



Enhancing **Child-Friendly Access to Justice in Family Law Proceedings**: handling child-related litigations in personal status jurisdictions in the **Middle East and North Africa (MENA)**

Regional Workshop Report

10-12 December 2019

With the support of:



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1. Introduction and background

On the 10, 11 and 12 December 2019 the regional workshop “**Enhancing Child-Friendly Access to Justice in Family Law Proceedings: handling child-related litigations in personal status jurisdictions in the Middle East and North Africa (MENA)**” was held by Terre des hommes Foundation Lausanne (Tdh) with the Centre of Legal Studies and Research for the Arab World (CEDROMA). The workshop was hosted by the Faculty of Law and Political Science of Saint-Joseph University in Beirut, Lebanon.

Children involved in Family Law Proceedings: a crucial access to justice pathway

Children are always concerned by family law proceedings, especially as they relate to family separation and its effects (divorce, custody, visitation, alimony, etc.). Indeed, parental disputes can be a source of high emotional distress and hinder the present and future wellbeing of the couple’s children, especially when involving intra-family violence. Moreover, **judicial decisions in these matters highly impact children’s lives**, as they may entail a compulsory change of home and school, a separation from friends and family members and a significant modification of the child’s routines.

Judicial handling of parental disputes is common to every country and society. Despite their differences, **all justice systems encounter gaps when aiming at providing comprehensive child-friendly responses to children involved in family law proceedings**¹. In general, family law courts and proceedings are still largely adult-oriented and insufficiently equipped to protect children against violence and secondary victimization. Children’s rights are still not guaranteed, specifically the right to be heard and to effectively and safely participate in the proceedings.

The situation in MENA

In many MENA countries, official justice systems are also **ruled by religious values and norms** and often reflect the existence of a plurality of confessions. Some countries are strong examples of legal pluralism, where religious legal systems can coexist with secular² and customary legal systems. In despite of the specificity of each context, **family law affairs in all MENA countries are almost exclusively dealt with by applying religious legal provisions**.

The diversity and complexity of the legal systems in MENA is often an obstacle to produce a comprehensive analysis on the state of children involved in family law proceedings. The limited evidence-based knowledge on religious-based family law jurisdictions in MENA also hinders the capacity of access to justice stakeholders to design adapted child-friendly and child-focused interventions in religious-based family law systems.

Applying international child protection standards to promote children’s rights, particularly those related with their access justice, is essential but insufficient, especially in such contexts.

¹ Tdh, 2018: Enhancing Child-Friendly Access to Justice for Children in Family Law Proceedings: A Comparative Dialogue on Procedures and Best Practices in Lebanon and some European Countries. Workshop report.

² Based on Common law or Civil Law.

Contextualized tailor-made strategies and interventions that take into consideration religious values and norms are key to develop specialized adapted interventions in family law systems.

Family Law proceedings in context of legal pluralism: an innovative approach piloted by Terre des hommes in MENA

While Tdh has been engaging with community faith-based actors since 2011, the thematic of family law proceeding in context of legal pluralism (specifically referring to formal justice systems applying traditional-based and religious precepts to rule personal status matters³) started to be formally explored in 2017 through an action-oriented research conducted in Lebanon and involving 7 of the most representative religious communities in the country (Sunni, Shi'a, Maronite, Druze, Greek Orthodox, Greek Catholic Melkite, and Evangelist).

Preliminary findings related to the obstacles and opportunities for religious courts to comply and adopt the standards of a child-friendly justice for children were further explored by Tdh through a series of technical exchanges, including an **exploratory roundtable in 2017** and a **workshop reuniting Lebanese civil and religious judges, European family law magistrates and justice for children specialists in 2018**. The latter was organized in collaboration with CEDROMA and with the support of the French Embassy in Beirut, Lebanon.

Parallel pilot interventions on religious-based justice have also been launched in **Palestine**, where Tdh has developed a **strong partnership with Sharia courts to implement gender-responsive interventions to reduce violence against girls and women**, including capacity building initiatives for judicial personnel and an evidence-based research on the administration of gender-based violence cases. A strategic partnership established with the Afghan Women Judges Association has been a solid step forward for Tdh to launch the thematic in Afghanistan.

The evidence-based knowledge obtained through these initiatives allowed Tdh to launch an **Innovation Project in 2018** aiming at developing a new model of action for religious-based family law jurisdictions in MENA. This *Innovation Project* started to be piloted in Lebanon and it is currently in its regional scaled-up stage, looking in particular at the following countries Jordan, Palestine, Egypt, Iraq and Afghanistan.

A regional country assessment including Palestine, Jordan, Afghanistan, Egypt, Iraq and Lebanon has been developed by Tdh. In addition to it, the regional workshop held in December 2019 presented the preliminary results of the some of the country assessments which served to discuss the specificities of the different religious-based family law systems through a child-friendly justice lens.

This thematic is at the center of Tdh Access to Justice for Children Program. Its **regional conceptualization** based on the above acquired knowledge has been captured as follows:

³ Personal Status refers to family law affairs inter alia to marriage, divorce, custody, and visitation rights.



Religious Justice is one of the main approaches of the Access to Justice Programme (A2J)



Do you know that... ?

- In many MENA countries, official justice systems are also **ruled by religious values and norms** and often reflect the existence of a **plurality** of religious laws and communities.
- Official secular and religious justice systems can **coexist** under the same territory and the boundaries between both is often **blurred**.
- In MENA, family law is almost exclusively dealt with by applying religious legal provisions. Family law is referred to as **Personal Status matters**.
- Rulings on Personal Status Matters, which deal with issues such as **marriage, divorce, custody and alimony**, often directly **impact children**.

Concerns



Efforts to enhance access to justice for children often focus on **criminal justice**. But the **rights and needs of children in family law proceedings** also need to be considered.



Religious-based family law proceedings are not typically **child-centred** and aligned with international **child-friendly justice standards**.



Limited access to **evidence-based information** on religious-based justice systems.

Tdh Objectives

- Ensuring a **child-friendly access to justice** for children, including **safe child participation**, in religious-based justice systems.
- Enhancing protection against **intrafamily violence** for children involved in **judicial parental disputes** and related harmful practices such as **child marriage**.
- Fostering **evidence-based knowledge** to design **child-friendly and child-focused interventions** in religious-based family law systems.

Interlinked strategies

Fostering **knowledge, mainstreaming and contextualisation** of international and national legal and procedural frameworks on **child protection and access to justice** within **interfaith religious values and norms**.

Coordination between systems and among **trained multidisciplinary actors** to provide a **comprehensive specialized response** to children involved in religious-based family law proceedings.

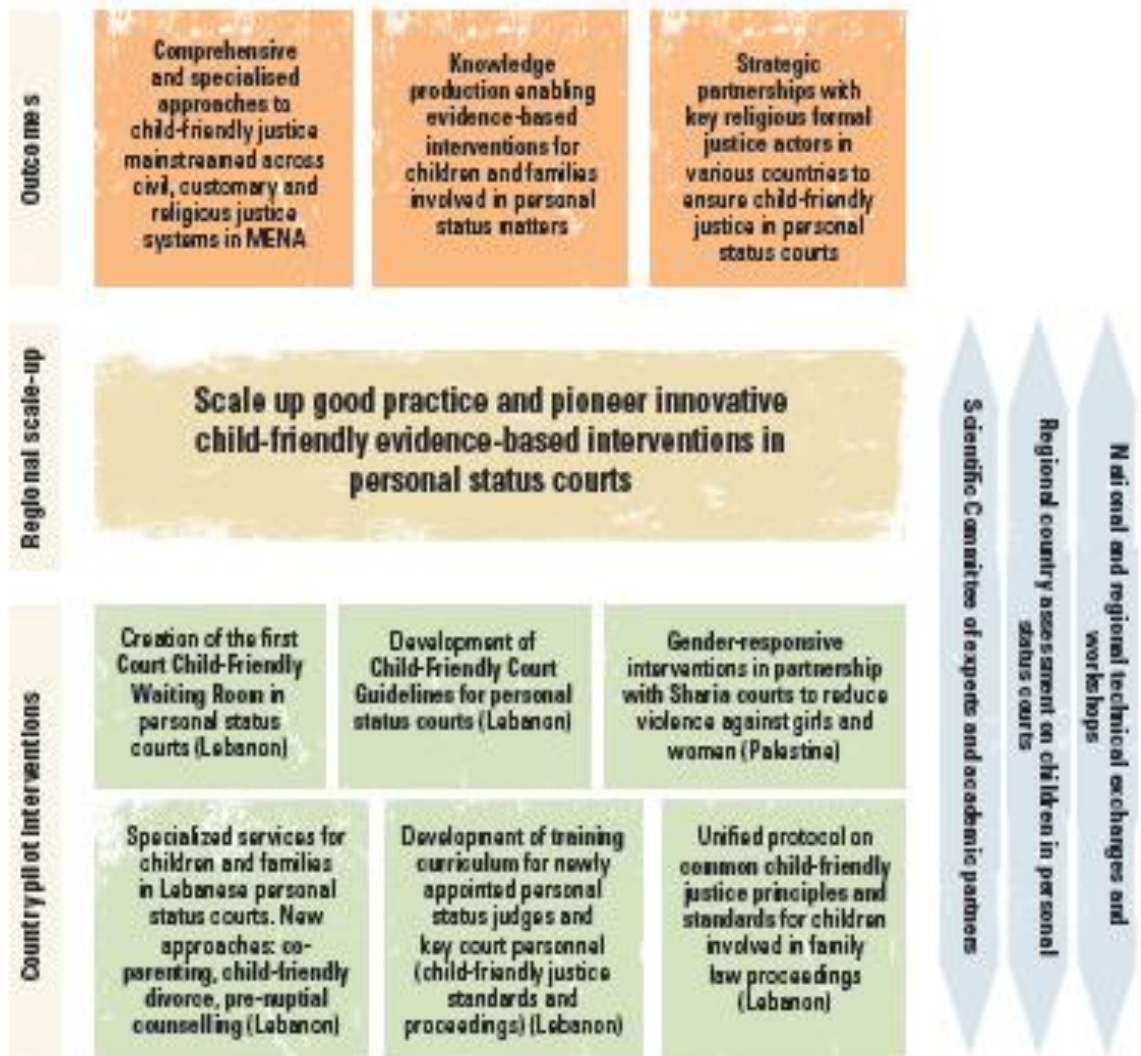
Synergies between formal religious justice actors and community faith-based actors to better mobilize **men and boys (husbands, fathers, male relatives)** through **positive religious values and figures** against harmful practices for children.

Evidence-based programmatic design: research, consultations, assessments and collaboration with **scholars and academia** to propose **child-centered evidence-based interventions**.



In December 2018 in Lebanon, Tdh organized a workshop on "Enhancing child-friendly justice for children in family law proceedings". The event supported expert exchanges between a network of religious judges, international family law magistrates and justice for children experts to promote the adoption of a child-friendly approach to justice in personal status courts in the country.

Tdh added-value in MENA



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2. Workshop: objectives, methodology, participants and partners, complementary events

Objectives

The workshop aimed at gathering family law judges and magistrates from various MENA countries where personal status matters are ruled by religious-based precepts and norms, along with justice for children professionals, family law experts, and academia.

Objectives:

1. Fostering regional multidisciplinary exchanges aiming at the promotion and adoption of child-friendly justice initiatives in personal status law systems in MENA.
2. Fostering technical exchanges between personal status judges from various MENA legal systems and countries.
3. Fostering technical and academic knowledge production around the functioning of the various personal status law systems in some MENA countries and their alignment with children's rights.
4. Exploring different understandings and definitions of child-friendly justice principles through the various personal status law systems in some MENA countries.
5. Exploring the development of promising child-friendly interventions in personal status law courts in some MENA countries, especially those reinforcing:
 - The best interests of the child
 - Child participation.
 - Interdisciplinarity and specialization of justice professionals and services.
 - Coordination among justice and child protection systems and stakeholders.
6. Presentation of the child-friendly religious justice court guidelines developed in Lebanon.
7. Presentation and discussion of the preliminary draft of the child-friendly religious justice country assessments.

Agenda

In order to achieve these objectives, theoretical specialized presentations provided by multisectoral experts were provided. Those were combined with practical exercises, where group discussion and presentations in plenary were organized. (Cf. Annex 1: Agenda which includes the detail of days 11 and 12 December).

Methodology

The workshop was framed as **introductory to approach the regional dimension** of the topic child-friendly justice in family law proceedings in MENA. This was reflected on a **well-delimited**

agenda in terms of the diversity and scope of the topics addressed, as well as the number of specific outcomes expected.

A **participatory and practical approach** to the technical aspects of the workshop was privileged. Presentations/keynote speeches were avoided to promote dynamic and interactive exchanges among practitioners and experts around concrete practices and experiences in various personal status courts.

The structure of the workshop followed a **working group session-format**, aimed at:

- analyzing, exchanging and discussing around the practical implementation in MENA personal status courts, through a child-friendly justice lens.
- identifying (common) problems, solutions (that uphold child-friendly justice principles and standards) and best child-friendly justice practices that can be eventually exportable among MENA countries within their current legal framework.

Technical analysis and discussions led to **punctual theoretical references** to the global child-friendly justice principles and standards' framework.

The below elements are to be highlighted as per their relevance in the methodology designed for the regional workshop:

- Two technical presentations were provided by the following experts:
 - Baudouin Dupret (researcher): "*Le juge de la famille, le droit codifié et le silence de la loi: Réflexion comparative sur l'usage des sources du droit en matière de statut personnel*" (The family judge, codified law and the silence of the law: Comparative reflection on the use of the sources of law in matters of personal status).
 - Marie-Claude Najm (CEDROMA): "*Legal and Social Protection of Parentless Children in front of Muslim Jurisdictions*".
- The workshop sessions were methodologically organized as follows:
 - Restitution of preparatory group work (Day 1):

Brief summary of main features of personal status law jurisdictions per country (key commonalities and differences). "**How child-friendly is personal status jurisdiction in your country?**" Key successes and obstacles pre-identified by MENA judges including promoting and enhancing child-friendly justice approaches in their own personal status matters jurisdictions.

The objective of this section was to provide a common ground of knowledge among participants regarding the specificities of the various personal status jurisdictions prior to the workshop's kick-off. Information was be collected from MENA judges during the

two months before the workshop took place, using a schematic table. Restitutions were provided by the presenters using the same table. The presentation aimed at sharing general impressions on how child-friendly they think their jurisdictions were (specifics were discussed during the working sessions).

- Breakout working groups and restitution (Day 1 and Day 2)

Child friendly justice in practice: analysis of judicial decisions from a child-friendly justice lens.

MENA judges were asked to select and share, prior to the workshop, 2-3 judgements per country relevant to the workshop theme and discussions. Tdh and CEDROMA selected 7 judgements, 1 per participant country (Iraq, Egypt, Lebanon, Palestine, Jordan, Morocco, Tunisia) that were analyzed collectively during the session (groups and then discussion in plenary). The objective was to identify aspects of the judgements (either at procedure or substantive level) aligned and not aligned with a child-friendly justice approach, as well as potential solutions that can be acceptable within the legal framework in the different MENA countries.

- Wrap up (Day 1 and Day 2)
 - o Child-friendly principles (implemented and not implemented)
 - o Child-friendly processes/interventions (and gaps)
 - o Role of judge applying child-friendly justice approach
- Ways forward (Day 2)

Recommendations from judges to introduce/enhance child-friendly justice in MENA personal status courts, focused on: i) training; ii) policy making; iii) service provision; iv) interdisciplinary approaches; vi) coordination; v) child participation (within the current legal framework/s).

Agreement on key 1-2 process to be worked at country level and within the regional group created at the workshop. Next steps to be activated.

Participants and partners

33 participants, including: (i) 11 family judges from 7 different MENA countries: Iraq, Palestine, Jordan, Egypt, Tunisia, Morocco and Lebanon, (ii) 3 justice experts from Switzerland and France, (iii) 6 specialized researchers from CEDROMA and (iv) 13 Tdh staff working in the Access to Justice for Children Program in different countries and at headquarters partook in the regional workshop celebrated.

Selection of participants was done in close coordination with the different authorities in each country, to whom Tdh closely cooperate within the Access to Justice Program. Participants were appointed to attend the event which guaranteed their ability to share institutional views and express commitments on behalf of their judicial institutions they belong to, reinforcing the relevance of the outcomes and recommendations contained in this report.

The regional dimension of the workshop that was possible thanks to the work performed by Tdh since 2017 in each of the participant countries as well as given the expertise network created around the thematic, including with the strong partnership achieved with CEDROMA, brought a unique event where commonalities and gaps in the family law justice system when pertaining to children made possible very technical exchanges and agreement on fostering key processes in the coming period.

The workshop was organized by Tdh and its academic partner CEDROMA with the technical and financial support of the French Embassy in Amman (Jordan) and Beirut (Lebanon) as well as of UNICEF.

Complementary events to the 2019 MENA Workshop

The regional workshop held in December 11 and 12 was preceded by field visits to Shi'a and Sunni courts in Beirut, as well as to the child-friendly waiting room set up with the support of Tdh in the Sunni court of 1st instance. MENA judges as well as experts invited to partake in the regional workshop were brought to the different premises where they had the chance to engage in technical discussion with judges, clerks and other personnel within the courts, about the development of hearings with children and their families, functioning of the judicial process as well as the social services around those processes, gaps and successes. The objective of the field visits was three-pronged: (1) create an optimal environment for open dialogue and effective technical exchanges during the workshop, based on real practices and experiences with children and their families, (2) allowing ice-breaking personal interactions among the participants from different countries and (3) foster the child-led optic to be systematically considered through the 2 days of regional encounters.

Additionally, Tdh and CEDROMA hosted a dinner for all the participants at Abdel Wahab restaurant in Beirut.

Detailed calendar on the pre-workshop day (December 10) is captured below.

Tuesday, 10 th December 2018				
Time	Court name	Location	Hosting judge	Program
08:00	Pick up group at meeting point (hotel Sodeco Suites, Badaro)			
08:30 - 09:15	Sunni court of 1 st instance	Beirut	Sheikh Mohammad Nokkari	Visit Child Friendly Waiting Room built up by Tdh
09:15 - 09:30	Movement of participants assured by Terre des hommes. Drop off at hotel Sodeco Suites / Tdh Beirut office			
08:30 - 10:30	Sunni court of 1 st instance	Beirut	Sheikh Mohammad Nokkari	Visit court premises; attend hearings; exchanges with court personnel and judicial authorities
10:30 - 11:00	Movement of participants assured by Terre des hommes. Drop off at hotel Sodeco Suites			
11:00 - 12:30	Shi'a court of appeal	Beirut	Sheikh Abdel Halim Charara	Visit court premises; attend hearings; exchanges with court personnel and judicial authorities
12:30 - 13:00	Drop off at hotel by Terre des hommes (self-arrangements for lunch)			
Free time for participants until 19:00				
19:15	Pick up at meeting point (hotel Sodeco Suites)			
19:15 - 21:30	Welcoming dinner at Abdel Wahab Restaurant, Achrafieh, Beirut			
21:30 - 21:45	Drop off at meeting point (hotel Sodeco Suites)			

3. Workshop: Main elements of discussion

- Discussion around the **elements that define a child-friendly justice system in family law proceedings**: (i) it is **specific** and **specialized** for children, (ii) it guarantees the respect and effective **implementation of all children's rights** at the **highest possible attainable**, (iii) it ensures the **application of child-friendly principles**, (iv) it considers **child's level of maturity and stage of development**, (v) it is **accessible, age appropriate, culturally and gender sensitive**, (vi) it is **speedy but diligent**, (vii) it adapts to the needs, context and circumstances of the child (**tailor-made**), (viii) it entails a **holistic safeguarding of children**: the best interest of the child is ensured at all stages (judicial procedures/justice outcome/follow-up).

Those elements were visited pertaining the different family law jurisdictions in the participants' countries and through the collective analysis of the 7 judgements prepared for the workshop. Several points of highlight are worth to be made from the discussions:

- Family law proceedings in MENA countries when dealing with children face a duality between traditions and modernity. A debate was held around the alignment between Islamic Sharia'a legal values and practices with other legislation in force in the correspondent countries in an attempt to harmonize some principles, particularly when pertaining to children's treatment in justice.

Points of deliberations circled around the **universality of the child friendly justice**, its **susceptibility to be contextualized to all legal systems and jurisdictions**, including those infused with traditional/religious values and its character of **legal abidingness** for justice operators, regardless of the jurisdiction or confession they belong to.

- While they were different positions presented, it was common to all of the participants that given the mix-up and flaws in the way personal status laws are interpreted, binding guidance on how to deal with children in family law procedures should be enacted (missed in all the participant countries) and that jurisprudence practice should be

conducive to an improvement of processes that involves children throughout the utilization of the child-friendly justice guidance for family courts.

- The judges held a lot of discretionary power in the whole decision-making process at the pre-judicial and judicial proceedings involving children and there is a great variety of judges that rule differently based on the religious or civil schools from which they come. There is no systematic use of the expertise and assessment of other professionals when dealing with cases involving children such as social workers, psychologists and/or other type of child protection professionals. It very much depends in most countries on the decision of the judge him/herself.

In connection, an in-depth discussion took place around the concept of “judgecraft” and its relevance in family law procedures, specially those involving children. **Judgecraft** understood as the process of reinforcing, through different levels, the role of the judge to ensure stronger child-friendly justice responses: judging skills linked with legal substantial knowledge but also with the development and reinforcement of specific human skills, including but not limited to quality, fairness, transparency, effective communication, psychology, oral and writing skills, handling of difficult situations and parties, managing and conducting hearings, stress management and continuous self-development. MENA judges were very interested in that concept and how to operationalize it within the specialized capacity building programs on child-friendly justice processes. It was highlighted its link with the **binding guidance on children’s treatment in family law procedures and the jurisprudence practice following**, as mentioned above.

- Some countries shared successful examples, through the judgements analysed, in piloting processes which involved the cooperation of the social workforce professionals in family law cases involving children. In Egypt and Iraq, the social assessment of the child is mandatory in all the processes before the case is brought to the judge. In Jordan and Palestine, the judges may decide if collaboration with other professionals is required. In Morocco, seeking help of professional outside the judicial personnel only happens when the case is “complex or may entail danger for any of the parties” (defined upon the discretionary of the judge). Required **multidisciplinary approach and its inclusion at the judicial offices of family courts** was deeply explored with the workshop participants. Most of the judges agreed on the need to better regulate and organize the personnel working with them and were open to consider multi-profile teams as per benefits for the process and ultimately the judgements they rule, but also for following up the enforcement of those judgements, particularly important when children are involved. There was a lot of interest in knowing in detail the models presented by judges from Iraq and Egypt.
- Linked with the elements of a child-friendly justice system, a discussion around the need of **unfolding the concept of child-friendly justice into tangible and operational elements applicable to day-to-day justice principles** was held: (i) **Best Interest of the Child**, (ii) **Non-**

discrimination, (iii) **Dignified treatment** and (iv) **Child participation**. Those were confronted with the judgements' analysis following concrete standard rights for children in justice processes: right to be informed, right to be heard and to express views, right to free assistance of an interpreter, right to access professional legal advice, right to protection of private and family life, right to a speedy judicial process avoiding undue delays.

- How family law judges interpret and apply the best interest of the child's formula in concrete cases involved significant debate. There was a unanimous agreement on the broadness of the term "interest", encompassing physical, moral/spiritual, financial, etc. Some judges emphasized on the "Islamic view" of the best interest of the child which lies on the discretion of the judge; others confronted this idea by saying that while it is not possible to have a concrete definition of the concept, there is a need to come up with unified standards to be applied at the level of family law proceedings given its central importance when weighing the different consequences for the child in each case.
- Along the different judgements analyzed and from the discussions held, while all the judges emphasized on the importance of listening and considering the opinion of children who are involved in family law proceedings, the majority of rulings showed that children were hardly counted in for as affected case parties. Only in some cases when the child involved was 15 years old or above and based on the concept or "maturity" as per Sharia'a's indications, it was mandatory to involve them in the case, which did not necessarily imply that they were properly heard and their views were considered in the case. A major flaw that was systematically seen in the judgements analyzed was the justification on how children's views were considered (or not) by the judge. A significant element that the MENA judges in the table agreed that there is a need for deep improvement.
- It was also discussed the suitability to cite in the judicial rulings the international and national regulations pertaining to the rights of the child. It was clear for the judgements analyzed that in those where the legal analysis was rich and considered different levels, there was a much better articulation and consideration of elements pertaining access to justice safeguards for children.
- Confidentiality was an issue at stake in many of the rulings analyzed. Throughout the discussions on this element, it was clear that the lack of private child-friendly spaces at court level and the deficiencies on knowledge of the child's psyche and lack of appropriate guidance were the main reasons for explaining the flaws here. It was confirmed that personal status laws do not regulate the due confidentiality when dealing with family cases involving children.

Once the analytical work done through the family law judgements finalized, a collective decision was taken to explore in depth common and crucial areas of work for all of the judges of the MENA countries represented, where they saw that regional exchange and regional joint

reinforcement could be beneficial: family mediation and ways of enhancing child participation within family law proceedings.

- **Family mediation**

The following areas of the family mediation processes in each of the countries where it exists were discussed: What is the legal framework? Codification or process to be elaborated and applied at courts?; How to organize the process: stages in which family mediation takes places? Who proposes/decides on the family mediation? What is/could be the criteria related to child/family to apply mediation?; Who is the mediator? What is his/her role (conciliation, mediation)? Accreditation, training, skills required?; What is/could be the structure of the process, the different phases (preparation of the parties, mediation sessions, agreement/disagreement, follow-up)?; Governance rules during the process of family mediation (active listening, respect, confidentiality, priority, etc.).

In **Jordan**, a family mediation framework is in place. The Sharia'a Enforcement Act considers that the outcomes of mediation offices have legal value and, hence, are to be immediately enforced. It is estimated that around 30% of the personal status court have a mediation service. However, currently mediation is mainly directed to reconcile marriages that are at the edge of divorce. Guidance of how to deal with a large scope of family law issues with specifications of handling children in all those disputes from a judicial point of view it is considered an urgent need, along with the set-up of child-friendly equipment in the family mediation offices and the launching of a capacity building training program for Sharia'a family mediators specialized in child-friendly justice.

In **Egypt**, the settlement and mediation departments started to be established in 2004 at the family courts with the main goal to attempt to reconcile married couples facing several issues. They are normally composed by a social worker and a psychologist only. In this kind of mediation, it is requested the validation of a family judge in all cases. It was highlighted the need of clarifying the concept and the process of mediation inclusive of a child justice perspective, allowing the mediation institution to enlarge its scope to better serve family disputes. Capacity building along with the proper structuration of the professionals to work on the mediation departments was also indicated as crucial.

In **Palestine**, family guidance and reconciliation departments have been established from 2017 in all the family courts of first instance. The objective of their work is to provide legal insight on the dispute, having influential third parties acting as helpers of an amicable solution. The judges need in any case to validate the agreements that can be eventually reached. It has been proven to be a very effective mechanism in country. Specific guidelines for appropriately handling cases in which children are involved as well as enhancing the skills of the family guidance and reconciliation departments staff are confirmed to be the next steps towards the specialization of the process.

In **Iraq**, the social research offices offer mediation in family law cases as well in juvenile cases. Each of them is composed by social workers, psychologists and other specialized health-related

staff as required. It is legally mandatory to go through the social research offices prior to have the right to open a judicial claim. If the case is settled at the social research office, it can be considered legally closed. It only reaches the judges in case of unsuccessful process at that stage. Guidance on how to better deal and apply child justice is a pending task to be addressed.

In **Tunisia**, family mediation is currently the main subject of discussions in country between the Ministry of Justice and the Ministry of Solidarity towards formalizing and professionalizing the system, including a specific section and team in charge of advising and taking care of children involved in family law disputes. It is yet unclear how this process is going to be boosted and it would be important that children are considered active justice users with all the specific safeguards to be taken, rather than with a passive lens. There is a crucial momentum in Tunisia to learn from other experiences and get the right advice on this theme to come up with a fair and functional system that modernizes the reconciliation approach, until now being the one mainly practiced.

In **Morocco**, reconciliation processes (without formalization) are usually practiced by family judges at the initial stage of the case. It is focused on adults, not considering children within the process and not having any adequate pathway for it. Steps towards this direction with a specific focus of children could be very beneficial, specially learning from other countries in the region on how to better conduct the process with the different stakeholders.

In **Lebanon**, judges from different confessions stated that, as such, “family mediation” is not foreseen by the personal status laws although they practice it (reconciliation) in a lot of cases. They highlighted the need to regulate the process to be more effective, while allowing flexibility for each confession. Guidance on how to deal with children in the mediation processes would be of a great value, insofar capacity at that level is very highly required.

In addition, given the commonalities and interest of the family mediation process, the experience in Switzerland was demanded by the MENA judges. Family mediation in **Switzerland** was established in 2000 following a legislative amendment on consensual divorce. *The legal act stipulated that children are the ones of the highest importance in family mediation processes and therefore the process always needs to serve their best interest.* Training was mandatory to all family mediators (normally those are not judges but are part of the judges’ team) to get a professional accreditation. Child justice procedures and operational guidance to deal with children are central to the capacity building process, which includes a period of mentoring with accredited mediators before getting the accreditation. Family judges were skeptical of the process at the beginning, but it has been proven to be a very effective way of dealing with family disputes and protecting children while considering them active parties of the process. It is now very common that judges send back the case to family mediation before considering opening a judicial claim.

- Enhancing child participation within family law proceedings

A presentation of the process of the conceptualization and elaboration of the *Child-friendly Court Guidelines for Personal Status Courts in Lebanon* was provided as being a ground-breaking process led in country with the collaboration of 7 religious confessions and technically



supported by Tdh. English and Arabic versions of the guidelines were distributed and discussed, in particular: the process of defining alignment of child-friendly justice practices with religious values and traditions, the compilation of judicial child-oriented best practices applied throughout all the phases of a family dispute procedure, in both conflictual and non-conflictual cases having children involved and the concrete guidance throughout the different phases of a family law process involving children: i) convocation ii) hearing iii) judgment. A practical check list for child hearings is also provided in the guidelines.

The discussion with MENA judges and experts on child justice at the workshop for this specific area circled around the following points: Is child participation compulsory by law? Not compulsory by law but implemented in practice? How is it implemented? Who conducts the hearings? (*i.e. specialised skills for auditioning children? - Attitudes*), how hearings are conducted? (*i.e. does a specific child friendly procedure exist? - linked to best interest of the child and child justice principles and standards*) and where is it conducted? (*i.e. specialised/adequate equipment or premises*).

Personal status laws do not foresee expressly the right of children to be heard, to have their views considered and to get a justification on them in the ruling of the correspondent judicial process they partake. This is normally captured in the child or juvenile justice laws of the country, which are of a non-confessional nature and do not offer any concrete standard guidance for its application in any case. The MENA judges highlighted that it is then to the absolute discretion of the judge how children participate in family law procedures, if they do it at all. There were several points raised on the matter: judges lacking concrete guidance and skills to appropriately deal with children, it is required to count with social workers or similar professionals with expertise to support the process of child participation in family matters, it is to be clarified concrete good practices at the regional level preferably on how to justify that children safely partook in the process and their views were considered when the judges decide that their views are not going to be applicable (for safety reasons, when it is considered that the child is “manipulated” by one of the parents, etc.). According to the best practices discussed, children from 10 years old should be given the choice to partake in the process with child-sensitive procedures in place. Additionally, the remaining question is how to handle children of younger ages and which concrete steps are to be put in place in those cases.

4. Workshop: Agreed ways forward

There were several agreed take-aways from the regional workshop as highlighted in brief below:

1. Permanent establishment of a *regional working group formed by the judges attending the workshop with Tdh staff* aiming at operationalizing the next steps agreed, as highlighted below.
2. Define the *conceptual framework of child-friendly justice in family law proceedings in each of the countries* focusing on the key following elements: (i) adapted legal framework, (ii) judicial practices & attitudes, linked to judgecraft and the positive interpretation of the law through jurisprudence practice, (iii) required specialized teams in the judge office (interdisciplinarity & professional skill-building) and (iv) complementary services equipment/infrastructure.
3. Compile a *regional assessment of the main features and practices in each of the countries pertaining family law proceedings involving children*, as a wealthy source of information and baseline to measure the practices to be boosted (family mediation and child participation) as per agreed at the workshop.
4. Define and roll out *MENA regional model process and framework document of family mediation for conflictual and non-conflictual disputes in personal status court involving children*. Capacity building program inclusive of a toolkit for judges and court personnel of a social nature to follow.
5. *Contextualize the Child Friendly Court Guidelines for Personal Status Courts in Lebanon* in the rest of the countries following the methodology developed.

Annex 1 – Captured moments from the regional workshop



Annex 2 – Agenda

AGENDA DAY 0 - Tuesday, 10 th December 2019		
Time	Content	Responsible
08:00 - 10:45 <i>Pick up time 8:00 at the lobby of Sodeco Suites hotel</i>	Institutional visits to Lebanese personal status courts: Sunni Court of 1st Instance* (Beirut area) - exchanges with court authorities and personnel; - visit court premises, including Child-Friendly Waiting Room; - attend hearings <i>(*) all participants</i>	Terre des hommes
11:00 - 12:30	Institutional visits to Lebanese personal status courts: Shi'a Court of Appeal** (Beirut area) - exchanges with court authorities and personnel; - visit court premises; - attend hearings <i>(**) court visits limited to MENA judges and family law experts (cf. movement plan for details)</i>	Terre des hommes
13:00 - 18:30	Free time (free lunch arrangements)	n/a
19:00 – 21:00 <i>Pick up time 18:40 at the lobby of Sodeco Suites hotel</i>	Welcoming dinner (Abdel Wahab restaurant, Beirut)	CEDROMA / Terre des hommes

AGENDA DAY 1 - Wednesday, 11 th December 2019		
Time	Content	Technical Responsible
08:45– 09:00 (15 min)	Arrival of participants and registration	Tdh: Jennifer Troncoso CEDROMA: Zeina Risha
09:00– 09:15 (15 min)	Opening and welcoming - Fabrice Durand, Regional Attaché Justice Cooperation, French Embassy in Amman - Marie-Claude Najm, Director of CEDROMA, University Saint-Joseph of Beirut - Marta Gil, MENA Regional Coordinator, Access to Justice Program, Terre des hommes Foundation	Tdh: Marta Gil CEDROMA: Marie-Claude Najm
09:15– 09:30 (15 min)	- Introduction of participants - Participants' expectations - Workshop objectives - Presentation of agenda	Tdh: Jennifer Troncoso
09:30 - 10:00 (30 min)	Restitution of preparatory group work: Brief summary of main features of personal status law jurisdictions per country <i>Presentation (in French)</i>	Presentation by CEDROMA: Harith Dabbagh
10:00 - 10:15 (15 min)	Restitution of preparatory group work: Key successes and obstacles pre-identified by MENA judges applying a child-friendly justice approach in their own personal status matters jurisdictions.	Presentation by Tdh: Jennifer Troncoso
10:15 - 10:30 (15 min)	Coffee break	CEDROMA
10:30 - 13:00 (150 min)	Child friendly justice in practice: analysis of MENA judicial decisions from a child-friendly justice lens. (session I) - Court decisions - CFJ-aligned practices/procedures - Main obstacles/challenges/gaps - What essential changes/solutions to be applied/what could have been done differently?	Tdh: Nathalie Hobeika/Farah Ishaqat CEDROMA: Harith Dabbagh
13:00 - 14:00 (60 min)	Lunch break	CEDROMA
14:00– 15:15 (75 min)	Child friendly justice in practice: restitution of MENA judicial decisions from a child-friendly justice lens (session II)	Group representatives (judges), supported by Tdh and CEDROMA animators
15:15 - 15:30 (15 min)	Coffee break	CEDROMA
15:30 - 16:30 (60 min)	Technical Presentation "Le juge de la famille, le droit codifié et le silence de la loi: Réflexion comparative sur l'usage des sources du droit en matière de statut personnel" Questions and Group discussion	Presentation by Baudouin Dupret
16:30 - 16:45 (15 min)	Wrap up day 1	Tdh: Marta Gil

AGENDA DAY 2 - Thursday, 12 th December 2019		
Time	Content	Technical Responsible
9:00 - 9:30 (30 min)	- Brief summary of day 1 - Presentation of agenda day 2 - Registration of participants	Tdh: Marta Gil CEDROMA: Marie-Claude Najm
09:30 - 10:30 (60 min)	Technical Presentation: <i>"Legal and Social Protection of Parentless Children in front of Muslim Jurisdictions"</i> Questions and Group discussion	CEDROMA: Marie-Claude Najm
10:30 - 10:45 (15 min)	Coffee break	CEDROMA
10:45 - 12:30 (105 min)	Child friendly justice in practice: Application of Child-Friendly Justice Principles and Standards in court. Analysis of gaps and areas of improvement. Presentation and Group discussion	Tdh: Jennifer Troncoso / Marta Gil
12:30 - 14:00 (90 min)	Lunch break	CEDROMA
14:00 - 15:00 (60 min)	Child friendly justice in practice: consolidation & wrap up - Conclusions - Way forward Presentation and Group discussion	Tdh: Yann Colliou
13:00 - 14:00 (60 min)	Lunch break	Tdh: Jennifer Troncoso
15:00 - 15:15 (30 min)	CLOSURE - Evaluation of the workshop - Certificates of participation	Group representatives (judges), supported by Tdh and CEDROMA animators
15:15 - 15:45 (30 min)	Coffee break	CEDROMA

(***) Simultaneous translation in Arabic, English and French will be ensured during the workshop sessions (December 11th and 12th)

Annex 3 – List of participants

Judges

1. Judge Mejbel Hussein Suhail, Judge at personal status court of appeal in Baghdad Karkh Federal (Iraq).
2. Judge Somoud Damiri, Chief prosecutor of Sharia courts in Palestine. Judge of appeal in Sharia courts (Palestine).
3. Judge Dr. Mansour Al-Twalbah, Director of the International Cooperation for Human Rights (Jordan).
4. Judge Dr. Mahmoud Abu Rumman, Judge at the Directorate of International Cooperation and Human Rights (Jordan).
5. Judge Tarik Mohammad Abu Tayeh, Head of the Family Reform, Mediation and Conciliation Office at Ma'an Sharia Court (Jordan)
6. Judge Hassan Amr El Hussein, President at the Court of Appeal (Egypt)
7. Judge Soumaya Boughanem, Counselor 3rd degree in Tunisia, specialized in family and child jurisdiction (Tunisia).
8. Judge Laila Abbou, Former Judge at family court of first instance, Souk-Larba, (Morocco)
9. Judge Sheikh Mohammad Nokkari, Judge at the Beirut Sunni Court in Lebanon. Member of Tdh Scientific Committee on Religious Justice (Lebanon).
10. Judge Sheikh Abdel Halim Sharara, Counselor judge at the Supreme Jaafari court (Lebanon).
11. Judge Father Georges Dimas, Judge at the Greek Orthodox court of Appeal (Lebanon).

Experts

12. Badouin Dupret, Researcher CNRS (French National Centre for Scientific Research)
13. Renate Pfister-Liechti, Former judge and prosecutor in Switzerland, Member of Tdh Scientific Committee on Religious Justice.
14. Fabrice Durand, Regional Cooperation Attaché at the French Embassy in Amman, Jordan.

CEDROMA

15. Marie-Claude Najm, Professor at the Faculty of Law and Political Sciences, University Saint-Joseph of Beirut. Director of CEDROMA, Former Ministry of Justice Lebanon.
16. Samer Ghamroun, Assistant Professor at the Faculty of Law and Political Sciences, University Saint-Joseph of Beirut. Researcher at CEDROMA. Member of Tdh Scientific Committee.
17. Nadi Abi Rached, Lecturer at the Faculty of Law and Political Sciences, University Saint-Joseph of Beirut. Researcher at CEDROMA.
18. Harith Al-Dabbagh, Associate Professor at the Faculty of Law, Montreal University (Canada). Guest researcher at CEDROMA.
19. Myriam Mehanna, Teaching assistant the Faculty of Law and Political Sciences, University Saint-Joseph of Beirut. Associated researcher at CEDROMA.
20. Lama Karamé, Member of Legal Agenda. Associated researcher at CEDROMA.

Terre des hommes (Tdh)

21. Yann Colliou, Head of the Access to Justice Program.
22. Zahra Dziri, Deputy Area Manager MENA.
23. Cédric Foussard, Access to Justice Global Advocacy Advisor.
24. Marta Gil, MENA Regional Coordinator, Access to Justice Program.
25. Jennifer Troncoso, MENA Regional Technical Advisor, Access to Justice Program.
26. Adrien Genoud, Program Coordinator Access to Justice Iraq.
27. Farah Shaban Ishaqat, Legal Specialist Jordan.
28. Sayed Hamidullah Hanif, Program Manager Access to Justice Afghanistan.
29. Elham Mahmoud, Program Manager Access to Justice Egypt.
30. Nathalie Hobeika, Program Manager Access to Justice Lebanon.
31. Gelena Vujanovic, Program Coordinator Lebanon.

32. Hiba Shihab, Social Worker Access to Justice Lebanon.

33. Franck Joly, Country Representative Lebanon.