
ILAC Discussion Paper:

Access to Justice for Vulnerable Groups in Times of COVID-19 – Palestine

Author: Ylva L. Hartmann



**International Legal
Assistance Consortium
Discussion Paper:**

Access to Justice for Vulnerable Groups in Times of COVID-19 – Palestine

This is one of three reports focusing on access to justice for vulnerable groups in times of COVID-19. The other two reports deal with Tunisia and Libya respectively.

© Copyright 2021 by the International Legal Assistance Consortium (ILAC). All rights reserved.
ILAC encourages the use of the information contained in this report but requires citation to the authors and source. Cover photo: Saja Majdoubeh.

Table of contents

List of abbreviations	4
Authors	5
Executive summary	6
Introduction	9
<hr/>	
1 Administration of justice during the pandemic	11
Regulation of the administration of justice during COVID-19	11
West Bank.....	11
Gaza.....	13
Civil and criminal courts	14
West Bank.....	14
Gaza.....	15
<i>Sharia</i> courts	16
West Bank.....	16
Gaza.....	16
Judicial notification and enforcement departments' work hampered	17
West Bank.....	17
Gaza	18
Further digitalisation of the judiciary needed	19
Access to legal information	20
Increased use of customary dispute resolution – arbitrators and social conciliators	21
<hr/>	
2 Access to justice and vulnerable groups during the pandemic	23
Legal representation and lawyers' contact with clients.....	23
Gender-based and domestic violence	25
Single mothers and their children	28
Child custody and visitation rights	28
Alimony	29
Children	31
Children in conflict with the law	31
Increase in child marriage	32
Employment conflicts.....	33

Palestinian workers in areas controlled by Israel	35
People in detention	36
Right to physically appear in front of a judge	36
Lack of access to legal counsel	36
Detention conditions	37
Overcrowding	38
<hr/>	
3 Conclusions and recommendations.....	40
Administration of justice	40
Digitalisation and access to legal information	41
Access to legal representation.....	42
Women and children’s rights and gender-based violence	43
People in detention	44

List of abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COVID-19	Coronavirus Disease 2019
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IDLO	International Development Law Organization
ILAC	International Legal Assistance Consortium
ILF	International Legal Foundation
ISTIQLAL	The Civil Coalition for Judiciary Reform and Protection
OCHA OPT	United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territories
PCHR	Palestinian Center for Human Rights
SIDA	Swedish International Development Agency
UNICEF	United Nations International Children's Emergency Fund

Authors

Ylva L. Hartmann, Legal Adviser, ILAC

Al Haq is grateful to Saja Majdoubeh and Ashraf Abu Hayyeh for their contributions to this report.

The Palestinian Centre for Human Rights is grateful to Basel Al Sourani, Suheir Kharma and Marwan Yaghi for their contributions to this report.

We express gratitude to the International Legal Foundation (ILF) for their input.

The report was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida).

Executive summary

COVID-19 has had serious and extensive impacts on people's access to justice in Palestine. The severity of this situation is exacerbated by the Israeli occupation and systematic repression of and discrimination against Palestinians, the blockade of the Gaza strip, internal Palestinian division, a chronic shortage of electricity, and the shortage of specialised personnel, medicine and equipment.¹

This discussion paper provides insights into the increasing justice gap experienced by vulnerable groups during the pandemic in Palestine. It builds on a series of in-depth interviews with lawyers and judges in the West Bank and Gaza. Drawing on their experience, the discussion paper suggests recommendations to addressing this gap and use the lessons learned from the COVID-19 pandemic to enhance access to justice for vulnerable groups.

In both the West Bank and Gaza, the courts and judicial proceedings have been completely shut down for limited times during announced states of emergency, which has caused confusion among many individuals about where to address their grievances. Subsequent poor case prioritisation has been particularly detrimental for vulnerable groups. The gradual reopening and partial resumption of the work of the courts has unfortunately created a fertile environment for favouritism and interest-based selective execution of court judgments, which has disproportionately affected vulnerable groups' access to justice.

The great majority of interviewees expressed concern over the spike in **domestic violence**² and victims' decreased abilities in seeking legal protection during the pandemic. Many interviewees criticised that cases of **alimony, child support, custody and visitation rights** had not been sufficiently prioritised during the pandemic, with disproportionate effects on single mothers and their children's access to justice. Many interviewees, both from the West Bank and Gaza, expressed concern over an observed increase in **child marriage** during the pandemic.

People subsisting on the **informal economy or daily-labour workers** have been particularly affected during COVID-19 and have suffered great

¹ UN Office for Coordination of Humanitarian Affairs (OCHA) Opt, "COVID-19 Emergency Situation Report 5 (14–20 April 2020)", 22 April 2020.

² Violence against women increased during the pandemic, 15 percent of women in Palestine were subjected to physical violence in the beginning of the pandemic; psychological violence was the most common form, reaching 55 percent, followed by economic violence at 53 percent. This was according to: Ministry of Women's Affairs, "Impact of the COVID-19 Pandemic on Gender-Based Violence in the State of Palestine (14–24 April 2020)", Pilot Study, Basic Findings, Summary of Findings, Ramallah, Palestine, pg. 13.

financial hardship. The pandemic has brought to light the large number of women who access the judicial system to defend their labour and employment rights. **People in detention's** rights to defence and access to counsel have also been violated during the pandemic. Both in the West Bank and Gaza, lawyers have often been, for instance, prevented from visiting their clients in detention. The discussion paper also briefly comments on detention conditions during COVID-19, in the West Bank and Gaza and for Palestinians in detention in Israeli prisons.

The restrictions on movement have decreased lawyers' contacts, both with their clients and the courts. Justice seekers' financial ability to hire lawyers has been severely affected by the economic crisis produced by the pandemic. Some interviewees affirmed that women were particularly impacted by reduced access to **legal assistance and representation**. Many lawyers coordinated among themselves to cover each other's hearings and exchange information to ensure their clients received effective representation. In the West Bank, during COVID-19, the need surfaced to better implement and provide resources for the national legal aid strategy.³

Both in the West Bank and Gaza, the pandemic has brought to light the vital functions of the **notification departments** – with the mandate to notify the parties to each case of the timeline, hearings and deadlines – and the **enforcement departments** – mandated to enforce court judgments and decisions. These departments' work needs to be better prioritised, both in normal circumstances and during pandemics and similar crises, to increase transparency and contact with the justice seekers.

In Gaza, some interviewees expressed concern regarding an **increase in the issuance of death sentences during the pandemic**. The interviewees were concerned by the possibility that the instability caused by the pandemic had been exploited, according to them, to more speedily hear and adjudge murder cases, with the aim to calm public opinion and increase trust in the institutions.

In both the West Bank and Gaza, the suspension of the judicial systems pushed many to turn to **customary dispute resolution mechanisms**, such as arbitrators and social conciliators (traditional leaders who resolve conflicts and social problems based on local and religious norms and traditions). This may have had detrimental effects on women and girls' access to justice, since their rights and legal protections are often weaker when involved in customary dispute resolution.

³ The national legal aid strategy was adopted 11 December 2019 by a coordinating council consisting of the Transitional High Judicial Council, the Ministry of Justice, the Independent Commission of Human Rights and the Bar Association. It focuses on criminal justice assistance.

The study concludes that there is a need both in the West Bank and Gaza, to manage the administration of justice better and more strategically during pandemics and similar crises. This could, for instance, be done by creating a judicial crisis management committee to coordinate the work of the judiciary during crises, in particular to safeguard access to justice and vulnerable groups' needs. The pandemic has also revealed how fragile the systems of administration of justice are in Palestine, when put under pressure for longer periods of time. Further, **digitalisation** of the justice systems is also needed to better ensure access to justice during crises, for example, to make legal information and procedures more accessible to the public. Despite all the challenges and setbacks in reaching equal access to justice for all produced by the COVID-19 crisis, the pandemic has also provided an opportunity to examine ways in which the justice systems can be made more efficient to enhance access to justice, with long-term impacts and potential reach beyond the current health crisis.

Key recommendations⁴

- **Form a judicial crisis management committee** of experienced and independent figures to devise plans and strategies to manage crises, in particular considering vulnerable groups' needs.
- **Map the legal and practical conditions for digitalisation and make public a mapping report.** This should include digital literacy/infrastructure, with consideration of due process, fair trial rights, the right to privacy and data security.
- Provide sufficient funding to **ensure that domestic violence shelters never have to close**, even during emergencies. Better resource protective measures attached to domestic violence cases, including for children.
- **Prohibit, without exception, all marriages for individuals under 18 years of age.**
- **Ensure the full respect, protection and fulfilment of the right to counsel**, regardless of the existence of a state of emergency.
- **Defence lawyers are essential workers and they should be provided with an ID to allow them to travel when movement restrictions are implemented.** Coordinate with law enforcement to ensure they respect lawyers' right to move during these periods.

⁴ These are six selected key recommendations. See the section on recommendations at the end of this report for more recommendations.

Introduction

In both the West Bank and Gaza, the total, and later partial, suspension of judicial proceedings during COVID-19 had serious and extensive impacts on people's access to justice. The severity of this situation was exacerbated by the Israeli occupation, the blockade of the Gaza Strip, internal Palestinian division, the chronic electricity shortage, and the shortage of specialised personnel, medicine and equipment.⁵

In Gaza, prior to the pandemic, the economic situation was very difficult, resulting from the 14-year-long Israeli closure of the territory and its implications for unemployment and poverty rates, but also justice delivery. The curfew policy imposed during COVID-19 has revealed the extent of overcrowding in residential units and neighbourhoods due to the extreme poverty that the Gaza population endures, leading to an environment that – according to some interviewees – fostered poor morale, anxiety and depression. This resulted in an increase in petty thefts, as well as family disputes requiring resolution by the judiciary.

In the West Bank, COVID-19 has also had disastrous effects. Poverty is expected to double because of the pandemic, from 14 to 30 percent,⁶ which will result in an increase in legal and social disputes. A person's geographical location was found to be an important factor affecting access to justice in the West Bank during the pandemic period, as people living in remote areas were more affected by movement restrictions.

Justice seekers' realities look very different depending on where they live: the West Bank, the Gaza Strip, the West Bank's area C and Jerusalem. The partition of Palestine between the West Bank and Gaza has also divided the justice system into two parallel ones. In both the West Bank and Gaza, there are many different institutions/systems through which to access justice: the *ordinary* courts (civil and criminal), *Sharia* courts (with jurisdiction over personal status law), military courts, administrative courts and a constitutional court in Ramallah, as well as arbitrators and social conciliators.⁷ Both in the West Bank and Gaza, the court system is supervised and regulated by a High Judicial Council.

This discussion paper does not intend to provide an exhaustive overview of access to justice for vulnerable groups during COVID-19 in Palestine, but

⁵ Supra note 1.

⁶ World Bank, "Economic Monitoring Report to the Ad Hoc Liaison Committee", 2 June 2020, pg. 7, para. 17.

⁷ Traditional leaders resolving conflicts and social problems, based on local and religious norms and traditions.

rather to spotlight key challenges and potential solutions exposed in interviews conducted for this study. The paper does not address the situation of vulnerable groups of Palestinians living under areas controlled by Israel, where Palestinians have been subjected to systematic repression and discrimination.⁸ Illegal settlements, demolishing of buildings owned by Palestinians and Israeli closure of the Gaza strip, with catastrophic humanitarian consequences, have all continued during the pandemic.⁹

This discussion paper draws on 30 in-depth interviews conducted with lawyers and judges. In the West Bank, 15 interviews were conducted with legal professionals from nine governorates. In Gaza, 15 legal professionals were interviewed from three governorates. Interviewees came from civil, criminal, *Sharia* and military judicial systems and were selected with consideration to their particular contact with or knowledge of the situation of vulnerable groups. The interviews were conducted by the Palestinian organisation Al Haq in the West Bank and ILAC-member the Palestinian Center for Human Rights in Gaza, between November and December 2020.

⁸ Human Rights Watch, World Report 2021, Israel and Palestine Events of 2020, available at: <https://www.hrw.org/world-report/2020/country-chapters/israel/palestine> (accessed 23 August 2021).

⁹ Ibid.

1 Administration of justice during the pandemic

During COVID-19, in both the West Bank and Gaza, judicial proceedings have been suspended for limited periods of time. In the West Bank, the work of the courts was suspended from 22 March to 15 April 2020. In Gaza, courts stopped work during the two states of emergency, 10 March to 10 April and 24 August to the beginning of October 2020. The resumption of judicial activity was at first partial, and case prioritisation schemes had to be set up to deal with accumulation and backlogs of cases. In Gaza, full resumption of judicial activity was also affected by the judicial recess, further delaying the normal functioning of the courts.

Regulation of the administration of justice during COVID-19

West Bank

In the West Bank, COVID-19's effects on the judiciary have been coupled with controversy and debate on the reform of the judiciary. The reforms adopted have led to increasing control of the executive over the judiciary.¹⁰ To confront the spread of the COVID-19 virus, the Palestinian President issued a number of decrees related to the judicial system and its work, authorising the President of the Supreme Court¹¹ to take decisions regulating the work of regular courts, such as which cases to prioritise during the pandemic.¹² The President of the Supreme Court was appointed by the executive and in a manner that failed to meet criteria of impartiality and independence. The reforms have been met with heavy criticism from Palestinian civil society organisations, which have

¹⁰ See ILAC Policy Brief 7/2021, Ylva L. Hartmann, Lauren McIntosh, "Judges on the Frontline – Is the Rule of Law Losing its Guardian? Examples from the West Bank and Guatemala", January 2021. For more background, see ILAC Policy Brief 3/2019, Mikael Ekman, "Be independent and do as you're told! Closing space for judges in Palestine", October 2019.

¹¹ The President of the Supreme Court is also the President of the Transitional High Judicial Council in the West Bank.

¹² Al-Haq organization, a legal reading of the two laws by decisions regarding amending the Judicial Authority Law and the formation of a Transitional Supreme Judicial Council (in Arabic), available at: <http://www.alhaq.org/ar/advocacy/14779.html> (accessed 14 May 2021).

voiced concerns around the executive taking advantage of the pandemic to extend its power.¹³

The Palestinian President declared a state of emergency on 5 March 2020, while the Palestinian National Authority imposed various restrictions on movement and the functioning of society to stop the spread of the virus. On 22 March 2020, a curfew was imposed for a period of 14 days in all areas of the West Bank. Judicial activities were completely suspended between 22 March and 15 April 2020. After the suspension, the courts resumed their work gradually and partially, according to guidelines and directions issued by the High Judicial Council.

The High Judicial Council decided that the Palestinian courts should function on a restricted schedule to handle the most sensitive types of cases, such as cases related to freedom (arrests, release and recall orders in executive cases), violations of the state of emergency, and cases concerning 'basic needs of humans', such as water and electricity.

Dates and legal deadlines, such as the filing of cases, submitting requests and appealing court rulings, before the regular, civil, criminal, administrative, legal, military and constitutional courts, were extended to adapt to the suspension of judicial proceedings. The judicial annual break for the regular and military judiciary was also cancelled to make up for the suspension of work during the lock down.¹⁴

Palestinian institutions, including the judiciary, were also affected by the stop of all forms of coordination with Israel, including security coordination, in January 2020. Palestinian security services withdrew all security patrols in the areas under joint administration with Israel,¹⁵ practically leading to a complete inability to carry out any activities for the Palestinian institutions in those areas. Prior to the halt in security coordination in January 2020, the Palestinian security services notified Palestinian citizens under Israeli control about their legal cases. The cessation in coordination between Palestinian institutions and Israel led to the postponement of many cases, greatly increasing the length of litigation before the courts.

¹³ See, for instance, the "Joint Urgent Appeal on the Deteriorating Judiciary Situation in the State of Palestine in Light of the Issuance of Three Unconstitutional Laws by Decree Regarding the Judiciary by the Palestinian President", submitted to the UN special rapporteur on the independence of judges and lawyers by 13 civil society organisations, including Al-Haq and the Palestinian Center for Human Rights, 15 March 2021.

¹⁴ The judicial annual break in Palestine is usually a 45-day period, which begins in July and ends in September each year.

¹⁵ Al-Jazeera, "After resuming security coordination with the occupation, the PA is about to return its ambassadors to the UAE and Bahrain", 18 November 2020 (in Arabic).

Geographical differences and difficulties in the West Bank

Movement restrictions have affected the delivery of justice during the pandemic in the West Bank. Many judges, prosecutors and court administrators were unable to reach their work, despite having permission to travel; some did not have private means of transportation and there were significant disruptions of public transport. Further, the decision to partially close some cities and towns in the West Bank, especially cities and towns that depend on nearby city centres, resulted in the inability of citizens to access the justice sector.

To circumvent the effects on justice delivery of the movement restrictions, judges were asked by the High Judicial Council to carry out their work in their home governorates. Some interviewees said that this resulted in some judges being disproportionately influenced by prosecutors in hearings related to extension of the terms of detention, for instance, since defence lawyers not living in the same governorate as the judge were prevented from attending the extension hearings and could not therefore plead their cases.

Given that judges were asked to work in their home governorates, some courts had enough judges while others had very few, since there were not many judges living in that specific governorate/city. Regarding the courts in the southern governorates, access was more difficult than the northern ones, due to road closures, as well as the high spread of the coronavirus in those governorates.

Gaza

Access to courts in Gaza has been severely limited during the pandemic. On 10 March 2020, the Gaza High Judicial Council decided that no new cases should be registered during the 30-day state of emergency that was declared in response to the COVID-19 pandemic on 5 March.¹⁶ After the 30-day state of emergency, judicial services partially reopened. As for the prioritisation of cases to be heard, there were different guidelines to be followed for civil, criminal, military and *Sharia* courts. Then again, on 24 August 2020, the Gaza Government Committee imposed a full shutdown of the judiciary until the reopening of judicial proceedings at the beginning of October.

The Ministry of Interior and the Ministry of Health divided the Gaza Strip into different areas, classifying those where the virus had peaked into 'red zones'. Here, all public and private organisations had to be closed and movement of citizens banned, affecting access to the courts. As a result, the residents of these red areas were unable to access judicial facilities.

Most of the interviewees found that judicial services during the pandemic were slow and unstable, due to the recurrent lockdowns and suspension of work at the courts. The Gaza High Judicial Council's decisions on which cases to

¹⁶ Gaza High Judicial Council Circular No. 43/2020.

prioritise were deemed by some interviewees as not taking into consideration the conditions and needs of vulnerable groups. Also, many claimed that the gradual reopening and partial resumption of the work of the courts created a fertile environment for favouritism and interest-based selective execution of court judgments, which disproportionately affected marginalised groups' access to justice. Many of those interviewed also pointed out the lack of a strategy for crisis management, which would have made work easier for justice providers during the pandemic. Some interviewees noted that the lack of material resources, such as laptops, delayed many procedures.

Civil and criminal courts

West Bank

Regarding the regular civil and criminal judiciary, the High Judicial Council in the West Bank issued a set of instructions on the work of the courts during their total closure, whereby the work was to focus on cases of an urgent nature that could not be delayed. The following two types of cases were labelled as urgent: releases and repealing of detention orders; and cases related to the basic components of human life – often concerning water and electricity issues (for instance, urgent requests to reconnect the electricity supply or water, which are civil proceedings). Lawsuits related to violations of government measures to prevent the spread of the virus were also prioritised during the pandemic.

Some interviewees pointed out that the Ramallah Magistrate and First Instance courts had been particularly ill equipped to meet the constraints of the pandemic. There were numerous pending cases in these courts and many people and lawyers frequently presented themselves physically at the courts, while the size and infrastructure of the court buildings and courtrooms made it impossible to respect social distance protocols. Already prior to the pandemic, a severe shortage of staff had been reported in the Ramallah First Instance Court, leading to delays of hearings.¹⁷ There is no proper waiting area for parties who are outside of the courtroom: they are left standing in a narrow corridor, often leading to disturbances of the hearings.¹⁸ Also, the courtroom is small and becomes overcrowded fast.¹⁹

¹⁷ The Civil Coalition for Judiciary Reform and Protection (ISTIQLAL), "Monitoring report Criminal Trials before the Serious Crimes Court and First Instance Courts in the West Bank and Gaza Strip", November 2020, pg. 25.

¹⁸ Ibid.

¹⁹ Id. pg. 26: "Defendants are seated next to the public, by the entrance. The elevator by which they are brought to the floor where the courtroom is located is tiny, and this often caused delays, especially in cases involving multiple defendants. There is no dedicated place to keep voluminous case files, which are sometimes placed on the floor."

Gaza

During the pandemic, the **civil** courts were commissioned by the Gaza High Judicial Council to only hear cases registered and pending at court before 2018 (which did not include any cases registered in 2018 and later), as well as urgent requests. The following urgent requests were the most common ones presented before civil courts during the pandemic: requests for seizure, status verification, travel bans or ban removals. The prioritisation of cases registered and pending at court before 2018 was seen as not strategic by many interviewees, since it did not take into consideration the circumstances of the case or the individuals involved. One of the unintended positive effects of the civil courts' prioritisation of cases was that many cases that had been registered with the court before 2018 were decided on, and the backlog of cases was partially decreased.

As for the **criminal** courts, they could only hear serious cases such as murder, public servants' crimes (such as bribery and embezzlement), and cases related to bail or extension of detention. The issuing of new detention orders was suspended. One interviewee noted that at least 2,500 criminal cases accumulated at the Gaza Magistrate Court during the pandemic in 2020. Another interviewee estimated that around 25 out of 50 premeditated murder cases were adjudged during the pandemic in 2020, to maintain civil peace. There were also cases that provoked public opinion, such as abuse and assault of women and children: the courts considered these as a priority, again with the aim of maintaining civil peace.

Some lawyers interviewed did not agree with the prioritisation of felonies, since this type of crimes frequently required long procedures and direct contact between the lawyer, the client, witnesses, the prosecution and judges. They pointed out that it would have been easier to hear other types of cases, with simpler and speedier procedures, which could, for instance, have had the benefit of reducing backlogs of cases. Some lawyers stated that the prioritisation of felonies had affected many of those suspected of committing misdemeanours disproportionately.

Concern over death sentences

In Gaza, certain interviewees expressed concern regarding the increase of the issuance of death sentences during the pandemic. In 2020, 16 death sentences were pronounced, in comparison to 2019 and 2018, when 4 and 15 death sentences were issued, respectively.^{20, 21} The lawyers were concerned by the possibility that the instability caused by the pandemic had been exploited to hear and adjudge murder cases more speedily, to calm public opinion and increase trust in the institutions and the administration of justice. They

²⁰ The Independent Commission for Human Rights in Gaza, Annual Report 2019.

²¹ The Independent Commission for Human Rights in Gaza, Annual Report 2018.

claimed that pressure was exerted on them and their colleagues to bring their evidence more speedily and that they were not granted opportunities, for example, to postpone their cases. For instance, one lawyer stated that he was only informed one day ahead of his client's hearing in a murder case, while he was in the belief that all judicial facilities were to shut down because of the pandemic. This caused confusion and did not allow him to duly prepare for the hearing.

Sharia courts

West Bank

The *Sharia* courts in the West Bank organised their work according to a shift system to keep them operating at a minimum level. When judicial proceedings were suspended during the curfew, judges were asked to work at courts located in their governorates – also to enable them to function at a minimum level. Some of the *Sharia* courts were closed more than once, due to infections among the judges and employees, which negatively affected the administration of cases. There was also a lack of clarity around which cases to prioritise for *Sharia* judges.

The *Sharia* courts in the West Bank put in place a system whereby the names and telephone numbers of judges were put on courts' social media sites, to enable exchange of information and to answer justice seekers' queries. Unfortunately, the telephone line made available by the *Sharia* courts did not entirely fulfil its purpose: citizens needed legal services such as filing complaints, which was not possible to do via the phone. But the initiative represented a positive step in using technology to develop more inclusive access to justice.

Gaza

The work of the *Sharia* courts in Gaza was suspended during the two periods of states of emergency, in March/April and August/September 2020, respectively. Between and after the complete shutdown of the courts, there was partial reopening of judicial operations.

On 22 April 2020, the Gaza High Judicial Council declared the gradual resumption of the *Sharia* courts' work in a limited manner and with an emergency system. On the 1 May, the *Sharia* courts resumed their work according to normal working hours. From 15 July until 1 September, the *Sharia* courts stopped working again because of the judicial holiday. They remained closed until the end of the second state of emergency, at the end of September.

After the second lockdown in late September, marriage and divorce cases were considered to be the most urgent ones and were prioritised by the courts.²² One interviewee claimed that the rationale behind this prioritisation was financial, since each marriage and divorce request costs 70 Jordanian dinars. The *Sharia* courts were operating limited working hours, Monday and Wednesday from 09:00 to 14:00. Areas classified as ‘red’, that is, those most seriously affected by COVID-19, remained closed, with residents’ movement denied. On 10 October, the *Sharia* courts returned to regular working hours,²³ and subsequently also prioritised lawsuits related to alimony and dowries.²⁴ On 1 November 2020, child custody, hosting and visitation cases, as well as their execution, were also included as priority cases.²⁵

Some interviewees stressed that their work would have been substantially facilitated during the pandemic if information about cases and hearings had been published on each *Sharia* court’s website. During the resumption of services, the courts were overcrowded with lawyers and citizens, which posed public safety issues and impacted the courts’ efficiency.

Judicial notification and enforcement departments’ work hampered

Both in the West Bank and Gaza, the pandemic has brought to light the vital functions of the notification departments – which have the mandate to notify the parties to each case of the timeline, hearings and deadlines – and the enforcement departments – which are mandated to enforce court judgments and decisions. Both the judicial notification and enforcement departments’ work needs to be better prioritised in normal circumstances and during pandemics and similar crises, to increase transparency and contact with justice seekers.

West Bank

In the West Bank, most interviewees stressed that the suspension of the work of the notifications departments during the pandemic had been particularly detrimental to access to justice. Each court has a notification department that oversees delivering in-person notifications and summonses to appear in court. One interviewee framed the notification as “the origin of the case, nothing can proceed without notifications”. When the court sets a new date for the hearing, the parties need to be re-notified. The adjournment of hearings due to the suspensions of judicial proceedings during the curfew required new

²² Gaza High Judicial Council circular 14/2020.

²³ Gaza High Judicial Council circular 24/2020.

²⁴ Gaza High Judicial Council circular 27/2020.

²⁵ Ibid.

notifications. The number of cases accumulated before the judiciary increased and exponentially multiplied the need to re-notifying the parties; thousands of notifications accumulated in the early period of the pandemic.

The notifications department was already, pre-COVID, considered to work poorly and, according to some, represented one of the major problems of the judicial sector. It then suffered for several months after returning to work gradually on 15 April 2020, due to the accumulation of notifications of both old cases that were received before the pandemic and new cases filed after the resumption of judicial services. One interviewee noted that each notification might take more than five or six months before it was received by a party.

Some notifications were sent by electronic means during the pandemic, depending on access to e-mails and the internet by the lawyer representing the party in question.

Some interviewees noted that because many people were unaware of the time of their hearings, this negatively affected their trust in lawyers, as well as in the judiciary.

The work of the enforcement departments, mandated to enforce court judgments and decisions, also has a significant effect on citizens' access to justice. The suspension of the enforcement departments' work²⁶ was compounded by a lack of employees, which resulted in prolonged periods of non-enforcement. The Civil Enforcement Department sits within the High Judicial Council and the Criminal Enforcement Department sits in the Public Prosecution. There is also a *Sharia* Enforcement Department. Cases that were particularly detrimental to justice seekers in terms of lack of enforcement were, according to interviewees, family cases, such as alimony checks, and judicial rulings that were passed just before the closure period of the courts.

Gaza

In Gaza, the work of the judicial notification departments was suspended during the two states of emergency, which obstructed and prolonged the litigation period. At the beginning of the pandemic, some judges in Gaza used mobile phone short message services (SMS or 'text') to notify lawyers about hearings. After a couple of weeks, most judges shifted back to the ordinary notification system, by sending the notices via post and a private contractor, Mersal Post.

Also, the work of the enforcement departments – mandated to enforce court judgments and decisions, such as arrest warrants, salary/pension deductions, custody etc. – was suspended during the two states of emergency. Even after

²⁶ The work of the enforcement departments was suspended between 22 March and 15 April 2020, as with all other judicial activities.

the courts gradually returned to work, the enforcement departments' activities did not resume initially, since these were not considered to be a priority.

Further digitalisation of the judiciary needed

Many interviewees stressed the importance of developing the digitalisation of the justice system in both the West Bank and Gaza to improve access to justice, underlining that the needs and rights of justice seekers must be put at the front and centre of this development. Acknowledging the importance of digital divides, digitalisation should also be accompanied by analogue efforts to increase access to legal information and justice.

There is no remote litigation system in place in the West Bank nor in Gaza. In the West Bank, the UN-backed Sawasaya programme works to promote the rule of law, gender justice and access to justice and includes digital components. The work includes the Mizan I and II programs: a central database for internal court use linking all courts and activating e-links with relevant authorities. This involves an electronic case management system, automation of registering and filing cases, and electronic communication.²⁷ The Sawasaya programme has been an important enabler to improve administration of justice.

Many interviewees underlined that the Mizan website of the High Judicial Council had to be further supported and developed to better face pandemics and similar crises. Some suggested that the Mizan system should make it possible to file complaints by lawyers and citizens online. It would also be important to hold educational awareness programmes among citizens to spread information about its existence and how to use it. Some stressed their concerns about data security issues, which would come with further digitalisation of the justice system.

Suggestions to introduce electronic notifications and electronic signatures were presented in the West Bank during the pandemic, but these had yet to be introduced at the time of writing. Discussions about introducing a remote trial system were common among legal professionals during the pandemic, but many had serious concerns that such a system could lead to potential breaches of defendants' right to a fair trial.

Some interviewees underlined the importance of all justice providers – both those working in courts and lawyers – improving their digital literacy and use digital means of communication to a greater extent. However, it was noted that

²⁷ The following authorities/entities are linked to the Mizan programs: the Public Prosecution (criminal cases), Ministry of Interior (population records), Ministry of Transportation and the Palestinian police (traffic violation reports), the Palestinian Bar Association (lawyers' directory), and Ministry of Justice (national criminal records).

there were frequent power cuts and a fragile digital infrastructure, in particular in Gaza. The digital gap was especially noted in the marginalised areas next to the border of Gaza.

Access to legal information

Apart from the Mizan information pages in the West Bank, the website of the High Judicial Councils (West Bank and Gaza) and social media, there were some attempts by civil society organisations to disseminate information on rights and procedures available to citizens during the pandemic online.

The Gaza High Judicial Council posted daily information on the administration of cases during the pandemic on its website and Facebook page, including the schedule of hearings. This became one of the main means of contact and transmission of information between the Gaza High Judicial Council and lawyers. One interviewee noted that the Gaza High Judicial Council's website was at the time of the interview, under development to expand its services to include the possibility of lawyers filing requests, cases, etc. This would be a welcome step in digitalising the judiciary and increasing access to justice, provided privacy and cybersecurity are taken into account. Some interviewees noted that access to this website and information should also be granted to the wider citizenship and not only legal professionals. In the West Bank, some interviewees raised the Palestinian Lawyers Library as a good example of an organisation that published legal information online targeting both lawyers and citizens.

Interviewees pointed out that beyond people involved in judicial proceedings and the legal community, it would be necessary to disseminate legal information to the wider public both online and offline, something that became even more clear during the pandemic. In particular, according to interviewees, legal information concerning the following topics would be important: changes to rights and procedures during the pandemic and familiarising people with the legal procedures, periods, objections and mechanisms used at courts in light of the current situation; securing free and easy lines of communication to connect with lawyers and justice providers; and the need to make available the "Lawyers Directory" launched by the Bar Association in the West Bank, which includes the names of all lawyers, their membership status, telephone numbers and addresses, to communicate with citizens.

Many interviewees affirmed that there was a need to inform citizens of the primary basics on their rights when in contact with the judiciary, such as the right to counsel, the right to communicate with ones' counsel, the right to remain silent, the basic components of a lawsuit and its functioning and rationale, as well as the different roles of the court registrars, employees and

the police. Some interviewees also stressed the need to better implement and give resources to the West Bank's legal aid strategy.²⁸

Increased use of customary dispute resolution – arbitrators and social conciliators

In **both the West Bank and Gaza**, the suspension of the judicial systems pushed many to turn to a greater extent to customary dispute resolution mechanisms, such as arbitrators and social conciliators: that is, traditional leaders who resolve conflicts and social problems based on local and religious norms and traditions.²⁹ One of the main purposes of arbitrators and social conciliators is to reach amicable solutions between the parties involved in disputes.

Many interviewees stressed that it was more difficult for women and girls to be granted justice in these customary dispute resolution mechanisms. During COVID-19, many women were, in these settings, convinced to waive their rights, such as to alimony (financial support granted to a divorcee) and dowry (*mahr*, the payment of money or possessions from the groom to the bride). During the pandemic, sometimes the lawyers themselves acted as mediators between spouses to enforce alimony debts and the transfer of other belongings. Rulings already handed down by the *Sharia* courts were also brought up by justice seekers to arbitrators and social conciliators for enforcement.

Many interviewees stressed traditional leaders' non-acceptance of women and girls' rights and legal protection, and the vulnerable position they found themselves in when involved in customary dispute resolution. The increased use of these mechanisms therefore impacted women's access to justice disproportionately during the pandemic.

Paradoxically, customary justice systems also have the potential to improve women's access to justice, if they respect women's rights and agency, since many women turn to customary and tribal settings to seek justice to a greater extent than they do to formal justice systems.³⁰ Informal justice systems are closer to home, less expensive and more accessible for women, who often bear

²⁸ The national legal aid strategy was adopted 11 December 2019 by a coordinating council consisting of the Transitional High Judicial Council, the Ministry of Justice, the Independent Commission of Human Rights and the Bar Association. It focuses on criminal justice assistance.

²⁹ Social conciliators work to solve disputes between different parties; arbitrators (sometimes referred to as *mukhtars*) are persons considered as extended family, tasked with solving disputes within the family.

³⁰ IDLO Issue Brief, "Navigating Complex Pathways to Justice: Women and Customary and Informal Justice Systems", 10 September 2020.

a heavy labour burden for their families.³¹ The matters dealt with are also often key issues for women – such as inheritance, family law, and access to and ownership of land.³²

The ordinary judiciary's failure to enforce detention orders during the pandemic pushed many to turn to traditional leaders to a greater extent, allegedly also in cases potentially involving offences punishable with deprivation of liberty, to try to get non-custodial solutions. Some interviewees held that the increased use of customary dispute resolution had undermined citizens' confidence in the ordinary justice system and reinforced the power and position of traditional leaders. The increased use of customary dispute resolution during the pandemic was also seen as an important setback by many civil society organisations, who have advocated against its use for a long time.

³¹ IDLO Report, "Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment", 2013, pg. 11.

³² Id. pg. 15.

2 Access to justice and vulnerable groups during the pandemic

All interviewees stressed the disproportionate effects on vulnerable groups in terms of their access to justice during COVID-19. Both in the West Bank and Gaza, the courts and judicial proceedings were completely shut down for limited times during announced states of emergency, which caused confusion among many individuals and was particularly detrimental to marginalised groups. This was coupled by the already low legal awareness and digital literacy of vulnerable groups to access alternative sources of legal information on platforms such as Facebook and WhatsApp.

Some interviewees in the West Bank highlighted that, even prior to the pandemic, regular courts were not sufficiently prepared and lacked adequate infrastructure to receive vulnerable groups such as women, children, persons with disabilities and the elderly. This was, in particular, in relation to insufficient numbers of administrative staff and inadequacy of courtrooms in size and acoustics.³³ During COVID-19, these shortcomings became more evident. Public safety procedures and social distancing made it even more difficult for some among these groups to enter the small and ill-equipped courtrooms.

The data collected show that vulnerabilities often intersect, cumulating individuals' experience of discrimination and marginalisation in their access to justice. Individuals can simultaneously fall under several of the different categories, thus increasing their vulnerability.

Legal representation and lawyers' contact with clients

In both **the West Bank and Gaza**, lawyers' work to increase their clients' access to justice was made more difficult during COVID-19. The restrictions on movement decreased lawyers' contacts, both with their clients and the courts. The categorisation of areas as seriously affected by the virus – the 'red-tagged' areas – made access by clients, or possible witnesses, even more complicated.

Aside from clients in detention, most lawyers managed to keep remote contact with their clients via landline and cell-phones (mobile phones), which most lawyers preferred over digital means of communication. Both lawyers and their clients tended to rely more on landlines and cell-phones, since they considered

³³ Supra note 17, pg. 8.

digital means riskier in terms of hacking or losing information. Yet, some lawyers did use social media applications, including Facebook and WhatsApp, to keep in contact with their clients and to send materials related to their cases (photos, videos etc.). Some lawyers interviewed reported that the pandemic had positively affected their work, since they had been able to reach new groups of justice seekers and potential clients by using digital communication, including broadcasting live on Facebook, where outreach increased exponentially. Many lawyers coordinated among themselves to cover each other's hearings and exchange information to ensure their clients received effective representation.

In the West Bank, during the first days of the curfew announced 22 March, lawyers had to follow the movement restrictions in common with ordinary citizens. The Bar Association reacted to this and negotiated an agreement with the High Emergency Committee,³⁴ according to which lawyers were allowed to move between governorates, main cities, towns, villages and refugee camps to carry out their professional duties and to communicate with the justice sector, their clients and law enforcement agencies. According to one interviewee, sometimes they were obstructed by the police, who did not allow movement despite lawyers showing them their ID issued by the Bar Association.

Most of the civil society organisations providing free legal aid to vulnerable groups were able to maintain communication with their clients during COVID-19 via toll-free lines. Many interviewed lawyers reported that vulnerable groups' knowledge of their legal protection was low and that legal awareness raising on the rights and procedures available was one effective tool in increasing vulnerable groups' access to justice. Preferred channels for these campaigns to increase outreach were radio, television and social media.

The interviewees considered radio to be the most effective way to convey legal information to vulnerable groups; some stressed that their outreach was particularly good with women via radio. One interviewee noted that the use of social media to reach women and girls was also efficient, since it was not as easily controlled by male partners or guardians. This view contrasted with reports from the Women's Centre for Legal Aid and Counselling, which stated that social media was increasingly watched by controlling husbands and family members during the home quarantine period.³⁵

³⁴ The High Emergency Committee was formed to review the epidemiological situation, assess developments in the spread of the epidemic and issue decisions in response to this analysis.

³⁵ The Civic and Women Coalition for the Implementation of CEDAW in the Occupied State of Palestine, "Report on the Violence against Women and girls during COVID-19 in the State of Palestine", submitted to: The United Nations Special Rapporteur on Violence against Women, 29 June 2020, pg. 15.

In both the West Bank and Gaza, many lawyers experienced financial difficulties because of the suspensions and partial functioning of the judicial system. Some lawyers even stopped practising law and started working with other professions inside the Green Line³⁶ instead. More senior lawyers managed to maintain and even to acquire new clients during the pandemic, but younger lawyers, who often did not have as large a network, were affected in terms of lack of clients and income. In Gaza, one interviewee estimated that lawyers' incomes decreased by half on average during the pandemic.

Gender-based and domestic violence

The great majority of interviewees expressed concern over increasing rates of domestic violence and the victims' decreased abilities in seeking legal protection during the pandemic. They also felt frustrated by the fact that it was more difficult for them, in their capacity as judges and lawyers, to be alerted to domestic violence cases during the pandemic due to people's increased seclusion in their homes.

According to a survey conducted in the beginning of the pandemic by the Ministry of Women's Affairs in the Gaza Strip and the West Bank, including Jerusalem, violence against women increased during the pandemic, 15 percent of women had been subjected to physical violence. Psychological violence³⁷ was the most common form, reaching 55 percent, followed by economic violence³⁸ at 53 percent.³⁹

This is a similar pattern to other parts of the world. Prior to the pandemic, UN Women reported that, *globally*, "243 million women and girls aged 15–49 have been subject to sexual and/or physical violence perpetrated by an intimate partner in the previous 12 months".⁴⁰ Violence against women and girls, and particularly domestic violence, has only intensified since the outbreak of the

³⁶ The demarcation lines between Israel and Palestine decided in the 1949 armistice.

³⁷ European Institute for Gender Equality, definition of psychological violence: "Any intentional conduct that seriously impairs another person's psychological integrity through coercion or threats. Any act which causes psychological harm to an individual. Psychological violence can take the form of, for example, coercion, defamation, verbal insult or harassment" (accessed 23 March 2021).

³⁸ European Institute for Gender Equality, definition of economic violence: "Any act or behaviour which causes economic harm to an individual. Economic violence can take the form of, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as alimony" (accessed 23 March 2021).

³⁹ Ministry of Women's Affairs, "Impact of the COVID-19 Pandemic on Gender-Based Violence in the State of Palestine (14–24 April 2020)", Pilot Study, Basic Findings, Summary of Findings, Ramallah, Palestine, pg. 13.

⁴⁰ UN Women, "COVID-19 and ending violence against women and girls", 2020.

pandemic.⁴¹ In May 2021, ILAC published a policy brief on the increase of gender-based violence and how the barriers for women and girls' access to justice for these crimes in conflict-affected and transitional settings had exacerbated during COVID-19.⁴²

In the **West Bank**, telephone hotlines experienced an increase in complaints regarding physical and psychosocial violence.⁴³ Civil society organisations witnessed a nearly threefold increase in the demand for counselling by women and girls subjected to gender-based violence.⁴⁴

At the beginning of the pandemic, the organisation SAWA recorded a 10 percent increase in calls from women in relation to domestic violence and abuse in the West Bank.⁴⁵ The organisation Palestinian Working Women Society for Development provided more than 510 phone consultations during less than two weeks in March–April 2020; 40 percent of the calls concerned gender-based violence alone.⁴⁶

Some interviewees expressed that under normal circumstances, some cases of domestic violence could be avoided by interventions by the police and family protection units. During COVID-19, this possibility was severely affected because of movement restrictions.

The Ministry of Health provided free support and telephone helplines as a response to the COVID-19 pandemic, intended to cover all sorts of support needed arising from the pandemic and not only gender-based violence. The telephone lines were, however, ill-equipped to deal with the situation of women, in particular support in cases of gender-based and domestic violence.⁴⁷

The restricted functioning of the public transportation system in the West Bank, as well as its increased costs during the pandemic to reduce crowds, disproportionately affected women – since they often did not have independent access to a vehicle to the same extent as men. The interviewees stressed that this was a contributing factor limiting women's access to both lawyers, courts and the police. The lawyers also recommended a stronger monitoring function of the family protection police unit to ensure access to transportation for victims of violence.

⁴¹ Ibid.

⁴² ILAC Policy brief 8/2021, Vanessa Passos Araújo, Linn Häggqvist, "The shadow pandemic: COVID-19 and justice for gender-based violence survivors in conflict-affected and transitional settings", May 2021.

⁴³ UN Women, "COVID-19: Gendered impacts of the pandemic in Palestine and implications for policy and programming", April 2020, pg. 19.

⁴⁴ Supra note 35, pg. 14.

⁴⁵ SAWA Weekly briefing, 9-16 April 2020.

⁴⁶ Supra note 35, pg. 14.

⁴⁷ Id, pg. 15.

Many interviewees stressed the impacts on children, who also suffered from domestic violence. They affirmed the importance of courts treating domestic and gender-based violence as urgent cases to prioritise during pandemics and similar crises, and that there was a lack of clarity around which cases to prioritise for *Sharia* judges.

In Gaza, even prior to COVID-19, there was a high risk of being exposed to gender-based violence, compounded by tense living conditions because of poverty, overcrowding and economic insecurity in the Gaza strip.⁴⁸ This was aggravated during the pandemic, in particular as a result of the home quarantine measures taken by the authorities to stop the spread of the virus,⁴⁹ increasing pressure and domestic violence – perpetrated in the vast majority of cases by men.

The Ministry of Social Development’s Aman Shelter, which offers protection to women survivors of gender-based violence, located in Gaza City, reported a significant increase in the number of women seeking refuge. A study conducted by UN Women across Palestine at the beginning of the pandemic, found that 53 percent of justice and security service providers observed an increase in domestic violence.⁵⁰ According to one *Sharia* lawyer interviewed for this study, her workplace (the Women’s Affairs Center in Gaza), offered 50 legal consultations to women victims of gender-based violence daily, compared to 25 per day before COVID-19.

The Aman Shelter was closed from 27 August to 10 September 2020, as its staff were unable to travel from their residencies in the southern and northern Gaza Strip, and due to lack of protective equipment. The shelter was forced to send several women back to their homes and sometimes even back to the aggressors, or to rented apartments. After reopening, the shelter received 15 cases between 10 September and 22 September 2020, compared to four or five cases per month during normal circumstances.

Many interviewees from Gaza affirmed that often victims of domestic and gender-based violence could not file complaints with the police or request police protection, since law enforcement was occupied securing quarantine centres. Also, interviewees stated that it was difficult for victims to obtain medical certificates as proof of the physical marks of the violence, due to overcrowding of hospitals with COVID-19 cases.

⁴⁸ Ward, J. “If not now, when? Addressing gender-based violence in refugee, internally displaced and post-conflict settings: a global overview”, The Reproductive Health for Refugees Consortium, New York, 2002; Supra note 35.

⁴⁹ Supra note 35, pg. 12.

⁵⁰ UN brief, “Impact of COVID-19 crisis on the access of women victims and survivors of violence to justice and security services in Palestine”, 2020.

Single mothers and their children

Many interviewees criticised that cases of alimony, child support, custody and visitation rights were not sufficiently prioritised during the pandemic, with disproportionate effects on single mothers and their children's access to justice.

In the West Bank, there was a lack of clarity around which cases to prioritise for *Sharia* judges. In Gaza, cases of alimony, child support, custody and visitation rights were not granted priority in the first phase of the courts' reopening.

It became increasingly difficult for many women, including single mothers, to pay the fees to file lawsuits, as poverty increased during the pandemic and disproportionately affected women's ability to turn to the courts when needed. One interviewee from the West Bank held that many women who requested divorce during the pandemic, waived their rights, such as alimony and child support, in exchange for a divorce certificate. Sometimes, when a divorced man was unable to pay alimony, he asked to be imprisoned instead; to avoid seeing the fathers of their children behind bars, women sometimes conceded their rights.

During the shutdown of the courts, in both the West Bank and Gaza, it was impossible to file for divorce. In Gaza, one interviewed lawyer's client wanted to file for divorce during the pandemic, as her husband had been missing abroad for some time. The law of Sharia Legal Procedures No. 12 of 1964, stipulates that in such cases, the person seeking the divorce has to publish an advertisement for 30 days in an official newspaper to look for the missing husband/wife, which the client did. When the courts reopened, the client was forced by the court to republish the advertisement for another 30 days, extending the period of litigation and its associated costs, which was difficult for the client. Also, many divorced women were unable to retrieve personal belongings from the marital household.

Child custody and visitation rights

Many interviewees, both in the West Bank and in Gaza, reported that some divorced parents had been deprived of seeing their children for lengthy periods during the pandemic. Oftentimes, this concerned children visiting their fathers, who then did not return them to the mothers who held custody. Many mothers were unable to force the ex-husband to return the children at the end of their hosting period. The mothers could not turn to the courts for help because of the suspension of their work, or had substantial delays in their cases, depriving them of seeing their children for long periods of time.

This also concerned parents awaiting rulings on child visitation rights – a procedure that allows separated parents to see their children – and child hosting rights – allowing separated parents to host their children overnight.

Areas outside of the control of the Palestinian authorities were particularly affected, because of the lack of security coordination with Israel. Some fathers were also deprived of their visitation rights during COVID-19, according to the interviewees.

In Gaza, one interviewed lawyer mentioned the case of a client, a mother of two twin girls (16 months old). After her divorce, the court ruled that she was entitled to obtain their immediate custody (within less than 48 hours). However, during the COVID-19 crisis, she was deprived of seeing her children for over a month, since when movement restrictions were issued by the authorities, the children were at their father's house. The lawyer contacted a *mukhtar* from a conciliation committee (traditional leaders/arbitrators who resolve conflicts and social problems, based on local and religious norms and traditions) and managed to reunite the mother with her twins.

Alimony

Both in the West Bank and Gaza, women and children dependent on alimony for survival and subsistence have been greatly affected during the pandemic. The suspension of registration of new cases and execution of judgments and legal decisions during the two states of emergency in Gaza was a hard blow for people dependent on alimony for survival. Most people entitled to alimony lack other sources of income. As alimony is calculated from the date the case is registered with the court, the inability to file cases during the states of emergency deprived rights holders of important sums.

In the West Bank, women who obtained court decisions in relation to alimony shortly before the declaration of the state of emergency and women who needed to register application for alimony during the suspension of the courts' work, were hit particularly hard. This situation was compounded by the closure of the enforcement departments (which enforce court judgments and decisions),⁵¹ and the fact that all *Sharia* courts rely on only one enforcement department, the Sharia Enforcement Department, which oversees enforcing all decisions taken by the *Sharia* courts.⁵² When the Sharia Enforcement Department finally opened, there was a heavy backlog of cases, which caused more delays to their enforcement and women's ability to collect alimony.

⁵¹ The Civil Enforcement Department resides within the High Judicial Council and the Criminal Enforcement Department in the Public Prosecution.

⁵² The Sharia Courts have jurisdiction over the Personal Status Law.

Parents are also entitled to request financial support from their children, if they are unable to sustain themselves. Some interviewees affirmed that the lockdown created an opportunity for some children to evade this obligation.

As a result of the suspension of judicial proceedings, interviewees estimated that women entitled to alimony lost on average three monthly alimonies. Their financial needs pushed many women to use the services of mediators, including traditional leaders and social conciliators, to convince husbands to pay alimony or to ask for loans.⁵³ After the resumption of judicial proceedings, the accumulated sums were supposed to be paid in one instalment; however, many women agreed to receive the pending alimony across a number of instalments to ease the financial burden of their husbands.

Cases of alimony were prioritised over other types of family disputes by *Sharia* judges when courts resumed their work. Alimony payments were not included in the decision adopted during the pandemic ordering the postponement of executive payments. Some interviewees suggested that court orders related to alimony should be directly transferred to banks instead of the enforcement department, to make the process of obtaining the alimony sum easier.

In Gaza, the registration of alimony cases spiked following the states of emergency. One interviewed *Sharia* lawyer said that she alone registered 27 alimony cases for women and children during the first week after the reopening of the courts, compared to ten cases per month before the lockdown.

Interviewees gave examples of cases where divorced women with children had to vacate their homes, due to the lack of alimony covering their housing expenses. Some women got help from civil society organisations and shelters, such as the Hayat Shelter. However, this help did not reach everyone.

Some interviewees believed that some husbands took advantage of the suspension of judicial operations and refused to pay their financial dues or execute judicial rulings on alimony and dowry, for instance. One interviewee reported that some also refused to adhere to amicable agreements entered into before the announcement of the first state of emergency in March 2020.

It was also noted by interviewees that the alimony amount granted by the courts was very low: 50 Jordanian dinars (JD) per month, corresponding to approximately €58, for divorced women, and 20–35 Jordanian dinars, corresponding to approximately €23–€41, for children, depending on their age. Nor did it take into consideration crises such as COVID-19, which heavily impacted expenses and made it difficult, if not impossible, to sustain oneself. This was believed to push some divorced women and their children into criminal behaviour.

⁵³ For more on the use of customary justice, see section Customary dispute resolution – mukhtars and social conciliators, pg. 21 in the present report.

Lack of financial support was also difficult for the elderly, especially widowed women. If a woman's husband is deceased, she is entitled to 20 Jordanian dinars per month from her son(s). Some sons refused to pay financial support to their widowed mothers during the pandemic. Legal awareness is particularly low among the elderly, which is another obstacle to them using the justice system to obtain their rights. One interviewee illustrated the difficult situation of the widowed elderly with a case he was working on. The case involved a widow who had filed a request for financial support from her children on 13 July 2020. The court issued its decision in mid-November 2020 (20 JD to be paid monthly). The courts where the case was registered were in a red area – heavily affected by COVID-19 – which caused further delays to the case. The client was said to be in a dire situation in terms of her economic position and her health.

Children

Children are a diverse group, and it is impossible to comprehensively capture their different/intersecting vulnerabilities based on the data collected for this study. There are, however, some indications to be drawn.

The Palestinian Ministry of Women's Affairs study on violence against women and girls, showed that 270,000 children were subjected to psychological, physical and/or verbal violence between March and April 2020.⁵⁴ These figures show to what extent children have been affected by the high rates of domestic violence. Additional stress was caused by the suspension of protective measures and assistance for children who had been subjected to or in any way experienced domestic violence during COVID-19.

In the West Bank, the work of the Orphans Fund, from which *Sharia* judges issue payment orders to orphans, was also stopped from 22 March to 15 April 2020, exposing orphans to extreme vulnerability.

Children in conflict with the law

Children were disproportionately affected by the suspension of judicial proceedings during the lockdown. In Gaza, many cases of juveniles were adjourned for lengthy periods, which had a negative impact on the children, causing a lot of stress and affecting their well-being. In the West Bank, when operating, juvenile courts exclusively considered serious criminal cases. This left children accused of misdemeanours – offences which were more common during the pandemic – and other offences without hearings.

⁵⁴ Supra note 35, pg. 17.

Increase in child marriage

Many interviewees, both from the West Bank and Gaza, expressed concern over an observed increase in child marriage during the pandemic. UNICEF has reported that child marriage risks increasing during COVID-19, for reasons such as school closures and increased financial pressure, both known factors that push children towards marriage.⁵⁵

Even before COVID-19, child marriage was a serious issue, both in the West Bank and Gaza. In 2019, 19.3 percent of females' registered marriages took place when they were under the age of 18 (19% in the West Bank, 19.9% in the Gaza strip).⁵⁶ The statistics for males married before the age of 18 were 0.9 percent.⁵⁷

In the **West Bank**, most of the marriages that have taken place during the pandemic have not been formally registered. Many interviewees noted that there had been an increase in applications for marriage approval for those taking place outside of the formal system (the *Sharia* courts) during the pandemic, that is, customary marriage, in particular in the southern governorates. Customary marriage often includes parties under the legal age of marriage, which is 18 years old. A Presidential Decree (No. 21 of 2019), adopted on 3 November 2019, raised the age of marriage to 18 for both women and men, but also permitted chief justices of *Sharia* and other family courts to allow marriage below the age of 18, "if required in the interest of both parties". The decree's enforcement started at the beginning of 2020.

In the West Bank, under normal circumstances, marriages taking place outside the legal frameworks are subject to examination of legality and, if not legally valid, are punishable by law. However, during COVID-19, some interviewees had been confronted with applications concerning exceptions to conclude marriage contracts for persons under the legal age. The *Sharia*' Chief of Justice received around 2,000 applications to validate child marriages during 2020.

In **Gaza**, during the first week of the courts' partial return to work in September 2020, more than 100 marriage formalisation requests were registered in the Gaza *Sharia* courts, well above the average number. Many interviewees noted what some called the '*abnormal*' increase in marriages during the lockdown and were concerned about an increase in child marriage during the pandemic. In Gaza, the family rights law sets the legal age of marriage at 17 years for females and 18 years for men (Article 5). A judge can authorise marriage below 17 and 18 if puberty is reached or the person can be

⁵⁵ UNICEF, "COVID-19 – A threat to progress against child marriage", March 2021.

⁵⁶ Palestinian Central Bureau of Statistics, 2019

<http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3934>, (accessed 16 February 2021).

⁵⁷ Ibid.

considered to be “physically mature”, and if the girl’s guardian agrees (Article 6 and 7).⁵⁸

Before the pandemic, poverty was deemed to be one of the main determinants of child marriage, as a way of securing the family’s economic well-being.⁵⁹ During COVID-19, the increase in marriage has been explained partly by a surge in unwanted pregnancies.⁶⁰ These in turn have happened as a result of the increase in sexual assault and gender-based violence mentioned earlier in this report. Some interviewees explained the increase in marriage during COVID-19 by the fact that wedding arrangements became much less expensive, since larger gathering such as wedding parties were banned.

Child marriage – marriage before the age of 18 – is a serious violation of the rights of a child.⁶¹ Girls are disproportionately affected by child marriage, as demonstrated by the statistics from the Palestinian Central Bureau of Statistics, and such marriages often result in a life in certain sexual and economic servitude, as well as increasing the risk of domestic violence and sexual abuse.⁶²

Employment conflicts

Both the West Bank and Gaza economies were in a dire situation before the pandemic. In the West Bank, 13 percent lived below the poverty line and the unemployment rate had been averaging around 17 percent before COVID-19.⁶³ In Gaza, economic and food insecurity, as well as economic stress, was already predominant before the pandemic due to the Israeli blockade, isolation and internal division.⁶⁴ According to the World Bank, before COVID-19, every second person was living in poverty in Gaza.⁶⁵ The Palestinian Central Bureau

⁵⁸ Musawah for Equality in the Family, “Thematic Report on Muslim Family Law and Muslim Women’s Rights in Palestine”, 70th CEDAW session, July 2018, pg. 15.

⁵⁹ UNICEF, “Child marriage and the law – Legislative reform initiative paper series”, Division of policy and practice, April 2007, pg. 31.

⁶⁰ Supra note 35, pg. 11.

⁶¹ Including the right to equality on grounds of sex and age, the right to marry and found a family, the right to life, the right to the highest attainable standard of health, the right to education and development, and the right to be free from slavery, as established in the following human rights treaties ratified by Palestine: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

⁶² Supra note 59, pg. 33–34.

⁶³ World Bank, “Economic Monitoring Report to the Ad Hoc Liaison Committee”, 2 June 2020, pg. 7, para. 17.

⁶⁴ World Bank, “Cash-Strapped Gaza and an Economy in Collapse Put Palestinian Basic Needs at Risk”, 25 September 2018.

⁶⁵ Supra note 63.

of Statistics estimated the unemployment rate to be 45 percent in Gaza in 2019.⁶⁶ Women and youth unemployment rates were higher, with unemployment among young women (15-29 years) in Gaza particularly high, estimated at 92 percent in 2020.⁶⁷ Interviewees stated that young workers had been among the most affected during the pandemic; many were dismissed from work during the lockdown, increasing their economic insecurity.

The World Bank estimates that the COVID-19 pandemic will result in a substantial increase in poverty, with a raise to 64 percent from 53 percent in Gaza and 30 percent from 14 percent in the West Bank.⁶⁸ Unemployment is also soaring and will have disastrous effects on peoples' justice needs.

People subsisting on the informal economy or daily-labour workers, women, youth, and the elderly have been disproportionately hit and have suffered great financial hardship. The Palestinian Federation of Trade Unions documented approximately 39,000 complaints from women concerning dismissals and other labour rights issues during the first quarter of 2020.⁶⁹ Women with disabilities comprised 355 of the complaints, while 75 percent of the complaints concerned the informal sector.⁷⁰

Some interviewees pointed out that most of their clients filing lawsuits against their employers concerning arbitrary dismissal or non-payment of salaries, were women. Unemployed women often found themselves at the mercy of their husbands or parents and had been, according to interviewees, subject to abuse to a greater extent during the pandemic since they were seen as increasing the financial burden of the family. This added to the prevailing notion of some parents that daughters were a burden and more costly than sons. Interviewees had heard about many instances where parents or husbands insulted these women and their lack of financial income.⁷¹

In the West Bank, many employers had been forced to reduce wages, sometimes by about 50 percent, or had to close down their businesses during COVID-19, leaving many unemployed, while some workers were dismissed. Workers on probation terms had been particularly affected and some did not receive the wages they were entitled to, which led many to resort to the courts to try to demand outstanding payments. Workers who had been infected with

⁶⁶ Reliefweb, "Increase in Gaza's unemployment rate in 2019", 5 March 2020.

⁶⁷ Reliefweb, "Gaza unemployment rate in the second quarter of 2020: 49.1%", 21 September 2020.

⁶⁸ Supra note 63.

⁶⁹ General Union of Palestinian Women and Women Civic Coalition Palestine, "The Reality of Palestinian Working Women in the Labour Market during the COVID-19 Pandemic", para. 3.

⁷⁰ Ibid.

⁷¹ For more information on increased vulnerabilities and discrimination against Palestinian women in the labour market, see supra note 69.

the coronavirus were quarantined, sometimes leading to their dismissal because of their absence from work.

Some of the interviewees from the West Bank said the judiciary had not found fair solutions, striking a balance between the rights of employers and employees. The decisions were grounded in instructions from the Ministry of Labour, which had decided to derogate from some labour rights during the pandemic. One of the quoted examples of such a case was the Telecommunications Company, which has fired many workers during the COVID-19 pandemic.

In Gaza, at least 160,000 workers have been affected during the pandemic, related to dismissals and reduced working hours and wages, according to the Palestinian Center for Human Rights (PCHR).⁷² People have been unable to resort to the courts to complain about the illegality of their dismissals or to raise other employment conflicts, since these cases were not considered to be priority cases by the courts. Some interviewees stated that this forced some workers to agree to what they perceived as unfair settlements outside of the courts. In some cases, negotiations were carried out directly with the employer in question; in others, people resorted to the *mukhtars* and social conciliators.

One interviewee was concerned that some employers had taken advantage of the closure of the courts and referred to one example of a client of his. A 40-year-old man resorted to the social conciliators to try to solve an employment conflict during COVID-19, but the employer refused to accept any amicable settlement.

Palestinian workers in areas controlled by Israel

Palestinian workers in areas controlled by Israel faced increasing community abuse during the pandemic when returning to the West Bank, as they were among the first groups to be infected with the virus. According to an agreement between the Palestinian Authority and Israel, concluded 18 March 2020, Palestinian workers were allowed to enter to work in areas controlled by Israel on the condition that they did not return to the West Bank for a period of one month. When returning home to the West Bank, the workers stayed secluded because of bullying, were often not able to work and ended up in terrible economic situations, since they usually worked on a daily-labour basis. If the workers were to return to the West Bank before one month, they would be penalised by imprisonment and fines. Many workers were imprisoned, as were people who helped them to travel back home.

⁷² Press release issued by the Palestinian Centre for Human Rights, calling for relief for workers hurt by the coronavirus pandemic, 4 December 2020.

People in detention

People in detention are particularly vulnerable to virus infections and pandemics; prisons are in their nature more prone to fostering transmission of diseases, since detained and incarcerated persons are concentrated in small spaces. The rights of people in detention have been affected in various ways, both in the West Bank and Gaza.

Right to physically appear in front of a judge

One of the most serious issues that has arisen for people in detention during COVID-19, in the both the West Bank and Gaza, has been the difficulty bringing people in detention to court while respecting social distance protocols. In many instances, this has led to violations of the right to physically appear in front of a judge. The judge has an obligation to monitor and ensure that people in detention will not be subjected to any form of torture or other cruel, inhuman or degrading treatment or punishment, as required by both Palestinian law and international human rights law.⁷³

People detained in a different location than the court with jurisdiction over the case have been particularly affected, since movement restrictions have made it difficult for hearings to take place. Some interviewees in Gaza noted that there had been extensions made to detention orders, without bringing the individual in question to court. Palestinian law provides that the judge competent to extend the detention must physically see each detainee before extending the detention.⁷⁴ In Gaza, in some cases during COVID-19, the officer in charge of coordination between the court's judges and the Public Prosecution contacted the judge in charge of the detention order via phone, depriving the detainees of the right to physically appear in front of the judge. This was particularly common during the second state of emergency in Gaza. Some interviewees noted that there were cases when the detention was extended, even without a judge's order.

In some instances, the judge in charge of the case would travel to the city where the person in question was detained to hear the case and deliver judgments – but this was far from the norm. For example, Ramallah court judges moved to Hebron court to hear a few cases. In other cases, the period of detention was extended.

Lack of access to legal counsel

The right of people in detention to defence has been violated during the pandemic in both the West Bank and in Gaza. Lawyers have been prevented from visiting their clients in detention. Many lawyers interviewed expressed

⁷³ Palestinian Procedural Law Article No. 121, International Covenant on Civil and Political Rights, Article 14(3)(d) of the ICCPR.

⁷⁴ Ibid.

deep concern over the lack of contact with their clients in detention during the pandemic, which represented a serious breach of the right to counsel and the right to defence.⁷⁵ This also affected the protection of other rights, including the right to liberty and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. If lawyers don't have access to their clients, they can't advocate for their release or take note of torture complaints/check for signs of torture (both physical and psychological).

In the **West Bank**, lawyers often had to communicate with their clients via the judicial police, which was in no way adequate to allow clients private and confidential communication with their legal counsel. In the West Bank, some interviewees pointed out that people in detention had been denied their right to hire a lawyer during the lockdown period, in violation of their right to defence. Also, given the restrictions on movement, judges were often asked to work in their home governorates. Here, according to some interviewees, the judges were disproportionately influenced by prosecutors in hearings related to an extension of the terms of detention, for instance, as defence lawyers not living in the same governorate as the judge were deprived from attending the hearings, in violation of the right to defence and a fair trial.

In **Gaza**, the prison administration issued a decision at the beginning of the pandemic to prevent lawyers from visiting their clients at the reform and rehabilitation centres, to protect health and safety. People in detention were only allowed to use the prison phone for contact with their lawyers and families. At some detention centres in Gaza, people in detention could speak with their family members via computers and video calls. Neither the clients nor the lawyers felt comfortable with using the prison phone as a means of communication, since it did not provide safeguards with respect to privacy and confidentiality. Consequently, on various occasions, lawyers in Gaza could not contact their clients and retrieve information to build the defence of their cases. Also, phone calls from detention centres are not free of charge and many people in detention do not have the financial means to pay for them. Some lawyers had difficulties in reaching their clients when trying to call them back, as it was not possible to use the same number as the client was calling from.

Detention conditions

People in detention in the **West Bank and Gaza** have suffered from the lack of humanitarian assistance. Oversight bodies and mechanisms have either been denied access to detention centres and prisons or occupied with other issues related to the pandemic, so they have not been able to help people in detention, who are often not considered a priority. Also, the shortage of medical staff has made conditions of healthcare in detention worse, both in terms of quantity and quality of healthcare provided.

⁷⁵ Article 14(3)(d) of the International Covenant of Civil and Political Rights.

Additionally, families have been prevented from visiting people in detention. Before the pandemic, many detainees relied on help from their families to sustain themselves in prison, with food, toilet items etc. This support was cut off during the pandemic, worsening the lack of supplies and harsh living conditions in detention centres and prisons in the West Bank and Gaza, which was already a serious issue before the pandemic.

Palestinians in Israeli prisons

Palestinians in **Israeli prisons** and detention centres have been subjected to discriminating policies. Hundreds of detained Israelis were released to protect them from possible contamination, while detained Palestinians were not subject to similar protective and preventative measures.⁷⁶ The Israeli Supreme Court even ruled that the 450 people detained in Gilboa prison – overwhelmingly Palestinians – did not have the right to social distancing.⁷⁷

Palestinians detained in Israeli prisons and detention centres face deplorable detention conditions, including overcrowding, unsanitary environments, lack of proper ventilation and poor nutrition.⁷⁸ In August 2020, there were reports of an increasing number of detained Palestinians testing positive for COVID-19,⁷⁹ yet mass arbitrary detentions and arrests have continued during the pandemic.⁸⁰ Violations of access to legal counsel and proper defence have also been reported, as well as denial of family visits and alternatives thereto.⁸¹

Overcrowding

Overcrowding in prisons and detention centers was already a serious issue in both the West Bank and Gaza before the pandemic.⁸² In **the West Bank**,

⁷⁶ Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967; José Antonio Guevara Bermúdez (Chair), Leigh Toomey (Vice-Chair), Elina Steinerte (Vice-Chair), Seong-Phil Hong and Sètonджи Adjovi, Working Group on Arbitrary Detention; Dainius Pūras, Special Rapporteur on the right to physical and mental health; Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “COVID-19: Israel must release Palestinian prisoners in vulnerable situation, say UN experts”, 24 April 2020.

⁷⁷ Adalah, “Israeli Supreme Court rules: Palestinian prisoners have no right to social distancing protection against COVID-19”, 23 July 2020.

⁷⁸ Al-Haq, Adameer, Joint Written Submission, United Nations Human Rights Council, 45th Regular Session – Item 7, “Israel Continues to Deny Palestinian Prisoners the Right to Health and Safety Amidst Outbreak of COVID-19”, 20 August 2020, pg. 3.

⁷⁹ Al Mezan, “Palestinian detainees in Israeli custody are increasingly at risk of contracting COVID-19”, 27 August 2020.

⁸⁰ Supra note 78, pg. 1.

⁸¹ Centre for Constitutional Rights, “ICRC: Urgent Intervention Needed to Protect Palestinian Prisoners and Detainees in Israeli Prisons from COVID-19 Exposure”, 14 April 2020.

⁸² United States Department of State, Bureau of Democracy, Human Rights and Labour, West Bank and Gaza 2020 Human Rights Report, pg. 10, 2020.

measures were adopted to reduce overcrowding of detention centres and prisons during COVID-19, such as the pardoning 140 prisoners to release them from detention (Decisions No. 22 and 25 of 2020 from the High Judicial Council) and 13 more pardons at Christmas (Decisions No. 64 and 65/2020). To reduce pressure on prisons, persons convicted of civil debts were also not imprisoned (Decision No. 11 of 2020).

In **Gaza**, hundreds of prisoners and detainees were released during the first wave of COVID-19 in Gaza; some of them were released on bail and others were given a furlough, renewed every week, which aimed at reducing the overcrowding in prisons.

Nonetheless, the adopted measures to reduce the prison population in the West Bank and Gaza did not manage to mitigate the overcrowding.

3 Conclusions and recommendations

Decades of occupation, blockade and armed conflicts had taken place even before COVID-19, making improving access to justice for vulnerable groups a very difficult task in Palestine. Solving this deeper and even existential access to justice crisis needs more comprehensive measures and, above all, political solutions and political will from all parties involved.

The COVID-19 pandemic adds to the already grim picture as it has had disastrous effects, such as a significant increase in poverty and needs of a legal nature that require solutions by courts and authorities. This study shows that cases of domestic violence, alimony, child support, custody and visitation rights, people subsisting from the informal economy or daily-labour workers, as well as people in detention have been particularly affected during COVID-19. It has also brought to light concerns about an escalation in child marriage, both in the West Bank and Gaza, and worries about an increase in the issuance of death sentences in Gaza during the pandemic.

Paradoxically, Palestine, or at least the West Bank, may be better positioned than many other countries to develop answers to the challenges and setbacks of delivering justice produced by the pandemic. The digitalisation of the justice system has already begun in the West Bank, brought about by the conflict and the difficult situation before the pandemic in terms of administering justice. The threshold to develop the digitalisation of the judiciary and institutional reticence may be lower than in other contexts. One needs to be very cautious about possible detrimental effects on fair trial rights and equal access to justice in the digitalisation process, and representatives of civil society, legal aid organisations and vulnerable groups need to be consulted and involved as a safeguard.

Irrespective of the sometimes-insurmountable challenges in Palestine, it is important to recognise that there are possible measures to take to enhance justice for vulnerable groups, as well as state obligations to act towards this end. This discussion paper aims at providing some initial recommendations by using the lessons learned to date from the COVID-19 pandemic.

Administration of justice

Greater use of customary dispute resolution during COVID-19 has been highlighted in this report, along with women and girls' increased vulnerabilities when seeking justice in those settings. One step for addressing this issue, is for the authorities in Gaza and the West Bank to **remove barriers for women to serve as arbitrators**.

Recommendations to Palestinian authorities:

- **Form a judicial crisis management committee** comprising experienced and independent figures to devise plans and strategies to manage crises. Members should be drawn from the Ministries of Interior, Health, Justice and Social Development, and the directorate of the rehabilitation and reform centres, as well as bar associations and representatives from the civil society. (The committee should ensure that all measures protect vulnerable groups' access to justice and consider the specific function of the courts, police, prosecution, and rehabilitation and reform centres.)
- **Eliminate filing fees for cases classified as priority** under the emergency management scheme for those who cannot afford them. Cases classified as 'priority' should also be treated as priority by the notification and enforcement departments.
- **Courts should consider flexible or extended hours of operation**, following the good practice demonstrated by the West Bank *Sharia* courts' shift system. Courts should also consider traveling to various locations to facilitate access, particularly for those in remote areas or without transportation, and should ensure sufficient working staff.

Digitalisation and access to legal information

Given the current state of technology, the existence of an emergency should not impair the public's right to obtain non-confidential case information nor impair the parties' ability to access information necessary to the prosecution and defence of their case. Though the digital infrastructure may not be sufficiently developed, advances in technology can still be capitalised upon to facilitate access to justice for marginalised groups. A thorough mapping and analysis need to be carried out before moving trials online, to determine the effects on due process rights and victim participation.

An imperative condition for digitalisation in the West Bank and Gaza is to improve digital literacy and infrastructure broadly within Palestine, while ensuring protection of data and addressing other security risks that accompany a digitalisation process. In parallel to digitalisation of the justice systems, broader public information campaigns should be led to ensure citizens' due analogue access to legal information, for instance, via radio, television or civil society.

Recommendations to Palestinian authorities:

- **Map legal and practical conditions for digitalisation and make public a mapping report.** The mapping should include digital literacy/infrastructure, with due consideration of due process, fair trial rights, rights to privacy and data security.
- **Digitise the notification department as a priority.** Electronic notifications can facilitate and expedite notification procedures. The notification department should also publish notifications online and should give parties multiple options for receiving notifications. Consider having parties complete a form stating their preferred method of notification, such as telephone, email, etc.
- **Publish information about cases and hearings on each court's website,** including *Sharia* and ordinary courts. **Courts should create telephone hotlines** for parties to obtain information about their cases and for justice seekers to obtain information about procedures, as the *Sharia* courts in the West Bank have done during the pandemic.
- In the West Bank, **build on the Mizan I and II projects to allow for electronic case filing and electronic signatures in full respect of the right to privacy and data security.** Include a public access section, where the public can find hearing dates and access other public information. Educate the public on any rollout of a public access component of the Mizan projects.

Access to legal representation

A well-functioning legal representation and legal aid system is essential to ensuring access to justice for marginalised groups. In general, all lawyers should be given more access to their clients in detention and information about their cases. The legal aid system would also benefit from additional resources and technology to undertake its work more effectively.

Recommendations:

- **Defence lawyers are essential workers. Provide them with an ID to allow them to travel when movement restrictions are implemented** and coordinate with law enforcement to ensure they respect lawyers' right to move during these periods.
- **The bar associations should prioritise cases of vulnerable groups** to a greater extent, in particular people in detention. The Bar Association should make publicly available the Bar Association's Lawyers Directory, via digital means, containing the names of all lawyers, their membership status and their contact information.

Women and children's rights and gender-based violence

Laws and practices that preceded the pandemic exacerbated the marginalisation of women and children. Not only should those designing emergency measures consider the different ways such measures impact men and women and girls and boys, but the legal challenges these groups have faced resulting from the pandemic can help inform positive reforms for non-emergency times. General measures to increase legal protection for children include **the prohibition, without exception, of all marriages for individuals under 18 years of age**; ensuring that children born out of wedlock are legally recognised; and providing children involved with the law with free legal and psycho-social support. The continued operation of the Orphans Fund should also be always ensured, even during emergencies.

Recommendations to Palestinian authorities:

Family law

- **Improve the family law framework** to better protect the rights of women and children, including ensuring expedient execution of judgments. A family protection code should be developed that improves the monitoring function of the Family Protection Unit. A specially trained family law police unit should be established to enforce the execution of judgments.
- **Implement specific programmes to educate women and children about their rights**, in particular regarding the Personal Status Law.

Gender-based and domestic violence

- **The Higher Sharia Court Council should create an emergency plan to support women and children.**
- Provide sufficient funding to **ensure that domestic violence shelters never have to close**, even during emergencies. Better resource protective measures attached to domestic violence cases, including for children.
- **Build on the success of existing domestic violence telephone hotlines**, including adequate resources and staffing.
- **Do not require submission of a medical certificate to simply file a domestic violence case.**

Single mothers and their children

- **Review and amend rules and procedures relating to alimony and child support**, to ensure the system protects children and former spouses. The West Bank's alimony fund should be fully funded and geographic branches should be established to broaden access. A similar alimony fund should be set up in Gaza. A minimum amount of alimony needs to be put in place to ensure recipients enjoy a basic standard of living. Alimony payments should be directly transferred from the payer to a state-managed bank account, to facilitate distribution to payee spouses.
- **Ensure child visitation orders are enforced to the greatest extent possible** during emergencies and that lost time is made up later. Hearings on visitation order enforcement may be appropriate for digitalisation.

People in detention

The COVID-19 pandemic has been particularly dangerous for individuals in detention. Measures should be taken to limit the need for detention and to improve detention conditions, including steps to reduce the risk of communicable diseases and access to quality medical care. During crises, it is important that courts prioritise and continue hearings for release.

Recommendations to Palestinian authorities:

- **Ensure the full respect, protection and fulfilment of the right to counsel**, regardless of the existence of a state of emergency. This includes guaranteeing at all times that detained persons can communicate with their lawyers via free and confidential access to telecommunications and in physical spaces that enable confidential communications. Immediately abolish the practice in the West Bank of the judicial police serving as communication intermediaries between individuals and their lawyers.
- **Ensure that humanitarian assistance and oversight bodies and mechanisms have full access to people in detention.** Ensure individuals in detention can communicate with their loved ones and receive food, toiletries and other personal articles.

COVID-19 has had serious and extensive impacts on people's access to justice in both the West Bank and Gaza. Decades of occupation, blockade and armed conflicts had taken place even before COVID-19, making improving access to justice for vulnerable groups a very difficult task in Palestine.

This study shows that cases of domestic violence, alimony, child support, custody and visitation rights, people subsisting from the informal economy or daily-labour workers, and people in detention have been particularly affected during COVID-19. It has also brought to light concerns about an escalation in child marriage, both in the West Bank and Gaza.

The pandemic has revealed how fragile the administration of justice is in Palestine, when put under pressure for longer periods of time. Despite all the challenges and setbacks of reaching equal access to justice for all produced by the COVID-19 crisis, the pandemic has also provided an opportunity to examine more efficient ways of working for the justice systems, with long-term impacts and potential reach beyond the crisis period. To that end, the study suggests recommendations to use the lessons learned from the COVID-19 pandemic, to take first steps to enhance access to justice for vulnerable groups.

This discussion paper builds on a series of in-depth interviews with lawyers and judges in the West Bank and Gaza. The interviews were conducted by the Palestinian organisation Al-Haq in the West Bank and ILAC-member the Palestinian Center for Human Rights in Gaza. It was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida).

Author:

Ylva L. Hartmann, Legal Adviser, International Legal Assistance Consortium (Sweden)



ILAC is a global rule of law consortium providing technical assistance to justice sector actors in fragile and conflict-affected countries.

ILAC's mission is to rapidly respond to and assess the needs of the justice sector in conflict-affected and fragile countries, and help strengthen the independence and resilience of justice sector institutions and the legal profession. Today, ILAC has more than 80 members including individual legal experts as well as organisations that represent judges, prosecutors, lawyers and academics worldwide.



**International
Legal Assistance
Consortium**

ILAC Secretariat

Stockholmsvägen 21,
SE-122 62 Enskede, Stockholm
Sweden
Phone: +46 (0)8-545 714 20
info@ilac.se

www.ilacnet.org



The Palestinian Centre for Human Rights is an independent Palestinian civil society organisation dedicated to the protection of human rights, the promotion of the rule of law, and the upholding of democratic principles in the Occupied Palestinian Territory. It was established in 1995. Most of the Centre's activities concentrate on the Gaza Strip, and include documentation and investigation of human rights violations, provision of legal aid and counselling, and preparation of research articles.



AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. It was established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory. Al-Haq has special consultative status with the United Nations Economic and Social Council, is a member of the Euro Mediterranean Human Rights Network (EMHRN), the World Organization Against Torture (OMCT) and Habitat International Coalition (HIC). Al-Haq is an affiliate of the International Commission of Jurists and a member of the Palestinian NGO Network (PNGO).

Read the report online:

