

**Regression or progress?
Barriers to equality of economic opportunity
and the Arab transitions**

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1. Introduction: Conceptual issues and root causes

This paper discusses the potential impact of the Arab uprisings that were sparked in December 2010 on the existing barriers to equality of economic opportunity. It was commissioned by the International Labour Organization (ILO) as a background paper for the Expert Group Meeting convened from 21 to 22 May 2013 on Women and Economic Empowerment in the Arab Transitions, and revised with comments from the meeting. The research for this paper was completed in May 2013 but it has, to the extent possible, been updated to reflect current events up until July 2013. The purpose of the paper is to provide an overview of the existing barriers to equality of opportunity in the Arab region, setting a baseline against which future progress and regression can be measured and identifying entry points to promote progress and avoid regression. In this introductory section, some conceptual issues in discussions of economic equality are addressed.

The conceptual challenges to assessing gender equality are common across the Arab region as in other parts of the world. To begin with, the purpose of the term gender itself is still not clear. It is often used inter-changeably with women instead of being used to call attention to the socially constructed roles that disadvantage men as well as women. For example, the use of “gender-based violence” is all too frequently interchangeable with “violence against women”, and little research is done on violence against boys and men although this is also a problem. Partly as a result, women continue to be defined as a vulnerable group in need of protection, often included with children and the disabled. They are neither seen nor treated as active agents of change with rights and responsibilities but rather as passive recipients of support with primary responsibility for the domestic sphere. Meanwhile, the notion that men and boys may also experience vulnerability is not considered and little attention is paid to their actual or potential role in the domestic sphere. The social and economic value of ensuring that the correct use of the term gender underpins analysis cannot be over-stated because these misconceptions play out in national planning.

Moreover, the correct use of the term is important because both women and men resist the focus on individual rights at the expense of family and community, which is associated with a Western approach to human rights. Because it addresses the rights and needs of both women and men, a gender-sensitive approach is less of a threat to family and community cohesion and is an effective way of promoting economic and other rights. A gender-sensitive approach also facilitates the engagement of men in working for gender equality and women’s empowerment to the ultimate benefit of society as a whole. Another challenge is the continued gender neutrality of the development discourse. For example, the population category of “youth” is frequently referred to in gender-neutral terms, including in many of the analyses of the status of youth as a contributing factor to the Arab uprisings. The interchangeable use of gender and “women” also carries an implicit assumption that women are gender-sensitive and men are not, whereas both can be gender-neutral or gender-sensitive.

Beyond these conceptual challenges, it is important to highlight the root cause underpinning most economic discrimination against Arab women in laws, regulations,

and practice: the belief that men are the head of household and the primary authority, as has been the case in other parts of the world where patriarchy has and still holds sway. In the Arab region, however, men's role as household head is enshrined in Islamic law. Because men have a legal obligation to spend on women and the household, whereas women have no such obligation (although in reality they do spend on the household), men are given a host of economic rights which, depending on the country, include entitlement to health benefits, tax deductions and allowances, among others.¹ They are also given other legal rights such as the right to unilateral divorce, control over women's freedom of movement, and the right to pass their nationality to their children and spouse.

This point is important to tackle head-on in efforts to promote gender equality, as seasoned advocates of women's rights are aware. One of the most significant strategies in this regard is promotion of equality of economic opportunity because it can be and is evidence-based and involves the less controversial entry point of economic rights rather than the far more problematic entry point of personal status rights and all the resistance this engenders from conservative forces. At the same time, securing greater equality of economic opportunity helps to make the case for reform in legislation and evolution of social attitudes in personal status matters.

The evidence that needs to be collected includes the impact of jobless growth, which has led to higher overall unemployment rates for women compared to men (i.e. more women are looking for and not finding work); gender-based wage gaps and lower returns on employment; gender-based occupational segregation; the gap between available skills and labour market demand; weak national planning; and the oil wealth that funds a generous welfare state and inadvertently discourages female labour force participation. It is also vital to invest in accurate data regarding Arab women's economic activity, which remains largely uncounted given that much of it is in the informal economy.

Armed with such evidence, it is easier to spotlight the reality of women's economic participation and to make the case for more equitable national plans and programmes. It will also be easier to challenge the male head of household construct and to argue that marriage is a partnership rather than the man being the sole decision maker. Thanks to civil society activism, Tunisia and Morocco have redefined marriage as a partnership that involves mutual duties and rights for the management of the household, which directly counters the male head of household concept. This will help to promote equal rights in health benefits, allowances, and economic rights, benefiting men and children as well as women, and leading to change in family law and other legislation.

In this paper, sections 2, 3, and 4 establish something of a baseline against which to gauge the impact of the Arab uprisings on the barriers to economic equality. Section 2

¹ See, for example, Egypt's explanation of its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): women and men's rights are "equivalent" rather than equal "out of respect for the sacrosanct nature of the firm religious beliefs" and because the husband has the legal obligation to spend on the wife. See also Jordan's 5th Report to CEDAW in 2010 where it explains that differences in rights are related to differences in responsibilities within the family unit as the husband is financially responsible for the family irrespective of the wife's own wealth.

focuses on the legal underpinnings of gender discrimination, covering the reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the caveats in constitutions, and the economic problems created by the personal status and nationality laws for both women and men, as well as for their children. Section 3 examines the issues arising in planning for gender equality of access to economic opportunity. It discusses the ways in which the labour force is shaped through education, vocational training and other factors, drawing attention to breakthroughs in significant areas like the judiciary. Section 3 also addresses the problems facing vulnerable groups, including female-headed households, migrant workers and child labourers.

Section 4 highlights pre-uprising progress and obstacles towards economic equality in labour laws and regulations, social security legislation, and penal codes. It does not attempt to provide a comprehensive overview of legislation and practice, but rather to spotlight some of the areas where gender discrimination still impedes access to economic opportunity, including prohibited work, limited maternity and paternity rights as well as pension rights, sexual harassment in the workplace, and women's access to trade unions and employers' organizations.

Section 5 examines the challenges brought about by the Arab uprisings in the constitutional and other legal spheres, and the struggle to maintain access to the public sphere. It does not discuss the causes of the Arab uprisings as these have been addressed in other reports, including the ILO/UNDP *Rethinking Economic Growth* and the UN Development Group Arab States' "Response Strategy & Framework for Action". Section 6 begins with a set of general findings and recommendations highlighting the main issues discussed in sections 1 to 5, followed by specific recommendations in three main areas: challenging the regressive discourse on gender, strengthening civil society and rights to freedom of association, and revisiting the approach to development plans and projects. Throughout this paper, illustrations are given of civil society activism to bring about legislative reform.²

2. The legal roots of gender discrimination in the economic sphere

A. CEDAW and constitutions

The international legal foundations of equality between women and men are spelled out in CEDAW, which all Arab countries have signed and ratified. However, all Arab countries also appended reservations upon signature, thus limiting their responsibility under international law. Only Morocco, Algeria, and Tunisia have announced their intention to remove their reservations to CEDAW due to sustained civil society activism

² Unless otherwise mentioned, country examples in this and other sections are from the 2010-2011 unpublished gender equality assessments by Camillia Fawzi El-Solh on Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates (UAE) and Evelyn Bazalgette on Jordan and Lebanon, as well as the unpublished cross-regional assessment by Nadia Hijab in 2011 for UN Women's Arab States Regional Office.

that led to extensive legislative reforms during the 2000s. In Morocco, for example, these reforms included a new Family Code, changes to the Labour Code to introduce sexual harassment in the workplace, changes to the Penal Code to criminalize spousal violence and changes to the Nationality Code to give women and men more equal rights in transmitting their nationality to their children.

Reservations to CEDAW reveal the areas where women's rights are most circumscribed. These include, depending on the country, reservations to: equality in inheritance (Article 2.f); nationality (Article 9); freedom of movement and choice of residence (Article 15.4); legal capacity, testimony, and the right to conclude contracts (Article 15.1 and 15.2); rights within marriage, including divorce, matters related to children, and personal choices, including choice of profession (Article 16); and arbitration in case of dispute between two or more state parties concerning interpretation of CEDAW (Article 29.1). Most of the reservations have been to Articles 9 and 16.³ In addition to the complete withdrawal of reservations announced by Morocco, Tunisia, and Algeria, Egypt has withdrawn its reservation to Article 9 and Jordan to Article 15.4. Efforts to withdraw the reservations to CEDAW arouse a fierce reaction from conservative forces. For example, when Jordan withdrew its reservation to Article 15.4 in March 2009, the conservative Islamic Action warned that families faced the threat of "total collapse".⁴

The reservations set out in CEDAW may not be spelled out in Arab constitutions but some of the same constitutions that speak of equality also include caveats that undermine equality. For example, Egypt's pre-uprising constitution of 1971 guaranteed equality of all citizens before the law (Article 40), but then undermined the possibility of women attaining such equality in Article 11. In just a few lines, there were three key contradictions regarding women's modern and traditional roles that posed impediments to women's economic opportunities. First, Article 11 said the State had the obligation to "guarantee harmonization between the duties of woman towards the family and her work in the society", which perpetuates women's domestic roles while ignoring those of men. Second, it stated that such official harmonization would ensure women's equal status with men in "political, social, cultural and economic life", which is physically impossible if only one partner is responsible for domestic duties. And third, it qualified that this equal status would be "without violation of the rules of Islamic jurisprudence" which, as interpreted in pre-uprising Egypt, did not lead to equal social and economic rights in the personal status and other codes. Egypt is not unique in this regard. Both the Bahraini and the post-invasion Iraqi constitutions state that women's equality with men should not breach the provisions of *Sharia* (Islamic law).

B. Issues in personal status and nationality laws

³ Saudi Arabia only cited a specific reservation to Article 29, but also declared: "In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention."

⁴ *The Jordan Times*, 27 April 2009.

Whether personal status laws are codified or not, personal status matters draw on or are grounded in *Sharia*. Women face a range of problems due to unequal rights within the family during marriage and in case of divorce, including custody and guardianship of the children, maintenance, and inheritance, as well as in cases of polygamy.⁵ Further, in some countries, the husband's consent is needed for women to work, continue their education, or travel. For example, in Yemen, both the Personal Status Law and the Citizenship Law stipulate "a husband has the right to be obeyed by his wife" and therefore women need the permission of their husband or male guardian to leave the house. Whether the restrictions are real or perceived, they create a climate in which many women are unwilling or unable to press for these rights. For example, even though this is not based in the law but is a customary practice, Yemeni women are unable to obtain a personal identity card without the consent of their guardian, which is essential for a woman seeking to enter the workforce, access state services, or apply for a passport.⁶

Attempts to amend family law face stiff resistance from conservative forces. In Bahrain, where the family code was not codified, the women's movement and their allies worked for years to secure a unified codified code that would apply to all citizens whatever their sect. However, Shia religious authorities objected, bringing over 100,000 protesters to the streets in 2005 to prevent state interference in what they saw as their exclusive domain. In the end, a codified law was passed for Sunnis but not for Shia. Although it was not a particularly progressive code, it was better than leaving personal status matters to the discretion of the presiding judges as is still the situation in, for example, the United Arab Emirates (UAE). In Lebanon, too, the religious authorities of different sects regulate personal status and there is a growing civil society movement for a unified civil code to fight sectarianism and promote women's rights. This is also an issue tackled by human rights advocates in Iraq.

Reform in nationality law is, in some respects, easier to tackle than personal status codes because nationality law is generally a civil code that does not draw on *Sharia*. Several Arab nationality codes have been amended in recent years to address the fact that women are not entitled to give their nationality to foreign husbands and the children of that union, whereas men can give their nationality to their foreign-born wives and children. The unequal treatment in nationality law has affected not only women's human rights but also that of their children and husbands, including rights to education, work, benefits, and other social, economic, civil, and political rights. Because discrimination in the nationality law also impacts on children and men, and is a flagrant example of inequality, men have contributed to the struggle to change the law.

Yet in countries that have now made it possible for women to give their nationality to their children, there is still inequality. For example, Iraqi mothers still have to petition the Ministry of Interior and fulfil certain residency and age requirements if their children are born outside Iraq, whereas Iraqi fathers face no such constraints. In Yemen, reforms in 2010 made it possible for women to automatically grant their citizenship to their children

⁵ Women's rights within marriage can be specified within the marriage contract. However, women rarely avail themselves of this opportunity, and if rights are not specified the husband has the authority to decide.

⁶ Manea, Elham, "Women's Rights in the Middle East and North Africa: Yemen", Freedom House. 2010.

– but they have to obtain a written permit from the Ministry of Interior in order to marry a foreigner whereas a Yemeni man’s wife simply has to inform the Ministry.⁷

Meanwhile, foreign husbands continue to face hurdles. Even in those countries like Morocco, Algeria, and Tunisia that have amended their laws to reach near-equality in this sphere after a long struggle by rights groups, the focus has been on securing nationality for children. In Tunisia for example, under the 2010 Nationality Code the foreign wife of a Tunisian can acquire Tunisian nationality but a foreign husband must choose to be naturalised and must be living in Tunisia. In Saudi Arabia, 2005 amendments to the citizenship law permit non-Saudi men, including those married to Saudi women, to obtain Saudi citizenship if they have lived at least ten years in the country and are engaged in a profession approved by the authorities. Sons of mixed marriages can apply for citizenship when they reach 18 years, but not daughters unless they married a Saudi.

Those Arab countries that have not yet reformed the law have tried to mitigate the economic impact of the legislation. In Jordan, for example, recent measures to reduce the difficulties faced by Jordanian women married to non-Jordanians included: waiving fines for residency contraventions; extending an exemption from school fees for the 2009-2010 school year; temporary passports for children; and one-year residence permits if the children are in their mother’s care. Nevertheless, complaints and requests concerning nationality and residency-related issues are high on women’s agenda, in some cases second only to domestic violence.

It should be noted that the efforts to reform nationality law are challenged not only by the belief that the father’s nationality is paramount but also by Arab states’ reluctance to give nationality to refugees and migrant workers. Lebanon, Jordan and Kuwait host large numbers of Palestinians, stateless persons and migrants.⁸ Egypt initially amended the law to provide nationality for the children of Egyptian women married to foreigners but excluded Palestinians. In 2004, an amendment extended Egyptian citizenship to children of mixed Palestinian-Egyptian marriages born after the law’s passage (Palestinian men married to Egyptian women only secured residency rights.) Finally, in May 2011 the government made the law applicable to all children of Egyptian women.⁹

3. Planning for and promoting access to economic opportunity

“The serious problem is not when women act as dependents but when the state assumes that they are and therefore fails its duty to provide them with basic rights, opportunities and entitlements.”

ILO/UNDP, *Rethinking Economic Growth*, 2012, p.60.

⁷ Yemeni Parliament Watch at <http://www.yppwatch.org/news.php?newsid=218&lng=en>

⁸ Kuwait’ stateless *bidoon*, i.e. those without papers, are said to number between 100,000 and 200,000. The community has held public demonstrations protesting their lack of rights, leading to some progress.

⁹ “Women’s Rights in the Middle East and North Africa: Egypt”, Freedom House.

A. Engendering national planning

The social and cultural stereotypes in the legal sphere not only pose legal impediments for women and men but are also reflected in national plans. Many national plans refer to women's roles within the home. For example, the Saudi plan expresses confidence that women will be able to balance work and family and adds: "it is not possible to consider the impact of women on the community (for example, participation in economic activity) in isolation from their roles as wives and mothers."¹⁰ Moreover several national plans – Iraq, Qatar, Saudi Arabia, Kuwait, the occupied Palestinian territory – refer to women as a "vulnerable group", often including them with youth, children, and in some cases, the disabled, and perpetuating the view that women need care and protection rather than equality of access. While there are gender issues among vulnerable groups– as discussed in section 3.C below – women do not constitute a vulnerable group *per se*.

There is, nevertheless, evidence of growing gender-sensitivity even in the national plans that see women as a vulnerable group. For example, Iraq's plan identified the gender gaps in education that overall disadvantage women, particularly in the rural areas, while disadvantaging men in secondary education when they are forced to abandon their studies and get a job.¹¹ The Palestinian plan aimed for some modest increases in the percentage of women in the labour market (from 15.7 per cent to 17.5 per cent), the ratio of female to male average earnings (from 82 per cent to 90 per cent), and the percentage of women in senior positions (from 2 per cent to 4 per cent).¹² The Qatari national plan mentioned the need to "provide incentives to employers in industries preferred by Qatari women." The gender-sensitizing of national plans is often the result of activism by civil society in collaboration with Government. A good example comes from Jordan where the Jordanian National Commission for Women provided 51 female experts to work with sectoral committees on the 1999-2003 National Development Plan and thereafter.

The availability or otherwise of gender-disaggregated data is another issue arising in planning for gender equality. A good deal of data is available on Jordan, the occupied Palestinian territory, Lebanon, and Bahrain, from government sources as well as from a multitude of national and international studies.¹³ By contrast, far less data is available on Yemen, Iraq or Oman. In some countries, like Qatar or Kuwait, sex-disaggregated data are accessible, but the time lag between collection, tabulation and dissemination does not support evidence-based strategies for gender equality. Overall, there is as yet insufficient data on the informal economy, on men's domestic roles, and on social problems such as gender-based violence, sexual harassment and human trafficking, which makes it difficult to develop action plans and strengthen existing mechanisms.

Even if Arab national plans were to become more gender-sensitive, it would be impossible to generate equitable economic opportunities for either women or men

¹⁰ "Ninth National Development Plan 2010-14", Kingdom of Saudi Arabia. 2009.

¹¹ "National Development Plan 2010-2014", Republic of Iraq Ministry of Planning. 2009.

¹² "National Development Plan 2011-13", Palestinian National Authority. 2011.

¹³ In Jordan, gender-disaggregated data is now commonly used in official reports, including in Millennium Development Goals reports - on all the goals, not just MDGs 3 and 5 that directly involve gender issues.

without a different macroeconomic policy framework. Although a discussion of macroeconomic policy is outside the scope of this paper, it is worth noting that the ILO/UNDP *Rethinking Economic Growth* and the ILO's "Rethinking Informality in Light of the Arab Uprisings" as well as other recent documents make a compelling case for major shifts in economic policy to expand economic opportunities while ensuring gender equality of opportunity.¹⁴ In particular, they draw attention to the negative effect of "informalization" of women's work in the non-oil economies and the failures of palliative measures such as support to micro-credit. Meanwhile the oil-based economy countries with small indigenous populations are able to fund massive numbers of migrants and a generous welfare state that provides disincentives for nationals to join the labour force. Among the negative outcomes of these policy choices appears to be insufficient investment in education at both the state and family level, contrary to popular belief.

B. Shaping the labour force

Despite men's higher literacy rates, with particularly high gender gaps in literacy in Morocco, Yemen, and Egypt, education is a sphere in which boys and men appear increasingly at a disadvantage to girls and women. The expectation – indeed, the legal requirement – that men must spend on the household pushes them into the workforce at the expense of their education. Girls have higher secondary gross enrolment ratios than boys in ten out of 17 Arab countries and higher enrolment rates at the tertiary level in 12 out of 17.¹⁵ Women are also moving ahead in scientific fields. In the Middle East and Gulf region, they comprise 51 per cent of graduates in the sciences, 73 per cent in life sciences, 61 per cent in physical sciences, and 59 per cent in mathematics and statistics.¹⁶ Female graduates of the University of Bahrain had by 2008 outnumbered males in fields such as law, business administration and information technology.

The gender gap to men's disadvantage is especially glaring in the Gulf States where men have employment opportunities in the army and police force without a university degree. This has unleashed some unexpected social dynamics, including a rise in the number of unmarried women and higher divorce rates. Families are said to demand a higher dowry for educated daughters and some are unwilling to marry men with less education. Countries are trying to address this in different ways. Oman, for example, encourages young men to go to university by setting lower entry requirements for male students.

However, women's educational attainment is not yet translating into labour force participation. As is frequently pointed out, the region has the lowest rate of female labour force participation in the world (26.3 per cent, compared to a global average of 51.7 per cent) and the highest women's unemployment rate (17 per cent compared to the global average of 6.5 per cent).¹⁷ It is not enough to blame social norms for women's low labour

¹⁴ See also the background paper by Nisreen Alami commissioned by ILO for the May 2013 meeting.

¹⁵ ESCWA, "Addressing Barriers to Women's Economic Participation in the ESCWA Region", E/ESCWA/ECW/2012/1, 2012 pp. 12 and 14 respectively

¹⁶ Ibid, p.14.

¹⁷ UN Development Group (Arab States/MENA) "Response Strategy & Framework for Action", Draft Paper, 25 July 2011.

force participation: the fact that the unemployment rate is so high means that they want and need jobs but are not finding them. In Bahrain, for example, the female share of registered jobseekers holding university degrees was over 80 per cent. In addition, many women are driven to work in poorly unprotected informal activities due to the need to earn income. In Morocco rural women were reported to be experiencing considerable unemployment and 80 per cent of those employed were said to be domestic workers.¹⁸

It is often argued that women's vocational education does not prepare them for the market, and it is true that this is heavily gender-stereotyped with subjects on offer to women leaning towards traditionally "feminine specializations" such as sewing, embroidery, handicrafts and hairdressing, even though these may be already oversaturated, have limited returns in terms of income and are not linked to the market. Several countries are taking measures to address this. For example, the Jordanian Ministry of Labour established a funding mechanism to encourage employers to hire vocational training graduates, and provided training for 5,000 women and girls in the 23 occupations traditionally monopolised by men. However, recent studies argue that inappropriate skills are not the main factor for the high unemployment in the region and that, if anything, there is an oversupply of educated jobseekers.¹⁹ Furthermore, the demand for labour is in areas that do not require education and are primarily undertaken by migrants in both oil-rich and other Arab countries.²⁰

Employer attitudes are another factor behind women's low labour force participation. A 2007 study on gender and entrepreneurship in Lebanon found that, irrespective of gender, 40 per cent of entrepreneurs identified family commitments as a disadvantage of female employees. However, gender differences in absenteeism reported in male-headed enterprises were not found in female-headed enterprises. Women entrepreneurs tended to hire more female workers, to provide their workers with more benefits, and to be satisfied with their female employees' work, while often male entrepreneurs provided their female employees with fewer benefits, were less satisfied with their work, and tended to refuse their requests for leave more often than the requests of male workers.²¹

Against this background, it is worth noting areas in which women's breakthroughs in the workforce also challenge social norms. The judiciary is one such area because the presence of female judges challenges the view of women as legal minors whose testimony is half that of a man. Lebanon and Jordan are among the countries where women have recently made inroads into the judiciary. In Lebanon, the number of women judges soared from almost none in the 1990s to 38 per cent of all judges in civil, criminal and commercial courts, and 28 per cent of judges in the administrative courts by 2010. However, women are still not allowed to serve as judges and female lawyers in religious

¹⁸ UN Committee on the Elimination of Discrimination against women (2008), "Summary record of the 825th meeting: Consideration of reports submitted by States parties under article 18 of the Convention (continued): *Combined third and fourth periodic reports of Morocco*", CEDAW/C/SR.825, [CEDAW/C/SR.825](#), paras 16-17

¹⁹ ILO/UNDP, *Rethinking Economic Growth: Towards Productive and Inclusive Arab Societies*, ILO, 2012, pp. 82-83.

²⁰ ESCWA "Addressing Barriers to Women's Economic Participation", Op. cit., p. 15.

²¹ *Gender-Based Differences Among Entrepreneurs And Workers In Lebanon*, World Bank. 2009.

courts. In Jordan the increase was due to positive discrimination by the government. A programme to encourage female judges was over-subscribed and the percentage of women in the judiciary rose from 1.2 per cent in 2000 to 7.1 per cent in 2009.²²

Participation in local councils is another area where women can challenge stereotypes, especially as local politics brings them closer to the people. In another example from Lebanon the number of women elected for the municipal elections more than doubled to 531 from 2004 to the end of the decade. Of the women councillors, 57 went on to be elected mayor by their municipal councils, heading 6 per cent of municipal councils. The women reportedly overcame local patriarchal attitudes through a process of negotiation with both leading families and political groups.

C. Gender issues among vulnerable groups

Particularly vulnerable groups in the world of work in the Arab region include female-headed households, child labourers, displaced persons and refugees, migrant workers, and trafficked persons, and there are distinct gender issues within each of these groups. Female-headed households now account for a significant minority of households in several Arab countries. In Morocco, female-headed households accounted for 19.3 per cent of all households in 2009.²³ In general, female-headed households are more vulnerable to poverty. For instance, while women headed nearly 17 per cent of Palestinian refugee households in Lebanon, their households accounted for some 46 per cent of the special hardship families.²⁴

In Iraq, where 55 per cent of the population was said to face serious economic hardship in the wake of the 2003 U.S.-led invasion, it is estimated that nearly 740,000 Iraqi women are widows, and that there are between one and three million female-headed households. The allowance provided by a government social welfare program is insufficient and many widows do not even receive it because of corruption or government institutions' lack of capacity to reach rural areas.²⁵ The desperation to survive is said to have led to an increase in child marriage, forced prostitution and trafficking in women and girls. There are also reports of an increase in the practice of *mut'a* (temporary marriage without legal rights, sometimes used as a cover for prostitution) and that men working for local government and charities sometimes use their positions to pressure widows to practice *mut'a* in exchange for charity or services.²⁶

Child labour is a problem that affects boys and girls in different ways. Among Palestinian refugees in Lebanon, for example, the working children largely combined work and schooling, the girls mainly at home and the boys outside the home. Among Iraqi refugees

²² Jordan's Fifth National Periodic Report to the CEDAW Committee – Summary, p. 7.

<http://www.women.jo/admin/document/CEDAW%20English.pdf>

²³ Data from Royaume du Maroc, Haut Commissariat au Plan (2010), [Femmes et Hommes en chiffres 2010](#)

²⁴ "Report of UNRWA Commissioner General of UNWRA, 1 July 2003-30 June 2004". General Assembly, 59th session.

²⁵ "At a Crossroads Human Rights in Iraq Eight Years after the US-Led Invasion", Human Rights Watch. 2010.

²⁶ *Ibid.*, Human Rights Watch. 2010.

in Lebanon, 7 per cent of boys and 2 per cent of girls aged less than 15 were reported to be working. In Yemen, child labour constitutes about 10 per cent of the total labour force and of these 12 per cent are estimated to be between six to 14 years old. In Morocco, there was a significant decrease in child labour between 1999 and 2009, from 517,000 to 170,000, with the decrease particularly notable among young girls in urban areas due to a civil society concerted campaign in 2006 against the employment of young girls as domestic workers. In addition, the country has brought its child labour laws in line with international conventions and included sanctions in its penal code.²⁷

The problems faced by migrants have received more attention in recent years due to advocacy by international organizations and civil society. In Kuwait, for example, a civil society campaign entitled “put yourself in her shoes” called for women migrant domestic workers’ human rights. Yet there are still many problems throughout the region. In Bahrain, there were some government efforts to protect migrant workers, e.g. by preventing the transport of workers in uncovered trucks, which can result in injury and death, and by providing protections for domestic workers in the new labour law of 2012. However, male and female migrant workers suffer from unpaid wages, low wages, and overwork: male construction workers may be exposed to crowded and unsafe labour camps and female domestic workers may suffer sexual abuse.²⁸ Jordan appears to have gone furthest in the region in terms of legislation by adopting Regulation No 90/2009 to cover domestic workers, cooks, gardeners and similar categories as well as a Human Trafficking Prevention Act (2009). Oman has also taken steps to protect migrant workers and address trafficking. However, it would be important to examine the extent of implementation and monitoring of these laws.

Conflict and poverty are among the factors driving human trafficking. In Iraq, there is some evidence that women from southern Iraq are being trafficked into Gulf States, on the promise of marriage or after being married, but once they arrive in their countries of destination they find themselves forced to be servants and, on occasion, sex-workers.²⁹ Yemen is also a country of origin for children, mostly boys, who are trafficked into Saudi Arabia or to cities within Yemen and forced to beg, undertake unskilled labour, or work as street vendors, and some may be sexually exploited.

4. Providing rights and protection in the world of work

A. Gender stereotyped rights and “protection”

The legal framework remains weak in terms of non-discrimination in the Arab region. Although most Arab countries have ratified the ILO Equal Remuneration Convention, 1951 (No.100) and the Discrimination (Employment and Occupation) Convention, 1958

²⁷ Royaume Du Maroc - Ministère de l’Emploi et de la Formation Professionnelle, International Labour Organisation, & UNICEF (2009), *Le Travail Des Enfants En Bref* pp 45-54, 57-79

²⁸ <http://www.hrw.org/news/2012/09/30/bahrain-abuse-migrant-workers-despite-reforms>

²⁹ “2010 Report on Human Rights in Iraq”, United Nations Assistance Mission for Iraq Human Rights Office. January 2011.

(No. 111), this has not been sufficiently reflected in national legislation and practice. Of the other two ILO conventions aimed at ensuring equality in the world of work, only Yemen ratified the ILO Workers with Family Responsibilities Convention, 1981 (No. 156), and only Morocco ratified the Maternity Protection Convention, 2000 (No. 183).

Nevertheless, Arab labour codes are evolving towards ensuring a legal framework for gender equality in the world of work. For example, Morocco's 2007 Labour Code reiterates general principles of gender equality and non-discrimination and specifies equal pay for equal work, equality of treatment by recruitment agencies and women's right to belong to trade unions among other things. Amendments to the Labour Law in Saudi Arabia prohibit gender-based gaps in wages and salaries.

Such laws have yet to be fully implemented and gender wage gaps, a clear disincentive to women's work, remain wide throughout the region – even in the Gulf States. In Morocco, women's average earnings were estimated at 24 per cent of those of men in 2010 (U.S. dollars 1,603 compared to \$6,694 for men) and it continues to grow despite the law.³⁰ In the Bahraini private sector women holding university diplomas earn an average of 704 Bahraini dinars a month compared to male university diploma holders 1,270 dinars. Another workforce disincentive is tax regulation that assigns tax benefits and allowances to the husband even if the wife earns a higher income. There is some amelioration but not yet an acceptance of equality in this regard. For example, in the UAE, a recent decree enables female employees who are the principal breadwinners to receive the social allowance – if they are divorced or if the husband is unemployed.

Many Arab labour laws still reflect the belief that women are a vulnerable group in need of protection from night work and hazardous work. For example, Egyptian Labour Law 12 of 2003 provides that the relevant government ministers may establish conditions under which it is inappropriate for women to work between 7 p.m. and 7 a.m. (Article 89), while Article 90 allows the concerned minister to determine unwholesome or morally harmful areas of work for women, as well as jobs from which women are barred.³¹ Laws intended to protect women effectively restrict their access to the labour force or force them to work illegally in poorly paid jobs. In addition, this discriminates against men since all human beings need to be protected from hazardous work.

On a positive note, legislation in some Arab countries is also moving in the direction of covering home-based work. The Morocco labour code covers home-based work while Jordan has now extended unemployment insurance and health insurance to all workers, including housewives. Lebanon has passed legislation providing an optional health insurance scheme for self-employed workers and safety net provision of health care for the poor, which extends protections to the informal economy. However, this does not cover Palestinian workers since there is no system of reciprocal arrangements, one of the many areas of discrimination against Palestinian refugees in Lebanon.

³⁰ World Economic Forum (WEF) *Global Gender Gap 2010*, pp. 222-223

³¹ http://www.ilo.org/dyn/natlex/country_profiles.nationalLaw?p_lang=en&p_country=EGY

Meanwhile, the legal framework in several Arab countries as regards sexual harassment has evolved as a result of civil society activism. Other countries, however, still assume that existing penal code provisions are sufficient protection even though these may be too weak. For example, Bahraini legislation provides three months' imprisonment or a fine "not to exceed" 20 Bahraini dinars for anyone who "treats a female in a way that offends her modesty." By contrast, in Jordan, sexual harassment is now a specific offence, as it is in Morocco and Tunisia. Tunisian legislation even covers harassment through recordings or text messages (SMS) and penalties are doubled if the victim is a child or disabled.

Women are greatly under-represented in trade unions, although workers have minimal rights to organize in most Arab countries due to government restrictions on fundamental freedoms. In Egypt for example, only 104 women were among the 18,292 members elected to the Egyptian Trade Union Federation executive committee in 2006, and only 32 of the 481 members elected to high-ranking positions were women.³² Nevertheless, women workers played an important role in the Egyptian uprising.

By contrast, despite limited trade union rights in pre-uprising Bahrain, women headed five of the trade unions in the General Federation of Trade Unions and women were board members in 15 trade unions.³³ The Federation took up issues of concern to women workers, calling in 2009 for longer breastfeeding breaks and increased maternity leave in the private sector. It also helped to raise awareness about the apparent increase in discrimination against working women in the public and private sectors in Bahrain. It is worth noting that trade union rights worsened during the uprisings; for example, the Bahrain Nursing Union was dissolved in March 2011 after nurses helped the wounded.

B. Discrimination against men in parental rights

When it comes to maternity, paternity and other family protection, Arab labour laws have both strengths and weaknesses. In general, they prohibit the dismissal of a woman while she is out on maternity leave, but only Egypt, Morocco, and the Syrian Arab Republic provide adequate maternity leave.³⁴ Most Arab states still expect employers to bear the costs of maternity, with only three exceptions: Iraq, Morocco, and Tunisia having established social security provisions for paid maternity leave.³⁵ More recently, Jordan has helped address the costs of maternity on employers through a revision to the Social Security Law (Temporary Law No. 7, 2010) that provides for a maternity insurance fund.

However, in several Arab countries, the Labour Law obliges employers in the private sector to provide support for married women through day care facilities and time to breastfeed if they employ a minimum number of women although the public sector is rarely obliged to do so. This is a disincentive to hiring women, and employers throughout

³² Amnesty International, *Women Shape New Egypt*, p.7.

³³ The International Trade Union Confederation's 2011 Annual Survey of Trade Union Rights found that workers' rights were circumscribed in several ways, e.g. not being allowed collective bargaining.

³⁴ ESCWA, "Addressing Barriers to Women's Economic Participation in the ESCWA Region", E/ESCWA/ECW/2012/1, 2012 pp.

³⁵ Economic and Social Commission for Western Asia, "Addressing Barriers to Women's Economic Participation in the ESCWA Region", E/ESCWA/ECW/2012/1, October 2, 2012

the region tend to avoid taking on the minimum number of female employees that would require them to provide child care facilities. Indeed, based on studies of diverse countries, an ILO report affirmed the “real concern” that such policies may inadvertently lead to discrimination: “Public policies for workplace childcare that are based on sex-stereotyped assumptions that women alone are responsible for childcare tend to perpetuate gender biases in society and may limit women’s employment opportunities.”³⁶

The fact is that few Arab countries have yet moved in the direction of recognizing men’s roles in the domestic sphere and providing paternity leave although both CEDAW and the Convention on the Rights of the Child (CRC) speak of the roles and responsibilities of both parents in childcare. Morocco stands out for doing so although it only provides three days of paternity leave at full pay in the Labour Code (Art 269). This issue is not sufficiently recognized or advocated by civil society and international organizations in the region. When men are not entitled to family leave under the law this is an incentive for employers to continue to prefer male employees over women workers. In addition, the near-exclusive focus on maternity rights feeds into conservative attempts to restrict women’s visibility in the public sphere. In Kuwait, there were attempts to increase maternity leave from 40 to 70 days and to provide six months paid child care leave with the option to extend it to three years, which were seen as a way of discouraging the private sector from recruiting women and forcing women to stay home.

Unless paternity leave and parental leave are strengthened throughout the region, and the costs are included in family protection (and not just maternity) funds women will continue to struggle with a double or triple burden. Strengthening paternity rights is also important for men themselves, given that they play more of a role in the domestic sphere than is generally recognized. And it is vital in establishing marriage as a partnership and challenging the social norms that underpin the head of household construct that underlines much of the legal and social discrimination against women.

This is a challenge in most parts of the world, and was addressed in a recent article in the New York Times.³⁷ The author noted that unless families had incentives to take paternity leave, social norms would remain unchanged, and gave the example of Sweden and Norway that have recently set aside some weeks of paid parental leave that were available only to fathers and that were covered by social insurance. Other examples cited were those of Germany and Portugal, where a mother gets bonus weeks of maternity leave if the child’s father takes a minimum amount of paternity leave. The article also cited research that showed that a few weeks at the start could “change gender roles in households and workplaces for years.”

State policies that encourage women to enter the workforce, including by making it possible for them and their husbands to secure childcare, actually help to stimulate the economy. The ILO publication *Workplace Solutions for Childcare* noted that women’s employment creates as many as ten jobs for every hundred additional women in work and

³⁶ *Maternity Resource Package: From Aspiration to Reality for All*, 2012, p.30.

³⁷ Rampell, Catherine, <http://economix.blogs.nytimes.com/2013/04/02/incentives-for-men-to-help-women-to-work/?src=rechp>, April 2, 2013, p. 10.

gave an example from the Netherlands where childcare had grown from a small sector with 8,000 employees in the 1990s to one employing over 60,000 by 2003.³⁸

C. Retirement biases against men

Retirement is another area in which both women and men are penalized. Social security regulations in Arab countries have generally provided for earlier retirement for women than men, a “benefit” that results in significantly less than what they would be awarded if they retired later, leaving women even more dependent on their male family members for financial support. In general there has been a five year gap in retirement age with women retiring five years earlier than men, which is a special problem for women if they have not been able to put in the full number of work years due to family responsibilities. Only Egypt, Kuwait, Lebanon, Morocco, and Tunisia equalized the retirement age. Although it did not fully equalize between women and men, Jordan’s landmark overhaul of the Social Security Law did provide for greater equality in retirement benefits and pensions.

Despite the progress in Jordan’s and other Arab states’ social security legislation, there is still gender-based discrimination against men. An insured woman’s husband can only inherit his share of her pension if he can prove he is incapable of working, whereas a widow automatically inherits her share of an insured husband’s pension. This gender-based discrimination tends to encourage women to claim their pension as a lump sum, which generally works out to be lower than receiving a regular pension and which may disadvantage them in their old age.

Many of the regulations throughout the region still reflect the belief that women are perpetual dependents on menfolk rather than economic agents in their own right. For example, in Oman unmarried and unemployed daughters can claim a pension through their deceased father irrespective of their age; they can also claim this pension in case of divorce or widowhood. Similarly in the UAE, women who are widowed, divorced or married to a non-national are entitled to receive a residence, or residential land and funding support to build a house. Although divorced women are particularly vulnerable in the Arab world, such regulations are a disincentive to join the labour force.

5. Regression or progress? The impact of the Arab uprisings

A. Battles over CEDAW and country constitutions

As will be recalled from section 2.A, decades of struggle by Arab women’s organizations and their civil society allies led to the national legislative reforms that made it possible for Morocco, Tunisia, and Algeria to lift their reservations to CEDAW in full, and for Jordan and Egypt to lift them in part. These calls grew louder in the years leading up to the uprisings. For example, in 2008 the then head of the Justice and Development Party group in parliament, which now leads the government, objected to Morocco’s lifting of

³⁸ Hein, Catherine and Cassirer, Naomi, Geneva, 2010.

its reservations to CEDAW declaring: "We cannot lift all reservations to the point of achieving total equality, because this point is governed by sharia."³⁹ Now, in the wake of the Arab uprisings, CEDAW has become a target for conservatives in different Arab countries, with calls in Egypt to pull out of the convention altogether.

Indeed, the entire body of international law on gender equality appears to be the focus of attack. The Egyptian Muslim Brotherhood issued a searing statement on its website in response to the 57th session of the UN Commission on the Status of Women document on violence against women in March 2013.⁴⁰ The Brotherhood warned especially against changes in these areas: equal inheritance; replacing guardianship with partnership and sharing of roles within the family; equality in marriage legislation; "removing the authority of divorce from husbands and placing it in the hands of judges, and sharing all property after divorce, and cancelling the need for a husband's consent in matters like travel, work, or use of contraception". The Brotherhood statement came under such strong attack that former Egyptian president Mohammad Morsi launched a Women's Initiative that was seen as an attempt to distance the presidency from the Brotherhood.⁴¹

As for the battle over country constitutions, this was joined almost as soon as the regimes changed in Tunisia, Egypt, and Yemen, given the recognition of this document's importance by all sides. Yemeni Minister for Human Rights Hooria Mashhour told the ILO Expert Group Meeting in May 2013: "Our [women's] agenda must be represented in the constitution, otherwise we miss a historic opportunity." Yemeni women will have an opportunity to do so as an unusually large number (161) is represented in the National Dialogue Conference, which is discussing a new constitution, among other things.⁴²

There is a positive aspect to the heated debates over the constitution between different social and cultural forces in that they were a long overdue exercise in democracy. This exercise was much better handled in Tunisia than in Egypt including in terms of gender equality. For example, women accounted for 24 per cent of the post-uprising Tunisian constituent assembly compared to 6 per cent in the Egyptian one due to the new Tunisian government's commitment to parity between men and women on electoral lists (although the majority of women were from the Islamist Ennahda party). The deputy speaker of the Tunisian parliament said that she and her female colleagues in the constituent assembly were "engaged in a crucial exercise of learning to manage difference, develop consensus and elaborate a vision of Tunisia where all women and men see themselves reflected, represented, respected and protected."⁴³

However, neither the new Egyptian constitution that was adopted in 2012 but suspended after the ousting of the Morsi government nor the recently completed Tunisian constitution give primacy to international law, which is respected only if it is not contrary

³⁹ http://magharebia.com/en_GB/articles/awi/features/2008/12/17/feature-02

⁴⁰ <http://www.ikhwanweb.com/article.php?id=30731>

⁴¹ <http://www.arabist.net/blog/2013/3/28/womens-safety-and-participation.html>

⁴² Yemeni women make their voices heard
<http://www.aljazeera.com/indepth/opinion/2013/05/201352165913600148.html>, May 23, 2013.

⁴³ "Tunisia's women are at the heart of its revolution"
<http://www.guardian.co.uk/commentisfree/2012/mar/23/tunisia-women-revolution?INTCMP=SRCH>

to the constitution. This potentially undermines the universal respect of human rights principles.

There was some evidence of compromise in the now suspended Egyptian constitution: the same language on Islamic law as the main source of legislation was found in both the 1971 and the 2012 constitutions, despite concerted conservative attempts in 2012 to make it the only source of legislation. Moreover, the 2012 constitution did not go as far as conservative forces wanted in promoting a stricter application of Islamic law and an article making women's equality conditional on not violating the "rules of Islamic jurisprudence" did not make it into the final draft after a public uproar.⁴⁴

Yet there were major areas of concern to women's rights advocates in the 2012 constitution, particularly the definition, for the first time, that the principles of *Sharia* included "evidence, rules, jurisprudence and sources".⁴⁵ Women's rights advocates feared that "everything related to women will be explained within this framework."⁴⁶ Another major difference between the 1971 and 2012 constitutions was that the 2012 constitution assigned a role to Al Azhar university, saying its scholars "are to be consulted in matters pertaining to Islamic law."⁴⁷

The assumption that women have primary responsibility for the domestic sphere is there in both the 1971 and 2012 constitutions, committing the state to support "reconciliation between the duties of a woman toward her family and her work" (Article 10 of the 2012 constitution). Human rights groups were unable to remove the language about women's duties or to specify grounds for non-discrimination. At the same time, the 2012 Egyptian constitution committed in its preamble to "equality and equal opportunities for all citizens, men and women (*muwatinin wa-muwatinat*), without distinction, favouritism, or partiality, in rights or duties" and reaffirmed the equality of citizens in five articles (6, 8, 9, 33, and 63).⁴⁸

Clearly the struggle over gender equality in Egypt will continue to be fought in the days to come, whatever the outcome of the overthrow of the Islamist government. Women's rights advocates prepared for it in the early days of the transition. In June 2011, 500 NGOs launched a Women's Charter, endorsed by over half a million Egyptian men and women, setting out demands for political, legal, social, and economic equality.⁴⁹ One sign of civil society strength is the success in preventing the attempts to lower the age of

⁴⁴ Ibid.

⁴⁵ "Egypt's New Constitution: How it Differs from Old Version"

<http://www.voanews.com/content/egypt-constitution/1572169.html>

⁴⁶ Egyptian feminist economist in discussions with author, May 2013.

⁴⁷ For other key changes between 1971 and 2012 see

<http://www.aljazeera.com/indepth/spotlight/egypt/2012/12/2012129173710651270.html>

⁴⁸ McLarney, Ellen, [Women's Rights in the Egyptian Constitution: \(Neo\)Liberalism's Family Values](http://www.jadaliyya.com/pages/index/11852/womens-rights-in-the-egyptian-constitution_%28neo)

http://www.jadaliyya.com/pages/index/11852/womens-rights-in-the-egyptian-constitution_%28neo, May 22, 2013.

⁴⁹ "Egypt: Women's Charter Calls for Democratic Transition". UN Women, 2011.

<http://www.unwomen.org/2011/06/egypt-womens-charter-released-calling-for-a-democratic-transition/>

marriage from 18 to 13. And because of the attack on gender equality, there is greater awareness of the issues at stake, including amongst men.⁵⁰

In Tunisia, where the final draft of the constitution was released at the end of April 2013, the debates were more diverse than in the case of Egypt and there was considerable evolution on gender equality between the first and second drafts of the constitution in response to feedback from and advocacy by civil society.⁵¹

Article 28 of the draft constitution was among the areas that created most controversy by saying that women were “complementary” to men. One scholar said that such interpretations had been “misconstrued” and that a better translation of the word would have been “fulfil” as in women and men “fulfil one another within the family”.⁵² Still, she agreed that there was “a certain amount of tension” between Article 22, which guarantees full equality, and Article 28, and an ambiguity that could make it more difficult to achieve outstanding rights such as inheritance laws.

In the end, Article 28 did not make it into the final text due to the activism of women’s human rights advocates. Among the advocates for equal rights was the Union Générale Tunisienne du Travail (UGTT), Tunisia’s largest labour federation, which played an important part in the uprising, and which mobilized its members to participate with women’s and human rights groups in August 2012 demonstrations against Article 28. The UGTT emphasizes the “need to guarantee women’s social and economic rights, notably the right to employment and equality of compensation, treatment, and work conditions away from all forms of discrimination”.⁵³ This is a potential model of new alliances for civil society elsewhere in the region.

Morocco, which has moved furthest along the road to gender equality in the region, had a relatively quiet uprising that left the King in place but achieved constitutional reforms that have not, as yet, eroded the human rights its powerful women’s movement has achieved over the decades. However, there are worries about the future. For example, in January 2013, the Islamist-dominated parliament tried – unsuccessfully – to lower the age of marriage for girls from 18 to 16.

Indeed, in uprisings where conservative Islamist groups are in control, the controls over women’s behaviour and access to public space are surfacing. In areas of Syria now controlled by the most conservative Islamist forces, a strict interpretation of Islamic law is being applied to such matters “as divorce, marriage and vehicle licensing” and men guarding a hospital’s gates refused admittance to women unless they are clad in an

⁵⁰ Discussion at the ILO Expert Group Meeting, May 2013.

⁵¹ The limits of democracy are shown in the fact that there was only one expert in constitutional law in the assembly and the majority of those elected had little political training.
<http://thinkafricapress.com/tunisia/draft-constitution>

⁵² “Complementary status for Tunisian women”

http://mideast.foreignpolicy.com/posts/2012/08/20/complementary_status_for_tunisian_women

⁵³ “UGTT: New Tunisian constitution must guarantee women’s equality”

<http://leftlaborreporter.wordpress.com/2013/03/18/ugtt-new-tunisian-constitution-must-guarantee-womens-equality/>

abaya, a full-length cloak.⁵⁴ In Libya, where a conservative government is in charge, polygamy has reportedly been reinstated. And in Egypt, former president Morsi was said to have threatened to decriminalise female genital mutilation calling the issue "a family matter".⁵⁵

B. Fighting for access to the public sphere amidst escalating violence

In countries like Egypt women's access to the public space was being circumscribed even before the uprising due to harassment that was not effectively addressed by the authorities. The Egyptian Centre for Women's Rights said two-thirds of the women in the country suffered sexual harassment daily and a recent film was made on the subject.⁵⁶ In addition, violence was deliberately used by the Mubarak regime against men and women to intimidate activists and crush the uprising and is still being used to crush activism to this day, for example in a wave of sexual assaults against women participating in a day of protest against the former Morsi government in March 2013. The demonstrators believe the attacks are "designed to degrade and intimidate women" and to exclude them from public space. They emphasized the perpetrators' "calm demeanour" and ability to carry out such attacks in public without fear of punishment. Men were also sexually assaulted during such demonstrations when they were trying to rescue women.⁵⁷

The reports of violence against women in the public sphere in Egypt and of rape as tools of war in Libya and Syria are shocking, but this is not the first time in the region's recent history. During Algeria's 15-year civil war from 1991 to 2002, there were vicious attacks on women to keep them out of the public sphere, including rape, torture, and forced marriage, mostly by armed rebels.⁵⁸ In Syria, former detainees give horrifying accounts of rapes of both women and men, described by one source as a "massive" crisis that is "creating a nation of traumatized survivors"; assaults against women accounted for some 80 per cent of the cases reviewed in the study, with assaults against men accounting for 20 per cent.⁵⁹ According to the Office of the UN High Commissioner for Refugees one

⁵⁴ Islamic law comes to rebel-held Syria

http://www.washingtonpost.com/world/middle_east/islamic-law-comes-to-rebel-held-syria/2013/03/19/b310532e-90af-11e2-bdea-e32ad90da239_story.html

⁵⁵ "How Egypt's radical rulers crush the lives and hopes of women"

<http://www.guardian.co.uk/world/2013/mar/31/egypt-cairo-women-rights-revolution> Equally seriously, population policies no longer seem to be tackled. Although funding has not been cut, health officials reportedly believe that climbing birth rates that have reached levels not seen since 1991 are an economic management issue and not a population problem. "Egypt's Birthrate Rises as Population Control Policies Vanish" http://www.nytimes.com/2013/05/03/world/middleeast/as-egypt-birthrate-rises-population-policy-vanishes.html?nl=todaysheadlines&emc=edit_th_20130503

⁵⁶ <http://www.guardian.co.uk/world/2012/jun/09/egyptian-women-protesters-sexually-assaulted?INTCMP=SRCH> and

http://www.slate.com/blogs/xx_factor/2011/03/21/sexual_harassment_in_egypt_678_shows_how_pervasive_a_problem_it_is.html

⁵⁷ Amnesty International, "Egypt: Gender-Based Violence Against Women Around Tahrir Square," London, February 2013, p. 8.

⁵⁸ Social Institutions and Gender Index (SIGI) <http://genderindex.org/country/algeria>

⁵⁹ "Syria Has a Massive Rape Crisis"

<http://www.theatlantic.com/international/archive/2013/04/syria-has-a-massive-rape-crisis/274583/>

of the main reasons that families give for leaving Syria is rape or the threat of rape.⁶⁰ In Syria, there are signs that the assaults are part of a planned campaign. Meanwhile in Libya, enough evidence was gathered against the former regime of using rape as a weapon in war that the International Criminal Court included this in charges against the late dictator Muammar Al-Qadhafi.

In wartime men suffer death or disability, imprisonment and torture that leave emotional and or physical scars for life. Wartime violence against women in the form of sexual assaults and rape not only scars them but can also leave them abandoned by their families because of the shame attached to the woman's perceived loss of "honour" in traditional social norms, with serious economic consequences for their future livelihoods. In Algeria, it is reported that many of the women who were sexually assaulted during the civil war were abandoned by their families and found it hard to earn a living. Moreover, the government's decision to promote national reconciliation by granting amnesty to human rights violators meant the victims could have no recourse to justice even if it was deemed socially acceptable to do so.⁶¹

During the present day civil war in Syria, a researcher on sexual violence urged women "Don't let this break you--this is what they're trying to do" whereupon the response was "Tell that to our husbands".⁶² Women can be shunned even if they have sacrificed for the national cause. In the Israeli-besieged Palestinian territory of Gaza, female prisoners released from jail are given a warm reception but then find it hard to reintegrate into society. One former prisoner said she suffered from "marginalization, exclusion and degrading treatment" adding, "Our society views freed female prisoners as women who were raped".⁶³ Israel is estimated to have jailed three quarters of a million Palestinians since the occupation began, of whom 10,000 are estimated to have been women.

In pre- and post-uprising sexual violence against women, there has been a tendency to blame the victims. In Egypt, the former Morsi government's Islamist allies blamed the women for the sexual assaults they had suffered although the government tried to distance itself from those remarks, convening a meeting of women and producing draft legislation to criminalize sexual harassment of which women's rights activists were sceptical.⁶⁴ In an unusual move, one victim went public with her experience and her husband appeared alongside her to help address the social stigma; among other things, she said that nurses had advised her not to speak out in order to "protect her reputation". According to other reports, police officers and prosecutors dealing with such complaints often advise the victims to drop their cases and "and 'forgive' the perpetrators".⁶⁵

⁶⁰ "Democracy a Double-Edged Sword for Women"

http://www.nytimes.com/2013/04/17/world/middleeast/17iht-letter17.html?ref=world&_r=0

⁶¹ SIGI, op. cit.

⁶² "Syria Has a Massive Rape Crisis", op. cit.

⁶³ "Gaza women face problems after leaving Israeli jails"

<http://maannews.net/eng/ViewDetails.aspx?ID=576353>

⁶⁴ Rise in Egypt Sex Assaults Sets Off Clash Over Blame

<http://www.nytimes.com/2013/03/26/world/middleeast/egyptian-women-blamed-for-sexual-assaults.html?hp&pagewanted=all>

⁶⁵ Amnesty International, "Egypt: Gender-Based Violence Against Women Around Tahrir Square," op. cit, p.

Even if women are willing to go to court, the legal fees are an obstacle and the courts are not seen as a suitable public space for women. In pre-uprising Yemen, the lack of female judges, prosecutors, and lawyers discouraged women from turning to the courts and they are reluctant to approach male legal consultants, particularly for issues such as abuse or rape. Instead, women often rely on male relatives to go to court in their place.⁶⁶

C. Compromises on the road to equality

Since independence, Arab countries have struggled with multiple, concurrent challenges that took centuries to work out in the industrialized world, where they are still not fully resolved. For advocates of gender equality, this has meant a tall agenda. They have had to work for gender equality while *at the same time*: struggling for democracy and a national identity that enables all citizens to be equal under the law; striving for a change in the religious basis of state laws, effectively working toward a “secular” state;⁶⁷ working for economic accountability; fighting for freedom from occupation and/or foreign intervention; and tackling gender-based human rights concerns shared the world over such as violence, human trafficking, and migrant labour. It is no wonder that progress has been slow and uneven and has involved considerable compromise.

The intertwining of the issues of democratic representation and gender equality is a case in point. Across the region, human rights advocates frequently have to rely on or ally with non-democratic or dictatorial regimes to achieve advances in legal and social rights. These rights are often secured in advance of United Nations conferences on women’s rights when states like to appear “modern”, or at least avoid excessive criticism by other states. Now that more representative democracies are being shaped, conservative forces are determined to change the more progressive legislation not only because, in their view, it contradicts Islam but also because it is tied to the former regime, as Egyptian feminist Hoda Elsadda pointed out. Even though, as Elsadda notes, the ex-First Lady Suzanne Mubarak and her entourage as well as other state representatives “appropriated and manipulated” civil society activism to pose as the “sole guardian of the commitment of Egypt to modern values”, the former Morsi government used the public view of women’s rights as tied to a hated, US-backed regime to overturn laws and procedures to improve the status of women deliberately discredited these “as ‘Suzanne’s laws’”.⁶⁸

In Tunisia too some feminists attributed a backlash against women’s rights to the fact that the dictatorship claimed to be pro-woman.⁶⁹ On the other hand, others understood that the regime was simply using the issue for its own ends. As the post-uprising Islamist feminist deputy speaker of the Tunisian constituent assembly noted, the former regime “was

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⁶⁶ “Women’s Rights in the Middle East and North Africa: Yemen”, Freedom House, op. cit.

⁶⁷ The term secular is often and erroneously conflated with atheism, and writers and activists sometimes use “civil state” instead.

⁶⁸ <http://www.opendemocracy.net/5050/hoda-elsadda/egypt-battle-over-hope-and-morale>

⁶⁹ http://www.nytimes.com/2013/02/21/world/middleeast/women-face-fight-to-keep-their-rights-in-tunisia.html?_r=0

selective in its enlightenment, choosing to favour only a tiny elite while portraying itself as the champion of women” given that “only 20 per cent of the Tunisian workforce were women, and they were concentrated in low-paid, insecure jobs, while the daily conditions of rural women were characterised by deprivation and grinding hardship.”⁷⁰

Yet, whether they wish to or not, civil society organizations (CSOs) across the region must not only pressure and lobby the governments in power, they must at times ally with them to secure change in the legal and economic framework that government controls. Sometimes conservative forces are too strong, for example in the case of Kuwaiti women’s right to vote, which was held up for years in parliament despite the Emir’s support, or in efforts to strengthen legislation and action against “honour” crimes in Jordan which was also repeatedly blocked by parliament despite the royal family’s support. But there is often no choice but to form alliances and to forge compromises, and this will undoubtedly continue between civil society and the post-uprising regimes.

This will be especially important because the early signs of regression in women’s rights across the region are taking place against the background of the severe economic backlash from the uprisings. It is estimated that 50 per cent of the 2009 gross domestic product of the non-Gulf Cooperation Council Arab states would be needed to reach full employment and raise the labour force participation rate of women to 35 per cent, which is still lower than the developing region average.⁷¹ The situation could lead to a convergence in the aims of conservatives and government planners. As the ILO *Rethinking Informality* Report pointed out:

The push for increasingly relegating women to work at home is therefore the consequence of policies promoted by international financial actors, and has been largely in line with the priorities of conservative elements. It is therefore not surprising to see both sets of actors in agreement on the policy front in the emerging governments of the region.

There are here echoes of Jordan’s policy choices, albeit in a different era. In the 1970s-1980s the state actively encouraged women’s labour force participation due to massive male migration (nearly half the workforce) to service the rapidly expanding Gulf economies, only to sharply change course when the men began returning due to an economic downturn in the Gulf.⁷²

A bright spot on the horizon is that women, like men, are taking advantage of the new spaces for action. Many are joining political parties now that politics means something. In Egypt, Hoda Elsadda noted that civil society was the only space previously available for activists: “now there are more opportunities to participate in formal political

⁷⁰ “Tunisia's women are at the heart of its revolution”

<http://www.guardian.co.uk/commentisfree/2012/mar/23/tunisia-women-revolution?INTCMP=SRCH>

⁷¹ ILO/UNDP, op. cit. 99.

⁷² Hijab, Nadia, *Womanpower: The Arab debate on women at work*, Cambridge University Press, 1988, pp. 94 – 115.

society”.⁷³ She and other feminists that joined the Egyptian Democratic Socialist Party secured a commitment to 30 per cent representation of women in leadership positions and parity in future. In Libya, politicians began to court women voters and to encourage their participation in parties after over a million had registered to vote.

Within Islamist organizations such as the Muslim Brotherhood women are taking on more prominent roles, as already noted in the case of Tunisia. In Syria, six women members of the Brotherhood in Syria, known as the Syrian Sisterhood, were elected to the organization’s consultative body and two are now in leadership positions. This reflects the role they played in sustaining the organization’s philanthropic and charitable activities and providing services to Syrian refugees in Jordan.⁷⁴ Not enough is known about forces within Islamist movements with whom it is possible to form alliances to promote universally accepted interpretations of human rights and gender equality. More specifically, little is known about the discourse of Islamist women and women’s right to work, although the remarks of the Tunisian deputy quoted above indicate a solid grasp of the issues. These are areas where more research and outreach would be valuable.

6. Gender equitable development in the balance

A. General findings and recommendations

- The term gender continues to be used inter-changeably with women. Correctly used, a gender-sensitive approach offers less of a threat to family and community cohesion in the Arab region and is an effective way of promoting economic rights.
- The male head of household construct continues to dominate the region and is the root cause of discrimination in personal status, economic, and other spheres. It is vital that marriage be redefined as a partnership that involves mutual rights and obligations. To support this approach, more research and advocacy is needed on:
 - The contribution of women in the economic sphere as well as the actual and potential contribution of men in the domestic sphere.
 - The way in which state maternity funds help equalize the cost of employing women and men and the need to apply international standards of maternity leave.
 - The unfulfilled rights of men, including to paternity leave, which maintains a disincentive against employing women. European countries have established creative incentives to encourage the uptake of paternity leave and this has at the same time created a significant number of new jobs.
 - Pension policies that discriminate against women by offering earlier retirement (although some Arab countries have equalized the retirement age), as well as against men who are not able to inherit their widow’s pension, which encourages women to take a lump sum payment that is economically disadvantageous.

⁷³ Op. cit.

⁷⁴ “The Rise of the Syrian Sisterhood”

<http://carnegieendowment.org/sada/2013/04/25/rise-of-syrian-sisterhood/g187>

- The discrimination in constitutions and personal status and nationality codes has serious economic implications for women, men, the family and society:
 - Women’s rights to education, work, and freedom of movement are among the rights affected, contributing to the glaring reality that women’s educational attainment is not translating into decent work;
 - Men’s rights to education are affected because they are treated as the sole provider under the law;
 - Foreign men married to women nationals and the children of that union are deprived of rights to work, education and health;
 - Sectarian-based management of personal status not only discriminates against women. It also threatens national cohesion and reinforces sectarianism that has caused civil strife in several Arab countries.
- There is a long way to go in the Arab region to gender-sensitize national plans grounded in regularly collected gender-disaggregated data.
- The focus must be on evolving Arab economies in ways that create decent work for women and men, with particular attention to women’s ghettoization in the informal economy. More also needs to be done to address the gender stereotypes in education and vocational training that shape the workforce; drawing attention to the inroads women have made in strategic areas such as the judiciary and municipal councils would help to do so.
- Economic vulnerability affects males and females in different ways that need to be better understood, with particular attention paid to female-headed households, child labourers, migrant workers, and trafficked persons.
- There has been progress in labour legislation in tackling areas such as wage discrimination, but several Arab labour laws still reflect the view that women are vulnerable and need to be “protected” in ways that men do not.

B. Challenging the regressive discourse on gender

As discussed in section 5, the Arab uprisings have strengthened the hand of conservative elements that want to reaffirm traditional roles for women and men based on strict interpretations of *Sharia*. The importance of providing the evidence and mobilizing diverse forces to counter that discourse and prevent regression cannot be overstated. Gender equality advocates must be supported in the work they are doing to strengthen alliances with existing and new forces, including:

- Human rights advocates, economists, political parties, and legislators.
- Trade unions and human rights organizations, including women’s organizations, so that each group understands the others’ areas of activity as well as the international legal framework underpinning it and can strengthen their joint struggles.

- Islamists that base their work on a more liberal interpretation of *Sharia*, focusing in particular on women who are supportive of women's equality of economic opportunity. It is important to draw a distinction between traditions grounded in patriarchy that are common the world over and those grounded in Islamic tradition.

A major contribution to a shift in discourse would be made by recognising men's fears of rapid change that challenge their roles as provider and protector and to new developments such as girls outperforming boys in education.⁷⁵ Much of the debate around gender roles is happening online on blogs and in discussion groups, particularly among young Arabs.⁷⁶ In effect, these are the beginnings of a redefinition of masculinity away from traditional patriarchal constructs, similar to trends in other parts of the world.

C. Strengthening civil society and freedom of association

Civil society activism is responsible for much of the progress made towards gender equality and women's human rights in areas like personal status, nationality, political representation and the economy. Men are particularly active in efforts for reform in areas like nationality that also affect their rights.

Despite government restrictions on freedom of association and speech, civil society has become more active, vocal and organized. In the years leading up to the uprising, CSOs engaged in different spheres of activity joined forces to challenge state efforts to narrow the scope of civil and political rights, for example:

- Bahrain's Law of Association, which among other things limited women's associations to social and cultural matters and constrained their ability to work for genuine reforms in terms of gender equality.
- Jordan's 2008 Societies Law that gave the government the power to approve foreign funding, dissolve an association, or prevent the merger of two associations. Civil society protests led to a few amendments in 2009, but government possibilities for direct intervention remained.
- Pre-uprising campaigns in Yemen by human rights advocates for greater press freedom, which forced the Ministry of Information to partially lift the ban on licenses for new newspapers. Men and women also spoke out against newspapers that attacked protestors with impunity, especially "female activists in the field of women's and human rights."⁷⁷

⁷⁵ See, for example, Hamieh, Sylva Hamieh & Usta, Jinan, *The Effects of Socialization on Gender Discrimination and Violence: A Case Study from Lebanon*, Oxfam GB Research Report, March 2011 and *Insights into gender dynamics in marginalised urban communities in Jordan*, JOHUD. 2009.

⁷⁶ See, e.g., the recent Internet-based initiative by four young Arab women to promote women's right to participate in the public sphere, which has generated much discussion by both male and female youth.

"Revolution is female: the uprising of women in the Arab world"

<http://www.opendemocracy.net/5050/sara-abbas/revolution-is-female-uprising-of-women-in-arab-world>

⁷⁷ http://www.irex.org/system/files/MSIMENA08_Yemen.pdf

It is vital that international organizations support civil society efforts to uphold the right to association. As the ILO-UNDP's Rethinking Informality report put it with specific reference to the world of work, "the emerging balance of forces in different contexts ... will largely hinge on the ability of different groups of informal workers to organize themselves and build alliances with other social groups."

Civil society is most effective when individual groups come together in coalitions, and strong coalitions will be needed to prevent regression and support progress. Support by the UN and other international organizations should go towards building the capacity and effectiveness of coalitions rather than dealing with individual organizations. Otherwise they risk fragmentation of effort and the "NGO-ization of civil society, in other words tempting NGOs to tailor their agendas to donor needs and interests and be accountable to donors rather than to the people they are purporting to serve.

D. Revisiting international development support

The international development community, particularly the UN and its specialized agencies, has a role to play as a mediator or honest broker between the different actors caught up in crisis or post-crisis situations, and is in a position to support Arab countries in sustaining progress toward gender equality and prevent regression. However, it is important to note that the political, social and economic conditions that led to the uprisings in Tunisia, Egypt, Yemen, Bahrain, and Syria are present throughout the region, including economic disempowerment, political disenfranchisement and sectarianism, even in countries that appear "stable".

Development interventions must at least recognise, if not directly address these factors and take them into account in selecting partners and programmes. Given the need for the democratic evolution of most Arab state systems, it cannot be business as usual in terms of offering technical assistance to governments or to civil society. Perhaps the case that best illustrates this is that of the occupied Palestinian territory. As the feminist scholar Eileen Kuttab concludes in her discussion of efforts to foster women's empowerment, "What becomes evident from the Palestinian context is the need to tie empowerment to the everyday resistance to the colonial occupation and see it as part of a comprehensive process that relates national resistance to social and economic independence."⁷⁸

Although the situation in other Arab countries is different to the Palestinian situation, there are more similarities than meet the eye same. Although international organizations cannot of course directly oppose governments in power, in a context where institutions, systems, and lives can be crushed at any time by a dictatorial or unaccountable regime, it is important that they choose civil society partners that understand the links between development and a comprehensive process for political, economic and social rights.

⁷⁸ "Empowerment as Resistance: Conceptualizing Palestinian women's empowerment", Eileen Kuttab, Development, 53(2). 2010.

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