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MENA Women in the Reformist Process: A Retrospective

INTRODUCTION

On October 18, 2013, the Middle East Program and the Global Women's Leadership Initiative at the Wilson Center hosted a two-panel discussion on "MENA Women in the Reformist Process: A Retrospective," the first of which focused on women's political participation and the second focusing on economic reforms and social change. Participants on the first panel included Farahnaz Ispahani, public policy scholar at the Wilson Center, former member of Pakistan's parliament, and former Media Advisor to the president of Pakistan; Isobel Coleman, Senior Fellow and Director of the Civil Society, Markets, and Democracy Initiative, and Director of the Women and Foreign Policy Program, Council on Foreign Relations; Myriam Aucar, Committee on Women's Affairs and the Committee of Foreign Relations at the Beirut Bar Association, Lebanon; and Sawsan Zaher,

human rights lawyer at Adalah—The Legal Center for Arab Minority Rights in Israel, and Yale World Fellow, Yale University. Participants on the second panel were Moushira Khattab, former Public Policy Scholar, Woodrow Wilson Center, former Egyptian Ambassador to South Africa and to the Czech and Slovak Republics, and former Minister of Family and Population, Egypt; Kathleen Kuehnast, Director of the Center of Innovation for Gender and Peacebuilding, United States Institute of Peace; and Fatima Sbaity Kassem, former Director, UN-ESCWA Centre for Women. Rangita de Silva de Alwis, Director of the Global Women's Leadership Initiative, moderated the first panel, and Caryle Murphy, former public policy scholar at the Wilson Center, moderated the second panel. Haleh Esfandiari, Director of the Middle East Program at the Wilson Center, provided introductory remarks.

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About the Middle East Program

The Middle East Program began in 1998. In addition to spotlighting day-to-day issues, it continues to concentrate on long-term regional developments and their impact on political and social structure, economic development, and relations with the United States. The program pays special attention to the role of women, youth, civil society institutions, Islam, and democratic and autocratic tendencies. Dr. Haleh Esfandiari directs the program, with the assistance of Mona Youssef and Kendra Heideman.

About the Global Women's Leadership Initiative (GWLI)

The Global Women's Leadership Initiative's global network is the platform for the Women in Public Service Project which was launched by Secretary Hillary Clinton in partnership with the historic Seven Sisters women's colleges and moved to the Wilson Center in June 2012. GWLI is a unique platform for change – connecting current and emerging women leaders, promoting the goal of 50 percent women in public service jobs worldwide by 2050, advancing inclusive policies, and bringing new research to the forefront.

The following papers are based on the authors' presentations at the Woodrow Wilson International Center for Scholars on October 18, 2013. The opinions expressed herein are those of the authors and do not reflect those of the Woodrow Wilson Center.

De Silva de Alwis began the discussion by invoking the words of Hillary Clinton: “Women’s leadership is the unfinished business of the 21st century.” She continued to say that gender equality is the unfinished business of the revolutions that have taken place across the Middle East and North Africa (MENA) region. However, the current processes of redrafting and reforming constitutions across the region have provided an opportunity to ensure that women’s rights are enshrined in national legislation and that international human rights legislation, such as the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW), has primacy over all national laws.

Ispahani provided an overview of women’s rights in the region over the last century, and pointed out that there have been many indigenous movements calling for democracy and gender equality that preceded the “Arab Awakening.” Ispahani outlined two areas that must be addressed to produce meaningful cultural and political change: changing societal mindsets through curriculum reform in schools, and ensuring that there are gender-equitable laws on paper.

Coleman noted that the Arab revolutions of recent years were not the first time that secular authoritarian regimes had been overthrown by Islamist-led political parties, whose conservative readings of Islam have already prompted a roll-back in women’s rights. Coleman emphasized that periods of political transition are volatile times for women; however, there can be pushback on a conservative narrative through civil society action.

Aucar spoke about legal reform and constitutional amendments in Lebanon. She discussed a number of discriminatory articles in the penal and civil codes, including those that deal with domestic violence, rape, and family law. Personal status laws in Lebanon, which differ according to individuals’ religious affiliation, also prevent a comprehensive law on issues such as marriage from being applicable to all citizens.

Zaher discussed her work in training feminist lawyers and judges in Israel and the Palestinian territories on the “right to dignity.” She explained that the “right to dignity” is already integrated into the preamble of CEDAW, to which no country has made any reservations or restrictions. Further, “dignity” serves as an umbrella for rights to equality, autonomy, self-actualization, and respect.

Khattab transitioned the focus of the conversation from politics to economics, though she noted that the two were inseparable, and that to address them one must begin with education. She provided a series of statistics illustrating that according to most indicators of the Global Gender Gap index, women from the MENA region lag far behind women elsewhere in the world.

Sbaity-Kassem noted that everyone in the region, men and women, suffered from the greater economic troubles present. However, women have also suffered from gender biases, wage discrimination, and limited participation in the economy. She then recommended that women empower themselves to force governments to recognize their rights, to implement gender-sensitive laws, and to institute gender quotas to give women a “seat at the table” to help promote equality.

Kuehnast stated that there was a need to manage expectations in the MENA region while still moving forward. She recommended that women establish a regional voice to discuss difficult issues, find common ground from which to coalesce, and to create an understanding and role for men in the reformist process.





Mapping the New and Emerging Gender-Based Reformist Process in the MENA Region in the Wake of Political Transitions

Rangita de Silva de Alwis, *Director, Global Women's Leadership Initiative, Woodrow Wilson Center*

Scholars like Shirin Ebadi share a cautionary tale about the Arab Revolution. In 1979, Ebadi was on the frontlines of Iran's Islamic Revolution, which led to the enactment of numerous laws that discriminate against women and impede their ability to engage in public life in Iran. Ebadi stated even as the revolutions unfolded, "I do not agree with the phrase 'Arab Spring,' as coined by the global media. This is because the overthrow of dictatorship is not itself sufficient. Only when these repressive governments are replaced by democracies can we consider the popular uprisings in the Middle East to be a meaningful 'spring.'"¹ She has often referenced the fact that when the Iranian people succeeded in overthrowing the Shah in 1979, their political system was not replaced with democracy. Instead, a religious dictatorship took its place.

It is now abundantly clear that the toppling of dictators and dictatorships does not in and of itself guarantee the advancement of women's rights. The mapping below examines some of the emerging reformist initiatives that are yet to be fully implemented and the changes further needed to ensure gender equality under law.

If the revolutions achieved one thing, it was the way in which they sparked the mobilization of women in every country in the Arab region. Women's mobilizing and galvanizing have been critical in preventing the rollback of prior gains and in preventing a kind of creeping orthodoxy that threatens women's security.

It is because of women's mobilizing that Tunisian women's groups were able to combat *shari'a* as the source of law in Tunisia and the provision that men and women are complementary to each other. New forms of mobilization have sprung up in the region, including Jordan. In June 2012, a diverse range of protesters in Amman demonstrated peacefully against gender

inequalities. These groups created a human chain and decried the rape-marriage law (which allows rape charges to be dropped if the perpetrator agrees to marry the victim), women's rights to citizenship, honor crimes, and women's harassment. These protests were a demonstration of the engagement of a new generation of women coming to the forefront in calling for equality under law.

New and Emerging Reformist Initiatives in the MENA Region for Women: A Thumbnail Sketch

CEDAW Reservations

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as the global bill of rights for women, provides the standard-setting norms by which all laws and policies impacting women's lives are judged. Because CEDAW is the litmus test for gender equality, states that ratify it undertake compliance of the guarantees enshrined in the Convention.

Although all countries in the Middle East and North Africa (MENA) region—except Saudi Arabia and Sudan—have ratified CEDAW, the majority of countries in the region have yet to withdraw all of their reservations to CEDAW.

Tunisia made reservations to CEDAW articles 9 (2) (equal rights with regard to nationality of children); 16 (c), (d), (f), (g), and (h) (equality in marriage and family life); and 29 (1) (related to the administration of the convention; i.e. arbitration in the event of dispute); and with a general declaration that the government "shall not take any organizational or legislative decision in conformity with the requirements of this

Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution.”²

Although in August 2011 the Tunisian Council of Ministers adopted a draft decree to withdraw all reservations to CEDAW, nothing has been done. When states officially inform the UN Secretary-General about the withdrawal of a reservation, this is published in the treaty database. The withdrawal of Tunisia’s reservations, however, has not been published in the treaty database.³

In 2008, Egypt withdrew its reservation to CEDAW article 9 (2), which calls on states to grant women equal rights with men with respect to the nationality of their children. The reservation to CEDAW Article 16 (equality in marriage and family life) is maintained based on the provisions of Islamic and Egyptian law under which husbands and wives have different rights and duties, which according to Egypt’s combined sixth and seventh CEDAW report: “...while not identical, are equal.”⁴ Further, the report states, “...implementing equality in the way stated in several paragraphs of article 16 would diminish the rights women currently enjoy.”⁵ The reservation to article 2 (policy measures) is a general one, indicating that Egypt is willing to comply with the article as long as it does not conflict with *shari’a*. The provisions of articles 2 and 16 are considered central pillars of CEDAW.

The withdrawal of Egypt’s reservation to CEDAW Article 9 (2) in 2008 followed an amendment of the country’s nationality law in 2004. The amended law enables Egyptian women who are married to non-Egyptian men to pass on their nationality to their children, which was previously not permitted. Although Egyptian men married to foreign women can pass their Egyptian citizenship to their foreign spouse, Egyptian women cannot do so according to the amended law.

Jordan has not removed its reservations to article 9 (2) (equal rights with regard to nationality of children) or to article 16 paragraph 1 (c) (same rights and responsibilities during marriage and at its dissolution), (d) (same rights and responsibilities as parents), and (g) (same personal rights,

including the right to choose a family name, a profession, and an occupation). Jordan also maintains its reservations to article 16 (1) (c) and (d) because of alleged incompatibility with *shari’a* provisions.

Nationality Laws and Citizenship Equality for Women

Equal citizenship and nationality law lie at the heart of gender equality. In most countries in the MENA region, women do not have the same right as men to pass on their nationality to children born of a foreign father or to their foreign-born husband. This can have major implications on families and, in some cases, leave children stateless or without equal access to essential state services such as education and healthcare.

In Lebanon, despite much advocacy by women’s groups, women cannot confer Lebanese citizenship upon their children or upon their husbands. Currently, according to Lebanese law, Lebanese nationality is only passed on by the father with a few exceptions.

For the first time since the promulgation of Lebanon’s current nationality law in 1925, the Lebanese cabinet included the review and reform of the nationality law during its March 21, 2012 meeting. According to the law, while Lebanese women married to foreign spouses cannot pass their Lebanese nationality to their children or to their spouse, all children of Lebanese fathers will be considered Lebanese and Lebanese men have the right to pass their citizenship to a non-Lebanese spouse. A Lebanese woman can pass her nationality to her child only in cases when the father is unknown. The children resulting from a marriage between a Lebanese woman and a foreign national are considered residents rather than citizens and do not have the same rights. For example, they will not have equal access to education.

The Ministerial Committee upheld the current nationality law on December 14, 2013 but recommended that restrictions on children of Lebanese women married to non-nationals—relating to resident permits, education, work

in the private sector, and access to state medical care—should be addressed. If implemented, the hardships experienced by the children of Lebanese women married to non-Lebanese men should be addressed. However, this is not enough.

Palestinian refugees in Lebanon are considered resident foreigners and lack citizenship rights. Therefore, the status of Palestinian refugee women and men in Lebanese society differs significantly from that of Lebanese nationals. For example, Palestinian refugees are denied access to public social services, have limited access to public health and educational facilities, and are not allowed to work in a number of professions.

The Yemeni law on citizenship still remains unequal. A Yemeni woman who has children with a non-Yemeni husband is allowed to transfer her citizenship to their children under limited circumstances: if the foreign husband has died, the couple has divorced, or the woman has been abandoned by her foreign husband. The children of a Yemeni man, on the other hand, will automatically be Yemeni regardless of the citizenship of their mother. In 2008, an amendment to the nationality law allowed women to transfer their Yemeni citizenship under very restrictive circumstances, such as when the father is unknown or has no nationality in Yemen.

In Libya, a new law approved in 2010 allows women to pass on their nationality to children they have with a foreign-born spouse. The implementation of this law remains unclear.

Freedom of Movement

While some revisions to laws in countries in the MENA region allow women to obtain a passport and travel abroad without their husband or guardian's permission, many countries in the MENA region still consider the choice of domicile as a decision to be made solely by the husband.

In 2009, the government of Jordan withdrew the reservation to CEDAW Article 15 (4), which equalizes men's and women's rights relating to the movement of persons and the freedom to choose their residence and domicile. The withdrawn

reservation reads: "...a wife's residence is with her husband."⁶ The reformed 2003 (interim) passport law now allows women to obtain a passport without the permission of a husband or male guardian.

Political Representation

Women's political participation in the MENA region remains low, with one of the lowest representations of women in legislative bodies in the world. Qatar and Saudi Arabia have no female members of parliament, although women serve on the Shura Council in Saudi Arabia. In some countries, like Saudi Arabia and Kuwait, women did not have the right to vote until recently.

Prior to the October 2011 elections for a constituent assembly, Tunisia established the rule that all party ballots should include an equal number of male and female candidates.

Violence Against Women

In 2011, Lebanon repealed article 562 of the criminal code that allowed for the mitigation of sentences for so-called "honor crimes." A new draft law in Saudi Arabia criminalizes domestic violence. However, no implementation provisions have been drafted as yet. Tunisia is addressing the issue of a rapist marrying the rape survivor as a way of cleansing the crime.⁷

Constitutional Reform

One of the most important post-revolution reforms has been constitution-making in the MENA region. Although women played a pivotal role in the revolutions, they were not full and equal participants of constitutional reform in Egypt, Tunisia, and, until most recently, Libya.

It is critically important to bring new constitutions in line with international human rights standards and obligations under international law. Constitutions should refer to the international human rights conventions that the state has duly ratified, including CEDAW, and artic-

ulate the supremacy of those conventions. New constitutions should also enshrine the principles of equality and non-discrimination before the law and include gender as a prohibited category of discrimination. Moreover, as guaranteed by CEDAW, anti-discrimination must cover both direct and indirect discrimination, *de facto* and *de jure* discrimination, and multiple grounds of discrimination including—but not limited to—gender, race, religion, national origin, and disability. Positive discrimination or temporary special measures are integral to the equality of results as defined by CEDAW and should be articulated in the constitution. Constitutions should also include judicial independence and judicial interpretation of the law in accordance with the treaties and the jurisprudence of the treaty bodies.

In Tunisia, the National Constituent Assembly instituted a Consensus Commission in 2011 with the mandate to draft a constitution, which was passed in 2014. Several provisions of the constitution strengthened gender equality, including equality in elected office. Article 21 of the final Tunisian Constitution enshrines a strong equal protection clause and states, “All citizens, male and female alike, have equal rights and duties, and are equal before the law without any discrimination.”⁸ Article 39 calls for compulsory education until the age of 16, which is an important tool to address child marriage.⁹ Article 46 of the Tunisian Constitution calls for equal representation for women and men in elected councils.¹⁰ One of the most important elements of this provision is that it calls for necessary measures on the part of the state to eliminate violence against women.

The Egyptian Constitution, which also passed by referendum in 2014, calls for a similar provision of gender equality in elected office. Article 11 enshrines Egypt’s commitment to “taking the necessary measures to ensure appropriate representation of women in the houses of parliament... grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination,” which is to be lauded.¹¹ Although the over-general term “appropriate” falls short of an equal number of women in

political and public life, women’s groups must now ensure that laws that are to be drafted play an interpretive role in clarifying constitutional guarantees and filling in the gaps.

Much like its Tunisian counterpart, Egypt’s constitution guarantees the country’s commitment to the protection of women against all forms of violence. However, the provision that “ensures women to reconcile the duties of a woman toward her family and her work requirements” reinforces gender stereotypes and assumes that women are primary rather than joint caregivers of the family.¹² Women’s and men’s equal rights in public and private spheres can be guaranteed only if men have equal caregiving rights and opportunities and both men and women are able to reconcile their work and family obligations. Unless gender equality in this provision is guaranteed, the playing field will not be equal for women to hold “public posts and high management posts in the state.”¹³

Constitution-making is the first step in bringing laws in line with international human rights norms. There is still much more work to be done to implement these constitutional guarantees and bring them to life.

Endnotes

- 1 Ebadi, Shirin. “A Warning for Women of the Arab Spring.” *The Wall Street Journal*, March 14, 2012, accessed April 9, 2014, <http://on.wsj.com/1elsz5C>.
- 2 Convention on the Elimination of All Forms of Discrimination Against Women. “Declarations, Reservations and Objections to CEDAW: Tunisia.” Accessed April 9, 2014. <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.
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- 4 Committee on the Elimination of Discrimination against Women. “Combined sixth and seventh periodic reports of Egypt.” *Convention on the Elimination of All Forms of Discrimination against Women*, September 5, 2008, accessed April 9, 2014, <http://bit.ly/1iACocw>.
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- 7 Ghribi, Asma. 2012. “Tunisian Law Allows Rapists to Avoid Prosecution in Case of Marriage with Victim.”

Tunisie, March 29. Accessed April 9, 2014. <http://bit.ly/1eoKbgX>.

8 Constitution of the Tunisian Republic, 2014. Chapter 1, Article 21.

9 Constitution of the Tunisian Republic, 2014. Chapter 1, Article 39.

10 Constitution of the Tunisian Republic, 2014. Chapter 1, Article 46.

11 Constitution of the Arab Republic of Egypt, 2014. Part 2, Chapter 1, Article 11.

12 Ibid.

13 Ibid.



Women's Political Participation in Times of Turmoil

Myriam Kairouz Aucar, *Committee on Women's Affairs and Committee of Foreign Relations, Beirut Bar Association, Lebanon*

The presence of women in decision-making positions is hindered by the discrimination they face due to factors such as traditions and a patriarchal society, archaic religious interpretations, and discriminatory texts.

Waiting for a change in society's mentality is not efficient because changes are needed more quickly, and amending a discriminatory law has more of an instant effect. It is more efficient and effective to outlaw behavior that is discriminatory rather than attempt to convince a community that the behavior to which it is accustomed must change.

Women can seize the opportunities provided by the changes taking place in the Arab world to advance their agendas by lobbying for constitutions that contain provisions for gender equality. Such provisions could have general terms to prevent repetitive amendments and updates; specific provisions to ensure equality and protection could be included in specific legal texts and be updated as needed.

However, political turmoil in a country can lead to inactivity in its legislature, risking roll-backs in already acquired rights. How does one address and prevent these risks while seizing the opportunity for change?

Amendment of Discriminatory Laws

Women's political participation in Lebanon is extremely low due to the discrimination they face in many fields and in the legal texts. Due to the sustained efforts of various activists and civil society, many discriminatory provisions have been amended. However, many discriminatory provisions are still pending amendment, including those in the labor laws, social security laws, and criminal law. Also, provisions leading to the implementation of legal provisions enabling women with equal access to decision-making positions need to be enacted.

Currently in Lebanon, it is of prime importance to address two pressing discriminatory issues: prohibiting domestic violence and enabling women to serve in parliament despite the prevailing traditional patriarchal mentality. It is a priority to address these issues because women exposed to discrimination and domestic violence may not freely exercise their political rights and because adopting a quota is necessary in patriarchal societies that are resistant to women in decision-making positions.

Provisions for the Protection from Domestic Violence

The Lebanese criminal law was recently amended on the issue of so-called “honor crimes.” While such acts were previously not considered crimes and perpetrators were released without any charges, the current text considers such acts to be “crimes” with “attenuated sentences.” Nevertheless, such crimes are still tolerated under the new text. In addition, the current criminal law still contains many discriminatory clauses, and there are no provisions protecting against domestic violence or sexual harassment.

Lebanese civil society submitted a provision protecting women from domestic violence to a parliamentary subcommittee. However, the text was stripped of fundamental protections when amendments were made in the subcommittee under pressure from some political leaders.

Provisions Giving Women Access to Parliament: Incorporation of a Gender Quota

Gender quota provisions, although controversial, seem to be a necessary measure in Lebanon to ensure an acceptable number of women in parliament. The electoral law is in the process of being amended for the upcoming parliamentary elections in November 2014. The preparation of a new electoral law is an excellent opportunity to incorporate a gender quota provision securing a minimum number of seats for women in parliament. Women should seize this opportunity.

The adoption of legal texts encompassing equal rights and protections involves various steps. First, legislation is prepared and then submitted to parliamentary committees. Once adopted by the committee, they are submitted to the government for approval and then discussed in parliament for ratification.

Close monitoring and intense lobbying are necessary in all these steps to prevent amendments that could strip the proposed text of its purpose and to ensure adoption of the appropriate text.

Since the amendment of existing laws and the adoption of new legislation need certain political activity at the level of the parliament and government, it is important to address the available alternative measures to implement changes when political turmoil has decreased such activity.

Alternative Measures

Political instability and lack of accountability make it difficult to address laws that are discriminatory against women and to implement changes. In such situations, the role of civil society organizations and activists is essential to prevent putting women’s issues on hold and to apply alternative measures, whether collective or individual, on the actions by parliament. For instance, many labor courts, in order to address the discrimination against women in local laws, apply the International Labor Organization covenants to the benefit of women, rather than applying the discriminatory text in the labor field.

A decision was rendered in a domestic violence case where a judge had the courage not to wait for the enactment of a law protecting against domestic violence in order to protect the wife and daughters from the husband’s abusive behavior. In this case, a dispute started between the couple a few months earlier when the wife discovered that the husband had a mistress. One afternoon, while she was running errands, she received a message from her husband announcing a “huge surprise.” Worried, she rushed back home to find out that she could not enter the house because her husband had sold it without informing her and changed the locks. She immediately pressed charges. A judge sensitive to women’s and children’s issues was on duty and rendered a decision protecting the wife and two daughters by immediately issuing an order compelling the husband to provide shelter for his family for the night. The following day, the judge issued a decision ordering the husband to provide a home for his family and the new buyer to return the keys to the wife. The wife’s lawyer explained that the right to a marital home supersedes the right of a new acquirer to exploit the property.¹

In the absence of a law protecting against domestic violence, the judge restored to the wife and children the right to the marital home, which had been taken from them.

In Lebanon, personal status relating to matters such as marriage, divorce, and custody is ruled by the specific religious laws of each community. Marriages are governed by the specific personal status law under which the marriage was celebrated. Such religious laws are, in their majority, discriminatory toward women in many respects. However, the law also allows for marriages to be contracted outside the Lebanese territories; in this case, the marriage would be governed by the law under which it was conducted and not by the personal status law of the religious community of the spouses. As a consequence, many Lebanese travel abroad to contract civil marriages. Recently, a couple from different religious communities decided to contract a civil marriage in Lebanon. They performed the agreement before a public notary based on an old legal text, which was never repealed from the French mandate period. Initially, they were unable to register such a civil marriage at the department of personal status. However, after defending their case, they were able to obtain an order from the minister, based on a court decision, enabling them to register their marriage. As a result, and despite resistance to the enactment of a civil law regulating personal status, this couple was able to use an alternative measure.

Avoiding Rollbacks in Acquired Rights

One must keep in mind that amending a text to guarantee equality has the same procedure as amending it again to reinstitute discrimination. Consequently, in times of change, it is equally important to pursue the enactment of favorable

legislation to prevent rollbacks in previously acquired rights.

To avoid such rollbacks, activists should prevent those who do not support women's rights from accessing decision-making positions. This is done through the democratic process, by being involved in every step as voters and candidates, and by closely monitoring the candidates in decision-making positions. Awareness campaigns should be conducted to prevent voters from being misled by electoral campaign "promises" and to help them understand the disclosed and undisclosed history of the candidates prior to making their decision as to whom to select. Media should be involved in the awareness campaigns, in the lobbying process, and in monitoring any threat of rollback.

Women in substantive numbers (ideally, parity) should be included in parliamentary committees in charge of amending discriminatory laws and reviewing projects for protective laws. These women may be from among activists, public servants, women's rights organizations, lawyers, judges, educators, and businesswomen.

Awareness campaigns and training programs on the importance of abolishing discrimination should target the grassroots (all women, men, and children), because once non-discriminatory practices are disseminated among the population, amendments of discriminatory texts will meet less opposition. Awareness campaigns should also target civil and public servants especially since, as seen above, they are able to act in the absence of legal texts.

Endnotes

- 1 See, Nada MERHI, *Violence domestique: magistral précédent de la juge Arlette Tabet*. L'Orient le Jour, September 6, 2013. <http://www.lorientlejour.com/article/831695/violence-domestique-magistral-precedent-de-la-juge-arlette-tabet.html>

MENA Women in the Reformist Process

Isobel Coleman, *Senior Fellow and Director of the Civil Society, Markets, and Democracy Initiative; Director of the Women and Foreign Policy Program, Council on Foreign Relations*



As the Arab uprisings enter a third year of political turmoil, women's rights remain a critical litmus test of the revolutions: to the extent that emerging new governments in North Africa support women's rights, they will be far more likely to deliver on other values that are central to democracy, including freedom of speech and freedom of religion. If they fail to do so, the broader quest for greater freedom and rights is in jeopardy.

So far, the revolutions' track records on women's rights have been disappointing. Women have confronted a number of challenges to gender equality, including conservative social norms, discriminatory legal systems, and a rising wave of religious fundamentalism. In response, female activists, women's groups, and civil society organizations have fought courageously to push for more progressive legal provisions, defend women's public role and rights, and demand political inclusion. Starting from a relatively stronger position, women in Tunisia have largely managed to prevent a backsliding on rights and now appear poised to consolidate their rights in a reconstituted Tunisian political system. Women in Egypt, on the other hand, have lost ground, particularly under the Muslim Brotherhood-dominated Mohamed Morsi government. However, the military's ousting of the Muslim Brotherhood from political power has created a new opportunity for Egyptian women at least to hold onto their hard-won existing legal rights and perhaps even to push for an expansion of rights in the drafting of a new constitution.

Tunisia

Women in Tunisia have long enjoyed the most expansive legal rights in the region, including progressive marriage and divorce laws, significant state investment in women's health and educa-

tion, and robust political participation. During the last years of the Zine el-Abidine Ben Ali regime, women held seven cabinet posts in government, 59 seats in the 214-member parliament, and more than a quarter of the judiciary. Tunisian women also have one of the highest labor force participation rates in the region, with nearly a third of women working. Nevertheless, civil society groups, fearing that a rising Islamist tide would mean a rollback in women's rights, went to great lengths to advocate for political inclusion and gender equality at every step of the transition process. Their consistent mobilization around women's rights forced Rachid Ghannouchi, the leader of the resurgent Islamist Ennahda party, to make numerous pronouncements underscoring Ennahda's support for women's rights in an effort to assuage his critics and gain the support of secularists. "Women's rights are a fact of life in Tunisia," he repeated often, while also stressing that Ennahda would not attempt to alter the country's progressive personal status laws.

The mobilization of women's groups propelled women's rights to the foreground of the political transition process and yielded several victories. Women led a successful campaign to increase the number of women appointed to the High Commission for the Protection of the Revolution, the body in charge of leading the post-revolution legal and institutional reform process. They also successfully pushed for the implementation of a quota system for women's participation¹ in parliamentary elections, where women ultimately won 27 percent of the seats, on par with European countries and outstripping the share of seats held by women in the U.S. Congress. They redoubled advocacy efforts after Ennahda won the most seats in the National Constituent Assembly, the body responsible for drafting the new constitution. Civil society organizations have played a critical role in keeping the drafting committee on track

and ensuring that the draft constitution enshrines the principle of gender equality. Women's rights organizations rallied around several issues of concern, notably helping to shoot down efforts to include shari'a in the constitution and mobilizing thousands to protest a proposed article that referred to "complementarity" between men and women rather than "equality," forcing the Assembly to abandon such ambiguous language.

Overall, strong and persistent civil society groups in Tunisia have so far ensured women's inclusion in the political process, maintained the primacy of gender equality issues, and prevented any significant backsliding on women's rights.

Egypt

Egypt has proved to be a more hostile environment to women's rights. Women have historically been underrepresented in public and political life, gender-based discrimination is built into the legal system, and patriarchal attitudes are deeply entrenched. Although the Hosni Mubarak government had over the past decade passed a series of reforms to the all-important family law that benefited women, these reforms were attacked in post-revolutionary Egypt by religious conservatives as being anti-Islamic and also derided as "Suzanne's Laws" by others resenting their close association with the disgraced former first lady. Moreover, while the reforms scored some *de jure* legal gains for women on paper, they did little to combat the conservative religious discourse² that has *de facto* curbed women's freedoms.

Conservative attitudes about women's place in public and political life hindered women's participation in the post-Mubarak political transition. Immediately after the revolution, only one woman served in the interim cabinet, and, despite the availability of a number of highly qualified female lawyers, judges, and scholars, not a single one served on the constitution committee that revised the electoral laws. One consequential revision of the law was disallowing any electoral quotas for women. As a result, women won fewer than two percent of the seats in the first post-revolution parliamentary elections—a significant

slide from the 12 percent set aside by Mubarak-era quotas. Additionally, under former President Morsi, only two women held cabinet positions, and only five women were nominated to the 50-member constitution drafting committee.

Despite their political exclusion, women's groups continued to stage demonstrations to voice their demands, lead awareness campaigns, and raise gender equality issues in the media. Additionally, civil society activism blossomed to address the widespread use of sexual violence by security forces and thugs in an effort to intimidate women and force them out of the public sphere. Activists founded several groups to rescue women under attack, support victims, convince survivors to speak out, and educate the masses about sexual violence. Mosireen, a media collective, began to document these abuses. OpAntiSH and Tahrir Bodyguard emerged to intervene before, during, and after attacks. Civil society organizations and rights activists have also coordinated public demonstrations and awareness campaigns to push back against the perverse discourse used to excuse assault activities, including a 10,000-person march against sexual violence that featured the catchphrase "the women of Egypt are the red line."³

In addition, groups have pursued legal and political avenues to press for women's rights. Activist Samira Ibrahim, who was a victim of the army's infamous "virginity tests," sued the army doctor who carried out the procedure. Though she effectively lost her case when the court cleared the doctor, she won an important victory when the civilian court outlawed any further use of virginity tests. In March 2013, women's groups succeeded in putting the issue on Morsi's agenda, which launched an initiative to establish a special female police unit within the Ministry of Interior to deal with sexual violence.⁴ The National Council for Women also drafted a law in 2013 to outlaw sexual violence. It was submitted in June 2013 but then put on hold when the Shura Council was disbanded after Morsi's ouster.

Women's groups have also reached out to moderate Islamic leaders to push back against conservative religious ideologues who seek to

strip women of their rights in the name of Islam. Specifically, they worked with the Grand Imam of Al-Azhar, Grand Sheikh Ahmed al-Tayeb, to produce a document affirming women's rights in Islam, including the right to work, the right to participate fully politically, and the right to divorce. That paper was published in June 2013.

Overall, civil society groups in Egypt have fought a difficult battle to address rampant sexual violence, conservative religious orthodoxy, and the exclusive political system. As Egypt took yet another unexpected turn in July 2013 with the ousting of President Morsi, women's groups have regrouped to take advantage of a potentially more favorable political environment. The 35-member cabinet of the new interim government includes three women,⁵ and the 50-member constitution drafting committee includes 10 women—an improvement compared with women's exclusion under President Morsi. Women's rights groups have turned their attention to the constitution drafting process, hoping that they can remedy the unsatisfactory attention paid to gender equality and political participation in the last round. So far, the constitution will include a women's quota for municipal elections.⁶ Women's rights groups continue to push for more political inclusion, recently launching an extensive campaign to demand a women's quota for parliamentary elections as well.⁷ The steps taken by the interim government and the persistence of women's groups in Egypt indicate that Egypt's women's

rights movement, far from a lost cause, is gaining momentum.

Three years into a political transition process unfolding across the Middle East, civil society groups have struggled to hold onto their gains in both Tunisia and Egypt. As these countries continue to work through the messy process of democratization, women's rights groups must continue to press for political and legal institutionalization of women's rights as well as to broaden awareness and nurture support at the grassroots level. At stake is not only the establishment of a legal context for women that will reverberate for years to come, but also commitment to a broader human rights agenda so crucial to the core values of democracy.

Endnotes

- 1 <http://blogs.cfr.org/coleman/2012/01/10/quotas-for-womens-political-participation/>
- 2 <http://journals.cambridge.org/action/displayAbstract?aid=5195240>
- 3 <http://www.cnn.com/2011/12/22/opinion/coleman-women-egypt-protest/index.html>
- 4 <http://www.egyptindependent.com/print/1772126>
- 5 <http://bigstory.ap.org/article/7-killed-overnight-clashes-egyptian-capital>
- 6 <http://middleeastvoices.voanews.com/2013/10/insight-quotas-and-women-in-egyptian-politics-84510/?from=mevlistner>
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MENA Women in the Reformist Process: The Pakistan Example

Farahnaz Ispahani, *Public Policy Scholar, Woodrow Wilson Center; former member of Pakistan's Parliament; and former Media Advisor to the president of Pakistan*

The Middle East and North Africa (MENA) region has one of the lowest rates of women's political participation globally. Democratic change cannot be realized until women have an equal voice in the decision-making processes at all levels of political office and public service. The urge for democracy and the issue of women's rights are not new to this region. The Arab Spring may have brought democratic forces and the issue of women's political and legal rights once again to the forefront, but the region has had indigenous movements for democracy and women's rights for decades. Levels of women's political participation and their legal rights have varied from country to country.

Recent activism continues a long history of women's participation in the MENA region. During the first half of the 20th century, powerful women's organizations emerged in the United Arab Republic of Egypt and developed close ties with women's organizations and activists in Lebanon, the Palestinian territories, and Syria. Women's organizations participated actively in the anti-colonial struggle in the 1940s and 1950s in Algeria and Egypt, among other countries.

For more perspective, let us look at women's participation during historic moments and within earlier movements that pushed for a more open society in the Middle East:

- 1919 Egyptian revolt – During this revolt against British occupation, both men and women participated in street protests. It was the first time in modern Egypt's history that women were seen on the streets participating in a political struggle.
- 1960 Algerian revolution – The National Liberation Front (FLN) had a large number of women supporters who played various roles from combatants to fundraisers. While

women obtained some rights at the end of the revolt, their position in society did not change dramatically.

- 1979 Iranian Revolution – Women had obtained a number of rights under the Shah before the revolution; however, most of these rights were lost after the 1979 revolution. Women had to contend with compulsory *hijab*, lost rights tied to custody and guardianship of children, and could no longer sit as judges or serve as diplomats.
- 1987 First Palestinian Intifada – Women participated at all levels in this uprising, from organizing demonstrations, to hurling stones, to distributing leaflets.

The Arab Awakening also saw high levels of women's participation with variations from country to country. The dilution of democracy since the early protests, in Egypt for example, has reduced space for participation in the political process. When a revolt or revolution succeeds, those who participated are not always propelled into power. Rather, a select few obtain power, and the rest are often left in the same place as before the event.

Societies take decades to transform, and social changes that occur during a revolt may be temporary and are not always incorporated into mainstream society. The society may actually go back to pre-revolution standards, wiping out or suppressing any changes that took place. Granting rights to women, for instance, was often temporary—superficial or symbolic measures without a deeper connection to change in societal attitude. As democratic momentum ends, so, too, does the influence gained and the ability to make equality measures endure.

In most parts of the Muslim world, authoritarian forces amalgamate with religious conservatives

and depend on them for support and legitimacy. Resistance to women's rights and women's issues are often where both of these forces come together for their own reasons. Appeasement of religious fundamentalist forces comes at the expense of women's rights. Often religion is invoked to deny full and equal rights to women. Pakistan, a Muslim-majority country like most in the MENA region, has also suffered from authoritarian and religiously conservative forces that seem to make their main aim keeping women out of the mainstream and away from political leadership positions.

Every political movement has its own social momentum, and how a political shift, change, or revolution turns out will depend on the society from which it emerges. Whether it is the MENA region, Pakistan, Indonesia, or Turkey—each country has its own model. There are countries where women's participation and rights have regressed, such as Egypt. There are also countries where women's participation and rights have progressed, like in Tunisia, because women's access to education and legal rights were well-established before the recent transition. In some cases, women's ability to participate in political life or to have legal rights equal to men has varied within a country based on social status or class. Women from elite social groups have fared better than those from poorer segments.

What will differentiate the Arab Spring revolutions from past ones is the degree to which the political revolution triggers a social revolution wherein women gain meaningful access to and representation in political institutions. Notwithstanding women's increased participation in the public sphere as workers, women's interests have been woefully underrepresented in the political process. Thus, women's participation in the formal workforce, albeit at disproportionately lower rates than men, should not be mistaken for political representation and equal treatment.

Women's share of seats in the national parliament is the most common country-level indicator of their political empowerment. It is also the only political indicator used to track progress toward the executive branches of government making

informed policy decisions on issues affecting women. Regarding the Millennium Development Goals of gender equality and empowerment of women, both percentagewise and compared to other regions of the world, the MENA region has the smallest share of seats in national parliaments at less than 6 percent. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by 13 MENA countries, set a target for women of 30 percent of seats in national parliaments. This is clearly an ambitious goal from where we sit today. The policy intervention that is most effective at increasing the proportion of women in public office has been the establishment of quotas that reserve a specific number or percentage of seats for women in political parties or in local and national assemblies. At least 45 countries—including rich and poor countries, and old and new democracies—have used quotas to help improve women's participation at either the local or national level. Most of their systems reserve a critical 30 to 40 percent of parliamentary positions.

Pakistan, as an example, has reserved seats for women in parliament, which has helped women gain a seat at the table. The parliamentary elections held on February 18, 2008 for national as well as state (provincial) legislators proved to be a defining moment for greater, more informed, and effective participation of women parliamentarians in Pakistan. Following the increase in the quota for women representatives, 77 female parliamentarians were elected to the legislature and 17 to the senate. Until the election law changed in 2002, women made up only 2.3 percent of parliament, and Pakistan was ranked 105th among countries worldwide for female representation. Major change came with an increase in the number of reserved seat and the elections in 2008. Subsequently, 225 women members of parliament were elected to national and state legislatures. This strongly improved Pakistan's position in the Inter-Parliamentary Union's table of female representation, lifting the country to number 46 worldwide with 22.5 percent of women as members of parliament (MPs).¹

The increase in female representation in Pakistan's Parliament made it possible for women to achieve prominent positions in the legislature and government, which provided a platform for women to influence positive change. Speaker of the National Assembly Dr. Fehmida Mirza made history in March 2008 when she was elected with over a two-thirds majority to become the first woman speaker of a democratically elected legislature, not only in Pakistan but in the entire Muslim world. Female MPs chaired nine significant committees in the national parliament and state legislatures and held the two most important portfolios in the federal cabinet: minister of foreign affairs and minister of information. Similarly, the Benazir Income Support Programme, which remains one of the key mechanisms of poverty alleviation and employment creation for the poorest women and their families, is also headed by a woman MP.²

The surge in the number of women parliamentarians in Pakistan's national parliament and provincial legislatures had the effect of moving the rights-based agenda into the political mainstream, particularly as these relate to women and girls. Women in the parliament set up a Women's Parliamentary Caucus (WPC) to unite women beyond party lines and to build consensus on issues concerning women to ensure that gender concerns are adequately transformed into legislation, policies, and programs. During the 2008-2012 legislative period: "The performance of women MPs within the Parliament has improved appreciably."³ Twenty-six women introduced 12 out of 18 private member bills and assumed prominence through their active role as members in legislative and non-legislative business of the House, in standing committees, and by promoting and advocating public interest agendas outside the parliament.

Here is a list of pro-women legislation enacted by the Pakistan People's Party (PPP) coalition government from 2008 to 2012:

1. National Commission on the Status of Women, 2012
2. Women in Distress and Detention Fund (Amendment) Act, 2011

3. Protection Against Harassment of Women at the Workplace Act, 2010
4. Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011
5. Domestic Violence (Prevention and Protection) Bill, 2009
6. National Commission of Human Rights Act, 2012
7. Acid Control and Acid Crime Prevention Bill, 2010

Quotas remain a key way to ensure women's participation in the political realm. The biggest challenge facing women in the MENA countries that experienced the Arab Awakening is transforming their leadership and influence during the revolutions into *senior* political positions. Whether in government or in parliament, elected or appointed, women need to be at the table. The first step toward achieving the goal of equal political footing has to be a one-stop agenda that all civil society groups, women's groups, and rights groups throughout the MENA region agree on and pursue as one interest group. That is the essential reason for championing legislation that brings women's quotas into the system. These quotas should be present at all levels of government—from district and local councils all the way up to national parliament.

The key to successful quotas is proportional representation similar to that used in Pakistan. The mixed system in Pakistan has a fixed number of seats for women via quotas linked directly to the number of seats a party wins in an election cycle. Women in Pakistan can run in elections as independent candidates or as candidates of a particular party. Parties are usually loath to give women directly elected seat tickets at this point, with a few exceptions: the first woman speaker of the house and first woman foreign minister in Pakistan's last government were both directly elected. Although there are naysayers about the actual influence that women elected through quotas have, I have found in my experience that a seat at the table is far better and more useful while fighting for women's rights and for other social and economic issues than sitting outside the corridors of power.

Endnotes

- 1 All statistics in this paragraph were sourced from: “Inter-Parliamentary Union,” December 12, 2013. <http://www.ipu.org/english/home.htm>.
- 2 Ibid.
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Litigating the Right to Dignity to Promote Women’s Equal Rights in Palestinian Courts

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Calls to include clauses on equality and non-discrimination based on gender in the new constitutions in the Arab world have increased during the transitional period to democracy following the revolutions of the Arab Spring. Women’s equal rights, it is rightly argued, cannot be achieved without embedding into these constitutions the right to equality and the prohibition of gender-based discrimination. However, the questions I would like to pose are: how can women’s equal rights be ensured *de facto* if new constitutions do not include equality clauses? And how are women’s equal rights achieved even when equality clauses have been constitutionalized but not enforced? The strategy I would like to address here considers the legal status of women’s rights, whether or not they are addressed in constitutions. I will discuss the Palestinian context where the right to equality has been anchored in the constitution. However, my arguments are applicable to newly drafted constitutions in Arab countries that are still debating whether the right to equality should be embraced.

The Palestinian Context

In September 2011, the United Nations Development Programme (UNDP) issued a study that reviewed Palestinian legislation from a women’s rights perspective.¹ The study examined legislation in the fields of personal status law, criminal law, labor legislation, and political participation.

It offered insights into the relationship between legal reform and socio-legal studies and aimed to provide debate on efficient law reform affecting the rights of Palestinian women. This was in the context of the continuing struggle against Israeli occupation, which significantly affects the ability of women to achieve equal status. The study found that legislation does not conform to international laws (e.g., International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; and the Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW]). In the field of personal status law, the study addressed legislation permitting girls over the age of 14 to marry, requiring that consent of a guardian for marriage applies only to women, and easing the divorce process for men but not for women. In the criminal law context, the perpetrators of “family honor” killings can be exempted from judicial sanction. There is lack of specialized procedures to deal with sexual abuse suspects, and marital rape has not been criminalized.²

In 2003, the Palestinian Basic Law, which is regarded as the main constitutional document in the Palestinian territories, was amended to acknowledge the right to equality. The UNDP study found that the Palestinian Basic Law adheres to human rights standards, mainly with concern to the right to equality; but, in reality, equality has not been achieved. One of the main conclusions

of the study was that lawyers in court do not use the right to equality anchored in the Basic Law, nor does this right comprise part of the daily legal practice or discourse. Thus, it recommended the adoption of strategic litigation as a main tool in advocating for women's equal rights.

I wish to adopt the recommendations of the UNDP study. However, I propose the adoption of a strategy that aims to develop the litigation of "human dignity" in courts when women's rights are at stake. Litigating the right to dignity is required to achieve women's equal rights and fulfill the larger goal of social justice. Being under Israeli occupation on the one hand and struggling for its end on the other hand might limit the process of developing "human dignity" within the Palestinian court's jurisdiction. However, being in a transitional period toward establishing a free and independent state, judges, lawyers, legal scholars, and law students would have a major role in establishing new legal standards in the Palestinian constitutional regime based on the human dignity of all persons.

Why Dignity?

The modern concept of human dignity was established in international legal instruments drafted and adopted by the United Nations after World War II. In light of the events of WWII, the international community formed a wide consensus to set new standards of international law based on the human dignity of the person.³ Thus, the principle of human dignity became the legal basis for all human rights. It became clear that there is no justification for human rights without human dignity. The right to equality could not be recognized without first recognizing the principle and the right to dignity.⁴ The Universal Declaration of Human Rights was the first and primary document to adopt human dignity and addressed the concept in Article 1: "All human beings are born free and equal in dignity and rights..." As a result, many countries revised their legal regimes by agreeing to these new norms of international law. Human dignity became widely anchored in many constitutions.⁵

Dealing with Oppositions Against the Concept of Human Dignity

The litigation of human dignity might create rejection that reflects the debate of applying Western human rights discourse to Arab and Muslim countries. However, Muslim scholars tend to note that human dignity has origins in the Qur'an. According to Abdullah Al-Ahsan, the Qur'an established the concept of dignity. Verse al-Isra 17:70 of the Qur'an states, "We have bestowed dignity on the progeny of Adam and conferred on them special favors, above a great part of our creation." Another verse (al-Munafiqun 63:8) addresses dignity with respect to dignified status: "And honor (al-izza) belongs to God, to His Messenger and the believers." According to Al-Ahsan, "dignity is bestowed through God's act of creating Adam and breathing into His Own Spirit. Since all human beings originated from Adam and his spouse every single human being possesses this dignity regardless of color, race, religion and tribe."⁶ During the 20th century, reformers and leaders began reconstructing values of human dignity, a process resulting from European colonial occupation as well as nationalist movements.⁷ This process included debates about the applicability and connection between human rights and Islam. Created and motivated by attempts of nations after World War II, the goal was to establish an international human rights legal system based on the concept and the principle of human dignity. In 1969, and as part of this process, the Organization of Islamic Cooperation (OIC, formerly the Organization of the Islamic Conference) was established. It became the second largest inter-governmental organization (after the United Nations) with 57 Muslim states as members. In 1990, the OIC adopted the Cairo Declaration of Human Rights (CDHR), which provided an overview of the Islamic perspective on human rights. The CDHR affirms the *shari'a* as its source yet also reaffirms the commitment to the Universal Declaration of Human Rights with reference to human dignity.

The contemporary basis for setting human dignity as the underlying principle for equality

and prohibiting discrimination against women has been set by CEDAW, known as the international bill of rights for women. The preamble to CEDAW emphasizes that “discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.” In 1993, the 171 members of the UN adopted the Vienna Declaration and Programme of Action during the World Conference on Human Rights in Vienna.⁸ Article 1(18) established comprehensive protection against violations of women’s rights and made the explicit connection between the violation of women’s rights as a result of gender-based violence and the violation of their human dignity. The article provided specific protection against sexual harassment and violence.

The correlation between dignity and gender had found its roots in Arab regional legal instruments as well, of which all Arab states are members. The revised Arab Charter on Human Rights (2004) establishes equality in respect to human dignity. On the same regional level, a correlation between human dignity and gender can be found in the Cairo Declaration on Human Rights mentioned above. The revised Arab Charter on Human Rights and the CDHR differ, however, in their reference to dignity in the context of gender equality. While the Cairo Declaration refers to civic equality between men and women, the Arab Charter refers to the Islamic *shari’a* court. Despite differences in the legal texts, these documents share the underlying belief of human dignity of the person—men as well as women.

Litigating Human Dignity in Courts

Litigating “dignity” within a constitutional law framework establishes norms for state action and constrains the private action of individuals. Michael Rosen writes, “‘Dignity’ in a constitu-

tional law simply sets boundaries for individuals’ behavior beyond which the state is called on to exercise its coercive powers and intervene.”⁹ In the Palestinian context, contrary to modern constitutions, the Palestinian Basic Law does not explicitly establish human dignity as a basic principle in its preamble or within its text, including its Bill of Rights (Articles 9 to 33). However, it establishes the recognition of human dignity indirectly through reference to regional and international instruments, which are set to be the basis for the rights established in the Basic Law. Article 1 stipulates, “Palestine is part of the large Arab world” and, as such, it is bound by the regional legal instruments that acknowledge and establish the human dignity of persons.¹⁰ Moreover, Article 10(1) of the Basic Law declares the commitment of the Palestinian Authority to become a party in regional and international conventions. After the recognition of the Palestinian territories as a non-member observer state at the UN on November 29, 2012, it could now become party to international conventions including, most importantly in our regard, CEDAW.

Looking to the courtroom, litigating violations of human rights requires a comparative review of case rulings issued by different jurisdictions. Courts in different jurisdictions have recognized the violation of “human dignity” from a different perspective. For example, in *Ferraiuolo v. Olson*,¹¹ the Supreme Court of Canada discussed Ferraiuolo’s claims of his rights to his mother’s pension and damages under the Canadian Old Age Pension Act after his mother was killed by a motor vehicle while she was crossing the street. While examining the establishment of the discrimination argument, the court adopted the following definition of dignity:

Admittedly, there are different concepts of human dignity. But in *Law v. Canada* (at para. 53) the court identified those which are arguably amongst the most important to human beings: the realization of self-determination, personal autonomy, self-respect, self-worth, physical and psychological integrity and empowerment. Legislation running afoul of one or more of these elements, and based on an enumerated or anal-

ogous ground, will therefore be presumptively discriminatory.¹²

In other countries where social norms are stricter and limit women's rights, courts have acknowledged the infringement of human dignity when women's rights violations were concerned. In *Madhu Kishwar & Ors. Etc v. State of Bihar*,¹³ the petitioners challenged customary laws that excluded tribal women from inheritance of land or property. The Indian Supreme Court upheld claims on a gender-based discrimination case regarding inheritance while basing its reasoning on human dignity as the basis for right to life and property.

In *Eedi Ganiraju v. The State of Andhra Pradesh*,¹⁴ the Indian Supreme Court heard the case of the rape of a daughter who was impregnated by her father. Both father and daughter were non-citizens in India, originally from Bangladesh. The court also applied constitutional rights on non-citizens, especially with regard to the right to life being included within the scope of the right to human dignity:

As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her under Article 21 was thus violated.

Human dignity has also been the basis for court rulings in cases related to sexual harassment against women workers. In *Vishaka v. State of Rajasthan*,¹⁵ the Indian court discussed the common phenomenon of sexual harassment against working women and ruled:

The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility from ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive.

The court added the interconnection between human dignity and equality, stating:

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance.

While this strategy might also encounter some opposition from lawyers or mainly judges, I aim to provide a persuasive pledge for feminist and human rights litigators: to acquire women's equal rights based on the violation of human dignity. This process should involve practical trainings for the use of human dignity in constitutional law for both lawyers and judges in different jurisdictions. This strategy will provide a tool to achieve the greater goal of women's equal rights in a just society.

Endnotes

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- 3 "Human Dignity and Judicial Interpretation of Human Rights," Christopher McCrudden, *European Journal of International Law*; <http://ssrn.com/abstract=1162024>.
- 4 McCrudden, 26-27.
- 5 For example, see Article 1 of the German Basic Law http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0015
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- 9 *Dignity: Its History and Meaning*, Michael Rosen, Harvard University Press, 90.
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- 12 See also *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.
- 13 *Madhu Kishwar & Ors. Etc v. State of Bihar*, 1996 AIR 1864, 1996 SCC (5) 125.
- 14 *Eedi Ganiraju v. The State of Andhra Pradesh*, Writ Petition No. 16827 of 1997 [2006] INAPHC 304 (28 April 2006).
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Participation and Empowerment: The Struggle of Egyptian Women Continues

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Since receiving the invitation from the Wilson Center to speak about political participation and economic empowerment of Arab women amidst changes in the Middle East, I have struggled to find the best way to tackle it. The reason for this is probably because the economic and political empowerment of women since the start of the so-called “spring” in the Arab world has been virtually non-existent. Similarly, governments tackling critical political, legal, economic, and social reform have also been absent. A reformist process was not detected in any of the countries that have witnessed the Arab Spring. On the contrary, these issues have taken a backseat to other issues, which, at best, can be described as 3rd century issues—issues not worthy of this monumental juncture in the region’s history. Women’s aspirations over the past few years have been reduced to the mere protection of previously acquired gains. Worst of all, women’s issues ever since the Arab Spring have been used as a distraction. Previously, the focus was on lowering the minimum age of marriage and decriminalizing female genital mutilation (FGM), rather than fighting corruption or creating poverty alleviation measures.

As an introduction to using Egypt as a case study, I will give you a brief overview of the Middle East and North Africa (MENA) region through the 2013 Global Gender Gap Report prepared by the World Economic Forum as well as the United Nations Development Programme’s (UNDP) 2013 Human Development Report.

The Global Gender Gap Report examines the gap between men and women in four fundamental sub-indices: 1) economic participation and opportunity; 2) educational attainment; 3) health and survival; and 4) political empowerment.¹ The Global Gender Gap Index tracks the strong correlation between a country’s gender gap

and its national competitiveness, income, and development. The overall regional performance on the Global Gender Gap Index in 2012 places the MENA region at the lowest level globally. This ranking slightly varies when we move to the sub-indices.

The economic participation and opportunity sub-index once again ranks the MENA region at the lowest level globally. As for the educational attainment sub-index, the MENA region ranks fifth globally—better only than Sub-Saharan Africa. For the health and survival sub-index, the MENA region is in fourth place, just behind Europe and ahead of Sub-Saharan Africa and Asia. The political empowerment sub-index ranks the MENA region at the lowest level in sixth place.²

According to the UNDP 2013 Human Development Report, *The Rise of the South: Human Progress in a Diverse World*, “over the last decade, all countries accelerated their achievements in the education, health, and income dimensions as measured in the Human Development Index (HDI)—to the extent that no country for which data was available had a lower HDI value in 2012 than in 2000. As faster progress was recorded in lower HDI countries during this period, there was notable convergence in HDI values globally—although progress was uneven within and between regions.”³ Despite their previous achievements, countries in transition such as Egypt, Tunisia, and Syria have taken a backseat compared to the Gulf countries. The recent appointment of 30 women to the Saudi Shura Council has considerably improved the rating of Saudi Arabia.

From examining the two reports and following developments on the ground, one concludes that Arab countries in transition are far more

complicated and their internal dynamics too diverse to be analyzed collectively. A closer look will reveal that the intricacies of the upheavals in Tunisia, Egypt, and Libya leave little to no room for comparison.

For this reason, I will use the case of Egypt in more detail. It is the largest and most populous country in the region, and what happens in Egypt typically spills over to affect the rest of the region. Egypt has also witnessed more developments than any other nation over the past several years. Isobel Coleman compared the activism and vigor of both the Egyptian and Tunisian feminist movements and the implications of political developments in both countries after the Arab Awakening on women's struggle for equal rights. Coleman rightfully concludes that the Tunisian transformation is more stable and promises more gains for women than the Egyptian one. The critical question, however, is who will provide the model? All indications so far point toward Egypt providing the model not only for Tunisia but also for Turkey. The rise of militant political Islam parties in Egypt has encouraged their counterparts in Tunisia and Turkey to take positions that would roll back women's acquired rights. A case in point is the fact that Tunisia has delayed informing the UN Secretary General of the withdrawal of its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Tunisian interim government made this decision nearly three years ago in early 2011, shortly after the removal of former President Zine El Abidine Ben Ali.

The struggle of Egyptian women for equal rights goes back to the dawn of 19th century. Women achieved many milestones. They got their right to education early in the 20th century. Farahnaz Ispahani correctly mentioned that in the mid-1950s, Egyptian women were the first to be represented in parliament. All Egyptian laws have been modernized to ensure equal rights short of the personal status law. Egyptian women are represented in almost all professions, and the list of successful women is very long. However, women could have achieved more if it were not for the exploitation of religion as an alibi

to promote a culture that pushes women to the backseat. Egyptian women wanted their freedom when they took to the streets in 2011 in what was thought to be a "spring."

In the past almost three years, Egypt's government has gone under military control, by the Supreme Council of the Armed Forces (SCAF). This was followed by seemingly free elections that ushered in what was thought at the time to be a democratic president, two houses of parliament, several new governments, and a new constitution. Uncertainty has been the hallmark of all interim governments and Islamist-dominated lower and upper houses of parliament during this period. Egypt also witnessed an Islamist president suspend the rule of law in order to push through a flawed constitution—in a period that was marked by decisions that were repealed as quickly as they were issued. Egyptians eventually realized that their country was heading down a dangerous path—a path that threatened to further polarize and divide a nation that has been a model of unity and tolerance throughout history. Popular discontent mounted and eventually resulted in the June 30, 2013 ouster of former President Mohamed Morsi.

To answer the question posed by Dr. Haleh Esfandiari while introducing the panel: how have women been involved?

Women have been at the frontline of Egypt's various waves of political upheavals. Defying all taboos and tradition, women took to the streets standing side-by-side with their male compatriots. They were there in January 2011 when protesters were shot at. They were there again in February 2011 when protesters were trampled and attacked by camels and horses. In November 2012, they were there in front of the presidential palace where protesters were attacked by supporters of the Islamist government. And they were also there in June 2013 to demand the removal of then President Morsi from power. Egyptian women's activism has been strong—whether forcing the change or monitoring its path.

Egyptian women could have easily adopted the role that society tries to cast upon them and stayed at home, willing their male compatriots

along and cheering from a distance. Instead, they chose to be active participants in these historic movements, which have no doubt contributed to shaping the nation's future. It is, therefore, quite bewildering that the same society they helped protect and the way of life they fought to uphold has chosen to completely ignore and exclude them from the national rebuilding process. Women must have a seat at the table.

Egyptian women's political participation was dealt several blows during the transition: from the SCAF government of February 2011 canceling the women's quota in parliament to the Islamists giving them less than 2 percent representation in parliament, down from the 12 percent they held in 2010. Women had token representation in the Islamist's governments. The female deputy president of the Supreme Constitutional Court and female heads of universities were also axed. Women were instead exploited politically—whether as make-believe protagonists of women's issues who defended FGM and child marriage or as human shields in Cairo's Rabaa Square.

Women's issues became a distraction, along with trivial issues that Egyptians had already put behind them hundreds of years ago, and everything else was brushed aside. Instead of studying how best to fix the ailing economy or rebuild a modern Egypt fit for all its citizens and future generations, Egyptians were stuck in endless discussions about the place of religion in society and bickering over tertiary issues.

Economic participation by women worsened as Islamists demonstrated a lack of vision and lack of a roadmap. Inaction and sidelining important issues have led to a sharp decline in foreign direct investment, which has had a direct effect on economic output. This has left many sectors of society unable to take advantage of what should have been a surge in foreign investment following each of Egypt's key events of the past three years. According to *Economy Watch*: "Since the turn of the new millennium, the pace of structural reforms... helped Egypt to move toward a more market-oriented economy and has attracted more foreign direct investments as a result. The economy's performance... has been experiencing

continuous economic growth... In the post-Mubarak era, the Egyptian economy faces many challenges to stabilize the economy."⁴ No concrete reformist measures were taken to attract investment; alleviate the budgetary deficit; or address inflation, soaring unemployment, and dwindling demand on Egyptian labor, both domestically and regionally.

Egyptian women suffer the sting of the economic downturn—more women than men are jobless. According to Egypt's Central Agency for Public Mobilization and Statistics (CAPMAS) for 2012, around 9.6 percent of males in the labor market were unemployed, compared to 24.7 percent of females,⁵ and 80 percent of males in the labor market are employed compared to 20 percent females.⁶

According to *Economy Watch*, the unemployment rate in Egypt in 2010 was 9.1 percent. In 2013, the figure jumped to 13.55 percent, and the forecast for 2014 is 14.26 percent.⁷ Furthermore, "Just having as many women in the labor force as men could boost economic growth by 5 percent in the United States, 9 percent in Japan, and 34 percent in Egypt, the IMF said."⁸

According to the 2012 Global Gender Gap Index, Egypt's overall ranking dropped to 126, down from 109 in 2006. The breakdown for Egypt's rank is: 124 for economic participation; 110 for educational attainment; 54 for health and survival; and 125 for political empowerment.

At first it would appear that Egypt has continued to go downhill and witness systemic destruction since February 2011. A more in-depth analysis of the situation, however, will reveal that Egyptians have been given another chance. They are making every effort to learn from their mistakes and to avoid falling into the same traps. There seems to be widespread consensus over the key steps to reform. Egyptian women have nevertheless emerged stronger and continue to force themselves onto the political scene. They proved to be a formidable force not only as a voting bloc but also in breaking taboos on sexual harassment and sexual violence, which hampered their participation. With a well-defined and nationally agreed upon roadmap, women joined their male

compatriots to seize the renewed opportunity to write a constitution that restores the secular civil identity of the state—a constitution that reflects the new Egyptian balance of power as well as the progress achieved by the global community in the area of human rights. They are writing a constitution that recognizes citizens as equal, regardless of sex or religion. So far, the ongoing process has partially rectified the previous damage done to the constitutional status of women. Women are no longer recognized only for their reproductive role. The ceiling on women's equality with men is no longer confined to the restrictive and controversial “provisions” of *shari'a*, but, rather by the provisions of the constitution, guided by the flexible “principles of *shari'a*.” The state is committed to ensuring gender equality. It is also committed to implementing the ratified international conventions on human rights. Entities in charge of women, children, and human rights are elevated to independent and monitoring bodies. More importantly, the article on non-discrimination is brought into closer harmony with international human rights standards.

The embattled situation of women in Egypt begs the question of whether the liberals of 2013

really have gender equality as a basis for all-inclusive nation-building on their agenda, or if they are any different than their Islamist predecessors. It is still too early to judge the outcome of the current process. Egyptians are nevertheless united and determined to regain their civic identity and the rule of law.

Endnotes

- 1 http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf
- 2 Full analysis of the Global Gender Gap Index's sub-indexes is available at http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf
- 3 http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf
- 4 <http://www.economywatch.com/economic-statistics/country/Egypt/>
- 5 <http://www.dailynewsegypt.com/2013/03/04/capmas-unemployment-reaches-3-5-million/>
- 6 Egypt's Central Agency for Public Mobilization and Statistics CAPMAS 2013 Statistics Year book <http://www.capmas.gov.eg/>
- 7 http://www.economywatch.com/economic-statistics/Egypt/Unemployment_Rate_Percentage_of_Labour_Force/
- 8 <http://www.reuters.com/article/2013/09/23/us-imf-gender-idUSBRE98M11Q20130923>

The Role of Women in Economic Reform of the MENA Region

Fatima Sbaity-Kassem, *Former Director, UN-ESCWA Centre for Women*



Reform is the ultimate goal within a setting of conflicts, revolts, uprisings, and popular social movements as those we have witnessed in some Arab countries since 2011. In this setting, one sees that most development indicators intensified: poverty; job scarcity due to low investment; high unemployment among men and women, especially the youth; inequitable distribution of income, which increases the gap between the rich and the poor; widening social cleavages and the disappearance of the middle class; heightened religious extremism; lingering gender imbalances and widening gender gaps; and wage discrimination where women receive less pay for work of equal value.

Against this backdrop, the role of women in economic reform becomes most difficult, not only for women but also for men. Does violence and political instability leave space for reform? And what could be the role of women in economic reform? The short answer to the visionary yet timely concerns raised by the Wilson Center is that women's involvement in the reform process of democratizing countries—or those still immersed in the chaos associated with violence and unrest—remains limited. I will explain why by sharing facts and statistics, highlighting challenges and barriers, and offering a few pragmatic recommendations to activate women's role in economic reform.

We must recognize that reform is a holistic process in which economic, social, political, legislative, and administrative domains are interdependent and interlinked, including reform of the educational and health sectors. Reform initiatives are often resisted in societies enshrined with patriarchy, gender bias, and a political culture unfriendly to women. Moreover, in a region marked or “cursed” by unrest, political instability, occupation, and armed conflict, women and

children are the most affected. Violence and wars have always had a differential impact on women and children.

Nonetheless, this is all the more reason why women should not be marginalized. Their involvement in any reform process becomes not only crucial but also a necessity if national development and economic growth are to be attained and democracy consolidated. These countries cannot afford to ghettoize half of their human capital: women. Women's potential contribution to the reform process must be tapped and women mobilized as fully-fledged citizens.

Facts and Figures

I will share with you facts and figures about women's share in the labor force, the most commonly invoked indicator for women's economic participation. This is the baseline from which reform initiatives should start. On average, women account for 29 percent of the 22 Arab countries' labor forces. This is one of the lowest rates worldwide. Granted, however, there are wide disparities across Arab countries. For instance, women comprise 43 percent of the labor force in Comoros, Mauritania, and Somalia; 30 to 35 percent in Morocco, Lebanon, Tunisia, Egypt, and Sudan; 26 to 28 percent in Algeria, Yemen, Syria, Jordan, and Kuwait; 20 to 25 percent in Bahrain, Libya, and Iraq; while the lowest shares, 13 to 18 percent, are found in the other four Gulf countries: Oman, the United Arab Emirates, Saudi Arabia, and Qatar.

On average, 70 percent of working women are in the services sector. This is understandable, given that the region is more service- rather than industrially-oriented. The rate of female economic activity is highest in Yemen where 88 percent

of adult women (15+ years) worked in agriculture in 1999. In 2008, Morocco had 60 percent, Iraq had 51 percent, Egypt had 47 percent, and the Palestinian territories had 28 percent of women working in the agricultural sector. In 2010, Syria had 24 percent. These rates are high in the agricultural economies but decline to less than 10 percent in oil-producing and non-agricultural countries. Much lower female economic activity is recorded among young women (between 15 and 24 years).

These dismal rates translate into high rates of female unemployment, compared to men. The highest female unemployment rate is in the conflict-stricken Palestinian territories (26 percent) and countries of the Arab uprisings (Yemen at 40 percent, Jordan at 24 percent, Iraq and Egypt at 20 percent, and Syria at 22 percent). The regional average rate of female unemployment is the highest across the globe. Such high unemployment rates imply that women are actively seeking employment and not finding it. This may be attributed to globalization and economic recession accentuated by political instability, unrest, and the popular uprisings, but also to the quality of education and fields of specialization that do not match market needs.

However, one must go beyond numbers and number-crunching. Statistics may be misleading. For instance, the shares of women in the labor force in some Gulf countries include non-nationals (foreign workers). Moreover, the public sector is the highest employer of men and women in these countries. Another caveat is that sex-disaggregated statistics on the economic performance and contribution of women are often unreliable and inaccurate. Data on women in the agricultural and informal sectors are often underestimated. Their work at home is undervalued and is not accounted for in national accounts. Thus, any estimation of women's modest economic contribution to the gross national product should be taken with caution. Thus, if women's economic contribution is so modest, how do we expect them to be effective partners in the economic reform process?

Women's educational gains did not transform into economic empowerment. Many studies establish a direct relationship between women's education and their economic participation. There has been a quantum leap in women's educational attainment compared to the 1970s. For instance, in several Gulf countries and Lebanon, female enrollment at the tertiary level surpasses that of men—though this did not translate into matching gains in economic participation and/or meaningful contributions to the economy. Once women's economic contribution expands, it will be in the nation's interest to involve them in governance and the reform process as decision-makers and CEOs in the business world and the private sector. However, women's economic contributions are undervalued, underestimated if not invisible, and intangible. This is often referred to as “feminist economics,” though it does not tell the whole story.

Barriers and Challenges

Women's issues are relegated to the backburner in almost all of the democratizing countries, whether in those undergoing upheavals or not. Women stood side-by-side with men in the uprisings but were slighted thereafter. The transitional committees and reform processes failed to include women as partners commensurate with their active involvement in the uprisings. However, women grumbled and lobbied. They were not passive and demanded to share in decision-making and the reform process.

The rate of female economic activity remains low due to legal, cultural, and patriarchal barriers. Women's efforts to start their own small- and medium-sized enterprises (SMEs), except for micro-credits, are blocked by discriminatory laws and/or intimidating inheritance laws.

As businesswomen and entrepreneurs, women have unequal or limited access to credit and financial resources. Their economic rights are discriminated against, including those pertaining to opening bank accounts or taking out loans with preferential interest rates. Women receive lower wages than men for work of equal value

(wage discrimination). Also, their opportunities for recruitment, promotion, and training are not equal to those of men. Above all, their legal rights impinge on their enjoyment of full and equal access to financial resources, especially when they are heads of households, as happens during wars and conflict. Add to these that women's overall economic contribution is underestimated and undervalued in the domestic, agricultural, and informal sectors.

There is a dark side to the Arab uprisings that cannot be dismissed as irrelevant due to its active role in the economic and reform process: the rising violence against women in all its forms. This includes sexual harassment, economic violence, psychological violence, and physical displacement, especially of women and children refugees. The differential impact on women includes an increased number of female heads of household, feminization of poverty, and difficulties in balancing the multiple tasks of nurturing and making a living while their spouses are away. An article in one of the dailies reports that women's displacement got them out of their kitchens—it implies that their refugee status forced them to work for a living under dire circumstances of war and conflict.

Gender imbalances are greatest in decision-making and leadership positions in the public political domain. Moreover, the gains over time in women's leadership in the private sector surpass those in the public sector, worldwide. In other words, women's attainments in education have translated into relatively higher economic participation as well as in senior-level decision-making and CEO managerial posts. However, these gains, against theoretical expectations, did not translate into higher female parliamentary representation or public leadership posts to narrow the lingering gender gaps. These gaps still exist globally, but more so in this region despite some recent improvements. Male domination in the political domain prevails and persists.

A Few Recommendations

Democratizing governments must involve women in the reform process as a priority and exert serious efforts to create a gender-sensitive and politically stable environment. This will increase public and private investments as well as generate more jobs and employment opportunities for women and men.

Gender-sensitive legislation and laws must be enacted to eliminate gender discrimination in the work place and empower women economically.

Special measures must be taken, such as quotas, at all levels including in decision-making positions; and there must be incentives for the private sector to promote more women to leadership positions.

Once women assume leadership positions in large numbers, a critical mass of CEOs and decision-makers in the private sector is inevitably created. Governments will eventually recognize that it is in the national interest to involve more women in governance and economic reform. However, globally at the moment, Fortune 500 reports that female CEOs represent no more than 10 percent.

Economic violence can be eliminated with political will and women-friendly legislation. For instance, improving women's mobility and allowing women to work outside the home; providing women with access to capital, credit, and land ownership; working on equitable inheritance laws; and accepting that women may be heads of households just as men are.

Compile sex-disaggregated statistics to form the foundation for economic reform including foreign direct investment, taxation, finance, foreign trade, fringe benefits, and social security networks. Once the gaps are identified, solutions are easier to find.

In releasing the 2013 report on *Women, Business, and the Law*, World Bank President Jim Yong Kim said, "When women and men participate in economic life on equal footing, they can contribute their energies to building a more cohesive society and more resilient economy." This is true. For instance, as Saudi Arabia introduces new laws encouraging women to open their own, albeit segregated, businesses, one finds more

and more successful businesswomen and entrepreneurs, serving as role models to other women.

Conclusions

In order to activate and invigorate the role of women in economic reform, legal barriers should be removed. The region has the least protection laws related to violence against women, including economic violence. Only Algeria and Morocco have laws on sexual harassment in the workplace.

There is a dire need for a strategic vision to combat the feminization of poverty, women's unemployment, and female illiteracy—half of Arab women are still illiterate. This may involve a shift from neoclassical economic thought and policies to a more liberal, women-friendly, and gender-sensitive approach.

Governments must realize that it is in their national interest for women to take an active part in governance and reform and become full partners in the reform process.

Finally, for their part, women should lobby for gender-sensitive legal reform, including non-discriminatory laws and legislation, and implementation of international conventions including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and International Labor Organization (ILO) conventions on women's employment and rights. Women should also venture into new areas and diversify educational specializations, impose their presence, and build alliances with key intervention points in order to carve a role in the reform process: this has yet to happen.



Tunisians Call for Equality

Anware Mnasri, *Judge, Administrative Court of Tunisia*

Tunisians are pushing for the foundation of the Second Republic to be rooted in the ideals of democracy and pluralism.¹ The National Constituent Assembly (NCA) was established in 2011, and participants were elected to the Assembly by the people. The NCA is charged with writing a new constitution to guarantee rights and freedoms for all Tunisians. The Tunisian people widely demanded a new constitution after the revolution, proving that the protection of human rights was among their top priorities. Civic responsibility triggered the revolution, beginning a national dialogue, which has continued as the Assembly drafts a constitution that captures the Tunisian experience.²

Civil society associations throughout Tunisia have had a voice in creating the new constitution. So far, three versions of the constitution have been

released to the public, and each version has integrated proposed recommendations from various civil groups. Key recommendations from feminist and women's associations focused on making sure the constitution represents all Tunisians, regardless of differences. Groups expressed that the constitution should reflect the principles of democracy. These recommendations are not solely focused on women's rights but on the broader civic vision that addresses all the democratic principles brought to light during the revolution.

During this historical period, the issue of women's rights cannot be treated as one independent of citizenship. If the new constitution entirely denies the access of all citizens to human rights, then both women and men will lose their freedoms. The participation of women in the process is necessary to build a comprehensive view of

citizenship. By defending freedom of expression, women are freer. By defending freedom of the media, women are freer. If women are absent from the battle for rights and freedoms, the future will be distorted, resulting from perpetuated injustices.

The assassination of Mohamed Brahmi, the leader of the nationalist People's Party, in July 2013, combined with other acts of terrorism, led civil society groups to put more pressure on political parties to eliminate restrictions on freedoms in the constitution. In principle, the leadership had announced increased freedoms, but continued infringements highlighted the emptiness behind their statement.

Since the election of the NCA, civil society groups have been constantly vigilant in preventing the inclusion of ambiguity that could be interpreted in favor of restricting women's rights. For example, in August 2012, women protested the clause that referred to women as "complementary" to men, stating women's participation was measured in relation to the contribution of men. Women's and activists' efforts were successful in getting the NCA committees to modify the language and add Article 11 that states, "Women and men are partners in building the society and the state." The latest version of the constitution, released in June 2013, established the respect of the Second Republic "preamble." Gender equality is also present in Article 6, which provides that "citizens (men and women) are equal in rights and duties, in front of the law and without any discrimination."

Women's social commitments, mainly to her family, prevent her full representation in decision-making positions. Measures must be enacted to help women gain a seat at the table, and they are part of the Tunisian Constitution in Article 42: "The State shall guarantee the protection of the rights of women and support their gains and ensure equal opportunities for men and women in carrying different responsibilities."³ In Tunisian legislation, women have the same rights and obligations as men, but, in practice, those rules often are not respected. Likewise, equality in compen-

sation and employment opportunities exists in the law though often not in reality.

Violence against women is another focus of the dialogue around the constitution. Women are victims of physical and moral violence in various settings including familial life, public life, the workplace, and the political sphere. Including the elimination of acts of violence in the higher legal text is an achievement for Tunisian women who have fought for this principle to have constitutional support, also mentioned in Article 42: "The State guarantees the elimination of all forms of violence against women."⁴

August 13, 2013 marked the annual celebration of National Women's Day in Tunisia, recognizing the 40th anniversary of the 1956 enactment of the Code of Personal Status, which remains a progressive model in Arab and Muslim countries regarding the protection of women's rights. The family code abolished polygamy and gave women the rights to divorce her husband, adopt, and gain child custody after a divorce. In 2013, women organized on National Women's Day and participated in demonstrations calling for the revision of the draft constitution to work toward a better future for women and a democratic nation.

In the NCA, women represented 27 percent (58 out of 217 seats). However, the designations of these seats are sometimes dependent on the political agenda of their parties, which can be quite conservative. So, unfortunately, while the number of women is greater, the push from within the Assembly for inclusion of women's rights was often not. Civil society groups not only fought for the inclusion of the principle of parity in the constitution but also to ensure male and female candidates at the top of the lists would alternate, encouraging more people to vote for women (as currently only seven percent of those at the top of the lists are female). It should be noted that the principle of parity and gender alternation in the elections that led to the representation of women in the NCA has not been adopted by the deputies.⁵

The recommendation of civil society is to approve the principle of parity in elections and in constitutional bodies as well as to promote and

preserve the principle of alternation between men and women at the top of candidate lists. Women are not well-represented in politics due to social constraints that allow men to dominate. It is not easy to raise the principle of parity because it cannot be applied to unequal situations; hence, further positive measures benefitting women need to be included. Parity requires political parties to include women in politics because their electoral lists will be denied if women are not present. According to some members of the NCA, this principle will be enshrined in the constitution, and they are just waiting for the resumption of the NCA.

According to experts who working on the new electoral law, if the principles of parity and alternation are excluded from the constitution, they will be included in election law. Finally, the constitution is a body of rules that can be interpreted in a holistic way. The existence of hindrances to freedom threatens the rights of women and all citizens. For this reason, and due to the latest political crisis that led to the withdrawal of the opposition, a national dialogue has emerged stat-

ing that the pillars of this constitution are subject to consensus. It is noted that the members of the majority were in favor of dialogue during the successful, short transitional period of the Tunisian revolution. I think the Tunisian experience will have a successful ending because of the solidarity of the Tunisian people, especially the awareness and involvement of Tunisian women all over the country.

Endnotes

- 1 This paper was written in October 2013, prior to the passing of the Tunisian constitution.
- 2 The National Constituent Assembly passed the third and final draft of the constitution on January 26, 2014. <http://www.bbc.co.uk/news/world-africa-25908340>
- 3 <http://constitutionaltransitions.org/wp-content/uploads/2013/05/Tunisia-third-draft-Constitution-22-April-2013.pdf>
- 4 <http://constitutionaltransitions.org/wp-content/uploads/2013/05/Tunisia-third-draft-Constitution-22-April-2013.pdf>
- 5 Tunisia's new constitution, passed on January 26, 2014, includes the principle of parity in Article 46. <http://www.unwomen.org/en/news/stories/2014/2/tunisia-new-constitution>



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