

**WOMEN, LAW, AND JUDICIAL DECISION-MAKING
IN THE MIDDLE EAST AND NORTH AFRICA:
TOWARD GENDER JUSTICE**

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PART I

Introduction to the Project and Panel

The political-judicial structure has been a key domain for feminist activism and gender analysis alike for at least two reasons. First, state policies and legal frameworks determine women's status, social positions, and access to resources and rights.¹ Second, women's participation in political and judicial decision-making is a measure of women's empowerment and gender equality. Throughout the world, women have made impressive gains in the field of law, as practicing lawyers, legal counselors, and law professors. This has changed the legal profession, which once was dominated by men. Now women are making inroads into another profession that historically has been reserved for men: the profession of judge. In many countries, women judges are clustered in the family courts and lower civil courts, and a kind of "glass ceiling" prevents their promotion to the upper courts. In some countries, however, we also see women appointed to the highest courts. The presence of women judges in the International Criminal Court is an indicator of the importance that the international community attaches to gender equality, women's participation in decision-making, and women's perspectives on legal matters.

The global women's rights agenda – inscribed in international standards and conventions such as CEDAW, the Beijing Platform for Action, the ICCPR and the ICESCR – calls for the elimination of all forms of discrimination against women, for women's human rights and empowerment, and for women's participation and rights across civil and political, economic, social, and cultural domains. Access to justice and involvement in judicial decision-making are key indicators of citizenship and equality. [See Annex for relevant articles from CEDAW, Beijing Platform for Action, the ICCPR and the ICESCR.]

Preliminary research on patterns and trends in women's legal status – particularly in the family laws – and their participation in the judiciaries of the Middle East and North Africa finds a mixed picture. In some countries, legal reforms have taken place to enhance women's rights in the family and to push for more gender equality in the society; in other countries, discriminatory family laws remain on the books and women are second-class citizens in the family and society. Women's participation as lawyers and judges is similarly mixed across the region. Some countries report respectable percentages of women judges, while in other countries women are banned from the profession of judge, ostensibly for reasons of religious proscriptions but probably also reflecting biases against women in leadership and decision-making positions.

In order to obtain a better understanding of the status of women in the judiciary in countries of the Middle East and North Africa, of the relationship between women's judicial decision-making and gender justice, and of the need for advocacy and policy recommendations, the Social and Human Sciences Sector of UNESCO commissioned a series of country studies for discussion during the second World Congress of Middle Eastern Studies, which took place in Amman in June 2006. Authors were asked to provide a "mapping" of the different types of legal systems and courts in the countries under consideration; the paths by which women and men train for legal and judicial professions; the existence of associations for women lawyers and judges; the identification of codified discrimination against women; and the identification

¹ These include rights within the family (marriage, divorce, child custody, marital assets); access to property and inheritance rights; reproductive rights; freedom from domestic violence; socio-economic rights (e.g., maternity leaves and childcare, freedom from workplace harassment).

of policies that promote women's participation in the law and in the judiciary. For example, we need information on whether or not anti-discrimination legislation exists, and if mechanisms exist for its implementation and enforcement. Authors also were asked to provide quantitative information on the numbers/ percentages of women and men in law schools, in the Ministry of Justice, and in the different courts.

The project and some preliminary findings were discussed at a workshop held in Amman in June 2006, during the second World Congress on Middle Eastern Studies. The commissioned papers are being finalized during the second half of 2006 and all will be compiled in book form during 2007.

The overriding question that frames this study is: *would there be more justice for women, and would laws be more justly implemented, if the judiciary contained more women throughout the legal system, and especially in the higher courts? And: what steps need to be taken to promote gender equality in the judiciary?*

The project takes place within the framework of the 2006-07 work plan of UNESCO's Social and Human Sciences Sector. Specifically, it is Activity 1 within the Gender and Equality Section's Action on "Cultural Change for Women's Advancement".

PART II

WOMEN, LAW, AND JUDICIAL DECISION-MAKING: A REGIONAL AND COMPARATIVE OVERVIEW (Summary)

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This paper examines patterns and trends in women's legal status – particularly in the family laws – and their participation in the judiciary in Arab countries and Iran, in order to assess gender justice. (For comparative purposes, information also is included on Israel, Turkey and Malaysia.) It finds a mixed picture. In some countries – such as Tunisia, Turkey and more recently, Morocco – legal reforms have taken place to enhance women's rights in the family and to push for more gender equality in the society; in other countries, discriminatory family laws remain on the books and women are second-class citizens in the family and society. Women's participation as lawyers and judges is similarly mixed across the region. Some countries report respectable percentages of women judges (e.g., Algeria and Tunisia), while in other countries women are banned from the profession of judge (e.g., the Islamic Republic of Iran, Saudi Arabia), ostensibly for reasons of religious proscriptions but probably also reflecting biases against women in leadership and decision-making positions.

Critical legal scholars have found that gender, class, and racial biases – which themselves reflect power relationships and social hierarchies – are inscribed in constitutions, law, and policies throughout the world.² In the Middle East and North Africa (MENA), this fact is complicated by the presumed religious foundations of legal frameworks. That men have more rights over women, and Muslims over non-Muslims, is supposed to derive from the Sharia. These distinctions can be found in the region's family laws and penal codes, though in some cases even the constitutions reflect certain biases. Reforming such laws becomes a challenge.

The appointment of women as judges in some Muslim countries remains a controversial issue, due to a general perception that such appointments might not be in conformity with the Sharia. The majority view among the founding jurists Shafii, Malik and Ibn Hanbal regarded women as being disqualified as judges based on an interpretation of Surah an-Nisa' 4:34, that men are *qawwamuna* (protectors) over women. This would also appear to flow from a reading of Surah al-Taubah 9:71, that believing men and women are each other's *awliyya* (protecting friends and guardians).³ A principal argument against women serving as political leaders is that they are too emotional and sensitive—a perspective broadly held by men and a few women as well. Even women can believe that: “Women are emotional by nature. . . . It is better for a woman to stay away from politics.”⁴ Thus women are under-represented in the judiciary and in governance more broadly. It is precisely the absence of gender justice that has galvanized the region's women's rights organizations to campaign for legal and policy reforms.

² See various writings by such legal scholars as Duncan Kennedy, David Kennedy, Martha Minnow, and Adrian Wing. For an overview, see http://www.law.cornell.edu/wex/index.php/Critical_legal_theory last accessed 25 January 2006.

³ *Women as Judges*, Sisters in Islam (SIS) Working Paper Series, July 2002. Introduction, pp.v-vi.

⁴ Brian Katulis, “The Impact of Public Attitudes”, in Sameena Nazir and Leigh Tomppert, eds., *Women's Rights in the Middle East and North Africa: Citizenship and Justice* (New York and Lanham, MD: Freedom House and Rowman & Littlefield, 2005), pp. 19-20.

The full paper presents available information and data on women's status in the law and women's status in the judiciary by country, listed alphabetically. In what remains of this summary I provide a comparative perspective, with attention to Afghanistan, Israel, and Malaysia.

Afghanistan

With the exception of the heads of the juvenile and family courts in Kabul, women continue to be excluded from key positions in the judiciary. Where women do serve as judges, they do not perform the same functions as their male counterparts. Female judges tend to act in the capacity of judicial clerks and are rarely involved in the adjudication of cases. Female judges outside Kabul are rare. This may be a factor behind the pervasive lack of gender justice. Amnesty International's 2004 fact-finding mission found "a large number of female inmates in prisons ... incarcerated for the crime of 'running away' and for adultery, as well as for engaging in unlawful sexual activity. Amongst many judges and judicial officials, there was a prevailing lack of knowledge about the application of *zina* law. In many instances, there was a lack of basic legal skills among legal professionals interviewed. In addition, in relation to many offenses, sentencing is left to judges' unfettered discretion and they often handed down arbitrary sentences to women. A majority of imprisoned women have been charged or are imprisoned for transgressing social norms and mores."⁵

Israel

The judiciary is the only branch of government in which women's participation approaches men's. Women constitute 40 percent of Israel's judges although the higher the court, the fewer the women: women account for 15 percent of Supreme Court justices – 2 out of 13. In 1998 the state attorney was a woman (her predecessor was the first woman to occupy this high position). No Arab women have ever served as judges.

Women's relatively high representation in the judiciary may be because it is a common career choice for female law school graduates, who generally opt for government service rather than private practice, in view of the relative security and shorter working hours involved in the former, along with – for most women—lower income levels.⁶

Malaysia

There is a dual legal system in Malaysia, which is divided into the general civil courts and the Sharia Courts. The Sharia Courts have jurisdiction only over persons who are Muslims and its main area of jurisdiction is in the area of family law. Since the early 1980s, Malaysian women have been appointed to serve as judges in the general civil courts, with the proviso that women judges in the High Courts should only hear civil cases and not criminal cases as criminal cases that are tried in the High Courts are cases that involve capital punishment. On the other hand, women magistrates and women judges in the sessions courts can hear both civil and criminal cases, as the subordinate courts do not have jurisdiction over capital punishment. However, no woman has yet been appointed to serve as a judge in the country's Sharia Courts.

Malaysia provides for the division of matrimonial assets (*harta sepencarioan*). The wife, whose housework might be said to have indirectly contributed to the husband's acquisition of property, is entitled to claim one-third of the property acquired during the marriage. She is

⁵ "Afghanistan: Women Failed by Progress in Afghanistan", www.amnestyusa.org/countries/afghanistan
Accessed 5 May 2006.

⁶ Barbara Swirski, "The Citizenship of Jewish and Palestinian Arab Women in Israel", in Suad Joseph, ed. *Gender and Citizenship in the Middle East* (Syracuse, New York: Syracuse University Press, 2000), p. 340.

entitled to claim half if it is shown that she contributed directly towards its acquisition. The claim can be made upon divorce or before the husband contracts a polygamous marriage. Discrimination and inequality can be found in provisions on *Ijbar* (forced marriage). In the conservative provinces of Kelantan and Kedah, if a woman is an unmarried virgin, her *wali mujbir* (father or parental grandfather) can marry her to a man of equal status against her will.⁷

Women's rights activists in Malaysia have been looking next door to compare and contrast women's legal status and position in the judiciary. Indonesia has some 100 women sitting as Sharia (*syariah*) court judges, but in Malaysia the general view is that women are not qualified to become judges. Women have complained that Malaysia's Sharia court system is prejudiced against them. The wife of Indonesia's president, Abdurrahman Wahid, has been engaged in revising the country's standard guidebook of religious edicts to make sure that the book stresses the rights of women as much as their obligations under Islamic law.⁸ According to Sisters in Islam, a Malaysian faith-based women's rights group, the trend in Muslim countries around the world is law reform. Religious and legal authorities in Muslim nations are recognizing the problematic aspects of their current family laws and reforming them to be more egalitarian and just. Sisters in Islam asserts: "It is only right that Malaysia begins to do the same."⁹

Conclusions

The participation of women in the judiciary is an indicator of women's decision-making and of gender equality. In the Arab countries – as well as non-Arab Muslim majority countries such as Iran, Turkey, and Malaysia – there is a mixed picture with respect to women's legal status and women's participation in the judiciary. In some countries, the application of Sharia law precludes the presence of women judges. But in other countries (e.g., Tunisia, Algeria, Syria, Lebanon), women seem to form a respectable proportion of judges. Meanwhile, women's organizations throughout the region are prioritizing reform of family laws and greater participation by women in decision-making.

We need a clearer picture of women in the judiciary in the Middle East, an analysis of the similarities and differences across the region, and a better understanding of those factors impeding women's recruitment and promotion in the judiciary, so as to make the appropriate recommendations toward greater participation by women in the judicial systems of region and toward gender justice.

⁷ BARAZA!, *A Sisters In Islam Bulletin* (SIS). Vol.1, No.1, 2005, p.6.

⁸ Abdullahi A An-Na'im, ed. *Islamic Family Law in a Changing World: A Global Resource Book*. (London, New York: Zed Books Ltd, 2002), p. 249.

⁹ BARAZA!, *A Sisters In Islam Bulletin* (SIS). Vol.1, No.1, 2005, p.6.

PART III: COMMISSIONED PAPER ABSTRACTS

Women and Judicial Authority in Yemen: Reality, Challenges and Aspirations

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This paper argues that women's participation in the elaboration of public policies on equal footing with men is in the first place a fundamental human right. Denying women the right to participate in the development process of their own countries also deprives the country from maximizing the use of its human resources at all spheres of life, especially in a least developed country like Yemen. In this context, the paper will provide an overview of Yemen's historical, socio-economic, cultural, political and legal backgrounds highlighting Yemeni women's positions and roles.

The paper will look primarily into the function of the judicial authority in the Republic of Yemen, the newly born country established after the unification of the South and the North in 1990. It will discuss the legal framework of the judicial system, its branches and organs including the Supreme Judicial Council, courts, prosecution, and the legal profession. It will provide a critical analysis from a gender perspective on the reality of and the multiple challenges encountering justice including constitutional, legal, social, cultural and political factors that impede realization of a fully independent, effective and efficient justice system.

The paper will be supported by gender disaggregated data and statistics delineating in general the status and role of women in the judicial authority and in particular demonstrating the huge gap between the numbers of men and women working in the different levels and kinds of courts in selected governorates where women judges, prosecutors and lawyers are found, in addition to employees of the Ministry of Justice. Moreover, it will answer the following questions: do women have the same opportunities to access to justice as men? Is the justice system hostile and discriminatory against women or neutral? And what difference women make if they join the judicial authority?

In addition to documenting the overall challenges that hinder the justice system in Yemen in general, the paper will examine in depth the specific challenges facing women judges, prosecutors, lawyers and employees at the Ministry of Justice. It will also review the status and the role of the Yemeni Bar Association, a civil society organization, the High Judicial Institute, a training institute for future judges, and the five Governmental Faculties of *Sharia* and Law and the only Private Faculty of Law which could explain why women are strikingly underrepresented in the judicial authority in general and almost non-existent at the senior position levels.

Finally, the paper will review efforts and initiatives that have attempted to reform the justice system and the impact left so far. Recommendations solicited from parties involved in justice will be provided as well.

Women, Justice, and the Family Law in Algeria

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Former Women's Affairs Minister (Algerian Government: 2002-2003)

The saga of the Family Code (*Qanun al Usra/ Code de la Famille*) in Algeria enacted by the Algerian National Assembly June, 1984 was a most striking socio-cultural event in Algeria after Independence in July 1962, presenting to my mind one of the most telling texts on the ambiguity facing women's access to full fledged citizenry, otherwise generously promised by the highest law of the land, the Constitution. I propose in my paper to examine the notion of ambiguity, political and ideological, as well as judicial which has marked the law making process of independent Algeria in the very specific "private domain" of "personal status" codification, in contrast with more radical and clear cut use of positive law in the more public domains of the process of post-colonial nation-building in Algeria.

In addition to well-documented debates on the very subject matter since 1963, up to the Family Code enactment in June 1984, and the last so-called reformed version of the Code proposed by a national commission recommendations released in the fall 2005, I will propose a methodological reading of the ideological idiosyncracies (so to speak) of the National Assembly delegates, according to a paradigm bearing what I call "lower" and "higher" valuation referents informing the gender roles perceptions of the country's law makers. The paradigm refers to the clashing dynamics between so-called traditional value systems, supposedly of a religious nature, (the lower valuations end of the paradigm), and "more" modernizing (or modernist) valuations, with official feminist undertones (the higher valuations of the paradigm), equally marked by a "mythical" perception of modernity, clearly expressed in the a-historical ideological eclecticism of progressive injunctions of the Constitution, notably with regard an emphasis on a **non-secular notion of progress and social justice**. Hence the inevitable hesitations as to a full fledged empowerment of women in the private sphere of the family, rather than in the public one.

This methodology enriched with that of gender analysis of the technocratic and ambiguous nature of political decision-making with regard universal enfranchisement, be it with regard political democratization, or the status of women as full-fledged citizens, will help highlight the **mythical nature of the emancipatory official discourse** on modernization and women's empowerment in the private sphere, by subsuming the latter, and exclusively so, to the supra-natural rulings of a supposedly religious referent, commonly designated as the Shari'a, whose **man-made historical nature** as clearly demonstrated in the plethora of interpretations and Madhahibs, is totally occulted by law makers in Algeria, as is the case in most Muslim countries.

The paper will conclude with an up-to-date discussion of the opposition to the family code by the Algerian feminist movement. I will also describe promising developments towards future emancipatory personal status legislations, such as a substantial female professionalism in the judicial field at all levels of the judiciary (judges, lawyers, law teachers, law makers as members of the National Assembly) as well as a mounting political participation in parties and local as well as national decision-making echelons.

Turkey: Legal and Judicial Reform Movement and Gender Equality

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This paper deals with women's access to and participation in the Turkish legal profession and judicial system, which has been experiencing a large reform movement since 1999. An overview of the reformed legal and judicial system, as well as the legal traditions and general structure of the Supreme Courts and Constitutional Courts, will help explain how this new framework strengthens women's rights and gender equality in general and in the judiciary itself. Gender discrimination is a widespread problem throughout Turkey: women have faced serious setbacks with regard to public representation. Then, secondly, we will give an insight of the place of women in the judiciary. Women's under-representation in political and judicial decision-making confirms that, despite of the new legal guarantees, further measures are needed. Finally, the paper will recommend measures to promote women's participation in the judiciary and support a more gender-sensitive approach to the law in Turkey.

Since legal reforms in the 1920s, Turkey's judicial system has been based on the Swiss civil law and civil procedure, the Italian Penal Code, and the French administrative law, because these were considered the "best" in the field for various reasons. However, over the past 5 years, the political and juridical system in Turkey went through deep structural changes in order to negotiate its membership to the European Union. The objectives were to strengthen the efficiency and independence of the judicial power, and train judges and prosecutors in international law and human rights to develop human capital.

This legal and judicial reform movement has of course affected Turkish women in many ways: women citizens obtained the recognition of full equality with men, and women lawyers and magistrates were given the means to implement a rights-based approach with respect to the attention given to human rights, especially women's human rights, by the European Union and the Council of Europe.

Thus, a number of reforms have strengthened the principle of equality between men and women. A new Civil Code and a new Penal Code were adopted respectively in 2001 and 2004. The new Penal Code is quite progressive in terms of women's rights, but discrimination and domestic violence remain major issues. Efforts have to be conducted to allow women to take equal role and place in Turkish society: judges, especially women, in the highest courts should be the initiators and promoters of gender justice in this sense. Furthermore, Article 10 of the Constitution now states that men and women shall have equal rights and that the state has the duty to ensure that this equality is put into practice. In this regard, the new President of the Constitutional Court, who became the first woman at this position in 2005, took strong positions on the issue of headscarf, which initiated lively debates between political parties since the Islamist Justice and Development Party (AKP) has been in power.

In addition, the new package of constitutional amendments, which were adopted in May 2004, revised Article 90 of the Constitution, thereby enshrining the principle of supremacy of international and European treaties ratified by Turkey over domestic legislation. Then the CEDAW ratified by Turkey in 1985 – with few reservations – can be a reference for the defense of women's rights.

If women's participation in political and judicial decision-making reflects a country's commitment to gender equality and women's empowerment, Turkey fails in involving women as true actors of public life. The recent legal and judicial reforms helped to fall into line with international standards, but one could wonder how they will be implemented and challenge the deeply rooted traditional views of gender roles and relations within the Turkish society. Although the State guarantees women equal work and pay opportunities, the traditional value system shows gender segregation in the workplace and other public spaces as a social norm. Here the judicial practice is more questioned than the constitutional or legislative provisions themselves. The changes in the practice of the judges need time, and women could help promote them.

This paper suggests that, despite the full consecration of gender equality and the founding Kemalist principle of *laïcité*, women remain relatively excluded from the judicial decision-making processes. Although they serve as judges throughout the legal system, and even if they are perceived as "strong" and highly qualified women, it is worth being aware of the low percentage of women in executive roles: about 15% of the judges, and 30% of the lawyers. The feminization of law faculties may result in the feminization of the profession of lawyer, though this is not reflected in the judicial decision-making. But these indicators are much better compared with very low political representation, from 0 % to 5 % of women in political bodies.

Nevertheless, the important improvements of the Turkish judicial system – in term of human rights and women's rights – give a considerable role to play to judges, in particular women judges. Their male counterparts cannot "ignore" the gender perspective to address women's issues anymore, and have to overcome gender-biased customs and representations. The new laws have entered into force in June 2005 but not been assimilated yet by all judicial authorities and courts.

As regards access to justice, the state does not completely ensure access to effective redress and protection for women that are victims of violence, although campaigns for women's rights in Turkey have grown in confidence as more and more women have gained access to the law. Lawyers representing women in Turkey who have been assaulted have been subjected to social persecution in more conservative regions. Women's organizations (such as KADER, Women for Women's Human Rights – New Ways or Flying Broom) work to promote and protect women's rights and women's choices; women activists launched large campaigns of advocacy for the achievement of legal gender equality in the new Civil Code and new Penal Code. Regarding the current situation, we believe that the increase of women judges and prosecutors, notably in the higher courts, would build legitimacy and confidence in the legal-judicial system, as well as support women in the legal profession.

The study will be conducted through a reading of the relevant literature (including on-line resources), research travel to Ankara and Istanbul, and the gathering of documents, statistics, and interview data, collected in May and July 2006. Interview data will be collected through face-to-face and telephone consultations probably with the Minister of Women's Affairs of Turkey, the President of the Constitutional Court, the Vice-President of the State Council, women judges and lawyers, women activists, as well as written responses to questionnaires sent to magistrates and women activists. We will focus on obtaining their views on mechanisms to facilitate access to and participation in the judiciary.

The Status and Role of Women in the Judiciary in Iran

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This paper argues that women's involvement in governance and in the conduct of public life has a great deal of impact on the improvement of women's social position and the process of their empowerment, especially in countries where human rights are not recognized as individual entitlements and gender equality is yet to be achieved. This paper focuses on the status and the role of women in judiciary in Iran, and considers their access to, and participation, in legal profession.

The paper first reviews the structure and the organization of the judiciary branch of the government as well as its independence within the constitutional framework, and also studies the legal system of the country where all laws and regulations in every field must be in conformity with Sharia (Islamic law).

This study then examines the participation of women in legal profession and their involvement in the judiciary and judicial decision-making, and verifies the number and proportion of women judges and consultants and the types of courts they are involved in. Moreover, women's status in judiciary before and after the Islamic Revolution of 1979 as well as the changes with respect to women's access to judiciary in 1990s will also be addressed. It also reviews women's training for legal profession and the association of women judges and lawyers, and conducts interviews with women in this field.

The study also analyzes Iran's legal framework as well as social and cultural patterns that ban women from the profession of judge and restrict their access to legal profession. It identifies discriminatory laws and traditions that hinder women's recruitment and promotion in leadership and decision-making position in judiciary.

This paper finally argues that women's involvement in legal profession and their participation in judiciary, especially in higher courts, result in achieving gender equality in legal system and contribute to having more justice for women. It submits that women judges and lawyers have a positive impact on preventing biases against women and obstructing the application of discriminatory laws, especially family law. The paper suggests that, in Iran's legal system, a fundamental reform in structure and standards is needed to provide an appropriate legal system that enforces the principle of equality and guarantees women's participation in judicial decision-making. It also proposes certain suggestions and recommendations in order to enhance women's access to judiciary in Iran.

The Status and Role of Women in the Palestinian Judiciary

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The paper examines the status and role of women working in the Palestinian legal system in the West Bank and Gaza as established since 1994, in those areas that come under the jurisdiction of the Palestinian National Authority. It does not extend the focus to Palestinian women working in the Israeli civil court system illegally extended to occupied East Jerusalem.

Palestinian women's groups, along with other sections of civil society, have addressed themselves vigorously to matters of law reform, with significant international funding provided for activities such as legal awareness training for the public and for potential trainers, reviews and discussions of legislation discriminatory to women, drafting and advocacy activities. Both women's organisations and academic centres have been involved in judicial training activities; some organised by women's groups have specifically addressed matters of judicial interpretation and perceptions of particular relevance to women. Academic attention has been paid to how male judges apply the law in particular on issues to do with violence against women. To date however there appears to be no overall review of the status and role of women in the judiciary itself.

There are women judges at all levels of the regular (*nizami*) court system, and some representation in the Prosecutorial offices. They are however few in number compared with their male counterparts, and a number of factors (professional and societal) are suggested as being behind the low representation of women.

This paper considers the question from the perspective of text and of practice, including both 'regular' (*nizami*) and religious (*shari`a* and different Christian) courts and prosecutors' offices, the legal profession (including the Bar Association and the development of undergraduate law courses in domestic universities), the employment patterns of women law graduates in government ministries and governors' offices and relative conversion rates of such expertise into judicial appointment. It also considers the impact on the participation of women of the disempowerment of the central legal system and the apparent rise of parallel dispute processing mechanisms, as well as the ongoing occupation and the current political framework.

Women, Law, and Judicial Decision Making: The Case of Jordan

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Significant achievements recently have taken place in women's favor in Jordan. Enhancing women's political status and representation, steps to eliminate discriminatory laws, and addressing the issue of violence against women and honor killings are but a few examples. These developments have been achieved in the context of a democratization process followed by a reform initiative targeting the institutions of power.

An independent, effective, and fair legal system is one of the goals of the reform initiative. A new strategy for reforming the judiciary was adopted in 2005 where priorities included the training of judges on human rights issues and engendering the judiciary. This new atmosphere of reform created a momentum that opens the door to women's activism and their demands for more rights. The debate on citizenship as a central feature of democracy has encouraged many women activists to shift the discourse on the *women's question* from a moral and ethical one to a discourse of equal human rights. This would realize the Jordanian constitutional stipulation that "All Jordanians are Equal before Law". As a result of these initiatives, women's access to leading positions within the legislative and judicial bodies has increased (16 female judges serve today on diverse civil courts); a quota system was adopted at the level of the parliament's lower house; women were appointed to the upper house; and recent legal amendments to the Personal Status Law and the Penal Code (the latter often associated with honor killings) have helped to change the lives and aspirations of many women.

In spite of these achievements, women face considerable problems within the judicial and legal system. Women are still underrepresented in judicial and legal decision making positions; the legislative amendments are at risk because of the significant presence of tribal leaders and Islamists who often challenge changes in women favor; and the courts are still men's domain.

While calls for more female representation within the judicial system (mainly as judges) and more legal reforms are heard loudly in the Jordanian public space, it is important to research the status and role women play within this context. This paper will thus examine the patterns and trends in women's access to and participation in the legal system. It responds to the questions of what difference can women bring along with them if given the chance to access leading positions within the judiciary, what challenges do they face? And, what has been and what needs to be done to promote gender equality within the judiciary?

Women, Law, and Judicial Decision-Making in Lebanon

Alia Berti Zein

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The Lebanese Constitution in 1926 recognizes the absolute equality of all citizens and does not discriminate against women: “*All Lebanese are equal before the law. They equally enjoy civil and political rights without any distinction as to sex or religion....*” In its Preamble, amended in 1990, the Constitution adds:

“That Lebanon is committed to apply the Universal Declaration of Human Rights in all domains without exception,

That Lebanon is a Republic based on the respect of civil rights including freedom of opinion and belief, on social justice and the equality of all its citizens in terms of rights and duties without discrimination or preference,

That the civil service is accessible to all Lebanese without any preference except merit and qualification,

That the State respects all religions and guarantees to all citizens whatever is the community to which they belong, respect for their personal status and their religious interests.”

In addition, Lebanon has ratified several International Conventions relating to Human Rights, including most importantly:

- The International Convention on the Political Rights of Women in 1955.
- The International Covenant on Economic, Social and Cultural Rights in 1972.
- The International Covenant on Civil and Political Rights in 1972.
- The International Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value in 1977.
- The International Convention concerning Discrimination in Respect of Employment and Occupation in 1977.
- The Convention against Discrimination in Education in 1964.
- And finally, the most important, because it is specific, in 1997, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified by 180 countries including 17 Arab countries including Lebanon.

It is to be noted that Lebanon has a thriving civil society with more civil organizations than any other country in the Middle East. According to the Lebanese NGOs Forum more than 3,000 NGOs are operating in Lebanon wherein 200 are directly concerned with issues regarding women’s rights. Some of them are especially involved in campaigning and lobbying for amendments of laws that discriminate against women and for the adoption of an optional Civil Law of Personal Status. A large number of jurists, especially women lawyers and judges, are active members of those NGOs. As a result of their activist campaigns and in coordination with the government, all the discriminatory civil laws were amended during the past half century.

Lebanon was actually the first Arab country to recognize women's political rights in 1953. It even recognized equality between the sexes in terms of inheritance in the non-Muslim communities in 1959. Moreover, in 1960 Lebanon authorized married women to keep their nationality while at the same time adopting that of their husband. Since 1974 married women can travel without previous authorization from their husband. Furthermore, in 1987, Social Security made the retirement age 64 for both, men and women, while before that date, the retirement age for women was 55 years, while that for men was 60.

Married women recovered their full capacity to testify before all authorities in 1993. The law imposing male testimony in real estate matters was amended and the specific mention of "male" was eliminated. Finally, the commercial law has entitled since 1994 married women to engage in commerce without their husbands' authorization. They enjoy full rights to draw up all deeds in the interest of their commercial enterprises. It is worth mentioning that in Lebanon, assets are held separately by each spouse.

Regarding texts which are discriminatory against women, there are still many, despite the ratification of the CEDAW. These discriminatory laws as well as the recent achievements in women's rights before the law and in the judiciary will be described in the paper.

PART IV

Excerpts on Women, Justice, and Citizenship from International Conventions

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, or the Women's Convention)

Part I, Discrimination (Article 1)

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Part I, Guarantee of Basic Human Rights and Fundamental Freedoms (Article 3)

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Part II, Political and Public Life (Article 7)

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

Part IV, Law (Article 15)

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Part IV, Marriage and Family (Article 16)

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Source: <http://www.un.org/womenwatch/daw/cedaw/text/econvention> .

Beijing Platform for Action

Strategic Objective and Action: G. Women in Power and Decision-making

Strategic objective G.1.

Take measures to ensure women's equal access to and full participation in power structures and decision-making

190. [Actions to be taken] By Governments:

- a. Commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, inter alia, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions;

Strategic objective I.2.

Ensure equality and non-discrimination under the law and in practice

232. [Actions to be taken] By Governments:

- m. **Ensure that women have the same right as men to be judges**, advocates or other officers of the court, as well as police officers and prison and detention officers, among other things;

Strategic Objective and Action: I. Human Rights of Women

218. In order to protect the human rights of women, it is necessary to avoid, as far as possible, resorting to reservations and to ensure that no reservation is incompatible with the object and purpose of the Convention or is otherwise incompatible with international treaty law. Unless the human rights of women, as defined by international human rights instruments, are fully recognized and effectively protected, applied, implemented and enforced in national law as well as in national practice in family, civil, penal, labour and commercial codes and administrative rules and regulations, they will exist in name only.

219. In those countries that have not yet become parties to the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments, or where reservations that are incompatible with the object or purpose of the Convention have been entered, or where national laws have not yet been revised to implement international norms and standards, women's de jure equality is not yet secured. Women's full enjoyment of equal rights is undermined by the discrepancies between some national

legislation and international law and international instruments on human rights. Overly complex administrative procedures, lack of awareness within the judicial process and inadequate monitoring of the violation of the human rights of all women, coupled with the under-representation of women in justice systems, insufficient information on existing rights and persistent attitudes and practices perpetuate women's de facto inequality. De facto inequality is also perpetuated by the lack of enforcement of, inter alia, family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations intended to ensure women's full enjoyment of human rights and fundamental freedoms.

Strategic objective I.2.

Ensure equality and non-discrimination under the law and in practice

232. [Actions to be taken] By Governments:

d. Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice;

g. Promote education on the human and legal rights of women in school curricula at all levels of education and undertake public campaigns, including in the most widely used languages of the country, on the equality of women and men in public and private life, including their rights within the family and relevant human rights instruments under national and international law;

Source: <http://www.un.org/womenwatch/daw/beijing/platform/index.html> .

International Covenant on Civil and Political Rights (ICCPR)

Article 23

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Source: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Source: http://www.unhchr.ch/html/menu3/b/a_ceschr.htm