



GENDER BALANCE IN ACCESS TO JUSTICE IN THE SOUTHERN AND EASTERN MEDITERRANEAN REGION



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OVERVIEW

In 2015, the EBRD approved its first ever Strategy for the Promotion of Gender Equality 2016-2020 with the objective of increasing women's economic opportunities in the economies where it invests. Moreover, via the dispute resolution line of work we have tried a number of ideas and techniques. In our judicial and related trainings we have inserted a requirement for at least 20 per cent of judges and other trainees to be women and included wording encouraging women's participation via developing a closer relationship with women's business associations. This is particularly useful in the SEMED region where professional women need a boost to increase their role and visibility.

Promoting and establishing commercial mediation as a viable dispute resolution mechanism in various countries helps create job opportunities for women, but also provides easier ways to access justice. In some economies, in the SEMED area in particular, the fact of women attending courts is socially and culturally controversial and may lead to disapproval or harassment. Mediation offers a solution as it is confidential and may be organised in a way which suits the parties most, for example, being held outside the court building, appointing a female mediator, choosing an amicable process, and so on. Some women choose mediation as a profession since it is often associated with social and communications skills. Moreover, to show that the gender of mediators matters, one dispute resolution study found that male and female mediators are equally effective at reaching an initial settlement but female mediators are more effective at reaching binding settlements.¹

We have also undertaken two initiatives dedicated to promoting gender equality in our regions. Both initiatives are implemented in partnership with the International Development Law Organization (IDLO). The two initiatives aim to address the challenges women face in accessing justice both from the supply-side, by means of organising a Regional Forum Supporting the Leadership Role of Women Judges in the SEMED region, as well as demand side, by undertaking

a Research Study on Women Entrepreneur's Access to Justice – in Jordan. Both activities aimed to uncover barriers for women's access to justice, as well as factors that chip away at their capacity to do business or rise in the professional sense. Solutions and policy recommendations were developed on the back of such initiatives.

INSIGHTS FROM THE SEMED REGIONAL FORUM ON WOMEN JUDGES

The aforementioned forum took place on 14 to 15 December 2017, with the official title of "Towards a Women Judges' Platform in the Southern and Eastern Mediterranean Region". The idea was to exchange knowledge and experience and identify approaches to promote women's active participation and leadership in the justice sector. There were a total of 46 judge-participants from the region, including from Jordan, Lebanon, Morocco, the West Bank and Gaza, and Tunisia. Additional participants were from Poland, Sri Lanka and the United States of America (USA), as well as moderators from the United Kingdom (UK), Italy and the USA. Creating networks, forums and platforms

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for the exchange of ideas, experience, challenges and achievements is crucial for promoting change.

In all participant economies women may be appointed as judges. The number of female judges in the SEMED economies varies, but the percentage of women shrinks dramatically in the higher courts. For example in Egypt, in mid-2018, out of a total of 16,000 judges only 66 were women.² The judges discussed the importance of having role models and leaders in the judicial profession. Another contributing factor to rising through the ranks is the support of male and female colleagues who believe in women's role in the judiciary. It was emphasised what a powerful signal it is to see women acting as judges by the younger generation and society. There was a clear understanding among the participants about the changing nature of attitudes and that it takes time to change social norms and behaviours.

A Moroccan participant stressed the possibilities of changing laws by way of reinterpreting Islamic law. She invited judges to become activists in ensuring that religious teachings are understood to be flexible, capable of changing with time and may

be interpreted in line with international human rights. The slogan was to “train judges on human rights”.

Overall the forum participants identified an array of issues and challenges for women's advancement in the justice sector, grouped and described below. Nations should attempt to resolve these and international bodies may help them in this endeavour. Gender Equality and Women's Empowerment (Number 5) is one of the Sustainable Development Goals, as is Peace, Justice and Strong Institutions (Number 16).

Limited representation of women in the executive judiciary bodies

There are very few women in executive positions in the justice sector in the region. This includes economies where there is a high number of women judges, as for example in Lebanon (where 50 per cent of judges are women). This is discouraging on a number of levels, including lack of role models, limiting aspirations for female judges, a lack of representation of interests at the executive level, and so on. Forum participants revealed from their experience that male and

female mentors within judicial bodies are particularly important for increasing women's status in the judiciary. It is also essential that decision-makers perceive women's participation as being of true value rather than "gap-fillers" for quota or box-ticking purposes.

Method of judicial recruitment is often a barrier due to existing bias in the profession

Entrance into the judicial profession will be less restrictive if based on more objective criteria. For instance, in Tunisia the high rate of women judges on the bench (48 per cent) is a result of favourable legislation that permits entry into the judicial profession through a merit-based mechanism, for example, exam results and other objective criteria. It is perceived that common law systems due to their reliance on selection criteria such as length in service and reputation and experience in law firms, tend to perpetuate existing imbalances in the profession.

Limited presence of female judges reinforces and widens the limited role women have in the justice sphere and often discourages access to justice among women

Not surprisingly, the limited presence of women among judges reflects the role of women in public life and perpetuates such a limited role. On the other hand, women judges serve as inspiration to girls in pursuing a legal career. The presence of women on the bench shall be promoted as the proper carrying-out of fair and representative justice. This sends a powerful signal to society, to the litigants and any person answerable to the law about women being able to pursue their rights (including business rights) in court.

Restricting women judges to certain areas of dispute resolution is not a solution

Another way to perpetuate the limited role of women in the justice sector is to assign them to certain sectors of law for example, children's rights, family law and gender-based violence. This is particularly damaging to women's participation and access to justice in commercial law and connected fields, as a consequence affecting their ability to participate in business and entrepreneurial relationships.

SOLUTIONS

Obviously, resolving the described challenges would require complex approaches affecting the whole of society. However, it is often the case that incremental change has great effects. Forum participants, apart from sharing experience about challenges, also discussed potential solutions that may be suitable for the SEMED context:

1 Availability of a permanent regional platform/forum for discussion would constitute a major achievement.

This could allow a continuous exchange of ideas and experience, as well as offering support for change. The regional aspect of such a platform would be particularly important as SEMED economies share certain legal and social traditions, history and customs. Such a platform may also incorporate a collection of data and information that is useful for the participants (electronic observatory and database). Examples of useful information may be: the status of women in the region, trainings for women judges, thematic jurisprudence on specific legal areas, and so on. Various institutions and aid providers may feed data into this collection.

2 Thorough research to identify barriers to female participation in the justice sector and appointment of women as judges emerged as an urgent and necessary first step.

Such barriers are not as obvious as they may seem. It is clear that a number of women are appointed to judicial positions in most SEMED economies. However, in some contexts such numbers are very small, despite women outperforming men in the judicial entrance exams (for example, in the West Bank and Gaza). In other contexts, women are present in high numbers in the judiciary, but their number decreases significantly in senior positions (for example, in Lebanon). See further below regarding such research in Jordan.

3 Capacity building and training for women judges and legal professionals in a variety of areas was identified as essential. Areas for such initiatives may be described as follows:

- raising awareness about discriminatory laws and regulations
- linking women to affordable or *pro bono* legal services
- promotion of success stories about women judges/leaders



- training of women judges in specialised, new and emerging areas of law, not yet completely occupied and that are exciting to new generations (for example, commercial law, cyber crime, and so on). For instance, in Morocco six specialised commercial courts have recently been opened, creating opportunities for specialist judges
- training women judges to become trainers in various areas of the law
- continuous efforts to building capacity for women judges in aspects of law related to gender and gender-based violence, in order to allow them to be effective representatives of women.

The forum was instrumental in identifying some of the challenges to women becoming judges, highlighting the effect of limited women's representation in the justice sector on society. This was also a good opportunity to point to a number of available solutions, which may be used by policymakers in each economy as well as development organisations in their efforts to improve gender balance in the judiciary.

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CONCLUSIONS FROM THE RESEARCH STUDY IN JORDAN

Members of the EBRD's Legal Transition Programme (LTP) and the Gender and Economic Inclusion Team have led the study on Women Entrepreneur's Access to Justice in Jordan. The justice system is a vital ingredient to sustainable and efficient business operation. The objective is to identify and assess the legal, economic, social and cultural barriers women entrepreneurs face in resolving disputes affecting their businesses. Insights from women and men entrepreneurs, institutions and justice sector professionals were sought and areas for potential policy dialogue engagement were identified. Usual disputes include contract enforcement (for example, debt recovery), opening and closing of businesses, resolving employment disputes and upholding economic rights.

“Quite often a number of legal, economic, practical and social barriers prevent women from accessing the justice sector, either as justice sector professionals or as individuals aiming to resolve disputes. Our work in Jordan has shown that, when trying to start and operate their own business, legal obstacles faced by women can be compounded by high costs and lack of access to financial support, as well as social barriers to conducting business as a woman – including resolving disputes. Under its Strategy for the Promotion of Gender Equality (2016-2020), the EBRD aims to improve the business environment for women entrepreneurs in the economies where it invests; we identify measures to address existing gender gaps, including through promoting women's legal awareness. Such actions are so important when you want to create inclusive, sustainable market economies.”

– Barbara Rambousek, Director for Gender and Economic Inclusion, EBRD.



Legal barriers

There are laws in Jordan, which expressly discriminate against women. Discriminatory provisions exist in labour laws, pension laws and personal status laws, leading to severe limitations in freedom of movement, in legal capacity to sign contracts and administer property, in inheritance, and in the ability to testify in civil proceedings. This is exacerbated by variations in treatment in practice reported by women and men entrepreneurs. For instance, a woman is precluded (in practice) to file a legal claim without a male relative's permission; the same is often extended for bank loan applications. With this in mind, according to the study participants, alternative dispute resolution and in particular mediation emerged as a preferred way to solve commercial disputes. This may bring the required degree of informality and flexibility allowing women more freedom and a level playing field.

Recommendation: Activists and policymakers should:

- ➔ strive to raise awareness about discriminatory laws and practice with a view to remove such barriers in the legislation and in practice
- ➔ promote commercial mediation and raise awareness about this mechanism for dispute resolution with a view to improving women entrepreneurs' access to justice.

Economic barriers

Debt financing and overdue payments emerged as the main source of dispute in the study. The court fees in Jordan are the highest in the region, amplified by expensive legal services. Due to lack of women's limited access to finance as compared with men, they may not pursue legal advice nor go to court due to expense.

Recommendation: Activists and policymakers should:

- ➔ reduce costs of dispute resolution by promoting small claims or fast track procedures (including online) and alternative dispute resolution
- ➔ improve women entrepreneurs' access to legal aid services, including by creating specialised law school clinics providing free advice
- ➔ address gender bias in lending to women by reviewing existing micro financing programmes and ensuring women entrepreneurs' access to finding.

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Practical and institutional barriers

The study revealed a very low level of business legal awareness. Eighty-two per cent of the responding men and women entrepreneurs claimed “little”, “basic” or “no” understanding of the business-related legal and regulatory framework. Further, procedures to open a new business are perceived as overly complicated with little expert legal advice available. Courts again feature as a very weak link, due to being slow, having limited opening hours, and a lack of expertise among judges, but also lawyers. Enforcement of court decisions was singled out as a more positive and easy experience, except for women reporting it as a slightly more difficult procedure than men.

Recommendation: Activists and policymakers should:

- ➔ improve legal awareness of women entrepreneurs via trainings, dedicated manuals on various relevant subjects of civil and commercial law
- ➔ reduce barriers to registering and operating businesses, by streamlining the process and reducing fees
- ➔ improve access to qualified commercial lawyers, including by building the capacity of lawyers on legal matters most relevant for women entrepreneurs
- ➔ strengthen judicial capacity on commercial matters.

Cultural and social barriers

The practice of access to justice by women is enmeshed with cultural prejudices. It is viewed as shameful for women to resort to courts to resolve disputes affecting their business or report violation of their rights: for example, clerks may refuse to accept a claim unless countersigned by a husband or a male relative; administrative staff may harass women for addressing the court; women entrepreneurs may also be sued as a tactic to extract money or as a means of harassment. Appearing in court, including in order to testify, attracts social stigma for women. In addition, lawyers may attempt to extract higher fees from women clients. The composition of the legal profession is a reflection of cultural bias. Although, in Jordan, more women than men graduate from law school, women represent less than one-quarter of judges and lawyers. Even so, justice sector professionals revealed that there is little acceptance of women judges.

Recommendation: Activists and policymakers should:

- ➔ increase awareness of and counteract gender biases in the justice sector by organising gender-sensitive trainings for judges, mediators, lawyers and other legal professionals



- ➔ promote equitable gender composition of legal professionals, including by targeted support to women lawyers and judges, as well as integration of gender awareness in the law-school curriculum
- ➔ improve government processes and laws to reflect women entrepreneurs' needs, including by creating advocacy units to bridge the gap between government and entrepreneurs.

The study contributes to the growing body of information aimed at strengthening women's equitable access to justice in order to help create an enabling environment for women entrepreneurs to achieve business success.

Trainings for judges and mediation reform

Apart from dedicated initiatives, we are attempting to promote gender equality and women's access to economic opportunities in other projects in the dispute resolution area. The techniques we used include:

- a participating quota for women: for example, "at least 20 per cent of the judges receiving training will be women" (Competition law judicial training in Jordan)
- a clause encouraging women to participate in the trainings:
 - ➔ for example, "The curriculum and criteria for trainer selection will be approached from the gender-sensitive perspective and will include necessary provisions to ensure female participation as mediators" (Commercial mediation judicial training in Moldova – Phase III)
 - ➔ "To the extent possible, the Consultant will ensure gender-balanced participation – to this end, the Consultant will liaise closely with the recently established Tunisian Association of Women Judges" (Judicial training and training of trainers on intellectual property in Tunisia)
 - ➔ for example, "Promote mediation amongst women entrepreneurs through partnerships with women business associations and other relevant entities" (Commercial mediation judicial training in Moldova – Phase III/Commercial mediation in Jordan).



In most of the abovementioned initiatives a relatively balanced participation was achieved with an average of 60 per cent of women judge participants. This is in contrast to the numbers for example in our Serbian commercial mediation project, where 83 per cent of participants in all judicial and mediators' trainings were women. Before we slide into self-congratulation it must be said that this does not appear very balanced and, in addition, anecdotal evidence from the participants explains this number as due to judges being poorly paid in Serbia, hence more women employed in the judiciary. This reveals that imbalance towards any side may be an indication of an underlying issue we did not suspect nor anticipate.

Related is the fact that we should consider not only quantitative measures but also qualitative aspects of women's participation in the justice sector. With this in mind the EBRD through the LTP is working with the EPG Gender Team towards developing a training module for women judges in the SEMED region promoting leadership skills. The training aims to assist women judges with their ability to progress in their career, as well as improve their visibility and acceptance in the profession. We plan to use the module as an add-on to other judicial trainings in the region. For example, we are considering adding it to the training on mediation planned in Jordan.

CONCLUSION

The 2030 Agenda for Sustainable Development promises to leave no one behind. Women's access to justice is a critical part of this endeavour. With gender-responsive judicial institutions women are more inclined to assert and claim their social, economic, cultural, political and civil rights.

Given the promotion of gender equality has become of central importance to the Bank's mandate, the LTP is attempting to identify ways to contribute to the Bank's efforts in this respect. The techniques used in our projects, information gathered and platforms for exchange offered, point to the means of change, simultaneously making small steps towards empowering women, including in business. In the words of the first African-American woman in the USA to become a federal judge in 1966, Constance Baker Motley: "Something which we think is impossible now is not impossible in another decade."

If we were to compare the legal and judiciary sector in our regions to those in the developed world the change is possible but is ongoing. In the UK, women were first allowed to vote in 1918 and in 1919 were able to enter law school (due to Sex Disqualification (Removal) Act). Today women represent about 63 per cent of newly qualified and nearly 50 per cent of all solicitors, yet at senior levels, women account for only 25 per cent of partners.³ Equal pay also remains a problem with pay differentials exceeding the national average. In the UK, as at 1 April 2018, 29 per cent of court judges were female.⁴ At the same time 46 per cent of tribunal judges were female,⁵ with tribunals hearing primarily employment cases and some other more specialised cases (for example, appeals against public authorities, decisions on immigration, social security, mental health, and so on). Another feature of tribunals to consider is a more informal procedure.⁶

To put things further into perspective it is interesting to look at the information available on the European countries. Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) gathers comprehensive information on various aspects of the judicial systems collated into a bi-annual report on "European judicial systems – Efficiency and quality of justice".

According to the latest report: "*The States and entities with the highest percentage of women in*

Table 1: Distribution of professional judges by instance and by gender in 2016

States / Entities	Total of professional judges (FTE)		1st instance professional judges		2nd instance professional judges		Supreme Court professional judges	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	53%	47%	49%	51%	60%	40%	91%	9%
Andorra	42%	58%	29%	71%	67%	33%	NAP	NAP
Armenia	75%	25%	75%	25%	76%	24%	71%	29%
Austria	51%	49%	48%	52%	56%	44%	70%	30%
Azerbaijan	88%	12%	88%	12%	88%	12%	84%	16%
Belgium	47%	53%	46%	54%	50%	50%	72%	28%
Bosnia and Herzegovina	36%	64%	37%	63%	33%	67%	39%	61%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	30%	70%	27%	73%	35%	65%	59%	41%
Cyprus	51%	49%	50%	50%	NAP	NAP	62%	38%
Czech Republic	39%	61%	33%	67%	46%	54%	77%	23%
Denmark	49%	51%	44%	56%	58%	42%	68%	32%
Estonia	37%	63%	30%	70%	44%	56%	74%	26%
Finland	45%	55%	44%	56%	46%	54%	66%	34%
France	36%	64%	33%	67%	40%	60%	51%	49%
Georgia	51%	49%	51%	49%	50%	50%	62%	38%
Germany	NA	NA	NA	NA	NA	NA	71%	29%
Greece	29%	71%	27%	73%	28%	72%	55%	45%
Hungary	31%	69%	28%	72%	34%	20%	50%	50%
Iceland	62%	38%	58%	42%	NAP	NAP	80%	20%
Ireland	65%	35%	64%	36%	80%	20%	56%	44%
Italy	46%	54%	43%	57%	48%	52%	70%	30%
Latvia	22%	78%	19%	81%	24%	76%	32%	68%
Lithuania	38%	62%	35%	65%	57%	43%	69%	31%
Luxembourg	35%	65%	34%	66%	34%	66%	100%	0%
Malta	58%	42%	50%	50%	89%	11%	NAP	NAP
Republic of Moldova	52%	48%	53%	47%	48%	52%	55%	45%
Monaco	57%	43%	40%	60%	33%	67%	81%	19%
Montenegro	42%	58%	42%	58%	43%	57%	33%	67%
Netherlands	42%	58%	39%	61%	54%	46%	NA	NA
North Macedonia	40%	60%	39%	61%	45%	55%	48%	52%
Norway	59%	41%	56%	44%	64%	36%	67%	33%
Poland	NA	NA	36%	64%	47%	53%	NA	NA
Portugal	41%	59%	33%	67%	59%	41%	80%	20%
Romania	26%	74%	28%	72%	26%	74%	17%	83%
Russia	40%	60%	NA	NA	NA	NA	NA	NA
Serbia	30%	70%	30%	70%	25%	75%	42%	58%
Slovak Republic	38%	62%	37%	63%	39%	61%	41%	59%
Slovenia	21%	79%	18%	82%	25%	75%	58%	42%
Spain	47%	53%	40%	60%	63%	37%	88%	12%
Sweden	48%	52%	51%	49%	42%	58%	67%	33%
Switzerland	59%	41%	54%	46%	68%	32%	68%	32%
Turkey	58%	42%	58%	42%	68%	32%	53%	47%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	66%	34%	NA	NA	NA	NA	83%	17%
UK-Scotland	74%	26%	74%	26%	65%	35%	NAP	NAP
Israel	48%	52%	45%	55%	54%	46%	71%	29%
Morocco	73%	27%	68%	32%	85%	15%	80%	20%

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the judiciary are Belgium, Croatia, Czech Republic, Estonia, France, Greece, Hungary, Latvia, Lithuania, The Netherlands, Romania, Serbia, Slovakia, Slovenia. Feminisation has not yet been felt in Armenia, Azerbaijan, Ireland, Malta, Norway, UK-England and Wales and UK-Scotland. Generally, it appears that common law countries continue to present a very high percentage of men in judicial office. This high proportion of men is also found in eastern European countries (such as Armenia)”⁷ (see Table 1).

The main remaining issue in Europe sounds very familiar as an issue raised in some of the SEMED economies. In particular, based on the data for 2016, the higher the hierarchical level, the more the number of women (and thus the percentage) decreases. For professional judges of first instance, the average is 43 per cent men and 57 per cent women, the proportion rises to 50-50 for second instance professional judges, which is an improvement compared with 2014 data (the proportion was 53-47 in favour of men). At the level of the supreme courts, the distribution is 63 per cent men and 37 per cent women (against 65-35 in 2014).⁸

Although the proportions are on average encouraging in the European countries, gender inequality continues to be particularly marked regarding access to positions of responsibility. Hence further work needs to be done to achieve a true societal representation in the justice sector.



- 1 David Maxwell, “Gender Differences in Mediation Style and Their Impact on Mediator Effectiveness,” *Conflict Resolution Quarterly*, No. 4 (Summer 1992).
- 2 See <https://egyptianstreets.com/2018/08/09/top-judicial-positions-include-16-egyptian-female-judges/> (last accessed 21 January 2019).
- 3 “100 Years since women became people”, by Christina Blacklaws, 1 November 2017, see: <https://www.lawsociety.org.uk/news/blog/one-hundred-years-since-women-became-people/> (last accessed 21 December 2018).
- 4 Judicial Diversity Statistics 2018, published on 12 July 2018, see: <https://www.judiciary.uk/wp-content/uploads/2018/07/judicial-diversity-statistics-2018-1.pdf> (last accessed 21 December 2018).
- 5 *Idem.*
- 6 HM Courts & Tribunals Service, see: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about> (last accessed 21 December 2018).
- 7 “European judicial systems – Efficiency and quality of justice - 2018”, European Commission for the Efficiency of Justice (CEPEJ), p. 113, see: <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>
- 8 *Idem.*

