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ON THE COMPARATIVE STUDY ON THE APPLICATION BY RELIGIOUS AND CIVIL JUDGES OF INTERNATIONAL NORMS CONCERNING THE BEST INTERESTS OF THE CHILD

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Comparative Analysis Egypt, Israel, Jordan, and Palestine.



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3. Competent Courts and Conflict of Jurisdiction



INTRODUCTION

Introduction

- Overview on part II of the study

Examining

- court systems
- Applicable laws
 - Case law
- Competence issues

Providing

Historical perspective on the evolution of domestic laws

Analyzing

The incorporation of UNCRC principles in domestic laws

Providing

An overview on the mechanisms dealing with cross-border family disputes

Examining

The implementation of UNCRC principles by religious and civil judges in custody and contact disputes



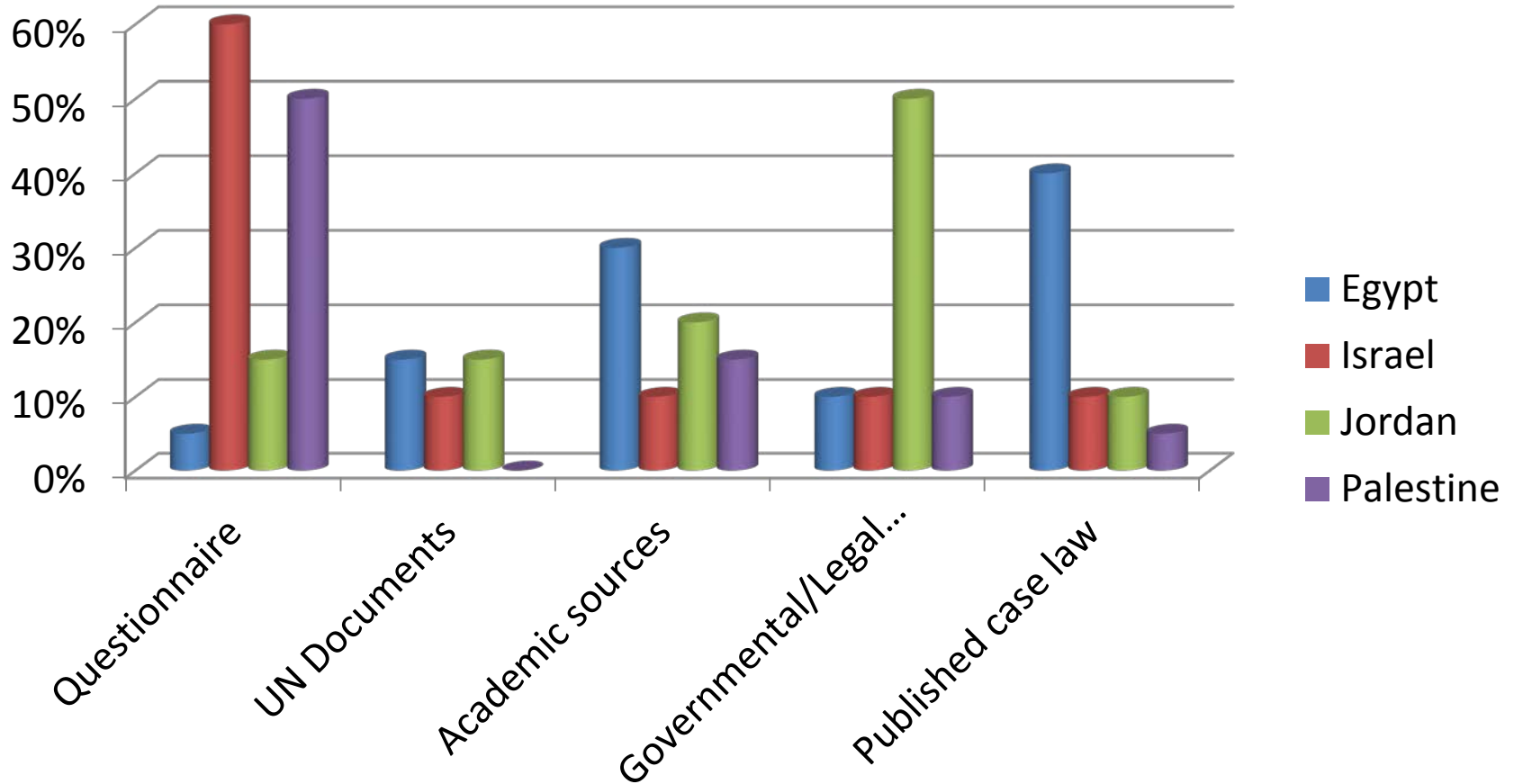
METHODOLOGY

Methodology



- Materials and documents of relevance to the study
- Formulation of the study questionnaire
- Validation meeting

Methodology





Competent Courts and Conflict of Jurisdiction

COMPETENT COURTS

Court System



- Single jurisdiction system with multiple applicable laws determined in accordance to the religious affiliation.
- No religious judges

COMPETENT COURTS

Court System



Israel

- Multiple jurisdiction system with several applicable laws.
- Civil Family court
- A specialized section from the civil courts
- Hears all family matters except marriage and divorce
- Exclusive jurisdiction over cross-border family disputes including cases under the Hague Child Abduction Convention.
- Religious courts
- Exclusive jurisdiction for marriage and divorce.
- Can deal with ancillary matters such as custody and visitation rights in the context of a divorce.
- Types of religious courts
- Rabbinical Courts (for Jewish majority)
- Shari'a Courts (for Muslims)
- Druze Court (for Druze)
- Ecclesiastical Courts (for Christians)

COMPETENT COURTS

Court System



Jordan

- Multiple jurisdiction system with several applicable laws.
- Shari'a Courts (for Muslims)
- Tribunals of Christian Communities (for Christians)
- Regular Civil Courts

COMPETENT COURTS

Court System



Palestine

- Multiple jurisdiction system
- Civil Courts
- Religious Courts
- Shari'a Courts (for Muslims)
- Ecclesiastical Courts (for Christians)

Cross-border family disputes

Egypt: No concentrated jurisdiction for cross-border family disputes.

Israel: Concentrated jurisdiction for cross-border family disputes. Family Courts – Hague convention.

Jordan: No concentrated jurisdiction for cross-border family disputes.

Palestine: No concentrated jurisdiction for cross-border family disputes.

Appointment of Judges

Egypt: No requirements prior to appointment of judges at family courts.

Israel: Expertise and previous experience in family law.

Jordan: Requirements for each court system (Shari'a/Tribunals of Christian Communities) related to the religious faith.

Palestine: Requirements for each court system (Shari'a/ Ecclesiastical courts) related to the religious faith.

Possibility of resorting to civil courts



Egypt: Not available – no religious courts

Israel: No possibility

Jordan: Possible in case of different religions or in case a Christian religious community is not recognized.

Palestine: Possible in case of different religions

Instances for adjudication in family disputes



Egypt: Only two instances available – No Court of Cassation.

Israel: Several instances including court of Cassation.

Jordan: Several instances including court of cassation ta Shari'a courts since 2015.

Palestine: Several instances including high Shari'a court since 2003.

Impact of religion on jurisdiction and competency



Egypt:

- The religion of the parties has no impact on jurisdiction. The religion will only affect the law applied by the court.

Israel:

- In case of different religion the family court will be competent. Religious courts will be competent in case the parties are of the same religion and holds the Israeli citizenship.

Jordan:

- In case of different religions the civil courts will be competent, However parties can agree to choose Shari'a court.
- In case a religious community is not recognized, civil courts will be competent.

Palestine:

- In case of different religions the civil courts will be competent, however parties can agree to choose Shari'a courts.
- In case of different religious communities, civil courts will be competent if the parties disagreed on jurisdiction.

Impact of nationality on jurisdiction and competence

Egypt: No impact

Israel: Family courts will be competent in case of different nationalities.

Jordan: Based upon religious affiliation

Civil courts will be competent in case of foreigners.

Palestine: Civil courts will be competent in case of foreigners.

Internal conflicts

Egypt:

- All personal status matters are under the jurisdiction of one court (Family court). No access to regular civil courts for personal status matters.

Israel:

- The existence of several religious courts and civil family court leads to competency disputes.
- Framework for organizing internal jurisdiction in Israel
- The court approached first has jurisdiction
- One judge one family principle
- Comity between courts principle
- The Supreme Court can annul the decisions of religious courts in the event that they exceeded their jurisdiction or diverged from the rules of natural justice.

Jordan:

- The existence of Shari'a courts /Tribunals of religious communities/ Civil courts leads to competency issues.
- Shari'a court of Appeal decides in case of conflict between two Shari'a courts.
- In case of conflict between Shari'a court and a tribunal of Christian Community/conflict between regular civil courts and religious courts/ two conflicting decisions from different courts, a special court from the court of cassation will be formed to decide on the issue of jurisdiction.

Palestine:

- The high constitutional court is competent to settle the conflict of jurisdiction between judicial bodies.

International conflicts

Egypt: National courts will examine which court was approached first. The same criteria of internal jurisdiction will be applied. In case of a final decision was issued by a foreign court, national courts will be incompetent.

Israel: Same criteria of internal jurisdiction will be applied with respect to some considerations such as whether there is a criminal aspect or not, citizenship, regular residence and protection.

Jordan: Foreign laws can be applied according to the constitution.

Palestine: Foreign laws can be applied