



International
Labour
Organization

► Access to labour justice: Judicial institutions and procedures in selected Arab countries

Overview of procedural
elements for access to labour
justice in judicial dispute
resolution institutions





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procedures in selected
Arab countries**

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for access to labour justice in judicial
dispute resolution institutions

Labour Law and Reform Unit
Governance and Tripartism Department

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► Introduction

As the number of individual disputes arising from day-to-day workers' grievances or complaints continues to grow in many parts of the world¹, labour courts are important part of dispute prevention and resolution systems and play a critical role in ensuring access to justice and contributing to equity in industrial relations.

Access to labour justice cannot be understood only as the formal access to labour courts and right to have a claim examined by an impartial judge, but also as access to a fair procedural regulation, which enables real conditions of equality before the judiciary.

This report aims at examining labour courts and ordinary courts hearing labour cases and various detailed aspects of their procedures and institutional settings, seeking to identify connections between them or trends in the region which may impact on the level of access to labour justice in the countries examined.

States commonly establish different types of institutions and procedures to resolve individual and collective disputes.

In Arab countries labour conflicts may be resolved mainly through judicial courts/tribunals, which are empowered to hear cases and determine a binding outcome of a dispute.² The following countries systems were examined: Algeria, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestine, Oman, Qatar, Saudi Arabia and Tunisia.

For the purpose of this report, these countries are divided in two major models: i) ordinary civil courts with jurisdiction over labour cases (with or without specialized labour branches/divisions or judges), and ii) specialized labour courts, under the direct administration of the Judiciary.

Courts hearing labour cases in Arab countries are formed either by professional judges only or by a panel with professional and non-professional judges, often called lay judges in first instance and normally appointed by representatives of trade unions and employers' organizations.

There may be also a combination of institutions when, for example, decisions taken by specialized labour courts at first instance may be appealed to ordinary higher courts.

Courts can also be competent to hear collective and individual cases. In some countries, labour courts may have full jurisdiction over all labour disputes or have their jurisdiction limited to either individual or collective disputes. They may also be competent to hear cases involving public employees or social security (pensions, unemployment).

Different models may involve different organic procedural laws and court procedural rules, depending on the existence of specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under civil jurisdiction.

Countries examined also present differences on the physical distribution of these courts and their availability of services to the public, which may impact on the level of access to labour justice.

To examine the multitude of characteristics of each country and compare them, pertinent national pieces of legislation and official statistics, when available, were examined considering 4 thematic areas: i) institutional structure of courts and tribunals, ii) jurisdiction, iii) procedural aspects, and iv) operational and practice.

1 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview* / edited by Minawa Ebisui, Sean Cooney, Colin Fenwick; International Labour Office. - Geneva: ILO, 2016. p. 19

2 For more information in respect to literature review on labour courts, please see Colàs-Neila, E., Yélamos-Bayarri, E. 2020. *Access to Justice: A Literature Review on Labour Courts in Europe and Latin America*, ILO Working Paper 6 (Geneva, ILO). p. 06.

The institutional structure evaluates how the courts are composed, if they are part of a multiple-tier system under judicial authority, how judges are appointed, what are the governmental bodies responsible for selecting them, and what are the requirements to be met to become a professional judge.

In jurisdiction, the courts hearing labour cases will be classified according to the material jurisdiction, if they can hear cases related to international jurisdiction, and if they can hear both individual and collective cases. For the purpose of this report, collective cases are disagreements between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests.³

By analysing the procedural aspects, this report aims at comparing the procedures by which it is

possible to present claims to the judicial dispute resolution institutions under examination, and how the procedures themselves are applied to cases⁴, which may affect directly or indirectly the level of access to labour justice.

Lastly, in operation and practice, the report examines the average distribution of courts and judges to hear cases (supported by official records, if available), who are the parties and actors involved in labour cases, what types of outcomes can be expected, what are the remedies available to deal with these outcomes, and what are the circumstances involving the enforcement or termination of these procedures.

This report used updated procedural regulations, updated information provided by official channels of Ministries and courts, and statistics from 2017 to 2021, when available.

3 ITCLO: *Labour dispute systems: guidelines for improved performance*. International Training Centre of the International Labour Organization, 2013. p. 18.

4 Including with respect to formal requirements, presentation of evidence and rules of burden of proof, participation of accredited representatives, and possibility of appealing the case to higher instances, costs of procedures, possible legal aid, and legal fees.

► Methodology

In order to compare models of procedural law and structure of courts in Arab countries, pertinent national legislation of each country was examined to collect qualitative data and produce contextual knowledge about the composition of courts hearing labour cases, context of their jurisdiction, procedures and practice of courts. Data collected was divided in several indicators conceived to enable the comparison of countries examined. Given the variety of models and processes, a cross-country quantitative comparison cannot readily be undertaken. Data provided are thus accompanied by descriptions of the specific context.

A number of countries do not provide full access to pertinent legislation in their official channels (governments and courts websites). When possible and available, legislation examined was retrieved from other official institutions.

In respect to statistical data, existing quantitative data was examined, when available by official countries' websites and their respective agencies and by other official institutions.



► Institutional Structure of Courts and Tribunals

Composition of Courts and Tribunals

Models of courts hearing labour cases

In the Arab countries examined, labour cases are heard by specialized labour courts⁵, ordinary/civil courts with specialized labour sections/branches⁶, or by ordinary/civil courts together with civil cases⁷, meaning that in the last one labour cases do not fall under a special judicial jurisdiction.

In Iraq, labour courts were established in each governorate of the country.⁸

In Egypt, labour courts are part of judiciary, but were created by an amendment to the Egyptian Labour Law in 2008, from a development of the judicial committees established to hear individual labour disputes.⁹ A similar situation is found in Saudi Arabia, that established labour courts in 2018.¹⁰

In Tunisia, labour courts (*Conseil des Prud'hommes*) are competent to hear labour cases. In the absence of a labour court in the region, the ordinary courts shall rule on labour matters.¹¹

In Palestine, although judges have been appointed to chair labour courts, the courts have not been established yet. A negotiation for the creation of specialized labour chambers or courts is ongoing.¹²

To hear individual labour disputes, Lebanon has established in fact a Labour Arbitration Board, composed by a professional judge appointed by the Ministry of Justice under the recommendation of the High Council of Magistrature, and lay judges appointed by employers and employees 'representatives. Although this institution is not part of the judiciary officially, its decisions may be submitted to judicial review by Courts of Appeal.¹³

In Algeria, a social matters chambre is part of the ordinary civil courts.¹⁴

In Qatar, a new system of labour dispute resolution has been established in 2018. The Labour Disputes Settlement Committee is composed by a first instance court judge, selected by the Supreme Council of the Judiciary, and two members nominated by the Minister of Administrative Development, Labour and Social Affairs, provided that one of them is experienced in accountancy.¹⁵ The system is still under implementation and sharing the jurisdiction with ordinary courts. The Labour Committees have jurisdiction to hear labour disputes involving matters of Labour Law

5 Egypt, Iraq, Lebanon, Tunisia, and Saudi Arabia.

6 Algeria and Morocco.

7 Jordan, Libya, Oman, Palestine, Qatar.

8 Labour Law of Iraq (Law No. 71 of 1987).

9 Articles 70 and 71 Egyptian Labour Law.

10 Royal Decree No. 20712 – 2018.

11 Article 183 of Labour Code.

12 ILO: *The situation of workers of the occupied Arab territories. Report of the Director-General - Appendix 2021*. International Labour Conference, 109th Session, 2021. 105. p. 39. Available in https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS_793285/lang--en/index.htm

13 Articles 77-82 Labour Code of Lebanon.

14 Article 502 Code of Commercial and Civil Procedure.

15 Article 3 of Law No. 13 of 2017 (Article 115 bis of Law No. 14 of 2004).

or breach of contract.¹⁶ Ordinary courts can hear specific labour cases limited to matters such as dismissals.¹⁷

In Libya and Oman, ordinary and civil courts of first instance hear individual labour disputes together with civil cases.

Under the Jordanian labour disputes resolution system, the labour court is only competent to hear collective labour disputes and if the conciliation board failed to resolve the case.¹⁸ The Magistrate Courts (ordinary civil courts) have jurisdiction over individual labour disputes with the exception of some disputes related to wages.¹⁹ (Chart 1)

Composition of courts hearing labour cases

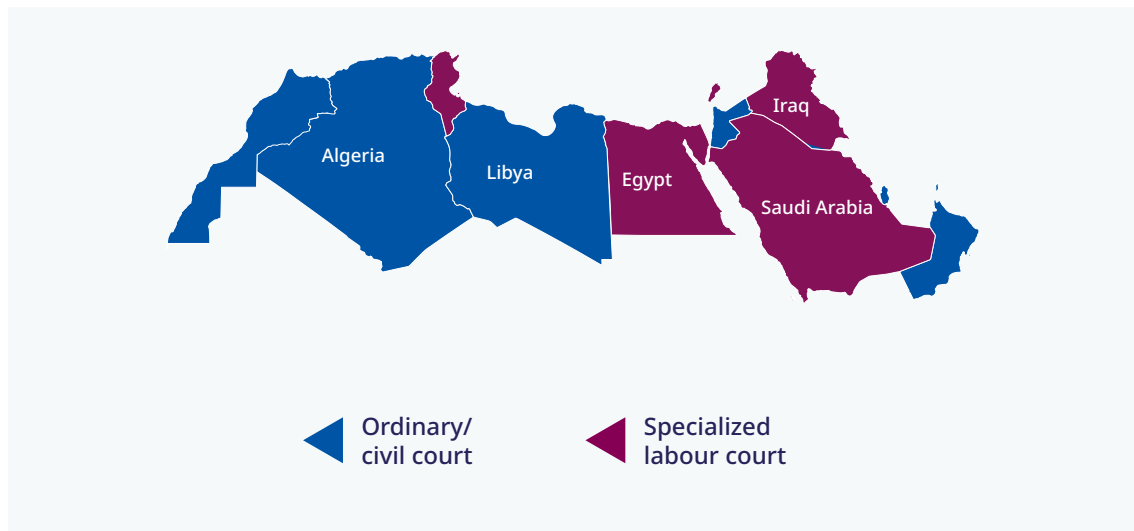
Labour courts and ordinary courts hearing labour cases can comprise professional judges and/or

non-professional judges, often representatives of employers, workers, and experts in labour markets (often called “lay judges”). In some countries examined, labour cases are heard by a panel composed by professional and lay judges. (Chart 2)

Labour cases may then be decided in first instance by a single judge²⁰ or by a panel of judges, which may be composed also by lay judges. In some countries the nature of the claim, amount involved or specific rules on procedures will be decisive to define whether the decision is to be rendered by a single judge or by a panel.²¹

Most of the countries provide mechanisms for the labour cases to be heard in a panel, even if composed only by professional judges and limited by specific rules of procedure or nature of claims. (Chart 3)

► Chart 1: Judicial courts of first instance hearing labour cases



16 Article 3 of Law No. 13 of 2017 (Article 115 bis of Law No. 14 of 2004).

17 Article 64 of Labour Law of Qatar. For this reason, this report will consider that in Qatar ordinary judicial courts have also jurisdiction to hear labour cases, once the Labour Committees are not under the administration of the Judiciary.

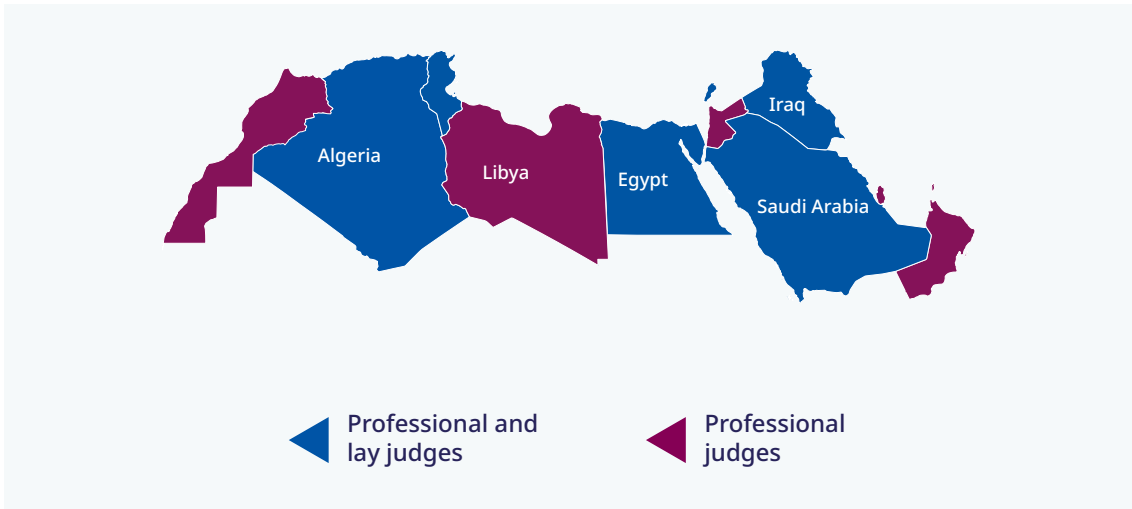
18 Article 124 of Labour Law.

19 Article 137 of Labour Law.

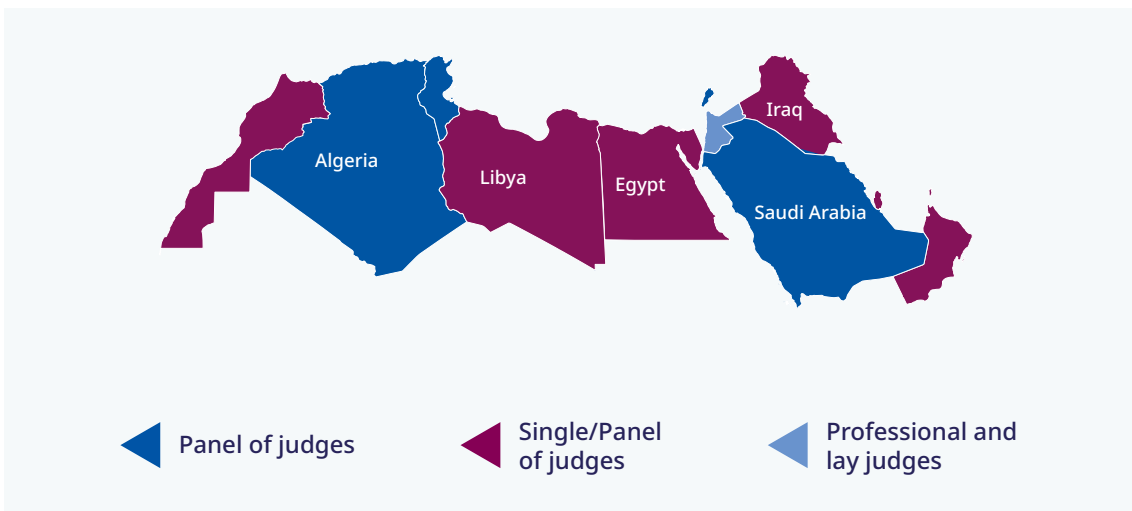
20 Examples include Jordan and Palestine.

21 Examples include Egypt, Iraq, Libya, Morocco, Oman and Qatar.

► Chart 2: Category of judges hearing labour cases in first instance



► Chart 3: Composition of judicial courts of first instance hearing labour cases



Selection and qualification of judges

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial

appointments for improper motives.²² The aim of judicial appointment processes should be to provide a reliable means of identifying persons who possess these qualities, and to do so in a manner that is legitimate, in order to sustain public confidence in the judiciary²³.

22 United Nations, High Commissioner for Human Rights: Basic Principles on the Independence of the Judiciary. Available here <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>

23 J. van Zyl Smit, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (Report of Research Undertaken by Bingham Centre for the Rule of Law), 2015, page 17.

Rules on selection and qualification of judges serve to guarantee their independence and ensure a sufficient degree of expertise and high standards in the qualification. The processes of selection of first instance professional judges and the qualifications required to hold the position are quite different among the countries examined, but specific trends are important to be explored. However, these rules are not sufficiently clear in the national legislations examined.

Qualification of Judges

Few of the countries examined provide specific or clear legislation in respect to requirements for selection of professional judges. (Figure 1)

In Libya, requirements also include: i) Libyan citizenship; ii) not less than thirty years old; and iii) not be married to a non-Arab woman.²⁴ Moreover, judges must have completed training in the Judicial Institute or have completed two years in a clerical position for appointment.²⁵

In Saudi Arabia, requirements to be appointed as a judge include i) Saudi citizenship; ii) not be under 40 years of age if he is to be appointed as an appellate judge, or under 22 years for inferior levels; iii) not have been sentenced for an offence or dismissed from a public office as a disciplinary action.²⁶

In Tunisia, the following professionals can be appointed without competition to a judicial position: i) professors and lecturers from the Faculty of Law and Economics and the Higher School of Law; ii) Lawyers who have practiced their profession for ten years at less, including internship years.²⁷

The concerning legislation in Iraq provides that candidates for appointment to a judicial position must have: i) a bachelor's degree in law; ii) a minimum of 3 years' experience in the legal field after acquiring the bachelor's degree.²⁸ Besides that, candidates must pass a technical exam.²⁹

The Statute for Judges of Morocco determines that candidates for judicial position as a judge must: i) be moroccan nationals; ii) enjoy all civil

► Figure 1: Statutory qualification requirements for professional judges

Qualification requirements			
Other requirements (age, citizenship, foreign languages, health, reputation)	Education (degree in Law)	Training	Experience
Egypt Jordan Lebanon Libya, Morocco Palestine, Saudi Arabia	Egypt Iraq Jordan Lebanon, Libya (or degree in Islamic Sharia), Qatar, Saudi Arabia, Tunisia	Egypt Iraq Jordan Lebanon Libya, Morocco, Palestine, Saudi Arabia	Iraq Lebanon Morocco Tunisia

24 Part 5 of Law No. 6 of 2006.

25 Law No. 6 of 2006 and Law No. 42 of 2012.

26 Article 37 of Law of Judiciary.

27 Article 32 of Law N° 67-29, relating to the organization judiciary, the Superior Council of the Judiciary, and the Statute of the Judiciary.

28 See more information in Supreme Judicial Council of Iraq. Available in <https://www.hjc.iq/Judicial-system-en.php>

29 Supreme Judicial Council of Iraq. Available in <https://www.hjc.iq/Judicial-system-en.php>

rights and be of good character; iii) be physically able to carry out the functions of the post; iv) be over the age of 21 years; and v) have completed military or civil service.³⁰ Other conditions for the competition and requirements to be appointed a judge might be changed, according to the discretion of the government.³¹

In Lebanon, candidates must meet minimal educational and personal standards as judged by the examining committee. Candidates must pass written and oral exams and then must study undergo a training for up to three years. In addition, lawyers, employees of the judicial administration or public agencies and institutions with a law degree and who have at least six years of professional experience, may be appointed as judges by the government upon recommendation by the Minister of Justice and the approval of the High

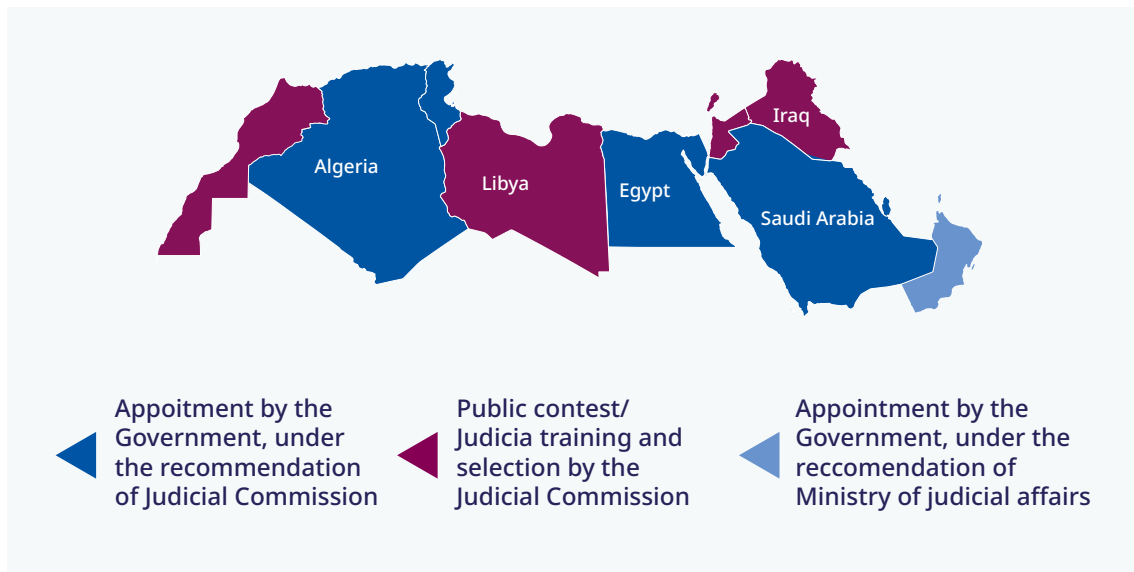
Clear or additional information has not been found concerning Algeria, Oman, and Qatar.

Selection of Judges

Few of the countries examined provide clear legislation in respect to methods of selection of professional judges or appear to have an objective and transparent criteria for selecting their professional judges.

However, in most of the countries, the active participation of an independent Judicial Commission in the selection and appointment processes, with more or less influence of governmental bodies, seems to be a common feature amongst the national legislations analysed. (Chart 4)

► Chart 4: Methods of selection of professional judges



Council.³²

30 Article 4 of Statute of Judges, 1974.

31 Articles 2-15 of Decree No. 2-05-178 of 2006.

32 Article 77 of Decree-Law No. 150/83.



► Jurisdiction

Material Scope

Courts dealing with labour cases might also be divided in terms of material and geographical scope. They might have their jurisdiction shared with other mechanisms of dispute resolution depending on the nature of the claims.

Individual labour disputes might be resolved in the same way as those available for the resolution of collective labour disputes. Collective disputes, in this case, are those between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers³³, over violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment (disputes concerning rights), or future rights and obligations under the employment contract (dispute concerning interests).³⁴

In most of the countries examined, judicial courts only hear individual labour cases. Only Algeria provided specific legislation establishing that social chambers in ordinary courts are also competent to hear collective labour cases.³⁵

In Saudi Arabia, legislation provides that labour courts are also competent to hear cases arising from collective dismissals, related to civil servants and any resolution issued by the General Organization for Social Insurance.³⁶

In Morocco, besides individual labour cases, ordinary civil courts hearing may also hear cases involving compensation for claims resulting from

accidents at work and occupational illnesses, and well as social security issues.³⁷

In Jordan, the established Labour Court hears only collective labour disputes.³⁸ Individual labour cases are heard by ordinary civil courts.

Geographical Scope

Cases involving foreign workers and enforcing foreign decisions

Courts hearing labour cases might be competent to enforce decisions rendered by foreign courts or render decisions on labour cases involving foreign workers providing services in national territory, depending on the reach of national legislation on this regard.

Very few countries examined provide regulation in respect to Labour Courts to enforce decisions rendered by foreign courts.

In the majority, there is no indication in the national legislation that suggests labour courts can enforce foreign decisions. In the case of enforcement of foreign judgments or resolutions, the general rules applicable to all matters may be followed. This is the case particularly of countries in which ordinary civil courts hear labour cases.

In Morocco, court decisions handed down by foreign courts shall be enforceable only after they have been accepted by a court of first instance.³⁹

33 ITCLO: *Labour dispute systems: guidelines for improved performance*. p. 18.

34 ITCLO: *Labour dispute systems: guidelines for improved performance*. p. 18.

35 Article 500 Code of Commercial and Civil Procedure.

36 Article 34 Law of Procedure, 2003.

37 Article 20 of Code of Civil Procedure.

38 Article 124 of Labour Law No. 8 of 1996.

39 Article 430 of Code of Civil Procedure.

In Iraq, legislation provides that judgments issued by foreign courts are not subject to enforcement in Iraq unless it is recognised by a specific Law.⁴⁰

No precise information has been found concerning Palestine. (Chart 5)

Procedural Aspects

Procedural Rules

Procedures adopted by courts hearing labour cases⁴¹ may follow specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under the jurisdiction of ordinary courts.

Most of the countries examined do not have special procedures to hear labour disputes. The vast majority adopt general codes of civil procedures

with or without adaptations to labour cases. (Chart 6)

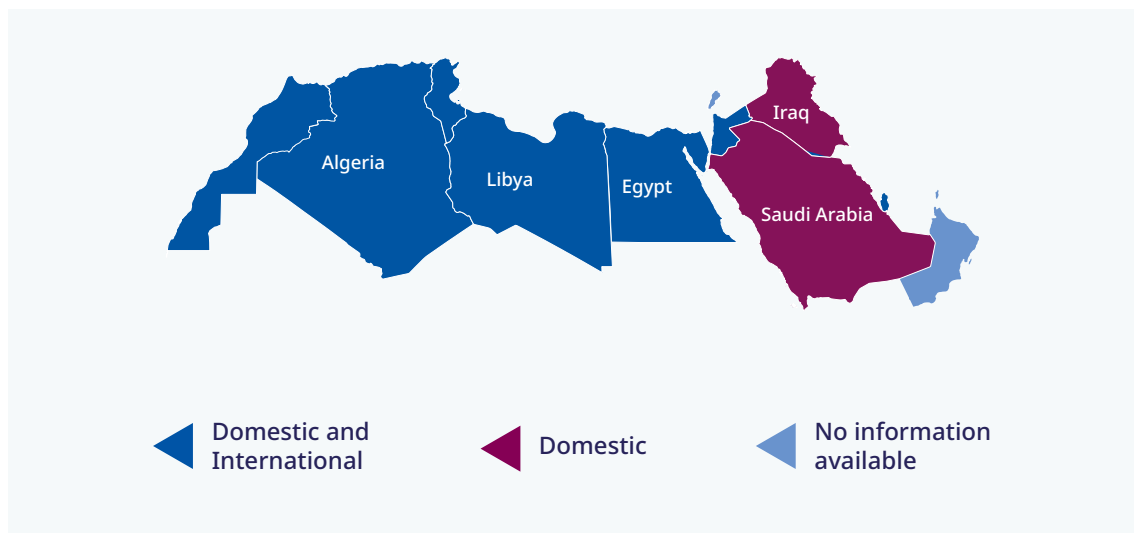
No information in respect to the procedural rules established for the Labour Arbitration Board of Lebanon. However, civil procedure rules are applied to recourses from the decisions of the Board presented to Courts of Appeal.

In Qatar, both ordinary courts and the Labour Disputes Committee follow rules established by the Code of Civil Procedure.⁴²

Legal Aid, Court Fees & Costs

An important aspect for the right of access to justice is the presence of judicial fees. A costly procedure may prevent people from requesting the services of courts, particularly those in more precarious economic situations⁴³. Exemptions from paying legal fees are common in most countries examined.

► Chart 5: Geographical jurisdiction of judicial courts hearing labour cases



40 Article 16 of the Civil Code 1951.

41 For this report, only specific procedures for labour cases or ordinary civil procedures applied to labour cases have been considered.

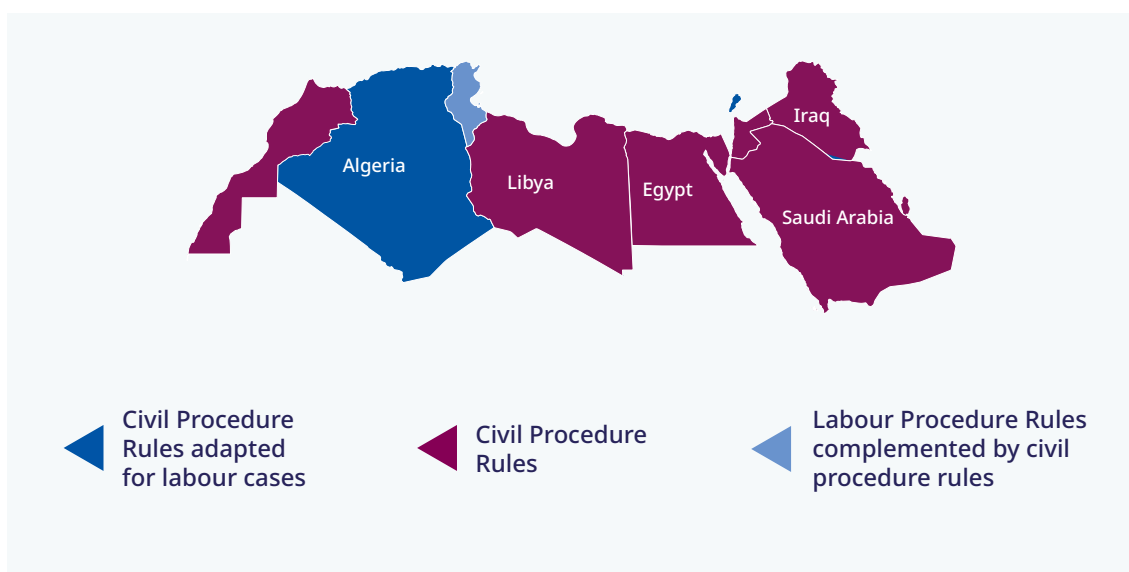
42 Article 3 of Law No. 13 of 2017 (Article 115 bis/4 of Law No. 14 of 2004).

43 Colàs-Neila, E., Yélamos-Bayarri, E. p. 20.

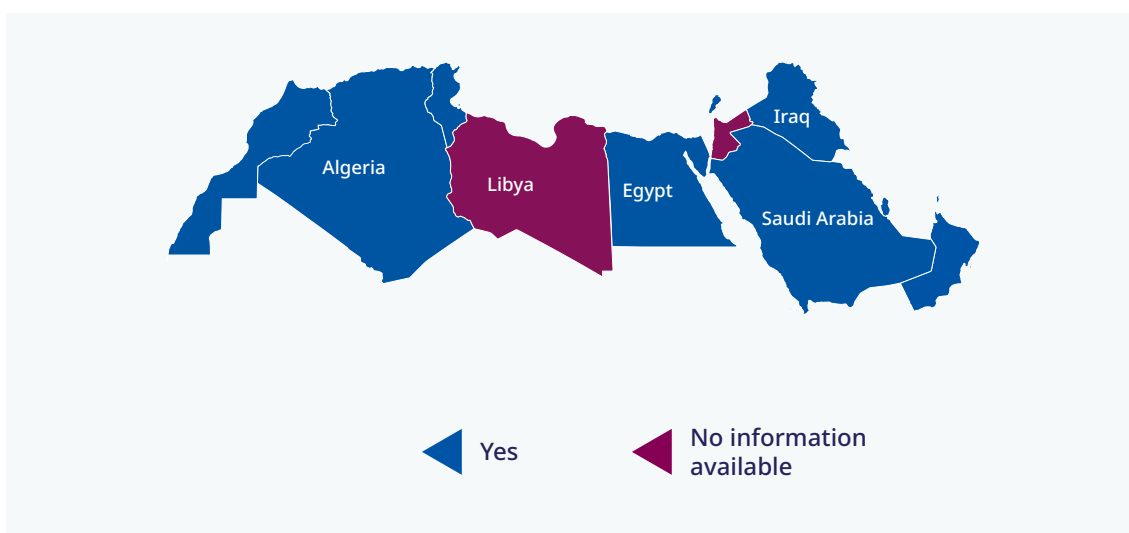
Very few information has been found concerning legal aid to access the judiciary in the countries examined, particularly concerning labour cases.⁴⁴ Most of the provisions found in this respect are related to general judicial procedures.

The report examined access to legal aid, payment of administrative costs (court fees) and costs with external reports and experts, and payment of legal fees. (Chart 7)

► Chart 6: Procedural rules applicable to labour cases



► Chart 7: Possibility of legal aid in labour cases



44 Information in respect to concession of legal aid benefits was only found in Algeria, Egypt, Iraq, Lebanon, Morocco, Qatar, Saudi Arabia, and Tunisia.

Courts fees in labour courts and ordinary courts hearing labour cases are either fully supported by the State or shared by the parties according to the outcomes of the cases, in which case beneficiaries of legal aid are exempted of paying them.

Most of the countries which have provisions determining the payment of courts fees distribute the burden of responsibility to pay such costs according to the claims granted. This means that in cases in which there has been presentation of a counterclaims, workers might also be sentenced to pay a share of court fees in case the decision finds counterclaims justified, if not entitled to exemption. (Chart 8)

Same rules apply in respect to costs with external reports and experts, which may be summoned to present reports on issues related to assessment of workplace to evaluate occupational health and safety conditions, medical evaluations on occupational illnesses and accidents, judicial inspections, and investigation of possible fraud in documents.

In all the countries examined, these costs are supported by the losing party of a certain claim or by the party that cause the need to produce such evidence. In other words, whoever caused the expense must bear it.

In respect to the responsibility over payment of legal fees, national legal systems provide for different models. In general, losing parties bear the most of it, but this may depend on the proportion of claims granted. In these cases, the plaintiff may be demanded to pay legal fees to the defendant in respect to the claims that were not granted. (Chart 9)

First instance procedures

First instance procedures applied for labour cases, either in labour or ordinary courts, are similar, regardless of specific procedures provided by law. However, certain trends have been observed in cross-case analysis.

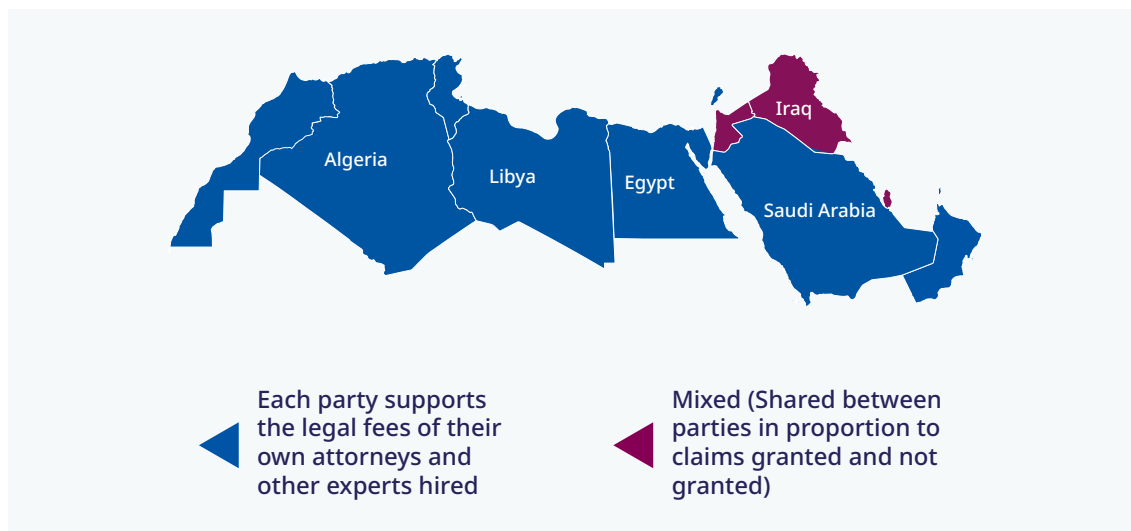
Precautionary Measures

Prior to the presentation of a statement of claim or petition to initiate a labour lawsuit, parties can present a petition to the Court for precautionary measures. Precautionary measures are an essential procedural law institution, once they often have a direct impact on the effectiveness of the future judgment and are fundamental to secure evidence and means to enforce the decision. (Chart 10)

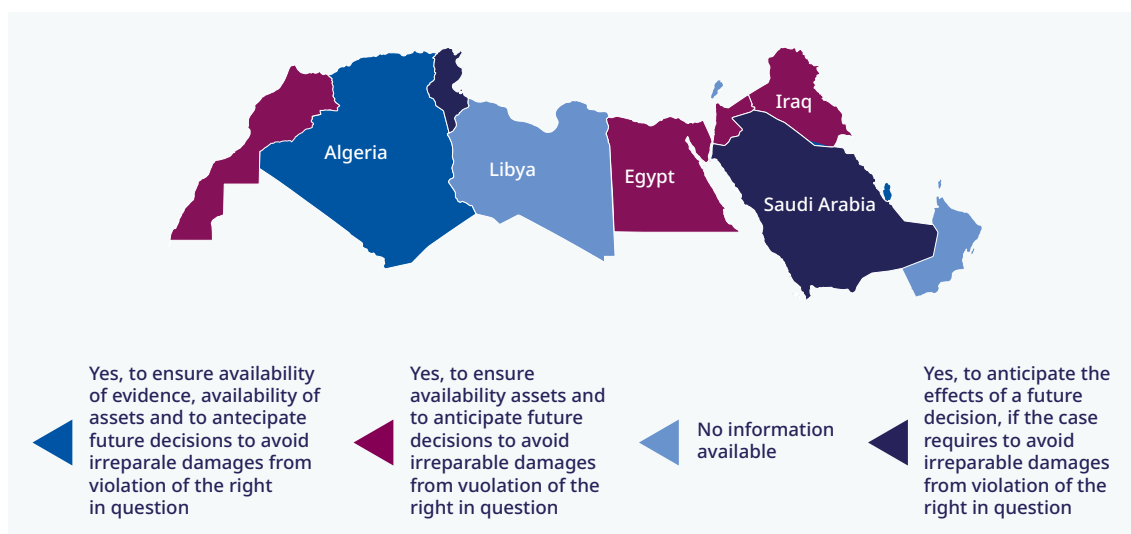
► Chart 8: Responsibility for the payment of court fees



► Chart 9: Responsibility for the payment of legal fees



► Chart 10: Possibility of precautionary measures



Administration of documents and evidence

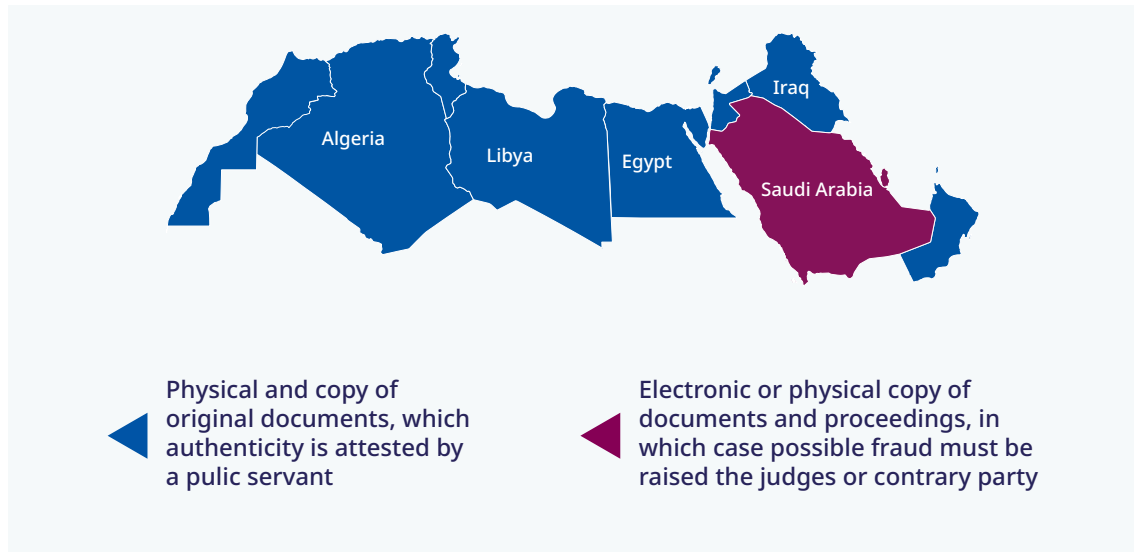
The search for instruments to shorten the time taken to resolve disputes also motivates many legal reforms and the introduction of specific mechanisms to present statements of claims, documents, evidence, and pleas in electronic form. Most countries examined have regulations providing formal requirements, such as written statements of claims (or specific forms to be filed),

to initiate the procedures, even though admit oral petitions, particularly during hearings.

Countries have already adopted measures that enable digitalisation of proceedings and electronic forms of presenting documents, evidence, and petitions. **(Chart 11)**

During the Covid-19 pandemic, judicial courts also accelerated the use of technological solutions to ensure the continuation of services provided.

► **Chart 11: Administration of documents and evidence**



These changes might also have functioned as a catalyst for further change and cutting-edge innovation in the future, providing a faster and costless procedure to parties. However, access to such technological improvements may be uneven in the region.⁴⁵

In Iraq, technological improvements were not applied due to lack of infrastructure and lack of capacity of parties to access technological tools.⁴⁶ In Saudi Arabia, the procedures of the dispute resolution during COVID-19 have been improved and 100% online, including virtual hearings.⁴⁷

Litigants and parties

In countries examined, the range of litigants which may be part of a labour dispute in court rarely varies. In most of countries, workers, employers, public prosecutors, trade unions, third parties indirectly involved, associations, heirs in case of death of one of the parties, and legal representatives, in case of incapacity of any of

the parties, are allowed to take part in the proceedings.

Representation of parties

In respect to legal representation of parties in Court, labour and ordinary courts hearing labour cases have different approaches to admit representation. In individual labour disputes, many of the countries provide regulations admitting self-representation in specific cases. (Chart 12)

Presentation of statement of claims and responses

In general, statements of claims might include information about the parties, facts and legal grounds of claims, and evidence that will support the claims or a request to secure or produce evidence for this purpose.

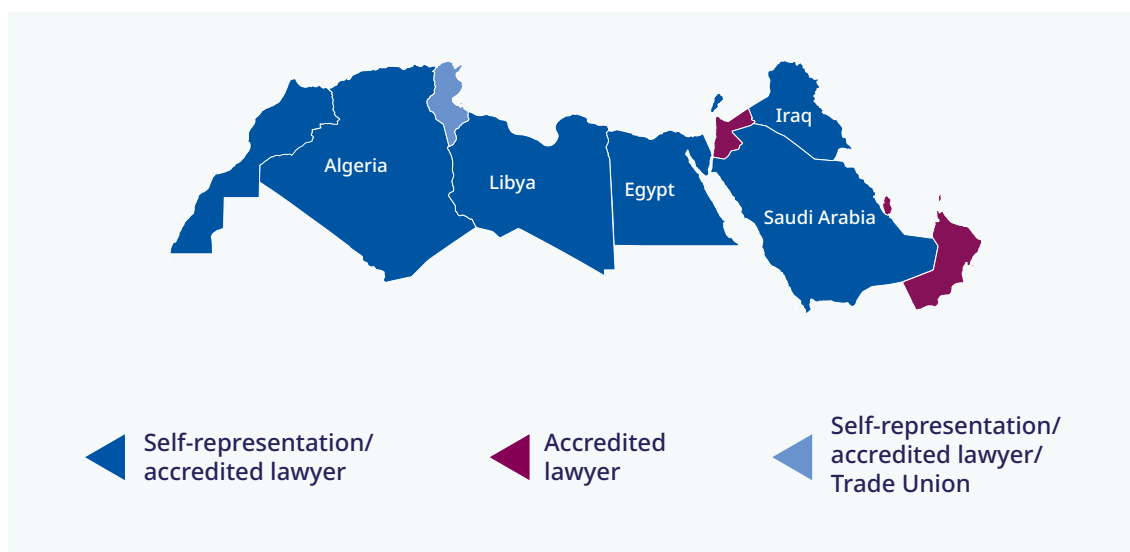
In some countries, statement of claims only can be brought to appreciation of the judicial courts

45 *Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic*. International Labour Organization – ILO, 2021, p. 23. Available in https://www.ilo.org/global/docs/WCMS_828628/lang--en/index.htm

46 Ibid.

47 Ibid.

► Chart 12: Representation of parties



after an attempt of conciliation before conciliation and mediation services has resulted unsuccessful.⁴⁸

Upon the receipt of the claim, the Court evaluates its appropriateness and adequacy to the requirements of the national procedural law. Parties may be summoned to amend the petition.

Opposite parties will either be served with the statement of claim or will be called for a first hearing where they can present their arguments and evidence. Parties can be served by the post office or via bailiffs. Defences and counterclaims may be presented at the first hearing or before.

In general, amendments to the complaint may be authorised if agreed by the defendant. Parties may also exchange pleas.

Evidence and arguments phase

After received pleas from parties, documents, and requests to assist with the presentation of further evidence, courts may schedule a hearing aiming at trying a conciliation between parties and solve

most of issues related to continuation of proceedings. This hearing may also delimit the facts and legal grounds of the claims and decide on matters related to evidence that needs the assistance of the court.

Normally, types of evidence admitted include documentary evidence, witnesses, hearings of parties, experts report in the areas of occupational health and safety, accounting, etc. Parties may ask the assistance of the court to produce or secure evidence.

Burden of Proof

Not very clear information concerning distribution of burden of proof has been sufficiently identified in national legislations examined.⁴⁹

In the countries where national legislation provides for rules on distribution, no provision concerning shifting of the burden in respect to labour cases was identified, as well as no provisions concerning the distribution based on the opportunity to produce the evidence. In all cases, procedural rules establish that the parties have the burden

⁴⁸ Examples include Algeria and Saudi Arabia.

⁴⁹ Information in respect to burden of proof was identified only concerning Algeria, Iraq, Jordan, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, and Tunisia.

of alleging the facts on which they are based in support of their claims.

Admissibility and presentation of evidence

In respect to admissibility of evidence, all countries examined provide rules conditioned to deadlines for presentation of evidence and lawfulness of different types of evidence presented. **(Chart 13)**

Regardless the documentation enclosed with the initial statement of claim and defence and counterclaims presented, parties may request, in general, hearing of parties and witnesses, elaboration of technical reports by experts, judicial inspections and presentation of public and private documents in the possession of a third party. In some countries, the court has discretionary power to determine the production of evidence.⁵⁰

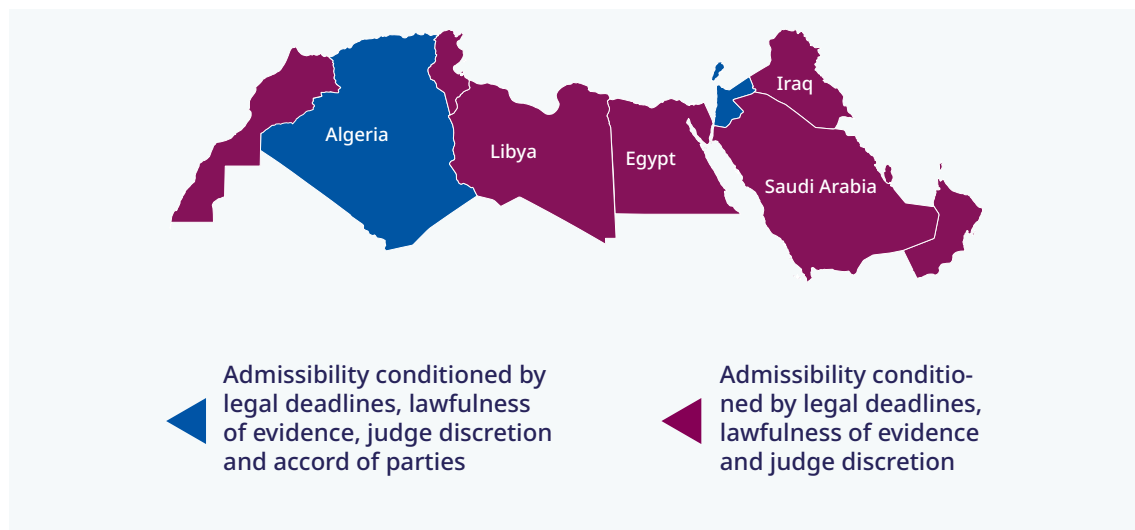
During the main hearing, parties might be obliged to appear. The presiding judges may also determine the order of acts, depending on the complexity of evidence to be produced.

In this respect, in Qatar national legislation provides that witnesses of both parties must be heard in the same hearing.⁵¹

The overview below provides a short description of common procedural measures and acts that might be adopted during first instance procedures in courts hearing labour cases in Arab countries. Important to bear in mind that they may occur in different ways depending on the type of procedure applied to the labour lawsuit.⁵² Also, the order in which they happen can change from country to country, and, sometimes, depending on the dynamics of the case itself and under the discretion of some courts.

That said, main steps in first instance may consider: presentation of the statement of claim, reception and acceptance of the statement of claim, notification of opposite parties, preliminary hearings to attempt conciliation, collection and production of evidence, main hearings (when also evidence can be collected, such as witnesses and parties' testimonials), judgement and notification of the decision, and amendments to the final decision in specific circumstances under first instance jurisdiction.

► Chart 13: Rules on Admissibility of Evidence



50 Examples include Algeria, Jordan, and Lebanon.

51 Article 274 of Civil and Commercial Law, 1990.

52 In some countries, depending on the amount involved, if the claims are monetary, or nature of the claim, the proceedings may follow a faster or detailed (ordinary) procedures, which may affect the occurrence of certain acts. For the purpose of this report, only ordinary procedures were considered, based on the legislation available.

Preliminary measures or injunctions may happen in a separate proceeding before or during the main case, on provisional basis. They may also be requested in different instances and the way they are operationalized differ from country to country. For these reasons, they will not be part of the following steps.

Judgement phase

Concluded evidence phase, parties may have the opportunity to present final considerations orally or in writing, depending on the discretion of the presiding court. The court will render a judgement in a single judge or in panel.

Recourses and appeals against final decisions might attack all aspects of the merits (facts

and legal grounds) or might be limited only to points of law and specific grounds provided by the law. All countries examined provide possibility of presenting a recourse against first instance decisions.

In countries where labour cases are heard by specialized labour courts, the legislation provide for a recourse to the same judge that rendered the decisions in order to clarify contradictory, omissive or obscure points or to correct obvious and clerical mistakes.

Below there is an overview of the main common steps of presentation of evidence, hearing, and judgement of the case, provided by the national procedural legislations analysed. **(Figure 2)**

► Figure 2: General overview of first instances phases

General overview of first instances phases
Representation: Parties may be self-represented, represented by accredited lawyers or authorized representatives (such as Trade Unions or Employers and Employees 'Organizations).
Parties: Workers, employers, public prosecutors, trade unions, heirs and legal representatives, in case of incapacity of any of the parties, may take part in the proceedings.
Admissibility of the claim and responses: The court examines the statement of claim and decides whether to accept it, reject it, or summon the plaintiff to adequate it. The defendant will be notified and can present a defence or/and counterclaim.
Initial evaluation of the cases and delimitation of facts and legal grounds: After received pleas from parties, documents, and requests to assist with the presentation of further evidence, the Courts may decide on how to delimit the facts and legal grounds of the claims and distribute the burden of proof.
6. Evidence: Procedures in respect to summoning of experts and witnesses are likely to take place during this phase. Determination of judicial inspections and expert reports may take place. Authenticity or validity of evidence may be argued by parties.
Hearing of the case (main hearing): Evidence produced is examined. Parties and witnesses, including experts, may be heard.
Final arguments and judgement: Concluded evidence examination, parties may present their final arguments in some countries. The Court may retire itself to discuss the case (in case of panel) and render the decision on the merits, in which case parties are notified immediately. Decisions may also be rendered after the hearing, within a deadline, and parties notified.
Clarification of decision and granting of appeal: The Court usually can, upon request of parties or to its own discretion, clarify obscure, vague, or contradictory points of the decision, as well as obvious formal mistakes. The decision might also establish the possibility of appeal or recourses, if allowed by the law. Appeals might be presented by the interested parties at first instance or directly to higher instances.

Recourses and appeals to higher instances

The examined systems may accept more than one type of recourse against decisions rendered during the proceedings. There have been observed recourses against final decisions, which may attack merits, points of law or seek annulment of decisions, and against interlocutory decisions which may influence the final judgement, such as decisions granting precautionary measures or secure of assets and evidence, as well as accepting or denying requests related to admissibility of statements of claims, defences, and other pleas.

Recourses may also vary from country to country. However, for the purposes of this report, proceedings in second instance will be considered in respect to recourses or appeals which attack the merits of the case, even if the name of the recourse is not necessarily appeal.

Not all countries provide possibility to re-examination of labour cases. However, in many cases, it is necessary to grant a leave to appeal or the grounds to appeal are limited. Besides, in the countries where the national legislation provides avenues for recourse, it is not clear to what extent they can be used to review labour cases.

The presentation of recourses against decisions on the merits of the case may have court fees or, in cases of decisions determining payment of sums in monetary claims, demand a deposit of an amount which may be converted in payment in case the decision stands.

The appeal or respective recourse might be presented to the same Court which rendered the decision or directly to the next instance. If presented to the Court the rendered the decision, its admissibility will be assessed in first instance.

Regardless of in which court the appeal is lodged, the opposite parties must be notified by the Court to present a response or to join the appeal with a counter-appeal, in case there is interest.

In Algeria, if an appeal is considered abusive, a penalty might be applied against the appellant part.⁵³

Below there is an overview of the main common steps of presentation of appeals in these different appealing jurisdictions. (Figure 3)

Supreme Court Phase

In a number of countries, a Supreme or Superior Court is the highest instance in the judiciary to hear recourses in labour related cases.⁵⁴ In most of the times, labour cases do not go that far due to the limitations to further discuss evidence and facts.

In countries where a Constitutional Court has been established, its role is not linked to the review of inferior courts decisions, but to the control of the constitutionality of laws and state acts.⁵⁵

Proceedings at the Supreme Courts are remarkably similar to proceedings of Court of Appeals, particularly concerning the designation formation of a panel of judges and few possibilities to present recourses, due to more strict requirements to be met. In most cases, only matters on point of law can be re-examined at this stage.⁵⁶

Procedures might be slightly different depending upon the type of recourse presented, as superior instances are generally competent to hear both extraordinary recourses, such as cassation, and ordinary recourses, such as appeals. Furthermore, recourses might be presented to the Superior instances directly against a decision rendered by first instance.

53 Article 347 of Code of Commercial and Civil Procedures.

54 Examples include Morocco, Palestine, Saudi Arabia, and Tunisia.

55 Examples include Algeria, Palestine.

56 Information in this regard (possibility of recourse to Supreme/Superior/Higher Court) was found only about Algeria, Egypt, Jordan, Morocco, Saudi Arabia, and Tunisia.

However, very few information in respect to procedures in these courts have been found in the national legislations examined concerning labour cases.

Below there is a summary of main steps common to all national legislations examined, although in most of the cases there is no specific indication that they can be applied to a recourse involving labour matters. (Figure 4)

► **Figure 3: Overview of main steps of presentation of recourses and appeals against final decisions of first instance**

Overview of main steps of presentation of recourses and appeals against final decisions of first instance

Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the higher instance where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse. Counter-recourses are allowed in some countries (such as Algeria).

Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Court of Appeal/Higher Instance, in which it is assigned to certain chamber, to be examined by the Panel.

Re-examination of the case: Parties may have the opportunity to present their arguments before the trial. New evidence or evidence rejected by the previous instance may or may not be admitted, depending on its relevance. Parties may be summoned to a hearing, in which the case will be examined.

Hearing and Judgement: The Court examines the first-instance judgment within the limits of the grounds specified in the recourse. During the hearing, parties may be heard, as well as new evidence may be examined. The Court decides about the merits of the recourse in panel and the decision is rendered according to the majority. Decisions may comprise: i) reform of the previous decision; ii) annulment of the decision and replacement with a new one; iii) annulment of the decision and determination of a new trial in first instance.

► **Figure 4: Overview of main steps of presentation of recourses to Superior instances**

Overview of main steps of presentation of recourses to Superior instances

Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the Supreme Court where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse. Incidental or joint recourses are rarely allowed.

Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Supreme Court, in which it will be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel.

Examination of reasons of the recourse: Parties may have the opportunity to present their arguments in written form before the trial. New evidence or evidence rejected by the previous instance is generally rejected, except when in support of the allegations related to violation of specific point of the allegations of the recourse. Parties may be summoned to a hearing, in which the case will be examined. A bench, with 3 or more judges will analyse the case. Parties may be summoned to appear in the trial hearing.

Judgement: Decision may i) Adopt a resolution to dismiss the recourse and leave the decision unchanged; ii) Adopt a resolution on full or partial cancellation of the decision and refer the case for new proceedings to trial or appeal; iii) Adopt a resolution to abolish the decision and keep in force a judicial court of first instance that was standing before; iv) abolish judicial decisions and to close the proceedings in the case or leave the application without consideration; v) Reverse and adopt a new decision or change the decision.

Enforcement phase

Final decisions might be enforceable immediately according to express statutory provisions, regardless of presentation of appeals.

The order shall be enforceable by operation of law, notwithstanding the exercise of any means of appeal. In Algeria, for example, the president of the Social Chamber may order the immediate execution of the decision, notwithstanding the exercise of any means of appeal.⁵⁷ In Qatar, even decisions rendered by the Labour Dispute Committee have immediate power of enforcement, irrespectively any recourse presented to the Court of Appeal.⁵⁸

It shall not be carried out where the sale of the objects seized cannot be expected to yield more than the amount of the costs of enforcement.

In most of the countries examined, enforcement proceedings are either regulated by specific legislation or be complemented by the general civil procedures. In most of the countries examined, legislation provide for the possibility of seizure of assets in case of enforcement in respect to monetary claims.

Regardless the type of procedural law regulating enforcement, proceedings are similar across the countries examined and normally courts that firstly heard the case will be in charge of the enforcement proceedings.

Enforcement may be initiated upon a request of the interested party or ex officio by the court. The competent court will, upon the request and with the presentation of proof of the last decision standing, as well as of indication of means to

promote the execution against the debtor (such as indication of assets, properties, addresses, etc), issue an enforcement order.

In some countries, founded opposition to the enforcement is allowed.⁵⁹ If no opposition is presented and the debtor does not comply with the obligation voluntarily, enforcement measures may be taken, such as seizure of assets and restriction of rights. Although the opposition to the enforcement proceedings seems to be a common step, its presentation and terms are not always very clear in national legislations examined.

Precautionary seizure of assets to avoid non-compliance was identified in a few countries.⁶⁰

In terms of assets which can be arrested, most of the countries have express provisions in this regard, authorizing seizure of movable and immovable assets to enable the payment of monetary claims.

Other measures are also provided to avoid the non-compliance with the decision in respect to payment of monetary claims.

In Saudi Arabia, enforcement is carried out by an enforcement judge, in enforcement sections in general courts.⁶¹ If the debtor refuses to comply with execution of the judgment for a reason other than insolvency, and it was impossible to execute assets, the creditor may request the detention of the debtor.⁶²

In some cases, conciliation hearings may take place during the enforcement phase, if requested by parties or in case the court understands that there is an opportunity to settle the issue without seizure of assets. **(Figure 5)**

57 Article 509 of Code of Commercial and Civil Procedure.

58 Article 3 Law No. 13 of 2017 (Article 115 bis/6 of Law No. 14 of 2004).

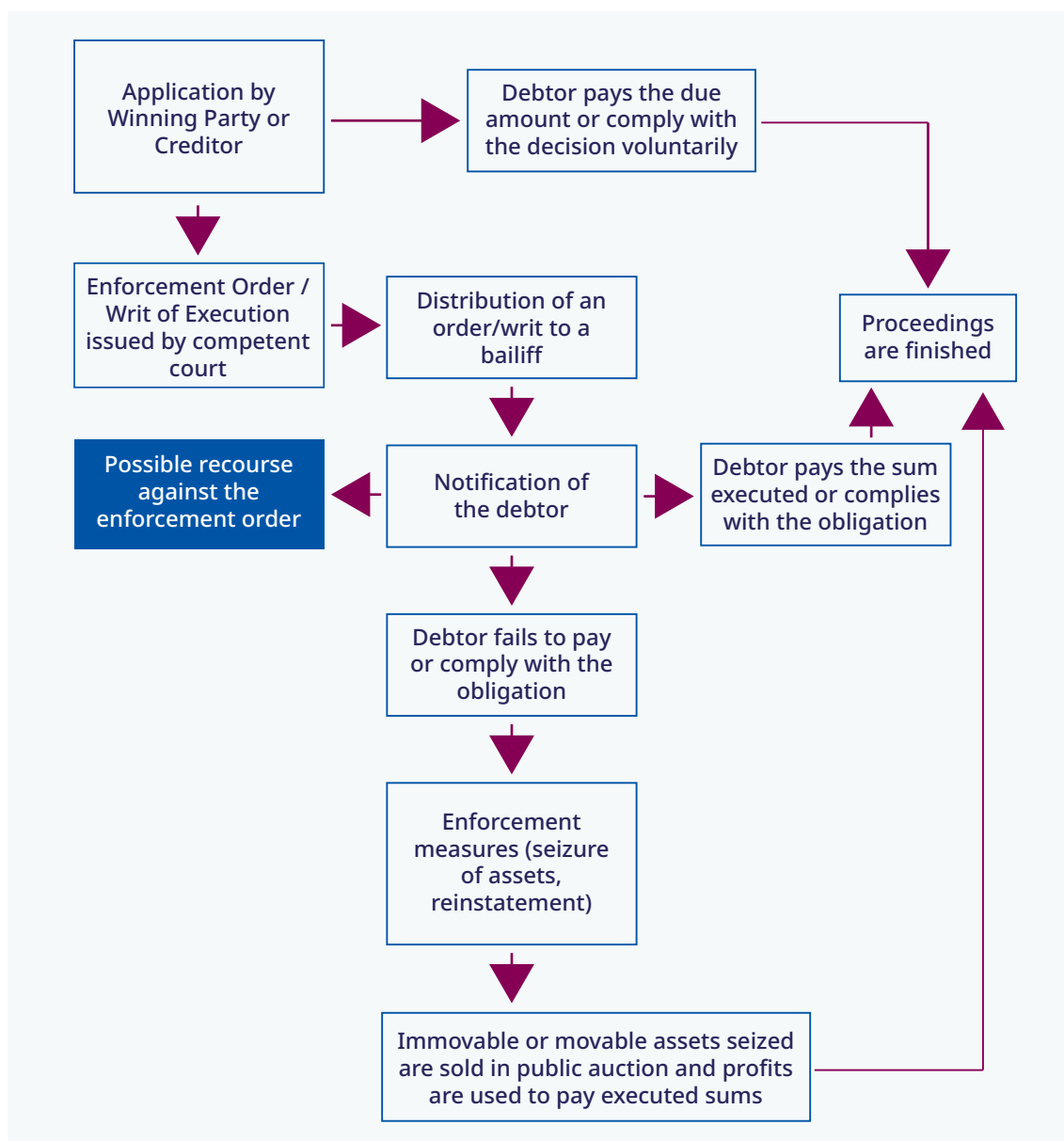
59 Examples include Algeria, Iraq, Morocco, Qatar, and Tunisia.

60 Examples include Egypt and Saudi Arabia.

61 Royal Decree No. M/53 in March 2013 – Law of Enforcement.

62 Article 230 of Law of Procedure.

► Figure 5: Common steps in procedures for enforcement of decisions



Possibility of conciliation and mediation during judicial proceedings

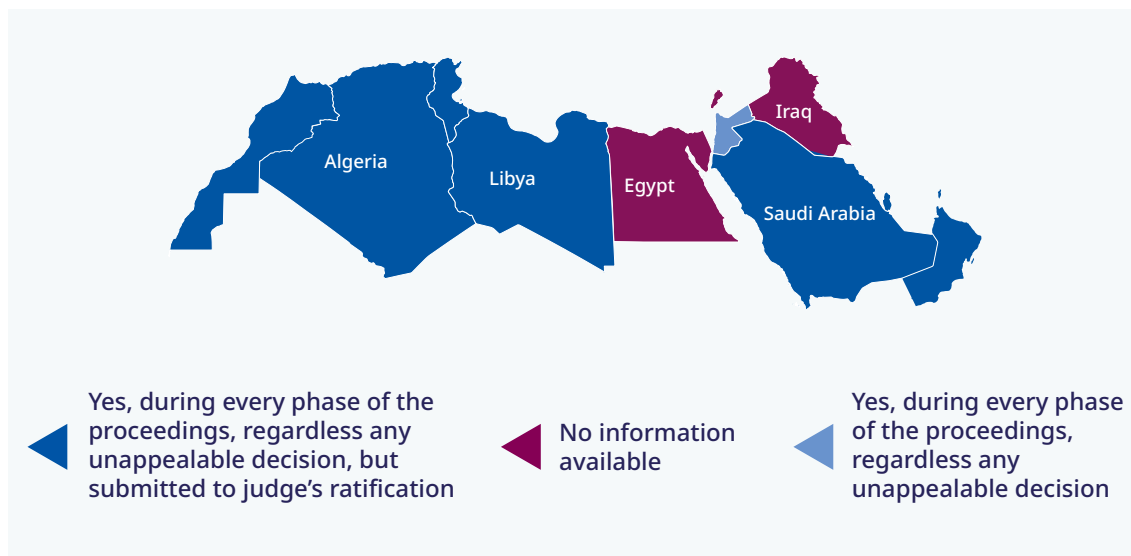
It is not sufficiently clear whether courts can refer cases to mediation and conciliation at any time during the judicial proceedings, including during the enforcement phase. In the countries where the legislation suggests it is possible, ratification of the Court seems to be mandatory in case agreements are reached during the proceedings in course. (Chart 14)

If conciliation or mediation is successful during the enforcement phase, agreements may not comprise waiving of claims granted by the final decision, unless the enforcement is temporary, and the case is pending trial of a recourse.

Procedural phases

Depending on the judicial tiers established in a country and the possibilities of review of final decisions set forth in the procedural law, the

► **Chart 14: Conciliation and mediation of labour cases during the judicial proceedings**



number of procedural phases may drastically vary from country to country. Most of the countries examined have normally 4 procedural phases: i) first instance; ii) second instance (appeal); iii) third instance (Supreme or Superior Court); and iv) enforcement phase.

However, due to limitation of presentation of appeals in some countries this may vary. Moreover, it is not sufficiently clear in the legislation consulted whether labour cases can reach all the judicial tiers, which may influence the number of phases as well as the length of trial. (Chart 15)

The number of recourses provided by the national legislation impact also direct in the number of procedural phases. In some countries examined, it is possible to present recourses against interlocutory and final decisions.⁶³

As mentioned before, it is not clear in the national legislations examined whether all judicial recourses available can be used to review a decision rendered in a labour case, particularly in countries where those cases are heard by civil courts or under civil procedure rules.

Recourses during enforcement phase and specific recourses reconsider decisions that cannot be ordinarily appealed or to discuss constitutional matters are allowed in several countries. (Chart 16)

In Qatar, decisions issued during the proceedings which do not terminate litigation, whether these decisions are conclusive or pertain to evidence or the course of the proceedings, shall only be appealable after the issuance of a judgment that terminates the whole proceedings, with the exception of provisional urgent decisions that suspend the proceedings and judgments subject to compulsory execution.⁶⁴

Average duration of procedures

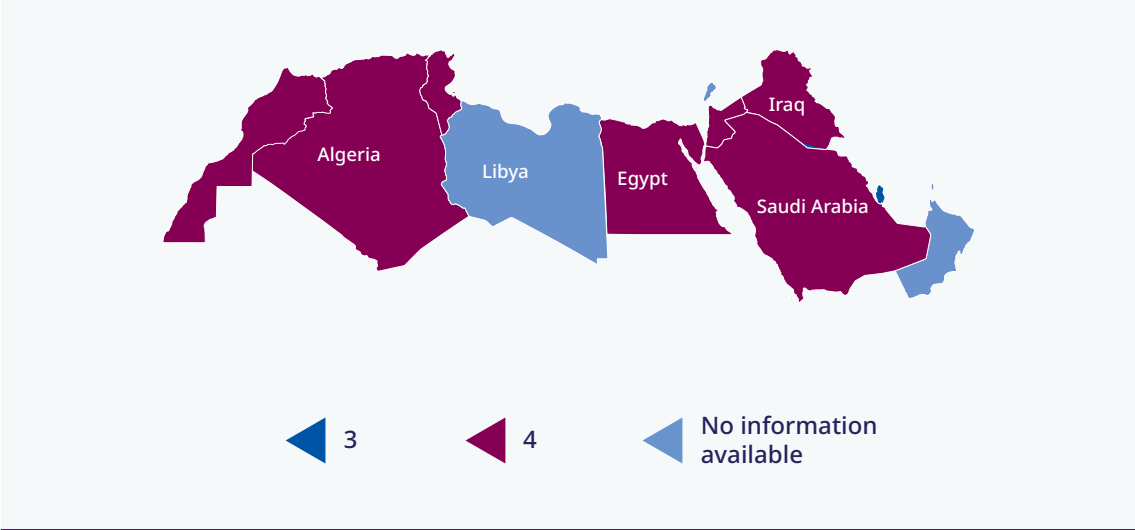
There is little official information or few statistics on average duration of procedures in courts hearing labour cases. In some countries, statutory provisions might determine the maximum length of first instance procedures⁶⁵, however no statistical data was found to confirm the duration of proceedings.

63 Examples include Algeria, Jordan, Qatar, Tunisia.

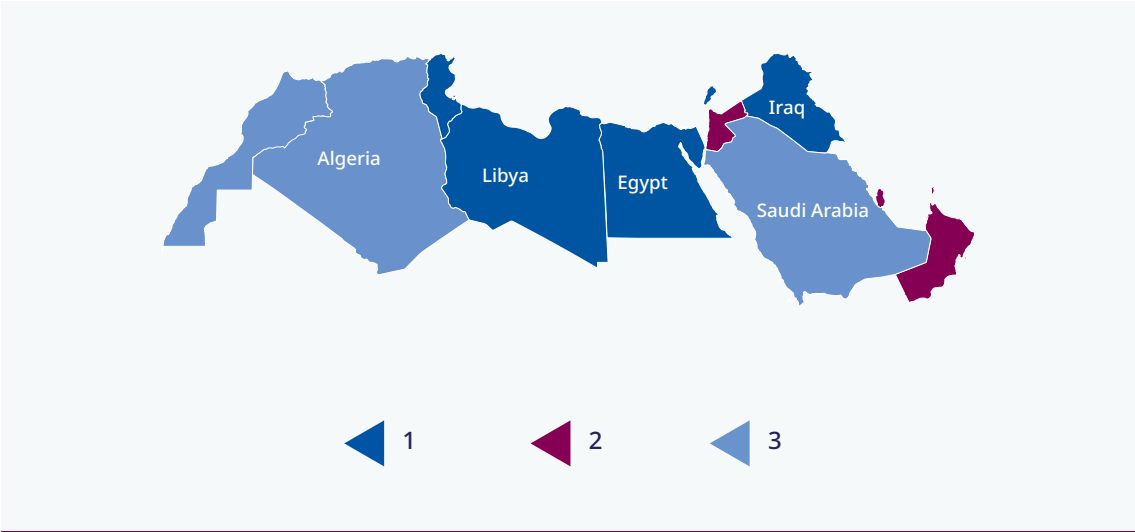
64 Article 156 Code of Commercial and Civil Procedure, 1990.

65 In Egypt, for example, Article 71 of Labour Law determines that labour cases must be resolved in 2 months.

► Chart 15: Number of procedural phases



► Chart 16: Possible recourses to present in a labour procedure.





► Operation & Practice

Average distribution of courts and professional Judges

It is not particularly easy to find statistics on distribution of courts to hear labour cases within the examined countries. This information does not seem to be available or updated in several countries' official websites.

Some official websites indicated the number of first instance judicial courts available, however

no reliable information was found concerning the number of labour courts or labour chambers available to hear labour cases.

Similar difficulties are found in respect to statistics on the availability of judges to hear labour cases. Most of labour and ordinary courts do not provide information on how many judges, professional and non-professional, are available per 100,000 habitants only for labour cases.



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