

**Regional Bureau for Arab States**  
**United Nations Development Programme**

**Women Are Citizens Too:**  
**The Laws of the State, the Lives of Women**

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**I. Introduction**

In December 2001, The United Nations Development Programme (UNDP), with support from the International Development Research Center (IDRC), launched a pilot initiative on Gender and Citizenship in the Arab world. This initiative is a sub-component of the UNDP Arab States Regional Programme on Governance (POGAR). During the first phase of the initiative, UNDP's Regional Bureau for Arab States (RBAS - <http://www.undp.org/rbas/>) developed a concept note and commissioned four papers on gender and citizenship in the Arab region. These covered three aspects of citizenship: (a) family laws, (b) social protection laws and (c) nationality and election laws. The papers were discussed at an expert group meeting co-organized by UNDP and Maroc20/20 which was held in Casablanca on July 28-29, 2002. Some of the research was subsequently presented at a roundtable organized by UNDP and Maroc 2020 at the Mediterranean Development Forum (MDF) which took place in Amman in October 2002. The full papers are currently being revised and will be published in hard copy. They will also be available on POGAR's website ([www.undp-pogar.org](http://www.undp-pogar.org)). To make the papers more accessible to a wider audience, UNDP commissioned a consultant to produce this summary and synthesis of all four papers.

### **Rationale:**

The recently launched Regional Arab Human Development Report 2002 (AHDR 2002) co-sponsored by UNDP's Arab States Bureau, and the Arab Fund for Economic and Social Development, identified the lack of women's empowerment as one of three key deficits in the Arab world (<http://www.undp.org/rbas/ahdr/>). The Gender and Citizenship initiative is based on the premise that a "Citizenship Framework" is a particularly powerful one, both conceptually and pragmatically, for empowering women and addressing their unequal access to public spaces in the Arab world. (See UNDP's concept note on [www.undp-pogar.org](http://www.undp-pogar.org))

The concept of citizenship is a central and mandatory concept for the modern nation state and is thus essential for any discussion of governance and gender. The concept of citizenship entails a direct and legal relationship between the individual and the state, a relationship that carries with it obligations and enforceable rights as defined by juridical processes. As an area of study, citizenship has gained increased importance in recent years due to increasing challenges to the very viability and basis of current nation states as a result of pressures from both below (in the form of ethnic or religious movements at the sub-national level), as well as from above (in the form of processes of regional integration and globalization).

The notion of citizenship is conceptually appealing because it significantly broadens the debate on gender, allowing us to go beyond traditional discussions of "women's issues" or "women in parliament", to more fundamental discussions

about the nature of the State and Politics in the Arab world. State legislation delineates and regulates the rights and responsibilities of citizens and rules by which one becomes a citizen, by which citizenship is passed on to children and spouses, and by which citizenship can be withdrawn. As the recent authoritative volume by Joseph (2000) clearly indicates, a citizenship framework also broadens the discussions to address crucial issues such as the place of family, and kinship ties in the social fabric, the extent to which kin-based formations are integrated into the modern political order, and the impact this has on the construction of citizenships in the Arab world.

A discussion of gender within the broader context of citizenship also allows for a more nuanced analysis and understanding of the tremendous challenges, as well as risks and forms of resistance, facing attempts at gender equality in the region. It is not by accident that the most heated debates in the Arab world center on gender and women's integration into public life. When women's access to and integration into the political community is debated, what in essence is being contested is the very future nature of social and political organization in the Arab world. Raising questions about the role of kinship and family in politics challenges the very core of the social textures in the Arab world.

At a more pragmatic and policy oriented level, a conceptual framework based on the notion of citizenship can serve as a strong basis for mobilizing for changes to empower women. In many parts of the world citizenship is emerging as the central point for protest and resistance by NGOs against deprivation and social exclusion. At the same time, the term citizen, "Al Mouwaten" is gaining currency in official statements and documents, in the press (both official and opposition), as well as in public discussions in many parts of the Arab world. This is the case even in some Arab countries that still use the more traditional term Subject, "Raaya" to describe the relationship between the rulers and the rest of the population. Not all the pre-conditions and presumptions underlying the concept of citizenship have actually been met in most countries in the region. Nonetheless, the fact that the term is now a central one in public discourse, is of strategic importance and has been successfully used by NGOs as a leverage for change and greater empowerment for women in the region.

### **Objectives:**

The Gender and Citizenship pilot initiative is now in its second phase. The objectives of this phase, which have been formulated in close consultation with key women's experts and NGOs in the region, are fourfold: (a) to support research-informed policy debate and dialogue on women's citizenship in selected countries in the Arab region; (b) to raise public and media awareness about the scale and implications of gender inequalities inherent in key legislation; and (c) to build the capacity of Arab women's NGOs in networking and advocacy to lobby for policy changes, and (d) to build partnerships between women's NGOs and parliamentarians. Working closely with key women's NGOs in selected countries

in the Arab world, these objectives are being operationalized through focusing on two innovative entry points: (1) nationality legislation and (2) civil registration procedures.

## **2. Gender and Citizenship in the Arab World: An Analytical Framework**<sup>1</sup>

Classical political thinkers usually discussed the citizen in terms of an abstract person, who appeared to be neutral in cultural and gender terms. And because constitutions and laws are written in terms of such an abstract citizen, they may appear equitable. But recent research has revealed the extent to which citizenship has, in most countries of the world, been a highly gendered enterprise, in practice and on paper.

### *Mother as Nation, Father as State*

To begin with, nations often use the woman as a critical symbol in inventing their notions of themselves. Most nations are divided by religious, ethnic, tribal, linguistic, regional and class differences. The image of the national "woman" creates a place of "belonging" to overcome internal differences (Layoun 1992; Peteet 1991).

Arab nationalist reformers and leaders, such as Qasim Amin in Egypt, have used women to imagine their communities as modern, arguing that it was in the interests of the "nation" to educate women, recruit them into the labour market, transform their dress and symbolically integrate them into the political process as emblems of modernity (Ahmed 1992). Political Islamic movements have also used women for imagining their political communities. By tying their visions of the ideal political community to women's dress or comportment, however, they have limited the possibilities of women's equal citizenship.

While women and motherhood are used as icons of the nation, men and fatherhood are associated with the state (Papanek 1994, Hunt 1992, Delaney 1995). The linkage of woman/mother to nation and man/father to state facilitated the institutionalisation of gendered citizenship in state-building projects.

### *The State and Masculine Citizenship*

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<sup>1</sup> This section is summarized and edited from the paper "**Gender and Citizenship in the Arab World**" written by **Suad Joseph** and commissioned by UNDP as part of its gender and citizenship initiative. The paper, which is being published separately, contains detailed references to the works of many scholars, some of which are cited at the end of this report.

No actor is more critical to the gendering of citizenship than the state. States regulate the rules by which one becomes a citizen, by which citizens pass citizenship on to their children and spouses, and by which citizens can lose citizenship. Most states use both land and blood criteria to codify and practice citizenship rules. In almost all the Arab states, however, the privileging of blood in citizenship rules has gone hand in hand with the masculinization of descent (Joseph 1999b). Almost all Arab states permit fathers, but not mothers, to pass citizenship on to their children and husbands, but not wives, to pass citizenship on to their spouses.

What it means to be a “citizen” of a particular country is a modern invention that evolved with the creation of modern nation states in the 19<sup>th</sup> Century. The efforts to give a genealogy to citizens (especially the linkage of “blood”) have enabled states to assert a continuity to their existence that elevates the being of statehood into the realm of the sacred.

The state, however, is not a single-minded actor with a unified set of interests. States are composed of different, conflicting, and changing sets of interests (Carapico and Wuerth 2000). It is most productive to see the state as a contested terrain, its actions reflecting local, national, and global conflicts and contradictions.

While women have worked to define the rights and responsibilities of citizenship, nevertheless, throughout the region, rights and responsibilities have been defined mainly by the state -- top down (Altorki 2000; Al-Mughni and Tetreault 2000; Amawi 2000).

*European states emerged with the rise of bourgeois classes intent on asserting their authority autonomously from the state. Arab states emerged with the demise of empires, resulting in top-down citizenship.*

Moreover, rarely, have large numbers of women in the Arab world acted categorically on behalf of their shared interests as women. While sharing some interests and circumstances, women are not a homogeneous category. Class, race, religion or other variables have been, at times, more important than gender in circumscribing women's rights and responsibilities as citizens. Their loyalties have more often aligned them with men of their class, religion, ethnicity, tribe, or family than with other women across these social boundaries, despite the fluidity of boundaries. Thus women need to be differentiated not only from men, but also from other women in relationship to their particular statuses (Yuval-Davis 1997).

### *The State, the Family, and Patriarchy*

Unlike Europe, where state-building emerged in conjunction with the rise of bourgeois classes intent on asserting their authority autonomously from the state,

in the Arab world, state-building emerged more in conjunction with the demise of empires, resulting in top-down citizenship.

Through legislation, through regulation of courts, through its practices as well as what it has not been willing to do, the state has invented the separations between the arenas of the “state”, “civil society”, and the “domestic” (Yuval-Davis 1997; Joseph 1997). Particularly important for analysing women’s secondary citizenship are the processes by which the “family” comes to be marked as a separate domain. It could be argued that the very idea of the “family” is an

*Patriarchy: privileging male and elder rights. In Arab societies, unlike the West, patriarchy mobilizes kinship structures to justify male and elder privileges. And family structures, values, and terminology are critical to survival in Arab societies*

invention of the state. Pre-state societies tend not to delimit an arena that is specifically family, nor do they identify family with women. Family is an invention that constrains women’s behaviour, as well as men’s behaviour, while at the same time romanticizing and sanctifying the grounds on which the constraints are built.

For all Arab states, the family is the core social institution. Almost all the constitutions of the states in this region define family as the basic unit of society. In

general, Arab states have woven family processes into state dynamics. Yet what has been meant by family has varied tremendously among states, social classes, rural, urban or pastoral communities, and religious and ethnic communities. Extended families, nuclear families, single headed households, and other varieties are found throughout the Arab world. What seems consistent is the presence of patriarchy. Though there are numerous uses of the term, commonalities in Arab usages of patriarchy are worth noting.

For most cases, patriarchy consists of the privileging of male and elder rights. In Arab societies, patriarchy mobilizes kinship structures, morality and idioms to justify male and elder privileges. Patriarchy has been and largely remains nested in kinship, distinguishing it from the notions of patriarchy common among Western feminist scholars who often separate patriarchy and kinship. This difference is crucial for understanding some of the specificities of the gendering of citizenship in the Middle East.

Arab men become citizen as heads of patriarchal families. Arab states have viewed women and their rights within patriarchal structures, as subordinate mothers, wives, children, and siblings (Giacaman, Jad, and Johnson 1996; Al-Mughni 2000). Women, as citizens, are conflated with children needing care and control. On this basis, Arab states justify laws that require women to obtain the permissions of male guardians to marry, travel or to open businesses.

Arab patriarchy has been forceful, in part, because of its rooting in kinship, unlike Western patriarchy. The impact of patriarchy for the gendering of citizenship has been profound because kinship permeates all domains. Family structures,

values, and terminology have been critical to survival in Arab societies. Political leaders bring their own family members into government, mobilize following through family units and dispense goods and services through family-based networks (Altorki 2000; Joseph 2000; Amawi 2000). They use family terminology to justify their leadership, reinforcing the family as a political unit of society and making membership in families politically strategic for citizens.

Family is also central to political identity. Political identity comes through male genealogy. The Arab nation is seen as descending through a series of patrilineal kin groups. Citizens have to belong to a male-defined kin group to belong to a religious sect, to belong to the nation, and to acquire the rights and responsibilities of citizenship. Children are assigned both the religious and political identities of their fathers. By not allowing women to pass citizenship on to their children (or their spouses), most Arab states cement the linkage between religious identity, political identity, patrilineality, and patriarchy – that is, between religion, nation, state, and kinship.

Not only do states legally privilege family above the individual, but also they represent the family as something *a priori*, "prepolitical," in a domain so beyond current time that it is best understood as sacred. The absorption of family values into religious values is enhanced by religious control over family law, giving religious sanction to patriarchy.

*Religion has underwritten the gendering of citizenship by its support of patriarchy. Clerics in all religious sects, themselves male, support hierarchical family relations.*

### *The Role of Religious Institutions*

Religious institutions have been the most powerful set of institutions in sanctifying the family. Indeed, religion has been a central force in politics in the Arab world, directly contributing to the gendering of citizenship. Membership in a religious sect has been, in practice, a requirement of citizenship in most Arab states. Through this, Arab states have not simply legalized a social reality, but have actively constructed it by requiring and making membership in religious communities strategically necessary for citizens. Some Arab states have given legal authority to institutions that "represent" the community, such as religious courts.

Religion has underwritten the gendering of citizenship by its support of patriarchy. Clerics in all religious sects in the Arab world, both within Muslim and Christian traditions, have been exclusively male, and they themselves have mostly been hierarchically organized, which has invested religious institutions in systems of male authority. Clerics have supported patriarchy through their support of hierarchical family relations. Religious institutions have tried to integrate persons in their families by teaching respect of family elders and have celebrated sacrifice of self for family love. The on-going use of kin idioms

("father," "mother," "son," "daughter," "brother," "sister") by most religions similarly has reinforced kin patriarchy.

Muslim and Christian religious institutions have supported patriarchy through their support of patrilineality. While patriarchy (privileging of males and seniors, legitimated by kin idioms and morality) and patrilineality (reckoning descent through male lines) should not be confused with each other, in practice, they have reinforced each other (Joseph 1999b). Laws differ from sect to sect, yet, in general, religious institutions (both Muslim and Christian) have assumed that children become members of their father's lineages – indeed, belonged to their fathers and their father's kin.

*The concept of citizenship as a set of contractual relationships between "the individual" and the state is, in most Arab countries, often overridden by the notion of the person as nestled in relationships of kinship and community.*

### *Sense of Self and Rights: Individual vs. Relational*

The constitutions of most Western states define the basic unit of society as the individualized citizen, with the concept of citizenship as a contractual relationship between state and citizen. The concept of citizenship as a set of contractual relationships between "the individual" and the state exists on paper in most Arab countries, although this has more often than not been overridden by the notion of the person as nestled in relationships of kinship and community (Joseph 2000; Charrad 2000; Amawi 2000; Altorki 2000; Al-Mughni and Tetreault 2000).

Western notions of the citizen-self as "individual" have been supported formally, legally and socially in most Arab societies. Other notions of the citizen-self, however, have also been supported. Notions of a relational or a connective self are particularly common in Arab countries. Connectivity is a notion of self in which a person's boundaries are relatively fluid so that persons feel that they are a part of significant others (Joseph 1993b).

Connective persons do not experience boundary, autonomy, or separateness as their primary defining features. Rather, they focus on relatedness. Maturity is signalled in part by the successful enactment of a myriad of relationships. In Arab counties in which the family has been valued over and above the person, identity has been defined in familial terms and kin idioms and relationships have been woven through society, connective relationships are necessary for successful social existence (Barakat 1993; Joseph 1999). When linked with patriarchy, connectivity produces patriarchal connectivity, which means the production of selves with fluid boundaries organized for gendered and aged domination in a culture valuing kin structures (Joseph 1993a).

Connective or relational notions of selfhood can underpin relational, rather than contractual notions of rights. Relational rights are neither communal (based on an assumption of a coherent corporate-like group) nor individualist. Relational

rights imply that a person's sense of rights flows out of relationships that s/he have. By being invested in relationships one comes to have rights. As a basis for citizenship practices, relational rights require citizens to embed themselves in family and other subnational communities such as religious sects, and ethnic and tribal groups to gain access to the rights and privileges of citizenship.

*How people organize on behalf of rights will be impacted by whether the notion of self and rights is individualist, relational, or communal.*

The differing notions of self and rights pose a dilemma, theoretically and politically, for feminists committed to activist agendas on behalf of women's citizenship rights. How one conceptualises and/or organizes movements on behalf of rights will be impacted greatly by whether the notion of self and rights is individualist, relational, or communal. Women may claim rights as individuals, through their relationships, or as members of communities (defined by religion, ethnicity, tribe, or other variables), affecting the search for women's human rights. The many notions of rights, self, and family that co-reside in the Arab world complicate attempts to search for continuities in the gendering of citizenship.

The intertwining of family and state, the meshing of "public" and "private" and the embeddedness of religion and politics feed into the gendering of citizenship. The assumptions of separations of public and private, kinship and state, civil society and state, religion and state do not necessarily hold up in Arab states. States often control civil society. At the same time, the penetration of the state by family-based patriarchy also contributes to the lack of democracy. And the patriarchy found in the domestic sphere is also found in governmental and non-governmental spheres. These continuities between governmental, non-governmental and domestic structures, which have been constitutive of patriarchy, are central to the culturally specific gendering of citizenship in Arab states.

*The assumptions of separations of public and private, kinship and state, civil society and state, religion and state do not necessarily hold up in Arab states.*

A generation of feminist theorists have investigated Arab state structures (Joseph 1991, 1993a, 1997, 1999a, b, 2000; Hatem 1986, 1994, 1995; Charrad 2000, 2001; Molyneux 1991; Lazreg 1994; Badran 1995; Brand 1998; Botman 1999). There remains a need for studies to establish a systematic basis for a comparative analysis of the rules and practices of citizenship throughout the Arab world. Meanwhile, the struggles, by women, to change the ideas of citizenship (whether by focusing on Islamic Law or state legislation) from a woman-centred perspective and to challenge masculine discourses of citizenship, are giving many women of the region hope.

### **3. Nationality Laws: Repercussions on Women, Husbands, Children<sup>2</sup>**

In most Arab countries, women do not lose their nationality if they marry a foreign national. However, with few exceptions, Arab women cannot pass their nationality on to their husbands and children. Arab women married to foreign husbands suffer the most humiliation and hardship; life is especially hard for their children who, deprived of their mothers' nationality, are excluded from basic political, civil and social rights. In effect, a part of the world that reveres the family and upholds it as the basic unit of society maintains laws that penalize and impoverish the family.

*With few exceptions, Arab women cannot pass their nationality on to their husbands and children*

Many of the discriminatory nationality laws are in fact based on French and British codes of the 19<sup>th</sup> century and not on Shari'a (Islamic Law). This section reviews nationality rights in Egypt, Jordan, Lebanon, the Occupied Palestinian Territories, and Tunisia.

#### *Egypt*

According to Egyptian Nationality Law no. 26 1975, a father can grant his children his nationality whether they are born within or outside Egypt (the Egyptian laws adopted the basic principles of Ottoman law, which in turn was influenced by French and British laws). Egypt has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but has entered four reservations, including a reservation to Article 9 paragraph 2 concerning the right of women to give their children their nationality.

*Many of the discriminatory nationality laws in the Arab region are based on French and British codes of the 19<sup>th</sup> century and not on Shari'a*

An Egyptian woman married to a foreign husband can keep her Egyptian nationality, but she cannot grant it to her children even if she is divorced or widowed. As such the children of a foreign woman married to an Egyptian enjoy better status than the children of Egyptian mothers. The only situation in which a woman can grant her children her nationality is if they are born in Egypt to an unknown or stateless father. However, children who meet these conditions must apply for Egyptian nationality to the Minister of Interior, and can do so only once they reach the age of majority. In addition, the application is subject to certain conditions, such as being resident

<sup>2</sup> This section is summarized and edited from the paper "**Nationality Laws, Elections, and Citizenship in Some Arab Countries**" prepared by Islah Jad of BirZeit University and commissioned by UNDP as part of its gender and citizenship initiative.

in Egypt for at least 5 years. The Minister of Interior has the right to accept or reject the application.

### *Jordan*

The Jordanian Nationality Law of 1954 was modelled on British nationality laws. The law was amended in 1987. The grounds for granting nationality include anyone born to a father holding Jordanian nationality; anyone born in the Hashemite Kingdom of Jordan to a mother holding Jordanian nationality and to a father whose citizenship is unknown, or who is stateless, or whose paternity has not been legally established; and anyone born in the Hashemite Kingdom of Jordan to unknown parents.

The Law also stipulates that a Jordanian man could grant Jordanian nationality to his non-Jordanian wife provided that she has resided in the country for a period of three years if she was an Arab national or five years if she is of non-Arab nationality . A Jordanian woman marrying a non-Jordanian cannot pass her nationality to her “foreign” husband. However, these restrictions can be waived if the non-Jordanian husband fulfils specific conditions, including investment in the country, residence for at least four years with the intention of permanent residence, and legal employment that does not compete with Jordanians (Amawi 2000). Similarly, the foreign husband of a Jordanian woman who wishes to acquire a residency permit must possess a permit for work that does not compete with Jordanians for the same employment, have a viable source of income, invest in the country; and have academic or professional qualifications unmatched in the country.

*Children of Arab women married to non-Arab men are not automatically entitled to residence and other rights.*

Even more problematic, a Jordanian woman marrying a non-Jordanian (but with established foreign nationality) can neither pass her nationality to her children nor grant them residency permits, whereas the children of a Jordanian man married to a non-Jordanian wife automatically acquire his nationality as well as residency. Since the Nationality Law is based on blood ties and not on land, the children of a Jordanian male are Jordanians wherever they are born, and a minor (below the age of 18) whose Jordanian father acquires a foreign citizenship can retain his/her Jordanian citizenship.

Consequently, the children of a Jordanian woman married to a non-Jordanian with established foreign nationality do not enjoy many rights, including enrolment in the school system, social entitlements, or political rights. Indeed, they are not even registered in their Jordanian mother’s passport, which is stamped “Children are not included due to the different nationality of the father”.

Activists, including the Jordanian National Committee for Women, have called for

an amendment to Article 13 of the Nationality Law so as to give the Council of Ministers the right to grant Jordanian nationality to the children of Jordanian mothers married to non-Jordanian foreign nationals.

Jordan signed CEDAW in 1980 and ratified it in 1992, but, like Egypt, its reservations included one to Article 9 paragraph 2. A later memorandum submitted by the Ministry of Foreign Affairs affirming its reservations explained that the article conflicted with the provisions of the Shari'a. Abla Amawi (Amawi 2000) argues that there is no contradiction between the CEDAW article and Shari'a because Shari'a does not address the issue of nationality, but that of *nassab*, which establishes linkages of a child to their father and not to the mother.

In fact, the Government's apprehension appears unjustified since Article 38 of the Jordanian Civil Code states "every person shall have a name and a surname and his surname shall be attached to the names of his children". Therefore, paternal linkages based on blood ties to the father would not be denied if the mother passes her citizenship to her child who holds the surname of the father.

*A woman needs her husband's permission to obtain a passport – but an unmarried girl of 18 can obtain her own passport without a male guardian's permission.*

The Passport Law also discriminates against women, stipulating that a Jordanian wife cannot obtain a separate passport without her husband's written permission. Neither can children under the age of 16. If those children are to be included in their mother's passport, the husband's permission is also required. Article 4 (a) of the Passport Law grants a woman the right to leave the country provided that she has a valid passport (Jordan also expressed reservations to CEDAW Article 15 paragraph 4, with regard to freedom of movement and choice of residence and domicile). By contrast, a female child can obtain the passport without the consent of her guardian upon reaching 18 years of age. However, once she gets married, she has to obtain her husband's permission.

A woman can by-pass the need for her husband's permission by securing the agreement of the Passport Department Director, who can grant her a passport for a one-year period. This possibility however, is limited in practice to Jordanian mothers who were abandoned by their non-Jordanian husbands. The yearly provisional renewal makes it difficult for the children to move and travel, and increases the mother's burdens in terms of time and expenses required for renewal.

### *Lebanon*

In Lebanon, the nationality law was based on the French Law. Decree no. 15 of 19 January 1925 was amended by the Law issued in 11 January 1960.

According to this law, a person is considered Lebanese if born to a Lebanese father; if born in the Greater Lebanon territory and able to prove that [he] is not naturalized as a foreign subject; or if born in the Greater Lebanon to unknown or stateless parents. A Lebanese mother can grant her children the Lebanese nationality if they were born illegitimately. If a mother has minor children and is naturalized as a Lebanese after the death of her husband, she can pass Lebanese nationality on to her children. In this case, Lebanese law gives the foreign woman more advantages than a Lebanese woman, who cannot extend her nationality to her children from a foreign husband after his death. In some instances, Lebanese mothers have been obliged to claim that their legitimate children are illegitimate in order to entitle them to their nationality.

*In many Arab countries, the only situation in which a woman can grant her children her nationality is if they are born to an “unknown” or stateless father. Some women claim their children are illegitimate so they can pass on their nationality.*

The 1960 law also provided that a Lebanese woman married to a foreigner shall not lose her nationality once married and will not be obliged to take the nationality of her husband. (Moughaizel 2000). A Lebanese woman can regain her Lebanese nationality if she proves that she was a Lebanese national before marriage to a foreigner (and that her marriage is dissolved). This provision does not apply to her children. They have to keep the nationality of their father. Lebanon has also ratified CEDAW, and like Egypt and Jordan has entered reservations to Article 9 paragraph 2. Lebanese women have worked hard, although as yet without success, to remove discrimination in Lebanese nationality law.

#### *Box 1 Lebanese Women Campaign to Change Nationality Law*

The Lebanese Association for Human Rights in collaboration with other women's groups began with the more modest demand that a Lebanese woman should be able to give her children her nationality in the event her foreign-born husband dies, thereby equalizing the status of Lebanese women with the status of foreign women who become naturalized Lebanese. They based their case on the principle of equality, the well being of the children and respect for family unity.

The activists studied legal impediments, drafted an amendment, and launched the campaign. They presented their demands in a memorandum to the Minister of Justice in June and again in October 1992. Meanwhile, the Lebanese Association asked all women's organizations to collect cases of discrimination against Lebanese women and their children related to their nationality status. In March 1993 a ministerial committee was established to study the Lebanese Nationality Law, and women's groups submitted their own study to this committee, detailing cases of discrimination against Lebanese women.

In January 1995, the Lebanese Association organized a general debate on the subject for academics, activists, members of parliament and lawyers. The participants decided that the amendment should include not only widowed but also divorced women and signed their names to a petition that they submitted to the authorities. That same month, a delegation representing different institutions met with the new Minister of Justice and demanded that the amendment be

endorsed. In February 1995, the Parliamentary Committee for Justice and Administration endorsed a draft law allowing a widowed mother to grant her Lebanese nationality to her children. The activists also presented another memorandum to the speaker of Parliament.

That month, the Minister of Justice prepared a draft law in which he included a condition that a Lebanese widow had to prove continuous residence in Lebanon with her children at least for 5 years in order to grant them her nationality. The Lebanese Association for Human Rights strongly objected to this condition. Another meeting in December 1995 brought together the parliamentary committee, the Ministry of Justice, the Ministry of Interior, and women activists were present and defended their case. A parliamentary sub-committee was formed to study the subject – and it is still “studying” the subject.

*Adapted from Moughaizel, 2000*

### *The Occupied Palestinian Territories*

Nationality Laws in the Occupied Palestinian Territories have gone through many different permutations reflecting the realities of the Palestinian people. At different times, laws dating from the Ottoman period, the British mandate, the Jordanian and Egyptian administrations, the Israeli occupation have been applied to the Palestinians that remained in their country, while the laws of Lebanon, Syria, and Iraq have applied to Palestinian refugees and exiles.

*Palestinians still do not enjoy the right to decide who resides in their homeland – or even who can visit and for how long.*

With the start of the Oslo peace process between Israel and the Palestine Liberation Organization (PLO) in 1993, an independent Palestinian legislation began to be passed, though this was still subject to Israeli control. As a result of the current political and legal realities, responsibilities and powers are effectively shared between the occupying power and representatives of the Palestinian people. One example of this “shared responsibility” relates to residence. According to the Interim Agreement, a joint Israeli-Palestinian committee would address the re-issuance of identity cards of those who had lost their identity cards. Additionally, while the Palestinian National Authority (PNA) had the power to grant permanent residency status in its areas to spouses and children “to promote and upgrade family reunification, it may not do so without Israel’s prior approval” (Mar’i 1997). Israel has also retained important powers in regard to the issuance or extension by the PNA of visit permits. Such permits may not be issued by the PNA unless they are cleared by Israel.

According to the Oslo Accords, the Palestinian National Authority had the right to issue Palestinian passports for Palestinian residents in the West Bank and Gaza as well as some Palestinian returnees (these were individually vetted by Israel). The interim agreements allowed for a one-off return of PLO political and military cadres as necessary for the formation of the Palestinian Authority and its police force. The right of residence was extended to approximately 80,000 PLO political, bureaucratic and military cadres.

The only mechanism open for other exiles to return was through the traditional Israeli-controlled system of application for family re-unification. This system based on "humanitarian" grounds and a case-by-case approach rather than individual or collective "rights" has been in place by Israel since the early 1950s. The overwhelming majority of family reunification applications are rejected. In the early 1990s the system became slightly more generous -- it put a standard ceiling of 2,000 cases or 6,000 individuals per year. Once the multilateral refugee negotiations over persons displaced by the 1967 war began, however, the regular family reunification system was frozen. In family re-unification cases it has long been the actual policy that women married to men without Palestinian identity cards ("foreign spouses") had virtually no chance of being considered. For the population resident in the West Bank and Gaza, Palestinian passports were issued, which were individually vetted by Israel.

Palestinians living in East Jerusalem, which was illegally annexed by Israel in 1967, were issued Israeli ID cards that extended some rights but denied others. They are entitled to vote for the Jerusalem municipal council, to health insurance and have access only to a limited number of social entitlements, but they have to pay the full Israeli taxes. They have an Israeli travel document valid for 9 months or a year. The status of Jerusalemite Palestinians is increasingly threatened by Israeli restrictions.

Taking into consideration the fact that Israel controls Palestinian borders, this makes it the supreme authority to decide who has the right to "reside" in his or her Palestinian homeland, who has the right to visit, and for how long. This effectively restricts the return of the Palestinians in general and Palestinian refugees in particular to their homeland. In sum, it is Israel that ultimately has the power to issue ID cards and to decide who is or is not a citizen of Palestine.

In 1994, Presidential Decree No 1 stated that the Palestinian Authority would re-activate all legislation prior to 5 June 1967, which meant the Jordanian Nationality Law would be activated in the West Bank and the Palestinian Nationality Law of 1925 would apply in Gaza. Accordingly, the Deputy Minister of Interior issued rulings concerning Palestinian passports stipulating that a woman had to get the consent of her husband in order to obtain a passport. The Palestinian women's movement was prepared, having issued a "women's document" earlier in 1994 to list all women's demands once the Palestinian authority was established. The document included granting women their rights to acquire, preserve or change their nationality, as well as to give citizenship to their husbands and children. Thus, the activists immediately mounted a campaign against the new decree.

*Box 2 Palestinian Women Campaign Against Passport Decree*

In 1994, when activists learned of the Interior Ministry Decree requiring the husband's consent for women to get a passport, they began a well-orchestrated campaign. First, a letter of protest was

written to the deputy minister. A media campaign was launched at the same time in cooperation with many official and non-official journalists, and many articles appeared in local newspapers written by men and women. A message was sent to President Arafat asking for the abolition of all measures discriminating against women with regard to their passports. Two women's delegations also met him in person to persuade him to take women's demands into consideration. Women's marches and demonstrations were organized with men to question the bases for the new Palestinian State and to ask for equality for women.

The activists documented many cases of divorced, widowed, and single women to show the humiliation they felt when they are asked to get the consent of their male "guardian" in order to get their passports. During this campaign many meetings were organized with the Deputy Minister. Women leaders argued: "Why didn't you ask us to get the consent of our male guardians when our political leadership wanted us to carry messages from one country to another?"

The deputy minister explained he was applying a Jordanian and not a Palestinian law and that he could not change the law until the new Palestinian law was issued. Activists pointed out that a draft Election Law was issued to organize the first legislative Palestinian elections without applying Jordanian laws. The Deputy Minister was persuaded by these arguments, and promised to issue a decree to change the ruling. Women's committees followed up until they received assurances in writing about the changes in the procedure to get new passports for women.

In a letter dated 2 March 1996 and signed by the Director General of Passports and Nationality after the decree by the Deputy Minister of Interior, it was stated that a wife does not need the consent of her husband to apply for her own passport, and a female adult (18 and above) does not need, irrespective of her social status, the consent of her guardian to obtain a Palestinian passport. The women's committees strictly monitored the application of the decree in all the Palestinian directorates to be sure that it was being applied across the board. A celebration was organized for the Deputy Minister and he was praised in many articles in the women's newspaper 'Sawt al Nissa'. Meanwhile, the women's movement is aware that more vigilance is still needed to ensure that the decree becomes law.

### *Tunisia*

The first Tunisian Nationality Law was issued on 19 June 1914 after the French Mandate and based on French Nationality Law. Tunisian nationality was granted to children born to a Tunisian father. Tunisian mothers could grant their children Tunisian nationality if they were born to an unknown father. After independence, a Tunisian Nationality Law was issued in 1957 and modified in 1963. It stated that men and women were equal in terms of acquiring and losing Tunisian nationality. It also stated that men and women could each keep their nationality of origin in case of marriage to a foreigner.

However, the law is not fully equal. According to Article 21, a foreign husband of a Tunisian woman can acquire Tunisian nationality if he fulfils the following conditions: permanent residence in Tunisia and good knowledge of Arabic. As for the foreign wife married to a Tunisian, according to Article 12 she becomes automatically Tunisian if she loses her nationality of origin because of her marriage. If she does not lose her nationality through marriage, she has the right to naturalize if she applies and if she resides in Tunisia for at least two years.

Furthermore, Article 6 states that a Tunisian father can grant his children his nationality wherever the place of their birth and Article 7 states that a child whose father and grandfather were born in Tunisia can acquire Tunisian nationality. By contrast, a Tunisian mother can grant her children her nationality if they are born on Tunisian soil of a foreign father or if they are born to an unknown or stateless father or to a father with unknown nationality. Article 15 states that children born of a Tunisian mother and a foreign father outside Tunisia, have to apply for the Tunisian nationality one year before their age of majority. If two years pass without opposition, they can be granted Tunisian nationality by a presidential decree. It is worth noting that the Tunisian Nationality Law is not based on Shari'a, but it does base itself on the Tunisian Family Code, which in turn is based on Shari'a, as noted in the reservations attached by the Tunisian government to CEDAW.

*Arab women married to foreign husbands suffer the most humiliation and hardship; life is especially hard for their children who, deprived of their mothers' nationality, are excluded from basic political, civil and social rights.*

#### **4. Social Security Laws Penalize Women – and their Families**<sup>3</sup>

In developing countries, where the spectre of poverty is omni-present, social protection mechanisms take on special importance. In the Arab World, where economic growth rate is one of the slowest of world regions, the issue is critical. There have been few studies on women and social security laws. Therefore, the question that remains largely unanswered is this: Are men and women benefiting equally from existing legislation? This section reviews legislation in Algeria, Egypt, Jordan, Kuwait and Lebanon to highlight distinctions between women and men, and then addresses the question of discrimination in Arab women's social security entitlements.

##### *Brief Overview of Social Security Legislation*

Algeria's social security program provides cash benefits for disability, retirement, survivor's pensions, unemployment, work injury and health care. Although all employed and self-employed people are technically covered under this contributive system, the reality is that benefits are heavily tied to active

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<sup>3</sup> This section is summarized and edited from the paper "Do Social Safety Nets Catch Women? Women's Social Security Entitlements in the Arab World" prepared by the Association for Development and Enhancement of Women (ADEW), Egypt, and commissioned by UNDP as part of its gender and citizenship initiative. Mariam Al-Foudery helped ADEW produce the paper as part of a team led by ADEW Chairperson, Iman Bibars.

employment in the formal sector.<sup>4</sup> For old age pensions, men must be at least 60 years and have 15 years of coverage, while women must be at least 55; and eligible survivors for pension include a widow of any age, children under age of 18, (under 21 if a student, 25 if an apprentice), daughters without an income of any age. There are a number of non-contributive social assistance strategies, which include pension benefits for war veterans and their families, scholarships for children of low-income families, and food programs in schools in poor areas. A relatively new cash transfer system helps poor people unable to work, and a public works program supports able-bodied and unemployed poor persons.

In Egypt, the contributive social security scheme covers old age, disability, death, work injury, and unemployment.<sup>5</sup> The Worker's Insurance Scheme (Law 79 of 1975) is the largest. The survivor's pension is divided as follows: dependent widow or widower, disabled widower; divorcee without other source of income and married at least 20 years; dependent sons and brothers under age 21 (26 if students, no limit if disabled), unmarried daughters and sisters, dependent parents. A lump sum is given in certain cases, including to widows over 51. Under the 1980 Universal Social Security Scheme (Law 112 of 1980) the working poor pay one pound a month and receive 25 pounds a month upon retirement.

*Comprehensive examination of women's entitlements in both contributive and non-contributive schemes shows an unmistakable pattern: women are excluded from the benefits in place to protect them. Laws themselves are discriminatory in subtle ways, and the implementation of the laws is also discriminatory.*

Parts of this program (the Sadat Pension) also address the immediate needs of the working poor, particularly widows, orphans, divorcees, the disabled, and the elderly until they can collect their pensions. However, this pension scheme is being phased out. The non-contributive Daman Ijtimaii Program is designed to protect destitute families, particularly widows, orphans, divorcees and their children, the totally disabled, elderly persons, never-married women, and the families of convicts sentenced to more than ten years in jail. Temporary assistance is also provided to pregnant women and women with infants, among others.

Jordan Social Security Law 30 of 1978 covers workers who are not covered under civil or military pension laws; it does not cover wage workers, agricultural workers, seamen, fishermen, domestic servants, the self-employed or family labour.<sup>6</sup> For old-age pensions, men must be 60 years of age, whereas women can be 55. The survivor's pension is payable to the widow; son under 18 (no limit if disabled); unmarried, divorced or widowed dependent daughters; dependent parents, brothers, sisters; and disabled dependent widower. The

<sup>4</sup> For more information, see Social Security Programs Throughout the World – Algeria". *Social Security Association* <http://www.ssa.gov/statistics/ssptw/1999/English/algeria.htm>

<sup>5</sup> For more information, see "Social Security Programs throughout the World, 1999 – Egypt." *Social Security Association* <http://www.ssa.gov/statistics/ssptw/1999/English/egypt.htm>

<sup>6</sup> For more information see Social Security Around the World 1999 – Jordan. *Social Security Administration* <http://www.ssa.gov/statistics/ssptw/1999/English/jordan.htm>

widow's, daughter's, or sister's pension ceases upon marriage. Jordanian non-contributive social security programs have expanded rapidly in recent years to make up for the elimination of food subsidies and other liberalization measures. Aid is given to poor households, including those with a female head who is widowed or divorced, provided that adult employable males are not part of the household.<sup>7</sup> The National Aid Foundation (NAF) provides eligible households with cash transfers and micro-credit loans.

In Kuwait, all formal sector employees are covered under the worker's Social Security Laws 61 of 1976 and 128 of 1992, and are eligible for old age, disability, and death insurance.<sup>8</sup> Unlike other countries, this scheme is quite comprehensive in its coverage of Kuwaiti citizens because over 90% of all nationals work for the government in some capacity. Recently, the civil service has been having difficulty absorbing new entrants, and the government is paying all unemployed people a monthly allowance. For old age pensions, men must be 55 years of age and have 15 years of contributions (20 years if between 45 and 49), while women with children must be 45 and have 15 years of contributions. Survivor's payments go to widows, children (under age 26, 28 if student, no limit for unmarried females and disabled males), parents, brothers, sisters, and sons' children, as well as dependent widowers. Kuwait also has one of the most generous systems of public subsidies in the world (non-contributive Social Security Law 22 of 1978). In addition, all families are eligible for allowances for household expenditures, children, and rent. Interest housing loans are given. Vulnerable groups receive special subsidies, including widows and divorcees with children, and Kuwaiti women married to non-Kuwaiti men if the men cannot work for health reasons. It must be noted that 60% of the total population in Kuwait is non-Kuwaiti and not covered by social security of any kind.

*Across the Arab world, the perception is that men are the primary income earners and the heads of their households.*

The civil war that ravaged Lebanon from 1975 to 1990 greatly affected the ability of the government to provide social security services to its citizens. In principle, all Lebanese working in any professional, commercial, or industrial activities are covered by the contributive social security program (Decree 13955 of 1963).<sup>9</sup> In reality, due to the high payroll contributions required of employers and weak collection mechanisms, many people who should be registered for benefits are not. And agricultural and informal workers are not covered under the scheme. Key distinctions between men and women include the fact that a female employee who quits her job within a year of marriage is entitled to end of service indemnity. In terms of family allowances, 20% of the minimum wage goes to the wife if she is not gainfully employed, and 11% goes to each dependent child and

<sup>7</sup> Radwan A. Shaban, Dina Abu-Ghaida, Abdel-Salam Al-Naimat. *Poverty Alleviation in Jordan: Lessons for the Future*. World Bank. 2001.

<sup>8</sup> For more information see <http://www.ssa.gov/statistics/ssptw/1999/English/kuwait.htm>

<sup>9</sup> See <http://www.terra.net.lb/LebanonToday/NSS.asp>

unmarried daughter. There is a maternity and sickness insurance program, but no unemployment insurance.

## *Reasons for Discrimination Against Women*

A perfunctory review of women's social security entitlements in Arab countries yields a fairly positive impression. Laws seemingly protect women and count their contribution to labour. For example, in Algeria, Jordan, Kuwait, and Lebanon, social security laws stipulate that childcare can contribute to early retirement, and in all five countries reviewed, unmarried daughters continue to benefit from their father's pensions long after other children are cut off. Furthermore, social aid programs make special provisions for widows and divorcees because it is well known that these groups are vulnerable in predominantly patriarchal societies. However, a more comprehensive examination of women's entitlements reveals an unmistakable pattern: women are excluded from the benefits in place to protect them. Laws themselves are discriminatory in subtle ways, and the implementation of the laws is also discriminatory.

*Women as heads of households are invisible* Gendered assumptions about family structures have an enormous influence on legal inequalities in contributive social security matters. Across the Arab world, the perception is that men are the primary income earners and the heads of their households. In the words of the head of public relations at the Egyptian Ministry of Social Affairs, "We give pensions to the family of the maintainer and keeper when he dies and that is usually the man, for the man is the keeper and head of the family". Contributive social security schemes are geared to insuring men more comprehensively than women, because men are seen as being in the best position to distribute resources to a given family.

*In most Arab countries, a married woman is not allowed to apply for government assistance even if her husband has long deserted her. The state assumes that all married women have an earning male to look after the family.*

In non-contributive social security schemes, these gendered assumptions about men and women's relative economic role are especially pronounced. The state openly targets men for its limited social protection resources. For example, in most Arab countries, a woman who is technically married is not allowed to apply for government assistance (even if she has long been deserted by her husband). The state assumes that all married women have an earning male to look after their welfare and the welfare of their children.

In most Arab countries, widows and divorcees are allowed special assistance to compensate for the absence of an earning male, but in Algeria, the notion of female headship is not even acknowledged in the aid scheme. Another example of gender bias in the law is that women are seen to bear sole responsibility for childcare, and, as a result, only women are eligible for parental leave.

*Women as labourers are invisible* Throughout the Arab world, the bulk of contributive social security legislation was passed more than two decades ago (1983 in Algeria, 1975 in Egypt, 1976 in Kuwait, 1978 in Jordan, and 1969 in

Lebanon). At the time, working women were an "aberration" in many places and social security laws were not written with female labour in mind. Today, the composition of the labour force has changed dramatically and women's participation is soaring (CAWTAR 2000). Yet social security laws have not adapted, partly because women's contribution to labour continues to be unclear. Government statistics routinely underreport the actual number of female labourers, particularly in rural areas. The problem is two-fold: government definitions of employment often exclude the informal sector, in which a significant amount of female labour is concentrated, and many households do not report working females to census workers because this would be an admission that the men cannot provide for the household.

*Women's Roles Are Stereotyped* Societal understandings of women's "nature" and "duties" also play a large part in creating gendered social protection schemes. Women are seen as mothers and caretakers, and when they are offered assistance it is primarily in the domestic sphere. Destitute women are much more likely to be given minimal allowances to take care of their families than offered employment, skills training, or day care facilities for children. States interpret their needs as maternal rather than economic. In addition, women's actual receipt of assistance often depends on their conformation to norms of appropriate behaviour for women. The most extreme example of this is spinsters having to prove their virginity in order to collect a state allowance in Egypt.

*Women's needs are seen as maternal rather than economic. Destitute women are much more likely to be given minimal allowances to take care of their families than offered employment, skills training, or care facilities.*

*Institutions Are Male-Dominated* Perhaps the most important factor contributing to gendered laws in both contributive and non-contributive social security schemes, however, is the fact that social security programs are drawn-up, amended, and implemented by men. Men dominate the ranks of policy-making circles in every country under study (in Kuwait, women cannot even vote). Feminist research argues that it is precisely whether women's *own* definition of their needs and interests are taken into consideration that will determine whether state policies are women-friendly or not.

#### *Discrimination in Contributive Social Security Schemes*

In Arab countries, it is preferable to be associated with a contributive social security scheme than with a state aid program. First, contributive social security programs tend to be more comprehensive in their benefits. And second, they tend to be easier to navigate. Participants are treated as customers who have paid for the service, and the bureaucratic procedures involved are simpler and less demeaning than in non-contributive schemes. However, women face discrimination in contributive social security schemes.

*Laws that Discriminate* The law discriminates against women, men and their families in both pensions and family allowances. A working man's pension can continue to be drawn by his family after his death, but a woman's cannot. In all countries under study, a woman who has contributed to social security her whole life cannot pass on her benefits to dependent children or dependent parents. Husbands must prove that they are incapacitated or disabled to earn pensions. The assumption is that women do not contribute to their household's income during their lives, and that all women have a husband, brother or other male figure that will take the responsibility to care for their family after their death. Women whose families are dependent on their income lose a vital source of funds.

*A working man's pension can be drawn by his family after his death; a woman's cannot. Nor can women pass benefits on to dependent children or parents.*

As for family allowances, these are given directly to men. In Algeria and Kuwait, the state supplements family incomes with special allowances for insured affiliates (i.e. subsidies for children's education), but the sums are automatically tacked onto the man's salary because he is presumed to be financing all family expenses. This applies even if the woman is working in the public sector and her husband is not, and they have no other source of medical and other benefits for themselves and their children. Moreover, The state's notion of the "ideal marriage" does not take into account women with unsupportive husbands (drug addicts, men who have deserted their wives, men married to multiple women) or the reality that men and women are increasingly equal partners in marriages. This suggests that women's contribution to labour is not valued equally with men's; it doesn't "count" for as much financially.

*The Registry Limits Women's Access in Jordan*

The Registry is a document that has been increasingly required in all administrative procedures in Jordan, ranging from bread subsidies, to voting cards, to registration of children in schools. It is issued in the name of the head of the household (father, brother, husband) and it lists all female members and children.

The assumption that the head of the household is male has been very problematic, particularly in instances where the male spouse is dead or absent, or has given up Jordanian nationality. The wife or widow left behind becomes unable to acquire her own Registry and to benefit from her entitlements as a citizen. The Registry regulations are also an obstacle to Jordanian women married to non-Jordanian husbands, since the wife is not entitled to acquire the Registry and secure entitlements for her family.

A recent amendment to the law made it possible for the divorcee and the widow to acquire an independent Registry. However, they cannot include children, who are included in the father's Registry. If Jordanian women married to non-Jordanian men divorce the "outsider", they can now acquire their own Registry. However, their children cannot be included in their mother's Registry, and thus cannot access entitlements due to them from the State.

*Adapted from Amawi (2000)*

In Algeria, Egypt, Jordan, Kuwait, and Lebanon, daughters can collect their father's pensions only until marriage. Furthermore, because state benefits are so often associated with the presence of a male breadwinner, the pressure on women to get married and stay married is high. In Kuwait, women cannot own public housing unless they are married. All married Kuwaiti men with children are eligible for a public housing loan to build a home

with. If a Kuwaiti man dies before the loan is repaid, his daughter cannot repay the loan and own the home outright. She may live in it until her marriage, and then it reverts to the state. A son can repay the loan and own the property.

Similarly, in Egypt, divorcees who initiate divorce proceedings cannot collect their husbands' pensions. According to law 79 of 1975, a divorcee is eligible to collect her deceased ex-husband's pension only if the divorce was requested by her husband, and was against her will. In Jordan, daughters cannot resume receiving their father's pension even in cases of divorce.

Finally, social security laws are based on traditional family structures. Women can retire early if they have raised children, and women can take leave to raise children or care for sick family members. While it can be argued that these laws conform to the reality that most women in the Arab world do bear primary responsibility for household labour, the fact is that incorporating this worldview into the law itself prohibits change. Even if men want to stay home and take care of the children, they cannot afford to do so under current legislation. Moreover, such laws reinforce women's "double burden" of labour at home and at work. They also contribute to labour market discrimination by reinforcing the perception that women are more costly workers. In addition, employers take advantage of these laws to encourage women to "retire" after marriage so that they do not bear the costs of maternity leave.

*Even if men want to stay home and take care of the children, they cannot afford to do so under current legislation.*

*Structural Problems* Many women who work in the formal sector are not insured even though they meet narrow eligibility requirements. Due to the high payroll contributions required of employers (17% of the basic wage in Egypt, 8% in Jordan, and 8% in Algeria), many choose not to insure their employees in general. Women, in particular, are an easy target because their lower levels of education and remuneration make them replaceable if they quit, and because they have less social power to redress grievances. Poor women who seek insurance find it especially difficult to navigate the system. Perhaps an even more significant problem, however, is that contributive social security laws usually only cover salaried workers, of which women are only a fraction. In Jordan and Lebanon, wage workers, agricultural labourers, fisherman, domestic servants, and the self-employed are explicitly excluded from the contributive social security scheme. In Egypt almost 60% of social security affiliates work in the formal sector. In Algeria, only 60% of the workforce is actually insured, the majority in the formal sector.

*Contributive social security schemes largely cover formal sector workers – most women work in the informal sector.*

Women usually work in the informal sector, which is not covered by social security legislation. With the exception of Kuwait, in which the state guarantees government employment to all Kuwaiti citizens, research shows that most women in the Arab world are the petty vendors and agricultural labourers excluded from

mainstream insurance schemes. Unfortunately, because employment surveys underreport informal female labour, it is not clear exactly how many women are left out, but the likelihood is that the vast majority of women are not insured.

It should be noted that social security benefits are almost always tied to being a citizen of the country. While in most Arab countries, the two are synonymous, in a country like Kuwait in which 60% of the population is not Kuwaiti, this distinction matters. Equally significant is the case of female citizens married to foreigners and the children of these marriages, who face a host of problems.

Although social security laws in the Arab world tend to discriminate against women, national governments are often constrained from changing the situation. The subject of women's "rights" is highly politicised and potentially damaging to ruling parties. Another problem with government-initiated change in social security matters is that states often face an information gap. Because so much of the discrimination is de facto rather than de jure, governments do not have a complete understanding of the difficulties women face. The very bureaucracies that should be reporting the problem are in fact the agencies contributing to the problem. So in light of this, how can effective change occur?

#### *Discrimination in Non-Contributive Social Security Schemes*

In general, non-contributive social security schemes are problematic in the Arab world. First of all, many programs are relatively new. The programmes in Algeria, Egypt, and Jordan were either implemented or modified in the 1980s and 1990s to compensate for economic liberalization measures that slashed the budgets of former aid schemes, and they remain unorganised more than a decade later. Systems tend to be bureaucratic and inefficient, application procedures are cumbersome, and definitions of poverty are often subjective. Non-contributive programs tend to have small budgets and target groups, and as a result, inadequate benefits and limited coverage. In effect, social aid programs target people living in absolute poverty with resources that would never enable them to cross the official poverty line. On one hand, women are disproportionately affected by these problems because they tend to make up a significant percentage of total affiliates. And on the other hand, they also face discrimination both in the design of programmes and in their implementation.

*Heads of household are the targets of most aid programs - and governments define female headship narrowly.*

Moreover, heads of households are the targets of most aid programs, and governments define female headship narrowly. In Algeria, women can only qualify for aid on the basis of disability or old age, not on the basis of their headship. In Egypt, Jordan, and Kuwait, the government defines a female head of household as a widow or divorcee, ignoring other female household heads who might also be vulnerable such as women married to unemployed men, women married to drug addicts, deserted wives, and second wives. A second

wife cannot access help because she technically has an employable male in the household who "should" be providing for her. The Egyptian government acknowledges that 20% of households are headed by women; NGOs suggest on the basis of empirical observation that the figure may be closer to 40%.

The cumbersome application procedures associated with non-contributive schemes are particularly problematic for women because they are more likely to be illiterate. Illiterate people have greater difficulty navigating a complicated system and making their complaints heard.

*Women's ability to redress grievances is limited by the very poverty, illiteracy, and powerlessness that forces them to ask for aid in the first place*

Furthermore, eligibility criteria for non-contributive schemes often require women to have official documentation, although countries do not encourage women to own such documentation in the same way that they do men. In Egypt, for example, women must have a state-issued identification card (ID) to apply for aid. However, while the state requires all men to have an ID by the age of 16, there are no such laws for women. As a result, women are often tagged onto the father's or husband's ID cards instead of being issued one of their own. If women do decide to apply for ID cards later in life, the process of getting one is lengthy and intimidating, and requires pre-requisite documentation such as birth certificates. Vulnerable women may thus be rejected from aid programs for reasons that are beyond their control.

Mobility is also an issue. Low-income women often face social constraints when leaving the neighbourhood. Even going out to work can get them labelled "loose." So when a country like Algeria, in which women's access to public space is severely restricted, initiated a public works project, it is not surprising that only 27% of the participants were female. The Algerian system can be considered unequal because, of its two main forms of social assistance, one is largely unavailable to women.

A final problem with the implementation of aid programs in the Arab world is that subjective criteria often determine whether women receive aid. Bureaucrats have the power to choose between applications, and women's conformation with prevailing gender roles tends to play a role in that choice. It is not surprising that, in Egypt, only one out of eight poor females is reached by the non-contributive social aid program. The sad truth is there is great leeway for discrimination when women's ability to redress grievances is limited by the very poverty, illiteracy, and powerlessness that force them to ask for aid in the first place.

NGOs throughout the Arab region have sought to address inequalities in women's social security entitlements, both by providing direct assistance and by researching the problems that women face so as to bridge the information gap and advocate for change. Indeed, experience has shown that the starting point

for empowering women in the social security arena is advocacy. Until discrimination against women is recognized as a problem in the first place, nothing can be done to change the law. Three things are vital:

- Comprehensive targeted research to fuel advocacy campaigns.
- Providing direct services to women is important, partly to understand the realities of their lives.
- Advocacy campaigns should be aimed at policy makers and the press, but should also aim to build coalitions among like-minded NGOs. Moreover, they should include the testimony and input of women themselves.

### *Box 3 Advocating for Identity Cards in Egypt*

The Association for the Development and Enhancement of Women (ADEW [adew@link.net](mailto:adew@link.net)), which was founded in 1987 to address the needs of low-income female-headed households, was one of the first groups in Egypt to identify poor women's problems with identity cards. Through fieldwork in some of Cairo's poorest slums, the organization noted that women were being excluded from benefits they desperately needed because they did not have official documentation issued by the state. A majority of ADEW clients had no birth certificates, marriage certificates or divorce papers. Fully 70% had no identification cards, meaning that they could not legally work, inherit property, register assets, apply for social security, and so on.

ADEW responded to the problem on both a local and national level. On a local level, it instituted a program to improve the legal status of marginalized women in the field, aiding women to navigate the bureaucratic process of obtaining official papers, counselling them individually on legal questions, and holding classes to raise awareness about women's legal rights. It also arranged for an employee of the Civil Registration Authority to teach a monthly seminar on how to obtain an ID card. To date, ADEW lawyers have helped women obtain 1480 ID cards, 230 birth certificates, 90 post-natal birth certificates, 100 death certificates, 79 marriage certificates, 115 divorce papers, and 600 documents relating to pension cases.

In April 2001, ADEW brought the problems of women's lack of ID cards and citizenship rights to Egypt's attention in a conference entitled, "Women and the Law: Legal and Constitutional Rights." The Conference, conducted under the auspices of Egyptian First Lady Suzanne Mubarak was pioneering in several ways.

It was the first time that an Egyptian NGO brought a taboo subject to national attention in a public way. The issue of women's citizenship had long been ignored in Egypt. The size of the conference, the importance of the issues, the sponsorship of Egypt's First Lady, and the attendance of several high-ranking officials were critical in lending legitimacy to what many viewed as a risky proposition. Moreover, ADEW invited over 100 NGOs to work together to choose live case studies and organize the conference.

Perhaps one of the most significant aspects of the conference was that it gave voice to a population that has a history of being voiceless. Poor, illiterate women are usually ignored, and forced to rely on others to tell their stories. ADEW wanted to ensure that, for once, women themselves had a chance to speak. The problem of ID cards was conveyed to conference attendees through the live testimonies of women from all over Egypt. The idea was to frame the discussion not in terms of women's "rights," a subject often dismissed by policy makers, but rather in terms of women's survival.

The ADEW conference succeeded in sparking a lively debate among policy makers, the media, and average Egyptians on women's legal role in society – for the first time in the country's history. Moreover, the conference catalysed concrete policy change. Representatives from the Civil Registration office vowed to facilitate the

process of obtaining identity cards for poor women, and promote organizational understanding of the problems women face when dealing with unsympathetic authority structures. The National Council for Women, the largest governmental women's organization in Egypt and one of the most powerful in terms of setting the policy agenda on women's rights, has taken up the issue of ID cards. It now models the ADEW legal assistance program, and has joined the campaign to make IDs widely and easily accessible to low-income women. And finally, of the 275 NGOs that attended the conference, several have now incorporated a legal assistance program for ID cards into their regular activities.

#### *Box 4 Pushing for Legal Amendments to Jordan's Social Security Law*

The organisation Business and Professional Women Amman (BPWA) supports women's involvement in small businesses through counselling, financial support, and training; provides a legal counselling service that teaches women about their rights and assists them in navigating the Jordanian legal system; and advocates women's issues at the national level.

In 1999, BPWA launched a campaign to change the Social Security Law of 1978. It began by inviting people to join a roundtable on the subject, and found that several articles in contributive social security laws were discriminatory. These included Article 56 that forbids widowers to collect their wives' pension after their death, Article 54, that states that widows, unmarried daughters or divorced women lose the survivor's pension if they remarry and then divorce, and Article 52, that excludes the unborn foetus of a pregnant widow from benefiting from the survivor pension.

BPWA then researched the effect of the law on women, and documented the problem in a systematic manner. A survey was conducted to find out whether women were aware of their pension entitlements, and a report was published on the findings. According to BPWA, few employed women are aware of their entitlements, and 72% of women believe that the current social security law is unfair.

The second phase of the campaign involved building coalitions with women's organizations, lobbying the government, and promoting intensive media coverage. A position paper on the law was published and disseminated, and seminars were conducted to raise awareness on the subject in conjunction with other Jordanian NGOs. Moreover, a roundtable meeting was held in which lawyers, government officials, journalists, NGOs, and representatives from the cabinet, Prime Minister's Office and parliament attended. BPWA met with the Minister of Justice, the Minister of Labour, the Director of the Social Security Corporation, and the Chairmen of the Legal Committee of the Lower House of parliament.

In May 2001, partly because of the BPWA campaign of this group, the Lower House of parliament endorsed a new social security law that amended Article 52 and Article 54. Article 56 remained unchanged, however, and BPWA is committed to continuing its campaign until it is legally altered. It has created an on-line petition soliciting signatures to change the law, and is promoting the issue to government officials and the media.

Material from BPWA [www.bpwa.jo](http://www.bpwa.jo)

## **5. Family Laws: Slow Progress Towards Partnership<sup>10</sup>**

Family law is critical to citizenship laws and practices. Family law (also called personal status code) is anchored in religious law in most Arab countries, making it a critical site in the struggle between feminists, nationalists and state builders. Family law, which regulates marriage, divorce, child custody and inheritance, may rightfully be said to be the most critical site of power of religious communities over the shape of citizenship in Arab states.

*Family law is the most critical arena in the struggle between feminists, nationalists, and state builders.*

It should also be noted that:

1 – Some Arab constitutions refer directly to personal status codes, giving these laws the highest protection in the hierarchy of legal instruments.

2 – The 1966 International Covenant on Civil and Political Rights emphasizes the relationship between rights relating to the private sphere and those relating to the public sphere, stressing that the family is a fundamental component of society deserving of protection both by state and society. Many comments made by the Human Rights Committee set up on the basis of the Covenant have to do with violations of the principles of liberty and equality as they relate to family laws.

3 – Although the concept of personal status in Arab states has arisen directly from Islamic law, the impressive wealth of doctrine by the Islamic jurists (*fuqaha*) and the immense and varied output of the theological and legal schools (*madhahab*) reveals the evolution of thinking over time and from place to place.

This section reviews legislation in Tunisia, Algeria, Morocco, Kuwait, Yemen and the Sultanate of Oman, as regards: entry into marriage, relationships during marriage, the ability to divorce and relationship with children. The review reveals the extent to which even closely related systems can differ, depending on the way political and judiciary matters are handled in a given system.

### *Entry into marriage*

Article 23 para 3 of the International Covenant on Civil and Political Rights states that "no marriage shall be entered into without the free and full consent of the

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<sup>10</sup> This section is summarized and edited from the paper "Family Laws and Citizenship" prepared by Soukeina Bouraoui, Director of the Tunis-based Center for Arab Women Training and Research (CAWTAR), and commissioned by UNDP as part of its gender and citizenship initiative. The paper also benefited from the assistance of Salwa Hamrouni and Fawzi Bel Knani.

intending spouses". In most Arab countries, a woman's consent to marriage is not sufficient on its own, but has to be ratified by the consent of a male guardian.

In Tunisia, which provides for the most equal arrangements, Article 3 of the Personal Status Code states that marriage can only take place with the consent of both spouses, if they are of legal age and competent. However, the same does not apply where the girl has not yet reached the age of majority (20). According to the 1993 reform of the code, Article 6 makes such a marriage subordinate to the consent of the guardian who is defined by Article 8 as "the closest agnate relative" with an express provision that this relative has to be male. The primacy given to the paternal line does not account for the weakening of family ties as well as the reality of the involvement of mothers in the marriage of their children, even when the latter have reached the age of majority.

Interestingly, however, the growing importance of the concept of "the child's best interests" has caused the legislator to offset the ascendancy of the father and of male agnatic relatives by also providing, in the 1993 reforms, that the agreement of the mother has to be obtained for the marriage of her minor child. However, this right of veto is hardly synonymous with perfect equality between the two parents: while in the event of decease or incapacity of the mother, the father, as the head of the family, can give his consent on his own to the marriage of his minor child, if the father should die or become incapacitated the mother has to obtain the consent of the closest agnate relative. Children are not left to the whims of their families: Article 6 paragraph 2 states that a judge is required to resolve disagreements between the mother and the father.

In Algeria, Article 11 of the Family Code of 1984 states that the conclusion of marriage for a woman is her guardian's responsibility, but with two provisos. First, a judge supervises the power of the guardian, since Article 12 stipulates "the guardian cannot prevent the marriage of the person placed under his guardianship, if the person wishes it and if it is to the benefit of the person". Second, Article 13 abolishes the *jabr*, in other words the right to impose marriage. The guardian can no longer compel a woman to marry against her will. This is a somewhat skewed advance in the law: the guardian is no longer able to compel, but obtaining his consent is still obligatory, which means in fact that the wish and the consent of the woman are necessary but not sufficient. A similar situation is found in Morocco. Article 5 of the *moudawana* of 1957 was modified in 1993 to abolish the right to impose marriage. But matrimonial guardianship is still in existence, whatever the age of the girl to be married.

*In most cases, a guardian can no longer compel marriage – but his consent to marriage is still needed*

In Kuwait, Law no. 51 of 1984 provides for the consent of the guardian as a prior and strict condition for the marriage to be valid, up to the age of 25 for women (Article 29). After the age of 25, as well as in the case of widows or divorced women, Article 30 stipulates that the guardian must still give his consent, but the woman's consent is also required. In Yemen, Article 16 of Law no. 20 of 31 March 1992 concerning personal status lists the guardians, who are all agnate relatives. But Article 10 requires "in addition to the consent of the guardian, that of the woman and of the man." This means that the consent of the future wife is necessary although not in itself sufficient.

Oman's new law of 4 June 1997 dealing with personal status also provides for the guardian to be from among the relatives from the male line (Article 11). But, in a sign of progress, the consent of the future wife is also required. The right of *jabr* was also repealed so that the guardian can no longer compel a woman to marry. On the other hand, a woman cannot marry without the consent of the guardian. However, if the guardian refuses to give his consent, it is possible to appeal to a judge (Article 10).

*Statutes are closer to patriarchy than to traditional Islamic law, which emphasizes the consent and wishes of the couple embarking on marriage.*

Three facts are noteworthy regarding the statutes of the countries under review. The first is that they remain bound to an interpretation that is more related to patriarchal customs than to traditional Islamic law, which stresses the importance of consent and of the wish of the young people to be married.<sup>11</sup> The Hanafi School accepts that a woman who has reached majority and is competent can marry without a guardian.<sup>12</sup> This is the position adopted by Tunisia.

Secondly, all of these statutes are incorporated in modern civic law. In other words, these are codes and laws that have been voted on by Parliament. They draw on the views of the scholars of today, rather than those of the past, to interpret textual passages.

Thirdly, all of the statutes represent, to differing degrees, progress relative to earlier laws in the majority of the countries under examination. Thus, for example, all of these statutes have abolished the right to impose marriage. However, these statutes have been the subject of comments by the Human Rights Committee, which reminds states of the importance of the full and free consent of men and women to the contracting of marriage, and which also recalls that states must guarantee the exercise of that right. Similar observations are made by the Committee established to monitor application of CEDAW, even though this committee does not make the connection with citizenship.

<sup>11</sup> See for example Muhammad Sa'id al-Ashmawi: "Asud al-Shari'a" [Foundations of Shari'a]. Cairo: Dar Madbouli, 1983. Pages 99-101.

<sup>12</sup> Muhammad Abu Zahrah: "Taareekh al-Madhaahib al-Islamiyyah" [History of Islamic Doctrines], undated, pamphlet 142. Cairo: Dar al-Fikr al-Arabi. Page 386.

The Human Rights Committee also notes that the age for marriage itself should be laid down according to the same criteria of equality. In Kuwait, the age for women is still 15 whereas it is 17 for men. It is worthy of note that the new statutes in Yemen and Oman adopt the same criteria for future spouses of either sex, without discriminating between them (15 years of age for Yemen and 18 for Oman) – an indication that such questions are more a quest of tradition than religion and that things can change.

### *During marriage*

CEDAW puts forward a family model founded on equality between husband and wife, where the duties and obligations of the two spouses are shared, and there is no head of family designated by the law. The great majority of Arab countries have repudiated this model and issued reservations on the relevant articles of the Convention. In all Arab countries, although to differing degrees, legislators have stipulated the pre-eminence of the husband as head of the family, both with regard to the wife and with regard to children.

*In all Arab countries, although to differing degrees, legislators have stipulated the pre-eminence of the husband as head of the family, both with regard to the wife and to children.*

In Tunisia, legislation has moved in successive steps to weaken the powers of the head of the family and the obligations arising out of marriage have become more egalitarian. Conjugal violence was against the law from the start (Articles 218 and 316 of the Criminal Code), and is grounds for divorce according to Article 31 paragraph 2 of the Code of Personal Status. In 1993, the reforms of the Personal Status Code deleted any reference to the obligation of obedience from Article 23.<sup>13</sup>

Some of the obligations of marriage in the Tunisian Code entail perfect equality between husband and wife, whereas others do not. For example, Article 40 enables the wife to petition for divorce if the husband abandons her without ensuring a supply of food for her, disregarding her personal income, which may be amply sufficient to meet her material needs. Article 39 also obliges the head of the family to provide subsistence by allowing a wife to obtain a divorce from an indigent man whose economic difficulties last for more than two months.

These two statutes undoubtedly arise out of Islamic law, which bases its provisions on the argument that the husband owes food to the wife, because she dedicates herself to the home on his account and on account of his children and that the authority of the husband (*qawwam*) and his pre-eminence (*daraja*) over

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<sup>13</sup> It has been shown by a major social survey carried out in 1993 that almost 55% of the persons polled state that the woman no longer obeys her husband. Additionally, one sociologist has pointed out that the higher level of education of the mother, “the more she will express opinions calling for an active and positive role for women.” See Aziza Darghouth Medimegh: *La famille tunisienne entre modèles et réalités*. In “Structures familiales et rôles sociaux.” Proceedings of the symposium at the Institut supérieur de l’éducation et de la formation continue. Tunis 3-4 February 1994. Editions C.é.r.é.s. 1994. Page 46.

his wife are dependent on his attending to her material needs, according to the Koran itself. These statutes are in contradiction with the fact that women have long been active in workforce, and the fact that the 1993 law itself does away with the obligation of obedience. Moreover, Article 23 clearly states "the woman must contribute to the expenses of the family if she has resources", which opens a significant breach in the belief of the husband's supremacy.

In Algeria and Morocco, the woman is required to be faithful, to obey in accordance with custom, and to breast-feed, if possible, the children of the marriage. Legislation in both countries even stipulates that this deference is due to the father, mother and close relatives of the husband (Article 36 of the *moudawana* in Morocco and Article 39 of the Algerian code). Obedience is also required in Kuwait (Article 87 of the 1984 law). However, Article 89 of the Kuwaiti law does not consider it to be a case of disobedience if the woman goes out for legitimate work; in addition, she does not need the authorization of her husband to make her pilgrimage to Mecca. In all of these countries, as well as in Yemen and Oman, the husband has the exclusive obligation to maintain the family, since he is head of the family and is given the obedience due to him (Article 37 of the Algerian code, Article 74 of the Kuwaiti law, Article 41 of the Yemeni law, and Article 49 of the Omani law). In Yemen, Article 40 stipulates that the husband cannot prevent his wife from going out for a legitimate reason, which includes the management of her own assets, work and visits to her parents. Oman does not deprive the woman of the right to visit her parents and to keep her maiden name.

*The changes to date are precursors to more significant changes.*

From the above review, it can be noted that the rights and obligations of the spouses continue to operate on the traditional model, but with certain changes that can be seen as are precursors to more significant modifications. In particular, going out to work or visiting the family are now considered legitimate rights. Indeed, the Human Rights Committee, aware of the importance of rights related to freedom of movement and choice of residence, has requested States to provide it with the necessary information "on laws and practices contrary to women's freedom of movement," including those concerning "the authority of the husband over the wife" or "the parental authority over adult girls" and to report on the measures taken to eliminate these laws and domestic recourse available.

### *Divorce*

In Tunisia, Article 31 of the Personal Status Code provides for the court to pronounce divorce in the event of mutual consent of the spouses; at the request of one of the spouses on the basis of the harm that he or she has suffered; or at the request of the husband or of the wife. Paragraph 4 stipulates that the court will decide on compensation for the material and moral harm suffered by one or the other of the spouses and resulting from the divorce in these two cases.

As for Algeria, Article 48 of the code of 1984 states that divorce “occurs at the wish of the husband, by mutual consent of both spouses or at the request of the wife.” The wife can request divorce in two ways: by arguing that she has been harmed, backing her case from the grounds listed in Article 53, or by *khol’a* (Article 54) whereby she provides “compensation” to the man, the amount to be mutually agreed or, in the absence of agreement, determined by the judge on the basis of “the value of the dowry at the moment the judgement is pronounced.”

Article 44 of Morocco’s *moudawana*, as modified in 1993, defines divorce as a dissolution of marriage by the action of the husband or of his agent. The judge’s only role under Article 48 is to take note of this unilateral decision and to attempt to dissuade the husband from it as part of an attempt at conciliation. In addition, pursuant to Articles 25, 53, and 58 of the *moudawana*, the judge can issue a judgement of divorce if the husband fails to fulfil his obligations to maintain the household, disavows paternity, or refuses to engage in sexual relations for a period exceeding four months.

*The khol’a is a way for women to get out of a difficult marriage, perhaps paving the way for relations that embody the true values of equal citizenship.*

In Kuwait, Articles 97 and 98 of the 1984 Personal Status Code establish the principle that the power to pronounce divorce is held by the husband. He can voluntarily delegate this power to an agent. He can also be obliged to delegate this power to the judge, who can decide on divorce on the grounds of harm suffered by the wife. Grounds for harm listed in Articles 120 to 138 list include failure by the husband to meet his obligation to maintain the family or refusal to have sexual relations for a period of four months. The procedures for *khol’a* are regulated by Articles 111 to 119, which require both spouses to be in agreement on this step and regarding the amount owed by the wife. If the wife can prove that she has had to resort to *khol’a* because of harm, the husband is not entitled to compensation (Article 116).

In Yemen, the 1992 law on personal status provides grounds on which the woman can request dissolution of the marriage (Articles 49 to 55). Article 60 establishes the principle that divorce is the prerogative of the husband or his agent, but Article 71 allows a judge, if he detects abuse on the part of the husband in exercising this right, to grant compensation to the wife, calculated on the basis of the living expenses for one year. *khol’a* requires the mutual consent of the spouses (Article 73).

In the Sultanate of Oman, Article 82 of the 1997 personal status law also states that divorce is the prerogative of the husband or his agent. This repudiation can occur without the involvement of a judge, either on the basis of confession or reports from witnesses (Article 89). In such cases, the repudiated wife must receive compensation set by the judge in accordance with the resources of the repudiating husband (Article 91). As for *khol’a*, it requires the agreement of both

spouses and the payment of compensation by the wife (Article 94). If the court can decide on divorce on grounds of harm or irreconcilable differences, assigning compensation calculated on the basis of the dowry (Article 98).

The above review shows that the husband has the ability to dissolve the marriage unilaterally, with the exception of the Tunisian code, whereas the wife does not. Thus, most of the countries reviewed are not in compliance with CEDAW Article 16 for women to have "the same rights and the same responsibilities [as their husbands] during marriage and upon its dissolution".

The *khol'a* does offer women a way out of a difficult marriage. This represents a change in attitudes in these countries under examination here, a tug of war between the patriarchal family of yesterday and the more egalitarian family of tomorrow that will more fully embody the true values of citizenship.

### *Relationship with children*

The modern concept of the best interests of the child is moving legislation away from rigid interpretations of Islamic law, and increasingly placing parents' prerogatives under control.

In Tunisia, the concept of the interests of the child was enshrined in the reform of 3 June 1966, which made those interests the only criterion governing assignment of physical custody. This was consolidated in the reform of 18 February 1981, which automatically transferred legal guardianship to the mother in the event of death of the father. But it is only since the ratification by Tunisia of the 1989 Convention on the Rights of the Child and the promulgation on 9 November 1995 of the Code on the Protection of the Child, that the interests of the child have turned into a solid foundation of legislation. Since then, this concept has worked its way into family law, nibbling away at the prerogatives of the father to the benefit of the mother.

*The concept of the best interests of the child is increasingly placing parents' prerogatives under control.*

Thus, Article 23 of the 1993 Personal Status Code calls for the joint involvement of both the parents in bringing up their children and managing their affairs, including education, travel, and finances. In addition, in order to preserve the interests of the child in the event of death or incapacity of the father, the legislator had in 1981 modified Articles 154 and 155 of the Personal Status Code, to make transfer of legal guardianship to the mother automatic in such a situation, thereby breaking with the traditional interpretation of Islamic law that transfers the *wilaya* [guardianship] to the closest male relative in the agnatic family. The mother is effectively promoted to the position of head of the family. However, the primary concern is the best interest of the child, and not the rights that should be enjoyed by the woman or mother.

In the case of divorce, the legislator has moved away from the law's hermetic partition between physical custody (*hadana*), which is given as a priority to the mother and the cognatic family, and paternal authority (*wilaya*), which belongs to the father and the agnatic family, to taking into account the best interests of the child. The 1993 amendments of the Code considerably broadened the concept of *hadana* to incorporate the prerogatives of *wilaya*, transferring to the mother responsibilities relating to the child's travel, studies, and management of financial accounts (Article 67). It thus transformed the *hadana*, which is restricted under Islamic law to material responsibilities and limited to children of tender years, into a civic institution that remains valid until the child reaches 18. Again, however, these broadened "powers" should not be understood as an enhancement of the rights of the mother relative to the father, but in terms of enabling the mother to operate in the best interests of the child. Indeed, Article 67 of the Code lists the instances where the *wilaya* of the father may be eliminated and applies it to any factor that might jeopardize the interests of the child.

*The increasing responsibility given to mothers is in view of the best interests of the child rather than the rights of women.*

In Algeria, Article 62 of the 1984 code adopts a broad conception of the *hadana*, which encompasses the upbringing, and education of the child. Articles 64 and 65 appear to enshrine a rigid interpretation of Islamic law with regard to the persons to whom physical custody can be assigned and the age at which such custody ends. The concept of the interests of the child is starting, however, to appear in these two statutes, since Article 64 requires the judge to grant physical custody in the event that none of the persons listed and classified is extant, "to the persons most closely related, in order to best serve the interests of the child." Also, Article 65 states "account will be taken, in the judgement which terminates the physical custody, of the interests of the child".

Moreover, Article 63 clearly invokes the concept of the interests of the child, by granting the mother the prerogatives of *wilaya* in the event of "abandonment of the family by the father or of disappearance of the father" in the period preceding the judgement of divorce. Article 87 also causes the *wilaya* to revert automatically to the mother in the event of the death of the father and Article 92 allows the testamentary guardian to exercise his prerogatives only in the event of death or incapacity of the mother. The interests of the child also underpin the provisions of Articles 88 and 89, which establish judiciary control over any actions taken by the guardian relating to the assets of the child. Article 90 deals with situations where there could be a conflict of interests between the guardian and the child, and thus conceives of interests of the child as possibly diverging from those of the father or the mother.

Article 109 of Morocco's *moudawana* incorporates the distinction made in Islamic law between the *wilaya* of the father and the *hadana* of the mother, defining the latter very restrictively and limiting it to the material tasks of feeding, bodily

hygiene and clothing of the child. The *moudawana* does not establish judiciary control over the actions taken by the father with regard to the possessions of his child. Article 11 of the *moudawana* on obligations and contracts simply makes such actions by any and all guardians subject to prior authorization by a judge.

It is however possible to note that some consideration is given to the interests of the child independently of the interests of the guardian. Thus, for example, Article 150 makes the father subject to stricter judiciary control in the event that he is poor and if the judge fears that he will usurp the child's assets. At the same time, Article 88 of the criminal code provides for the elimination of the *wilaya* if the guardian is sentenced to prison for a crime against the person of a minor.

The Kuwaiti personal status law of 1984 establishes an immutable order by which the *hadana* can be passed on (Article 189), with the guardian responsible for all non-material matters (Article 210), and with the *wilaya* handed down only through the paternal line (Article 209). However, Article 211 does not stipulate that the *wilaya* can only be assigned to males, while Article 209 provides that in the absence of a guardian in the pre-established list, judges may grant it to the person whom they consider the most capable of fulfilling this responsibility, leaving open the possibility that the judge could grant this to the mother.

*Family codes take as their starting point the principles of Islamic law separating the guardianship (wilaya) of the father and the physical custody and care (hadana) of the mother.*

In Yemen, the influence of Islamic law is evident in the majority of the provisions concerning the physical custody of the child. Concern for the interests of the child can be found in some provisions of the law. For example, Article 141 states that the physical custody by the mother is not a right for the mother but rather a right of the child: the mother is obliged to take on the custody even if she has refused to do so. Article 139 allows judges to override the legal duration of physical custody if they consider this in the interests of the child, while Article 142 even authorizes the judge to ignore the established order regarding physical custody if the interests of the child require it.

In Oman too the law of 1997 applies Islamic law with regard to *hadana* (Articles 126 and 127), the order in which physical custody can be passed on (Article 130), and the prerogatives of the guardian (Article 133). Articles 164 and 165 even allow the father to take possession of his child's assets without any judiciary control, and the paternal grandfather to automatically manage his grandchildren's assets in the event that the father becomes incapacitated. However, Article 130 does stipulate that physical custody is an obligation that applies to both parents throughout the entire duration of their marriage. In case of divorce, Article 132 obliges the mother to continue to have the physical custody of such of her children who still need her even if she has left the conjugal home. Articles 128 and 129 enable the judge to use the interests of the child as a justification for departing from the established duration of physical custody. Similarly, the judge

can nullify certain actions taken by the father (Article 168) and terminate his guardianship if he has jeopardized his child's assets (Article 169).

The review of the relationship with children shows that family codes take as their starting point the principles of Islamic law separating the *wilaya* of the father and the *hadana* of the mother, as well as the order in which physical custody and guardianship are passed on.

*The influence of the Convention on the Rights of the Child is clear in broadening the concept of the best interests of the child.*

However, the influence of the 1989 Convention on the Rights of the Child is hard to deny. This influence varies depending on the social changes that each country has undergone and the degree to which the legislator has been open to those changes. In some cases, the interests of the child are adopted as a supplementary criterion. In others, it enables the judge to act outside the principles of Islamic law. And in the case of Tunisia, it is enshrined as a fundamental principle that significantly modifies the traditional concepts of *hadana* and *wilaya* and lays the foundations for a new approach to the relationships between parents and children.

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