



# WANA Institute Tribal Dispute Resolution and Women's Access to Justice in Jordan

## **Tribal Dispute Resolution and Women's Access to Justice in Jordan**

Understanding justice systems that developed over millennia before the advent of the state and still operate today is critical to strengthening women's access to justice. Recognition of the important role of such 'non-state justice systems' and their complex linkages with other justice systems has grown in recent times, to the extent that it has been posited as "perhaps the most significant trend in justice reform efforts in the last decade."<sup>1</sup> Despite this, there remains a dearth of research on the topic in the West Asia – North Africa (WANA) region, including Jordan.

Like many other countries in the WANA region, Jordan has several central justice systems, which interact in a myriad ways: tribal dispute resolution processes, *Shari'ah* (Islamic) courts and State courts.<sup>2</sup> Several studies show that while considerable improvements to the gender equity of Jordan's state laws have been made over the last decades, there remain significant obstacles for women's access to justice.<sup>3</sup> Many of the reasons are not dissimilar to those in other countries. They include financial barriers, a weak legal aid system, low legal awareness, discriminatory substantive laws and a lack of trust in state institutions. However, there has been little research on the connection between women's access to justice and the tribal dispute resolution principles and processes that are so strongly embedded in Jordanian society.

Defying predictions made in the later period of Jordan's statebuilding, the notions of 'tribe' and 'tribal law' remain strong in Jordan. They are inextricably tied with identity for many Jordanians – from the national to the village level, with the majority of Jordan's population today having tribal affiliations, whether the tribes in question are primarily settled, semi-nomadic or nomadic.<sup>4</sup> Almost all original inhabitants of Jordan derive from Bedouin, a nomadic desert dwelling peoples. This means that similar principles and processes for governing justice and security, which were developed over

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<sup>1</sup> T Chopra and D Isser, 'Access to Justice and Legal Pluralism in Fragile States: The Case of Rights' (2012) 4(2) *Hague Journal on the Rule of Law* 337, 338. The author recognises the debate on the appropriate terminology as between 'informal', 'customary', 'traditional' and 'non-state' systems. The author also recognises the debate in legal pluralism scholarship as to 'what is law', preferring to use justice or dispute resolution system.

<sup>2</sup> The latter has been influenced by old European codes that were adopted during the Ottoman period, English common law introduced during the mandate between 1921 and 1946, followed by Egyptian and Syrian legislation and most recently, international law. In relation to international law, Jordan ratified the Convention for the Elimination of Discrimination Against Women (CEDAW) in 1992, but with several reservations.

<sup>3</sup> See, for example R Hussein, 'Jordan' in S Kelly and J Breslin (eds), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (2010) Start Page, ,

<sup>4</sup> G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, (1999) 12.

thousands of years of harsh desert living, are the basis for almost every tribe in Jordan, even those who now live a sedentary lifestyle. *Shari'ah* and state law may have largely replaced the intricacies of a comprehensive tribal legal code. However, the central principles and processes of dispute resolution underpinning the tribal justice system are still prevalent in Jordan today.

As legal scholar-practitioners Chopra and Isser have pointed out, gender discrimination is not generally an intrinsic part of any one particular justice system. Rather justice systems reflect and perpetuate aspects of the society in which they are embedded, such as asymmetric power relations between men and women.<sup>5</sup> This paper shows that tribal dispute resolution principles and processes both reflect the social norms and gender asymmetries in Jordanian society today, and impact the extent to which women can access justice through the state and *shari'ah* system. It does so by drawing on two main sources. First, literature on tribal dispute resolution processes in Jordan and surrounding countries. Second, the findings from a focus group held on 16 December 2014 in Amman with 30 female Jordanian civil society leaders. This paper is intended as an exploratory study, providing a foundation and direction for future research by posing several hypotheses about the relationship between women's access to justice and principles and processes governing tribal dispute resolution.

The paper is structured in three sections as follows. First, an overview of the role of 'the tribe' in Jordan's past and present is outlined. The second section discusses eight central principles and processes of tribal dispute resolution, which were developed over centuries of isolated desert living and still impact access to justice in Jordan today. The third section identifies three main ways that tribal dispute resolution principles and processes negatively affect women's access to justice. The paper concludes with suggestions for future research.

## 1. Bedouin, tribes and Jordan

This paper is based on the theory that justice systems do not exist or develop in isolation, but rather they are connected to an "underlying socio-economic, cultural and political context," and reflect many of the values and asymmetric gender relations of the society in which they are embedded.<sup>6</sup> Accordingly, this section outlines some of this context for tribal principles and process of dispute resolution in Jordan. It explains why, as al-Ramahi puts it, tribal dispute resolution systems and the "notion of 'tribe' has plural resonance in the Jordanian context".<sup>7</sup>

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<sup>5</sup> T Chopra and D Isser, 'Access to Justice and Legal Pluralism in Fragile States: The Case of Rights' (2012) 4(2) *Hague Journal on the Rule of Law* 337, 352.

<sup>6</sup> Ibid.

<sup>7</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 126.

### 1.1 Bedouin: Inhabitants of the desert

From the earliest recorded history until the end of the Ottoman Empire in 1918, people living in large swathes of desert in the WANA region were essentially left to their own devices; government or empire authorities confined their presence to capitals at the edge of the desert.<sup>8</sup> These people became known as Bedouin in English, which is from the Arabic *badawiyin*, meaning “inhabitants of the desert”.<sup>9</sup> As in many other isolated places around the world, the Bedouin people developed a system of law based on principles and processes designed to ensure their security and survival.

In order to survive in the sparsely populated but harsh, resource-poor desert traditional Bedouin society developed strong collective bonds within independent family groupings. Sonbol describes this, saying “living closely together and being highly dependent on each other meant greater tribal unity cemented by possessive pride in tribal honor, the tribal name and an intertribal clan hierarchy built on loyalty and respect.”<sup>10</sup> In short, tribal solidarity was required of everyone belonging to the tribe in order to ensure survival.<sup>11</sup> The largest natural grouping is the *ashira*, followed by *hamulas*.<sup>12</sup> These can both be considered translations for the English term ‘tribe’.<sup>13</sup> The Bedouin tribal structure is patrilineal (blood relationship descend through the male line), headed by male leaders, known as *shaykhs*. The next main grouping is the clan, or *khamisa*, which is headed by *kabir* (elders).<sup>14</sup>

### 1.2 Jordan and its tribes over time

Even though few people in Jordan today live nomadically in the desert, the legacy of the need for tribal solidarity remains strong. Like several other principles established during thousands of years of isolated desert living, tribal solidarity affects the current conception and operation of justice in Jordan. Although like other similar societies tribal structures, principles and processes of dispute resolution in Jordan are not static. They

<sup>8</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 9.

<sup>9</sup> Arguably the label ‘Bedouin’ is only appropriate for the minority of people who still live nomadically in the desert. However the terms ‘tribe’ or ‘tribal’ continue to hold resonance for so many in Jordan. Accordingly they will be used for the remainder of this paper. In other literature, tribal-based dispute resolution systems are known by a variety of terms such as customary justice systems, traditional systems or non-state legal systems.

<sup>10</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 43.

<sup>11</sup> A Furr and M Al-Serhan, ‘Tribal Customary Law in Jordan’ (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 18.

<sup>12</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 127. citing F Al-Kalani, *Shariah al-ashaer fi al Watan Al-arabi (The customs of the tribe in the Arab countries)*, (1985). See also, D Pely, ‘Women in Sulha - excluded yet influential’ (2011) 22(1) *International Journal of Conflict Management* 89, footnote 1.

<sup>13</sup> There are also larger units, which may gather together in conflict that could be described as confederations of tribes, known as *fakdh* (sub-confederation) and *qabila* (confederation). B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 12-13.

<sup>14</sup> *Ibid*, p. 13.

continue to adjust, albeit slowly, in response to societal changes. Indeed, they have done so for many centuries, adapting to the advent of Islam, then later to the establishment of the Transjordan Emirate, the Hashemite Kingdom and to processes of urbanisation and globalisation.

It is clear that tribal society and methods of dispute resolution in the WANA region predate Islam;<sup>15</sup> though since the advent of Islam in Arabia in the seventh century, Islam has influenced aspects of tribal culture and dispute resolution.<sup>16</sup> At the same time, many Arab tribal customs were incorporated into Islamic teaching.<sup>17</sup> Even where this did not occur, the rule '*al urf wal adah*' allowed for tribal customs to remain a legitimate source of law within Islam, as long as they do not contradict *Shari'ah* (Islamic) law.<sup>18</sup>

Due to the relative poverty of the East Bank area, Jordan was not greatly influenced relative to its resource-rich neighbours for many centuries. Even during the Ottoman period, whose land policies caused displacement among many Bedouin in the WANA region, the Transjordan area was far from the centre of power or economic influence. In the absence of state security systems being established during this time, "tribal forms of protective social economic affiliation expressed through kinship... [were] not limited to nomads; rather the tribes of Transjordan filled every economic niche... forming a complex web of integrative social alliance."<sup>19</sup> Thus, when the Transjordan Emirate was formed in 1921 most of the population was still organised primarily along tribal lines. The tribe was people's "principle frame of reference."<sup>20</sup>

In the early stages of Jordan's statehood the new government recognised tribes as a basic administrative unit for many purposes and encouraged tribal methods of dispute resolution to secure security, law and order.<sup>21</sup> Over the following decades, while the political, military and economic dominance of the state grew, tribal identity together with its ways of resolving disputes, was encouraged. For example, Bedouins were specifically recruited to fill the ranks of the military and security sectors, as well as prominent government positions.

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<sup>15</sup> E Jabbour, *Sulha Palestinian Traditional Peacemaking Process*, (1993) 13., A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 17., K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 12.

<sup>16</sup> A Kadayifci-Orellana, *A standing on an Isthmus: Islamic Narratives on War and Peace in Palestine*, (2007) 261-262.

<sup>17</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 75., S Kirazli, 'Conflict and Conflict Resolution in the pre-Islamic Arab Society' (2011) 50(1) *Islamic Studies* 25,

<sup>18</sup> A Al-Ramahi, 'Sulh: A Crucial Part of Islamic Arbitration' (2008) 12/2008 *LSE Law, Society and Economy Working Papers* 6.

<sup>19</sup> M C Wilson, *King Abdullah, Britain and the Making of Jordan*, (1987) 57.

<sup>20</sup> Y Alon, *The Making of Jordan: Tribes, Colonialism and the Modern State*, (2007) 13.

<sup>21</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 120. For more, see M A Nowar, *The Development of Trans-Jordan 1929-1939: A History of the Hashemite Kingdom of Jordan*, (2005) 111.

In the 1950s-1960s, a combination of unusually severe weather conditions, targeted government policies and services, and urban employment opportunities resulted in the sedentarisation of many Bedouin in the WANA region. By the late 1970s, it was estimated that only 3 percent of the Bedouin population in Jordan lived nomadically.<sup>22</sup> Jureidini and McLaurin wrote in the early 1980s that in Jordan “tribal linkages can no longer lay exclusive claim on tribe member’s allegiance... for a steadily increasing number, tribal allegiance is either meaningless or peripheral to their lives and feelings.”<sup>23</sup> Political theorists during this time predicted the role of the tribe would wane almost completely away as the state provided more and more direct services.<sup>24</sup> However, this proved inaccurate. Moving to a sedentary lifestyle did not spell the end of tribalism.<sup>25</sup>

While tribal allegiance may not hold first claim for many Jordanians today, it is certainly neither meaningless nor peripheral to many. It is largely unknown to what degree people who have come to Jordan from the Palestinian territories, Iraq and Syria have the same understanding of tribe. Many of them certainly share a Bedouin history with the East Bank Jordanians; Bedouins historically lived in significant parts of modern day Jordan, Israel and the Palestinian territories, Egypt, Saudi Arabia, Yemen, Libya, Iraq, Kuwait and Syria.<sup>26</sup> There is anecdotal evidence that in some cases Jordanians of Palestinian and Iraqi origins have adapted to the strong sense of tribalism in Jordan. For example, Murad states that some large families have invested in a meeting location “in order to exaggerate their special influence and place themselves on equal footing — in power and influence — with the tribal constellations typical of the indigenous Jordanians.”<sup>27</sup>

Regardless, it is clear that in several areas such as dispute resolution, elections and patronage, tribal identity and loyalty remains very strong throughout Jordan.<sup>28</sup> Part of the reason for its enduring strength is that Bedouin heritage was, and still is, strongly connected with ideas of national identity and national politics. It forms the basis for legitimacy of the monarchy, which originally chose to rule indirectly through tribal

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<sup>22</sup> P Jureidini and R d McLaurin, *Jordan: The impact of social change on the role of the tribes*, (1984) 14.

<sup>23</sup> Ibid, p. 40.

<sup>24</sup> E Gao, 'They're Here to Stay: Tribes and power in contemporary Jordan' in D Sindic, M Barreto and R Costa-Lopes (eds), *Power and Identity* (2015) Start Page, 54., P Jureidini and R d McLaurin, *Jordan: The impact of social change on the role of the tribes*, (1984) 14.

<sup>25</sup> R Bocco, 'International organisations and the settlement of nomads in the Arab Middle East, 1950-1990' in M Mundy and B Musallam (eds), *The Transformation of Nomadic Society in the Arab East* (2000) Start Page, 214., R Antoun, 'Civil Society, Tribal Process, and Change in Jordan: An Anthropological View' (2000) 32 *International Journal of Middle Eastern Studies* 441, 446.

<sup>26</sup> See G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, (1999) 9-12. for a recitation of the names and areas of influences of the tribes in Jordan its neighbours. See also, M H Abu-Hassan, *Bedouin Customary Law*, (1974)

<sup>27</sup> N Murad, *The Tribe and the Law*, The Jordan Times, (Amman January 12, 2014), available at <http://jordantimes.com/the-tribe-and-the-law>

<sup>28</sup> E Gao, 'They're Here to Stay: Tribes and power in contemporary Jordan' in D Sindic, M Barreto and R Costa-Lopes (eds), *Power and Identity* (2015) Start Page, 56.



structures.<sup>29</sup> The tradition begun by Abdullah I of maintaining a chieftaincy-like political system based on close personal relations, tribal identity, mediation, and conciliation has not changed dramatically.<sup>30</sup> Ramahi, in describing the relationship between the tribes and Jordan, notes “the legitimacy of tradition, considered almost synonymous with Bedouin or tribal culture, has been defended as part of the near sacrosanct foundations of the state and as central to cultural heritage.”<sup>31</sup>

Included in this ‘near sacrosanct foundation of the state’ are tribal principles and process of dispute resolution. This is apparent from traditional nomadic families to the highest levels of state. For example, to this day male members of the royal family, and certainly members of Parliament, are involved in tribal dispute resolution processes. However, with the exception of so-called honour killing, there has been little discussion or research about the effects of this on access to justice for marginalised groups, such as women.

## **2. Principles and processes central to tribal dispute resolution in the Arab world**

This section briefly describes eight related principles and processes that are central to Arab tribal dispute resolution.<sup>32</sup> Tribal processes seem to be primarily used today in Jordan for violations against life, limb and honour. The first of these are referred to as ‘blood crimes’ and criminal responses to violations of the first are known as ‘honour crimes’.<sup>33</sup> As mentioned, tribal principles and processes of dispute resolution are used in Jordan not just by those living nomadically but also by many people of all socio-economic backgrounds with tribal affiliations living in villages or cities like Amman.<sup>34</sup> None of these is exclusive to Jordan or to Muslims; they are also used in many other parts of the WANA region, including by some Christians and Druze in the Palestinian

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<sup>29</sup> Y Alon, *The Making of Jordan: Tribes, Colonialism and the Modern State*, (2007) 1. and Y Alon, 'The Tribal System in the Face of the State-formation Process: Mandatory Transjordan 1921-46' (2005) 37 *International Journal of Middle Eastern Studies* 213.

<sup>30</sup> Then his successor King Hussein kept close personal ties with Bedouin peoples, “visiting them often, socializing in their tents and playing the role of paramount tribal sheikh.” A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 121. King Abdullah II also spends considerable time visiting around the country and meeting tribal leaders.

<sup>31</sup> Ibid.

<sup>32</sup> Books could and have been written (primarily in Arabic) about each of these concepts. This summary is by no means a comprehensive description or explanation, but rather aims to provide a concise starting point.

<sup>33</sup> *Jordan: Tribal law, including whether it allows murder as revent; whether tribal law overrides the legal justice system* [JOR104416.E] (2013) available at [http://www.ecoi.net/local\\_link/256891/368860\\_en.html](http://www.ecoi.net/local_link/256891/368860_en.html), A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 48, 190. and A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 23.

<sup>34</sup> R Antoun, 'Civil Society, Tribal Process, and Change in Jordan: An Anthropological View' (2000) 32 *International Journal of Middle Eastern Studies* 441, 446.

territories.<sup>35</sup> As the literature on these processes in Jordan today is relatively sparse, this section draws also on literature examining their practice in several other Arab countries.<sup>36</sup>

## 2.1 *Asabiyya*

*Asabiyya* can be roughly translated as solidarity and is often used in the context of tribal or family collective responsibility. Ramahi describes *asabiyya* as “the fundamental basis of tribal society”, connecting every member of the tribe to each other in a reciprocal arrangement.<sup>37</sup> It has also been explained as:

a social code where the overriding necessity is that tribe or clan hold together and defend each other in order merely to survive in the face of other foreign and marauding nomads, and in the face of severe desert conditions which make this survival impossible except through the unity, co-operation and symbolic divisions of roles.<sup>38</sup>

This concept remains deeply embedded in Jordan today.

Collective responsibility is central to the processes used to deal with a range of conflicts.<sup>39</sup> Although tribal networks are wide in Jordan, strong solidarity is expected, for example in election voting, and also when blood or honour crimes occur.<sup>40</sup> One expression of tribal solidarity seems to be that when a member is loyal and supports his tribe, he would expect that his tribe will in turn support and take responsibility for him, even when he offends. This is expressed in the Bedouin saying ‘aid your brother whether oppressed or oppressor’.<sup>41</sup> Or as Coulson puts it, it is “to the tribe as a whole that individuals owed allegiance and it was from the tribe that protection of interests was obtained.”<sup>42</sup> However, what used to be a rational principle necessary for daily survival in the desert, today significantly hinders women’s access to justice, as will be further explored later.

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<sup>35</sup> D Pely, 'Women in Sulha - excluded yet influential' (2011) 22(1) *International Journal of Conflict Management* 89, 89., A Kadayifci-Orellana, *A standing on an Isthmus: Islamic Narratives on War and Peace in Palestine*, (2007) 266.

<sup>36</sup> As with any such dispute resolution system, its operation varies from place to place. However this section focuses on the most central and common elements. ‘Aref al-‘Aref even contends that there is little difference between the customs and dispute resolution systems of Bedouin in different Arab countries. *Jurisprudence among the Bedouin* (1933).

<sup>37</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 129.

<sup>38</sup> G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, 22.

<sup>39</sup> R Patai, *The Kingdom of Jordan*, (1957)

<sup>40</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 21.. For more tribal influence in elections, see E Gao, 'They're Here to Stay: Tribes and power in contemporary Jordan' in D Sindic, M Barreto and R Costa-Lopes (eds), *Power and Identity* (2015) Start Page, 56-58.

<sup>41</sup> G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, (1999) 23.

<sup>42</sup> N J Coulson, *A History of Islamic Law*, (1964) 9.



According to HRH Prince Ghazi bin Muhammad, whether someone with tribal affiliations is living in a settled, semi-nomadic or nomadic way in Jordan, there is an “acute consciousness and pride” in belonging to a tribe and knowing the tribe will defend and support him if need be.<sup>43</sup> He claims that this applies equally to “outwardly ‘westernized’ individuals from old settled tribes [who in times of crisis] will fall back on modes of behavior and considerations that are entirely tribal”.<sup>44</sup> One example of this in practise is if someone is killed by a person from by another tribe, unless a tribal dispute resolution process is commenced, someone from the victim’s tribe has the ‘right’ to kill someone in retaliation from the perpetrator’s tribe.<sup>45</sup> This is the case whether or not the second person killed was individually responsible for the initial death. To put it in legal terms, legal personality is defined as the collective, and there is mutual liability within this group, so when a man’s acts violate the rights of others outside his clan he is seen to be acting as an agent, or extension of his clan.<sup>46</sup>

According to one focus group member, this sense is still strong today, stating that one might be living a ‘normal modern life’ in Amman and “you think you’re bigger than that. But when something happens, everyone will stand by their tribe.” This collective conception of rights sees the best interest of the tribe as taking priority over individual cases of injustice. This means individuals might be pressured not to take cases to court that are seen to not be in the best interests of the tribe or its reputation. It also means the tribe will support their member, whether the offender or not, even to the extent of influencing court decisions.

The strength of *asabiyya* in a tribe also shows its strength to others. So the reputation, size and associated power of the tribe (including the protection it extends to its members) one is affiliated with in Jordan influences who one can marry, where one can go to university or what quality of justice one receive.<sup>47</sup> As expressed by Murad: “clout and sense of justice is clearly defined by ... tribal alliance and the level of that clout is defined by the influence and size of the tribe.”<sup>48</sup>

## 2.2 Sharaf

One principle strongly related to *asabiyya* is *sharaf*. *Sharaf* means honour or social standing. Honour both in and beyond the Arab world has been written about extensively

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<sup>43</sup> G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, (1999) 18.

<sup>44</sup> Ibid. He gives an example of a former minister and University Chancellor whose entire higher education had taken place in the West, who considered a blood feud when he thought his brother had been murdered.

<sup>45</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 24.

<sup>46</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 60.

<sup>47</sup> Focusgroup

<sup>48</sup> N Murad, *The Tribe and the Law*, The Jordan Times, (Amman January 12, 2014), available at <http://jordantimes.com/the-tribe-and-the-law>. For more on the importance of tribe’s size, see B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 69-70.

and this brief outline cannot capture all of the nuances of the 'ideology of honour'.<sup>49</sup> However, Shrylock succinctly outlined its importance to all aspects of life in Jordan, saying "ideas of honor continually recreate a political culture in which families, tribes, and nation-states are answerable to the same kind of moral reasoning... of male and female, controlling and controlled, [and] protecting and protected."<sup>50</sup>

*Sharaf* is connected with the whole tribe, as well as with individuals as members or representatives of the tribe.<sup>51</sup> According to Ozcelik, in relation to dispute resolution, it "is a flexible concept that can be used to legitimize feud and revenge as well as forgiveness, reconciliation, and mediation"<sup>52</sup> *Sharaf* is increased and diminished according to a range of factors. For example, in relation to dispute resolution, breaking an agreement reached following a dispute would greatly diminish *sharaf*. It is also strongly related to two other Bedouin values: offering hospitality (*diyafa*) and courage (*hasama*).<sup>53</sup>

*Sharaf*, in the sense of social standing, is also strongly connected to the English concept of reputation. Bailey argues that restoration of reputation is central to Bedouin view of justice. He posits that in traditional Bedouin society, law essentially means a right (*haak*), particularly to life, limb, honour and property.<sup>54</sup> When a violation of such a right occurs, the victim must try to restore this – either through physical revenge or a mediation-type process. However, as this law was developed in the absence of any government authority able to protect people from or rectify these violations each man, aided by his clan, was responsible for this. This responsibility is discharged through maintaining several security strategies. One of the first strategies is deterrence, primarily through the principle of collective solidarity, but also through being known as strong and maintaining a "reputation for being resolute in rectifying each and every infraction of his rights."<sup>55</sup> If a group does not do this, they may be known as weak, and then become seen as easy prey in the desert.

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<sup>49</sup> See, for example, S Hossain and L Welchmann (eds.), *Honour: Crimes, Paradigms and Violence Against Women*, (London 2005),

<sup>50</sup> A Shryock, 'House Politics in Tribal Jordan: Reflections on Honor, Family and Nation in the Hashemite Kingdom' in E Conte, P Dresch and L Valensi (eds), *Tribu, Parentele et Etat en Pays d'Islam* (2000) Start Page,

<sup>51</sup> P C Salzman, 'The Middle East's Tribal DNA' (2008) 25(1) *The Middle East Quarterly* 23, 31., A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 45.

<sup>52</sup> S Ozelik, 'Islamic/Middle Eastern Conflict Resolution for Inter-personal and Intergroup Conflicts: Wisata, Sulha and Third-Party' (2006) 3(12) *Uluslararası İlişkiler - International Relations* 3, 12.

<sup>53</sup> A Abu-Rabia, 'Family Honor Killings: Between Custom and State Law' (2011) 4(1) *The Open Psychology Journal* 34, 34.

<sup>54</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 16.

<sup>55</sup> *Ibid*, pp. 17-18.

Bedouins express this idea of justice metaphorically with the image of a camel walking through the desert carrying a load.<sup>56</sup> If someone's rights have been violated and not yet rectified, it is as if the camel's load is unbalanced (which is the same adjective as 'violations of rights') and it cannot continue, destined to die in the desert. Justice is achieved when the right has been rectified, thus restoring honour and a reputation for strength and resolve. Metaphorically, this is when the camel's load has been re-balanced and it is able to continue walking (restored right and rectified balance are both expressed by the noun '*adl*').<sup>57</sup>

### 2.3 *Ird*

A related concept is *ird*. *Ird* also means honour, but specifically in relation to women and most often to their reproductive and sexual lives.<sup>58</sup> According to Furr, *ird* "is the supreme value in Bedouin life, more important than life itself."<sup>59</sup> One connection between women's sexual activity and the tribe is that in early tribal society, women were highly important for securing the tribal lineage.<sup>60</sup> This is true whether women were married within the tribal or externally, to establish or maintain an alliance. In short, reliable descent was essential, requiring chastity from women before and after marriage.<sup>61</sup> Accordingly *ird* demands virginity for the unmarried and that married women remain faithful.<sup>62</sup> In addition, it requires women to maintain a good reputation, act and dress modestly and be above any suspicion in her community.<sup>63</sup>

*Ird* is also connected with the idea of reputation and strength as outlined earlier; if men cannot protect their women from violation they will be seen as weak. Another interpretation is that in failing to control the sexual behaviour of a woman under his responsibility, the male becomes 'ungendered', considered effeminate by his peers.<sup>64</sup> In this way, *ird* does not actually refer to women's honour, but to the honour of the men to whom they are related.<sup>65</sup> The woman is a symbolic vessel for male honour (*sharaf*)

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<sup>56</sup> Ibid, p. 19.

<sup>57</sup> Ibid.

<sup>58</sup> M Hasan, 'The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor' (2002) 21(1-2) *Journal of Israeli History: Politics, Society, Culture* 1, 6. The corollary of *sharaf* and *ird* is *hashama*, '*aib* or '*aar*', which each relate to shame.

<sup>59</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 29.

<sup>60</sup> P C Salzman, 'The Middle East's Tribal DNA' (2008) 25(1) *The Middle East Quarterly* 23, 28.

<sup>61</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 44.

<sup>62</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 145.

<sup>63</sup> I Glazer and W A Ras, 'On Agression, Human Rights, and the cAse of Murder for Family Honor in Israel' (1994) 30(3/4) *Sex Roles*

<sup>64</sup> R Ruane, 'Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan' (2000) 14 *Emmory Int'l L. Rev.* 1523, 1532.,

<sup>65</sup> M Hasan, 'The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor' (2002) 21(1-2) *Journal of Israeli History: Politics, Society, Culture* 1, 3.

and her actions reflect upon the males of her family and tribe.<sup>66</sup> Indeed, Sonbol states it is viewed “as the most serious offense to a family’s honor and therefore necessitated redress if the family is to regain its respectability in the community.”<sup>67</sup>

Hasan points out that through the beliefs relating to *ird*, men control and restrict women’s behaviour.<sup>68</sup> He claims that a threat to *ird* undermines male control, activating action by men to restore their domination, reputation and corresponding *sharaf*.<sup>69</sup> Whether collective tribal honour was always so strongly tied with *ird* is up for debate. Sonbol claims that tribal honour was formerly connected with a range of behaviour by both men and women, but that with the societal changes faced by tribes, issues of tribal honour have focused more and more exclusively on women.<sup>70</sup> It also seems that the concept today has expanded beyond acts related to sex, but also to controlling other behaviour of women.<sup>71</sup>

Loss of *ird* is passive and irredeemable by women. It can only be restored by male action, generally a male of close blood kinship. This is expressed in the Bedouin saying ‘dirty women must be cleaned by her family’.<sup>72</sup> Although one way of ‘cleansing’ the dishonor caused by a perceived serious violation of *ird*, is marriage between the male and female who had sexual relations.<sup>73</sup> This is often considered an option whether the sexual act was consensual or not. However, more commonly the dishonour brought upon the family or tribe is only considered ‘cleaned’ if the woman is killed by a close male blood relative. This is known as ‘honour killing’, or intra-family femicide.<sup>74</sup>

According to estimates there are an average of 20-25 so-called honour killings reported every year in Jordan.<sup>75</sup> However it is by no means a phenomenon only found in Jordan, with reports of its occurrence in other parts of the WANA region, including Pakistan, Afghanistan, Iraq, Iran, Syria, Yemen, Saudi Arabia, Kuwait, Turkey, Egypt, Lebanon;

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<sup>66</sup> R Ruane, 'Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan' (2000) 14 *Emmory Int'l L. Rev.* 1523, 1531.

<sup>67</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 190.

<sup>68</sup> M Hasan, 'The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor' (2002) 21(1-2) *Journal of Israeli History: Politics, Society, Culture* 1, 3.

<sup>69</sup> Ibid.

<sup>70</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 43.

<sup>71</sup> M Hasan, 'The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor' (2002) 21(1-2) *Journal of Israeli History: Politics, Society, Culture* 1, 3.

<sup>72</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 29.

<sup>73</sup> R Hussein, *Murder in the name of honour*, (2009) 48., A Abu-Rabia, 'Family Honor Killings: Between Custom and State Law' (2011) 4(1) *The Open Psychology Journal* 34, 36.

<sup>74</sup> F Faqir, 'Intrafamily Femicide in Defence of Honour: The Case of Jordan' (2001) 22(1) *Third World Quarterly* 65,

<sup>75</sup> R Hussein, *Murder in the name of honour*, (2009) , R Hussein, 'Jordan' in S Kelly and J Breslin (eds), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (2010) Start Page, 5.

Bangladesh; Israel and the Palestinian territories.<sup>76</sup> The practice has an arguably murky relationship with Islam. While some connect it with Islam perhaps due to dominant Islamic views on female chastity and male authority, honour killing is certainly not an Islamic concept.<sup>77</sup> It has been strongly condemned by several notable Islamic leaders.<sup>78</sup> *Shari'ah* law, although it condemns adultery, specifies that there must be four witnesses of good reputation who witnessed the act itself before any punishment takes place.<sup>79</sup> The Qur'anic punishment if the legal requirements are met is not death, but flogging. This honour killing in West Asia seems to be a practice that is primarily drawn from a prevailing, although certainly contested, interpretation of Bedouin tribal principles and processes.<sup>80</sup> Two points support this. First, within West Asia it has been practiced in Palestinian communities that are Druze and Christian.<sup>81</sup> Second, it is extremely uncommon in Muslim countries outside West Asia.

Jordanian journalist Rana Husseini has recounted the comments relating to Islam and his tribe of a Jordanian man who killed his sister, a victim of rape. He told Rana: "I know that killing my sister is against Islam and it angered God, but I had to do what I had to do and I will answer to God when the time comes."<sup>82</sup> The man insisted that his sister had to die because she had lost her virginity, stating "death is the only way to erase the shame."<sup>83</sup> He then described how he had sat down with around 800 men of his tribe and they had reached a consensus together for him to take this action. He also claimed "this is what our society wants. It is better to sacrifice one soul than to sacrifice my whole family."<sup>84</sup>

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<sup>76</sup> HRW "Jordan: Tribunals no substitute for reforms on 'honor killings': Changes to Penal Code Needed to help save women's lives, September 9, 2009. The issue is not confined to the WANA region, with growing reports of honor killings by first and sometimes second-generation immigrants to the UK, Europe and the USA. In addition, Human Rights Watch has documented many cases, including mitigated sentences for the male perpetrators, in parts of Southern America including Brazil and Ecuador.

<sup>77</sup> M Hussain, "'Take My Riches, Give Me Justice': A Contextual Analysis of Pakistan's Honor Crimes Legislation" (2006) 29(1) *Harvard Journal of Law & Gender* 223, 235-237.

<sup>78</sup> For example, by the Grand Mufti Ahmad Badr Eddin Hassoun, Syria's highest-ranking Islamic teacher, Grand Ayatollah Mohammed Hussein Fadllah, top Shiite cleric in Lebanon and Egypt's Grand mufti, as described in K Zoepf, 'A Dishonorable Affair: Chastity and Honor Killing in Syria' in S Khalaf and R S Khalaf (eds), *Arab Society and Culture* (2009) Start Page, 163-165. For an in-depth examination of why this practise is not Islamic, and on the relationship between tribalism and Islam, see G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, (1999) 21-54.

<sup>79</sup> Quran 24:2

<sup>80</sup> See, for example B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 81-82., K Zoepf, 'A Dishonorable Affair: Chastity and Honor Killing in Syria' in S Khalaf and R S Khalaf (eds), *Arab Society and Culture* (2009) Start Page, 163. and A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 196-197.

<sup>81</sup> J Ginat, *Blood Revenge: Family Honor, Mediation and Outcasting*, Second edition ed (1997) 70.

<sup>82</sup> R Husseini, *Murder in the name of honour*, (2009) 10.

<sup>83</sup> Ibid, p. 12.

<sup>84</sup> Ibid, p. 15. Even though this man had pled guilty to manslaughter, he was sentenced to one month for possession of an unregistered firearm and six months for the 'misdemeanor'.

## 2.4 Sulha

*Sulha* is a process used to deal with a range of disputes, including civil and financial matters, but today is most commonly used for inter-clan tension stemming from serious criminal cases involving injury or death, whether intentional or accidental.<sup>85</sup> The root of the word is *sulh*, which in Arabic means peace, or the physical act of settlement.<sup>86</sup> Others have translated it as 'to reconcile'.<sup>87</sup> It is generally attained through a negotiated agreement reached directly by the disputants or more often, with the help of third parties. The final step in its fulfillment is usually a public reconciliation ceremony, demonstrating reconciliation between the parties (*musalaha*).<sup>88</sup> This event includes rituals of shaking hands, drinking bitter coffee together and sharing a meal.<sup>89</sup>

One of the central goals of *sulha* is to avoid escalation of a conflict between families, or tribes.<sup>90</sup> Another way of putting it is to restore peace by restoring honour.<sup>91</sup> In this way it is strongly connected with *abasiyya*. As noted by Ramahi, *asabiyya* and its inherent notion of collective responsibility and action is a two-edged sword: it means a matter initially between two people can quickly escalate into a tribal feud; although awareness of this potentiality can act as a deterrent.<sup>92</sup> The possibility of a tribal feud is a strong incentive to end disputes quickly when they do arise. In this way *sulha* can be seen as a rational response to harsh desert living without government, where *sulh* is "a better alternative than endless cycles of vengeance" between competing tribes.<sup>93</sup> It is not uncommon for leaders of the offender's tribe to quickly initiate the *sulha* process in an effort to pre-empt retaliatory action.<sup>94</sup>

The *sulha* dispute resolution process clearly differs from that of the state legal system. According to Patai, one of the central differences is that the tribal system places a high value on the reconciliation of parties and implementation of settlements relies on

<sup>85</sup> B A Kritz, 'Palestinian *Sulha* and the Rule of Law' (2013) 27 *Arab Law Quarterly* 151, 152., S Ozelik, 'Islamic/Middle Eastern Conflict Resolution for Inter-personal and Intergroup Conflicts: Wisata, Sulha and Third-Party' (2006) 3(12) *Uluslararası İlişkiler - International Relations* 3, 10.

<sup>86</sup> D Pely, 'Resolving clan-based disputes using the *sulha*, the traditional dispute resolution process of the middle east' (2008) 63(4) *Dispute Resolution Journal* 80.

<sup>87</sup> D Smith, 'The Rewards of Allah' (1989) 26(4) *Journal of Peace Research* 387.

<sup>88</sup> In some scholars' interpretations, *musalaha* is the process of reconciliation, and *sulha* is merely the ritualistic event. See, for example, M Abu-Nimer, *Nonviolence and Peacebuilding in Islam: Theory and Practice*, (2003) 99.

<sup>89</sup> R Antoun, 'Institutionalized Deconfrontation: A Case Study of Conflict Resolution among Tribal Peasants in Jordan' in P Salem (ed), *Conflict Resolution in the Arab World: Selected Essays* (1997) Start Page, 163., K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 17..

<sup>90</sup> B U I o Law, *Informal Justice: Rule of Law and Informal Justice in Palestine* (2006) 112-113.

<sup>91</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 13.

<sup>92</sup> A Al-Ramahi, 'Sulh: A Crucial Part of Islamic Arbitration' (2008) 12/2008 *LSE Law, Society and Economy Working Papers* 4-5.

<sup>93</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 155.

<sup>94</sup> B A Kritz, 'Palestinian *Sulha* and the Rule of Law' (2013) 27 *Arab Law Quarterly* 151, 153.



voluntary agreement (and often public approval) between the families.<sup>95</sup> As Ben Nefissa puts it, the primary aim is not to attribute individual guilt or deliver sanctions; rather it is to “close a conflict, to end social upheaval, to recreate or mend the broken links between the parties and to restore social relations.” In this way *sulha* is based largely on a communal and restorative framework, whereas state systems tend to have more punitive and deterrence focused goals and address the relationship between individuals or individuals and the state. The Bedouin saying that reflects these divergences in approaches to justice goes: “the state courts neither heal the sick nor quench the thirsty”.<sup>96</sup>

While there are certainly also many differences between tribal conflict resolution and *shari'ah*, some tribal dispute resolution principles were affirmed by Islam.<sup>97</sup> For example, it has been argued that Islam sees reaching *sulh* as the ethically and religious best way for parties to deal with a dispute.<sup>98</sup> The Prophet Mohammed encouraged people pursue *sulh*, saying it was more rewarding than fasting, praying and offering charity.<sup>99</sup>

To reach *sulh* there are several steps involved, comprising all or some of those outlined below.

## 2.5 Jalwa

One of the first steps often taken after a serious crime is committed is known as *jalwa*. This is where, if the incident happened between members of two geographically close tribes, the offender and his extended family move to another area. According to Ramahi, the purpose of this is to “reduce the attendant tensions of the situation and avoid retributive offences. If one of the relatives of the offended party were to see the offender, he may become impassioned and commit the same or a more serious crime against the offender.”<sup>100</sup> There were at least 16 incidents of *jalwa* reported in Jordan in 2011, including a case that involved the evacuation of more than 100 families in al-Zarqa.<sup>101</sup>

<sup>95</sup> R Patai, *The Kingdom of Jordan*, (1957)

<sup>96</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 139.

<sup>97</sup> Ibid, pp. 66-68.

<sup>98</sup> Several passages in the Qur'an encourage parties to use *sulh* to deal with disputes. For example Verse 128 Sura Nisa (Women) states that “Reconciliation between them, and reconciliation is better” and Verse 9 in Sura Al Hujurat (the Chambers) states “If two parties among the Believers fall into a quarrel, make ye peace between them... make peace between them with justice and be fair: For God loves those who are fair and just.”

<sup>99</sup> A Al-Ramahi, 'Sulh: A Crucial Part of Islamic Arbitration' (2008) 12/2008 *LSE Law, Society and Economy Working Papers* 10. For more, see A Othman, "And amicable settlement is best": Sulh and dispute resolution in Islamic law' (2007) 21(1) *Arab Law Quarterly* 64,

<sup>100</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 147.

<sup>101</sup> Ayman Halasa, “Jalwa in Jordan: Customary Law and Legal Reform” *Legal Agenda*, 10 December 2013, available at <http://www.english.legal-agenda.com/article.php?id=565&lang=en>

How *jalwa* is practiced has changed over time. In the past, *jalwa* following a serious event required five generations of the offender's family reocate. However, today this extended family grouping or clan, known as *hasma*, consists only of three generations in Jordan due to an agreement between tribal leaders and the state.<sup>102</sup> This is in recognition of the changing nature of people in Jordan with tribal affiliations, most of whom no longer live nomadically.<sup>103</sup> Nevertheless, relocating three generations of people still results in serious disruption to employment, accommodation and schooling, not to mention the right to freedom of movement. In addition other rights such as voting are sometimes disrupted when people have to leave their electoral district.<sup>104</sup>

Another change is that today the police in Jordan are often involved in supervising *jalwa*, which seems to be facilitated by Jordan's administrative governors, ostensibly under the Crime Prevention Law No.7 1954.<sup>105</sup> Sometimes this process is undertaken willingly, but on other occasions it is forced. The period of the *jalwa* depends on the type of crime. For example, in cases of murder the usual period is up to seven years, but where someone has been wounded the *jalwa* lasts only until those wounds have healed.<sup>106</sup> Sometimes no *jalwa* is seen as necessary, but then an *atweh* is negotiated, as discussed below.<sup>107</sup>

## 2.6 Atweh

An *atweh* refers to the payment or agreement to enter into a temporary truce (*hudna*). This period is normally negotiated quickly following a murder or other serious crime to prevent physical retaliation being taken by the victim's tribe against the tribe of the offender, as per the notion of collective responsibility and action. According to Carroll's empirical research in Iraq, the ceasefire generally lasts between two to four weeks, but is renewable.<sup>108</sup> The *atweh* may have certain conditions attached to it, for example that the offender's family make *jalwa*, or that money be exchanged.<sup>109</sup> These days it will often be

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<sup>102</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 24.

<sup>103</sup> Ibid, p. 31.

<sup>104</sup> Ayman Halasa "Jalwa in Jordan: Customary Law and Legal Reform" The Legal Agenda, 10 December 2013, available at <http://www.english.legal-agenda.com/article.php?id=565&lang=en>

<sup>105</sup> Ayman Halasa, "Jalwa in Jordan: Customary Law and Legal Reform" Legal Agenda, 10 December 2013, available at <http://www.english.legal-agenda.com/article.php?id=565&lang=en>

<sup>106</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 149.

<sup>107</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 14.

<sup>108</sup> Ibid.

<sup>109</sup> S Ozelik, 'Islamic/Middle Eastern Conflict Resolution for Inter-personal and Intergroup Conflicts: Wisata, Sulha and Third-Party' (2006) 3(12) *Uluslararası İlişkiler - International Relations* 3, 10.

written up in a formal agreement, signed by the parties and witnesses.<sup>110</sup> The signing and implementation or *atweh* may also be supervised by state security forces.<sup>111</sup>

A guarantor (*kafil*) will also sign the agreement. In the absence of law enforcement agencies, guaranty (*kafala*) is seen as critical to the enforcement of the truce, as well as to other stages of the dispute resolution.<sup>112</sup> The *kafil* is normally a very well respected person, chosen because if there is any aggression between the parties that violates the truce, it is seen as a statement of contempt to him.<sup>113</sup> This in turn is considered a crime, known as *tagta al-wijih* which literally means ‘cutting the face’ and refers to violating someone notable’s honour.<sup>114</sup> Clinton describes how ‘throwing the face’ (*rami al-wijih*) of a notable man standing between two hostile parties on its own can be used for deterring violence and instigating an *atweh*. This can be used either by one of the parties or by a third party who says ‘I throw the face of [notable person] between you/us’ and then the honour of the notable person who has been summoned as guarantor is generally considered enough to hold a truce.<sup>115</sup>

There are different types of *atweh* depending on the stage of the dispute resolution process and the offense. For example, in some cases, police may enforce or even initiate a truce (*atweh amniyya*).<sup>116</sup> In other occasions, there is a period of peace until a judge decides the matter (*atweh haak*). *Atweh sharaf* refers to cases that involve honour and *atweh yadeeyahi* is for minor injuries or crimes.

## 2.7 Jaha

A *jaha* is a delegation of responsible, esteemed men. This will often include tribal elders and *shaykhs*, as well as religious authorities and state-appointed officials such as town mayors.<sup>117</sup> Their most common role is as representatives of a tribe who are charged with helping negotiate a peaceful settlement with the other party.<sup>118</sup> They may have a role

<sup>110</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 150.

<sup>111</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 26.,

<sup>112</sup> For a detailed explanation of the traditional role of guarantors in Bedouin dispute resolution, see B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 39-49.

<sup>113</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 25.

<sup>114</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 47.

<sup>115</sup> Ibid, pp. 46-47. However, it is not clear from Bailey’s account as to whether this is still a commonly used practice.

<sup>116</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 24.

<sup>117</sup> See, for example in R Antoun, 'Institutionalized Deconfrontation: A Case Study of Conflict Resolution among Tribal Peasants in Jordan' in P Salem (ed), *Conflict Resolution in the Arab World: Selected Essays* (1997) Start Page, where member involved include the local Islamic judge, the pasha (shayhk), state-appointed mayor, relatives and village elders

<sup>118</sup> N Yassine-Hamdan and F S Pearson, *Arab Approaches to Conflict Resolution*, (2014) 7.

early on in the dispute, for example in visiting the injured party's family to plead with them to agree to an *atweh*, or in other cases they may be used only for the later negotiation stage. They may employ a type of 'shuttle diplomacy', going between the two parties. It is their role to try and reach *sulh* through balancing and restoring honour.

*Jaha* will be engaged in the resolution of a range of cases, ranging from marriage agreements to murder cases. The size of the *jaha* and prestige of its members depends on the seriousness of the case.<sup>119</sup> According to Kritz, serving as a member is a position of great honour and there is a corresponding pressure from the community to be fair, unbiased and peaceable in order to retain the position.<sup>120</sup> As King-Irani notes in the context of Lebanon, the primary purpose of the *jaha* is not punishment or judgment "but rather, to preserve the good names of both the families involved and to reaffirm the necessity of ongoing relationships within the community."<sup>121</sup>

Murad of the Jordan Times commented on a case in early 2014 where two former high level Jordanian government officials were involved in a *jaha* to a Saudi tribe, where they requested charges be dropped against one of their sons who was involved in some kind of fight amongst youth. Murad was of the view that "this was a reconciliation meeting *par excellence* and truly showcased the positive side of tribal tradition and its usefulness in Jordan."<sup>122</sup>

As noted by Carroll, tribal dispute resolution processes work best when the facts are known and agreed upon. However, if this is not the case, there is sometimes an investigative component of the *jaha*'s work, where witnesses are heard and evidence is examined.<sup>123</sup> If the facts remain unclear, the process may come to a standstill, resulting in either a state court case, or revenge being sought.<sup>124</sup>

## 2.8 *Wisata*

Negotiations leading to *sulh* might be undertaken directly between *jaha* groups and the parties they represent, or they might involve a further intermediary party. Most often the third party will be either a mediator, known as the *waseet* or an arbitrator, known as

<sup>119</sup> C Witty, *Mediation and Society: Conflict Management in Lebanon*, (1980) 305., K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 13.

<sup>120</sup> B A Kritz, 'Palestinian *Sulha* and the Rule of Law' (2013) 27 *Arab Law Quarterly* 151, 155.

<sup>121</sup> L E King-Irani, 'The Power of Transformation and the Transformation of Power: Tirtuals of forgiveness and processes of empowerment in post-war Lebanon' in W Zartman (ed), *Traditional Medicine* (1999) Start Page,

<sup>122</sup> N Murad, *The Tribe and the Law*, The Jordan Times, (Amman January 12, 2014), available at <http://jordantimes.com/the-tribe-and-the-law>.

<sup>123</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 14. In Carroll's research in Iraq, *shari'ah* rule of evidence were followed in this process.

<sup>124</sup> Ibid, p. 15.

*hakam*. The term *wisata* (or *wasta*) means mediation or intercession.<sup>125</sup> Usually the *waseet* is a respected person (or persons) such as a *shaykh*, who is agreed upon by the victim and offender's families. In a similar way to the community accountability for members of the *jaha*, usually "the *waseet* acts tactfully and with integrity as the proper resolution of the dispute impacts his reputation and social status."<sup>126</sup> In some major intertribal disputes, the state or members of the royal family may act as *waseet*.

The primary aim of the *wisata* is to reach *sulh*, by achieving justice – in the sense of restored honour and reputation – when rights are violated. Bailey argues that mediation is so important and frequent because tribal people commit to solidarity with others in the group, thus conflict between two people will quickly spiral and become a concern for many. This means it is in the group's interest to resolve the conflict. He notes "hardly a conflict erupts among Bedouin without an attempt at mediation."<sup>127</sup>

Reaching a settlement often involves the mediator helping the parties to negotiate material compensation for the victim's family such as the payment of *diya* (blood payment) by money or a transfer of other good such as animals or land. The approximate starting point for the amount transferred is normally fairly clear; it is based on past similar cases or even established in a type of bilateral agreement between two tribes and then further negotiated in each case.<sup>128</sup> The final amount agreed upon is influenced by a number of factors, including the motivation for the incident, the suffering of the victim's family, the status of the victim and perpetrator and the behavior of the perpetrator, including whether he confessed quickly or not, or mitigated his crime afterwards in some way.<sup>129</sup>

*Diya* is not seen as a replacement of the monetary worth of the person (in a case of death) but rather the "price of the damage to honor that results from giving up the right to retribution."<sup>130</sup> Accordingly, often the *jaha* may ask the victim to not actually accept the

<sup>125</sup> There is debate about the difference in meaning between *wasta* and *wisata*, with *wasta* today holds some negative connotations relating to corruption and nepotism, even though some maintain that it merely means mediation or third party intercession. For more see R B Cunningham and Y Sarayrah, *Wasta: The Hidden Force in Middle Eastern Society*, (1993), A Al-Ramahi, 'Wasta in Jordan: A Distinct Feature of (and Benefit for) Middle Eastern Society' (2008) 22 *Arab Law Quarterly* 35, and S Ozelik, 'Islamic/Middle Eastern Conflict Resolution for Inter-personal and Intergroup Conflicts: Wisata, Sulha and Third-Party' (2006) 3(12) *Uluslararası İlişkiler - International Relations* 3, . For the remainder *wisata* will be used to refer to third party mediation.

<sup>126</sup> A Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan*, PhD, (2008) 152.

<sup>127</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 24.

<sup>128</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 15.

<sup>129</sup> *ibid*. There seems to be variation relating to how much *diya* is expected for a woman. In some cases it is set at half as much as for a man of similar social standing, but other times it is much higher because of the damage to the tribe's reputation for protection. F Stewart, 'Customary Law among the Bedouin of the Middle East and North Africa' in D Chatty (ed), *Nomadic Societies in the Middle East and North Africa: Entering the 21st Century* (2006) Start Page, 247.

<sup>130</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 16.

material compensation settled upon, or give it to a mosque or religious leaders.<sup>131</sup> This is often agreed to because of the notion that honour and reputation itself cannot be restored by money.<sup>132</sup> This practice is reflected in the Bedouin saying “getting justice is for reputation, not for filling the belly”.<sup>133</sup> If the money is accepted, then it technically goes to those who would have been responsible for taking revenge, the male blood relatives of the deceased.<sup>134</sup> In practice it will then be given in support of the victim’s widow and children in the case of death, or to the victim, in the case of assault or honour crimes.<sup>135</sup> If the amount agreed upon is not available immediately, a *kafil* is used again to guaranty performance of the final payment.<sup>136</sup>

As Antoun points out, this type of dispute resolution involves the trading and balancing of both material and intangible goods.<sup>137</sup> While material goods are certainly involved, just as important are symbolic benefits that restore *sharaf* for both parties, or to speak metaphorically, re-balance the ‘camel’s load’. Antoun states:

“At the end of the process a diction of amity is established; it is unclear who has “won” and who has “lost”, since intangible rewards (honour, respect, prestige) are balanced against tangible rewards in a skillful manner, and the parties resume social relations.”<sup>138</sup>

Sometimes, particularly in matters relating to marriage, divorce and, according to Furr, less serious violations of honour, the third party might undertake a process more like arbitration (*tahkim*).<sup>139</sup> The arbitration is carried out by tribal ‘judges’, who are elders from a separate clan than the two parties, who have distinguished themselves for their knowledge of custom and ability to make fair decisions.<sup>140</sup> According to Furr, during this process both (male) parties attend, take an oath while facing Mecca, then have the right to express their point of view or evidence, or be represented by someone else.<sup>141</sup> The

<sup>131</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 35-36.

<sup>132</sup> S Ben Nefissa, 'The Haqq al-'Arab: Conflict Resolution and Distinctive Features of Legal Pluralism in Contemporary Egypt' in B Dupret, M Berger and L al-Zwaini (eds), *Legal Pluralism in the Arab World* (1999) Start Page, 151., and Focusgroup, K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 16.,

<sup>133</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 20.

<sup>134</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 16.

<sup>135</sup> Ibid.

<sup>136</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 26.

<sup>137</sup> R Antoun, 'Civil Society, Tribal Process, and Change in Jordan: An Anthropological View' (2000) 32 *International Journal of Middle Eastern Studies* 441, 449.

<sup>138</sup> R Antoun, *Low-Key Politics: Local-Level Leadership and Change in the Middle East*, (1979) 156.

<sup>139</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 28.. For more, see S Ozelik, 'Islamic/Middle Eastern Conflict Resolution for Inter-personal and Intergroup Conflicts: Wisata, Sulha and Third-Party' (2006) 3(12) *Uluslararası İlişkiler - International Relations* 3,

<sup>140</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 28.

<sup>141</sup> Ibid.



judge then issues a decision. This decision is not considered enforceable but rather a final statement of right on a disputed point.<sup>142</sup>

Once *sulh* is reached, there are numerous community incentives to adhere to the agreement, as outlined by Carroll.<sup>143</sup> For example, if revenge is taken following *sulha*, then four times the originally negotiated *diya* must be paid and the tribe will not often help with this payment. Further, reneging on a *sulha* agreement ‘cuts the face’ (*tagta al-wijih*) or dishonors the *shaykh* who acted as a guarantor to the agreement.<sup>144</sup> But most importantly in this collective society is that those who dishonor the *sulh* risk becoming social outcasts and exiled from the tribe. As one *shaykh* in Iraq put it, these people “who mess with tribal law don’t go to court, but they are humiliated and lose respect.”<sup>145</sup> In these days in Jordan, it is also common for the state to insist upon a written agreement and to supervise the signing of this at the reconciliation ceremony.<sup>146</sup>

The next section looks at several ways the principles and processes of the tribal system outlined above affect women’s access to justice. It examines this not only by looking at the operation of tribal dispute resolution processes but also the ways that tribal principles, particularly *asabiyya*, *sharaf* and *ird*, affect women’s access to justice through Jordan’s other legal systems – namely the state and *sharia* courts.

### 3. How tribal structures, principles and processes affect women’s access to justice in Jordan

As long as the legal system and its judge continue to view the individual as belonging to his larger clan and give the clan the right to “handle” its women, we cannot talk about the rule of law.<sup>147</sup>

In their discussion of situations like Jordan, where multiple justice systems operate, legal scholar-practitioners Chopra and Isser note that gender discrimination is not generally an intrinsic part of any one certain justice system. Rather, justice systems – whether tribal or state – reflect the society in which they are embedded, including asymmetric power relations between men and women.<sup>148</sup> As this section will demonstrate, the gender asymmetries and patriarchal biases that exist in Jordanian society are reflected today in both tribal dispute resolution processes, as well as in the state justice system. As the first part of this section will show, women are largely excluded from tribal dispute resolution

<sup>142</sup> A Ahdab, *Arbitration with the Arab Countries*, (1999) 11.

<sup>143</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 17.

<sup>144</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 42.

<sup>145</sup> K Blue Carroll, 'Tribal Law and Reconciliation' (2011) 65(1) *Middle East Journal* 11, 17.

<sup>146</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 27.

<sup>147</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 48.

<sup>148</sup> T Chopra and D Isser, 'Access to Justice and Legal Pluralism in Fragile States: The Case of Rights' (2012) 4(2) *Hague Journal on the Rule of Law* 337, 352.

processes. However, this does not operate as a completely independent system, but is inextricably linked with the state system in a variety of ways.<sup>149</sup> Thus, Jordan's state system is perhaps equally flawed in its ability to recognise and protect women's rights. As demonstrated in the second and third parts of this section, there is no separate state enclave of legal protection for women or other marginalised groups. Instead, the principles and biases that have developed in the tribal system through millennia of isolated desert dwelling still influence today what cases reach the state justice system, and then how the state system handles these cases.

### 3.1 Exclusion from tribal dispute resolution processes

Women are excluded from direct access to almost every stage of the tribal dispute resolution processes described in the last section.<sup>150</sup> If women are victims or offenders, a male family member will represent them in negotiations. According to Palestinian *sulha* judge and scholar Jabbour, women are not permitted to speak before a *jaha* in any circumstances, whether as a witness, accused or victim.<sup>151</sup> Nor are they allowed to select members of the *jaha*, participate in developing the formal *sulha* agreement or serve as a member of the *jaha*.

Unfortunately there are very few studies exploring how and when women manage to access justice through tribal dispute resolution processes in the WANA region or how they might be empowered to do so. In an otherwise exceptional and comprehensive ethnographic study of Bedouin dispute resolution in the Negev and Sinai, Bailey simply states at the outset that the use of the term Bedouin throughout his book only refers to males, given that "the realm of legal affairs belongs to them alone, the women playing a secondary role of passive, protected people represented by the men."<sup>152</sup> Similarly, Antoun's helpful empirical analysis on tribal dispute resolution processes in Jordan appears to be based primarily on male informants.<sup>153</sup>

Pely's qualitative research on *sulha* processes in the Palestinian territories is one of the few studies to examine women's involvement in tribal dispute resolution in any depth. His research shows that women have an indirect influence over many stages of the

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<sup>149</sup> See, for example, B Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 *Sydney Law Review* 375,

<sup>150</sup> Focusgroup, B A Kritz, 'Palestinian *Sulha* and the Rule of Law' (2013) 27 *Arab Law Quarterly* 151, 164-165. citing an interview with *sulha* expert Doron Pely, who maintains that women are officially allowed to participate, but in all his years of experience, he has never seen one.

<sup>151</sup> Ibid, p. 165., D Pely, 'Women in Sulha - excluded yet influential' (2011) 22(1) *International Journal of Conflict Management* 89, 90.

<sup>152</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 7.

<sup>153</sup> R Antoun, 'Civil Society, Tribal Process, and Change in Jordan: An Anthropological View' (2000) 32 *International Journal of Middle Eastern Studies* 441, , R Antoun, 'Institutionalized Deconfrontation: A Case Study of Conflict Resolution among Tribal Peasants in Jordan' in P Salem (ed), *Conflict Resolution in the Arab World: Selected Essays* (1997) Start Page,

process.<sup>154</sup> For example, he describes how when a *jaha* first approaches the victim's family, women and young people of the victim's family are often allowed to vent their grief and frustration on the male members of the *jaha*, including through sometimes quite aggressive verbal abuse – which would normally not be considered acceptable. This provides a degree of acknowledgment of their suffering, a public outlet for their anger, and understanding of the need to recover their lost honour.<sup>155</sup> He also describes how throughout the process women often informally contact individual members of the *jaha* to follow the process and make known their views – from the ceasefire stage, where women might argue with their male relatives to postpone the initiation of a ceasefire, to the final *sulha* agreement made. In one, albeit apparently uncommon, example members of the *jaha* informally consulted with the widow of the victim to get her agreement to the tentative solution “to make sure that her sons do not grow up feeding on her resentment” and continue a cycle of revenge.<sup>156</sup> This shows that even when consulted, this woman's participation was limited to the potential impact she would have on her male family members.

Despite this informal background role women sometimes play, Pely's interviews with males who were frequently involved with *sulha* showed that they were against any increase in women's involvement. They made statements reflecting prejudices about the women's role and abilities, including: “women are ‘birdheads’, they are incapable of considering serious practical issues. If they mess about with *sulha*, they will destroy it”, and “women are not serious creatures... Every time a women got involved in *sulha*, we had problems and had to work much harder to reach a solution”.<sup>157</sup>

Pely's study indicates that while women have some indirect influence and participation in tribal dispute resolution processes today, it is highly limited. However, it may be that women's participation and influence has lessened over time. Several focus group members were of the view that there used to be a greater dispute resolution role for women within the tribal structure, particularly for older and respected women, who would influence how the males in their tribe handled disputes. The focus group members suggested that while this may still be the case in more traditional rural areas in Jordan, women in urban areas no longer have this influence. One exception they raised however was a well-known woman who had been directly involved in a range of dispute resolution cases at the village level. Her skill and role in tribal dispute resolution was recognised by King Hussein who bestowed on her a title of *muhktar* (literally: “the chosen one”, the head of the village). However, this example seems very much to be an

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<sup>154</sup> D Pely, 'Women in Sulha - excluded yet influential' (2011) 22(1) *International Journal of Conflict Management* 89, 91.

<sup>155</sup> S Lang, 'Sulha peacemaking the politics of persuasion' (2002) 31(3) *Journal of Palestine Studies*

<sup>156</sup> D Pely, 'Women in Sulha - excluded yet influential' (2011) 22(1) *International Journal of Conflict Management* 89, 94-95.

<sup>157</sup> *Ibid*, p. 99.

aberration. Those in the focus group were of the view that women in Jordan today have a lower position than in the past, which results in less influence over decision-making and also less protection from rights violations.

While further investigation is required there are indications that in the past not only did some women have a greater role in tribal dispute resolution but there were also more mechanisms in place within the tribal system for the protection of women and their rights. For example, women in trouble could be sheltered by the Sheikh of the tribe and would not be harmed and this would enhance the reputation of the tribe.<sup>158</sup> While this practice is not entirely lost, it seems to occur less frequently. It is probable that societal changes have led to the breakdown of some of these protections.<sup>159</sup> For example, increased urbanisation in Jordan has resulted in the spreading of tribes that traditionally were geographically close. This in turn has led to tribal leadership being far more decentralised and fragmented, and perhaps unable to provide protection to the same degree. One focus group member said “tribal justice has evolved [into] a very biased system... lost all its aspects of justice for all and now it’s just about tribal loyalty and protecting the tribe... and so women are at a disadvantage as it’s all men in control.”

In saying that, at the same time several focus group members were of the view that some women may receive a degree of ‘tribal support’ for some disputes if they resolved it within the tribe. They recognised that while tribal dispute resolution processes such as *sulha* do not offer full rights or an ideal solution, at least some kind of compromise settlement can often be reached. They connected this with their view that the court system is “broken” in many ways and does not guarantee women their rights. They also noted that if women try to take the matter to the court, they will receive no support from their tribe and risk becoming isolated and vulnerable. The next part examines this dynamic.

### 3.2 Tribal pressure to not take claims to court

There are many reasons why many women in Jordan do not seek recognition of their rights through the state civil and *shari’ah* court system. Many of the explanations are not dissimilar to those in other countries. They include financial barriers, for example high lawyers fees and minimal legal aid services; knowledge gaps, such as low legal and rights awareness; geographic inaccessibility; and lack of trust in state institutions.<sup>160</sup> A

<sup>158</sup> Focusgroup. For more about the Bedouin principle of protection, albeit with reference only to men, see B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 49-59.

<sup>159</sup> The evidence that customary justice systems are dynamic and change in response to a variety of factors is now firm, in contrast to the former view that such systems were static and fixed.

<sup>160</sup> *Substantive Equality and Non-Discrimination in Jordan, Shadow Report submitted to CEDAW Committee at the 51st Session* (2011)

further reason that is beginning to gain recognition is socio-cultural barriers.<sup>161</sup> This obstacle has been little explored in Jordan, but this paper posits that a significant source of socio-cultural challenge is prevailing interpretations of some tribal dispute resolution principles, such as *sharaf*, *asabiyya* and *ird*. These are combined with a strong patriarchal perception, as outlined above, that women should not be involved in dispute resolution processes. This part outlines several hypotheses concerning how the current operation of these principles restricts women's access to justice.

What is clear is that many women face considerable pressure from their own tribe to refrain from taking cases to court, or once cases are brought, to drop or reduce charges. In some cases this pressure is wrought through threats of physical violence or threats of social and economic isolation through exclusion from the tribe. What is not clear is why such pressure exists. One hypothesis posited here is that the *sharaf* – social standing, reputation or honour – of a family or tribe is seen to be diminished when disputes are taken to the *shari'ah* or civil courts. A related hypothesis is that taking members of one's tribe to court weakens the tribe's *asabiyya* – sense of collective action and responsibility, which in turn also diminishes *sharaf*. There may well also be some pressure on men not to take cases to court, but this is accentuated for women given patriarchal notions that women should not be involved in legal affairs. It is also compounded by the prevailing social norm that a woman should obey her family's instructions.<sup>162</sup>

It seems that the underlying logic that if someone does not fall in line with what is considered in the best interests of the tribe's reputation, then they are not adhering to the principle of *asabiyya*. Consequently, they are not seen as deserving protection or support from the tribe. The best interests of the tribe today seems to mean that 'internal' matters are only to be addressed through tribal dispute resolution processes or perhaps not at all. A focus group member described one case reflecting this dynamic. She described how a teacher physically abused a child at school. The teacher held the same tribal affiliation as the child. The child's parents wanted to take the matter to court. However they refrained after many members of the tribe came to their house and intimidated them to instead hold solidarity with the tribe by not pursuing the matter. The tribe wanted to 'protect' the teacher and his reputation – and by extension the reputation and honour of the tribe.

The third hypothesis posited here relates to cases that deal with women's chastity, such as rape or sexual assault. Because these are serious violations of *ird* it is seen as bringing shame to the tribe to bring these to a 'public' forum such as a court where others would hear of the men's failure to 'protect' or control the behavior of the women in their

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<sup>161</sup> See, for example the Concept Note for the ADRR-Legal Aid Conference "Women's Access to Justice: Propsects and Perspectives" held in Amman, Jordan on 8 March 2015. Available at [http://ardd-jo.org/sites/default/files/resource-files/concept\\_note\\_en.pdf](http://ardd-jo.org/sites/default/files/resource-files/concept_note_en.pdf)

<sup>162</sup> R Hussein, 'Jordan' in S Kelly and J Breslin (eds), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (2010) Start Page, 3.

family. Even if the victim's guardians would like to take this case to court, there is pressure to "drop charges to avoid social stigma."<sup>163</sup> Taking the matter to court is not currently seen as a way of rectifying the violation of rights and thus restoring honour. Instead, to avoid bringing further shame stemming from violations of honour, the Arab cultural code of *sutra* dictates another course of action, or more accurately, inaction.<sup>164</sup> *Sutra* means protecting against social disgrace or scandal. As female Palestinian scholar Nadera explains that:

the policy of 'not washing your dirty linen in public' is the norm; a person risks losing social respect if private matters become public knowledge. People thus tend to silence behaviours in order achieve *sutra*. Silence is important for preventing shame ('*aib*').<sup>165</sup>

Further, if a tribe's reputation is worsened then this affects the prospects of all the women belonging to it.<sup>166</sup> Accordingly, the female relatives of say, a rape victim, are not likely to support her in going to court as it will have detrimental socio-economic impact for them also.

Further empirical investigation is required to test these hypotheses and to determine whether it is perceived that there is dishonour in every case brought to court, or whether it is only for certain types of cases, such as those that deal with parties within one tribe or that deal with *ird*.

While sometimes the process of going to court and the subject matter of the case may bring dishonour to the tribe and is therefore discouraged, a fourth hypothesis is that on other occasions it is the possible outcome of court decision that is seen to bring dishonour. For example, even when a woman is aware she has inheritance rights under *shari'ah* law, she is strongly discouraged from bringing inheritance or reversion of dowry cases to the *shari'ah* court.<sup>167</sup> According to the prevailing interpretation of tribal custom, she is expected instead of 'renounce' her inheritance rights, especially to land, in exchange for apparent protection in the form of her brother paying her regular visits and supporting her if her husband harms her.<sup>168</sup> It seems that this is partly because it is considered shameful for women to own land and therefore the substantive outcome of

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<sup>163</sup> *Substantive Equality and Non-Discrimination in Jordan, Shadow Report submitted to CEDAW Committee at the 51st Session* (2011) 5."

<sup>164</sup> N Shalhoub-Kevorkian, 'Tribal Justice and Gender: Perspectives in the Palestinian Society' in H-J Albrecht, J-M Simon, H Rezaei, H Rohne and E Kiza (eds), *Conflicts and Conflict Resolution in Middle Eastern Societies - Between Tradition and Modernity* Start Page, 18.

<sup>165</sup> Ibid.

<sup>166</sup> Focusgroup, A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 29.

<sup>167</sup> Focusgroup

<sup>168</sup> M Hasan, 'The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor' (2002) 21(1-2) *Journal of Israeli History: Politics, Society, Culture* 1, 7., *Substantive Equality and Non-Discrimination in Jordan, Shadow Report submitted to CEDAW Committee at the 51st Session* (2011) 6.



such a case would not be acceptable.<sup>169</sup> It has also been suggested that pressure on women not to accept their dowry or inheritance might be simply because it benefits their male relatives. Hasan suggests that this is yet another way men are able to maintain a strongly patriarchal system.<sup>170</sup>

In sum, there are many situations in Jordan where a woman has rights under state or *shari'ah* law but she does not seek recognition or protection of these rights. This can be for a number of reasons, including ignorance of such rights, financial or geographic barriers and lack of access to legal aid. This part has shown that in addition to these reasons, the dominant operation of tribal principles such as *sharaf*, *asabiyya* and *ird* in Jordan may also prevent women from bringing cases to court. This is compounded by the expectation of family obedience when pressure is placed on women not to take cases to court; by prevailing social norms dictating the types of issues women should be involved with (not legal affairs); as well as material incentives for continued male domination. Unfortunately, even when cases reach the court system tribal principles and processes still pose significant barriers for women seeking to access justice.

### *3.3 Courts are also affected by tribal principles and processes*

Having cases reach the civil or *sharia* court system in Jordan is no magic bullet for women's access to justice. Several studies show that while considerable improvements to the gender equity in Jordan's laws have been made over the last few decades, there remain significant obstacles for women trying to access justice through the court system.<sup>171</sup> These studies do not address the influence of tribal principles and processes. While further empirical research is required to tease out the nuances, it is clear that there is a strong connection between tribalism and the protection of women's rights once cases reach court. One focus group member described this relationship, saying "even at court there are tribal dynamics at play, so it's not as if it's two separate systems... they are totally intertwined."

One way this is evident is that even when cases reach the court system, there is a possibility that charges will still be dropped or reduced because of tribal relationships between parties and court officials, police or government officials involved with the case. This reflects the continued expectation of "unquestioned solidarity" or *asabiyya* within a tribe, which is also expressed in the Bedouin saying mentioned earlier 'aid your brother whether oppressed or oppressor'.<sup>172</sup> On other occasions, tribal relationships may be used to drag cases out unreasonably, effectively preventing rights recognition and

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<sup>169</sup> Focusgroup

<sup>170</sup> M Hasan, 'The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor' (2002) 21(1-2) *Journal of Israeli History: Politics, Society, Culture* 1, 7-8.

<sup>171</sup> See, for example R Hussein, 'Jordan' in S Kelly and J Breslin (eds), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (2010) Start Page, ,

<sup>172</sup> G bin Muhammad, *The Tribes of Jordan: At the Beginning of the Twenty-first Century*, (1999) 23.

remedies. One example reflecting this is a case of child custody brought by a foreign woman who had married a Jordanian man. This type of case would normally take around four months to resolve in court. However in this instance, it took more than four years allegedly because of the tribal connection between her husband and the judge.<sup>173</sup> In addition, she was illegally detained for part of this period and it was speculated that this occurred because of a tribal relationship between her husband and another high-level official. Another reason courts delay cases in Jordan is to allow tribal dispute resolution processes to operate.<sup>174</sup>

When cases do reach the point of being decided at court, one hypothesis is that their outcomes sometimes follow tribal lines, in a similar way to how tribal affiliations affect the result of political elections in Jordan. That is, tribal solidarity, or *asabiyya* trumps whether the perpetrator was right or wrong, or whether the political candidate is the best one for the job or not. This principle is expressed in another Bedouin saying: 'When one turns to his cousin, even if he's wrong, he's not'.<sup>175</sup> In one example given at the focus group, the prosecutor of a sexual harassment case was of the same tribe as the judge, while one of the lawyers and the police witness was related to the accused male. It was claimed that tribal power plays influenced the outcome of the case. Similarly, one focus group member opined that tribal leaders or men with strong tribal connections "see themselves as above the state law; they have impunity."

Court outcomes may also follow tribal principles in another way. Particularly in cases of so-called honour killing, the court reflects prevailing interpretations of *ird* and *sharaf* in a way that fails to protect women's rights. There has been much written on this topic, so a brief summary here will suffice.<sup>176</sup> The state law in Jordan reflects what many believe to be tribal principles in how it deals with men who kill their female relatives they suspect of not being chaste. The bias towards the perpetrators of this crime is evident early in the process. HRW claims that in Jordan the police rarely investigate so-called

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<sup>173</sup> Focusgroup

<sup>174</sup> R Antoun, 'Civil Society, Tribal Process, and Change in Jordan: An Anthropological View' (2000) 32 *International Journal of Middle Eastern Studies* 441, 450.

<sup>175</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 72.

<sup>176</sup> For examples of literature relating to Jordan, see R Ruane, 'Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan' (2000) 14 *Emmory Int'l L. Rev.* 1523, , K C Arnold, 'Are the Perpetrators of Honor Crimes Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women' (2001) 16 *American University International Law Review* 1343, , R Hussein, *Murder in the name of honour*, (2009) , F Faqir, 'Intrafamily Femicide in Defence of Honour: The Case of Jordan' (2001) 22(1) *Third World Quarterly* 65, , M m Hadidi, A Kulwicki and H Jahshan, 'A Review of 16 cases of Honour Killings in Jordan in 1995' (2001) 114(6) *International Journal of Legal Medicine* 357, , C Madek, 'Killing Dishonor: Effective Eradication of Honor Killing' (2005-2006) 29 *Suffolk Transnational Law Review* 53, , A Tripathi and S Yadav, 'For the Sake of Honour: But Whose Honour? 'Honour Crimes' against Women' (2004) 5 *Asia-Pacific Journal on Human Rights and the Law* 63, . There are also a swathe of excellent publications on this issue, particularly in relation to Pakistan and Turkey.

honour killings and “typically treat the killers as vindicated men.”<sup>177</sup> Or when the police do conduct an investigation, they routinely conduct faulty investigations that fail to produce enough evidence for conviction.<sup>178</sup>

In the few cases that actually reach court, Penal Code articles 340, 98 and 308 allow perpetrators to routinely escape with no or light sentences. Article 340 (ii) states: “He who catches his wife or one of his [mothers, sisters, daughters or nieces] with another in an unlawful bed and ... kills or wounds or injures one or both of them, benefits from a reduction in penalty.”<sup>179</sup> However, in order to receive a mitigated sentence through this provision, the man must prove that he witnessed in an ‘unlawful bed’, that is, a sexually compromising act outside of marriage, including rape. Thus, this provision is not often used because of the proof of witness requirement. Article 98 however, is used frequently to mitigate the sentences of those who commit so-called honor killings:<sup>180</sup> “Any person who commits a crime in a fit of fury caused by an unlawful and dangerous act on the part of the victim benefits from a reduction in penalty.”<sup>181</sup> A perpetrator can benefit from a mitigated sentence, or even exoneration through Law 98, without having witnessed the perceived sexual wrongdoing of his female family member.<sup>182</sup>

Aspects of these clauses were imported from the French Penal Code of 1810 and Ottoman Penal Code of 1858, which deal with so-called ‘crimes of passion’.<sup>183</sup> However, as noted by Sonbol these European-derived codes had specific rules of evidence to carefully examine whether there was any evidence of premeditation.<sup>184</sup> In contrast however, the courts in Jordan neither require nor expect any evidence as to the ‘fury’ or ‘surprise’ involved, effectively allowing a murderer with *mens rea* to receive a mitigated sentence.<sup>185</sup> Sentences can also be mitigated in two additional ways. First, a sentence can be further reduced if the victim’s family – usually the same family as the perpetrator –

<sup>177</sup> ‘Honoring the Killers: Justice denied for ‘honor’ crimes in Jordan’ (2004) 16(1(E)) *Human Rights Watch* 1.

<sup>178</sup> R Ruane, ‘Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan’ (2000) 14 *Emmory Int’l L. Rev.* 1523, 1543.

<sup>179</sup> Translation provided in K C Arnold, ‘Are the Perpetrators of Honor Crimes Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women’ (2001) 16 *American University International Law Review* 1343, 1362.. There is no equivalent for women who may commit a similar crime.

<sup>180</sup> R Hussein, *Murder in the name of honour*, (2009) 33.

<sup>181</sup> Translations provided in K C Arnold, ‘Are the Perpetrators of Honor Crimes Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women’ (2001) 16 *American University International Law Review* 1343, 1357..

<sup>182</sup> M Hussain, ‘“Take My Riches, Give Me Justice”: A Contextual Analysis of Pakistan’s Honor Crimes Legislation’ (2006) 29(1) *Harvard Journal of Law & Gender* 223, 231.

<sup>183</sup> N Shalhoub-Kevorkian, ‘Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building’ (2002) 16 *American University International Law Review* 1343, 580-581.

<sup>184</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 196.

<sup>185</sup> As she states earlier, the fury or anger is simply assumed to exist because of the nature of the victim’s actions. Ibid, p. 195.

waives their charges.<sup>186</sup> Second, killing is often carried out, or at least said to be, by a minor, commonly the victim's younger brother. This ensures that he receives the lowest possible prison sentence and no criminal record.<sup>187</sup>

Compounding the injustice for victims of so-called honour killing is the fact that often these crimes are committed merely on the basis on suspicion.<sup>188</sup> According to Arnold's study in 2001, this was true for approximately 90 percent of honour crimes in Jordan.<sup>189</sup> In many of the cases examined after the crime, victims are found to be virgins.<sup>190</sup> Human Rights Watch has reported three cases from 2001-2003 in Jordan in which family members killed women following mere conjecture, including after seeing them talking to a stranger at a wedding celebration.<sup>191</sup> This confirms that material truths regarding a women's perceived wrongdoing or innocence are very much secondary to the impact on their male family members' honour and social standing (*sharaf*).<sup>192</sup> It has also been argued that financial motivations may lie behind many of these crimes, including access to property, dowry and inheritance.<sup>193</sup>

Another barrier to women's access to justice in cases involving *ird* is the way article 308 mirrors prevailing interpretations of tribal principles. Article 308 provides that if a male, who commits rape or sexual abuse against a female victim, agrees to marry said victim he will avoid sentencing. The victim has little say in this. Moreover, there are no clear and safe procedures for ensuring her consent to this 'solution' for restoring the perceived loss of honour.<sup>194</sup> According to focus group members, there have been examples where fathers refuse to marry their daughters to the accused but face considerable pressure to allow it from their tribe as well as government officials, judges (who sometimes suggest

<sup>186</sup> 'Honoring the Killers: Justice denied for 'honor' crimes in Jordan' (2004) 16(1(E)) *Human Rights Watch* 2.

<sup>187</sup> Focusgroup, K Zoepf, 'A Dishonorable Affair: Chastity and Honor Killing in Syria' in S Khalaf and R S Khalaf (eds), *Arab Society and Culture* (2009) Start Page, 163., M Hussain, "'Take My Riches, Give Me Justice': A Contextual Analysis of Pakistan's Honor Crimes Legislation' (2006) 29(1) *Harvard Journal of Law & Gender* 223, 235.

<sup>188</sup> Focusgroup, A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 190, 192.

<sup>189</sup> K C Arnold, 'Are the Perpetrators of Honor Crimes Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women' (2001) 16 *American University International Law Review* 1343, 1369.

<sup>190</sup> A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 190., Focusgroup.

<sup>191</sup> HRW, Honor killings in Jordan, 2004@1

<sup>192</sup> R Ruane, 'Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan' (2000) 14 *Emmory Int'l L. Rev.* 1523, 1531-1532.

<sup>193</sup> M Hussain, "'Take My Riches, Give Me Justice': A Contextual Analysis of Pakistan's Honor Crimes Legislation' (2006) 29(1) *Harvard Journal of Law & Gender* 223, 228-230; A E-A Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (2003) 190., Focusgroup, *Substantive Equality and Non-Discrimination in Jordan, Shadow Report submitted to CEDAW Committee at the 51st Session* (2011) 33., D Vitoshka, 'The Modern Face of Honor Killing: Factors, Legal Issues and Policy Recommendations' (2010) 22(2) *Berkley Undergraduate Journal* 1,

<sup>194</sup> *Substantive Equality and Non-Discrimination in Jordan, Shadow Report submitted to CEDAW Committee at the 51st Session* (2011) 5.

it as a solution of their own accord) and police.<sup>195</sup> If neither marriage nor honour killing is carried out, it can have a very negative social impact on the women's family. Furr describes how this occurred in Badia in 1998 where a father refused to kill his daughter and they were subsequently alienated from their tribe.<sup>196</sup>

Women victims of sexual and physical violence face challenges not only when they are seeking justice through the court, but also in seeking protection from government domestic abuse shelters. The focus group highlighted a case involving a female victim of domestic abuse and her husband, the perpetrator. The husband pursued his tribal connections with someone connected to the government shelter in which his wife had sought refuge, and accordingly she was soon 'sent back' with him. In other cases, the head of the government shelter for victims of domestic violence is reported to have strongly encouraged women not take cases to court, but instead to simply return to their husbands.<sup>197</sup>

A similar pattern occurs for women who are at risk of being victims of so-called honour killings. Given the possible consequences for women who are suspected of violating the honour code of *ird*, sometimes they seek protection from the police and are put into indefinite detention to prevent them being killed.<sup>198</sup> The police head of the Jweideh Correctional and Rehabilitation Centre for Women, where most of the women in this situation are placed, told Human Rights Watch in 2003 that 97 of the inmates were 'administrative detainees'.<sup>199</sup> This is a term used, along with 'protective custody' for women detained for their own safety. As mentioned earlier, in years past it seems that there were more options for women, such as gaining protection from tribal leaders. As these have weakened, the state now provides 'protection'. However, this option is dissatisfactory, especially given that most women are detained indefinitely and do not have effective paths for challenging their detention.<sup>200</sup> As Human Rights Watch puts it, protective custody for women threatened with violence "is a failed and perverse attempt to combat one crime by perpetrating another."<sup>201</sup> Further, in the majority of cases a male family member is required as a guarantor to release a woman from protective custody.

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<sup>195</sup> Focusgroup

<sup>196</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 29-30.

<sup>197</sup> Focusgroup

<sup>198</sup> *Jordan: Tribal law, including whether it allows murder as revent; whether tribal law overrides the legal justice system [JOR104416.E]* (2013) and *Guests of the governor: Administrative Detention Undermined the Rule of Law in Jordan* (2009) 2. available at <http://www.hrw.org/sites/default/files/reports/jordan0509web.pdf>. The same is also done for men against whom tribal threats of revenge have been made.

<sup>199</sup> 'Honoring the Killers: Justice denied for 'honor' crimes in Jordan' (2004) 16(1(E)) *Human Rights Watch* According to Human Rights Watch, this occurs purportedly through the Crime Prevention Law 1954, even though this law does not specifically authorize protective custody. *Guests of the governor: Administrative Detention Undermined the Rule of Law in Jordan* (2009) 10.

<sup>200</sup> *Guests of the governor: Administrative Detention Undermined the Rule of Law in Jordan* (2009) 2.

<sup>201</sup> *Ibid*, p. 11.

Yet this is very often the same person from whom the woman needs protection.<sup>202</sup> It is not uncommon for women to be harmed or killed by a male member of their family upon their release.<sup>203</sup>

Finally, women also seem to be disproportionately affected by severe court punishments. The hypothesis posited is that because male offenders are more likely to have recourse to tribal dispute resolution processes, which are acknowledged by the court, they are able to avoid receiving court sentences that are detrimental to them. Women do not have this option to the same extent. In one example a male offender raped and killed a woman and the case was brought to court. The offender's tribe said that they would handle the matter by giving him a severe punishment. The offender was then released and the court case was dismissed, reflecting a common tribal sentiment that punishment is best meted out by one's own tribe. This is reflected in the Bedouin saying: 'Compelling the unruly one is incumbent on his clansmen'.<sup>204</sup> The tribal punishment was never carried out. In several other cases involving murder, male offenders were able to avoid the court system by pursuing a tribal settlement involving *sulha* and some form of punishment. The judge might be told that the tribe will administer a customary penalty like death on a camel's back, but this very rarely occurs.<sup>205</sup> Females accused of murder do not seem to have the same access or support to pursue a settlement through the tribal system. Thus they are processed through the court system, where in Jordan they may receive the death penalty. Accordingly, a disproportionate number of people who receive the death penalty are those without strong tribal support, such as women or foreigners.

This said, there are some cases where women can access justice through the court system, even against tribal opposition. More research is needed to find out how often and in what circumstances these cases occur, and how more women might be similarly empowered. Even though there is a tribal principle that money should not be pursued or accepted for the resolution of honor crimes, there was a case where a woman decided that she would go to court and pursue monetary compensation. She did this against the opposition of her tribe but was successful in receiving a settlement at court. In another case involving physical assault, the victim turned down what was offered in the *sulha* negotiations and took the matter to court instead. Despite the pressure from her tribe not to, she was successful and was awarded significant damages. In other cases, however, women have taken a similar path, have not been successful in court, and have lost the support of their family and extended tribe.

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<sup>202</sup> Ibid, p. 3.

<sup>203</sup> Focusgroup and ibid, p. 12.

<sup>204</sup> B Clinton, *Bedouin Law from Sinai and Negev: Justice without government*, (2009) 61.

<sup>205</sup> Focusgroup.



In sum, although the state court system in Jordan is functional, it still operates in ways “that reflect dominant social norms and biases” of the society in which it is based.<sup>206</sup> These dominant norms are deeply influenced by tribal principles and processes of dispute resolution, developed over centuries of isolated desert-dwelling.

#### 4. Conclusions

In Jordan, women are falling between the cracks of the tribal and state justice systems. It appears that transition towards a secular rights system has meant that protections once available at the tribal level have been lost, but at the same time, women cannot readily access justice through the courts. The result is that women are extremely unlikely to report cases of rights violations, let alone receive just outcomes, and hence become targets for increased violence and marginalisation. A causal factor is chronic and systematic discrimination against women and their exclusion from decision-making and debate. Patriarchy and male dominance maintain a system where law, religion and culture operate in independent and connected ways to maintain the status quo.

In terms of practical steps to improve women’s access to justice, promoting state justice systems alone is not a comprehensive solution, particularly when social pressure prevents women from accessing this system.<sup>207</sup> A principal concern is that while women’s legal rights awareness is slowly growing, there are still significant barriers preventing them from accessing the courts. The danger of focusing on rights awareness without parallel improvement in the rights recognition and protection is that it raises expectations.<sup>208</sup> There is a growing body of research that shows that a state-centred approach, when the state lacks the capacity to implement or secure women’s rights, can be counterproductive.<sup>209</sup>

Further empirical research on the ways women might be empowered to better participate in dispute resolution is required, as well as on the types of outcomes women receive when they are party to a dispute. Practitioners might also explore opportunities to improve women’s access to justice at the tribal level. Tribal systems are dynamic; sometimes they adapt in ways that decrease access to justice, but on other occasions they respond to changes in society that empower women. An example of the latter relates to the tribal resolution of murder cases. There was a common practice of offering an

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<sup>206</sup> T Chopra and D Isser, 'Access to Justice and Legal Pluralism in Fragile States: The Case of Rights' (2012) 4(2) *Hague Journal on the Rule of Law* 337, 342.

<sup>207</sup> T Chopra and D Isser, 'Access to Justice and Legal Pluralism in Fragile States: The Case of Rights' (2012) 4(2) *Hague Journal on the Rule of Law* 337, 344.

<sup>208</sup> Focusgroup, *ibid*, p. 351.

<sup>209</sup> See for example an example in Liberia, cited in *ibid*, p. 342. and (east timor one from issuer... from my Columbia paper. J Gundel, *The Predicament of the Oday: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, (2006) iii.

unmarried female of the perpetrator's tribe in marriage to the victim's tribe. This would occur as part of the *sulha* agreement, creating blood bonds and an incentive for compliance.<sup>210</sup> This practice has ceased in Jordan,<sup>211</sup> and been replaced by *jalwa*. Further investigation is needed into how to stimulate evolutions that are more protective of women. Increasing women's capacity for forum shopping should also be evaluated as a strategy for enhancing protection. At present, women's opportunity to select the forum where they are most likely to get a favourable result is extremely limited. Even when one system does provide a better outcome, as in the case of inheritance distribution,<sup>212</sup> rarely are women able to navigate plural legal systems to their advantage. Such research should examine what opportunities exist to increase awareness of different rights options and women's manoeuvrability between justice actors.

Finally, there needs to be more space for debate and discussion on the boundaries between law, religion and custom. The Jordanian justice architecture is characterised by internal dynamism and contestation, and there remains a strong debate regarding what rules form part of custom of Jordan. In 2000, on the issue of honor killing, one tribal leader, Trad Fayez was reported as saying "A women is like an olive tree. When its branch catches woodworm, it has to be chopped off so that the society stays clean and pure."<sup>213</sup> Another tribal leader (and MP) Noman Ghuweiri from Zarqa disagreed, saying "Only the rule of god should apply in such cases. These crimes do not occur within tribes. The Bedouin women are well respected and their rights are preserved and secured."<sup>214</sup> The Speaker of the Lower House at the time, Abdul Hadi Majali insisted that honor killing was part of custom reportedly stating "We have our own customs and traditions and we deputies insist that if an individual surprises his female relative and kills her, he should benefit from a reduction [in penalty]."<sup>215</sup> It is indisputable that many of the customs that discriminate against women and leave them vulnerable to violence have no basis in law or religion. At the same time, it is clear that a major source of rights violation is entrenched custom that is presented as being justified in or condoned by religious norms. Until the spaces occupied by religion, law and custom are clearly defined, the scope to enhance the protection of women will remain limited.

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<sup>210</sup> Furr@27-28. This practice was counter to *sharia*'h law.

<sup>211</sup> Farr@31. Confirmed in focus group. Stewart notes that this practice has declined throughout the WANA region, attributing it to the influence of the state. F Stewart, 'Customary Law among the Bedouin of the Middle East and North Africa' in D Chatty (ed), *Nomadic Societies in the Middle East and North Africa: Entering the 21st Century* (2006) Start Page, 272.

<sup>212</sup> A Furr and M Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 17, 22. also interview, diala.

<sup>213</sup> Associated Press, published in Daily News "Jordan's conservative society tires to combat honor killings" 7/6/2000 available at <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=jordans-conservative-society-tries-to-combat-honor-killings-2000-07-06>

<sup>214</sup> R Husseini *Murder in the name of honour* (2009) 63.

<sup>215</sup> Ibid 64.



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