



## Arab Women Development Report 2015

# Arab Women and Legislations

## Executive Summary







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and Legislations**

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Edited by  
**Center of Arab Women  
for Training and Research  
CAWTAR**

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## Foreword and Acknowledgment

The Center of Arab Woman for Training and Research (CAWTAR) has since 2001 issued periodic reports on the development of Arab women. The reports have focused on specific perceptible and priority issues to enhance the situation of Arab women. CAWTAR believes that knowledge is a mechanism of change once endorsed by policies and decision-makers. Therefore, CAWTAR has chosen - in cooperation with regional partners and CAWTAR's Arab Network for Gender and Development (ANGED) - to work on a number of key issues. The developments in the Arab world have proven that these issues were rightly selected.

The first report in the series of Arab women development reports<sup>(1)</sup> assesses the impact of globalization on the Arab economies, in their process of trying to catch up with globalization, and on the economic participation of Arab women. The second report looks to the future, by exploring the dreams and aspirations of teenagers as well as their social and cultural composition. The report allows teenagers to speak up and express the ways in which they relate to one another. They express their views and their criticism of schools, households, work, religion, traditions, politics, terrorism, friendship, and love. The report also allows teenagers to talk about the situation of women and men and physiological changes.

Arab media has developed significantly since the early 1990s. It provides platforms for debating a variety of public issues. Hence, CAWTAR's third report was a special report on Arab women and the media. The report discusses how the media handles Arab women, and deals with women as media producers, media source, and media consumers. The report reviews a decade of media research in the Arab world (as of the Fourth World Conference on Women, Beijing 1995). It analyzes the research and produces findings and recommendations.

CAWTAR remains aware of the difficulty of making separate reviews of how women are involved in decision-making. The fourth report by CAWTAR therefore deals with Arab women's participation all decision-making processes in the public and private domains. The purpose of the report is to expose the key obstacles that keep women from decision-making, whilst also highlighting the resources that are made available for women to participate effectively in the decision-making process.

This report deals with Arab women and legislations, an issue that has become a priority in the Arab world in recent times. The approach of the report avoids, as much as possible, the traditional perspective of dealing with this issue, which involves focusing primarily on personal status laws and laws of political nature. Instead, the report looks at entire sets of laws that regulate the status of women and the regulations, if any, which are dedicated to women's human rights.

Each report by CAWTAR has a special approach, and the reports thus vary. Some of the reports collect and analyze data, while others field studies. The samples of selected countries for research also vary. In this report, national legislations are collated; and the report focuses on the rights granted to women, in comparison to those granted to men. The report also looks at the conventions that Arab states have or have not ratified. The legislations are analyzed from a gender and human rights perspective, with the purpose of showing aspects of equality and discrimination in civil and political rights, education, training, women's rights within the household, health and reproductive health rights, gender-based violence, right to work, relevant social rights, and rights to litigation and access to justice. While this report does not claim to be exhaustive, its efforts in reviewing laws and conventions and highlighting the discriminatory aspects ought to be seen as highly significant.

The report brings added value; it includes twenty Arab states that are members of the Arab League. This allows for a comparative review of the states and shows that the legal system of each state has its own advantages and disadvantages. While some countries have well-developed legal systems, they can sometimes fail to match the successes of the women's rights related laws of countries with less-developed legal systems. The comparative

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1. Globalization and Gender: Economic Participation of Arab Women 2001



review also shows that the Arab states, despite all successes, still fear full equal treatment of men and women by the law.

Nevertheless, in this report, CAWTAR aspires to be the first in mapping Arab legislations by integrating recent developments in Arab states – in the aftermath of Arab uprisings. The report provides basis for knowledge that can be used as a starting point by different stakeholders. They may enhance and develop the knowledge-base by making policies and drafting laws against discrimination.

While the Arab Gulf Program for Development (AGFUND) is the key supporter of Arab Women and Legislations report, other organizations interested in this issue have been involved too. Hence, the report is jointly produced with these organizations, which reflects CAWTAR's continuous efforts to create effective partnerships. CAWTAR has worked with the Organization for Economic Cooperation and Development (OECD) on a study entitled "Women in Public Life: Gender, Laws, and Policy in the Middle East and North Africa." The study was published in October 2014 and launched on November 17 and 18, 2014 in Amman, Jordan.

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Development Program (UNDP) produced a paper based on the findings of the report addressing decision-makers in various countries and calling for implementation of the proposed reforms. The legal situation of each country included in the report is taken into consideration. The Arab League held two symposiums in Amman and Cairo to review the initial findings of the report. Representatives of governments and civil society organizations, as well as experts from the countries included in the report, joined the symposiums. CAWTAR will continue to work with these organizations in a joint program on strategic tools for enhancing equality between men and women, strengthening the rights granted to women by laws and human rights, and preparing for the future. CAWTAR would like to express its gratitude to all those who took part in the two symposiums, for their valuable contribution to enriching this report.

We would also like to extend sincere gratitude to the President of AGFUND H.R.H. Prince Talal Bin Abdul Aziz, and AGFUND Director Mr. Jibren Abdul-Rahman Jibren, who believe in a legislative environment that supports women's effective involvement in the public and private domains and in a critical review of women's legislations. We would also like to thank Dr. Carlos Conde from the governance team of OECD. OECD has been involved in this work and appreciates the value of the report, the capacities of the Arab organizations, and the expertise that can produce work of international magnitude. We also extend sincere gratitude to the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), especially Dr. Sameera Maziad Al-Tuwaijri, the then Regional Director Arab States, Dr. Adel Abdellatif and Dr. Maya Morsy from the United Nations Development Program (UNDP). We would like to thank the Arab League, especially H.E Ambassador Inas Sayed Mekkawi, Director of Women, Family and Childhood Department, for their confidence in CAWTAR's capacity to review Arab women's situation, to research the situation and to provide training and advocacy.

Many thanks to the experts and those who contributed to this work, for their efforts to collect laws, data, and provide analysis of the laws, identifying the laws that are worthy of commendation and those that require amendments. CAWTAR is certain that this report will lay the foundation for changing Arab discriminatory laws and for adopting best legal practices. We hope that the report will initiate in-depth reviews, collection and updating of data on women's legal statuses, and that it will be an incentive for debates on these critical issues now and in the future.

**Dr. Soukaina Bouraoui**  
Director  
The Center of Arab Woman  
for Training and Research (CAWTAR)

## Introduction: Between Discrimination and Equality

### 1. Overall Framework

The completion of this report is the first phase of the Arab Women and Legislations Program, which is implemented by the Center of Arab Woman for Training and Research (CAWTAR) with the support of the Arab Gulf Program for Development (AGFUND). The partnership of the Program also involves a number of international and regional organizations, including the Organization for Economic Cooperation and Development (OECD), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Development Programme (UNDP) and the Arab League.

### 2. Objectives

The Arab Women and Legislation Program, as a whole, and this report in particular, aim to define and analyze the status of Arab women and their legal rights in the legislations of 20 member states of the Arab League; Comoros and Somalia are excluded. Approximately, 300 laws have been analyzed, with reference to international conventions and agreements, which the Arab states in question are signatories to, as well as the measures taken by the states in line with their national and international obligations. The purpose of the analysis is to expose evidence of institutional discrimination against women in Arab states; with the aim of supporting the desired change through advocating legislative and regulatory reforms.

### 3. Methodology

The methodology of the report is based on three key components. Firstly, there is a quantitative component, which considers achievements in development. The indicators relating to development achievement reflect the extent to which citizens enjoy human and legal rights and benefit from development. Secondly, there is a component focusing on gender perspective and principles', which reads and analyzes laws on the basis of gender equality and lack of discrimination between men and women. Thirdly, a human rights component defines rights and duties at different levels on the basis of a number of principles and values.

This review of laws and constitutions regulating the rights and duties in Arab states – of the citizens overall and of women's rights -in particular- highlights the steps taken by Arab states to ensure equality men and women and actual realization of women's defined rights as residents of a country. Laws apply to men and women alike. Laws give women rights. Additionally, women are entitled to human rights as well as rights guaranteed by laws. Hence, the report differentiates between the rights guaranteed to women through law, and those guaranteed by human rights. The rights guaranteed by laws do not always ensure equality between men and women. Laws may be dedicated to discriminate against specific groups of people, and against women. Human rights, on the other hand, are non-discriminatory and advocate equality. However, human rights are not necessarily integrated in the enforceable laws of a state. In any case, the differentiation between rights guaranteed by laws and human rights – which are indivisible - is purely methodological. Its purpose is to facilitate analysis and diagnosis.

Laws of Arab states are tradition-based; they are structured upon traditionally recognized roles of men and women, how they – men and women – relate to one another, and their status as members of households and society. For instance, laws perceive rights and duties, as well as sanctions, on the basis of a set of behavioral and functional criteria that are, according to traditions, acceptable to men and

women. However, the set of behavioral and functional criteria vary according to time and place. This has proven to be problematic in the process of survey and analysis. On the other hand, laws allow for integration of human rights and equal citizenship – without any form of discrimination including gender-based discrimination - as states and societies evolve.

These two bases upon which the legal systems stand – on the one hand, men and women’s rights being defined on the basis of traditional distribution of roles and responsibilities in the home and in the society (gender structure), and on the other hand human rights - increase gaps and contradictions of laws and widen the gaps of development and rights between men and women (development and rights indicators).

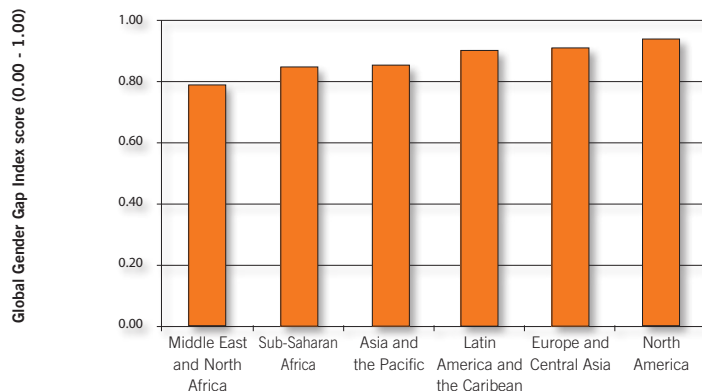
The reading and analysis of the laws are based on equality, non-discrimination, rule of law and accountability. The findings show that there are laws that guarantee equality while other laws enforce discrimination against women and look at them from sex morals, and Islamic Shari’a (religion-based law) perspectives. Findings also show that there are fair and just laws that strengthen women’s rights especially in public life, also ensuring women’s political rights.

The framework of human rights defines the obligations of a wide range of actors; however, the state parties to the human rights conventions are the primary actors who are responsible for ensuring human rights. Therefore, a state party to human rights treaties and conventions must ensure the rights stipulated in the human rights treaties and conventions. Hence, in compliance with the international law for human rights, the state parties have the obligation to respect protect, promote and fulfill the human rights as stipulated by the conventions and ensure that all citizens enjoy such rights. The state parties to the conventions must also propose legislative reforms to ensure human rights.

### 4. Current Situation

Successes have been noted in improving women’s situation, improving women’s rights, and enhancing the living standards of households and societies. However, there are still challenges faced by the legal, political, social and economic aspects of women in the Arab countries. Therefore, according to various international reports, including the Report of the 2013 World Economic Forum on the “Global Gender Gap Index ”<sup>(2)</sup>, Arab states rank low on gender equality<sup>(3)</sup>. in comparison with the rest of the world.

**Global Gender Gap Index Score <sup>(4)</sup>**




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2. The Global Gender Gap Report, 2013, World Economic Forum, Geneva, Switzerland  
 3. Equality 1  
 4. Report on the Global Gender Gap Index of the World Economic Forum, 2013

The following table shows where Arab states rank on the global gender gap index score of 2013 in comparison with 136 world states <sup>(5)</sup>

| Country                         | Performance           | Rank |
|---------------------------------|-----------------------|------|
| United Arab Emirates            | 0.6372                | 109  |
| Kingdom of Bahrain              | 0.6334                | 112  |
| Qatar                           | 0.6299                | 115  |
| State of Kuwait <sup>(6)</sup>  | 0.6292 <sup>(7)</sup> | 116  |
| The Hashemite Kingdom of Jordan | 0.609                 | 119  |
| Sultanate of Oman               | 0.6053                | 122  |
| Republic of Lebanon             | 0.6028                | 123  |
| Algeria                         | 0.5966                | 124  |
| Republic of Egypt               | 0.5935                | 125  |
| Kingdom of Saudi Arabia         | 0.5879                | 127  |
| Kingdom of Morocco              | 0.5845                | 129  |
| Republic of Mauritania          | 0.5810                | 132  |
| Arab Republic of Syria          | 0.5810                | 132  |
| Republic of Yemen               | 0.5128                | 136  |

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5. Ibid

6. 113 the first in 2014

7. Report on the Global Gender Gap Index of the World Economic Forum, 2013

Arab countries in general have not scored better in 2014 except for Kuwait, which now occupies the 113th place, and the United Arab Emirates, which occupies the 109th place.

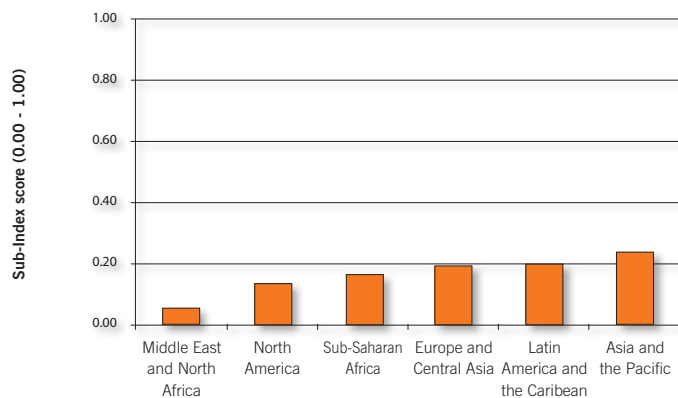
The situation of Arab women has been subject to political and legislative debate throughout the transitional period following the Arab uprisings, which may delay the desired development that women and democratic movements seek to achieve. This change requires more focus and more efforts to safeguard the achievements and to continue the fight for ensuring and/or enhancing already secured women’s rights – even though women and democratic movements are active actors in politics whether in government or opposition. To ensure this, all forms of discrimination against women in the laws must be eliminated. Policies must also be made in support of women’s human rights such as the right to life and the right to protection from all kinds of violence, and ensuring women’s right to citizenship and protection at home and in the community.

## I. Women’s rights, political and civil participation and women’s role in building democracy

### Current Situation

According to the World Economic Forum 2013 Report on the “Global Gender Gap Index”, Arab states rank low in providing political opportunities and empowerment to women; they lag behind in the 6th place.

#### Regional Performance on the Political Empowerment Sub-index <sup>(8)</sup>



Moreover, progress of Arab states in providing political opportunities and empowerment to women is slow, according to the Inter-Parliamentary Union, with progress recorded at 19% in 2010 and 19.5% in 2011. The following table shows that women’s involvement in the decision-making process at national level in Arab countries is limited.

8. Report on the Global Gender Gap Index of the World Economic Forum, 2013

IPU ranking 2014 <sup>(9)</sup>

| Rank | Country              | Lower or single House |        |           |       | Upper House or Senate |        |       |       |
|------|----------------------|-----------------------|--------|-----------|-------|-----------------------|--------|-------|-------|
|      |                      | Elections             | *Seats | Women     | W %   | Elections             | *Seats | Women | W %   |
| 27   | Algeria              | 05/ 2012              | 462    | 146       | 31.6% | 12/2012               | 144    | 10    | 6.9%  |
| "    | Tunisia              | 10/ 2011              | 217    | 61        | 28.1% | ---                   | ---    | ---   | ---   |
| 45   | Iraq                 | 04/ 2014              | 328    | 83        | 25.3% | ---                   | ---    | ---   | ---   |
| 60   | Mauritania           | 11/2013               | 147    | 37        | 25.2% | 11/ 2009              | 56     | 8     | 14.3% |
| 69   | Saudi Arabia         | 04/2010               | 354    | 86        | 24.3% | 05/2012               | 29     | 5     | 17.2% |
| "    | United Arab Emirates | 01/ 2013              | 151    | 30        | 19.9% | ---                   | ---    | ---   | ---   |
| 83   | Morocco              | 09/ 2011              | 40     | 7         | 17.5% | ---                   | ---    | ---   | ---   |
| 86   | Libya                | 11/ 2011              | 395    | 67        | 17.0% | 10 /2009              | 270    | 6     | 2.2%  |
| 105  | Jordan               | 6/ 2014               | (9) 93 | 30        | 16.0% | ---                   | ---    | ---   | ---   |
| "    | Syrian Arab Republic | 08/2012               | 275    | 38        | 13.8% | ---                   | ---    | ---   | ---   |
| 116  | Bahrain              | 02/2013               | 55     | 7         | 12.7% | ---                   | ---    | ---   | ---   |
| 131  | Kuwait               | 01/ 2013              | 150    | <b>18</b> | 12.0% | 10/2013               | 75     | 9     | 12.0% |
| "    | Lebanon              | 05/ 2012              | 250    | 30        | 12.0% | ---                   | ---    | ---   | ---   |
| 142  | Oman                 | 06/2009               | 128    | 4         | 3.1%  | ---                   | ---    | ---   | ---   |
| 143  | Yemen                | 12/2009               | 33     | 1         | 3.0%  | ---                   | ---    | ---   | ---   |
| "    | Qatar                | 07/2013               | 65     | 1         | 1.5%  | ---                   | ---    | ---   | ---   |
| "    | Lebanon              | 10/2011               | 84     | 1         | 1.2%  | 10/2011               | 83     | 15    | 18.1% |
| "    | Lebanon              | 04/2003               | 301    | 1         | 0.3%  | 04/2001               | 111    | 2     | 1.8%  |
| "    | Lebanon              | 05/2003               | 35     | 0         | 0.0%  | ---                   | ---    | ---   | ---   |

9. Report of the IPU -Figures correspond to the number of seats currently filled in Parliament

In any case, the national indicators of specific Arab countries – with respect to providing political opportunities and empowerment to women – demonstrate improvement. These countries had adopted the quota and parity systems in their constitutions, their elections laws, and used direct appointments. In this respect, one example is the latest figures of the election of 68 women out of a total of 217 members of the Tunisian parliament (elected on 26 October 2014), representing 31.33% of seats in parliament. On the other hand, there are countries that have not shown any positive changes in the low percentage of women's involvement in medium-level executive positions, or in elected councils, or appointments. This is due to a number of reasons such as political setback and a non-conducive political climate that threatened women's rights and security, particularly in the public domain.

In addition to improving participation, women's civil and citizenship rights and political participation have become priority to ensure equality between men and women and to ensure wider aspirations of social justice, liberty and democracy. However, women's civil rights are rarely scrutinized because they are linked to other rights of political and socioeconomic nature in the public and private domains (including the private life within the family), and because of parallel definitions of relations, rights and duties between men and women that are established outside the framework of equal citizenship.

### 1. Regulating Women's Civil and Political Rights

#### Achievement of Equality between men and women

A set of civil rights has been created through the review and analysis of the constitutions and laws. The set was based on the principles of human rights, and is distinguishable since it has been established outside religious, military and political influences. Hence, it achieves the consensus of all the Arab legal systems, with no exception, and the consensus of other countries. This undoubtedly emphasizes the universality and comprehensiveness of this set of civil rights.

Constitutional rights and civil and political liberties overlap and intertwine; hence, they cannot be reviewed individually in isolation from one another. The constitutions and laws of a number of Arab countries explicitly stipulate the principles of equality between men and women. They also explicitly advocate non-discrimination on the basis of sex among citizens. Other countries recognize equality of duties and payment of taxes between men and women. Only Algeria has constitutional articles that call for free business practice among all citizens. All of the constitutions and laws of Arab states advocate basic liberties such as personal liberties, freedom of belief, freedom of expression, confidentiality of correspondence, freedom of movement, freedom of press, and rights to property and inheritance. Furthermore, there are Arab countries such as Algeria that outlaw abuse through their constitutions. Sudan, UAE and Libya's constitutions prohibit enslavement. The constitutions of some other Arab countries advocate for rights that are specific to women.

Concerning the separation of powers in Arab countries, in the aftermath of the 2011 events some opted for parliaments with two chambers, including in Egypt, Kuwait, United Arab Emirates, Djibouti, Sudan, Syria, Saudi Arabia, Palestine and Qatar. Other countries opted for one chamber parliaments. Most Arab countries agree on endorsing the rights of women to run for elections, to vote, to take industrial action, to demonstrate, to form trade unions and public associations, to apply for political asylum, to address public authorities and to participate in the political life. There are countries that have adopted a quota system by allocating a percentage of parliamentary seats to women and quota in political parties' membership as well as municipal councils. A number of countries have not accurately set a percentage or number of seats in parliaments for women;

however, they provide financial incentives to political parties to encourage women's participation, such as the case of Mauritania where a percentage of seats is allocated to women in parliament. The Saudi and Algerian parliaments have electoral systems and appointment of women in the upper chamber.

## Remaining areas of discrimination

Constitutions and laws contain articles that discriminate between men and women and between women themselves. The review of such laws and constitutions shows that the absence of supportive institutions such as political parties, which are still forbidden in some countries, reduces women's chances of political participation. Other factors are the absence of a neutral, unbiased language and/or the non-observance of a language that equates women's rights to those of men, and the fluctuation between conditional equality and concealed discrimination, which is still obvious. Unequal rights and a legally institutionalized discrimination threaten human rights and the rights guaranteed by the law. For example, some countries in the region, if not the majority, do not pay sufficient attention to accurately drafting civil and human rights, or using a gender-sensitive language, although in Arabic and French there are specific feminine and masculine terms. This includes electoral laws for running for presidency, parliament or political parties. However, the laws of political parties in Djibouti and Syria are exceptional cases.

A number of constitutions embody articles on rights and liberties. However, in these constitutions, the guarantee of such rights and liberties is based on specific conditions, which make them treat men and women unequally. The conditions may include reference to public order, Islamic Shari'a, vice, customs, and protection of Islamic faith. Moreover, the conditions that limit such constitutional rights and liberties may also include "woman nature" and responsibilities within the household. Consequently, the rights and liberties of women as citizens and human beings are affected in comparison to those enjoyed by men. The rights include movement and driving and that a woman's deposition at a Shari'a court is unacceptable. Only two women's similar deposition may be accepted – a condition that does not apply to men, which means that the deposition of a man is equal to two women's deposition. Some countries do not consider representing women in parliaments a necessity.

There are constitutions that guarantee equality of rights and liberties; however, they restrict them in both public and private domains. This restriction discriminates between men and women as well as between women of different sects. The constitutions use the rights of religious sects to organize household relationships as an excuse. These sects have laws that supersede constitutional provisions in a number of Arab countries with different religions and sects, including Lebanon, Iraq, Egypt, and Syria.

In hereditary monarchies in Arab countries, the office is passed through inheritance to a male family member, which is also the case of some European hereditary monarchies.

Personal civil rights and public rights are intermingled with the laws that govern households and/or married people. In some Arab countries, women still need their husbands' consent to be able to practice rights that are guaranteed to them as citizens. The intermingling of rights include men's rights over women where the latter must obey the husband's "taa'a", and the husband's right to reversible divorce "talaq raj'ee", which is found in the households laws. In some countries, women must submit their husbands' consent when they apply for a passport. There is also the husbands' right to oversee the wives' property. Husbands may also terminate contracts wives sign to provide breastfeeding without husbands' consent.



There are legal and/or constitutional provisions that not only consolidate discrimination in civil and political rights of men and women, but also jeopardize other basic civil rights, such as the right to security and safety, which entails a threat to the right to life. For instance, husbands get away with domestic abuse, and sanctions for committing adultery vary between men and women. Some countries flog adulterers, incarcerate and try women accused of honor crimes without giving them the opportunity to appeal sentences or gain access to a lawyer. Some countries confiscate female servants' passports thus depriving them of the right to movement, in addition to many more examples.

The review and analysis of the laws and constitutions show the legal reference and political trends and ideologies of Arab countries. These elements have an impact on the drafting of constitutions and laws and on the manner through which they deal with gender and human rights. There are specific historic and current developments in those various Arab countries, which also have an impact on the laws and constitutions. Consequently, the constitutions and laws vary in guaranteeing civil and political rights, and vary in guaranteeing equality or consolidating discrimination between men and women. There are laws and constitutions that are vague in stipulating equality or discrimination between men and women, and as a consequence they can be interpreted differently in accordance with different interests and perspectives.

## **II. Women's Economic Rights and participation and women's role in development**

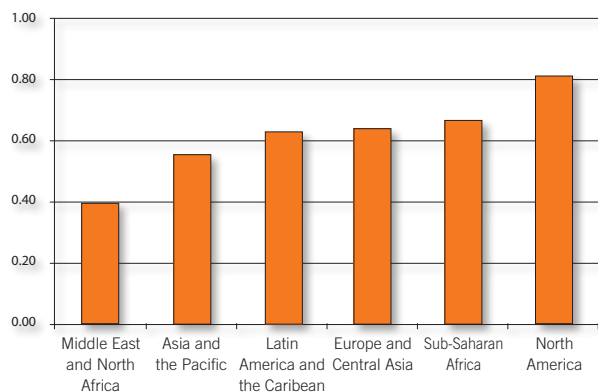
### **Current situation**

Arab countries vary in terms of women's possession of economic assets, according to location, population, and resources. This has impacts on economic liberties of people. Moreover, economic activities in these countries are numerous, ranging from the services sector and commercial sector to the developing agricultural and economic sectors. Development in countries is measured by the extent to which they guarantee economic rights, in addition to the approved regulations in the laws and constitutions. Analyzing the situation of women in relation to their relevant economic and social rights requires a more holistic approach, because women's participation in the economic activities or in the labor market, on equal footing with men, does not necessarily mean that they are economically empowered.

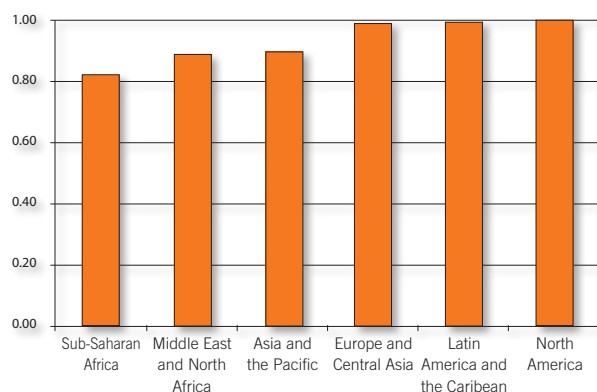
The tool "access to and control over resources" from a gender perspective is used as a mechanism for assessing the extent and level of women's empowerment. This does not mean only the economic resources, such as labor or loans, but goes further to cover all areas of rights such as education, training and legal and administrative measures that support the work of women and provide the means to alleviate the burdens related to their multiple roles and their tasks in and out of home. It also covers the freedom of movement, by providing appropriate and safe means of transport, social security, health services, the rights related to their reproductive roles whether they are working women or not, as well as the means of investing in their times of leisure and, obviously, the ability to take decisions.

Most, if not all, Arab countries exert efforts to integrate women in economic growth - in its limited sense – and in development, and thus plan for that from the early stages of education. However, the data, with its multiple sources and levels, indicate that the outcome of these efforts is by far less than the global rates, meaning they are not sufficient to achieve the desired development. On the contrary, it reveals that the regional performance, when considered as part of the global ranking<sup>(10)</sup> is limited in relation to education, participation or economic opportunities <sup>(11)</sup>.

### Regional Performance on the Education Attainment Sub-index



### Regional Performance on the Economic Participation and Opportunity Sub-index <sup>(12)</sup>



The tables show that Arab countries occupy the fifth rank out of six on a global scale in education and scientific attainment (i.e. one before the last, which is the Sub-Saharan Africa) and the last rank (i.e. sixth place) in participation and in economic opportunities. These figures and gaps mean that the status of the rights of women and girls in education and economic rights is deteriorating, with limited opportunities in both fields.

10. Report on the Global Gender Gap Index of the World Economic Forum, 2013  
 11. Economic participation and opportunity indicator  
 12. Economic participation and opportunity indicator

### 1. Regulating Women's Rights to Education and Training

#### The achievement of equality between men and women

The constitutions of almost all Arab countries guarantee the right to education. Hence basic education is compulsory and free in Algeria, Egypt, Tunisia, United Arab Emirates, Bahrain, Jordan, Palestine, Iraq, Syria, Qatar and Sudan. The language used in the guaranteeing of the right to education is not gender sensitive. The constitutions of other Arab states stipulate that the state guarantees the right to education. However, the constitutions do not refer to citizens or whether the provision of education is compulsory or free. These countries include Kuwait, Morocco, Saudi Arabia, Sultanate of Oman and Libya. There are articles specified for women and their right to education on equal footing with men, such as the document on Palestinian women's rights. Variations have been recorded as regards the contents of the right to education from one country to another, and from one document to another in the same country, as some consider education a matter of free choice and not a right, such as Lebanon, whereas other countries do not constitutionally guarantee the right to education, such as Djibouti and Mauritania. Other countries, such as Yemen, Egypt, Saudi Arabia, Iraq and Sultanate of Oman, go as far as to integrate the eradication of illiteracy as a right guaranteed by the constitution.

Most Arab countries have enacted laws to deal with the right to education. These laws are in support of constitutional provisions concerning compulsory and free education. The laws also contain provisions that the constitutions failed to address clearly, and contain provisions that guarantee the right to education for all citizens. The laws contain gender sensitive language and clearly stipulate equal right to education for men and women. A number of laws even hold parents responsible for their children's education, such as the case of the Syrian laws. Qatari laws hold husbands<sup>(13)</sup> responsible for their wives<sup>(14)</sup> education.

Some of the laws of Arab countries guarantee the right to education to women prisoners. They also guarantee the right to education to rural women. However, they overlook the right of education to people with special needs. This may be due to the fact that guaranteeing such rights requires additional technical and financial investments. Though illiteracy is a common phenomenon in most Arab countries, with the exception of the United Arab Emirates<sup>(15)</sup>, only a few of Arab states, such as Algeria, Egypt, and Yemen, guarantee the right to education to all citizens and define the age group and gender.

Arab countries' constitutions and laws do not frequently address the right to training and vocational training. They are integrated in the constitutions of only two countries (Egypt and Morocco). Some of the countries are keen to enact special separate laws to address this right in a general manner, such as Tunisia, or with an explicit reference to men and (Iraq, Libya, Sudan and Palestine). A number of other countries integrate provisions for training and vocational training in labor, human development, labor force, education or combating illiteracy laws (United Arab Emirates, Yemen, Algeria, Djibouti, Iraq, Syria, Oman, Libya and Qatar).

Arab countries' laws clearly enforce gender-based non-discriminatory provisions among all citizens. The laws also criminalize gender-based discrimination. The enforcement of non-discrimination includes vocational training in Djibouti and Algeria. The educational curricula of Tunisia and Algeria focus on teaching schoolchildren the principles of gender equality. Yemen and Jordan enforce combating illiteracy policies through the education law on the basis of equality between all citizens. Mauritania follows suit by standardizing the curricula in the education reform law and making it obligatory to establish training centers for every vocation. The Chambers of Commerce in Saudi Arabia focus on the training of women.

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13. Duty-bearers

14. Right-holders

15. The Global Gender Gap Indicator Index

Iraq has a high institute for training for all citizens. Qatar issues citizens with certificates indicating the number of years spent in education in Qatar and in other countries.

Laws and constitutions enforce discrimination against women in several cases. Such laws and constitutions claim to be protecting women. According to the review and analysis in the report, the laws and constitutions contain contradictions as they base women's rights and empowerment on Islamic Shari'a, traditions, and social patterns, which are used to justify the restriction on women's rights, such as the case of Yemen and Kuwait. Moreover, there are laws that do not use gender sensitive terminology when they address young people such as the case of Syrian laws.

There are measures and provisions which reinforce – by the power of law - various forms of gender-based discrimination that limit the enjoyment of rights, such as prohibiting co-education except in kindergarten (Saudi Arabia and Kuwait); or not allowing married women to complete their education in government schools. The same provisions allow male senior citizens to benefit from illiteracy combating programs (Kuwait), while making it conditional for women to be accompanied by a guardian during studying or training abroad (United Arab Emirates). They also stipulate the right of a guardian to terminate a training contract for legitimate reasons, and differentiate in the financial treatment between married male and female scholars, according to the training regulations (Sudan), or, in some cases, temporarily postpone the enforcement of the education law, with regard to boys and not girls (Oman).

## **2. Regulation of social and economic rights of women**

### **2.1 The Right to Work**

The review of the extent of enjoyment of the right to work in general, and women's right to work in particular, links the right to work with sub-rights (called sub-rights in this context, but they are nonetheless actual rights). For example, an evaluation was made of the legal position with regard to employment and promotion, the right to assume public office, equality in pay and other professional remunerations, in addition to the right to personal and general leaves, as well as other professional and syndicate rights.

### **Achievements of equality between men and women**

Constitutions and labor laws of a number of Arab countries such as the United Arab Emirates and Oman consolidate the right to work of all citizens. They guarantee such right and give people the liberty to choose work. Even though constitutions and laws of a number of Arab states use neutral or general terms or terms like "each person" or "every citizen" or "all citizens" without further specification - such as in the case of Kuwait, Qatar, Libya, Mauritania and Saudi Arabia - they do prohibit gender-based discrimination. The laws and constitutions of Algeria, Bahrain, Tunisia, Djibouti and Iraq follow suit. The laws and constitutions of Djibouti prohibit nationality-based discrimination. The laws and constitutions of a number of Arab states explicitly refer to equality between men and women in the rules governing employment such as the case of Algeria, Bahrain, Tunisia, Oman, Sudan and Yemen. Some have specifically focused on women's right to sign contracts (Morocco) or to assume public office and senior managerial positions in the state, and to be appointed to judicial agencies and bodies (Egypt). The laws and constitution of Bahrain emphasize the need to support women's right to work. They help women reconcile their responsibilities inside and outside the home.

The laws in most of the Arab countries guarantee equal opportunities between men and women in employment and promotion, and outlaw gender-based discrimination in these areas. There is no discrimination in the right to promotion and to assume public office, which is based on efficiency and expertise, according to the laws of Jordan, Tunisia and Syria, and equal opportunities for men and women in assuming different responsibilities in all areas according to the laws of Tunisia, Iraq, Egypt and Morocco.

In general, there is no discrimination with regard to equal pay for equal work between men and women. However, definitions of equal pay may vary from one country to another as most legal provisions link wages and equality to a number of factors such as: the volume of work and the quality of performance; education; position; the geographic location; the nature of work; the level of difficulty in the performance of duties and responsibilities; the working conditions and the hazards involved; the years of service, and the social status. The laws also emphasize non-discriminatory payment of salaries to employees.

Iraq is the only Arab country that stipulates that remuneration must ensure a better standard of living while taking into consideration the social status. Other countries prohibit discrimination for whatever reason, including gender discrimination (Bahrain, Djibouti, Lebanon and Syria) even if the reason is to do with the social status (Syria). A number of other countries stress, in clear terms, the guarantee of equal pay for men and women (United Arab Emirates, Qatar, Kuwait, Libya, Egypt and Saudi Arabia). Tunisia is the only Arab country that declares equal pay for men and women in its laws.

Some laws may state the meaning of equal pay in general and between men and women, emphasizing that equal pay must be based on a number of factors such as equal terms and employment conditions for work of equal value. These laws refer to the right of “every citizen, male or female, to fair pay” without defining the principle of fairness which leaves room for interpretations, including from a gender perspective. This often means taking measures in the form of positive discrimination, “because equality is not always fair”. Does fair pay mean here that it will necessarily be to the benefit of the female citizen? Or is it fair that the male citizen, as the head and supporter of the family, should enjoy a higher pay?

All employees, men and women, enjoy without discrimination the right to weekly, annual or general sick leaves, or to a pilgrimage leave, in the countries where the law so stipulates. Some countries grant women a leave to accompany the husband in the case of travel for work or study. Widows are also entitled to a leave of waiting period as defined by the Islamic Shari’a.

Countries like Jordan, Sudan, Oman, Palestine and Qatar refer to the right to engage in trade. Constitution and laws define a number of elements of the right to engage in trade such as property, capital and labor, based on different principles including Islamic justice or social justice on the one hand, and the principles of labor, production, free market and freedom of economic activities on the other. The law in Lebanon grants married or single women aged 18 and above the full right to engage in business, ownership of different resources and disposal thereof, including selling, without necessarily obtaining the husband’s consent.

Countries like Jordan, United Arab Emirates, Bahrain, Sudan, Syria, Oman, Qatar and Kuwait guarantee the right to savings and investment in the constitutional or legal provisions, emphasizing the freedom of investment and economic activities for the interest of the individual and the society. They also encourage cooperatives and savings for the benefit of the country, or with reference to other economic and developmental factors. Mauritania is the only country that emphasizes women’s full authority to dispose of their own financial assets.

## Remaining areas of discrimination

Although some countries adopt the principle of equality at work and consider some provisions to be in favor of women, some laws may encourage women to terminate employment. For example, women in Kuwait and Lebanon may obtain full end of service benefits when they terminate their work contracts because of marriage within one year. Mothers in Tunisia are allowed to work half-time while obtaining two-thirds of the salary.

Additionally, the compensations included in the calculation of the remunerations, or those related to the social status, are linked to the distribution of roles and tasks between men and women in the society and within the family, which means inequality in the payment of benefits and compensations that are related to work since women, even if married and have children, are still treated as single women in the labor and taxation laws, and men are considered heads and breadwinners of households.

In any case, the legal system which addresses the economic rights, the right to work in particular, still includes provisions discriminating against some segments and sectors, of which women are a majority. Agricultural, pastures, domestic male and female workers, and the like, are not covered by the labor laws either, in countries such as Jordan, United Arab Emirates, Syria, Lebanon, Egypt and Yemen. Therefore, they do not enjoy the labor laws as such, nor are they covered by the relevant social rights. While some texts mention that special laws regulate the work of these groups, this does not necessarily mean that women benefit from them, especially female agricultural and domestic workers and those employed in family businesses - often only consisting of family members - working under the management and supervision of the husband, father, mother or brother.

There is no law criminalizing sexual harassment in 16 of the countries included in this analysis. Meanwhile, Algeria, Tunisia, Morocco and Egypt address the issue of sexual harassment in the workplace, by incorporating the issue in the labor law or in the penal code, but they still need additional efforts to enforce and activate the provisions that are supposed to protect women from sexual harassment. The law does not always make it easy for women, as it requires them to prove that harassment has taken place, and present evidence thereof. Moreover, there is no protection for the witnesses in this case, and the perpetrator can even be compensated when the sentence is in favor of such a perpetrator – such as the case of Tunisia.

Though professional and syndicate rights are granted by the constitutions and the laws, with some exceptions in Oman, Qatar, Lebanon, Libya, Saudi Arabia and Yemen, most Arab countries limit women's rights to work by time and place. They consider women and children to be at the same level, and prohibit them from working during certain hours, in what is termed as night work (with the definition of the night shift varying from one country to another), and from what is defined as hard or hazardous work, above or below the ground. Justifications range from women's capacities and nature to the protection of their health or morals. Most laws refer to exceptions by often referring to the public interest, although they do not define or specify what public interest means. They use this term to give credibility to other justifications such as the authority of the legislator to revoke one of the rights for the benefit of a superior one, which means that public interest may supersede private interest.

## 2.2 Social Professional Rights

There is a number of social professional rights that support male and female workers, albeit in varying degrees between the sectors, within the public sector itself and between the public and private sectors, in addition to variations from one country to another.

### Achievements of Equality between men and women

The Arabic terminology<sup>(16)</sup> used for expressing the right to social security varies. The contents and components of expressing the right vary, too. The right to social security is guaranteed to all male and female workers and to some segments for which the state guarantees social benefits, and in cases of unemployment, disability or old age, as well as in cases of permanent or temporary disabilities or death for all who are covered by the insurance, men and women, as clearly indicated in some laws.

Maternal and childcare in most Arab countries are considered constitutional and legal rights; however, the terminology used to express these rights may vary between countries. Working mothers enjoy prenatal and postnatal medical care and paid maternity leave before and after childbirth, as well as time for breastfeeding thereafter. Some laws guarantee provision of special room for breastfeeding in every institution that employs at least 50 women (Tunisia), or other facilities (Algeria). Working mothers are allowed, whenever necessary, to take leave to care for one or more children under the age of six when the children are sick or with special needs. They may also take an additional unpaid leave, if they so wish. The law ensures the protection of women during pregnancy or after childbirth as it is prohibited to ask women to work overtime during the last six months before childbirth or to work 40 days thereafter.

The right to pension is equally guaranteed to all male and female workers.

Agriculture and domestic workers do not enjoy social security benefits in the Arab countries that exclude them from being covered by the labor laws, including in Jordan, United Arab Emirates, Syria, Lebanon, Egypt and Yemen. Iraq excludes women working in family businesses from social security benefits. However, there are gaps in this area between the public and private sectors in all Arab countries.

The right of working mothers to benefit from the full entitlement of the pre- and postnatal leaves, in particular with regard to pregnancy/maternity/delivery leaves, differs in many respects in the Arab countries, including in the duration of employment. For example, the maternity leave is not standardized and is calculated in days, weeks, months. In Egypt women are entitled to benefit from pregnancy/maternity/delivery leaves three times throughout their employment, and the duration of the leave varies in each of the three times. There is also discrimination between female government employees and other female employees with regard to the duration of the leave, such as the case of Qatar. Working women can request an extension of their leave, if needed (for sickness or for childcare), but this leave is unpaid and requires submission of a medical report. Women lose this right if involved in paid work in another institution. The right to breastfeeding varies in time and duration among Arab countries; it is calculated by months or divided into two parts. The time given for breastfeeding is considered as hours worked without decreasing the remuneration. Moreover, the rights of working mothers to pre- and postnatal leaves vary between the public and private sectors.

Although the right to retirement is guaranteed to all employed people, there are differences in the retirement age among countries, sectors, and among men and women. There are variations between the countries in the conditions, the age of retirement of men and women, and differences in the duration of the employment, even if the retirement age is the same. There is also discrimination against men in a number of Arab countries such as Jordan, Bahrain, Palestine, Syria and Yemen since a widower can only obtain his entitlement to the pension of his late wife in cases of injuries, disability or lack of a source of an income equivalent to this pension. Moreover, a number of laws in Arab countries require the submission of medical reports to claim one's late wife's pension.

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16. The terminology used in Arabic translates to either insurance or solidarity in English

### III. Women's Rights within the household including the right to pass on nationality to children

#### Current Situation

The population of the Arab world reached 367.4 million in 2012. The world population in 2012 registered seven billion people. It was estimated that the total number of senior citizens in the Arab world who were in the age group of 65 years or more would reach 16.7 million on October 31 of the same year, which accounts for 4.1% of the total population of the Arab world. This figure will reach 17.7 million people in 2015. The Regional State of the Population Report for the year 2012<sup>(17)</sup> highlighted the high density of youth - which mainly relates to the South - where about 85% of the world's population is between the ages of 14 to 25 years in developing countries - and showed that the Arab youth ratio (below 25 years) was about 70% of the total population.

It has not been possible to obtain general statistics, indicators or regular figures, including at the levels of national, regional or even international specialized organizations<sup>(18)</sup>. This is what made it difficult to assess quantitatively the number of households in each country, or region as a whole, their categories, or the average number of their members. Therefore, the assessment is based on the population statistics, which are often responsive to the needs of the demographic studies or other developmental areas. It should be taken into consideration that the data does not necessarily help qualitative analysis, whether anthropological, economic or legal, but it would at least allow the assessment of the extent of the violation of rights by its reference to development gaps and to the size of the population, with its various segments.

It is important to define the concept of "household", including the number and size of the households, since the concept differs from one society to another. The definition of the concept of the «household» and description of its forms and functions allow the understanding and analysis of the laws related to households. The provisions of household laws are often based on the frameworks determined by the society with all its components and the expectations for the protection of households as institutions and roles more than the protection of the individuals who constitute the households.

Relevant studies define a household as a social group or a social system, as an end in itself (to have children), or as a means to achieving other goals (e.g. economic and/or social). In this document, it is possible to take as a base, a simple definition of sociology that identifies the household as the basic cell of society and the most important of its primary groups, and which is composed of individuals bound by familial and kinship ties. Households contribute to all aspects of social activity, whether material, spiritual, ideological or economic.

A number of Arab countries sought to legally define the concept of household; however, they failed to examine the structure, components, functions, and objectives of a household. They only referred – in the definition – to specific components such as religion, morals, and country. The household laws of some Arab countries deal with the relationship between men and women within marriage. They also deal with men and women's relationship within the household as well as women's rights and responsibilities. The laws also define the state's responsibility towards ensuring women's rights and women's support to take on responsibilities within the households. Such laws use terms like "ensure," "guarantee," "protect," "safeguard," "committed", in countries including Jordan, Egypt, Syria, Bahrain, Tunisia, Iraq, and Qatar, among others.

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17. The Arabic version of the 2012 Regional Report on Population, United Nations Population Fund

18. National statistics institutions, Arab Family Organization, the League of Arab States, the United Nations Population Fund at the international level, the Regional Bureau for the Arab States



### 1. The Status of Women and their Rights within the household

#### Achievement of equality between men and women

Most Arab constitutions contain the principle of equality in rights and duties among citizens in general, and between men and women in particular. They guarantee such rights in all civil, political, economic, social and cultural domains. Men and women are considered equal before the law without any discrimination even though the latter reference is not mentioned in all constitutions.

The principle of equality between men and women stipulated in the constitutions of Arab countries requires that all laws, including household and nationality laws, conform with and are based on this principle. At the same time, most countries put restrictions on this principle, and, at the same time, call for abiding by it. This is manifested by the fact that the equality stipulated in the constitution does not violate some of the provisions and fundamental elements, thus leaving the concept open to other interpretations as well as being difficult to implement. This is because the definition of the household and the provisions that govern it fluctuate between equality and discrimination among laws and even within the same law.

Personal status and/or family and nationality laws are analyzed in this study to link equality between men and women to household roles, relationships and responsibilities. The analysis takes into consideration that the process of drafting constitutional and legal texts, when dealing with equality and non-discrimination, puts restrictions on these same constitutional principles, whether by referring to Shari'a or to other pretexts such as security and morality. Some laws clearly refer to more than one household law, especially in countries with multiple sects and religions such as Lebanon, Iraq, Egypt, Syria, and Palestine. The texts of other countries' laws similarly contain the principle of equality and discrimination.

A series of achievements have been realized with regard to the household laws in conformity with the commitments of some countries to the principles of justice and equality stipulated in their constitutions and their respect for their international commitments through their ratification of international conventions and agreements. These achievements include several issues that vary among countries, such as the principle of consent in concluding a marriage contract; setting the minimum age for marriage at 18 years; not stipulating the presence of a guardian as prerequisite for concluding the marriage contract since both the husband and wife have the right to conduct their marriage by themselves. All countries have agreed on the necessity to officially document the marriage contract as a practice that protects the rights of both parties, especially the wife, as compared to other types of marriage which may be recognized by the community but not the law (not legally registered marriage - known in Arabic as *zawaj Urfi* - by reciting the *Fatiha*, the first sura (chapter) of the Quran, and making marriage public. In addition, some household laws provide equal rights to both spouses, such as the right to freely lay down their own special preconditions in the marriage contract. Moreover, the rule obliging the wife to obey her husband has been eliminated from some Arab laws in an attempt to strengthen the legal status of women within the marital relationship.

Some of the legislations in the region consider it self-evident that a mother has an equal responsibility towards supporting the children like the father but made this right conditional on the absence of the father (Saudi Arabia, Libya and Sudan) or if the mother has money of her own (Tunisia). The provision on family guardianship includes a range of rights and duties of parents towards their children, as well as managing the marital life. Few laws have included the principle of equality in

the management of the family affairs and raising children, but the guardianship remains with the father. It is worth mentioning that only Algeria gives full guardianship to the mother after divorce, if she has the custody of her children.

In dealing with divorce, the treatment of the husband and the wife differs from one law to another, as some laws give equal rights of the spouses to terminate the marital ties (Tunisia and some sects in Lebanon) while others include equality between the spouses in the case of a request for divorce by mutual consent (Morocco, Algeria and Libya). Some laws establish equality in filing for divorce due to harm or dispute (Iraq, Djibouti and Syria) and some grant the right to compensation for arbitrary divorce in a number of countries (Iraq, Jordan, Syria, Algeria and Morocco).

## Remaining areas of discrimination

Numerous pieces of evidence of discrimination are revealed by the analysis of Arab countries' laws governing the rights and relationships within the household, regarding nationality and other special situations. For instance, some countries allow the engagement and marriage of girls as young as 10, such as Sudan, Iraq, Yemen, Mauritania, Kuwait, Bahrain, and a number of sects in Lebanon and Syria. Other countries' laws, such as Jordan, Palestine, Algeria and Tunisia, stipulate that the minimum age at marriage must be 18; however, the laws of these countries grant exceptions to judges to allow the engagement and marriage of younger girls. Marriage is also allowed by delegation. The presence of the guardian is often regarded as mandatory in the marriage contract, which may result in the guardian signing the marriage contract instead of the wife, which defies – or probably even cancels – the principle of consent in the marriage, and is a direct cause of forced marriages.

In most Arab countries, the wife is obliged to obey the husband in all matters relating to marital life, including movement and travel (Egypt, Yemen, Syria, the United Arab Emirates, Kuwait, Sudan, Djibouti, Bahrain, Qatar, Saudi Arabia and Jordan) with the exception of Tunisia and the Druze Sect in Lebanon. Polygamy is legally granted in the laws of most Arab states, whereas some states try to limit it by placing strict conditions (Algeria and Morocco).

Husbands only have the right to unilateral divorce in 15 Arab countries including Yemen, Iraq, Syria, the United Arab Emirates, Kuwait, Sudan, Djibouti, Bahrain, Egypt, Qatar, Saudi Arabia, Jordan, Algeria and Morocco. In most countries, including the United Arab Emirates, Bahrain, Qatar, Syria, Iraq, Egypt, Kuwait, Lebanon, Saudi Arabia, Yemen, Mauritania, Algeria and Morocco, husbands have the right to revocable divorce, which means that they may by law force their wives to return home; however the laws of Morocco grant women the right not to resume the marital relationship. The wife is considered guilty of disobedience (*nashez*) if she does not abide by the rule of obedience and refuses to accept the husband's orders, such as the case of Syria, Yemen, Sudan, Qatar and Saudi Arabia. The "khu'l'a" (women unilaterally filing for divorce) allows the wives to end the marital relationship and regain freedom in exchange for financially compensating the husband, which is often a sum of money representing the dowry (Yemen, Iraq, Mauritania, Syria, the United Arab Emirates, Kuwait, Libya, Algeria, Egypt, Morocco, Sudan, Bahrain, and Qatar).

Mothers do not have custody over children since fathers are considered the sole custodian of the children and have the authority to prevent children from traveling with their mothers without the fathers' consent. This is enforced in all Arab countries including Tunisia where the Tunisian law provides for equality in the family custody that has been defined as managing the family's affairs. However, the father remains the head of the family, and in this capacity, he is expected to provide for the wife and children. Wives are not required to contribute to the family expenses unless they are wealthy<sup>(19)</sup>.

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19. Article 23, Tunisian Personal Status Code

It should be noted that there is discrimination against men as fathers in one Arab country only, which is Algeria, where custody over the family is taken away from men after divorce and given totally to mothers. No Arab law acknowledges the right and responsibility of women to provide for their children despite the fact that they actually do so and there is no explicit text that obliges the mothers to provide for their children, like the father. Family laws address the right to inheritance according to Islamic Shari'a, its interpretation and application, based on the doctrines of each country.

The majority of Arab countries, of which the legal systems have been analyzed, incorporate the inheritance laws of the Islamic Sharia'a in their laws. The right to property and disposal thereof is probably considered one of the fundamental issues between men and women that are still being debated. Discrimination between men and women is manifested in the inequality in the text and in the conditions of enforcement of laws. However, this depends on the individual case of each country since there are countries with one sect of Muslims; countries with more than one sect of Muslims; countries whose official religion is Islam but have non-Muslim sects and numerous doctrines. The laws of these countries vary according to the sects and doctrines they have.

## 2. The Right of Women to pass their Nationality on to their Children

### **Achievements of equality between men and women**

It is worth noting that a limited number of Arab Countries (Tunisia, Morocco, Algeria, Iraq, Mauritania, Djibouti and Egypt) grant mothers the right to pass their nationality on to their children, on equal footing with the father. Egypt went further by endorsing the right of Egyptian women to pass their nationality to their children and making it a constitutional principle.

### **Remaining areas of discrimination**

In the majority of Arab countries, the mother remains deprived of the right to grant her nationality to her children (Kuwait, United Arab Emirates, Bahrain, Qatar, Syria, Jordan and Saudi Arabia). A few countries equally grant that right, except if the nationality was acquired through naturalization, such as Mauritania. Some inequalities exist regarding transmission of nationality by marriage. There are some inequalities in the transfer of nationality by marriage and discrimination in transferring the nationality to the children, when the mother is married to a foreigner in some countries (Libya). Some other laws render the transfer of nationality by the mother subject to the issuance of a ministerial decree of acceptance (Egypt). Moreover, a woman may lose her original nationality if she marries a foreigner and acquires his nationality (Qatar).

## IV. The Right to Health & Reproductive Rights and Protection from Gender-Based Violence

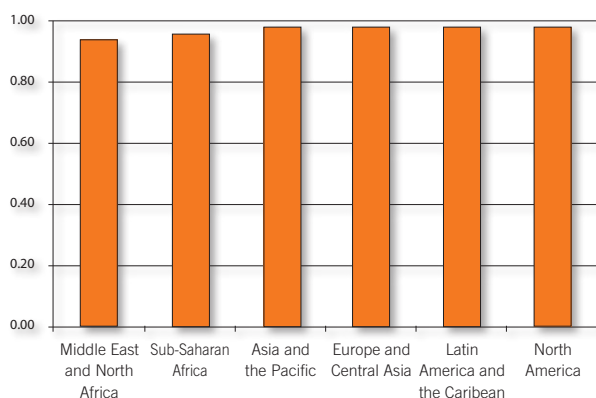
### Current Situation

#### 1. The Right to Health and Reproductive Health Rights

The concept of health involves the protection and endorsement of the rights of individuals to access comprehensive health and information services to meet their health needs, as related to both physical and mental health, as per the internationally agreed-upon definition<sup>(20)</sup>, i.e. in a comprehensive and multi-dimensional manner. The concept expands to include sexual and reproductive health and their different components in all stages of life, to ensure the full enjoyment of the right to health and reproductive health rights.

Among the four indicators adopted by the World Economic Forum Report on the “Global Gender Gap Index,” the sub-index for health and survival, which consists of two biological indicators, namely life expectancy at birth<sup>(21)</sup> and sex ratio<sup>(22)</sup>, as highlighted in the following chart, the Arab region finds itself in a medium ranking (i.e., fourth), as compared to its ranking in other areas (last and one before last).

**Regional Performance on the Health and Survival Sub-index<sup>(23)</sup>**



Life expectancy rates at birth are usually higher for females than for males, as well as being high in rich countries and low in poor countries. Medical progress and improvement in nutrition are factors that raise this index, whereas there are other factors that lower it, such as wars.

On another level of evaluation and analysis, the index of life expectancy at birth is linked to gender-based comparison since women lose this specific advantage, linked to their biological sex, at birth. Women suffer living conditions based on sex-based discrimination, which leads to violence and its impact on women’s lives and survival in all stages of life, amongst which are child delivery and maternal mortality rates.

20. World Health Organization  
 21. Life Expectancy at birth  
 22. Sex ratio/masculinity ratio  
 23. The 2013 Report Global Gender Gap Index

The sex ratio is the male-female ratio in one generation; while the male ratio is the ratio of men to the total population. It is an important biological indicator, as the male-female ratio can affect the numerical balance between the sexes. The most prominent example of this is what happened in China due to the population policy it adopted allowing married couples the right to one child only. To abide by these rights, families who preferred having a male child resorted to abortion. This underlines the importance of addressing this indicator from a gender perspective and its balances.

## 2. Gender-based violence against women

The issue of gender-based violence against women is related to health and reproductive health. It is defined as a “Public Health Issue” by the World Health Organization. It is considered a component of general and reproductive health in the agenda of the International Conference on Population and Development. Gender-based violence is the type of violence to which women – more than anyone else – are exposed at all stages of their lives, because of their sex and identity as women within a community. It is an extremely complex social phenomenon, deeply rooted in the gender-based patriarchal relations, in the sexual life, in the shaping of the self-identity as well as in the structure of the social institutions.

It has been agreed that violence against women is an international phenomenon that is not exclusive to nationality, religion or homeland; it recognizes no borders. This made most, if not all, Arab countries include it in one way or another, in their national concerns. A World Bank study in 1994<sup>(24)</sup> presents a harrowing picture of the social and health consequences of violence against women, as violence is considered a major cause of death and disability for women between the age of 15 and 44 years. According to this study, women in this age group face ten risk factors, and that the dangers of rape and domestic violence outweigh the dangers of cancer and car accidents, wars and malaria.

Furthermore, several studies<sup>(25)</sup> have demonstrated a growing relationship between violence against women and HIV/AIDS, as women who have been subjected to violence, are more at more risk to contract the HIV/AIDS (48%).

Following are some examples that show the extent of violence against women in the region, and the need to address this issue appropriately, legally and humanely:

**Some comparative indicators on marital violence** <sup>(26)</sup>

| Country   | Violence Form |               |        |          |
|-----------|---------------|---------------|--------|----------|
|           | Economic      | Psychological | Sexual | Physical |
| Algeria   | 9.4           | 10.9          | 21.6   | ---      |
| Egypt     | 28            | 17            | 62.6   |          |
| Morocco   | 15.2          | 8.7           | 48.2   | 8.4      |
| Palestine | 23.3          | 9             | 61.7   | ---      |
| Syria     | 18            | 4             | 26     | 33       |
| Tunisia   | 7.5           | 9.7           | 16.8   | 3.9      |

24. Heise, LoriL; Pitanguy, Jacqueline, Germain, Adrienne, 1994. Violence Against Women: the hidden health burden. <http://documents.worldbank.org/curated/en/1994/07/442273/violence-against-women-hidden-health-burden>

25. <http://www.womenshealth.gov/hiv-aids/women-are-at-risk-of-hiv/violence-against-women-and-hiv-risk/> <http://www.genderandaids.org/index.php>

26. The data included in this table is taken from the national surveys mentioned above.

Countries vary in their approach to acknowledging the phenomenon of domestic violence, addressing and combating it. National efforts include incorporating strategies, plans of action and programs, as well as provision of services based on international references at the level of governmental institutions, sectors, and civil society organizations that play a fundamental role in dealing with the phenomenon.

Laws are enacted to address this phenomenon from different angles and dimensions, including reference, duration of ratification, and to target groups (Jordan, Kurdistan, Iraq, Saudi Arabia and Lebanon). At the time of preparing this study, there are draft laws and reforms of penal codes in a number of countries. These draft laws are on their way to be ratified by cabinets and parliaments in Iraq, Algeria, Tunisia and Morocco.

## The legal system of the right to health, reproductive health rights and protection from violence against women

### 1. Women's right to health and reproductive health

#### Achievements of equality between men and women

The right to healthcare is guaranteed in all Arab countries and there is no discrimination of any form in the enjoyment of this legal right by the citizens on the basis of gender or age, poverty or disease or ability to access and control resources. The right to healthcare includes the different levels of healthcare services.

Besides the prohibition of all types of discrimination - including gender discrimination, regardless of grounds, and the consolidation of the principle of equality in rights, including social rights - most Arab constitutions, except for Mauritania, affirm the state's responsibility to guarantee the provision of healthcare to all citizens, with special attention to mother and childcare. Moreover, some countries included reproductive health in the laws regulating the provision of health and in special policies and programs.

It must be acknowledged therefore, that most of the Arab legislations cover social rights, including the right to healthcare, on the basis of the principles of equality. They also recognize the special rights of women as mothers and provide that the state shall ensure maternal and childcare at varying levels. Moreover, some of these legislations speak of ensuring preventive measures, which cover basic health services including in emergency cases. Some laws also stipulate offering guidance, counseling and medical examinations to both prospective spouses and provide the necessary medical facilities to address diseases that can be treated and which may affect their reproductive health in the future, whenever necessary. The laws in most Arab countries do not prevent the right to administer family planning methods without detailing them. Some countries provide contraceptives free of charge. Women in some countries enjoy the right to unilaterally make a decision without the consent of the husband even prior to a surgical procedure.

Legislations in some Arab countries allow abortion, under certain conditions, whether medical or non-medical, where pregnancy is life threatening or likely to cause health complications to the woman. Tunisia is the only Arab country where women are granted the right to abortion subject to medical conditions, if they so wish, while in two countries (Algeria<sup>(27)</sup> and Sudan) this right is unconditionally granted in cases of rape.

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27. By terrorists

### Remaining areas of discrimination

Women's health is often addressed from a limited angle and mainly as women and mothers (maternal care) or as "married women of childbearing age," without paying adequate attention to all women in all stages of their lives and situations, including the elderly. Furthermore, despite the progress achieved in the development and implementation of reproductive health strategies, including those aimed at adolescence and youth stages, and although all Arab countries, without exception, adopt, in one way or the other, population policies and implement reproductive health programs, most legislation still ignore the reproductive rights.

Regulations vary from one country to another and may sometimes reach prohibitive levels. For example, in only one country (Syria), the constitution stipulates that «whoever sells, offers for sale, or purchases for the purpose of selling, any contraceptive material or facilitates its use in any way, shall be punished»; even though they are sold in pharmacies and are available in clinics and hospitals. Only one Arab country (Libya), criminalizes artificial insemination, and punishes the woman or her spouse who undertakes or even agrees to its performance. All Arab countries, without exception, agree on criminalizing abortion without the consent of the woman and enforce severe punishment if the abortion results in woman's death. They all agree on criminalizing abortion if women resort to it, even by their own free will, with the exception of Tunisia, Algeria and Sudan.

Western countries have adopted strategies and programs for the prevention of the HIV/AIDS virus and significant progress<sup>(28)</sup> was recorded in programs and services offered to treat the people who live with it, with a focus on women. The United Nations Agency in charge of HIV/AIDS confirms that although its rate is still low, the Arab region ranks first in the world regarding the increase in the spread of this disease, which is also annually on the increase worldwide, especially among women, and married women in particular. This can also be linked to the low status of women in society and their inability to take decisions, including, those that threaten sexual and reproductive health and their lives. This is due to the social and cultural structure and the gender-based distribution of roles and relationships which result in male dominance, reinforced by laws such as the personal status code/ family law.

## 2. Women's Right to Protection from Violence

### Achievements of Equality man-woman

Most of the constitutions in the Arab countries prohibit discrimination among citizens, men and women, and gender-based discrimination, whatever the reason may be. Most Arab countries prohibit violence against women; this is based on the general recommendation No. 19 of CEDAW, which defines any form of discrimination as violence. States constitutionally and legally recognize their responsibility in securing the dignity, protection, the right to life, freedom and safety of all citizens. Furthermore, some constitutions clearly point to violence against both children and women. They stipulate the necessity of providing protection and care to women, preventing their economic exploitation and all forms of violence within the family, school or the society, as well as all forms of torture, whether physical, psychological, moral or material, including any inhuman treatment that may undermine women's dignity or the inviolability of the human body. They also assert the state's responsibility in taking all necessary measures needed to eradicate violence against women

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28. High Level Meeting of Women Leaderships in the Middle East and North Africa Region, 10-11 November 2014, Achieving Gender Equality and addressing HIV/AIDS, as part of the Arab Strategy 2014-2020 and the Post 2015 Development Agenda

With regard to the marriage of girls, a number of countries have recognized that the eligibility for marriage is fulfilled with the consent and the coming of age at eighteen years, in accordance with the rules of the country itself and the international regulations. Furthermore, in most Arab countries, the penal code criminalizes physical violence, without mentioning men or women in all cases, by imposing prison sentences and detention that range from specific periods up to life imprisonment, if violence results in death. Furthermore, some laws stipulate additional punishments that are contingent upon the situation, if the violence inflicted - such as beating and injuries - lead to complete disability, permanent handicap, disfigurement, or mutilation that deprive the victim from a bodily function of any kind. Furthermore, in some countries, laws relating to anti-violence criminalize threats and verbal abuse, slander, insult and contempt; with harsher penalties should these occur within the family.

Arab countries like Djibouti, Kurdistan, Iraq, Egypt and Sudan criminalize - in varying degrees - acts of violence that may lead to the maiming of the genitalia - as in female circumcision - and regard this harmful practice as an example of domestic violence. Anyone who inflicts upon another any type of harm, injury or illicit practice, even if it is only an «incitement» to perform it, is punishable by law, with a harsher sentence if the victim is a minor, and especially if the person performing the operation is a medical doctor, pharmacist, chemist or a midwife or any of their assistants, whether in hospitals, public or private clinics, governmental or non-governmental, or any other such facility. In cases of circumcision, non-governmental organizations can file a legal civil proceeding in a limited number of countries.

Furthermore, the four Arab countries - Algeria, Morocco, Tunisia and Egypt have enacted laws against sexual harassment, which include a definition of both the term and the target group (male/female workers). The provisions of punishment differ from one country to another. Any involvement in repeatedly harassing another person by remarks or gestures that may undermine another person's dignity, humiliate, shame or force them to respond to theirs or to a third party's sexual desires, or putting pressure to weaken their will to resist these desires, is considered sexual harassment. Moreover, any abuse of authority or exploitation of one's professional rank by giving orders, or threatening or pressuring someone to comply with certain sexual desires is also considered sexual harassment.

As regards sexual violence, most Arab legislations use terms such as 'sexual intercourse without consent', 'sexual intercourse by force', or 'indecent assault'. Only four countries (Algeria, Djibouti, Sudan and Mauritania) out of twenty use the term 'rape' in their laws. All Arab countries criminalize sexual violence against women and girls as well as boys, particularly with the use of force and threats. Furthermore, harsher punishment is applied in cases of sexual violence against children, the disabled or the helpless of both sexes; and is applied in cases of incest, especially if the perpetrator holds direct disciplinary powers over the victim, such as teachers and the clergy. Perpetrators of rape and abductions cannot escape justice.

Human trafficking is criminalized in a number of Arab countries. These countries target those who incite fornication, prostitution, sexual exploitation, violence and coercion of women, girls and boys to commit sexual acts. Laws also punish those who make a living out of prostitution of others and stipulate a harsher punishment if the victims were minors or if those forcing prostitution were spouses or family members or those having disciplinary authority over them. However, these laws are not deterrent enough on the one hand, and do not fully cover the various forms of sexual exploitation on the other; as they have been limited to fornication, indecent acts, vice and forcing others into prostitution.



### **.Remaining areas of discrimination**

All laws generally stipulate equality and protection of women in all stages of life; however, they also consolidate discrimination or at least create the framework through which women's rights may be threatened. In that sense, Arab countries set the age of marriage of girls at eighteen, nineteen or twenty years. However, they leave the door open to exceptions that permit the judge to determine the minor girls' best interest by allowing their betrothal and/or marriage if it is deemed necessary without setting any minimum age, as stipulated in all Arab family laws. Alternatively, some Arab countries define the minimum age of marriage for girls at ten, fifteen, sixteen or seventeen years. This situation is regarded as gender-based violence and a clear violation of the rights of the woman and young girls.

Inflicting harm and physical violence upon others, regardless of their gender, is punishable by the penal law without discrimination between men and women. In fact, laws do not mention the gender of the victim in their general provisions, thus indicating their neutrality from a gender-perspective. However, laws vary from one country to another regarding the degree by which the issue of the nature of the physical violence against women and its forms are addressed - be it within or outside the household. Most Arab laws drop the punishment if the complainant foregoes his/her rights in the given case even though the law criminalizes domestic violence and as the punishment is stopped, the public interest litigation is dropped. Moreover, many Arab countries find that disciplining the wife and the children is the husband's right that should not be punished as a crime in line with the existing social norms consolidated by law in the articles relating to that issue, as well as recognizing that the practice of beating is adopted as an educational method at home and in schools. Physical violence within the family is not criminalized, whereby family relationships and the type of authority that the offender holds over the victim are not considered as an aggravating circumstance, but rather a right: such as the right of a husband to discipline his wife, or a father his children, thus violating the woman's right to physical and mental safety throughout her life. Disciplining the wife may reach several levels of physical and psychological harm that could even lead to death, if the norms and traditions prevalent in the area, family or clan or even the wife's own clan allow it; and the tradition that will always protect the husband committing the aggression from being prosecuted and punished, since the law permits such actions.

There is contradiction in a number of countries between legal articles that consider 'honor' as a justification granted by law to men and the constitutional provisions that stipulate equality between citizens before the law, without discrimination, including gender-based discrimination, and prohibit all forms of violence and abuse within the family, schools or community. Some countries consider crimes of 'honor' as mitigating grounds for extenuating a sentence, and a state of extreme anger an acceptable excuse for reducing a sentence, if the judge deems the motive for the crime to be related to «honor».

Almost all countries have agreed on criminalizing threats, slander, insult and humiliation, but they do not make the punishment more severe if such crimes occur within the household. Most Arab laws tolerate verbal violence and stop pursuing a case if the complainant, man or woman, waives his/her right to filing a lawsuit. Some countries even go as far as dropping the lawsuit altogether, if the plaintiff admits that, through his/her actions, he/she brought shame upon him/herself «through degrading actions». This argument is often applied to justify that the violence endured by women is their own responsibility and the result of their actions, such as going out in the streets or the workplace, because of the way they dress or for raising their voices.

In most Arab countries or within certain regions in this area, from the Atlantic Ocean to the Arab Gulf, the phenomenon of female genital mutilation/cutting (FGM/C) exists, though with differences in occurrence, severity or acuteness. The phenomenon is not always officially acknowledged, and would not be officially known were it not for the studies undertaken and the educational roles played by the

NGOs and certain international organizations. The official denial of this phenomenon therefore makes the available information on this matter insufficient which consequently leads to the inability to legally address the issue.

Some countries admit this harmful practice and have developed policies and strategies to combat it, but are not fighting it through law, regardless of the level of its occurrence. It is worth noting that the laws to address female genital mutilation/cutting need to be strictly enforced. According to the most recent data, the phenomenon of FGM/C among women aged 15 to 49 reached 96% in Djibouti, followed by Egypt at 91%, and Sudan at 88%. Iraq registered 8%<sup>(29)</sup>. The high rates of FGM/C in the Arab world are due to lack of laws as well as weak political and legislative will in the face of harmful traditional practices against women.

Sixteen out of the twenty countries targeted in this survey did not address the issue of sexual harassment in the workplace. Therefore, they have never enacted legislations to deal with the issue. They were mainly concerned with issues of sexual assault and indecent acts. On the other hand, all but one of the countries that actually enacted laws addressing sexual harassment need to define the issue or clarify their vision towards it (does it concern men or women?) and amend these laws in a way that would secure the protection of the victim during and after the filing of a complaint, and that would respect her rights and ensuring the protection of men/women who are willing to give testimony under oath.

Arab countries consider sexual violence against females a crime. However, a rapist or kidnapper may get away from justice by marrying the victim in a number of Arab countries. Forced sexual intercourse is treated in different ways in the different Arab countries; some countries do not consider or punish marital rape.

There are Arab countries that consider rape as a crime. However, it is not punished by death sentence except in the cases where the victim is under sixteen or fourteen years or in the cases of incest. Women may also be subject to the same punishment as men, for “having accepted” or “consented to incest.” The penalty however varies from one country to another and ranges between capital punishment and imprisonment. Sometimes there is no defined ceiling to the punishment, which may leave it to the discretion of the judge<sup>(30)</sup> who may even waive it. In this respect it is difficult to interpret the discretionary power and ability of the judge as being tolerant. There are other factors that should be considered, such as the cultural and social background which can justify the act of rape, either by assumptions or accusations against women such as being a victim of rape because they went out, or because of the way they are dressed, and the way they behave.

There are no laws in the Arab countries, except for Palestine, that provide protection to women from economic violence. However, there are laws and constitutions that address women’s right to own and control resources. In reality, even when there are laws, women in the Arab world face economic violence. They are denied access to and control over basic resources such as family support. They are deprived of inheritance. They are forced to work or quit work. Women’s salaries and other financial sources are confiscated. Women are also forced to relinquish financial rights in order to be able to obtain divorce or inheritance.

Most Arab countries have failed so far to enact effective laws that prohibit human trafficking. The laws and constitutions that attempt to address this issue remain non-deterrent. This situation has contributed to the exacerbation of human trafficking in a number of Arab countries. Imposing fines only, or deportation of illegal immigrants, may enable the perpetrators who were penalized for these crimes to repeat them and resume their activities since they pay small fines.

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29. UNICEF Report on Female Genital Mutilation, 2013

30. Judicial Discretion

## Conclusion:

### The present... between the past and what the future holds in store

The conclusion focuses on the principles of non-discrimination and equality and the rule of law and accountability. Moreover, the conclusion focuses on the principles of other human rights that constitute the foundations and pillars of democracy and good governance.

The evaluation included what has been achieved in the area of gender equality on two levels: in the national legal systems of twenty Arab countries - with a focus on the constitutions - and the extent to which gender equality is reflected in the political and legislative will and international law.

Reviewing the national legal system means examining to what extent the principle of equality is implemented and reflected in the lives of all citizens. Reviewing the international law means assessing the will of the Arab countries to conform to international law in light of their ratification of international conventions and the impossible reservations. Finally, the above mentioned principles of human rights were “tested” and the extent to which they are respected was closely examined through areas and indicators that are considered essential for the rule of law, its implementation and what it requires in terms of accountability systems and mechanisms so that citizens, especially women, can access justice institutions in order to exercise their right to litigation.

### 1. The principle of equality in the National Law: Constitutionalizing equality and non-discrimination: The Reality and its facets

Arab constitutions have integrated numerous texts demonstrating equality between men and women, either by a ruling, or by the assumption that men and women – as citizens of the same country - enjoy equal rights, bear the same duties and are subject to the same regulations and legislations. Though all Arab countries stipulate in their constitutions the principle of equality, the concept and phrasing of these articles, especially with regard to the constitutional provisions, differ from one another. Some of them even vary in terms of the wording within the same constitution. The difference in the meaning of the principle of “equality between citizens, in rights and duties and before the law” can be highlighted according to the constitutional articles of the Arab countries concerned, which can be categorized into five types:

- 1. Equality subject to conditions and interpretations:** For this type, the constitutional text concerning equality in the fundamental system of government / constitution differed uniquely in its features from all other texts, as it was careful, in its phrasing, to associate it with Islamic Shari’a. Women did not feature explicitly in the text through the language used, but was emphasized in the text by stressing “non-discrimination between individuals and the society with regard to human rights” (Saudi Arabia).
- 2. Equality and non-discrimination, with no mention of sex-based discrimination:** These texts appear in the same phrasing i.e. “all citizens are equal before the law in rights, duties, opportunities and human dignity and cannot be discriminated against on grounds of language, origin, race, religious belief, or political affiliation.” There is no mention of sex as being one of the possible or prohibited forms of discrimination between citizens, nor did they detail any forms of discrimination between citizens at all (Lebanon, Jordan, United Arab Emirates, Sudan<sup>(31)</sup>, Libya<sup>(32)</sup>)

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31. Transitional Constitution

32. The Interim Constitutional Declaration

**3. Equality and non-discrimination, including sex-based discrimination:** This is the case of the texts in most Arab countries (Kuwait, Mauritania, Djibouti, Algeria, Oman, Bahrain, Palestine, Qatar, Sudan, Iraq, Morocco, Syria, Egypt). They recognize the equality of male and female citizens/men and women before the law without discrimination on the basis of sex. All those texts use almost the same wording.

**4. Emphasis on the equality between men and women, with a focus on positive discrimination:** Some other constitutional texts came close to the previous type, with some improvement in the wording, by stating citizens, men and women, in detail, stressing the eagerness to activate equality between men and women (Palestine<sup>(33)</sup>, Jordan<sup>(34)</sup>, Algeria, Tunisia). Some texts in Arab constitutions are characterized by giving explicit and detailed attention to women's rights in special articles that may not be provided to other segments of society. These texts differ in their phrasing and in meaning, in favor of women, and emphasize women's equality with men (Yemen, Sudan, Algeria, Morocco, Syria, and Tunisia).

Most countries have made significant progress towards securing and improving the legal status of women and their rights, through law reforms, starting by the basic law i.e., the constitution, and by formulating policies to activate these principles. It is noted, however, that there are discrepancies in legislations and a huge gap on a number of levels: between what is contained in a given law and other laws, and/or their implementation, and with different policies that have been formulated for eliminating discrimination and activating equality in practice, whether individual or institutional.

According to equality analysis of the national legal systems, not all constitutions clearly stipulate «gender» as a distinctive factor as was done with other factors of non-discrimination (race, religion ...etc.). Moreover, the language of most Arab constitutions is not gender-sensitive.

In fact, the realization of women's human and legal rights is still faltering due to the contradictions and incompatibility resulting from the application of the three existing legal systems, namely, the constitution, the statutory laws, and the customary (tribal and clannish traditions and customs) and religious laws (as well as between Islamic laws "Shari'a", different Islamic sects and doctrines of Christian churches with their many and varied denominations.)

In many countries in the Middle East, North Africa and the Arab Gulf, the application framework of the law in jurisprudential schools is dual and subject to the state of affairs and circumstances. In some instances, it is subject to the personal interpretation of those who are required to apply the law; and if the principle of the judge's discretion in passing judgments is legal, it has to be characterized by full neutrality and objectivity, so that justice and non-discrimination, including gender-based discrimination, may be safeguarded.

For example, in most of the countries concerned, the family law implicitly and practically prevails over all other laws, including the constitution. In some countries, the constitution itself contains articles that cancel the principle of gender equality affirmed in other provisions of the same document, instead giving preference to other provisions and standards that consolidate discrimination between men and women and even discrimination between women of different sects.

Therefore, based on the principles, attitudes and the actual reality of the status of women, the situation and challenges of the region, either as a whole or of each of the countries concerned, can be summarized as follows:

- Limited enjoyment of rights due to the low level of awareness;
- Achievements towards realizing equality are in need of implementation of laws;

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33. The Independence Declaration Document

34. The National Charter

- Achievements towards realizing equality are hindered by contradictions in laws, including the constitution as well as practices, limited capacities and services;
- Achievements towards realizing equality are threatened by a vague future that fluctuates between apprehension and hope.

## 2. Gender Equality in international law and the Arab obligations towards International Conventions and Agreements:

### Between ratification and reservation

In its Preamble, the United Nations Charter in 1945 states that «...We the peoples of the United Nations ... reaffirm our faith in the equal rights of men and women and of ...nations large and small” ... This principle is emphasized in the fifth Article of the Preamble of the Universal Declaration of Human Rights in 1948 «.... reaffirm ....their faith in the equal rights of men and women...” adding to what was defined in Article 2 of the Declaration in terms of non-discrimination for whatever reason, including sex, and without any discrimination between men and women».

The provisions of the seven main international treaties apply equally to men and women, boys and girls. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are considered to be the «International Bill of Human Rights», including what is stipulated in their texts in their Article (3) that explicitly provides for equality between men and women in the enjoyment of the rights set forth therein. One treaty, among the seven, exclusively concerned with the achievement of equality between men and women, and considered as the «International Bill for the Human Rights of Women”, is the «Convention on the Elimination of All Forms of Discrimination against Women», which expands the concepts of discrimination and violence against women, and adapts and develops their provisions through the tool of General Recommendation (19) in order to remove doubts and ambiguities regarding its purpose.

The Arab countries did not delay the ratification of a large number of international conventions and treaties on human rights, including those that remove all forms of racial, sexual and ethnic discrimination and those targeting specific groups (children, women, immigrants and people with disabilities), specific rights (work, education, political participation ...) or specific violations (torture and cruel treatment, human trafficking and exploitation ...) in addition to ratifying a number of optional protocols. States' compliance with the principles of gender equality, equity, empowerment of women and the progress achieved in the implementation of the conventions were analyzed, particularly with regard to their inclusion in national legislation, or their translation into concrete action and a reality enjoyed by citizens - men and women - in general, and women in particular.

Despite the diverse contextual backgrounds of the countries in the region, there are a number of common factors related to those countries that have ratified the international treaties, thus expressing their commitment to all rights fields - and to the specific groups stipulated therein. - There are also commonalities relating to the reservations on some fundamental principles or articles, on the one hand, and to the failure to translate international commitments into national commitments on the other, even in the case of non-reservation, with regard to most countries, whether these commitments concern public or private life.

The analysis of the situation of all rights fields contained in the four chapters of this report reveals that the position of the Arab countries fluctuates as follows:

- Between the reservations relating to one Convention and those relating to another: such as the reservation on the item of gender equality in one convention without a reference to such reservation in another convention.
- Between the reservations and constitutional texts and the legal provisions of the country.
- Between what is stipulated in the Constitution and the reservations: the Constitution consolidates the status of the conventions, as being higher and superior to the national laws; yet, at the same time, there are reservations to them, which are therefore considered as reservations to the Constitution itself.
- Between legal reform and the removal of reservations with no avail: the reservation in question loses its meaning and becomes unnecessary due to the national legal reform. Yet, maintaining other reservations could jeopardize this reform, such as, for instance, consecrating equality by passing the nationality to the children, lifting the reservation on the relevant CEDAW article, while maintaining the reservations on articles 15 and 16.
- Between lifting reservations regarding specific articles and provisions, while maintaining the general reservation, which is considered as a reservation on the Convention as a whole.
- Establishing national mechanisms concerned with human rights issues, gender equality and women's empowerment to achieve these, but lacking a clear mandate and resources.
- Developing policies, strategies, programs and services require greater support, including financial.
- A monitoring and evaluation system that mainly includes periodic national reports on the status of women and their rights, and their submission to regional and international authorities concerned, without accountability.

## The Right to Litigation and Access to Justice

The right to litigation is provided to all people, and is stipulated in the Constitution – and/or law. It is an aspect of the public liberties, whereby individuals have the right to litigation, and to freely resort to it when they want. The right to litigation and access to justice is based on a set of both principles and assumptions, in view of the current reality with regard to women. For instance, it is assumed that no impunity shall be allowed when the legal and human rights of individuals are violated, and that everyone is entitled to equal access to law enforcement, without any discrimination, including gender discrimination.

The Arab legislative systems have undertaken great efforts in stipulating this right from various aspects. A number of constitutions stipulate the right of the citizens of a country, and the expatriates residing there, to litigation and to go to court - including the constitutions of Algeria, Egypt, Iraq, Oman, Bahrain<sup>(35)</sup>, Sudan, Syria, Saudi Arabia, Palestine and Qatar. Some of these systems acknowledged the right to litigation, under certain conditions, such as restricting this right to its citizens (Libya), providing it with assistance (Lebanon), or approving special provisions for women's access to litigation (Kuwait) or for refugees' right to the same (Yemen) or approving its free delivery (Morocco).

A number of Arab countries stipulated, in their constitutions, the principle of the independence of the judiciary and non-interference in its affairs, adding that courts are inviolable (Tunisia, Egypt, Iraq, Kuwait, Libya, Lebanon Palestine, Qatar and Jordan). In view of the importance accorded to the composition

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35. The National Charter

of the judicial authority in the Arab States, a number of them included in their constitutions the ranking of the tribunals, and that the litigation should proceed on several levels and guaranteeing the right to appeal against sentences passed (Algeria, Tunisia, Egypt, Morocco, Yemen, Kuwait, Oman, the United Arab Emirates, Jordan, Mauritania, Libya, Djibouti, Sudan, Lebanon, Syria, Saudi Arabia, Palestine and Qatar). Furthermore, they stipulate the right to legal defense, fair and public trial, as these constitute the basic elements on which the litigation system in some countries is based (Algeria, Tunisia, Egypt, Morocco, Iraq, Bahrain, Yemen, Kuwait, Oman, the United Arab Emirates, Jordan, Libya, Djibouti, Sudan, Syria, Palestine and Qatar).

One of the most important principles stipulated in the constitutional process on the right to litigation, is the principle that the accused is innocent until proven guilty, in a public and fair trial; and that neither the crime nor the punishment shall be imposed, except through a stipulation (Algeria, Tunisia, Morocco, Bahrain, Yemen, Oman, The United Arab Emirates, Jordan, Mauritania, Libya, Djibouti, Sudan, Syria, Saudi Arabia, Palestine, and Qatar). This principle is clearly entrenched in most of the Arab Constitutions. Only one Arab Constitution (Egypt) stipulates that the trial should take place in front of the regular judge<sup>(36)</sup>. Several Arab constitutions concurred in stipulating that trials should be conducted within reasonable time limits (Egypt, Tunisia, and Morocco), to the importance of effective justice (Jordan and Sudan), rapid rulings in lawsuits and to the enforcement of urgent trials. A number of countries (Saudi Arabia and Libya) endorsed the right of married people to enter into litigations relating to marriage, from the beginning of the marriage.

Some texts contain new concepts about the right to litigation and access to justice, like non-discrimination with regard to prison sentences, or the abstention of a judge from trying cases in a court where his spouse works as a lawyer or vice-versa (Algeria). Some texts also stipulate a number of measures, such as legal assistance, legal aid, exempting widows of martyrs from legal fees and expenses in a number of Arab countries (Algeria, Tunisia, Jordan, Sudan and Iraq). The exemptions are conditional on proof of the inability of litigants to pay. Social diversity and the gender of the litigants shall be taken into consideration when issuing the judgment, in order to avoid gender discrimination in the enforcement of the sentence (Jordan, Mauritania and Palestine). Some Arab laws have abolished the death sentence for pregnant women (Oman, Syria, Sudan, Saudi Arabia and Qatar), changing it to imprisonment, after delivery, (as a discretionary measure).

Some countries take individual decisions, such as not to punish women coerced into committing adultery (Sudan); or relating to the generalization (also called regulations or notices) or facilitation of the litigation procedures; the issuance of powers of attorney for women litigants (Saudi Arabia); sentences or procedures for offices or centers for legal consultations and advice; or family counseling in court (Tunisia). In order to avoid engaging in difficult procedures in courts, countries have - with variations in the terminology used - worked on establishing offices and centers for legal services and consultations (Tunisia), or offices for family conciliations (Bahrain) for the same purpose; or also the concept of a Counseling Chamber to try conjugal reconciliation in cases of divorce by mutual consent in one country (Morocco). Furthermore, special tribunals, with qualified judges, have also been established, to look into cases of youth delinquencies (Palestine), as well as follow up units on the implementation of rulings in favor of women (United Arab Emirates), and special courts for the so-called «honor» crimes, to maintain secrecy and reputation (Libya). It should also be mentioned that it was stipulated in the law of only one country (Libya) not to include a sentence for the appropriation by the husband of the assets of his wife. Several Arab countries have achieved progress by cancelling the ruling preventing wives from travelling without the consent of the husbands (Egypt, Iraq and Bahrain). A number of laws (Algeria, Iraq and Morocco) also decree that a court approval is required for polygamy; and going to court to obtain this approval is considered to be in the interest of the protection of women's rights.

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36. Article 97 Amended Constitution of 2012

At the procedural and implementation levels, only Libya has a separate law for the appointment of women in the judiciary. It should be mentioned that most countries do not require that kind of legislation for women to be appointed in the various positions of the judiciary. Algeria, Tunisia, Egypt, Morocco, Bahrain, Yemen, the United Arab Emirates, Jordan, Djibouti, Sudan and Qatar are cited among others as examples. Mauritania and Kuwait were added to the list in 2014; and this includes the appointment to the higher levels of decision-making (the Presidency of the Algerian State's Assembly), the membership in the Supreme Court in the United Arab Emirates and in Morocco and the Presidency of the Supreme Court in Djibouti.)<sup>(37)</sup>

Despite all these achievements, there are texts, sentences or procedures that contradict the stipulated principles and include elements that perpetuate discrimination under the pretext of protection. Examples are numerous, such as judicial decisions issued by the highest authority in the country (Qatar, Sudan), or when investigation with women has to be made without men - including "Mehrem"<sup>(38)</sup> and presence is allowed only for a member of the "Authority for Upholding Virtue and Repeating Sin" under the pretext that the woman and the prosecutor should not be left in seclusion (Saudi Arabia). Also when the judicial system falls under different geographical jurisdictions, or political and/or administrative divisions, within a single country, as is the case in one country (Palestine), discrimination is consecrated between regions and among women.

A number of national judicial systems formulate certain provisions that limit the rights of women and discriminate against them, for instance, having to go to court in order to be issued with a passport without the husbands' consent (Iraq, Kuwait, Palestine); or not recognizing that the consent of the first wife is a condition to allow polygamy (Libya); or withholding the passports of household female workers (Lebanon), keeping their identity in "abeyance", which hinders their right to resort to litigation to defend their rights in court, in addition to violating their other rights, such as the right to free movement.

Some Arab Countries have established special and extraordinary tribunals such as the religious tribunals of Jordan that have their special interpretation of the religious and legal texts in addition to the fact that some of their decisions are exempted from judicial supervision. Furthermore, there are the Shari'a tribunals of Iraq where judgments and interpretations are imbued with clear sectarian overtones. Libyan Shari'a courts make exceptions for certain cases through special texts and tribunals to look into some lawsuits, thus falling out of the ranking of regular courts. Furthermore, in some countries such as Lebanon, women are not allowed to work in Shari'a tribunals.

## Contradictory rights

There is contradiction, not to say conflict, within the national legal and legislative systems starting with the constitution. A constitution may contain articles that are mutually opposed, or between the constitution and other equivalent or non-equivalent laws, specifically those which govern public life, such as the social, economic and political rights regulating the right to education, health and employment, on one hand and those governing the private life within the family, behind closed doors, on the other; and finally between the legal and national legislative systems and the international obligations and parameters ratified by the country.

The study of the methods of applying the different rules of the law in similar legal situations, starting with the Constitution, reveals that the laws of the Arab personal status codes - which encompass both Muslims and non-Muslim men and women - are the optimal ways for legitimizing, legalizing and

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37. With an article in the constitution to fill the place of the president in the case of power vacuum

38. Members of the family forbidden by the religion to marry or the husband himself



institutionalizing gender discrimination, both in texts and practice. For instance, irrespective of the educational level of women, their social, professional, political and institutional status, or their economic income or even their age and their social status, a number of legal systems have always regarded - and still regard - a woman as a minor, based on the same reference, i.e. family laws.

Accordingly, countries may deem it necessary to have reservations on some issues, when concluding agreements or enacting national laws. There are also justifications for such reservations or existing gaps that indicate inequality and discrimination, due to deeply rooted male-dominant conceptual attitudes and social practices.

Challenges still persist in effectively adopting and / or enforcing the existing legal arsenal. This is due to the weakness of the justice systems, admitted by the countries themselves, in terms of the insufficiency of the services provided - either due to their limited availability or to the lack of proximity to citizens, both men and women - which negatively affect their access to justice, particularly for women. The evaluation also mentions the administrative delays and inadequate funding that preclude the adoption of the proposed measures and the implementation of the programs developed. There is also a failure to build the capacities of those working in the justice sector, with their various disciplines and ranks - particularly those in the judiciary, whether concerning human rights principles in general, or those concerning women, nationally and internationally, in particular.

### 3. An enabling environment for women's empowerment and gender equality

Legislation is considered the mirror of a society, and the legal system a reflection of its political, social, economic and cultural structures. Therefore, the provisions and articles included in the legislations, laws and systems define the roles of both women and men in family and society with all its institutions, as reflected by the desire of the authorities and the masses. Hence, it can be a means for either ideological blocking or expression.

To begin with, establishing and enhancing a system of gender accountability requires increasing the number of women in the decision-making processes. Good governance needs women, as much as women need good governance, to guarantee the respect of the commitments related to gender equality and to consecrate it on the national and global levels, as a fundamental pre-requisite for achieving equality between all citizens. The principle of the rule of law demands the application of a framework that includes endorsing human rights as legal rights, through which disputes can be resolved through courts of justice in a process based on competence, neutrality and independence. All people should be treated equally in the law, and before the law, and no one is entitled to be above the law.

The challenges facing each of the four domains of rights analyzed were addressed by proposing legal reforms and additional measures to rectify the situation in order to achieve equality without discrimination. In conclusion, the challenges facing the achievement equality require the following:

**First:** Translating the will for change in order to enhance equality between men and women, as well as promoting women's citizenship, together with eliminating all forms of discrimination, that have been identified as contradictions that hinder women's enjoyment of their legal and human rights.

**Second:** Stipulating the principle of equality between men and women in the law while carrying out the necessary amendments and reforms required by the constitution and a number of priority laws, including family laws, the penal code and the labor law.

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39. Gender accountability

40. Good governance

40. Rule of law

**Third:** Achieving equality between men and women without reservation, and enhancing the states' regional and international obligations, to support one another, and contribute towards the realization of women's legal and human rights and gender equality.

**Fourth:** Establishing the rule of law system, in text and rules, and developing frameworks, mechanisms and appropriate indicators to guarantee the enforcement of the law.

**Fifth:** Establishing an accountability system that allows calling on duty-bearers, men/women, to assume their responsibilities towards right-holders, men/women.

**Sixth:** Conveying the desired message of equality to the society through diligent work based on fighting and punishing discrimination, in collaboration with the civil society and the media.

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## References

### Bibliography

- Law references of Chapter One: Political and civil rights of women
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# Arab Women and Legislations

Executive Summary

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