reform was raised on different levels.

Everyone has felt and known the imbalances between the judicial institutions and legislation. Courts are floundering, and individuals complain about them. Everyone that the calamity comes from corruption, bribery, poor training, slow broadcasting of cases, weak texts and delays in legislation, and weak enforcement of rulings against the state and the public administrations, and its facilities.

At the beginning of the second decade of this century, with the outbreak of the so-called “Arab Spring,” the regimes and their rulers in several countries in the North African region and the Middle East were hit by huge political earthquakes, overthrowing some of them despite the repression, bullets, and blood-shedding squares and spaces in several capitals and cities.

Moroccan streets witnessed massive and comprehensive protests, known as the “February 20 Movement”, where slogans against the most influential political and societal profiles were raised, in addition to the constitutional issues, especially, the separation of powers: The scope and competencies of each power should be accurately defined and they should be exercised in line with international covenants of universal reference. The constitution of an independent judicial authority, the review of the nature and components of the Supreme Council of the Judicial Authority, the establishment of guarantees for a fair trial, the right to defense, and the presumption of innocence and the procedures to challenge the unconstitutionality of laws before the Constitutional Court were other constitutional concerns.

In this atmosphere, the state launched an initiative to draft a new constitution by a body of Moroccan experts, which ended with a vote on the July 2011 constitution. The beginning of the fourth stage of Moroccan judicial life started a new path of justice attempting to create the appropriate conditions to guarantee legal security and give an answer to two essential questions for Morocco at the same time:

- The necessary independence of the judiciary ensures citizens’ judicial security, protects their rights and freedoms, instills confidence in justice and access to the judiciary, and guarantees a fair trial.
- Betting for the judiciary’s contribution to supporting sustainable development and ensuring an appropriate climate that encourages the protection of investment and investors by addressing corruption, protecting public money, fighting impunity, and establishing a culture of responsibility versus accountability.

What are the characteristics of the judicial situation in light of the changes, whether constitutionally, legislatively, or institutionally? And how the justice and judiciary of Morocco faced the test of the Covid pandemic and its repercussions?

In an attempt to find some answers, the issue will be addressed in two axes:

- **First axis:** It presents the judicial organization in Morocco and its basic features.
- **Second axis:** On Covid-19, the manifestations of the pandemic crisis on the justice and justice facility.

## The first axis: the Judicial structure in Morocco

### First: The Conditions of Justice Institutions and the Challenges of the Moroccan Judicial Experience at the beginning of the Independence

Everyone, including authorities, associations, parties, institutions, and public opinion in Morocco, admit that the Moroccan justice system, which the country inherited from colonialism, was initially weak and scattered and lacked all human, material, and legislative capabilities.

It has been subjected to several setbacks and witnessed imbalances that affected the confidence in its efficiency and the capabilities of its judges, assistants, clerks, lawyers, experts, and others. This is what the Supreme Commission for National Dialogue concluded and the director of half a century.

A description of the magnitude of the imbalances that impacted the judicial institution and made it the subject of criticism by civil and political society can be given as follows:

- The significant shortcomings of the judges and the actual independence of the judiciary.
- The competence needs of judge, who should have abroad and real training that helps him to work in light of transparency and to stand up to every influence, pressure, or instruction.
- Corruption of the judicial system due to the spread of bribery and the use of dirty money in the judicial process at its various levels, which opened the door for mediation and the possibility of spoiling the entire judicial process.
- Slowness in examining the presented files, delays that are not convincing, and accumulation of files waiting for their turn to access the sessions and deliberations.
- The ineffectiveness of the procedures for notifying the summons to the parties and their failure to reach them within the legal deadlines, as well as the bad faith of some of the litigants who take advantage of the situation and requests several delays more than one time.
- Procedural civil and criminal laws require a large number of amendments aiming to support the rapid creation of the judiciary, facilitate access to judicial information, and increase efficiency.
- The high financial cost of litigation before most courts of all instances.
- Lack of human resources, judges and police officers.
- No continuous training and the narrow horizon of diligence due to fear of censorship and accountability for the judicial audacity enjoyed by several judiciaries.
- The judicial administration is inefficient and the courts have inadequate infrastructure and limited scope.
- There are not enough judicial assistants, in addition to there is a widespread lack and/or weakness in the training and professionalism of most lawyers and experts.

Through political, legal, and human rights experiences over dozens of years, the judiciary has witnessed several experiences that, depending on their size, have played a role in pushing some reforms toward fundamental objectives, notably the establishment of an independent and impartial judiciary that rejects the separation of the relationship with political power.

The various stages we are talking about have tried to draw up a blueprint for Morocco to strengthen the building of the rule of law and try to answer the questions of the actors concerned with the conditions of justice, including those relating to effectiveness, impartiality, quality, and ensuring legal security.

The harsh blows to the pre-COVID judicial apparatus with the 1974 experience must be taken into account, and the post-2011 Constitution as well. By 2020, COVID-19 impacted different levels and had different socioeconomic, political, institutional, and judicial outcomes; ergo, COVID-19 consequences resulted in significant paralysis within the justice sector.

## Second: The Institutional Status of the Judiciary Since 1974

In the context of launching comprehensive reforms following the political shocks represented in two military coup attempts in 1971 and 1972, an armed uprising attempt in 1973, and other societal outbursts, on July 15, 1974, Morocco established a legislative framework that defined its judicial choices.

The judicial sector was an arena of intense competition between political adversaries and their significant parties, the Moroccan regime and the opposition. This made it necessary to launch the judicial reform process and made it one of the priorities.

Thus, according to the law, the reform related to the judicial organization started on July 15, 1974, which made several successive changes.

The law was built on significant directions, including:

**First:** it chose the multiplicity of types of courts in nature and specialization, where the structure of the judicial body consisted of the following:

1. Courts of First Instance.
2. Administrative courts.
3. Commercial courts.
4. Courts of Appeal.
5. Administrative Courts of Appeal.
6. Commercial Courts of Appeal.
7. Court of Cassation.

**Second:** the introduction of the individual judiciary and collective judiciary, where the components of the judicial bodies were distributed:

- **Based on a single judge:** before the courts of the first instance in ordinary cases.
- **Collective judiciary** in real estate, family, and inheritance cases, where three judges adjudicate.

**Third:** Taking into account the multiplicity of instances of litigation in felonies, where:

- Established a criminal court of appeal as a second instance before criminal decisions of the first instance can be appealed.
- Created four money crime sections before four courts of appeal, then raised the number later.

### Third: The Constitutional Rooting of the Judiciary and the Independence of the Public Prosecution since 2011

#### On the first level

The 2011 constitution created a solid and vital debate on the academic, legal, and political levels. The judiciary issue and the independence of the Public Prosecution Office captured a wide area of interest, mainly from judges and lawyers.

The constitution stood on the principle of the independence of judicial authority. It emphasized the prohibition of any interference in the judiciary, and every judge needed to inform their superiors of any attempt to undermine the independence of the judiciary.

A national debate was launched through the appointment of a higher commission to reform the judicial system in 2012. This was the first nationally launched precedent in which the government actors represented by the Ministry of Justice met with the legal actors represented by judicial officials from judicial bodies, such as the Court of Cassation, and practicing judges, university professors, and lawyers.

After a year of the work of the Supreme Commission, dealing with the imbalances known to the justice sector at all levels, its dialogue efforts finalised withdrawing six strategic goals to advance the reform of the judicial system, which are:

1. Consolidating the independence of the judiciary.
2. Synthesis of the judicial system.
3. Enhancing the judiciary's protection of rights and freedoms.
4. Improving the effectiveness and efficiency of the judiciary.
5. Developing the institutional capacities of the justice system.
6. Modernizing the judicial administration and strengthening its governance.

In addition to these primary objectives, 36 sub-goals and 200 executive mechanisms were announced through 353 operational procedures.

**On a second level**

The restructuring of the Supreme Judicial Council was reconsidered. The King, the Head of State, remained the head of the Supreme Council of the Judicial Power, the organ that works on the professional life of judges, deputized by a chief delegate, who is the head of the Court of Cassation.

The institution expanded to include judges elected by their colleagues in its traditional composition, a non-judicial people represent constitutional institutions such as the National Council for Human Rights, the Mediator Foundation, and the Supreme Scientific Council.

The Council assigned new competencies, including protecting the judge's independence, expressing his opinion on laws that concern justice, issuing annual reports on justice status, and discussing criminal policy reports implemented by the Chief Public Prosecutor.

**On a third level**

For the first time, the judges recognized their right to freedom of expression, as the constitution lifted the ban on them and their domination. Thus, they had the right to establish and belong to associations of judges, which happened within a few months when the Moroccan Judges Club was founded among young female judges and judges. Despite being prevented from holding the founding meeting in a public hall, they defied the ban and held their founding assembly in the open air.

**On a fourth level**

Regarding the rights of litigants and the elements of justice, several rights have been constitutionalized, and at the top of them are:

- Right to a fair trial.
- The right to defend.
- The right to receive judgments within reasonable deadlines.
- Right to the presumption of innocence.
- The right to compensation for judicial errors.
- Preventing the establishment of exceptional courts.
- The authorities' obligation to implement judicial rulings.

**On the fifth level**

Is the independence of the Public Prosecution Office. Public opinion has dealt with one of the most critical judicial issues, the independence of the Public Prosecution Office from the Minister of Justice.

Until 2011, the Minister was the first concerned with criminal policy and the supervisor of the Public Prosecution Office, from whom he receives instructions directly.

Therefore, sharp institutional, conceptual, and procedural differences emerged between justice actors on the subject from the outset.

Some considered that the constitution did not resolve the status of the Public Prosecution Office in terms of the party to which it belongs but instead left its matter to the law. The second paragraph of Article 110 of the Constitution stipulates the following: “The judges of the Public Prosecution must apply the law. They must also abide by the written legal instructions issued by the authority to which they belong.” This trend went towards saying and defending the subordination of the Public Prosecution to the Ministry of Justice because of the guarantees of oversight and accountability by the people’s representatives in Parliament regarding implementing the criminal policy.

Nevertheless, the youth professional associations of judges, some human rights organizations, academics, and lawyers considered that the constitution gave members of the Public Prosecution the status of judges, being subject to the judges’ statute. The judiciary is the same, just as the constitution does not differentiate between them. What is meant by “the authority they belong to” contained in Article 110 of the Constitution is the presidential authority within the Supreme Judicial Council.

However, the Constitutional Court finally settled the matter<sup>81</sup>, and the Public Prosecution now enjoys a status manifested in complete independence under its direct head, who is the attorney general at the Court of Cassation, to whom the attorneys and general attorneys report.

October 7, 2017, was the date of the transfer of the powers of the Minister of Justice to the Chief of Public Prosecution (Transferring all the powers of the Minister of Justice that were in his hands to the Head of the Public Prosecution regarding the management of the public case and the management and implementation of the criminal policy).

81 Constitutional Court Decision No. 991.16 states: Concerning Article 25:

Whereas this article stipulates that “the judges of the Public Prosecution shall be placed under the authority and control of the Prosecutor General of the King at the Court of Cassation and their hierarchical superiors”; Whereas the Constitution stipulates in the second paragraph of its article 110 that judges of the Public Prosecution must abide by the legal written instructions issued by “the authority to which they belong”, without the Constitution specifying this authority; Whereas article 107 of the Constitution stipulates that “the judiciary is independent of the legislature and the executive” and that “the King is the guarantor of the independence of the judiciary”; Whereas reference to the provisions of the Constitution shows that the latter did not distinguish between judges of judgments and judges of the Public Prosecution except in some aspects related to the nature of their respective work, such as judges of judgments, ..... Whereas, the judges of the Public Prosecution, as in charge of initiating and exercising public proceedings and demanding the application of the law, must also abide by the written legal instructions issued by the authority to which they are subordinate, as defined in article 110 (second paragraph) of the Constitution; Whereas the principle of subordination of prosecutors enshrined in the second paragraph of article 110 of the Constitution, which obliges them to “abide by the written legal instructions issued by the authority to which they are subordinate”, is an internal subordination carried out in accordance with the hierarchy and levels of responsibility of the judges of the Public Prosecution, and without prejudice to the principle of the independence of the judiciary from the legislative and executive branches, it cannot be subordinate to a party outside the judicial authority; Whereas the power to formulate criminal policy, which is part of public policy, remains the prerogative vested in the legislature, which also has the power to evaluate such policy, in accordance with the provisions of the Constitution; Whereas, on the basis of all of the foregoing, the Presidency of the Public Prosecution, whose judges are part of the judiciary, can only be assigned to a body belonging to this authority, which makes the provisions of the aforementioned article 25 placing the judges of the Public Prosecution under the authority and control of the King’s Prosecutor at the Court of Cassation, in conformity with the Constitution...



#### Fourth: Judicial Structure After July 2022

By virtue of Law No.: 38.15 dated 06.30.2022, the rules of the judicial organization have been adapted to the constitutional requirements of the 2011 constitution.

What was mentioned in the section on the judiciary brought about changes on multiple levels...

The advantages of the new legal framework on the judicial organization can be mentioned as follows:

- The law was inspired by the constitutional developments stipulated in the 2011 Constitution.
- These are components based on the independence of the legislative authority from the executive power.
- The organization relied on the concept of judicial unity and that the Court of Cassation is the highest judicial body in Morocco.
- The Court of First Instance is the central main unit of the judicial structure.
- Adopting the principle of specialization, like appointing judges to their duties based on the field.
- Introducing the principle of free litigation.
- Considering Arabic as the language of litigation, pleadings, and drafting of judgments.
- Adopting the issuance of judgments for collective bodies by unanimous or majority vote, with the dissenting opinion being included in a confidential report that is kept for ten years and is only viewed by a decision of the Supreme Council of the Judicial Power.
- Creating research committees at each court's level to determine the difficulties encountered in the court's functioning. It consists of the president of the court, the public prosecutor, and the head of the Bar.
- The provision of several rights for litigants, among which is the right to equality before an independent, impartial, and upright judiciary that protects the rights of individuals and groups.
- Creating courts of first instance with general jurisdiction, courts that include specialized sections in commercial and administrative justice, and first instance courts classified according to the type of cases.
- Creation of the "Social Assistants" institution, which performs several tasks such as mediation and reconciliation, and other specialties.

#### The second axis: Covid and the Manifestations of the Pandemic Crisis on the Facility of Justice and the Judiciary

How did the authorities deal with the pandemic? Perhaps it is useful to discuss two aspects: the first relates to general procedures, and the second relates specifically to the field of justice and the justice sector:

## General Precautionary Measures in Government Decrees Declaring a State of Emergency with Security and Repressive Accompaniment

Since the early stages of the Coronavirus outbreak (Covid-19), Morocco has adopted strict measures with which it has sought to reduce the violence of the pandemic and contain it as much as possible.

As measures were taken to protect public health, the risks threatening the health system initially complained of the limited capabilities and capabilities of dealing with the pandemic and a large-scale outbreak.

Like other countries, Morocco recorded its first confirmed case of coronavirus on March 2, 2020. Given the rapid developments, a state of health emergency was declared on March 20, 2020, by decree as Law No.: 2-20-292 issued on March 23, 2020, which is related to the enactment of special provisions for a state of health emergency and the procedures for declaring it. Decree No.: 2-20-293 of March 24, 2020, regarding the declaration of a state of emergency throughout Morocco and published in the Official Gazette No. 6867 bis of March 24, 2020 (France took the same measures, and the law of the state of emergency was published then on the same day, that is, March 24, 2020).

As part of these exceptional measures, a comprehensive quarantine was imposed, and several legal and regulatory requirements were adopted, according to which the movement of people was restricted. The closure of public places such as theaters, shops, swimming pools, stadiums, and airports, and the process of free and gradual vaccination was prepared.

In parallel, strong security measures were imposed, constituting an endless restriction of many rights and freedoms. These actions were triggered as a result of accusations of violating quarantine rules, failing to comply with authority instructions, and insulting employees.

The result was hundreds of arrests and conducting trials that lacked justice due to the speed of the trial and the absence of the right of defense in a security approach that made fundamental freedoms vulnerable to violations, according to the testimonies of media professionals, lawyers, and human rights and civil associations.

## Measures of the Judicial System

COVID-19 has caused the justice sector, with its courts, hearings, litigating escorts, judicial and lawyers bodies, court frameworks and employees, and others, many troubles and repercussions on different levels.

This has forced the judiciary to take exceptional and proactive decisions early before the governmental and public authorities impose general directions starting from a later date, as indicated above.

## **On the one hand: the Measures of the Supreme Council of the Judicial Power, Near-general Disruption and Fatal Paralysis:**

### **1 - In terms of improvisation in the nature of the measures:**

The judiciary took the first proactive and improvised measures through the delegated president of the Supreme Council of the Judicial Power under circular No. 151/1 on March 16, 2020.

The decision announced and identified several measures, including:

- Suspension of all sessions of the various courts, starting from Tuesday, March 17, 2020.
- Felonies and misdemeanors cases involving defendants who are in pretrial detention and placed in prison institutions are excluded from these measures.
- Investigation cases to determine the status of defendants in misdemeanour cases who are presented for interrogation after being placed in prison or interrogated in a state of release.
- Juvenile cases, to decide whether they were to be placed in a re-education institution or handed over to their families.
- Urgent issues, which cannot be delayed.
- Ensuring the presence of human resources in courts at a minimum.
- Controlling the litigant's access process so they are not allowed access except when necessary.

Among the advantages of these measures is that they were taken superficially and did not present expectations of their effects, nor did they give any compensating solutions. Thus, it was severe, which resulted in justice in a semi-stroke or more than two halves of paralysis.

### **2- In terms of its judicial and professional dimensions that have implications for the right to defense and the right to litigation:**

It is known that access to the judiciary without restrictions or obstacles is one of the rights of the litigants, and it has a strong relationship with the right to defense. Every prohibition outside what is required by the system affects the essence of the right to litigation.

Furthermore, it is not a secret that the meeting point of the litigants and what embodies the actual access of the judge is the court, as it is the space that serves as a reservoir of judicial information close to the litigants, their defense, and judicial assistants.

As a result of the repercussions of the pandemic, the courts almost became deserted yards due to measures to stop their activities and remove their human personnel, including judges and employees.

As most of these people sought refuge in their homes, closed their offices, and suspended their sessions, litigants were also prevented from entering the courts and from searching for the resolution of their cases and lawsuits, especially those that were on the verge of decisive deadlines, the failure to respect of which would result in the forfeiture of their rights or a change in their positions.

The right to defense was wiped out by the suspension of the activities of lawyers, including women and men, in most of the courts, and the closing of the hearings' doors in their faces.

This resulted in a rupture between them and their clients. With the pleadings, judgments, and decisions, they were prey to the decisions to close the courts and the prey of preventing movement without permission from the authorities.

### **On the other hand: Decree No. 293 and the Issue of Retroactive Laws**

Among the sacred principles are the non-retroactivity of laws and their application to situations before publication. This is to prevent prejudice to the rights and legal positions of individuals acquired under previous laws.

Interestingly, Decree No. 2.20.293, which declared a state of emergency, remained silent that it would be applied retroactively to the measures taken preemptively, leaving opportunities for the judiciary to interpret the text in this section.

The judiciary has already intervened, as the Administrative Court of Appeal in Rabat issued on March 26, 2020, a decision in case No.: 422. 7202.2020, in which it was considered that the state of emergency began by closing the airspace, describing this sovereign decision, noting that the closure took place at an earlier date on March 10, 2020, i.e., Before the decree was published as a law on March 24, 2020.

### **On the third hand: Suspending the Deadlines for Judicial Appeals**

The above decree, in particular, directs the procedural processes that relate mainly to the validity of the deadlines stipulated in the legislative and regulatory texts in force during the period of a state of a health emergency, where it decided to stop them, with the resumption of calculating the deadlines again on the day following the lifting of the state of emergency.

The deadlines for appeals related to cases of persons being pursued in a case of arrest, the extension of the placement under theoretical custody, and pretrial detention were excluded from these provisions. The decree stipulates the suspension of the deadlines, whether they are periods of lapse or limitation periods, as:

- Stopping the deadlines for filing lawsuits.
- Stopping the deadlines for notification and its impact on the determination and holding of sessions and the continuity of regular work in the courts.
- Stopping the deadlines for appealing judgments.
- Stopping the deadlines for notifying some warnings of a legal nature.

## Remote Trials Between Legality and Fair Trial and Criticism of Detainees

### 1- In terms of the anger of the judiciary moving away from the litigants

Without a doubt, it has been asked of jurists, lawyers, and law professionals, including officials in the judiciary, the question of administering justice in the time of the pandemic and the question of dealing with the rights and freedoms of people and with the many violations that affect them during the Covid period. The consequent fear and anxiety did not escape one of them.

In other words, the issue of a fair trial, the protection of defense rights, the ability to maintain its variances, its status, and conditions, the extent to which the judiciary is responsible for halting courts and semi-complete hearings, and the extent to which there is doubt in their capacity and their powers to take such decisions, has been pointed out. The responsibility of many judges who left their jobs and files was also highlighted.

In general, the legality of the measures imposed by the executive authority and the judiciary was raised without prior notification in the justice field.

### 2- Is the solution remote trials, or is the inevitable damage?

A. In terms of prison closures and the spread of the virus

It is known that prisons, in turn, have not been spared the pandemic and the entry of Covid into cells and wards. With it, the health of more than eighty thousand male and female prisoners, and the health of more than ten thousand employees, became vulnerable to infection.

Here, the potential risks were presented in the process of transporting them daily, in the hundreds, to the courts, back and forth from prisons to court sessions. The seriousness of this issue was compounded by the announcement of the spread of Covid cases in some prisons.

Many civil organizations have called for the release of women, juveniles, the elderly, some remand detainees, and people with special needs to alleviate the numerical pressure in prisons.

In the face of the Covid attack on prisons, prison services took measures, including:

- Banning family visits for prisoners.
- Presenting the prisoners scheduled to be transferred to the medical staff.
- Allocating special places for new prisoners.
- Stop all activities.
- Prohibition of transferring prisoners to courts starting from April 25, 2020.

Hence, it seems that Covid-19 has launched a rapid and dangerous siege on the right to try prison detainees. The judiciary and the executive authority had no other option than to search for possible outcomes to lift the siege on the right to trial for a segment of citizens whose freedoms are restricted and who cannot be held hostage at the mercy of the pandemic or prevent them from accessing the judiciary.

B. The rationale for choosing a trial remotely and via screens

### 1- General rules of attendance at criminal trial:

The adoption of remote trials using audio-visual means of communication falls within the framework of the future vision of digital justice that all countries aspire to, which aims to achieve a set of objectives represented in particular in rationalizing judicial time, saving effort, and reducing expenses, to ensure that cases are resolved within reasonable deadlines. Other goals are contributing to the preservation and good management of public money, as the mentioned technology achieves an economy in state expenditures by avoiding the heavy expenses and costs required by the transfer of the traditional litigation system, in addition to the possibility of providing conditions for quick access to information and rulings. It also enables the updating of the nexus with the judiciary and making it keep pace with technological development to be able to face exceptional circumstances.

As for the criminal trial, there is no doubt that its peculiarities are rooted in the rules of a fair trial as stipulated in the international legitimacy of human rights and institutions. It begins with respecting the accused's right to appear before the judge who will judge him and the rules of a public trial.

Also, the trial enables the judge to directly talk with the accused according to his thoughts and emotions, so he cannot judge a person far from him because this weakens the guarantees granted to the accused.

According to Moroccan legislation, the rule of presence in the trial occupies a primary position (Articles 304, 307, 308, 311, 312, 314, 318 of the Code of Criminal Procedure), as no trial begins until after the detainee is summoned and brought to the courtroom. The judge made sure that the accused is in his presence (Articles: 423, 428, 439 of the abovementioned law), the presence of his defense and the presence of the translator.

If there is any impediment to his transfer from the prison to the court, the clerk of the court will read him in the prison the minutes of the session and what he may consider.

Suppose the person refrains from appearing before the court, its president will order his appearance by force. If he insists on refusing to appear, then the court will decide whether to continue the trial. The judgment issued against him shall be considered in his presence.

### 2- The judicial authority in the face of Covid, justifications, and outcome, and confirms the lack of legal mechanism:

It is necessary to emphasize a fundamental issue, which is that there are no laws in the Moroccan legal system framing this option (virtual trials) to give it the cover of legality.

This was indicated by the Delegated Head of the Judiciary and the President of the Court of Cassation himself when he noted that: "Waiting for a law regulating virtual trials remains a beautiful hope for all practitioners and those interested in justice."<sup>82</sup> Expressing his hope that this law will be issued as soon as possible so that the country will have the appropriate legal mechanism that allows remote trials in the post-Covid-19 period<sup>83</sup>.

<sup>82</sup> A seminar organized by the Moroccan Ministry of Justice in cooperation with the Supreme Council of the Judicial Power, organized on April 27, 2021

<sup>83</sup> (A seminar organized by the Moroccan Ministry of Justice in cooperation with the Supreme Council of the Judicial

Thus, outside the rules of pleadings and rules of criminal procedure, the Ministry of Justice, together with the Presidency of the Judicial Authority and the Presidency of the Public Prosecution, announced on April 26, 2020, the launch of the first online session of a criminal trial at the Court of First Instance in the city of Salé for detainees' cases.

Justifications were provided by the judicial authorities and lawyers of remote trial, represented in several goals, including:

- Avoiding the risks of COVID-19 infections in prisons and courts is a strategic goal.
- Ensuring detainees' right to a trial and to have their cases resolved quickly so that many of them can regain their freedom.
- Respecting the reasonable time and avoiding extending their detention.
- Preserving and rationalizing the judicial time to prevent the annoying accumulation of files.
- Preserving the health of detainees by limiting the movement between prison and the court, with the logistical difficulties that it poses to the administration and security staff, and to what quarantine imposes on the return of detainees to prison from the court.
- The remote trial of detainees is carried out after expressing their desire to conduct a trial remotely.
- The remote trial experience falls within the scope of the digital court's implementation policy, modernization of the judicial system, and bringing the judiciary closer to litigants so that the matter will prevail in the rest of the trials.
- The remote trial does not affect the parties' rights, especially since the trial via the screen can only be accepted by the accused and his defense.
- The electronic and logistical equipment has been prepared to make the conditions for the trial available.
- The remote trial will be an opportunity to eliminate the delay that harms the rights of detainees.

The judiciary concluded by confirming the results of the experiment by publishing statistics in October 2020 that indicated:

- The number of remote sessions reached 403.
- The number of cases listed reached 8,096.
- The number of detainees who benefited from a remote trial reached 9,524.

---

Power, organized on April 27, 2021)

In April 2022, new statistics were published, among which the judiciary clarified:

- 38,534 sessions were held remotely.
- It included 753,328 misdemeanor and criminal cases.
- 852,083 detainees benefited from it.
- The number of judgments issued reached 26,5096.
- 22,988 people were released from them.
- 2366 persons were acquitted.

### **3. Judicial work supports the legality of remote trial because it protects against the pandemic:**

Indeed, after a long wait, the Court of Cassation broke its silence and recommended the remote trial, which all the courts took, and linked this to the need for the defendant's consent and his waiver of attendance. This means that it is not possible to reverse any judicial ruling issued by the trial courts according to the remote trial program whenever the accused and his defense waived the right to be present.

The Court of First Instance went further than the Court of Cassation and considered that the consent of the accused is sufficient because it is the right of the accused, not the defense.

The Presidency of the Moroccan Public Prosecution Court, the Court of Cassation, the Delegate of the General Prison Administration, and the Presidency of the Judicial Authority classified the experience of remote litigation, which the courts fought over a whole year, in light of the pandemic, as "successful," as it enabled the continued functioning of the courts regularly and carrying out its constitutional duties, consecrating the right to a fair trial within reasonable deadlines.

They considered that the adoption of the remote trial using audio-visual means of communication falls within the framework of the future vision of digital justice that justice aspires to, which aims to achieve a set of goals represented in particular in rationalizing judicial time, adjudicating cases within reasonable deadlines, contributing to preserving public money. And his excellent management of what the mentioned technology achieves in terms of financial state expenses and facing exceptional circumstances that can make listening to the parties and transferring detainees difficult or risky, as is the case with the situation related to the Corona epidemic.



## Manifestations of danger to justice on the occasion of Covid and in parallel with the remote trial

There is no dispute that the remote trial was necessitated by the conditions of Covid and its socio-economic and health repercussions, as well as that the whole process was a jurisprudence away from the rules of legal procedures for the trial. Despite the benefits of jurisprudence, the flaws in the pattern of trials imposed by the Covid pandemic can be embodied in the following elements.

### Imbalances related to procedural legitimacy

Legislation in the criminal field is formal or substantive and is within the jurisdiction of the law, not the regulatory authority's jurisdiction.

Therefore, an executive or administrative authority cannot introduce an amendment or take any action without passing through the necessary channel, which is the legislative institution represented by Parliament, as it did unconstitutionally by adopting procedural regulations related to the rules of form in the trial.

Consequently, we do not find any officials discussing the issue of constitutional legality, the difficulties, the fate of criminal legitimacy, the rights of litigants, or the problems that impede the conduct of the trial during the pandemic.

The system of justice, the judiciary, and the trial from a distance are not regulated by the law's procedural rules. This means that the rules chosen by the Ministry of Justice and the judiciary do not amount to legal procedures that arrange legitimate results and make breaching them incur a procedural penalty.

COVID-19 pushed officials to violate an important rule, on the one hand, as it preserved the Public Prosecution's position in attending the trial and reserved for the defendants or accused, along with civil officials, the freedom to appear before the court and attend sessions. Hence, screens and cameras cannot compensate for the requirement of presence and publicity.

Trials in light of Covid-19 and the imposed choices in the field of justice affect the conditions of women, children, and those in difficult situations. It was difficult for them to address the judges of the court in a way that preserves their private lives, as their presence behind the screen might prevent them from communicating and responding to the judges' questions and naturally presenting their defenses.

### **Imbalances at the level of the remote court measure**

The trial via video screens in the criminal field has placed digitization at the center of the debate on the future of justice.

Fear about the fate of justice emerged when judges, lawyers, and prisoners found themselves facing multiple faults, such as weak internet, poor sound and image, the difficulty of a complete and continuous discussion from the beginning to the end the judge, and the inability to ensure that the prisoner followed the court's facts in a real way, especially his ability to listen to everything Promotes inside the courtroom.

The remote trial, after all, raises questions about the conditions of the trial from the prison room and its availability inside the courtroom.

### **Imbalances at the level of respect for the rights of the defense**

Counsel assistance, legal aid, and legal counseling provided by the defense to the prisoner, and opportunities for communication between the accused and the defense must be available before, during, and throughout the trial hearing. Nonetheless, the experience of the trial remotely does not provide this opportunity practically and procedurally.

The ban on family visits also extended to lawyers during the quarantine, which constituted a shockwave in the field of the right to defense.

On the other hand, the remote trial faces other aspects that affect the right to defense, including confrontation with witnesses, expressing an opinion on documents that can be decisive in the outcome and which are invoked, and the accused must see them, read what they contain, and discuss them before the court. The accused may also be compelled to display his health condition, to show the signs of the assault he experienced from his opponent or the torture he suffered during the preliminary investigation before the court for their examination.

## In conclusion: How is justice in the future, and what is the future of intelligent justice?

The measures taken during the COVID-19 pandemic by those in charge of the justice sector are not generally bad or negative. Instead, it was very useful especially after providing reasonable justifications, despite several difficulties that were recorded at the procedural level, which happened through experiences in the world.

The use of Zoom and the Internet was intense, its use in Morocco reached, according to an annual report completed by the National Agency for the Regulation of Transportation, 18.5 million people, or more than half of the population in 2016 before COVID-19.

This was a catalyst for creating a friendship with the world of digitization and technology and an impetus to develop a discussion about intelligent court and remote trial procedures. No one can deny the hope that the justice sector will be able to access the digital revolution, not being ignorant of the importance of its results.

Therefore,

- The first strategic challenge remains the journey toward using digital courts and the expansion of its presence intelligently through field studies and the involvement of many actors in the process.
- The second challenge is to pay attention to the dangers of creating the robots judges. The position of human conscience and convictions should remain central in the judicial process, especially in the field of criminal justice. Judges themselves are the pillars of the justice system and they do not feel that they are strangers to the parties to the criminal case, which is characterized by an atmosphere of confrontation and discussion between all parties. Consequently, trials shall not become a television series, where the technology creates false and imaginary scenes.
- The third challenge is discrimination in the field of justice and the judiciary and even in legislation, hindering the access of women, vulnerable groups, the elderly, and immigrants to resort to the judiciary and the possibility of benefiting from digital and technological judicial administration services, on an equal basis with all litigants. This, of course, requires spreading a culture of human rights, enabling everyone to know the rights and duties of litigants, and providing legal aid to those in need.
- The fourth and final challenge is to consider that justice is a common right of humanity and the battle of all peoples, and that all measures must be taken to end the suffering and the remnants of COVID in all countries. Unfortunately, humanity does not share technology and wealth and cannot enjoy happiness on an equal footing. However, at least, we should grant justice and equity during the trial based on equality and non-discrimination.

It remains that to build a life and eliminate the social and economic effects of Covid, which is related to justice and its comprehensive concepts, it is important to stop any crimes on innocents. Suffering must be acknowledged, trust restored, and justice delivered, as Michelle Bachelet, the former United Nations High Commissioner for Human Rights, emphasized.



Ashraf Abu Hayya

## Table of Contents

<b>Introduction</b>	<b>141</b>
<b>The context of the development of the justice sector in the Palestinian Territories</b>	<b>142</b>
Structures and divisions of the formal justice sector	144
Judiciary	144
Public Prosecution	147
Judicial Police	147
Ministry of Justice	148
Lawyer	149
Informal justice system structures	149
<b>Access to justice for the most vulnerable groups</b>	<b>150</b>
The extent of the legislative system's response to women's access to justice	151
First: Criminal Laws	151
Second: Civil Laws	152
Third: Personal Status Laws	152
The extent of the existing justice structures to women's access to justice	153
First: Access to Criminal Justice	153
Second: Access to Justice under Personal Status Laws	155
<b>The effects of COVID-19 on Access to Justice</b>	<b>156</b>
<b>The Results</b>	<b>158</b>
<b>Recommendations</b>	<b>160</b>
<b>References</b>	<b>161</b>

## Introduction

Palestine has been part of the Ottoman Empire since 1517, when it became subject to the administrative and legal rules imposed on the rest of the Ottoman provinces. When the Ottoman Empire was defeated and the First World War ended, Palestine was subject to the British Mandate in 1917 and then to the Israeli occupation in 1948 for the more significant part of it. The other part remained under Jordanian rule in the West Bank and Egyptian administration in the Gaza Strip. This situation continued until 1967, when Israel completed its occupation of all of Palestine and imposed its control over all of historical Palestine and parts of the Arab countries, which produced many legal systems during each stage<sup>84</sup>.

In 1994, the Palestine Liberation Organization signed an agreement known as the “Oslo Accords” with the government of the Israeli occupation state, which led to the establishment of the Palestinian National Authority in the main cities in the West Bank and Gaza Strip. This granted the authority legal and administrative powers over the areas it controls. A legislative council was elected in the West Bank and Gaza Strip, including the residents of Jerusalem, entrusted with legislative powers in the field of Palestinian legislation and laws.

During that, all the legislations and laws that Palestine passed through, including some of the Ottoman legislations, were valid and enforceable in the Palestinian legal system, which complicated the legislative situation in Palestine. Palestinian courts still depend on Ottoman legislation regarding land laws and civil law. They adopt punitive legislation from the British Mandate era and the Jordanian Penal Code, as well as the application of some Israeli military orders, and apply laws and legislation issued during the period of the Palestinian Authority, which makes the application of these legislations subject to the geographical area historically used. In the Gaza Strip, the legislation of the British Mandate and some of the legislation established during the Egyptian administration in the Gaza Strip are applied. In Jerusalem, after the Israeli occupation state annexed it in 1982, Israeli laws were applied. In the West Bank, Ottoman, British, and Jordanian legislation, Israeli military orders, and regulations issued by the Palestinian Authority are applied<sup>85</sup>.

In light of this scene of the Palestinian legal system, the question arises as to the configuration of the current Palestinian political system and which are the laws regulating it in relation to the authorities ruling under the ongoing Israeli occupation. The question also arises about the structures of this political system for each of its legislative, executive, and judicial authorities, and its various sectors; the nature of the social contract between the people and the Palestinian Authority; the guarantees for the rights and freedoms of citizens, and how to access and protect these rights according to the components of a system in which all these systemic complexities overlap. These different legal and political issues impact human rights and fundamental freedoms for all groups, including vulnerable groups.

In this study, we will shed light on the nature of the Palestinian political system and its various divisions to clarify the justice sector’s design in the occupied Palestinian territory and the various structures associated with it. It also explains the mechanisms through which citizens can access justice.

<sup>84</sup> Institute of Law, Summary of the Legal System and the Legislative Process in Palestine (Birzeit University, 2008).

<sup>85</sup> *Idem*.

For this aim, we will rely on the descriptive method of analysis by looking at the documents regulating the Palestinian political system from primary and secondary legislation and examining them to serve the purpose of this study of defining the justice sector in Palestine and the mechanisms of access to justice for all groups, how this system interacts with its challenges through all the stages and eras, as well as citizens' access to justice during the Covid 19 pandemic.

The research will also focus on access to justice for vulnerable groups, including women, children, and the poorest. In its geographical context, it will address the legal situation and the existing system in the justice sector in the West Bank, Gaza Strip, and Jerusalem in general, paying particular attention to the justice sector in the West Bank.

### **The context of the development of the justice sector in the Palestinian Territories**

All the stages that Palestine went through were political par excellence, so the attention of all the successive parties ruling Palestine was directed towards how to control and maintain Palestine, especially the colonial parties, and how to put an end to the colonization of the Arab and Palestinian sides of the Palestinian colonial project. The internal organizational state of the legal and political system structures was not a priority. This was evident when the Palestine Liberation Organization entered the occupied Palestinian territory under the Oslo Accords and established the National Authority in 1994.

The justice facilities faced a catastrophic situation:

- In terms of infrastructure of deplorable buildings and equipment.
- An insufficient number of courts, judges, members of the public prosecution, and clerks.
- The absence of a judicial officer according to the real concept of it, which is the backbone of the work of the justice sector.
- Incomplete jurisdiction of the courts in criminal, real estate, and administrative cases due to the Israeli occupation.
- Absence of an appropriate legal framework in the West Bank and Gaza Strip.
- Inexistence of institutional structures for the justice sector from the Judicial Council.
- Lack of administrative and constitutional judicial structures.
- The existence of a legal judiciary specializing in family issues depends on the legal systems neighboring Palestine and derives its administrative references from them.

All of this was acceptable under the Israeli occupation since Palestinian societal life and political forces depended on access to justice through social, not legal and judicial frameworks, given that these structures were controlled by the occupation and its civil administration, which made the entire Palestinian community refuse to cooperate with them at the time. Additionally, in the absence of a legal educational incubator, there were no law schools in Palestine until 1995.

The Palestinian National Authority faced significant challenges in building the justice sector. The beginning of the Palestinian Authority had political priorities utterly different from what is the case in the occupied territory. The Palestinian leadership at that stage had been formed in the contexts of revolution and resistance to the occupier and its laws and procedures against the inhabitants of the occupied land. Consequently, it found itself bearing a responsibility that it had not played an active role in before, which made it hasten to adopt a system close to Palestine about the nature of the justice sector with its various structures and to adopt legislation that is almost entirely copied from the legislations surrounding Palestine, i.e., Jordan and Egypt.

To this end, the Palestinian Authority has adopted a democratic political system based on the separation of powers. The Palestinian Basic Law was drawn up in 2002 and was amended in 2003, which defined the form of the Palestinian political system inside the occupied territories as a representative democratic system based on political and partisan pluralism, in which the President of the National Authority is elected directly by the people, and the government is responsible to the President and the Palestinian Legislative Council. It is based on the principle of separation of powers and clarifies the nature of the judicial authority with all its divisions: Regular, military, administrative, constitutional and Sharia courts<sup>86</sup>.

As a result, the Palestinian Legislative Council adopted a judicial system similar to the Egyptian one, as well as the Public Prosecution Sector, the Judicial Police, and the Ministry of Justice, through the adoption of a law for the judicial authority of 2002 and a law for the formation of courts of 2001, which described the nature of the Palestinian judicial system and the division of courts and public prosecutions and its competences<sup>87</sup>.

Since 1996, after the election of the Palestinian Legislative Council, which took it upon itself to try to unify the legislation in the West Bank and Gaza Strip, and despite all the challenges that the Palestinian Authority faced in building the justice facility, the steps that began to be taken began to show the features of the justice sector that we see today.

The judiciary was formed by the provisions of the Basic Law and the Judicial Authority Law of 2002. A Supreme Judicial Council was formed to supervise the regular judiciary and was tasked with carrying out the tasks of the Constitutional Court until its formation in 2017.

Likewise, judicial departments were formed from the Supreme Court, the Court of Cassation, the Courts of Appeal, the Courts of First Instance, and the Magistrate's Courts, and the nature of the jurisdiction of each of these courts was clarified<sup>88</sup>.

The Public Prosecution was also rebuilt, and this was stipulated in the Palestinian Basic Law and the Judicial Authority Law through the appointment of a public prosecutor, assistant attorney generals, chief prosecutors, prosecutors, and assistant prosecutors, and clarifying the nature of the formations of partial prosecutions in geographical areas and specialized prosecutions from the Family Protection Prosecution and the Juvenile Prosecution, as well as the role of the Public Prosecution in instituting criminal cases and supervising judicial officers.

86 The Palestinian Basic Law, issued in the city of Ramallah on: 29/5/2002 AD Corresponding to: 17/ Rabi' Awal/ 1423 AH, Yasser Arafat, Chairman of the Executive Committee of the Palestine Liberation Organization, President of the Palestinian National Authority

87 The Palestinian Basic Law, issued in the city of Ramallah on: 29/5/2002 AD Corresponding to: 17/ Rabi' Awal/ 1423 AH, Yasser Arafat, Chairman of the Executive Committee of the Palestine Liberation Organization, President of the Palestinian National Authority

88 Law No. (5) of 2001 Establishing Regular Courts, published in the Palestinian Gazette, No. (38), on 5/9/2001, p. 279.



The Civil Police is one of the most critical components of the justice sector and is directly linked to citizens' access to justice. This body had little presence before the existence of the Palestinian Authority, as it was directly related to the occupation administration of the Palestinian territories.

On 1/7/1994, the late Palestinian President Yasser Arafat issued a decree to form the Palestinian Police under the Oslo Accords to maintain security and public order to assume its duties in the areas of influence of the Palestinian Authority<sup>89</sup>.

Since then, the building of the Palestinian police has evolved to include specialized departments that have a significant role in supporting the justice sector, particularly the judiciary and the prosecution, thus contributing to ensuring that vulnerable groups have access to justice.

With the formation of successive Palestinian governments since the establishment of the Palestinian Authority, the Ministry of Justice played an intertwined role with the judiciary and the public prosecution regarding the development of the justice sector in Palestine.

### Structures and divisions of the formal justice sector

There are many structures in the formal justice sector between the judicial and executive authorities. Still, their legal references are the legislation and laws approved by the legislative authority.

Therefore, we see that the amended Palestinian Basic Law of 2003 defines the general framework governing these structures and defines their nature and the nature of the jurisdiction of each of them.

Accordingly, in this section of the study, we will address the structures of the formal justice sector, its internal divisions, and its roles in citizens' access to justice. We will analyse the structures of the formal justice sector through the judiciary with its various divisions, the Public Prosecution Office, the Ministry of Justice, and the police.

### Judiciary

The judiciary is the most prominent address in citizens' access to justice. It is the most critical national mechanism for protecting public rights and freedoms in all political systems, constitutes a balance between rights and duties, and maintains the independence of the political system and the non-interference of any of the authorities in the work of the other authority.

The judiciary in Palestine is currently divided into five sections, each subordinate to an independent administration from the other.

1. The **regular judiciary** has general jurisdiction in the judiciary. The Judicial Authority Law defined its competencies and formation, and its jurisdiction is limited to settling 1 civil disputes between citizens and civil controversies between citizens and the authority. The regular judiciary also specializes in criminal proceedings, cases related to violence against women and children, and juvenile justice cases where children are in conflict with the law. This section is consisting of:

---

89 About the Palestinian Police: Establishment, Role, Tasks and References. Visited the police website on 9/15/2022 <https://www.palpolice.ps/about>

- **Magistrates' courts** are the first instance of litigation, and their jurisdiction is limited to civil disputes with a specific economic value. Furthermore, it specializes in criminal cases classified as misdemeanors, meaning that the penalty ranges from 3 months to 3 years. Domestic violence cases in which the penalty does not exceed three years are under their competence scope as well. Juvenile justice for children is in conflict with the law, and specific cases are limited, regardless of their material value.
  - **Courts of First Instance**, competent in considering (in the first instance) commercial and civil cases that fall outside the jurisdiction of the Magistrates Courts. They are competent to hear criminal proceedings classified as a felony and become a court of appeal that considers judgments issued by the Magistrates Court.
  - **Courts of appeal**, which is considered a second instance of litigation and resolves appealing judgments issued by the courts of the first instance.
  - **Court of Cassation**, which is the last level of litigation and deals with appealing judgments issued by the courts of appeal.
2. **The Administrative judiciary.** Recently, the administrative judiciary in the occupied Palestinian territory has become an independent administrative judiciary in its own right, in accordance with Decree-Law No. (41) of 2020 regarding the formation of administrative courts. It is concerned with administrative cases related to government decisions and decisions issued by the relevant departments and other non-governmental ones, which are exclusively specified in by the law forming the administrative judiciary, such as local bodies or universities and others specified by law.
- The Palestinian administrative judiciary has unfolded in two levels; that is, there is an administrative court of the first instance, and there is a higher administrative court that plays the role of appealing administrative judgments issued by the first instance.
- The administrative judiciary has become an abolition one, i.e., it considers the extent to which the decisions issued by the government are compatible with the law, and if they are not according to the legal system in force, and it abolishes them. On the other hand, it also rules compensation that shall be paid if the administrative decisions issued by the government or other bodies subject to the jurisdiction of this court caused harm to the aggrieved by it; this approach is new in the Palestinian system which starts after 2020.
3. **Constitutional judiciary.** It is also modern in terms of formation. The regular judiciary was in charge of the jurisdiction of the Constitutional Court until 2016. The establishment of the Supreme Constitutional Court dates back to the amended Basic Law of 2003, when the Constitutional Court Law was adopted on February 17, 2006, bearing the name of the Supreme Constitutional Court Law No. (3) of 2006 published in the Official Gazette No. (62).
- In 2016, the Palestinian President issued Presidential Decree No. 57 of 2016 regarding the formation of the Supreme Constitutional Court, according to which the first judicial body of the Supreme Constitutional Court was formed. The Constitutional Court Law was also amended twice, the first by Decree-Law No. 19 of 2017 and the second by Decree-Law No. 7 of 2019.

This newly formed court is considered one of the courts that aroused great controversy in Palestinian society in terms of its formation and its violation of the constitutional rules stipulated in the Palestinian Basic Law.

The constitutional judiciary in Palestine is concerned with constitutional oversight of laws and regulations; interpreting the provisions of the Basic Law, and legislation (laws and decisions by-laws) if it raises a conflict in implementation and is of such importance that its interpretation is required; settling conflicts of jurisdiction between administrative and judicial authorities and among judiciaries; deciding on the challenge to the state's loss of legal capacity by the provisions of Clause 1/C of Article 37 of the amended Basic Law of 2003.

Its decision is effective from the date of its approval by the Legislative Council by a two-thirds majority of its members.

4. **Military judiciary.** It is known as the Security Forces Judiciary Authority, where the Military Prosecution and the Military Courts exercised their jurisdiction based on a set of revolutionary legislations of 1979.

After the issuance of the Basic Law of 2003, which stated in Article 101, paragraph (2) of it, "Military courts shall be established by special laws. Such courts may not have any jurisdiction beyond military affairs" the military courts began applying revolutionary laws to members of the Palestinian security forces.

In 2018, a decision was issued by Law No. (2) of 2018, and the military judiciary became known as the Security Forces Judiciary in the Palestinian Territory, and it is competent in military affairs and crimes committed by members of the Palestinian security forces who are subject to the law of service in the Palestinian security forces. The Security Forces Judiciary is an independent judicial body, that has an independent judicial council and a military prosecution.

5. **Sharia and ecclesiastical courts.** The amended Palestinian Basic Law of 2003 referred to the formation of Sharia courts, mandating the regulation of their work, formation, and jurisdiction by the provisions of Article 101, paragraph 2 of it, which stipulates that Sharia and personal status matters are handled by Sharia and religious courts by the law.

The Sharia courts were also mentioned in the Judicial Authority Law of 2002 by stipulating in Article (6/1) that Sharia and religious courts are regulated by their laws, and Sharia courts shall be organized according to the 1972 Jordanian Sharia Courts Formation Law.

In the year 2021, a decision was issued by Law No. (8) regarding the Sharia judiciary, which upholds the independence of the Sharia judiciary itself<sup>90</sup>. This is because the Sharia courts in Palestine are formed from the Sharia Supreme Court, the Sharia Court of Appeal, and the Sharia Court of First Instance. These legal bodies focus on adjudicating Sharia issues and documenting legal arguments and transactions<sup>91</sup>.

90 Article (2) of Decree-Law No. (8) of 2021 issued on: 05/03/2021

91 Institute of Law, *Sharia and Ecclesiastical Judiciary in Palestine* (Birzeit University, 2012).

Also, ecclesiastical courts deal with personal status cases for non-Muslims; these courts have a different system from the Sharia courts on two levels: the First and the second instance.

These courts apply personal status laws, particularly, all the provisions related to marriage, divorce, and other legal issues. They are considered essential forums for women's access to justice.

## Public Prosecution

The Public Prosecution Office is an integral part of the justice sector, as it is the body authorized by law to defend the public right to preserve the rights of society in the face of crime. The prosecution was typified in the amended Palestinian Basic Law of 2003 in its section on the judiciary and referred to the law the method of establishing the Public Prosecution Office, its mandate, and the conditions of appointment, transfer, dismissal and interrogation of the members of the Office of the Public Prosecutor.

The Public Prosecution is responsible for initiating the investigation, referring the criminal case, and following it up before the competent court; monitoring the optimal implementation of the provisions of the Penal Code to achieve respect and protection of human rights; representing ministries and state institutions before all courts in lawsuits and requests brought from or against them pursuant the law; conducting periodic visits to rehabilitation and reform centers and care homes, reviewing their records, communicating with any inmate or detained in them, and investigating his complaints; execution of enforceable judgments in criminal cases; oversight and supervision of the judicial police; and filing a disciplinary lawsuit against judges and members of the Public Prosecution Office if they proceed and conducting them<sup>92</sup>.

The Public Prosecution has jurisdiction as a judicial control authority and supervises all judicial control officers. They report to it about the work of judicial control, and thus they are of great importance in the access to justice and as an integral part of the justice sector.

The Public Prosecution consists of the Public Prosecutor, the Assistants of the Public Prosecutor, and specialized prosecutions, as is the case in the prosecutions for domestic violence protection, the Juvenile Protection Prosecution, the Human Rights Prosecution, and the Economic Crimes Prosecution.

## Judicial Police

The judicial police are seen as one of the main pillars in the justice sector, as they enjoy great powers in terms of citizens' access to justice, whether in the aspects related to combating crime in society or the element associated with the protection of fundamental rights and liberties.

In the Palestinian legal system, the Palestinian legislator, in the Law of the Judicial Authority and the Law of Criminal Procedures, granted the Public Prosecution the power of judicial control mainly and the supervision of judicial officers who enjoy this capacity under special laws<sup>93</sup>.

<sup>92</sup> The official page of the Council of Ministers, the Public Prosecution, the electronic portal, the date of the visit 1/10/2022 <http://www.palestinecabinet.gov.ps/portal>

<sup>93</sup> Article (9) of the Palestinian Criminal Procedures Law No. (3) of 2001.

The judicial officer is in charge of researching and investigating crimes and their perpetrators and collecting the evidence required for investigation. The Public Prosecutor supervises the judicial police officers, and they are subject to his/her oversight with regard to the work of their position. The Public Prosecutor may request the competent authorities to take disciplinary measures against anyone who violates his/her duties or fails to perform them, without preventing him from being held criminally accountable.

Among the bodies provided by law, the responsibility of judicial control is the director of police, his deputies, his assistants, directors of the provincial police and public administrations, police officers and non-commissioned officers, each within his jurisdiction, and employees who have been entrusted with judicial control powers under the law.

Among the main functions of the judicial police; it could be identified the following: Accepting reports and complaints received about crimes and submitting them without delay to the Public Prosecution Office; conducting examination and inspection; obtaining the necessary clarifications to facilitate the investigation; seeking the assistance of specialized experts and witnesses without taking an oath; taking all the necessary means to preserve evidence of the crime; recording all their procedures in official minutes being signed by them and all the persons concerned<sup>94</sup>.

### Ministry of Justice

The Ministry of Justice is the representative of the executive branch in the justice sector. However, the relationship of the Ministry of Justice with the components of the Palestinian justice sector has witnessed widespread controversy since the establishment of the Palestinian Authority regarding the conflict overpowers the rule and the power of the Ministry of Justice specifically about the judiciary and the public prosecution in the issue of the supervision the work of the courts and the public prosecution administratively, transfer, and appointment of judges and prosecutors; it also has other powers which is not the area discussed in this study.

Nevertheless, the Ministry of Justice's role in citizens' access to justice is also essential in the Palestinian justice sector.

One of the powers of the Ministry of Justice is to supervise forensic medicine in Palestine. Forensic medicine is one of the key departments related to achieving justice for crimes, as they are the ones who conduct the anatomical characterization, carry out the medical examinations for cases of violence against women, whether inside or outside the family, especially sexual assaults, and prepare the official reports. The courts and the Public Prosecution rely on these examinations and reports to do their work.

The Ministry of Justice is also responsible for managing criminal records, the record of citizens' records, and the issuance of non-conviction certificates for citizens. It also monitors detention, rehabilitation and reform centers, receives complaints from inmates, and ensures that these centers are compatible with human rights guarantees, whether under local laws and legislation or international covenants to which the State of Palestine has joined<sup>95</sup>.

<sup>94</sup> Article (22) previous reference.

<sup>95</sup> Institute of Law, *Initiative for Judicial Independence and Human Dignity* (Birzeit University, 2010).

The Ministry of Justice also has a human rights unit that manages citizens' complaints about human rights violations and follows up on them with the competent authorities in the security services and other government agencies.

## Lawyer

The advocacy profession in Palestine is regulated by Law No. (3) of 1999, regulating the profession of lawyers, in addition to the laws of the Bar Association of 2000, being the general legal umbrella for regular Palestinian lawyers. The legal lawyers' affairs are regulated according to the Jordanian Sharia Lawyers Law of 1952 and the Sharia Lawyers Instructions of 1987.

Lawyers play a significant role in the Palestinian justice sector, especially in defending fundamental rights against the executive authority's overreach of the pillars of the justice sector, particularly the judiciary. They also have an essential role in defending the rights of citizens, whether in civil or criminal jurisdiction. In the past three years, the Palestinian Bar Association has waged a great battle to confront the executive power's interference in judicial affairs by passing legislation limiting the judiciary's independence and threatening public freedoms.

## Informal justice system structures

Concerning informal justice structures in Palestine, it is necessary to address the informal judiciary and how it affects the lives of citizens, specifically the vulnerable groups of women, children, the elderly, and the poor.

### Informal Protection Mechanisms:

- The **clan system** plays a vital role in imposing order in Palestinian society. Tribal decisions often override official national laws, fundamentally in attacks against women. This informal mechanism for dealing with cases of violence against women consists of the intervention of the extended family or clan, depending on the type of violence committed<sup>96</sup>.

The informal judiciary, an expression used to refer to the state of informal justice, is a common term in Palestinian life and is almost also found in other Arab or non-Arab countries, but with different meanings. It is a judiciary that derives its strength from the historical context in Palestine. This judiciary tends to resolve disputes between Palestinian citizens, reaching reconciliation among clans. It is widely accepted in the Palestinian social situation, due to the weak performance of official justice structures, basically in areas where justice agencies cannot access, fundamentally the judicial police.

Tribal reconciliation is based on reconciling customs and traditions. These conflicts are often settled at the expense of vulnerable groups, such as women's issues and domestic violence.

96 UN Women, *Denying Women's Access to Justice in the West Bank of the Occupied Palestinian Territory* (2014).

In many cases where women are subjected to violence, these conflicts are solved according to societal traditions and customs at the expense of the weak party. Thus, women are kept in the family framework, and they accept domestic violence because the customs contemplate the exposure of women to violence. They must agree with it and remain silent to please the community and the environment, and preserve family and child care<sup>97</sup>.

- There are other forms of conflict resolution in Palestinian society, including the **reform committees**. These committees derive their existence and legitimacy from the social structures in Palestinian society and official bodies. Official departments have been formed in the provincial headquarters called reform committees departments. They enjoy official support because of their influence in society, particularly in intervening in significant conflicts, such as cases of murder and severe abuse.

There are reform committees in towns, villages, and camps that are formed by popular committees in the camps and village councils and enjoy the support of the local community. They intervene in resolving disputes between citizens and family issues, such as domestic violence incidents. The solutions are often in accordance with customs and traditions. In the essence of their work, they do not differ much from the tribal judiciary.

- From an informal structure's point of view, legal aid and mediation are provided by **NGOs**. Many institutions offer legal services to citizens, including women and children.

Part of this assistance is mediation in family issues, notably in the separation of spouses and the consequent financial rights to separation (where the NGO communicates with the husband to submit proposals for paying the wife's dues and children), as well as cases related to supervision and custody of children. Many institutions succeed in mediation before going to the regular judiciary and courts for women to obtain their rights, and in cases of husbands refusing to divorce because divorce is in the hands of the man.

However, in many cases, women gave up much of their economic rights in mediation in exchange for a divorce, due to the difficulty of obtaining a divorce through the courts, as the system of personal status laws does not allow women to divorce except in specific cases that are often difficult for women to prove. Another reason for divorce women to waive their economic rights is the difficulty of implementing the obligations resulting from the divorce ruling, especially the financial ones, given the weakness of the political system, particularly in the areas that the judicial police do not reach because of Oslo Accords classification areas. This causes women to suffer when it comes to the enforcement of judgments involving economic rights, handing over of children to the wife or the enforcement of the wife's right to supervise her children.

## Access to justice for the most vulnerable groups

Access to justice is a vague term because the discussion revolves around the paths of justice in different ways, but to obtain justice, it is necessary to talk about access to complete justice.

Complete justice means that the citizen obtains justice when is exposed to a decrease in his rights or a violation of these rights, whether by other individuals or public authorities, that is, the citizen

<sup>97</sup> Institute of Law, Law and Society Series (1), *The Rule of Law and Conflict Resolution in Palestine, Informal Judiciary* (Birzeit University, 2006).



shall get his full, undiminished rights. These rights must not be fragmented or detracted from, and they must be equal for all citizens without any discrimination based on gender, disability, race, opinion, political affiliation, and others.

Also, the structures of formal justice systems must be able to secure access to efficient justice in all its fields, whether by facilitating access to it in terms of infrastructure, geographical scope, cost, humanitarian preparation, material adjustment, and the appropriate time.

On the extent to which Palestinian citizens have access to complete justice under formal and informal justice systems, especially vulnerable groups of women, children, and other citizens, it is necessary to describe the pathways to access to justice under these systems and the extent to which these systems respond to prompt justice.

We will address it through two tracks: the first, in which we will talk about the response to the existing legislation, paying attention to the penal legislation to combat violence against women, and the legislation on family rights; and the second track, the response of the justice sector structures under the legislative system to achieve complete justice.

## The extent of the legislative system's response to women's access to justice

### First: Criminal Laws

The criminal laws in force in Palestine are the Jordanian Penal Code of 1960 in the West Bank, the British Mandate Penal Code of 1936 in the Gaza Strip, and the Palestinian Penal Procedures Law in force in the two regions. They are generally incompatible with international criminal justice standards, and they are considered one of the old laws and legislation that have not witnessed development regarding modern justice systems.

This legislation still fails to protect women victims of violence. The debate has been raging for more than sixteen years regarding adopting the Family Protection from Violence Law, which has not been approved yet, despite Palestine's accession to the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

Despite the abolition of some articles and the amendment of others related to punishment for honor killings of women, the killing of women still exists in Palestinian society. Women's rights institutions have monitored (58) cases of murder during the two years (2019-2020)<sup>98</sup>.

This is primarily reflected in the applications of the judiciary in cases of prosecution of criminals accused of murdering women. Given the nature of these provisions, even after these amendments were made, they did not achieve the degree of deterrent punishment against the perpetrators of these crimes.

As a result of the continuing state of political division between the West Bank and the Gaza Strip and the absence of a Palestinian parliament capable of passing advanced legislation that considers Palestine's obligations under joining international conventions, the situation remains the same regarding this discriminatory legislation against women. It makes it challenging to access complete justice.

<sup>98</sup> Women's Center for Legal and Social Guidance, *The killing of women in Palestinian society, the killing of women in the time of Corona, an analytical report* (2021).



The situation becomes more difficult about the reality of women's access to justice in cases of domestic violence that do not amount to murder, mainly beatings, threats, and abuse, and in the absence of a procedural law that provides rapid intervention for prevention and protection for women victims of violence.

In order to proceed with the opening of a criminal investigation, particularly in those cases regarding physical abuse of minors (the most prevalent form of physical violence against women), the Code of Criminal Procedure requires that there is a complaint by the affected person, i.e., the women should file a complaint against the husband or the relative concerned on behalf of the minor. This is in accordance with Article 4\1 of the abovementioned legal text, which stipulates that "The Public Prosecution may not conduct an investigation or file a criminal action which is statutorily conditioned on a complaint, a civil action, a requisition or a warrant, except on the basis of a written or oral complaint by the victim or his private attorney, a civil action filed by him or his private attorney, or a warrant or requisition by the competent authority".

This is faced with very great social difficulties. So, the family of the wife or girl does not allow them to submit such complaints, as they are socially unacceptable, and they disgrace the family if the women submit such complaints. Women are also threatened with a divorce from their husbands if they file a complaint against them.

Therefore, these procedures and laws push women into a corner, which makes them accept violence under the pressure of the family and society, contributes to impunity for aggressors, and makes it difficult for vulnerable groups to access complete justice.

It is not enough to enter into the procedures of access to justice. When talking about access to justice, it must be complete justice.

## **Second: Civil Laws**

Civil and commercial legislation is also inherited from the successive historical eras in Palestine, and it is legislation that does not take into account the social differences in the Palestinian context. There are Ottoman legislations still applied in Palestine, as is the case in the Code of Judicial Provisions, property laws, Jordanian and British Mandate legislation, and legislation approved by the Egyptian administration of the Gaza Strip.

Issues of joint ownership are still absent from the legislation in force. Women also lack protection in commercial legislation, about banking transactions in which they are exploited by family members, whether by opening an account in their names, involving them in issues of issuing checks they do not know about, and asking them to sign them blank, which later makes them accused of cases of issuing checks that do not match the balance and other things. Issues related to discrimination in the legislative aspect.

## **Third: Personal Status Laws**

Like its similar criminal and civil legislation, the personal status system in force in the Occupied Palestinian Territory is inherited from historical periods.

In the West Bank, the Jordanian Personal Status Law of 1976 is applied. In the Gaza Strip, the Family Rights Law of 1954 issued by the Egyptian administration of the Gaza Strip is implemented. In Jerusalem, the Jordanian Personal Status Law is implemented with the amendments made to it in Jordan since the courts are under Jordanian guardianship.

All these laws are still unfair to women regarding their access to justice: Guardianship is still applied to women, who need a male guardian to get married and they still need to file cases before the courts to request separation, unlike men. In addition to polygamy, guardianship and custody issues, and other core issues do not help women access justice through the existing personal status system.

### **The extent of the existing justice structures to women's access to justice**

Despite the efforts that have been made over the past twenty years regarding the development of the justice sector in Palestine, the response of this sector, with its dysfunctional structures to reach complete justice, especially for women, is not at the required level due to many challenges at the national formal and informal levels.

With regard to how these structures respond to women's access to justice, we must discuss access to justice on two primary levels that affect women's lives. The first centered on criminal justice, and the second focused on justice in family rights and the effectiveness of these divisions in women's access to justice in normal circumstances. In addition, the impact of the Corona pandemic on the work of these structures and women's access to complete justice will be examined.

#### **First: Access to Criminal Justice**

In many instances where women are subjected to violence, the police are the first body in contact with victims in the criminal justice system.

In the Palestinian Territory, there is the Family and Juvenile Protection Department, a special department in the Palestinian police force in the West Bank. It is a public unit whose mandate is to follow up on issues of domestic violence, gender-based violence, juvenile cases in conflict with the law, and children at risk of delinquency. Moreover, there is also the Department of Family Protection in the Gaza Strip, which is affiliated with the Gaza police force.

As a result of the development that took place in the performance of these departments and units, the availability of a female component in these units encouraged some women to seek support and assistance. However, the lack of sufficient numbers of women in these bodies makes women uncomfortable handling some issues a subject of reluctance.

A unified procedures manual for these units has also been developed so that all their employees can be trained on these procedures in dealing with cases of violence against women, and it clarifies the nature of the relationship between the police as a component of the formal justice sector and other actors, whether governmental or non-governmental.

Prevention and protection for women victims of violence are among the most critical family protection tasks in the police. Women's protection places are essential to protecting them and providing them with safety. There are few centers in which women whose lives are at risk due to violence are placed, and they are under the management of the Ministry of Social Development. Nonetheless, there are specific entry criteria to these centers for women until a settlement of their situation, whether judicial or social, is reached through informal justice systems.

- **Family Protection Prosecution:** It is one of the specialized prosecution sections in the Public Prosecution Office in Ramallah. It works in criminal cases that women are exposed to; moreover, prosecutors from the family prosecution work in the sub-prosecution offices within the rest of the governorates.

This entity is concerned with prosecuting the accused, investigating, pleading, appealing, and following up the implementation of sentences for crimes committed within the family with its various members, including the elderly and people with disabilities; crimes against women and children victims of violence outside the family; crimes committed by women in cases of adultery, prostitution, incest, corruption of the marital union and other related crimes-sexual characters. Additionally, its jurisdiction includes the crimes of threats and extortion against women through all means of wired, wireless, and electronic communications.

The work of this prosecution is regulated by unified procedures manual to homogenise and institutionalize investigation, transfer, and litigation procedures in cases of violence against women in the public prosecution. They ensure the provision of specialized, sensitive, and gender-sensitive services at all stages of the legal process in the Public Prosecution Office, preserve their human dignity, and hold perpetrators of violence accountable. This guide clarifies the roles and responsibilities of partners and the coordination mechanisms between them and the Public Prosecution<sup>99</sup>.

- **Juvenile Prosecution:** It was established based on a decision in the Palestinian Juvenile Protection Law of 2016 as a specialized prosecution from which prosecutors emerge in all the governorates' prosecutions.

The Juvenile Prosecution Department functions are:

- Hearing cases of delinquent children and those at risk of delinquency, which includes carrying out investigations and pleading in a manner that guarantees confidentiality and respect for the child's rights and finding ways to reform and speed up his integration into society in accordance with the procedures established by the Criminal Procedures Law and the Juvenile Law in force.
- Appealing judgments by objection, appeal, appeal in cassation, and retrial in jurisdiction cases.

<sup>99</sup> The Palestinian News Agency, Wafa, the date of the visit 15/10/2022.

- Networking and cooperating with the Ministry of Social Affairs through the Child Protection Guide regarding the child's follow-up in those cases of exposure to delinquency established in accordance with the law.
- Entrusting the social development and protection guide with all necessary social work and research to reveal the truth and knowledge of the child's personality and the appropriate means to reform and protect him and to take measures for delinquent children under the age of 15 years.
- Conducting mediation in misdemeanors and violations between the victim and the delinquent child himself or his representative.
- Inspecting rehabilitation and care homes, vocational training centers, and specialized hospitals.

## Second: Access to Justice under Personal Status Laws

The second axis concerns access to justice in relation to family rights under the personal status system. It is based on women's access to justice through Sharia and ecclesiastical courts. In this regard, women suffer from the legal and procedural system governing their access to justice.

Within the Sharia courts, divisions are associated with each type of women's problems in this system. There are family counseling departments, specialized in looking into divorce disputes between spouses, and they try to bridge the dispute and present reconciliation between the parties to prevent divorce. In the event that these efforts fail, the family counseling department reports are submitted to the court; in addition to the arbitrators between the parties, and in the end, claims are submitted to the court according to the nature of each claim.

Most of the problems women face are related to proceedings in which they want to divorce, and they have to file a lawsuit before the court. The cases in which women may request divorce are limited to several cases exclusively, unlike men, who have the right to initiate divorce whenever they want. Here, women suffer in the process of proving the reasons on which they are based in the divorce application. In the vast majority of the trials, women justify the request for separation on conflict and discord between spouses, including wife abuses. Still, in many proceedings, women are forced to give up their rights in exchange for obtaining a divorce agreed with the husband. On top of that, the procedural system within the family courts is a lengthy procedure that prolongs the litigation period and limits access to complete justice.

Each of the titles of family rights is a case in itself. Women who obtain divorce need to file other cases to receive alimony, get housing rent, and obtain children's custody. All of them require entering into other procedures to implement these provisions, which prolongs litigation and makes it difficult for women to continue down this path, besides the high financial cost of attorneys' fees. Furthermore, other procedures are related to the rights of viewing children. This is another path between the Sharia courts and the judicial police, in addition to the problems related to where children are seen in the courts or social development centers.

To assess the extent to which women enjoy access to effective justice, it is possible to rely on the General Comment of the United Nations Commission on Women No. 33, which identified six interrelated and essential elements for this purpose: Justiciability, availability, accessibility, good quality, provision remedies for the victims and accountability.

Although differences in the prevailing legal, social, cultural, political, and economic conditions require a differentiated application of these features in each country, the essential elements of the approach apply to all such countries and demand an immediate application<sup>100</sup>.

Accordingly, and to examine the extent to which states are committed to creating all conditions for access to complete justice, the possibility of litigation requires that women must have the option to resort to justice without hindrance, as well as having the ability to claim their rights and enable them to do so, these matters are legal rights under the Convention.

The availability of justice also demands establishing, maintaining, and financing courts and quasi-judicial or other bodies throughout the country in urban, rural, and remote areas.

Access to justice systems implies that all justice systems, both formal and quasi-judicial, are secure, affordable, physically accessible to women, and tailored to the needs of women, including those who face multiple or complex forms of discrimination.

The quality of justice systems needs that all components of the system adhere to international standards of efficiency, effectiveness, independence, and impartiality and that all women are promptly provided with adequate and effective remedies that are enforced and lead to sustainable and gender-sensitive conflict resolution.

It also requires that justice systems be context-appropriate, dynamic, participatory, and open to innovative, practical measures, be gender sensitive and take into account women's growing demand for justice; providing remedies requires that justice systems provide women with possible protection and fair compensation for any harm that may be caused to them.

Looking at the standards set by the United Nations Women's Committee referred to in the above paragraph and their applications on the ground in the occupied Palestinian territory, we find that we need a great effort to develop Palestinian justice structures and systems in line with these standards, both in terms of the availability of justice systems, efficiency, effectiveness and ease of access and possible cost and other criteria.

Apart from the challenges facing the Palestinian justice system, foremost are the occupation of Palestinian land and the lack of control over the ground, as well as to the internal challenges associated with the division, the absence of elections, the lack of independence of the judiciary, and the consolidation of all powers in the hands of the executive power.

## The effects of COVID-19 on Access to Justice

The COVID-19 pandemic has cast a shadow over all walks of life worldwide. The justice sector is one of the systems that has been dramatically affected by the pandemic. The impact of the pandemic varied among many different groups in all global societies, and the share of the poor and vulnerable groups was more significant than other groups in many countries. In the occupied territories, the impact of the pandemic was evident in many sectors.

---

100 General Comment No. (33) of the Committee on the Rights of Women at the United Nations, Trust No. (cedaw/c/cg/33), 3/8/2015

The measures taken by the Palestinian authorities to confront the pandemic have greatly affected the official justice sector. A state of emergency was declared in the Palestinian Territory by a decree issued by the Palestinian President declaring a state of emergency for 30 days on March 4, 2020<sup>101</sup>.

Pursuant to the declaration of a state of emergency, the government and governors were mandated to take the necessary measures to ensure facing the pandemic, the most prominent of which was closing cities, preventing movement between and disrupting public life, including official and informal work departments and the private sector. Likewise, under the state of emergency coverage, it was ordered to disrupt the work of the courts and suspend some provisions of the legislation in force by issuing special legislation to implement the state of emergency and suspending some of the rights contained in the International Covenant on Civil and Political Rights, such the right to movement and peaceful assembly.

The justice sector has been characterized by confusion in dealing with the pandemic and its consequences. The disruption of work in the courts had significant repercussions on the path to access to justice, as all court sessions were postponed to other dates, which led to a large backlog of cases. Criminal cases were prioritized, as they were directly related to the right to personal freedom. Another challenge was the inconsistency of the legislation in force with the pandemic condition, especially electronic attendance, which requires postponing the consideration of these cases since electronic litigation is not available in the Palestinian judicial and legal system. In cases where the closure was imposed on some cities without others, the work in the cities that were not subject to closure was within the minimum workload due to the absence of workers from the closed areas. All these issues, in addition to reducing the number of attendees in the courtrooms to a minimum, significantly disrupted the judiciary's work in the early periods of the pandemic.

With time, confusion remained in litigation procedures, as many courts were suspended when it was found that one of their employees was quarantined as a preventive measure, which disrupted the work of all the executive and support teams. This is something the justice sector has not known before, which had increased the backlog of cases before the courts and increased the judicial suffocation, which is suffering from a severe crisis at this level.

On the other hand, the work of other agencies in the justice sector was greatly impacted by the pandemic. It was also affected by the measures taken at the judicial level. The large number of detainees in detention centers forced the government to take measures related to releasing those arrested for minor crimes to reduce the overcrowding situation in prisons.

Also, the provisions related to confinement during the pandemic period were not implemented except for complex cases against which criminal judgments were issued, as women suffered from the disruption of the implementation of such pronouncements, especially about the implementation of expenditure provisions, children's supervision, and other provisions.

In terms of the access of vulnerable groups to justice procedures, fundamentally cases exposed to domestic or societal violence, they were greatly affected despite their decline in the public sphere and their increase in the private sphere.

101 Presidential Decree No. (1) of 2020, issued on March 5, 2020 and published in the Palestinian Official Gazette, the facts in issue (165) on March 19, 2020

A study conducted in the Gaza Strip on the impact of the pandemic on violence against women indicated that the rate of violence in all its forms increased by approximately 40% during the pandemic and that this raise was higher in the private sphere.

The understanding of the specific space of the Palestinian society, represented in the nuclear family and the extended family, is attributed to the issue of home quarantine and the family's stay in the home. The poorest families and families with the most significant number of individuals had the largest share of the increase in cases of violence within the family towards women and children.

Through the women's unit's lawyers who follow up on women's issues and provide them with legal advice over the phone, the Palestinian Center for Human Rights reported that there are many complaints by women due to the suspension of Sharia courts' work in their cases, in addition to stopping the work of the judicial police. They urgently need to find a solution to their issues, precisely alimony, seeing children, and custody.

## The Results

1. The Palestinian justice sector will continue to suffer from a lack of development and accessing its full ability that gives it the appropriate roles as a result of the continued Israeli occupation of the Palestinian land, being the main obstacle in the development of this sector and enabling it to perform its duty in the best manner in line with international standards.
2. The Palestinian justice sector is relatively new. It is one of the unique sectors in the context of democratic systems, as it is located in a political system under occupation and faces many structural challenges. Internal political division is another factor that significantly influences the sector's independence with all its various structures. In addition, the sector does not have the necessary capabilities to play active roles at all levels.
3. The legislation in force greatly impacted the justice sector as a result of the different historical eras that Palestine witnessed, as well as the inconsistency of these legislations and laws with all economic and social developments and international human rights standards.
4. The Palestinian justice sector was affected by the inherited justice sector systems, especially the neighboring systems to Palestine. This impact reflected on the nature of the legal system without taking into account other more developed global experiences in the field of justice systems, shaping the philosophy of criminal justice that remained undeveloped and stagnant, and making access to immediate justice difficult to achieve.
5. The weakness of financial resources has kept the inherited infrastructure of the justice sector developing at a slow pace, and the Palestinian Authority's dependence on financial aid due to its lack of control over its resources because of the occupation. This made the priorities of the agendas of successive Palestinian governments related to the fundamental issues of education, health, local governance, and employee salaries and made them lose the ability to develop sustainable government plans related to building an effective justice sector.



6. The status quo and occupation policies contributed to the stability of the strength of the informal judicial systems, including the informal judiciary and reform committees. It also promoted the resolution of conflicts through clan ways based on customs and traditions at the expense of the most vulnerable groups in the social context.
7. The Palestinian political division and the absence of parliament contributed to the emergence of Palestinian political classes that see political division as meeting their interests. This increased the interference in judicial affairs and the justice sector and led to the loss of the independence of the judiciary. This affected the citizens' access to justice by making fundamental amendments to the structure of the judicial system, including the formation of the Supreme Constitutional Court and the separation of the administrative, judicial system from the regular judiciary, despite the weak financial capabilities, the lack of resources and the dependence of the Palestinian Authority on external support.
8. The justice sector did not meet the required effectiveness according to the standards of the United Nations committees for several factors, including the fact of the occupation and the inability of law enforcement agencies to enter and access all areas. The geographical distribution of courts of different instances and the overall distribution of judges according to the population is another variable to be taken into account in terms of justice sector effectiveness in Palestine, as there is severe a shortage in the number of judges and courts of second and third instance are concentrated in specific cities, making the cost of access to the courts expensive, huge and cumbersome and reinforcing the unwillingness of individuals to resort to the judiciary.
9. The legal and legislative system in force cannot meet the needed evolution at all levels and it should be harmonized with international standards on human rights, especially after Palestine accedes to many basic human rights conventions. The current legislation also cannot achieve complete justice for citizens, particularly the vulnerable groups in Palestinian society. Moreover, procedural legislation cannot provide the necessary protection for these groups.
10. The components of the sector lack the human and material capabilities necessary to create and develop infrastructure for accessing to justice, whether in terms of technical expertise at the level of law enforcement agencies or expertise in the field of techniques, technology, and various specialized laboratories, as well as the participation of women in these sectors more in terms of number and effectiveness.
11. The justice sector, with all its structures and divisions, did not have the ability and effectiveness to deal with the Covid-19 pandemic, exacerbating the suffering of vulnerable groups from access to prompt justice, the repercussions of which continue to this day.



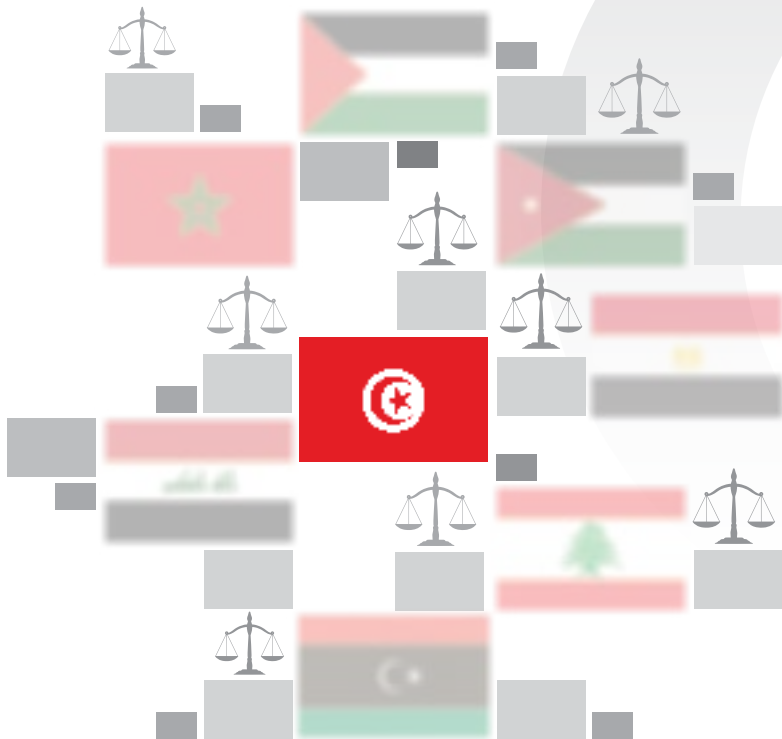
## Recommendations

1. Holding general elections that enable citizens to participate in politics, allowing the election of a parliament capable of approving legislation related to the justice sector, limiting the interference of the executive authority, and putting an end to the status quo. The adoption of criminal and other laws related to citizens' rights that are characterized by equality and non-discrimination enhances citizens' access to justice.
2. Addressing the structural imbalance that the sector suffers from by providing it with the necessary professionals, material resources and financial budgets that contribute to upgrading the sector's infrastructure and increasing the participation of women in all its specialized structures, which contributes to the access to all groups to complete justice.
3. Activating the role of the supporting authorities in the justice sector, specifically the judicial police, in a way that effectively participates in the implementation of judgments, investigation and inference procedures and providing them with technical expertise expertise and the necessary material and human resources, especially the female component.
4. Increasing the number of judges in all courts, thus reducing judicial deadlock and the length of litigation, relying on statistical studies regarding the number of judges, the population and the equitable geographical distribution of all courts of all levels to facilitate the cost of access to the judiciary.
5. Adoption of the Family Protection from Violence Law, providing preventive and protection mechanisms for women victims of violence and women at risk. This will help the administrative and judicial authorities to improve access to complete justice for women victims of domestic violence and gender-based violence in the public sphere.
6. Conducting a comprehensive review of the sector's roles in the pandemic stage, taking advantage of them, and adopting policies, procedures, and measures that contribute to its development and make the speed of response in such cases positive elements in strengthening the sector for citizens' access to complete justice.
7. Conducting comprehensive legislative harmonization of criminal and family legislation in line with Palestine's obligations under the accession to international human rights conventions, benefiting from international experiences and expertise in this regard, particularly the convention committees and specialized agencies of the United Nations and international cooperation organisations

## References

- The amended Basic Law of 2003, the Palestinian Gazette, excellent issue, on March 19, 2003, p. 5. The Jordanian Penal Code of 1960, applied in the West Bank, No. 16 of 1960, published in Issue 1487 of the Jordanian Official Gazette, dated 5/1 1960, p. 374.
- Mandate Penal Code No. (74) of 1936.
- The PLO Revolutionary Penal Code of 1979.
- The PLO Revolutionary Criminal Procedure Code of 1979.
- The Palestinian Penal Procedures Law No. (3) of 2001 and its amendments, published in the Palestinian Gazette, No. (38), on 5/9/2001, p. 94.
- Law No. (6) of 1998 on Correction and Rehabilitation Centers “Prisons,” published in the Palestinian Gazette, No. (24), on 7/1/1998, p. 87.
- Law No. (5) of 2001 Establishing Regular Courts, published in the Palestinian Gazette, No. (38), on 5/9/2001, p. 279.
- Cabinet Resolution No. (8) of 2016 on the complaints system, procedures guide, and forms.
- Presidential Decree No. (1) of 2020, issued on March 5, 2020, and published in the Palestinian Gazette, the facts in issue (165) on March 19, 2020
- The Universal Declaration of Human Rights, was adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948.
- International Covenant on Civil and Political Rights, adopted and offered for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of December 16, 1966, entry into force: March 23, 1976, in accordance with Article 49.
- General Comment No. (33) of the Committee on the Rights of Women at the United Nations, Trust No. (cedaw/c/cg/33), 3/8/2015
- The Impact of the Corona Virus Pandemic on Violence against Women and Girls in the Gaza Strip, Family Affairs Center, September 2020.
- The killing of women in Palestinian society, the killing of women in the time of Corona, an analytical report, the Women’s Center for Legal and Social Guidance, 2021.
- Institute of Law, Birzeit University, Law and Society Series (1), The Rule of Law and Conflict Resolution in Palestine, Informal Judiciary, 2006, Birzeit.

- Institute of Law, Birzeit University, Initiative for Judicial Independence and Human Dignity, 2010
- UN Women, Denying Women's Access to Justice in the West Bank of the Occupied Palestinian Territory, 2014.
- Sharia and Ecclesiastical Judiciary in Palestine, Birzeit University, Institute of Law, 2012
- Institute of Law, Birzeit University, Summary of the Legal System and the Legislative Process in Palestine, 2008.
- Dr. Camille Mansour, The Judicial Authority in Palestine (Evolution, Development, and Challenges), website of the Coalition for Integrity and Accountability, Aman, visit date 9/15/2022, see <https://www.aman-palestine.org/media-center/139.html>
- About the Palestinian Police: Origin, role, tasks, and references. Visited the police website on 9/15/2022, see: <https://www.palpolice.ps/about>
- The official page of the Council of Ministers, the Public Prosecution, the electronic portal, date of the visit 1/10/2022, see: <http://www.palestinecabinet.gov.ps/portal>
- UN Women, Impact of the COVID-19 Pandemic on Violence against Women and Girls in the Arab States - Perspective of Women's Civil Society Organizations, 2021



## The Right to Access Justice in Tunisia

Hafidha Chekir

## Table of Contents

<b>Introduction</b>	<b>166</b>
<b>Judicial organization in Tunisia</b>	<b>166</b>
The current judicial organization	167
Civil Courts	167
Courts of the first instance	167
Courts of the second instance	168
Administrative judiciary	169
Financial Judiciary	169
Military Courts	170
<b>The Principles Founding the Right to Access to Justice:</b>	<b>170</b>
The principle of judicial independence between recognition and restriction	170
Adoption of the principle of judicial independence	170
Guarantees of the Independence of the Judiciary: The Role of the Supreme Judicial Council	171
Retreat in the independence of the judiciary: from independence to dependency	172
The principle of equality and non-discrimination	175
<b>Legal Framework for the Right to Access to Justice</b>	<b>177</b>
The right to a fair trial in local texts. Several texts deal with the right to a fair trial, the most important of which is the constitution.	177
The right to a fair trial in international and regional agreements ratified by the Tunisian state	179
The right to a fair trial in international treaties	180

The right to a fair trial in regional agreements	184
<b>Conclusion</b>	<b>185</b>
<b>Difficulties and challenges</b>	<b>186</b>
Crisis of trust in the judiciary	186
Impact of the covid-19 pandemic on the judiciary	186
Weak women's access to justice	186
Existence of discriminatory laws	187
Failure to implement laws protecting women from violence	187
Failure to respect international obligations by the state	187
Fear of stigma and societal reactions	188
Lack of knowledge of rights	188
Difficulties related to security and judicial institutions	188
Double the enjoyment of legal aid	189
<b>Conclusion</b>	<b>190</b>
<b>Recommendations</b>	<b>191</b>
Informing people of their rights and making them aware of the importance of enjoying them	191
Right to legal aid	191
Legal reforms by the authorities	191
Adoption of international conventions when issuing judgments and judicial decisions	192
Remove all obstacles related to the administration of justice	192
Realization of human rights	193
Improving access to justice	193
<b>Appendix</b>	<b>195</b>

## Introduction

The demand to enjoy the right to access justice has been at the forefront of activists concerning the rule of law, particularly since 2011. Ever since independence, activists in Tunisia have strived to ensure access to an independent and impartial judiciary that does not harm the interests of male and female citizens and limits the abuses of the authorities.

The right to access justice is one of the components of the rule of law. It is both a fundamental right and a necessary condition for protecting and promoting human rights and it is inextricable to the principles of equality and non-discrimination.

The right to access justice is also considered one of the fundamental guarantees for the enjoyment of these rights and to ensure their protection. It is evidence of the validity of the judicial system because failure to respect this right can lead to injustice and unfairness.

The right to access justice falls within the framework of the human rights approach, which is based on the unity of these rights, their indivisibility, their interdependence with each other, and based on respect for the principle of equality between male and female citizens without discrimination. Therefore, this study will focus on highlighting this system with its various components, with an emphasis on the basic mechanisms that support this system, including those based on the establishment of an independent and impartial judiciary capable of carrying out the role entrusted to it and addressing the many violations that the Tunisian countries experienced in several periods before 2011, the time of the previous dictatorial regime and after 2011. At the same time, the study will look at the efforts of human rights organizations and jurists to endorse these rights, build a state of law, and achieve democracy.

The key questions is what does the right to access justice represent? What are the guarantees for the enjoyment of the right of access to justice, especially for the benefit of some vulnerable groups, including women victims of violence and discrimination?

To answer these questions, the study focuses on the principles that establish the right to access justice in Tunisia and provide the legal framework that guarantees the enjoyment of this right. It also highlights the difficulties that prevent some vulnerable groups, including women, from enjoying this right and the most important legislative and administrative solutions provided by the concerned authorities.

Before that, we will devote an introductory paragraph to presenting the judicial organization in Tunisia.

## Judicial organization in Tunisia

The development of the justice sector in Tunisia: in connection with the emergence of the modern state, from a plurality of judicial systems to its unification. Immediately after independence, the national judiciary was unified, based on Ordinance No. 3 of 1956, integrating the Shari'a courts into the judicial court system, leading to the July 1st Agreement of 1957, according to which the French courts were abolished and their jurisdictions were transferred to the Tunisian courts. This was achieved on July 6, 1957, the date of completing the unification and Tunisia of the judicial structures.

## The current judicial organization<sup>102</sup>

The judicial system in Tunisia is based on the principle of litigation on two levels: primary and appellate.

Tunisia knows five types of judiciaries: civil, administrative, financial, and constitutional judiciary, as well as the military judiciary through military courts, which the constitution describes as specialized courts in military cases. The constitution prohibits the creation of special courts.

### Civil Courts

The judiciary is the primary judiciary because it is closely related to citizens' disputes. It is also called the ordinary judiciary to distinguish it from the military judiciary in particular, as it is concerned with cases between individuals, whether civil or criminal cases<sup>103</sup>.

The judicial judiciary consists of courts of the first instance (the courts of the first instance, the real estate court, and the sub-district courts) and second-order courts, i.e., the courts of appeal in addition to the Court of Cassation.

### Courts of the first instance

#### - Courts of First Instance

They are the courts that consider, in principle, all cases, whether civil or criminal, so whoever wants to file a claim must initially go to the Court of First Instance, which is referred to him by territorial consideration.

There are 28 first instance courts in Tunisia, with an average first instance court in each city except for four states, namely Tunis, Nabeul, Sousse, and Sfax, which includes two courts.

In general, each court of the first instance includes a republican prosecutor and his assistants, investigation offices supervised by investigative judges, and criminal and criminal departments. In civil cases, there are employment, personal, commercial, and other departments.

#### - Real estate Court

The real estate court is a court specialized in real estate issues, as it registers real estate, whether voluntary or compulsory registration, and it also undertakes the updating of real estate fees<sup>104</sup>.

102 <https://www.observatoire-securite.tn/ar/2018/09/27/عدددها-كم-اصنافها-ماهي-تونس-في-المحاكم>

103 There are currently more than 140 courts, whether courts of first instance (courts of first instance, real estate court, and sub-district courts) or second-order courts (courts of appeal) distributed among the various courts of the republic, in addition to the Court of Appeal.

104 There is only one real estate court in Tunisia, but it has branches in 16 states



## - District Courts

They are courts of lesser degree than the courts of first instance, and they are also of the courts of the first degree. They are supervised by the district judge, who initially considers personal civil cases and cases related to work accidents until the end of 7,000 dinars. If the limit exceeds this amount, the jurisdiction of the Court of First Instance becomes jurisdiction. In the penal article, only preliminary rulings are issued in misdemeanors punishable by imprisonment for a period not exceeding one year or a fine not exceeding 1,000 dinars, and final decision, that is, not subject to appeal, are issued in the article of violations that carry a maximum penalty of 15 days of imprisonment. The district judge also specializes exclusively in alimony cases<sup>105</sup>.

## Courts of the second instance

### - Courts of Appeal

When appealing against a ruling issued by the Court of First Instance, appeals are made to the courts of appeal, which are courts of second degree, and thus their judges are more senior and experienced than the first instance. In general, each court of appeal includes a public prosecutor and his assistants (in lieu of the public prosecutor in the first instances), indictments (in lieu of investigation offices in the first instances), and criminal and criminal appellate departments that consider the contested judgments<sup>106</sup>.

### - Court of Cassation

It is the highest court in the judicial hierarchy of justice in Tunisia. In the Levant countries, it is called the Court of Cassation. It is not a third-degree court, i.e., after the Court of First Instance and the Court of Appeal, but rather a court of law that monitors the proper application of laws by the courts of origin (i.e., the courts of the first instance and the appellate courts), so it does not look into the facts and is limited to the legal aspect of the dispute.

The Court of Appeals only considers final judgments of degree, that is, issued by courts of appeal or final decisions by courts of the first instance, as courts of appeal are composed of a first president, heads of circuits, and advisors distributed over civil and penal circuits<sup>107</sup>.

105 There are 85 sub-district courts in Tunisia distributed among the various circuits of first instance in the Republic of Tunisia. For example, within the territorial area of the Court of First Instance in Tunis (Bab Banat), there are sub-district courts in Tunis, Carthage and Bardo, while in the territorial area of the Tunis Court of First Instance 2, there are sub-district courts in the Zohour and Ouardia districts. In the governorate of Medenine, for example, where there is only one court of first instance, we find 4 district courts in Medenine, Ben Guerdane, Djerba and Zarzis.

106 There are 16 courts of appeal in Tunisia, each of them territorially covering a number of first instance courts as follows: the Tunis Court of Appeal (includes the Tunis First Instances, Tunis 1, Ben Arous, Ariana and Manouba), the Nabeul Court of Appeal (includes the Nabeul, Grombalia and Zaghuan First Instances), and the Bizerte Court of Appeal (includes the First Instances Bizerte), the Kef Court of Appeal (includes the El Kef and Siliana primary schools), the Jendouba Court of Appeal (inaugurated in 2017 and includes the Jendouba Primary), the Beja Court of Appeal (inaugurated in 2018 and includes the Beja Primary), and the Kasserine Court of Appeal (inaugurated in 2014 and includes the Court of First Instance in Kasserine)

107 There is a single Court of Cassation in Tunis, located on 9 April Street in the capital, and thus its territorial jurisdiction includes the entire territory of the Republic of Tunisia.

## Administrative judiciary

The administrative judiciary consists of a Supreme Administrative Court, Administrative Courts of Appeal, and Administrative Courts of First Instance<sup>108</sup>. It specializes in disputes in which the administration is a party and has judicial and advisory jurisdiction.

- **Judicial Jurisdiction:** The Administrative Court is competent to hear cases of abuse of authority aimed at canceling decisions issued in the administrative article and cases of administrative responsibility. It also considers, on appeal, the decisions issued by the Competition Council, the General Authority for Insurance, and the Financial Services Committee stipulated in the Financial Services Provider to Non-Residents Law, and in response to tax disputes, disputes related to professional bodies, and decisions issued by the Banking Committee. It is also specialized in examining electoral disputes of all kinds by the provisions of Basic Law No. 16 of 2014, dated May 26, 2014, related to elections and referendums.
- **Consultative jurisdiction:** Article 4 of Basic Law No. 40 of 1972, dated June 1, 1972, relating to the Administrative Court, stipulates that “the Administrative Court must be consulted on draft orders of an ordinal nature. The Administrative Court is consulted regarding other draft texts and, in general, on all issues that require Legislative or regulatory provisions, are consulted or presented to them by the government to express its opinion thereon.

## Financial Judiciary

The financial judiciary consists of the Court of Accounts with its various bodies. This court was organized by Basic Law No. 41 of 2019, dated April 30, 2019.

The Court of Accounts has a judicial reference and oversight authority. It judges the accounts of public accountants, rebukes errors of conduct, and exercises oversight authority over the funds and disposals of public structures, particularly the state and public institutions whose budgets are ordinarily attached to the budget of the state, public associations, public institutions, and public and corporate bodies. Whatever their name, the state, local communities, or public enterprises contribute directly or indirectly to the capital, independent constitutional bodies, and other independent public bodies and amendment bodies.

<sup>108</sup> The first instance circuits of the administrative court in the regions: According to the last paragraph of Chapter 15 of Law No. 40 of 1972 relating to the Administrative Court, for the first time, primary circuits were established in the regions branching from the Administrative Court within the limits of the judgmental jurisdiction stipulated in Article 17 of the said law, in accordance with Governmental Order No. 620 for the year 2017 dated May 25, 2017. These departments consider cases filed against the regional and local administrative authorities and public institutions whose original headquarters are located in the territorial scope of the department, as well as cases in which jurisdiction may be assigned to them by virtue of a special law.

## Military Courts

Military courts are courts specialized in military crimes<sup>109</sup> divided into:

- **The Supreme Military Court** consists of three judges officers headed by the oldest of them, provided that his rank in all cases is not less than a lieutenant colonel and a representative of the Military Prosecution
- **The Central Military Court** has supreme power
- **The Central Military Court.**
- Each of them is competent to consider cases filed by the law.
- Military personnel may not be tried before a court whose president is lower in rank, and there shall be with the court a clerk to record what is going on in the session<sup>110</sup>.

## The Principles Founding the Right to Access to Justice:

Among the essential principles that guarantee the right to a fair trial are the principle of independence and the principle of equality and non-discrimination.

### The principle of judicial independence between recognition and restriction

The principle of judicial independence is one of the most critical constitutional pillars and one of the principles that enshrine the rule of law within the framework of the principle of separation of powers and respect and guarantee of human rights.

### Adoption of the principle of judicial independence

The independence of the judiciary is guaranteed in the various Tunisian constitutions. However, this guarantee varied from one form to another, as it evolved from merely approving the principle to fortifying it through establishing a constitutional body that ensures respect for this independence. Still, we ended up restricting this independence and placing the judicial authority in subordination.

Thus, the 1959 constitution contented itself in Chapter 65 by stipulating that: “Judges are independent, and there is no authority over them in their rulings except the law” and assigned the task of ensuring the independence of the judiciary to a Supreme Judicial Council, but without it being a constitutional council<sup>111</sup>.

<sup>109</sup> Law No. 25 of 1966 promulgating the Military Courts Law

<sup>110</sup> Chapter 43 of the Law No. 25 of 1966 promulgating the Military Courts Law,

<sup>111</sup> Chapter 67 “The guarantees necessary for judges in terms of appointment, promotion, transfer, and discipline, which are ensured by a Supreme Judicial Council whose composition and competence are determined by law.”

In 2014, with the advent of the new constitution, the independence of the judiciary was strengthened in section Five of the constitution in Chapter 102 by recognizing that “the judiciary is an independent authority that guarantees the administration of justice, the supremacy of the constitution, the rule of law, and the protection of rights and freedoms.”

Noting that the judicial authority is not limited to the judicial judiciary, as is the case in the 1959 constitution, but also includes the administrative and financial judiciary, the Constitutional Court, and the Public Prosecution, which the constitution considered in Chapter 115 “part of the judicial judiciary and included in the guarantees guaranteed to it by the constitution<sup>112</sup>.”

Also, to enhance the independence of the judiciary<sup>113</sup>, the 2014 constitution, by the provisions of the third paragraph of the preamble, linked it to “the supremacy of the law, respect for freedoms, human rights, independence of the judiciary, equality of rights and duties among all male and female citizens, and justice between the regions.” The 2014 constitution also prohibits in Article 109 “Any interference in the functioning of the judiciary.”

In the same direction, Article 105 considers that “the lawyer is a free and independent profession that participates in the administration of justice and the defense of rights and freedoms. The lawyer shall enjoy legal guarantees that guarantee his protection and enable him to perform his duties.”

The constitution provided a set of guarantees, particularly in the judges’ enjoyment of penal immunity and their commitment to impartiality and impartiality when performing their duties.

### **Guarantees of the Independence of the Judiciary: The Role of the Supreme Judicial Council**

To ensure the independence of the judiciary, the 2014 constitution created a Supreme Judicial Council whose tasks are to ensure the proper functioning of the judiciary and respect for its independence<sup>114</sup>. Contrary to the 1959 Constitution, which assigned the presidency of the Council and the appointment of the majority of its members to the President of the Republic<sup>115</sup>, the Council is not subject to executive authority. The Council is composed according to Article 112 of four structures: the Judicial Judicial Council, the Administrative Judiciary Council, the Financial Judiciary Council, and the general session of the three judicial councils.

112 Chapter 115 - The judicial judiciary consists of a cassation court, courts of second instance, and courts of first instance.

113 Maher Abdel Moula. The independence of the Tunisian judiciary after the revolution. Arab Future Journal, Issue 470, 2018.

114 Chapter 114 - The Supreme Judicial Council guarantees the proper functioning of the judiciary and respect for its independence. The plenary session of the three judicial councils proposes reforms, and expresses opinion on proposals and draft laws relating to the judiciary that are obligatory before it, and each of the three councils decides on the professional path of judges and on discipline.

115 Chapter 6 of Law No. 29 of 1967 dated July 14, 1967, relating to the judiciary system, the Supreme Judicial Council for Judges, the Supreme Judicial Council and the Basic Law for Judges “His Excellency the President of the Republic presides over the Supreme Judicial Council”

Each of these structures consists of two-thirds of judges, most of whom are elected, and the rest are appointed in capacity. The remaining third of non-judges from independent specialists provided that the majority of the members of these structures are elected. The elected members perform their duties for a single term of six years.

The Supreme Judicial Council elects a president among its members among the highest-ranking judges.

To implement the provisions of the Constitution on the matter, the law came in 2016 to define the Council as a constitutional body that guarantees the independence of the judiciary by the provisions of the Constitution and ratified international treaties<sup>116</sup>.

The law also recognized the judges with grants and privileges in Chapter 4 of the same law<sup>117</sup>.

### **Retreat in the independence of the judiciary: from independence to dependency**

After July 25, 2021, the dissolution of the government, the suspension of all parliament's competencies, and the issuance of Order 117 on exceptional measures that suspended the work of the constitution, except for the section relating to rights and freedoms<sup>118</sup>, and the President of the Republic's monopoly of all legislative and executive powers, caused a severe crisis between him and the Supreme Judicial Council accused of lacking independence and submission to The ruling political parties and serving their interests since 2011, especially the Ennahda Party.

The President of the Republic has resorted to several means to limit the independence of the judiciary.

The President of the Republic amended the updated law of the Supreme Judicial Council by decree to end all privileges and grants enjoyed by judges<sup>119</sup>. He also canceled the law relating to the Supreme Judicial Council by Decree No. 11 of 2022, dated February 12, 2022, and replaced it with the Interim Supreme Judicial Council.

As a result of this last decree, the council lost its constitutional character. It became a council that enjoys functional, administrative and financial independence that supervises the affairs of the judicial, administrative and financial judiciary<sup>120</sup>, provided that the president of the republic plays a crucial role in everything related to the judicial movement, as he can object to the appointment, appointment, promotion or transfer of every judge or judge. He is nominated to the Interim Su

116 Law No. 34 of 2016 dated April 28, 2016 relating to the Supreme Council of the Judiciary. Chapter one - The Supreme Judicial Council is a constitutional institution that guarantees, within the scope of its powers, the proper functioning of the judiciary and the independence of the judiciary in accordance with the provisions of the Constitution and the ratified international treaties.

117 Chapter 4 of the Law No. 34 of 2016 dated April 28, 2016 relating to the Supreme Council of the Judiciary

118 Presidential Decree No. 2021-117 dated September 22, 2021 relating to exceptional measures

119 Repealed by virtue of Decree No. 4 of 2022 dated January 219, 2022

120 Chapter One: By virtue of this decree, a council with functional, administrative and financial independence shall be created to supervise the judicial, administrative and financial affairs, to replace the Supreme Judicial Council stipulated in Basic Law No. 2016-34 dated April 28, 2016 related to the Supreme Judicial Council, and to be called the "Interim Supreme Judicial Council" and it is based in Tunis.

preme Council, and when he abstains from being appointed<sup>121</sup>, he appoints those who meet the conditions for the plan in question.

The President of the Republic also has the right to request the dismissal of every judge who violates his professional duties based on a justified report from the Prime Minister or the Minister of Justice<sup>122</sup>.

To confirm the dominance of the President of the Republic over the judicial authority, this Decree was revised again by Decree No. 11 of 2022 to strengthen the powers of the President of the Republic in this field and to enable him to relieve each judge of anything that might affect the reputation of the judiciary, its independence, or its good functioning.

The presidential order relating to a judge's dismissal may not be appealed until a final criminal judgment has been issued regarding the acts attributed to him<sup>123</sup>.

121 Article 19 - The President of the Republic undertakes to sign the judicial movement for each category within a maximum deadline of twenty-one (21) days.

The President of the Republic may, within the period mentioned in the first paragraph of this chapter, object to the appointment, appointment, promotion or transfer of each judge based on a reasoned report from the Prime Minister or the Minister of Justice.

In this case, each council shall reconsider the objection subject by substituting the designation, appointment, promotion or transfer within a deadline of ten (10) days from the date of receiving the objections.

The nomination in the High Judicial Plans shall be based on a nomination by the Interim Council of the Judiciary concerned within a list that includes six (6) candidates, without less than three (3) candidates for each of the High Judicial Plans, by presidential order.

The President of the Republic may object to one or more candidacies based on a justified report from the Prime Minister or the Minister of Justice. In this case, the President of the Republic re-elects the President of the Interim Supreme Council of the Judiciary, who in turn refers him to the Provisional Council of the Judiciary concerned to replace the candidate or candidates subject of the objection, and the Council shall do so within a period not exceeding ten (10) days.

122 Article 20 - The President of the Republic has the right to request the dismissal of every judge who violates his professional duties based on a reasoned report from the Head of Government or the Minister of Justice. In this case, the relevant temporary council of the judiciary shall immediately issue a decision to suspend work against the judge concerned, and shall decide on the request for exemption within a maximum period of one month from the date of his undertaking after providing legal guarantees to the person concerned, and in the event of failure to decide, within the specified period for the head of government or the minister of justice Undertaking the file to conduct the necessary research within fifteen (15) days before referring it to the President of the Republic, who then has the power to make a decision to exempt

123 Chapter One - To Article 20 of Decree No. 11 of 2022 dated February 12, 2022, related to the creation of the Interim Supreme Council of the Judiciary, the following provisions are added:

The President of the Republic may, in the event of ensuring or compromising public security or the higher interest of the country, and based on a reasoned report from the authorized authorities, issue a presidential order to dismiss each judge in relation to what may affect the reputation of the judiciary, its independence, or its proper functioning.

A public lawsuit is raised against every judge who is exempted within the meaning of this chapter.

The presidential order regarding the dismissal of a judge can only be appealed after a final criminal judgment has been issued in the acts attributed to him.

Based on this decree, at the beginning of June 2022, the President of the Republic dismissed 57 judges, accusing them of serious charges, including financial and moral corruption, supporting terrorism, and other charges, without any final judicial decisions against them<sup>124</sup>.

The exempted judges responded that they appealed to the Administrative Court, which did justice to them and issued a decision on August 10, 2022, suspending the implementation of a number of these decisions concerning between 47 and 50 judges. A decision that provoked many interactions in the Tunisian judicial and political scene and was received by judges and many political actors as a “victory for the right and the law,” calling for the dismissal of the Minister of Justice for what they considered fallacies based on and according to which the decisions of removal were made.

The judges thought that issuing decisions to stop the implementation of the President's orders for 49 of their colleagues would be the institutional way out of the crisis. Still, the Ministry of Justice refused to implement the decisions because these judges have criminal cases and stated on August 20, 2022, announcing the referral of files to the judiciary related to financial and terrorist crimes against the exempted judges. In Tunisia. Three days later, on August 11, 2022, the Minister sent 27 files to the Public Prosecution Office related to the same judges and authorized the removal of offices, changing the locks of judges' offices, and installing guards at their doors. This represented a flagrant violation of the right to legal protection and disrespect for the independence of the judiciary and caused widespread condemnation among human rights defenders and civil society organizations<sup>125</sup>.

Finally, and as the last stage in violating the independence of the judiciary, on September 20, 2022, the Provisional Judicial Council lifted the judicial immunity from the President of the Association of Tunisian Judges, Anas Al-Hammadi on the grounds of obstructing the freedom of work in the Court of First Instance in Monastir during the judges' strike in June 2022. The decision was taken in response to the request of the Public Prosecutor At the Court of First Instance of Monastir, which undertook a complaint filed by a lawyer against Anas Al Hammadi.

124 What is the truth about exempting a new list of judges in Tunisia?, see: [https://ultratunisia.ultrasawt.com/%D8%A7-%D8%AD%D%A%D%2D%D8%A9-D8%A5%D8%B9%D9%81%D8%A7%D8%A1-D8%D8%A7%D8%A6%D8%D8%A9-D8%A%D8%AF%D8%A%D8%A7%D8%A7%D8%A%D8%A7%D8%A7%D8%A7%D8%A6%D8%B3%D8%9F%D8%A7%D8%A%D8%B1%D8%A7%D8%AA%D8%D8%B3%D8%B3%D8%B3%D8%B3%D8%A7%D8%B3%D8%A9%D8%A7%D9%94%D8%AE%D8%A8%D8%A7%D8%B1](https://ultratunisia.ultrasawt.com/%D8%A7-%D8%AD%D%A%D%2D%D8%A9-D8%A5%D8%B9%D9%81%D8%A7%D8%A1-D8%D8%A7%D8%A6%D8%D8%A9-D8%A%D8%AF%D8%A%D8%A7%D8%A7%D8%A%D8%A7%D8%A%D8%A7%D8%A7%D8%A6%D8%B3%D8%9F%D8%A7%D8%A%D8%B1%D8%A7%D8%AA%D8%D8%B3%D8%B3%D8%B3%D8%B3%D8%A7%D8%B3%D8%A9%D8%A7%D9%94%D8%AE%D8%A8%D8%A7%D8%B1)

125 This position aroused widespread condemnation from many jurists, who considered the statement a “scandal and ridiculous”, according to them, and said that “the Minister of Justice fabricates indictment files for the exempted judges after issuing a verdict that does justice to them.” Implementation of judicial decisions, although they are final and implemented according to the explicit phrase of the law immediately Legal Agenda The file of the exempt judges: After the release of signs of a new crisis Tunisia on 16.08.2022



To completely retreat from the judiciary's independence and end the role of the Supreme Judicial Council, with the 2022 constitution, the judicial authority lost all its powers. It turned into a judicial function subject to the will of the President of the Republic. And an economic council and an administrative council, and each council is in charge of organizing the sector to which it belongs<sup>126</sup>. The judiciary has also taken every guarantee to protect the rights of judges and the transparency of their nomination or exemption since the nomination of the members of each council is by a presidential order by the President of the Republic after their nomination by the concerned council.

Thus, we note that the independence of the judiciary falters in Tunisia and collides with the political will and attempts to control all state agencies, including the judiciary, despite all the struggles waged by civil society organizations and judges to strengthen the independence of the judiciary and protect the rights and freedoms of female citizens. This will result in a violation of the right to access justice.

### The principle of equality and non-discrimination

In addition to the principle of judicial independence, the right to a fair trial is based on the principle of equality before courts and judicial bodies.

This principle is considered one of the most important principles that support the independence of the judiciary, as well as one of the most important principles upon which the judicial system is based, to achieve the confidence of female citizens in the judiciary and become the object of their reassurance. Instead, it is the first building block upon which any just judicial system<sup>127</sup>.

This principle is confirmed in the Tunisian Constitution of 2014, which states in Article 108, "Litigants are equal before the judiciary," in implementation of the provisions of Article 21, which states that: "Citizens are equal in rights and duties, and they are equal before the law without discrimination," as well as in the International Covenant on Civil and Political Rights. Especially Article 14, which states that 1. "All people are equal before the courts..."<sup>128</sup>

According to the interpretation of this article as stated in General Comment No. 32 on Article 14 on the right to equality before courts and tribunals and to a fair trial issued by the Human Rights Committee<sup>129</sup>:

"The right to equality before courts and tribunals and a fair trial is one of the basic elements for the protection of human rights and is a procedural means to maintain the rule of law."

126 Chapter one hundred and nineteen: The judiciary is divided into a judicial judiciary, an administrative judiciary, and a financial judiciary. Each of these districts is supervised by a higher council. The law organizes each of the three councils mentioned

127 Ahmed El-Sawy. About the book mediator in the law of pleadings. Cairo University, August 14, 2010

128 International Covenant on Civil and Political Rights. Adopted and offered for signature, ratification and accession by United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966

129 Human Rights Committee. The ninetieth session. Geneva, 9-27 July 2007 General Comment No. 32. Article 14 - Right to equality before courts and tribunals and to a fair trial. CCPR/C/GC/32/23 August 2007



It also guarantees the right to equal treatment before courts and judicial bodies in general, the principles of equal access to courts, and equal legal opportunities. It ensures the treatment of the parties in the case concerned without any discrimination.

Article 14 of the Covenant includes the right of access to the courts to adjudicate any criminal charge or the rights and obligations of any civil lawsuit. The effective administration of justice must be ensured in all such cases to ensure that no one is deprived, in procedural terms, of their right to seek justice.

And always in the same comment, it was stated that “the systematic failure of an individual to access the competent courts or judicial bodies, whether by law or de facto, violates the guarantee contained in the first paragraph of paragraph 1 of Article 14. This guarantee prohibits the exercise of any operations Discrimination in access to courts and tribunals is not based on law and cannot be justified on objective and reasonable grounds. This guarantee is violated if certain persons are prevented from bringing claims against others for reasons such as race, color, gender, language, religion, political opinion, national or social origin, property, birth, or another status.”

As a rule, the right to equal access to courts relates to access to courts of the first instance. It does not address the question of the right to appeal or other remedies and guarantees equal legal opportunity. This means that all parties have the same procedural rights unless there is a distinction based on the law, has objective and reasonable justifications and does not have an actual unfairness to the defendant. Equal legal opportunity would not be achieved if, for example, only the prosecutor and not the accused were allowed to appeal a particular decision. The principle of equality between the parties also applies to civil lawsuits. It requires, among other things, that each party be allowed to object to all arguments and evidence presented by the other party. In exceptional cases, this right may require the provision of assistance in the form of a free interpreter to a poor party to the case who would not otherwise be able to participate on an equal footing in the trial proceedings or if it was not possible to cross-examine his witnesses.

Equality before courts and tribunals also requires that similar legal procedures be followed in dealing with similar cases. For example, if a particular class of cases is considered using exceptional criminal procedures or courts or tribunals expressly set up for this purpose, then objective and reasonable reasons must be given to justify this distinction.

For equality to be achieved, every citizen must have the right to resort to the judiciary without discrimination between litigants and between male and female litigants.

As a result, to the extent that the right to a fair trial is based on non-discrimination and equality, the role of judges is to protect people from discrimination and ensure their enjoyment of the right to equality, and impose penalties for those who act in a discriminatory manner or commit discriminatory acts, primarily that the Tunisian constitution is based on the principle of equality between male and female citizens in rights and duties.<sup>130</sup>

<sup>130</sup> Chapter 23 of the 2022 constitution requires that: Male and female citizens are equal in rights and duties, and they are equal before the law

## Legal Framework for the Right to Access to Justice

This section focuses on international and national texts that recognize and guarantee the right to a fair trial.

### The right to a fair trial in local texts. Several texts deal with the right to a fair trial, the most important of which is the constitution.

Tunisian constitutions differ concerning the right to a fair trial.

The 1959 constitution, the first constitution of an independent state, did not include the right to a fair trial in the rights it guaranteed, but it recognized some aspects or elements of the right to a fair trial. In Chapter 12, he emphasized that: “Reservation is subject to judicial oversight, and no precautionary suspension shall take place without judicial permission. It is prohibited to subject anyone to arbitrary detention or arrest.”

Also considered in the second paragraph of the same chapter is that “everyone accused of a crime is innocent until proven guilty in a trial in which the necessary guarantees for his defense are guaranteed.”

On the other hand, Chapter 13 stipulates in the first paragraph that: “Punishment is personal and can only be by a pre-established legal text, except for the accompanying text.”

As for the 2014 constitution, for the first time, it enshrined a set of fundamental principles that guarantee the right to a fair trial<sup>131</sup> and access to justice by what is customary within international treaties since it recognized at the same time the right to litigation and the right to defense and considered that disputes should be settled within reasonable deadlines (It is supposed to be determined by the jurisprudence of the judiciary according to the nature of the conflict, which has not yet taken place) He also considered that the lawyer, which was described as an assistant to the judiciary, has become a partner in the administration of justice and an original constitutional role in defending rights and freedoms<sup>132</sup>.

In the 2022 constitution, in implementation of the principle of equality between male and female citizens in rights and duties stipulated in Article 23, the right to a fair trial was established in Article 33: “The accused is innocent until proven guilty in a fair trial in which all defense guarantees are guaranteed in the trial phases.” and trial.” Article 124 of the same constitution affirms that: “Everyone has the right to a fair trial within a reasonable time. Litigants are equal before the judiciary.

<sup>131</sup> Article 108 - Everyone has the right to a fair trial within a reasonable time, and litigants are equal before the judiciary.

The right to litigation and the right to defense are guaranteed, and the law facilitates recourse to the judiciary and guarantees judicial aid to those who are financially unable.

The law guarantees litigation at two levels.

Court sessions are public unless the law requires their secrecy, and the verdict is only declared in a public session.

<sup>132</sup> Chapter 105 – The legal profession is a free and independent profession that participates in the administration of justice and the defense of rights and freedoms.

The lawyer enjoys the legal guarantees that guarantee his protection and enable him to perform his duties

The right to litigation and the right to defense is guaranteed. The law facilitates recourse to the judiciary and guarantees the financially incapable of judicial assistance.

Court sessions are public unless the law requires them to be confidential, and the verdict is only declared in a public session.

In guaranteeing the right to a fair trial, the constitution establishes the principle of personal punishment and the non-retroactivity of laws, except in the case of the accompanying text<sup>133</sup> and the conditions of arrest or detention of a person, provided that “the state works to guarantee the right to litigation at two levels” (Chapter 123).

At the level of legislation, reference can be made to Basic Law No. 58 of 2017 on the elimination of violence against women<sup>134</sup>, which is of great importance since it is based on a comprehensive approach to addressing violence in its various manifestations and forms and in all public and private spaces in which it is practiced by preventing violence, protecting the victim woman and making a commitment. And track down and punish the perpetrators.

Among the features of this law is that it defines the victim as: “The woman and children residing with her who have suffered physical, moral, psychological and economic harm, or have been deprived of enjoying their freedoms and rights, through actions, words, or cases of negligence that constitute a violation of the laws in force.”<sup>135</sup>

Recognizing the victim’s status entails protecting her and ensuring that she enjoys a set of rights defined in Chapter 13 of the same law<sup>136</sup>, which is essentially the right to legal protection appropriate to the nature of the violence practiced against her in a manner that guarantees her security, safety, physical and psychological integrity, and dignity while respecting her privacy and the administrative, security and judicial measures required. Information and legal guidance on the provisions regulating litigation procedures and available services, the obligatory enjoyment of legal aid, and fair compensation for victims of violence.

133 Chapter Thirty Four:

Punishment is personal and can only be in accordance with a pre-established legal text, except in the case of the text attached to the accused.

Chapter thirty-five:

A person may not be arrested or detained except in flagrante delicto or by a judicial decision, and he is immediately informed of his rights and of the charges against him, and he may appoint a lawyer. The period of suspension and retention shall be determined by law.

134 Organic Law No. 2017-58 dated 11 August 2017, relating to the elimination of violence against women

135 See Chapter Three of the same law on definitions

136 Article 13: A woman who is a victim of violence and the children living with her enjoy the following rights:

- The appropriate legal protection for the nature of the violence practiced against her in a manner that guarantees her security, safety, physical and psychological sanctity and dignity with

Respecting its privacy and the administrative, security and judicial procedures it requires.

- access to information and legal guidance on the provisions regulating litigation procedures and the services available,

Obligatory enjoyment of legal aid.

- Fair compensation for victims of violence in the event that implementation is impossible for the one responsible for it, and the state replaces the victims in finding a solution

the amounts spent,

- Health and psychological follow-up and appropriate social accompaniment, and the enjoyment of the public associative undertaking when necessary, including:

Listening, immediate accommodation within the limits of the available possibilities.

According to articles 4, 26, and 39 of the same law<sup>137</sup>, the state must surround the victim woman, provide her with legal assistance<sup>138</sup>, respond to all demands for protection and assistance<sup>139</sup>, inform her of all her rights, and enhance her capabilities by legally assisting her.

Legal aid is an essential component of access to justice. This is because, according to Recommendation No. 33 of the CEDAW Committee (paragraph 36), “the provision of assistance, advice and legal representation in judicial and quasi-judicial procedures, free of charge or at low prices, in all areas of the law, constitutes a crucial aspect of women’s access to economic justice systems in terms of access to justice systems.”<sup>140</sup>

Thus, we note that the right to a fair trial has a constitutional character with all its components since the constitution adopted the references of a fair trial, the right to defense, the presumption of innocence, and the challenge to the unconstitutionality of laws before the Constitutional Court. It is complemented by Law No. 58 of 2017 on violence against women and the international and regional agreements ratified by the Tunisian state.

### **The right to a fair trial in international and regional agreements ratified by the Tunisian state**

Since 1948, the Universal Declaration of Human Rights<sup>141</sup> has stipulated, in particular, the principles of equality before the law, the presumption of innocence, and the right to a fair trial. It also affirmed the right of every person to enjoy legal protection without discrimination and the right to resort to the courts for effective redress from any acts that violate the fundamental rights granted him<sup>142</sup>. The constitution or the law recognizes the right of every person to have his case heard by an independent and impartial court openly and fairly<sup>143</sup>.

137 As stipulated in Chapter Four of the same law: The state is required to: respect and guarantee the confidentiality of the victim’s private life and personal data;

Providing equal opportunities to obtain services in all regions and regions,

Providing legal guidance to our victims of violence and enabling them to obtain legal aid.

Undertaking to accompany victims of violence in coordination with the competent authorities in order to provide social, health and psychological assistance necessary and to facilitate their integration and accommodation.

138 Article 26:1 - The competent unit shall obligatorily inform the victim of all her rights stipulated in this law, including:

Claiming her right to protection to a family judge

139 Article 39 Each person entrusted with the protection of women from violence, including agents of the judicial police, representatives of child protection, agents of health, women’s affairs, family, social affairs, education and others:

- respond promptly to every request for assistance or protection made by the victim directly,
- Responding immediately to every request for assistance or protection within the meaning of Article 14 of this Law,
- Giving priority to notification of perpetration of violence that threatens the physical, sexual and psychological integrity of women and children residing with them,
- Listening and diagnosing when receiving complaints by interviewing parties and witnesses, including children, in separate rooms and ensuring their inviolability;
- Inform the complainant of all her rights

140 Committee on the Elimination of Discrimination against Women. General Recommendation No. 33 on women’s access to justice. 2015.

141 The General Assembly adopted the Universal Declaration of Human Rights in Paris on 10 December 1948 as the common standard to be aimed at all peoples and nations. It sets out, for the first time, basic human rights to be universally protected

142 This is the content of Articles 8 and 7 of the Universal Declaration of Human Rights

143 Article 10 of the Universal Declaration of Human Rights

### The right to a fair trial in international treaties

After the Universal Declaration of Human Rights and the emergence of the two Covenants in 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, all human rights were recognized mechanisms that were established to ensure their enjoyment.

Regarding the right to a fair trial, Article 14 of the International Covenant on Civil and Political Rights recognizes the right to equality before the courts and the right to have access to the courts:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against a person or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court under exceptional circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his/her own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in his/her presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against himself or to confess guilt.

This article reaffirms the right of everyone to seek remedies and reparations for violations of their rights.

As for the Convention on the Elimination of All Forms of Discrimination against Women, it requires states parties to Article 2 of it to impose legal protection of women's rights on an equal basis with men, and to ensure effective protection for women, through the competent courts and other public institutions in the country of any discriminatory act.

In the same context, General Recommendation No. 28 issued by the Committee on the Elimination of All Forms of Discrimination against Women<sup>144</sup> in Paragraph 17 "... states parties have an obligation to ensure the protection of women from discrimination practiced by public authorities, the judiciary, organizations or companies or ordinary persons, in the public and private spheres. Such protection shall be provided by competent courts and other public institutions, and shall be enforced through sanctions and remedies, as appropriate. States parties shall ensure that all governmental bodies and agencies are fully aware of the principles of equality and non-discrimination on a sexual or gender basis, and that sufficient training and awareness-raising programs should be prepared and implemented in this regard.

Paragraph 32 of the same recommendation emphasized: "The importance of the obligation of States Parties to ensure that legislation prohibiting discrimination and promoting equality between women and men and adequate remedies are provided for women who are subject to discrimination in violation of the Convention. This obligation requires that States Parties provide redress to women who are entitled to their rights. Under the Convention, without reparation the obligation to provide an adequate remedy would not have been fulfilled. These remedies include various forms of reparation, such as monetary compensation, restitution, rehabilitation, reinstatement and measures of satisfaction such as public apologies, public memoranda and guarantees of non-repetition and to introduce changes to relevant laws and practices and bring to justice perpetrators of violations of the human rights of women."<sup>145</sup>

Paragraph 34 requires states parties "to ensure that women can invoke the principle of equality in support of complaints of acts of discrimination committed in violation of the Convention by public officials or private actors and that women have access to affordable, available and timely remedies, with the provision of aid and assistance." necessary, to be decided in a fair trial by a competent and independent court or tribunal, as appropriate. In cases where discrimination against women also constitutes a violation of other human rights such as the right to life and physical integrity, in cases of domestic violence and other forms of violence. For example, states parties have an obligation to bring criminal proceedings, bring perpetrators to justice and impose appropriate criminal penalties, and states parties should provide financial support to independent associations and centers that provide legal resources to women in the course of their work to educate women about their rights to equality and help them seek to remedy discrimination.

With regard to the Convention on the Rights of the Child<sup>146</sup>, it includes fair trial guarantees for children accused of violating the provisions of the penal laws, as Article 37 stipulates: "(D) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appro-

144 General Recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. December 16, 2010.

145 Economic and Social Commission for Western Asia. Report on the Status of Arab Women Women and Girls' Seeking Justice: From Ratification of International Instruments to Implementation. 2015

146 Convention on the Rights of the Child adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 44/25 of 20 November 1989

prate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action”

Article 40 also Include :

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
    - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
    - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
    - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
    - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:



- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

With regard to the Rome Treaty relating to the events of the International Criminal Court<sup>147</sup>, Article 67.1 defines the rights of the accused and affirms that:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
- (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
- (c) To be tried without undue delay;
- (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;
- (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (h) To make an unsworn oral or written statement in his or her defence; and
- (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

<sup>147</sup> Rome Statute of the International Criminal Court adopted in Rome on 17 July 1998



## The right to a fair trial in regional agreements

At the regional level, we find several conventions establishing the right to a fair trial, including the European Convention on Human Rights and the American Convention on Human Rights. Still, we will content ourselves with presenting the African Charter on Human and Peoples' Rights<sup>148</sup> because the Tunisian state has ratified it<sup>149</sup>.

The African Charter on Human and Peoples' Rights is concerned with the right of access to justice, the right to litigation and proof of innocence, the right to defense and the right to a fair trial. It also enshrined the principle of non-discrimination, in its preamble that "freedom, equality, justice and dignity are essential objectives to achieve the legitimate aspirations of African peoples." Article 3 states that "1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law".

Article 7 guarantees the right of everyone to litigation, it stated:

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

The Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights<sup>150</sup> explicitly sets out the obligations of states parties to guarantee women's right to seek justice. Article 8 of it states:

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

- a) effective access by women to judicial and legal services, including legal aid;
- b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;

148 Charter enacted and adopted by the Assembly of African Presidents at its 18th Ordinary Session in Nairobi (Kenya) 1981. Article 7

1. The right to litigation is guaranteed to all, and this right includes:

(a) the right to have recourse to the competent national courts to consider an act that constitutes a breach of the recognized fundamental rights, which are enshrined in conventions, laws, regulations and prevailing custom;

b- A person is innocent until proven guilty before a competent court,

(c) the right to defense, including the right to choose a defender;

d- The right to be tried within a reasonable time and by an impartial court.

2. A person may not be convicted of an act or omission that does not constitute a crime punishable by law at the time of its commission, and there is no penalty without a text, and the penalty is personal.

149 The Tunisian state acceded to this charter by virtue of Law No. 64 of 1982 dated August 6, 1982

150 Ratified by the Tunisian state by virtue of Basic Law No. 33 of 2018 dated 6 June 2018

- c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
- d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- e) that women are represented equally in the judiciary and law enforcement organs;
- f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women<sup>151</sup>.

In the same vein, in 2006 the African Commission on Human and Peoples' Rights issued Resolution No. 100 "Lilongwe" on access to legal aid in the criminal justice system, calling on African countries to guarantee the right to a fair trial and fair access to justice and legal aid.

## Conclusion

Undoubtedly, most international, regional and local texts recognized the right to a fair trial in its various components, which indicates the existence of a domestic and international judicial system that guarantees respect for human rights on the basis of equality and without discrimination. It is possible to limit these rights to the right of access to justice, the right to a public trial, the right to inform each person of his rights, the right to legal aid, the right to be protected from torture by various means, the right to self-defense and protection of judicial guarantees guaranteed by law, the right of every opponent to present his means of defense and firm evidence and to ensure respect for the principle of confrontation with the opponents, the right to discuss witnesses, the judges' commitment to impartiality and independence, respect for the principle of non-retroactivity of laws, except in the case of the text attached to the accused and the presumption of innocence.

However, despite their importance, in many cases these rights remain dead words, not respected for several political and cultural reasons related to compromising the independence of the judiciary, lack of application or respect of laws, distrust in the judiciary and the state, high illiteracy, especially among women, and citizens' lack of awareness of their rights and freedoms. know her. This would impede the citizens' enjoyment of this right in its various components.

151 Maputo Protocol on the Rights of Women in Africa Article 8: Access to justice and equal protection before the law Women and men are equal before the law and each has the right to benefit from equal protection before the law. States Parties shall take all appropriate measures to ensure that:

- (a) Effective use by women of judicial and legal services, including legal aid services;
- (b) Support local, national, regional and continental initiatives directed at facilitating women's access to legal services, including legal aid services;
- (c) Establish adequate educational and other appropriate structures, paying particular attention to women and making everyone aware of their rights;
- (d) Provide law enforcement bodies at all levels with the necessary capacities to properly interpret and effectively apply gender equality;
- (e) Equal representation of women in judicial and law-making institutions;
- (f) Reform existing discriminatory laws and practices to promote and protect women's rights.

## Difficulties and challenges

Tunisia's female and male citizens face significant difficulties in accessing justice despite international and local recognition of this right.

To present the difficulties and challenges, we chose to address an issue that concerns women, given the fragility of their situation, especially when they are subjected to violence and discrimination.

### Crisis of trust in the judiciary

In general, there is a reluctance of male and female citizens to access the judiciary due to several reasons, including the lack of trust in state institutions, including the judiciary.

The lack of trust is due to the lack of vision among most actors in the field of justice reform and the executive authority's interference in the judiciary's work to undermine its independence and its attempts to politicize the judiciary in the Bourguiba and Ben Ali eras.

Since 2011, new actors have intervened in the functioning of the judiciary, such as political parties and businessmen, accusing some judges of corruption and serving the interests of wealthy people, prestige, and political leaders, as well as considering the judiciary a function and not an authority since 2022.

### Impact of the covid-19 pandemic on the judiciary

During the Covid pandemic, judicial spaces and many other spaces were closed, which on the one hand, led to the disruption of the judicial process and the impossibility of filing complaints.

On the other hand, it fueled a feeling of impunity for some people and the spread of violence and criminality, especially towards women, where official statistics indicate that the rate of violence increased seven times in 2021 compared to the previous situation<sup>152</sup>.

### Weak women's access to justice

The percentage of women's access to the judiciary remains weak. In an intervention on the occasion of a symposium on women's access to justice between the recognition of the right and its implementation. For example, the judge of the Kasserine Administrative Court in the Kasserine governorate Afaf Hawashi<sup>153</sup>, said that the first instance department in the Kasserine Administrative Court adopted for the first time in various Tunisian courts, the gender approach in cases brought by women; in this context, the rates of women's access to the administrative judiciary were weak, according to the study conducted by the Kasserine Department, which proved that the percentage of causes related to water and electricity, for example, does not exceed 10% of claims brought by women.

<sup>152</sup> <http://www.femmes.gov.tn/ar/2022/06/06>

<sup>153</sup> Tala Solidarity Association in partnership with the Euro-Mediterranean Network for Rights. A regional forum on women's access to justice between approving the right and implementing it: the example of the state of Kasserine. Sbeitla, Kasserine Province. Republic of Tunisia. November 2000.

## Existence of discriminatory laws

In Tunisia, we find discriminatory laws that do not always depend on equality between women and men, especially in the field of the family, where women to this day are subject to the authority of men and do not enjoy the same rights regarding guardianship over children, family responsibilities, and the enjoyment of property when it is hereditary. This is because the Personal Status law, which has been regulating family relations since 1956, still embodies the patriarchal system and consolidates the husband's authority within the family with its various repercussions on the family and discrimination when ownership is transferred through inheritance<sup>154</sup>.

We also find laws that do not criminalize some aspects of discrimination, such as discrimination based on familial status and civil status or discrimination in decision-making positions and assuming responsibilities in state institutions.

## Failure to implement laws protecting women from violence

A study by the "Women's Observatory" of the "MRA" Association in March 2021 indicates 0.5%. The judgments issued in violence cases were based on Law No. 58 of 2017 related to eliminating violence. Most cases of violence against women were judged based on the Personal Status Code (64%) 3%. Of the provisions adopted, the provisions of the Constitution and 52%. Civil and Commercial Procedures Law<sup>155</sup>.

## Failure to respect international obligations by the state

The state also does not respect the provisions of ratified international conventions, especially the Convention on the Elimination of All Forms of Discrimination against Women, which states parties, including Tunisia, requested to adopt legislation and policies to eliminate discrimination, especially what is included in its second article, which displays the necessity:

- a) incorporating the principle of equality between men and women in their national constitutions or other appropriate legislation, if this principle has not yet been contained therein, and ensuring the practical realization of this principle through legislation and other reasonable means;
- b) Take appropriate legislative and non-legislative measures, including applicable penalties, to prohibit all discrimination against women."<sup>156</sup>

However, the Tunisian state did not respect its international obligations. It contented itself with approving the principle of equality between female and male citizens in the constitution<sup>157</sup> without activating it on the level of reality. Some laws depend on the principle of non-discrimination, especially in the social and professional fields, but they are often not applied and not respected by the concerned authorities<sup>158</sup>.

154 An order dated August 13, 1956 regarding the issuance of the Personal Status Code

155 <https://www.webmanagercenter.com/2021/03/22/465345/64-des-jugements-dans-les-affaires-de-violence-a-legendes-femmes-se-basent-sur-les-dispositions-du-csp-rapport/>

156 Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women

157 Chapter 23 of the Tunisian constitution for the year 2022

158 International Commission of Jurists. Obstacles facing women's access to justice in Tunisia in the light of

## Fear of stigma and societal reactions

A study prepared by the Tunisian Association of Democratic Women in 2021 found that women face several difficulties in accessing justice, including fear of stigmatization and reactions from the family environment or the view of others, or ostracism from society. For a divorced woman or from the family's reaction when she asks for a divorce or when she complains to the judiciary.

## Lack of knowledge of rights

Among the difficulties, we can also mention the lack of knowledge of rights, legal procedures, and procedures for obtaining legal aid and access to information due to the high rate of female illiteracy, especially in the popular circles<sup>159</sup>, which represents 25%, and which can reach 60% in rural areas.

Financial difficulties are prevalent in most circles, where women complain about the lack of financial means to cover the costs of access to justice.

## Difficulties related to security and judicial institutions

The same study highlighted difficulties within the security and judicial institutions. Although the law on eliminating violence in Chapter 25 punishes any security agent who tries to pressure the victim woman to waive her rights<sup>160</sup>. This chapter was not always respected by the police. This year, the security agent asked the victim's wife to waive her case and return to the house, but the husband killed his wife<sup>161</sup>.

Concerning the judicial institution, the law relating to the elimination of violence and in Chapter Four relating to procedures, article 22 stipulates that "the public prosecutor assigns one or more assistants to receive complaints related to violence against women and to follow up on investigations into them. And to "allocate independent spaces within the courts of the first instance to include judges specialized in cases of violence against women at the level of the public prosecution, investigation and family judiciary" and impose the creation of independent offices and spaces and the formation of judges specialized in issues of violence against women in Article 23.

international law and international standards. 2016. see

<https://www.icj.org/wp-content/uploads/2016/06/Tunisia-Memo-WA2J-Advocacy-Analysis-brief-2016- EN.pdf>

159 These are the latest statistics for the year 2021. see

<https://www.alchourouk.com/article-Mohamed-Trabelsi-percentage-25-percent-of-Tunisian-illiterates-and-more-than-60-percent-of-the-drop-out-early-for-8-01-2021>

160 Article 25 The agents of the competent unit, in the event they receive a notification and notification of a case of flagrante delicto of a crime of violence against women, must immediately turn to the spot to conduct research after informing the Public Prosecutor.

A person affiliated with the unit specialized in investigating crimes of violence against women who intentionally exerts pressure on the victim or any other type of coercion to get her to give up her rights or to change the content of her complaint or to retract it shall be punished with imprisonment from one to six months.

161 It is reported that this murder took place in the city of El Kef on Sunday, May 09, 2021, where Aoun in the National Guard killed his wife with several shots he fired from his professional weapon a day after his appearance before the Public Prosecution in the case of submission, and his release after his wife dropped her complaint against him. Which caused a media uproar about the circumstances of this crime, especially with regard to the release of the offender by the court. <https://www.hakaakonline.com/article/131437-Case-Rebekah-Al-Sharni-Accountability-President-Association-Women-and-citizenship-in-Kaf-about-covering-on-serious-information/131437/>

But in reality, except for some courts in the governorate of Tunis, no spaces have been allocated, nor the formation of judges specialized in cases of violence against women.

In addition, the judges' view is the same as that of society, as some of them try to influence the victim woman to avoid scandal and protect the family's honor despite conclusive evidence of violence, especially in the case of rape.

As a result, the victim woman loses all ability to defend herself and is usually shocked and does not find the necessary legal support to get out of her crisis.

Even if the number of women judges in the judiciary has developed and reached 45.6% of the total number of 2337 judges in 2019<sup>162</sup>, the status of women victims of violence has not changed, and the view of women judges in most of them does not differ from the position of judges.

We also note that the absence of offices or cells to receive and direct women victims of violence in the courts would lead to them losing the most specific information related to their cases, especially as it stops them from seeking legal assistance, guidance, and counseling due to the lack of training specialists in receiving and guiding women victims of violence to ensure their protection, especially providing respect for privacy and not Addressing them among the rest of the issues of public right. This is even though the law on the elimination of violence requires in Chapter 13 on the protection that "a woman who is a victim of violence and the children living with her enjoy the following rights:

- Appropriate legal protection for the nature of the violence practiced against her in a manner that guarantees her security, safety, physical and psychological sanctity, and dignity while respecting her privacy and the administrative, security, and judicial measures required.
- Access to information and legal advice on the provisions regulating litigation procedures and the services available.

## Double the enjoyment of legal aid

Among the problems women victims face are the delay in procedures, the length of the litigation period, and the judicial aid.

Despite the stipulation of legal aid within the framework of protection (Chapter 13, the obligatory legal assistance enjoyment.) and the existence of a law related to legal aid since 2002<sup>163</sup>, legal aid is still challenging to achieve, and many women are ignorant of this right to legal assistance or do not know how.

The lack of legal aid impedes access to justice, infringes on women's rights, and limits their protection.

162 Mohamed Afif Jaidi, the Tunisian judge, will see parity in the horizon of 2021: for the first time, she is the president of the Tunis Court of Appeal. The Legal Agenda on the History of the Tunisian Judge Charf-Tanasuf in the Horizon-20/<https://legal-agenda.com/4.07.2019>

163 = Law No. 2002-52 dated June 3, 2002, relating to the granting of judicial aid, as amended by Law No. 2007-27 dated May 7, 2007.

This led to the issuance of a joint circular from the Acting Minister of Justice and the Minister of Women, Family, and Seniors to facilitate the procedures for obtaining mandatory legal aid and the right to legal counseling for victims of violence against women<sup>164</sup> and to expedite the consideration of the request for judicial assistance and not to restrict the granting of legal aid provided that the victim proves that it is without income And being satisfied with what the victim provides to prove the harm inflicted on her, such as the initial medical certificate, making the necessary information available, guiding women about their rights, respecting their will, and raising awareness of the role of the judicial advisor in facilitating access to information.

## Conclusion

Despite the recognition of the right to a fair trial in the Tunisian constitution and the obligations of the Tunisian state through the ratification of the relevant international conventions and the adoption of the principles on which the right to access to justice is based, its enjoyment faces many difficulties stemming from the absence of public policies based on human rights.

In addition, there is contentment with approving rights without activating them and without ensuring that they are respected on the ground through establishing constitutional and judicial bodies to protect them. Moreover, there is a lack of respect for the principles on which the right to access to justice is based on and a negative view that citizens hold towards the judiciary.

All the previous would lead to reluctance to enjoy this right and results in a lack of access to the judiciary to defend legitimate issues, undermine all the gains and guarantees that male and female citizens have obtained since 2011, and develop a sense of insecurity among all citizens who have lost confidence in state institutions, especially in the judiciary.

However, this reality cannot lead us to accept these setbacks but instead prompts us to make recommendations to endorse this right and all human rights and to strengthen the pillars of the rule of law and democracy.

---

164 Joint Circular from the Acting Minister of Justice and the Minister of Women, Family and the Elderly No. 183 of 2021 dated March 8, 2021 on facilitating procedures for obtaining mandatory judicial aid and the right to legal counseling for victims of violence against women

## Recommendations

To overcome the observed imbalances and facilitate the access of male and female citizens to justice, the following recommendations must be made:

### Informing people of their rights and making them aware of the importance of enjoying them

Access to justice depends on informing people of their rights and the remedies available to them to address violence. If a person knows that s/he has rights and entitlements, his view of his/her status in society may change. Even if the appropriate steps are not taken to realize this, educating all men and women, children, and youth about human rights would change the social culture in terms of evading justice and putting an end to justice.

### Right to legal aid

Obstacles to the provision of legal aid must be removed, and the financial and human resources necessary to make legal aid available to all male and female citizens who need it must be increased.

On this subject, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems issued in 2013 state that this assistance shall be provided without the imposition of justice, without any financial cost on those who do not have the financial resources or when it is needed<sup>165</sup>.

About women, paragraph 52 of these principles states: “States should take applicable and appropriate measures to guarantee women’s right to legal aid, including the following:

- (a) Develop an active policy to integrate a gender perspective into all legal aid policies, laws, procedures, programs, and practices to ensure gender equality and access to justice on an equal and equitable basis.
- (b) Take practical steps to ensure that female lawyers are available, whenever possible, to represent female defendants, accused and victims.
- (c) To provide assistance, legal advice and support services in court in all legal procedures to female victims of violence to ensure their access to justice and to avoid indirect abuse, and to provide other services that may include translation of legal documents when requested or necessary.”

### Legal reforms by the authorities

Establishing an equal democratic climate to achieve collective security and work to rebuild confidence in state institutions, and develop independent constitutional bodies capable of protecting the rights and freedoms of citizens and citizens

<sup>165</sup> United Nations Principles and Guidelines for Access to Legal Aid in Criminal Justice Systems. 2013. Resolution adopted by the General Assembly on the basis of the report of the Third Committee A (45/67/A) / RES/67/187 <https://www.unodc.org/documents/justice-and-prison-reform/N1248980A1.pdf>



Establishing a constitutional court that monitors the constitutionality of laws

Creating unified indicators and circulating them at the national level to monitor violations in general and setting up a mechanism to monitor statistics related to human rights violations and violence against women that are available to associations, taking into account the requirements related to the protection of personal data.

Adopt legislation that guarantees equality and prohibits discrimination in all aspects of life.

Reviewing and repealing the provisions of discriminatory laws, especially the provisions of the Personal Status Code, which are still discriminatory.

Establish adequate and accessible legal protection measures against discrimination, violence, and unequal treatment in law and practice.

### **Adoption of international conventions when issuing judgments and judicial decisions**

Ensuring that the provisions of international human rights treaties can be used consistently, enforce and demand their application and adoption in sentencing, including providing appropriate training for all law enforcement officials, including judges, prosecutors, police, and lawyers.

### **Remove all obstacles related to the administration of justice**

Whether at the structural or institutional level, it is necessary to work to remove all obstacles related to the administration of justice and concerning the knowledge and behavior of justice sector workers, including by putting in place legal mechanisms and procedures that take into account gender differences and ensuring the availability of remedies designed to respond to the needs of female citizens.

Revise existing accountability mechanisms, for example, by establishing effective oversight and monitoring mechanisms and developing clear codes of conduct, guidelines, guidance, and mechanisms to hold accountable those responsible for not complying with them;

Training of judges, prosecutors, the police, and other state actors at all levels on Tunisia's domestic and international obligations to ensure women's access to justice, including gender equality and non-discrimination, and eliminate other discriminatory and abusive behaviors based on gender stereotypes among officials, especially police officers.

Provide adequate financial and human resources to support women's access to the Tunisian justice system, including appointing and training more female officers on gender equality and non-discrimination.

Taking the necessary steps to address the societal and practical factors that impede the access of citizens to justice, including Studying their privacy and taking appropriate financial measures to ensure their access to justice.

## **Realization of human rights**

Promoting justice for the implementation of human rights principles through the formulation of a systematic vision of the state of justice and the possibility of access to it in Tunisia. As well as developing practical visions that fit the needs of the judicial and justice facility based on the principles of human rights in their universality and comprehensiveness and far from political and ideological trends, particularly about emerging economic institutions, minorities, and marginalized groups.

## **Improving access to justice**

Put in place various mechanisms to ensure all citizens have real access to justice. Among these mechanisms is a review of the judicial map, which will enable the service of citizens through establishing district courts in rural geographic areas that witness a scattered population. Likewise, updating the procedures towards more flexibility and speed will enable the most significant number of vulnerable people to benefit from judicial aid, which is one of the strengths of the justice system in Tunisia.

## Appendix

### **A joint circular from the Acting Minister of Justice and the Minister of Women, Family and Seniors No. 183 of 2021 dated March 8, 2021 on facilitating procedures for obtaining mandatory judicial aid and the right to legal counseling for victims of violence against women.**

Joint Circular from the Acting Minister of Justice and the Minister of Women, Family and Seniors

To the ladies and gentlemen, heads of the courts of first instance, prosecutors of the republic, heads of justice aid offices, those charged with judicial guidance, ladies and gentlemen, regional delegates for women and the family, delegates for the protection of children and heads of centers for the care of women and children victims of violence.

the topic:

References: Chapters 46 and 108 of the Constitution

Articles 4, 12, 13 and 39 of Basic Law No. 2017-58 dated August 11, 2017, relating to the elimination of violence against women

The importance of judicial aid and legal guidance in ensuring that victims of violence against women have recourse to the judiciary, in implementation of the provisions of articles 46 and 108 of the constitution and in implementation of the requirements of Basic Law No. 2017-58 dated 11 August 2017, related to the elimination of violence against women.

And according to the difficulties that were observed in the application of Basic Law No. 58 of 2017, especially Chapter 13 of it, related to ensuring legal aid and legal guidance for women victims of violence against women. Considering the delay observed in the consideration of the demands for obtaining justice aid by women victims of violence, and the discrepancy in the applications by subjecting those demands in a number of cases to some conditions and procedures stipulated in Law No. 2002-52 dated June 3, 2002 relating to the granting of judicial aid Which is inconsistent with the stipulation of Basic Law No. 58 of 2017 on the obligatory nature of judicial aid for victims of violence against women.

And in the interest of the good application of the aforementioned law aimed at protecting victims and children residing with them within the meaning of Chapter 3 of Basic Law No. 58 of 2017 and facilitating their enjoyment of their rights, especially the right to obligatory legal aid and timely legal guidance.

In the context of coordination between the Ministry of Justice and the Ministry of Women, Family and the Elderly, with the aim of standardizing applications by the justice aid offices, developing methods of dealing with complaints of violence against women and good law enforcement, the following measures are intended to be implemented:

- With regard to the obligation of judicial aid:
- Expedite the consideration of requests for obligatory legal aid through the immediate commitment of the head of the legal aid office without stopping at the regular session of the office in accordance with the provisions of Chapter 9 of Law No. 52 of 2002.

- Not restricting the granting of legal aid on the condition that the victim proves that she has no income or that her fixed annual income is limited and does not meet the expenses of litigation or execution.
- Be satisfied with what the victim submits to prove the harm inflicted on her as a result of the violence inflicted upon her, such as the initial medical certificate, if it is available, and not to stop providing what is useful for the complaint in general, such as a copy of the criminal investigation report.
- Regarding judicial guidance:
  - Work to provide the appropriate legal information to the victim of violence by guiding her on:
  - its rights stipulated by the aforementioned Law No. 58 of 2017,
  - The provisions regulating litigation procedures and the services available at the level of protection and penal prosecution, according to the nature of the violence inflicted upon them, their needs and their particularities,
  - Respecting the will of the victim to take the appropriate decision for her, following her legal guidance,
  - Work to educate litigants about the importance of the role of the judicial advisor in facilitating access to information and legal guidance for victims of violence.

We call upon all concerned ladies and gentlemen judges in all courts to work towards the proper implementation of the requirements of this joint publication.

We also call on all those responsible for the institutions that refer to the Ministry of Women, the Family and the Elderly, especially the regional delegates for women and family affairs, the delegates for the protection of children, the centers for the care of women and children victims of violence, and all the institutions involved to work on disseminating the provisions of this publication and raising awareness of its content to the public.

## Conclusion and the Way Forward

The studies in this volume have offered an analysis of realities on the ground facing the right to access justice and that of the justice sector in selected Arab countries. While each country is subject to own unique historical trajectory and sociopolitical dynamics, the pages that follow look at the common challenges with a view to envision a joint agenda for positive change.

### Common challenges

The analysis in this volume suggests there are common challenges to the Arab countries regarding the enabling environment, the legal framework, supply of services, the demand of justice, and impact of the COVID-19 pandemic.

### The Enabling Environment

An enabling environment refers to full range of conditions in a society that enable or hinder access to justice and favor a strong justice sector. The conditions can be sociocultural, political or economic. Among the most critical issues that have been highlighted are:

#### At institutional level:

- Unstable and cyclical downturns in the economy affecting levels of investment in the justice sector.
- Security challenges resulting from political and security instability.
- Threats to the independence of the judiciary, especially with the tendency of governments to restrict and interfere into the judiciary's work.

#### At individual and community levels:

- General low institutional trust that results in individual lack of confidence regarding the state's capacity to ensure the right to access justice.
- Resort to the use of alternative dispute resolution mechanisms beyond the justice system to settle disputes, especially under the umbrella of tribal law, which leads to further weakening of the rule of law and the judiciary.
- Limited legal awareness among the population regarding their rights.

### The Legal Framework

All legal frameworks in the Arab countries under study contain discriminatory provisions that violate the rights of many groups, especially vulnerable and marginalized groups such as women, refugees, immigrants, children in conflict with the law, persons with disabilities. As a starting point, there is a need to harmonize national legal frameworks in relation to international obligations.

## The Supply of Services

The absence of adequate infrastructure and human resources capable of supporting the justice sector is one of the most pressing challenges, among them:

- The absence of adequately and appropriately equipped buildings to protect the rights and guarantee the dignity of litigants.
- Generalized backlog of cases, which places an additional burden on the litigants and ultimately leads to reluctance to use the justice system to address grievances.
- Limited opportunities for professional development and specialization for human cadres within the absence of appropriate training programs for all workers in the justice sector; in addition, the insufficient number of judges leads to weak judicial specialization.
- Obstacles to the implementation of judicial rulings on the ground.
- The high cost of litigation and the inability to afford judicial costs.
- Limited use of digital solutions, and, equally important, lack of strategies for implementing digital solutions that meet realities in different contexts.

## The COVID-19 pandemic

The COVID-19 pandemic has placed more burdens on the justice sector in the Arab world due to the closures that Arab countries witnessed in an attempt to contain the epidemic. The most significant challenges resulting from the COVID-19 pandemic were as follows:

- Closure of the courts resulted from the closures and curfews imposed by many Arab countries in their attempt to control the spread of the virus, which led to the accumulation of large numbers of cases inside the courts in a manner that exacerbated the pre-existing Judicial suffocation.
- The pandemic has prompted many Arab countries to impose emergency laws to control the pandemic, which has led to the restriction of public and individual rights and freedoms alike, such as ignoring fair trial guarantees, trying civilians before military courts, and strengthening the interference of executive authorities in the work of the judiciary... etc.

## Recommendations

Despite the unique situation of each of the Arab countries, many of these countries share a common ground that can be built upon in order to reform the justice sector and guarantee the right to access justice for all individuals without discrimination. Accordingly, the previous studies concluded with recommendations that could constitute influential factors contributing to the development of the justice sector and the protection of the right to access justice in the Arab world.

These are the recommendations that we can present under three main headings:

### 1 - Enabling Environment

The enabling environment in its political, security, and economic dimensions is critical to protecting and supporting the justice sector on the one hand, and preserving the rights of individuals and groups, including the right to access justice on the other hand. Accordingly, work must be done at the state and government institutions, but also and community and individual level towards:

- Strengthening security and political stability in general: The volatile political and security reality in the Arab countries is one of the main challenges that must be mitigated. It is necessary to strengthen the democratic system by supporting political participation based on democratic foundations to build trust between the state and individuals within a political and security framework based on protecting the rights of society.
- Enhancing the independence of the judiciary and the separation of powers: The independence of the judiciary is considered one of the essential principles on which democracy is based, as protecting this independence leads to imposing judicial oversight on the actions of the executive authority in a way that guarantees the protection of individual rights and safety on the one hand, and prevents the encroachment of the executive authority on others authorities on the other hand.
- Enhancing transparency and accountability within the justice sector to advance and develop the judiciary's work, and increase community trust in a way that contributes to strengthening the right to access justice.
- Spreading legal awareness in society: Raising people's awareness of the nature of existing laws, their rights guaranteed by the constitution and the law, and the mechanisms of resorting to justice is essential to enhance the right to access justice.

### 2 - Legal Frameworks

In light of a rapidly changing and changing world, there is an urgent need for a comprehensive review of the laws in the Arab world regularly to protect the rights of individuals and vulnerable and marginalized groups in society. Therefore, a set of recommendations can be presented within this framework:

- Reviewing and Enforcing the Implementation of Justice Strategies at the National Level: Strategies for the justice sector are considered crucial in developing the sector. However, many strategies in the Arab world need continuous development and updating on both theoretical and practical levels. Therefore, it is necessary for both the official and non-official levels to continuously update these strategies and develop mechanisms to implement them on the ground.
- Continuous review and updating of legislation to respond to the needs and reality of society: The adaptation and constant updating of laws is a vital and sensitive matter, especially in light of the rapid pace of daily events in life, which requires a prompt response from laws and legislation.
- Activating the role of alternative dispute settlement mechanisms to ensure fair access to justice between the parties: Alternative means of resolving disputes are one of the effective alternatives that can be resorted to in an organized manner within the formal framework for resolving disputes between individuals, which can contribute to reducing the burden on the courts, and resolve outstanding cases more quickly, which reduces the burden on litigants.
- Integration of the concepts of gender within the justice sector: Women are considered one of the vulnerable groups whose rights are significantly violated under the legal system in the Arab world; therefore, it is necessary to work to enhance women's rights within the justice sector by integrating gender concepts to enhance women's access to justice.

### 3 - Supply of Services

Providing dignified infrastructure and enable appropriate human resources are critical to ensure a well-functioning judiciary. However, a well resourced judiciary by itself does not constitute a magic pill for change. Without work on the previous areas, investments in infrastructure and human resources will simply remain at investment level.

- Increasing the number of human cadres, especially judges, in the justice sector: The large number of cases brought before the judiciary requires the presence of sufficient human cadres to work on them in a way that guarantees the rights of all litigants. Therefore, there is a need to increase the number of administrative cadres, judges, and members of the Public Prosecution alike.
- Strengthening and developing the skills and capabilities of judicial cadres regularly in order to increase judicial specialization: The continuous development of the capabilities and skills of workers in the justice sector (administrative and legal) is one of the critical issues that contribute to improving their performance and their dealings with litigants and cases brought before them. The trend towards judicial specialization will also contribute to enhancing the performance of judges and raising their capabilities to deal with cases in depth, especially when dealing with sensitive groups such as women and children.



- Improving and developing the infrastructure of the justice sector: It is necessary to work on developing the infrastructure of the courts through new, advanced, and capable buildings that help provide comfort to litigants on the one hand, and facilitate and help people with disabilities to use these building, with the aim of encouraging and supporting individuals of different situations to go to access justice.
- Develop and promote clear strategies for the use of technology and digitization in the justice sector, taking into account all the needs of the justice sector and its parties: The COVID-19 pandemic has shown the importance of using modern technology and how to exploit it within the justice sector. Despite this, there is a need for in-depth studies on the impact of digitization and technology on the justice sector and the rights of litigants and how to use them positively to enhance the right to access justice.
- Strengthening and developing mechanisms for providing legal aid: The development of laws and mechanisms governing the provision of legal aid to disadvantaged groups is one of the most critical issues that must be worked on in the Arab world, especially since many litigants lack representation and legal aid, which poses a major obstacle in front of them in accessing eliminate.



This volume is written in the spirit of a collaborative effort toward strengthening the rule of law at a time when the political and economic context is not favorable. In practice, it is the product of a conversation over a six-month period among practitioners and experts in the field of access to justice in Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestine, and Tunisia. As a starting point, authors were asked to provide an analytical view of the status of the justice sector and the right to access justice in their countries by exploring three main dimensions of analysis: governance of the justice sector, supply of justice services, and demand for justice. It was agreed upon that the timeframe of the analysis should start post-2011, with particular emphasis on the disruptions brought by the COVID-19 pandemic. As the analytical work progressed, authors realized that as disruptive as it was, COVID-19 has been superseded in some national contexts by other major events, some of which constitute the majority of the analysis.

Overall, the value of the volume resides not only in its geographical coverage, as it includes an analysis of eight countries from the Maghreb and Mashreq, but also in the varied expertise in different legal fields, such as women's rights, refugee rights, personal status law issues, and constitutional law. The result is a volume that provides a glimpse into different geopolitical realities and highlights different analytical dimensions of access to justice.

