



OBJECTIVE ANALYSIS.
EFFECTIVE SOLUTIONS.

MIDDLE EAST PROGRAM

“Best Practices”
Progressive Family Laws in Muslim Countries
August 2005

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INTRODUCTION

Many experts, both inside and outside the Muslim world, have identified retrograde societal practices as a major obstacle to the economic and social development of the region. The United Nations Development Program's Arab Human Development Report found a clear correlation between authoritarian family patterns and the downgraded status of women on the one hand and the failure to overcome underdevelopment and stagnation on the other. Middle Eastern women, the report states, "suffer from unequal citizenship and legal entitlements, often evident in ... legal codes." Besides being unjust, this also results in a significant loss of human capital—shackling half the population and, with it, half the productive potential of society.

Muslim governments, legislators, and intellectuals have begun to recognize and address this problem. A number of countries have started to review and update their legal codes, to give attention to the training of their judges, and to concern themselves with the just application of existing laws in the court system. In doing so, they have found that equitable laws appropriate to the current age do not conflict with the principles of Islam. Rather, these countries are cleaning their legal codes of non-, pre-, and un-Islamic tribal practices, many of which are archaic and brutal, sanctioning such things as forced marriage, child marriage, punitive rape, sale of girls as hostage brides to resolve tribal disputes, and the like—all practices contradictory not only to global principles of human rights but also to Islam.

Two key areas of this ongoing process of review and renewal relate to the status of women and the organization of the family. Family codes and personal status laws are not a secondary matter but are at the core of a community's life. They govern basic issues, such as whom an individual may marry, at what age, and at whose behest; whether or not an unhappy marriage can be terminated, by whom, and under what circumstances; whether one will have access to one's children following a divorce; be permitted to seek an education and to work; be sovereign over one's own person and movements; be entitled to full citizenship with its rights and responsibilities; and have redress against violence and injustice.

In many Islamic countries, written legal codes quite officially exclude women from basic human and civic rights, placing them into a status of lifelong dependency and subordination to the power of a male relative or husband. The law may even explicitly allow men to keep a wife or other female family member prisoner, preventing her not only from obtaining personal documents and from traveling but even from leaving the house. Other egregious laws include those that pressure a woman who has been raped to marry her assailant or that take away a woman's (but not a man's) citizenship if she marries a foreigner.

In a second set of Muslim countries, the constitution nominally grants equal rights to all of its citizens, but massive inequalities written into personal and family status codes take that principle back again and consign women to the status of second-class citizenship.

Even where the rights of women are formally granted in both the constitution and the legal code, these rights are meaningless in actual daily life if implementation does not follow. In some places, judges may have enormous arbitrary power in applying and interpreting the law. Furthermore, in some regions there may not even be a professional group of judges; instead, self-appointed religious or tribal figures may "legislate" and adjudicate locally however they see fit. The Pakistani village council that "sentenced" a young woman to be gang-raped in punishment for an offense allegedly committed by her brother serves as an appalling illustration.

But fortunately, much movement and debate are currently occurring in this area, and we can note hopeful signs of change. Three reasons stand out. First, a number of forward-looking countries are addressing these problems and violations and have taken the lead in crafting equitable law codes. Second, as part of the post-conflict nation-building processes currently under way in Afghanistan and Iraq, issues related to constitutions and the law are receiving a great deal of international attention and expertise. Third, improved communication is bringing about a better global exchange of ideas and knowledge, both within the Islamic world and internationally. This has enabled Muslim legal scholars to draw on a much broader and richer range of legal interpretations and to build law codes that utilize the best elements from all of the recognized orthodox schools of law.¹

Civil society and nongovernmental organization activity, monitoring, awareness campaigns, and application of international conventions (such as The Convention on the Elimination of all forms of Discrimination Against Women, or CEDAW), can further support these positive developments.

About This Project

The goal of this project is to produce a concise, brief document that indicates “best practices” in the application and implementation of family law in Muslim countries. Thereby, we wish to make the positive developments that are occurring in the Muslim world’s legislative and judicial practice better known and available to other states and practitioners that are grappling with the same issues. We hope this overview will be helpful to lawmakers, legal practitioners, and civil society groups.

This document is not meant to be either prescriptive or an exhaustive record of all family law in all Muslim countries. Rather, it is a collection of “best practices,” touching on the issues that women and families have identified as being the most significant for their personal advancement and their quality of life and describing ways in which enlightened Islamic jurists have reconciled Islamic principles with contemporary ethical and social values to create forward-looking legislative practice.

The project team reviewed the laws and family codes of Algeria, Egypt, Indonesia, Iran, Jordan, Lebanon, Malaysia, Morocco, Pakistan, Syria, Tunisia, and Turkey. Referenced statistics and comparable data often extend beyond these countries; we have indicated the scope of those statistics when used, indicating whether comparisons are with the entire Middle East and North Africa (MENA) region, the Arab World, or countries with Muslim majority populations more broadly.

The RAND Corporation and the Woodrow Wilson International Center for Scholars began collaboration on this project in March 2005 under the joint leadership of Haleh Esfandiari, Director of the Middle East Program at the Wilson Center, and Cheryl Benard, Senior Political Analyst and Director of the Initiative for Middle Eastern Youth at the RAND Corporation. A team of researchers compared the constitutions and family law codes of the 12 Muslim countries listed above on topics ranging from issues of marriage and divorce to legal rights and violence against women. Research included a review not only of written laws but also of their application, with reference to secondary literature on the topic.

¹ The five historic schools of law often take distinctly divergent positions even on basic issues of personal and family law. Since all of them are considered equally mainstream, this theoretically enables lawmakers to pick and choose the best from each.

Each chapter notes the key goals reformers have pursued in connection with the issue; highlights progressive models for change, noting both those that fully meet the specified goal of equity and those that provide a degree of success yet fall short in some areas; and describes the challenges to full implementation of progressive laws. The chapters are in outline format and include charts for ease of comparison. All statistics and examples are as up to date as possible.

We hope this document will serve as a useful reference. We thank Kristin Carlucci, RAND Corporation, and Jillian Frumkin, Wilson Center, for their execution of this document; Professors Nathan Brown, Carnegie Endowment for International Peace; Lilia Labidi, University of Tunisia; Valentine Moghadam, UNESCO; Philippa Strumm, Wilson Center; and Catherine Warrick, American University for their expertise in reviewing chapters. We would also like to thank Evan Hensleigh, Nathan Raab, and Fariba Yassae, Wilson Center interns, for their excellent research support and Phyllis Gilmore, RAND Corporation, for editing the final document. All work was pro bono.

MINIMUM MARRIAGE AGE

The Koran does not define the minimum marriage age precisely, merely mentioning puberty as the permissible minimum. This has led to considerable divergence of legislative views on the proper minimum marriage age, particularly in the last century.

Young women are at particular physical and psychological risk from early marriage. Setting a reasonable, not too low, minimum marriage age for both partners and especially for the female is important for a number of reasons.

First, pregnancies in very young women are associated with increased complications and elevated mortality rates both for the mother and the child. Second, marriage often terminates a young woman’s school attendance. Third, a girl or very young woman is not in a position to give informed consent to a marriage.

Goals

- Sufficient access to education
- Right to choose a marriage partner
- Ability to give considered consent to a marriage
- Safe pregnancy of a physically and mentally mature mother

Key Challenges

1. Minimum marriage age continues to vary among Muslim countries (see table). The most-advanced countries have established equity of marriage age for men and women (as in the countries in **bold** in the table).
2. Women are often forced to curtail their education upon entering marriage. Thus, societies with minimum marriage ages above 17 or 18 provide more opportunity for schooling. Minimum marriage age laws must be enforceable and consent must be required (see next chapter), prohibiting—or forcing to annulment—marriages contracted by minors legally too young to marry. Judicial exemptions that allow bypassing minimum marriage age restrictions should be strictly limited to a set of clearly defined instances that should not include scenarios that further compound an act of violence on the woman.²

Country	Age in Years	
	Male	Female
Algeria ^a	21	18
Egypt ^a	18	16
Indonesia ^b	19	16
Iran ^a	15	13
Jordan^c	18 (16)	18 (15)
Lebanon ^d	18	17
Malaysia ^a	18	16
Morocco	18	
Pakistan ^e	18	16
Syria ^a	18	17
Tunisia ^b	20	17
Turkey^a	17	

^aReligious or civil courts may make exceptions to allow minors to marry.
^b“False ceiling” law—see text for explanation.
^cThe royal decree raising the minimum marriage age to 18 has not yet been written into law.
^dExceptions exist for religious minorities.
^eLaw unenforceable (minors can be penalized, but underage marriages remain legally valid).
 Note: Countries listed in bold have age requirement parity for men and women.

² For example, where a victim of rape or kidnapping is pressured to marry her attacker.

3. “False ceiling” clauses—in which the minimum age for marriage is different from the minimum age of consent—should be avoided. Laws like those in **Tunisia**, which allow women to marry at age 17 but set the age of civil consent at 20 for both sexes, requiring parental consent for the marriage of women under 20, can have the consequence of de facto denying women the right to choose their own partners.

Trends Toward Change

1. As the economic necessity of a two-income household spreads and as knowledge about the health risks associated with early pregnancy grows, early marriage is declining. Increasingly, the ability to contribute to the family’s sustenance is seen as a desirable quality in a wife. At the same time, the understanding that education and mental maturity better enable a woman to carry out the duties of child-rearing and motherhood is spreading. Furthermore, as women and men have increasing exposure to each other in social and professional spheres, the notion that young people should have a role in selecting their own marriage partners is gaining currency.
2. The overall trend in the Middle East is toward later marriage: One study has found that, between the early 1970s and the early 1990s, the number of women marrying before age 20 in the MENA region had declined at more than twice the average rate for the developing world.³
3. Gradually, legal codes are changing to reflect new realities and new ideals of marriage in the Muslim world. Higher levels of education and increasing access to information and contemporary global culture lead an increasing number of people to wish for marriages and families that are less hierarchical and authoritarian and more egalitarian. The examples of **Morocco**; **Iran** prior to the revolution; and other legally advanced countries, such as **Tunisia** following independence, are being seen as instructive for other Muslim nations. New laws, such as that of Tunisia, formally define the husband *and* the wife as the combined head of their family. This helps to reinforce the concept of an egalitarian partnership.

Implementation

1. Implementation is key; in fact, the **Moroccan** law makes note of the importance of law enforcement: “The Family Law assigns a key role to the judiciary in upholding the rule of law and provides for the public prosecutor to be a party to every legal action involving the enforcement of Family Law stipulations.”⁴ Simply changing the minimum marriage age for girls from 9 to 13 (**Iran**) or from 15 to 18 (**Morocco**) does not ensure that citizens will adhere to the law.
2. However, good laws are the prerequisite for a process of change. Islamic countries with progressive family laws and a consistent effort to implement them have been more successful in raising the minimum marriage age for girls than have others.

3 Sushella Singh and Renee Samara. “Early Marriage Among Women in Developing Countries,” *International Family Planning Perspectives* **22**, 148-157+175, 1996. The study, based on the Demographic and Health Surveys (DHS), asked women of different ages in 40 developing countries at what age they married. The study included six MENA nations (Egypt, Jordan, Morocco, Sudan, Tunisia, and Yemen). The five greatest declines in marriage before 20 were in Muslim nations (Sudan, Morocco, Tunisia, Jordan, and Indonesia).

⁴ Women’s Learning Partnership <http://www.learningpartnership.org/events/newsalerts/morocco0204.phtml>.

3. It is important to enforce the law and to impose serious sanctions on those who violate it. Marriages below the legally allowed age should not be recognized as valid under the law, and there should be legal penalties for the parents and guardians.
4. There also needs to be a broad education campaign to inform the public about the advantages of later marriage and the detrimental effects of girls marrying too young. Opinion leaders should be made part of such a campaign. The judiciary must be fully informed about the correct application of the laws, and the courts must be monitored. Judges and other formal or informal legal practitioners must be made aware that they will be held accountable and that there will be consequences for continued use of outdated codes or for turning a blind eye to violations.

Model Cases

In **Morocco**, the *Mudawwana*, or family law, was reformed in February 2004, providing women an opportunity for increased rights. The reforms are based on Islamic tenets. The minimum age for marriage for women was increased from 15 to 18, in parity with the minimum marriage age for men. Additional changes regarding equality include that the husband and wife will share joint responsibility for the family and that the adult woman is entitled to self-guardianship, rather than requiring that of a male family member, and may exercise it freely and independently. By addressing women's rights within the context of these new, progressive laws within the framework of Islam, Morocco is an example for Muslim countries aiming to integrate into modern society.⁵

In **Turkey**, men and women cannot marry before the age of 17. Under special circumstances and for very important reasons, the judge may permit a man or a woman to marry at the age of 16 (Article 124). As an added check, however, these underage marriages cannot proceed without approval of a legal representative (Article 126).⁶

In **Jordan**, a royal decree in 2001 raised the minimum marriage age from 16 for males and 15 for females to 18 for both genders. (The decree has not yet been formally incorporated into the law.)⁷

Other Case Studies

Tunisia Tunisian law does not permit marriage for men under the age of 20 or women under the age of 17 unless special court permission is granted for the welfare of the couple (Article 5). Marriage below these legal ages is subject to guardians' consent (Article 6). Tunisian law offers full civil capacity to both sexes at age 20 (Article 157).⁸

⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. "Morocco." Country Reports on Human Rights Practices—2004. February 28, 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41728.htm>; "List of the major improvements introduced in the new Family Law as compared to the current provisions," compiled by l' Association Démocratique des Femmes du Maroc (ADFM), 2004. <http://www.learningpartnership.org/events/newsalerts/moroccofamlaw.pdf>, accessed 13 April 2005. Also see <http://www.learningpartnership.org/events/newsalerts/morocco0204.phtml>.

⁶ South Eastern European Women's Legal Initiative. "Family Law Report: Turkey." http://www.seeline-project.net/FamilyLaw/TurkeyFL.htm#_ftn1

⁷ Emory University. "Islamic Family Law," <http://www.law.emory.edu/IFL/>, 2004.

⁸ Jamal J. Nasir. *The Islamic Law of Personal Status*. 3rd Ed. Kluwer Law International. 2002. Pg 50.

Algeria According to the Algerian Family Law of 1984, a *qadi*⁹ is needed to waive the age requirement of 21 years for men and 18 years for women.¹⁰

Pakistan According to the Child Marriage Restraint Act of 1929 and as it currently stands, the minimum marriage age is 18 for males and 16 for females. The act also introduced penal sanctions for contracting child marriages. However, “despite the provision of penalties for contracting underage marriages, such unions are not rendered invalid.”¹¹

Syria In Syria, minimum marriage age is 18 for men and 17 for women, although judicial discretion permits an exemption for younger individuals. However, safeguards are in place to prevent the marriage of very young women to older men. “If the court finds incompatibility in age between betrothed parties, the judge may withhold permission for marriage. Both parties require their *walis*’ permission for marrying under the age of full capacity, though a judge may overrule a *wali*’s unreasonable objection to the marriage of his female ward (conditional upon equality of status or *kafa’a* between the betrothed parties).”¹²

⁹ In Islam, a *qadi* is a judge of religious law.

¹⁰ Algerian Family Law of 1984, Article 7, translation in Tahir Mahmood. *Statues of Personal Law in Islamic Countries*, 2nd Revised Ed., 1995, p. 101.

¹¹ The Law and Religion Program of Emory University, “Islamic Family Law.” <http://www.law.emory.edu/IFL/index2.html>

¹² The *wali* is the representative, mediator, and guardian for underage or otherwise not legally competent individuals. Emory University. “Islamic Family Law,” <http://www.law.emory.edu/IFL/>, 2004.

POLYGyny

Islamic countries are addressing the issue of polygyny in different ways.

One group of countries, including Tunisia, Turkey, and in part Lebanon, simply *bans* the practice outright.

A second group *restricts* the practice, applying conditions that, in some cases, are quite rigorous to deter a frivolous exercise of multiple marriages.

Goals

- Ban the practice of polygyny or
- Restrict the practice of polygyny to at least reduce its detrimental effects on the wife, the children, and the institution of the family.

Implementation and Key Challenges

1. The most common conditions that countries that restrict polygyny place on the practice are the following:
 - a. The prior wife or wives must be informed of the man's intention to marry an additional wife.
 - b. The prior wife or wives must consent.
 - c. The husband must prove the polygynous marriage to be "just and necessary" (clearly mentioned grounds for this include a wife who is sterile, physically unfit for conjugal relations, insane, or physically infirm or a wife who refuses sexual relations).
 - d. The husband must give assurance that the new marriage will not affect the lives of previous wives and their children.
 - e. The husband must guarantee to act justly in regard to all of his wives and children.
2. The condition that a second or subsequent marriage be "just and necessary" could be a potent tool for regulation, but its ambiguity is cause for concern because it could also be used to justify polygyny on the slightest grounds. In some cases, for example, authorities may accept the wife's "failure" to produce a male heir as sufficient grounds for granting permission for polygyny (Bangladesh, Pakistan). To counter this, courts in Singapore encourage adoption in such cases, rather than a second marriage.¹³
3. According to the laws of the countries that restrict the practice of polygyny, wives in a polygamous marriage have to be treated equitably, and this includes provision for separate living arrangements if there has been such an agreement during the marriage. In the event of a violation of these procedures, the wife or wives can take the husband to court.

¹³ "Knowing our Rights: Women, family, laws and customs in the Muslim World," Women living under Muslim Laws, 2003, p. 200, London, UK.

Model Cases

I. Polygyny Is Banned

Tunisia. A Personal Status Code was adopted in Tunisia shortly after independence in 1956, which, among other laws, prohibits polygyny.¹⁴ Under Article 18 of the Personal Status Code, any man who contracts a polygynous marriage is punishable with one year of imprisonment, a fine of 240,000 Tunisian francs, or both. Under Article 21, a polygynous marriage is considered irregular and can be nullified either by spouses, guardians, mothers, or the legal department. The effect is that the marriage is considered never to have existed. However, the woman can still claim her *mahr*; the legal paternity of any resulting children is recognized; and the woman must fulfill *'idda* before remarrying.¹⁵

Turkey. In 2001, Turkey completed a sweeping overhaul of its Civil Code, with one outcome being a ban on polygyny. The revisions to the code, which had remained largely untouched since its introduction in 1926, also include the abolition of the legal principle that “the head of the marriage union is the man” and instead gives men and women equal roles in family matters.¹⁶

Lebanon.¹⁷ In Lebanon, much of a woman’s personal status is dictated by her religious affiliation. Lebanon recognizes 19 different groups that are each accorded their own religious law. According to the 1948 Law Pertaining to Personal Status for the Druze Sect (Article 10), polygyny is prohibited. Article 9 of the 1998 Civil Marriage Law, proposed by activists but not yet passed, would outlaw polygyny.¹⁸

II. Polygyny Is Restricted

Malaysia. Contracting a polygynous marriage requires the permission of a shariah court. A husband must justify in writing why the additional marriage is necessary and just (reasons may include existing wife’s sterility, physical infirmity, or insanity); must provide details of his income and financial obligations; and must convince the court that he can treat all wives equally. Failure to follow required procedures is liable to 6 months’ imprisonment and a fine.¹⁹

Pakistan. Under the Muslim Family Laws Ordinance (MFLO), polygyny is restricted, and a man is given permission to marry again only under specific circumstances and after following specific procedures. For instance, it requires that a husband obtain the written permission of the local government authorities (of the existing wife’s residence, not the husband’s) to contract a polygynous marriage. The husband has to satisfy the Union Council that he has obtained the prior wife or wives consent. The proposed new union must be “just and necessary”, determined to be so on the basis of the current wife’s physical or mental condition. The Dissolution of Muslim

¹⁴ U.S. Department of State, “Republic of Tunisia,” July 2004.

¹⁵ “Knowing our Rights: Women, family, laws and customs in the Muslim World,” Women living under Muslim Laws, 2003, p. 204, London: UK

¹⁶ Women for Women’s Human Rights. “Turkish Law Recognizes Women, Men as Equals.” 13 January 2002. <http://www.wwhr.org/?id=770>

¹⁷ In Jordan, only certain sects ban polygyny.

¹⁸ Knowing our Rights: Women, family, laws and customs in the Muslim World,” Women living under Muslim Laws, 2003, p. 205, London: UK

¹⁹ Ibid.

Marriages Act (DMMA) of 1939 allows a woman to seek a dissolution of her marriage if her polygynous husband either fails to treat her equitably or fails to follow the required procedure.²⁰

Indonesia. A 1983 policy requires that public servants and members of the armed forces request permission from their superiors, in addition to the regular permission procedures for polygyny. Under a 1990 policy, women public servants are ineligible to become second, third, or fourth wives. Polygyny is permitted only through an application to the court and requires approval of the prior wife or wives, a necessity for the marriage (current wife suffers from an incurable disease or is infertile, etc.), and a guarantee that husband will treat all wives and children justly.²¹

Other countries that require formal court permission for polygynous marriages include Bangladesh, Singapore, and the Philippines.

Polygyny: Summary	
Country	Status of Polygyny
Algeria	Allows up to four wives; current wives may sue for divorce if not informed.
Egypt	Allows up to four wives; must inform prior wives, who may divorce if they can prove harm from additional marriage.
Indonesia	Basis of marriage is considered monogamy, but Marriage Law does not prohibit polygyny for those whose religions allow it.
Jordan	No constraints aside from the classical injunctions that a man must treat all co-wives equitably and provide them with separate dwellings
Lebanon	Lebanon recognizes 19 different groups that are each accorded their own religious law. The Druze sect prohibits polygyny. Activists tried to outlaw polygyny for all sects in 1998.
Malaysia	Entering a polygynous marriage requires the permission of a Shariah court. Husband must justify in writing why the marriage is necessary and just. Failure to follow required procedures is liable to 6 months' imprisonment and a fine.
Morocco	Allows up to four wives, subject to judicial approval; women may prohibit polygyny in marriage contract; all parties must be informed; prior wife may apply for divorce.
Pakistan	Under the MFLO, polygyny is restricted and permission for a man to marry again is given only under specific circumstances. In the event of a violation of these procedures, the wife or wives can take the husband to court.
Syria	A judge's permission is required; polygynous marriage but may be refused unless the husband establishes lawful cause and financial capacity.
Tunisia	Polygyny is illegal.
Turkey	Polygyny is illegal.

²⁰ Ibid.

²¹ Ibid.

GUARDIAN PERMISSION AND WOMEN'S CONSENT

A widespread problem in many Muslim countries, especially in those marked by poverty, feudal structures, and/or large gaps in the status of social groups, is the conveying or selling of young women for economic gain or under political and other pressures. In some countries, including Afghanistan, warlords and other notables can force families to hand over their daughters; girls are used as a means of settling tribal disputes and may be given to enemies as a form of human reparations payment; and marriages are used for the economic gain of fathers or tribes. This is further compounded by the fact that the young women in question are often under aged and almost always unwilling, and the ensuing marriages are generally abusive.

There is no unified position within the Islamic world on the legal role of parents or a guardian (*wali*) in contracting or agreeing to a marriage or on the rights of women to determine their own spouses, either within civil legal jurisprudence or under the *shari'a* law. However, there is also no Islamic justification for forcing any woman to marry against her will or for preventing a mature woman from marrying as she chooses. Nonetheless, the actual practice throughout the Muslim world often excludes women from having any voice in the choice of their marriage partners, even though—given the enormous power Muslim society generally grants to husbands and their families—that decision will be of monumental importance to their prospects of happiness.

Child marriage, marriage to a virtual stranger, cousin marriage, and Levirate marriage²² continue to be the norm in many parts of the Muslim world. The religious obligation to obtain the bride's consent is—due to her inexperience, family pressure, and the norms of modesty and obedience—typically little more than a fiction. The operating assumption is that “silence implies consent”—a dubious proposition, given the power that fathers, families, clans, and communities wield against a potentially dissenting lone young female.

Goals

- Ensure that both partners freely consent to the intended marriage
- Allow women to choose their own marriage partners. Ensure that they are neither obliged to accept arranged or forced marriages nor prevented from entering marriages they have chosen

Schools of Islamic Thought

- The **Hanafi** *fiqh*²³ holds that the consent of both prospective spouses is required for marriage and that the *wali*'s consent is largely irrelevant (although the *wali* may object on some very limited grounds).²⁴

²² *Levirate marriage* is the custom of obliging a widow to marry one of her late husband's brothers, either as a first or as a plural wife.

²³ *Fiqh* is Islamic jurisprudence and legal rulings and typically refers to the legal rulings of the four *madhahib* (sing., *madhhab*), or schools of thought.

²⁴ Kecia Ali. “Consent and Forced Marriage,” 19 June 2003: <http://www.muslimmatrimonial.com/muslim-matrimonials/articles/islamic/marriage/consent-and-forced-marriage.shtml>, accessed 8 June 2005.

- **Shi'a** *fiqh* (sometimes called *Ja'fari*) also requires the consent of both prospective spouses. Some Shi'a require the *wali* to consent to the marriage of previously unmarried daughters; beyond this, the *wali*'s consent is not necessary. Some Shi'a scholars maintain that fathers hold the right of *ijbar*²⁵ for virgin daughters.²⁶
- The **Hanbali** *fiqh* requires the consent of the bride's *wali* but also maintains that the consent of a mature bride is required (minors engaging in marriage need not consent). The *wali* is to make the marriage in his ward's best interest, and the marriage is contracted between the groom and the bride's *wali* (never by the bride herself).²⁷
- **Shafi'i** and **Maliki** *fiqh* not only require the consent of the bride's *wali* for all marriages but also allow fathers (but not other *wali*) the right of *ijbar*, to arrange a first marriage for a virgin daughter.²⁸
- All four schools require the woman's consent once she is no longer considered a virgin; however, only in the Hanafi and Ja'fari *fiqh* is the bride allowed to contract her own marriage.²⁹

Key Challenges

1. The right of women to choose their own spouses needs to be secured. In **Pakistan**, for example, and in secular countries, such as **Turkey**, this is regarded as a natural extension of the *shari'a*. In **Tunisia**, women who have reached the age of civil consent (20) must consent to their own marriages; in **Morocco**, recent reforms to the Family Law code universally require women's consent.

Many legal codes require the consent of the bride but undermine this with other provisions. For example, **Iranian** law stipulates that the official conducting the marriage read the conditions of the contract to both parties and that they separately sign each condition to indicate acceptance. However, according to a 2004 U.S. State Department report, previously unmarried females, even those over 18 years of age, first need either the consent of a father or grandfather or a court override.³⁰

2. More-progressive laws grant equal rights to men and women, enabling women to be considered their own guardians and to be able to contract marriages on their own behalf. Again, this is a natural extension of Hanafi *fiqh*, but other countries, such as Maliki **Morocco**, have also argued that Islam permits women to contract their own marriages.

²⁵ *Ijbar* refers to the forced marriage of a virgin daughter, arranged by the bride's father (or, rarely, grandfather, if the father is deceased).

²⁶ *Knowing Our Rights*.

²⁷ Abdur Rahman I. Doi., "Marriage," <http://www.usc.edu/dept/MSA/humanrelations/womeninislam/marriage.html>, accessed 8 June 2005; "Marriage in Islam," http://www.ummah.net/Al_adaab/fiqh/nikah.html, accessed 8 June 2005.

²⁸ Doi, "Marriage"; "Marriage in Islam."

²⁹ T. P. Hughes. *Dictionary of Islam*, 1886; http://muslim-canada.org/marriage_dictionaryofislam.html, accessed 8 June 2005; Ali, "Consent and Forced Marriage."

³⁰ U.S. Department of State. "Country Reports—Iran": <http://www.state.gov/g/drl/rls/hrrpt/2004/41721.htm>, accessed 5 August 2005.

- Progressive laws require women’s consent regardless of age and thus deny the right of *ijbar*. Most Islamic countries deny the right of *ijbar*, but treatment and enforcement vary. With the 2004 reforms to the *Moudawwana*, **Morocco** eliminated the right of *ijbar*.

In some countries, such as **Tunisia** and **Turkey**, this practice is criminalized, and a marriage lacking the woman’s consent is invalid. In **Iraq** prior to 1959, “marriage contracts concluded by coercion” were considered void so long as they had not been consummated.³¹ In **Pakistan**, however, tribal families often use forced marriage as a means of exchanging women to settle feuds. Such practices are illegal and have been successfully challenged in Pakistan’s courts, but many and perhaps most instances never reach the legal system.³²

Implementation

- Where laws do protect women’s rights, they must be enforceable. In some countries, such as **Algeria**, forced marriage is not permitted, but perpetrators face no penalties. Many young women face family and community pressures to marry against their will and have no or only limited channels through which to voice dissent. Social support networks that might aid the woman in such cases, as well as the backing of an accessible formal or informal justice system, are generally lacking.
- Inadequate awareness about existing laws is another major obstacle to their enforcement. Traditional marriages are often contracted without ever dealing with civil authorities. Consequently, the prohibitions of civil law may not even be known, much less enforced. Several nations, such as **Algeria** and **Indonesia**, require the bride’s consent (or at least her lack of objection), but provide no realistic way for her to make such an objection known and no clear mechanism for escaping an illegal marriage (e.g., annulment).³³ Even in countries that do not require a *wali*, such as **Morocco**, such social practices as *kafa’a*³⁴ often remain and dictate a woman’s marriage practices.

Guardian Permission: Summary			
Country	Wali/Guardian...		
	Must Consent (Can Prevent Marriage)		Can Compel Marriage (<i>Ijbar</i> or Otherwise)
	For Groom	For Bride	
Algeria	no	virgin under 18	no
Egypt	no	yes ^a	no
Indonesia	yes	yes	no
Iran [‡]	under 15	under 13 or virgin ^a	
Jordan	no	under 18	
Lebanon	no	under 17 ^a	sometimes ^b
Malaysia ^c	no	Yes	sometimes ^d
Morocco^c	no	no	no
Pakistan^c	no	no	no
Syria	under 17 ^a	under 17 ^a	
Tunisia ^c	no	under 20 ^a	no
Turkey^c	no	no	no

^aProcedure for judicial recourse exists under some conditions.
^bShi’a *walis* retain right of *ijbar*.
^cWoman may contract own marriage (if able to consent)
^dIn two states, Kelantan and Kedah, *ijbar* is recognized.
Note: Countries listed in **bold** achieve all three goals for women.

³¹ Emory University Law School.

³² *Knowing Our Rights*, p 79.

³³ *Knowing Our Rights*, p. 91

³⁴ *Kafa’a* refers to equality between potential spouses, usually referring to social and economic standing, i.e. a woman must marry within her class, usually as determined by her family or clan.

Model Cases

The extensive reforms to the *Moudawwana* in 2004 make **Morocco** a model case. Under Morocco's new law, women become their own guardians on reaching majority, may conduct their own marriages, and may not be coerced into marriage under any circumstances. While significant challenges in implementation remain, Morocco's exemplary family law code grants Moroccan women rights of consent in marriage that are a true model for the Islamic world.³⁵

Tunisia's legal code not only makes consent to marriage expressly the responsibility of the bride and groom alone, it also provides clear procedures for ending a marriage in which the bride's consent was not obtained. Tunisian women may annul an unconsummated forced marriage in court without consequence; if the marriage was consummated, the woman may keep her *mahr* (dowry), and the paternity of any resulting children is recognized (also allowing her to claim alimony). Enforcement of civil family law in Tunisia is not as strong as its enforcement of other laws regarding women (e.g., in the workplace), but legal recourse does exist.³⁶

Turkey requires both bride and groom to declare their consent to the official. Women may seek annulment on grounds of coercion. A survey of women in Turkey found that 54 percent had met and married their spouses independently of their families. However, the same survey found that 41 percent of Turkish women were in arranged marriages, and 29 percent of those had not married willingly.³⁷

Pakistan guarantees women the right to contract their own marriages without the consent of the *wali*. *Ijbar* is illegal.³⁸

Other Case Studies

In **Malaysia**, it is illegal to prevent a woman of 16 or a man of 18 and above from contracting a valid marriage. Doing so can be punished with a fine, imprisonment, or both; yet the law recognizes the *wali's* consent as a requirement in marriage, but his refusal may be overruled by the courts.³⁹

Algeria forbids the *wali* to force marriage (Article 13) or to give a woman in marriage without her consent. He also may not prevent her from marrying: "Articles 12 and 13 of the Algerian Law rule that no guardian can stop his ward from marrying if she so wishes, and if it is in her interests. Should he prevent her from doing so, the judge may give her permission without prejudice to the provisions of Article 9 aforesaid. However, the father may prevent his virgin daughter from marrying if that prevention is in her interests. But no guardian, whether father or otherwise, can compel his ward to marry, nor can he get her to marry against her consent."⁴⁰

³⁵ L' Association Démocratique des Femmes du Maroc (ADFM), 2004, accessed 13 April 2005

³⁶ U.S. Department of State. "Country Reports—Tunisia": <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm>, accessed 16 June 2005.

³⁷ *Knowing Our Rights*, p. 86.

³⁸ Emory University Law School.

³⁹ *Knowing Our Rights*, p.72.

⁴⁰ Nasir, p. 54.

RIGHT OF DIVORCE

In many countries in the Islamic world, men have possessed a unilateral and unconditional right to divorce. In these same countries, women are often not only not afforded that right but, if they are allowed the right of divorce at all, must resort to the courts to divorce their spouses, where they confront innumerable social, legal, and bureaucratic obstacles.

In many Islamic countries, women are often at a massive disadvantage compared to men in such matters as financial support, child custody, child visitation and child guardianship, and subsequent remarriage.

Goals

- Ensure that men do not divorce their wives without cause, without even informing them, without specified reasons and an attempt at mediation and without judicial oversight.
- Enable women, as well as men, to obtain divorces under comparable grounds and with comparable procedures.
- Make financial accommodations for women in the event of a divorce.

Key Challenges and Implementation

Judicial Oversight

1. In Tunisia, Malaysia, Iran, and Yemen, the law requires that all divorces be settled in a court of law. While laws vary considerably in the degree to which women may seek divorce and on what grounds men may seek divorce, most of these countries mandate that the procedure be conducted in a court of law. For instance,
 - In **Tunisia**, where *mubarat*⁴¹ is recognized and unilateral *talaq*⁴² has been removed, divorce is possible only through the courts. Although either party may initiate this type of dissolution, in Tunisia both spouses must apply jointly. The judge may confirm an agreement between the spouses relating to such matters as custody, maintenance, etc.
 - In **Iran**, where *talaq* is recognized, the husband can divorce his wife without citing any reasons. However, divorce is permissible only through the courts and any independent pronouncement of *talaq* made on the part of the husband is considered immaterial before the court of law. Moreover, the registrar can only register a divorce after permission has been issued from a court and after any *mahr*, maintenance, and/or wages for housework have been paid to the wife. The law is interpreted to mean that no court can prevent a man from divorcing his wife; however, all her financial rights must be settled prior to the separation.⁴³

⁴¹ *Mubarat* refers to a mutually agreed-upon divorce (legal in a handful of Muslim countries).

⁴² *Talaq* refers to a unilateral divorce by the husband.

⁴³ *Knowing Our Rights*, p. 262.

Equality in Marriage Dissolution

1. The Supreme Court of **Pakistan** allows a woman to sue for a dissolution of her marriage on grounds of incompatibility. Pakistani women can divorce on almost the same terms as Pakistani men. Courts generally respect the statement by a Muslim wife that she cannot live with her husband “within the bounds of Allah.”⁴⁴
2. In 2000, **Egypt** enacted a law that allowed women the right to obtain a divorce from their husbands on the grounds of incompatibility. The divorce is granted on the wife’s return of her *mahr*. Prior to the new law, a husband could file for divorce without even informing his wife, while the wife needed conclusive proof and independent corroboration of physical abuse by the husband. “The [Egyptian] government’s most powerful strategy for winning public opinion was to emphasize the basis of *khul’* [no-fault divorce] in Muslim laws. The Sheikh of Al-Ahzar agreed to reiterate that the right to *khul’* is enshrined in Islam and he claimed to follow the Prophet’s own example by endorsing this right (reference was made to the *hadith* where Thabet Ibn Qay’s wife requested divorce for no reason other than that she had grown to dislike/hate him and could not continue to live with him).”⁴⁵
3. The **Syrian** law of Personal Statute (1953) put the husband’s motive for divorcing his wife under judicial scrutiny by financially punishing *arbitrary* use of *talaq*.⁴⁶ The Syrian Law of Personal Statute provides that, when a husband divorces his wife without adequate cause, he must pay her financial compensation to the equivalent of one year’s maintenance.

Financial Rights and Settlement

1. Redistribution of finances following the dissolution of marriage affects a number of matters. The first financial right of a woman is that of *mahr*. *Mahr* is the monies or other property that the wife is entitled to receive from the husband in consideration of the marriage.⁴⁷ What happens to the *mahr* is a direct relation to the circumstances of the divorce and the specific laws under which the dissolution occurs. The second financial right is that of the *mata’a*, which is interpreted widely as a consolatory gift or the beginning of the maintenance of a divorced woman. Muslim laws require that a divorced woman receive *mata’a* from her husband following *talaq*, *talaq tafwid* or *ta’liq*, divorce, or following *faskh* or *tafriq*, a legal or conditional divorce, under certain circumstances. After a dissolution of a marriage, funds received by a woman during her waiting period are considered part of the maintenance owed to her as a wife. This is not alimony, nor is it officially accurate to entitle it “post-divorce maintenance.”⁴⁸
2. In countries that require a waiting period following the dissolution of a marriage (to ascertain whether there is a pregnancy), the man is responsible for maintaining the woman during this time. However, if the woman has initiated the divorce, she is found to be “at fault,” and her right to maintenance may be lost.

⁴⁴ This phrase comes from the leading case of Khurshid Bibi, reported at PLD 1967 SC 97.

⁴⁵ *Knowing Our Rights*, p. 311.

⁴⁶ Emory University Law School, “Syria, Syrian Arab Republic”: <http://www.law.emory.edu/IFL/legal/syria.htm>, accessed 20 June 2005.

⁴⁷ M. Hidayatullah and Ashad Hidayatullah. *Mulla’s Principles of Mahomedan Law, 18th Edition*, 1977: N.M. Tripathi Private Ltd., Bombay.

⁴⁸ *Knowing Our Rights*, p. 311.

3. Unfortunately, regardless of how generous the maintenance award is, enforcement is often a problem. Also, the length of time for which wives are entitled to claim past maintenance differs by country. In Tunisia, it appears that wives can claim maintenance that was unpaid for an indefinite period prior to their application. In Pakistan, according to case law, it is permissible for wives to claim unpaid maintenance for up to 6 years prior to application. Egypt, Yemen, and Algeria limit claims to 1 year of past maintenance.
4. Some countries, including Egypt, Malaysia, and Algeria, specifically give the woman the right to remain in the marital home during the waiting period *if she chooses to do so*. This obviously prevents a situation in which a woman may face homelessness and hardship immediately following a divorce and allows her time to make new arrangements.

Model Case Studies

Countries That Do Not Recognize Talaq

Tunisia. Under Article 31 of the Personal Status Code, divorce by mutual consent (or *Mubarat*) is recognized. Divorce is possible only through the court and only after the judge has made reconciliation efforts. Article 31 also establishes equal grounds for husband and wife, including “at the will of the husband or at the request of the wife.”

Divorce can be pronounced by the court under three alternative circumstances: by mutual consent, on the grounds of harm (understood to relate to the failure of spouses to fulfill their rights and responsibilities as laid out in the law), or at the will of the husband or the wife. For the grounds of harm, the court may reject the petition. For the divorce at will, the judge has a duty to accept the divorce and must decide only on the damages due to the other spouse.⁴⁹

Indonesia. Under the Marriage Law, all divorces must go through the court. A husband married under Muslim laws must provide the religious court with a written notification of his intention to divorce, which must include his reasons for wishing to do so. If the reasons accord with one of the eight grounds available (see below for listing) to husbands and wives, both parties are called separately for reconciliation meetings with counselors. If reconciliation fails, the court will call the parties to witness the divorce.”⁵⁰

There are eight grounds for divorce: either party indulging in vice, such as drinking alcohol or gambling; husband deserting the wife for more than 2 years; husband being imprisoned for 5 years or more; domestic violence; illness affecting conjugal relations; continuous disputes between husband and wife; breach of the *ta’liq* (a condition in the marriage contract); and apostasy.⁵¹ Indonesian divorce codes “do not distinguish between husband and wife.”

Countries in Which Talaq Takes Place Through Court Proceedings

Morocco. Among other advances, Morocco’s 2004 reforms to the *Mudawwana*, established the right to divorce by mutual consent and placed unilateral divorce by the husband under strict judicial control: “Repudiation and divorce, defined as the dissolution of marriage, are a prerogative that can be exercised as much by the husband as by the wife, under judicial

⁴⁹ *Knowing Our Rights*, p. 298.

⁵⁰ *Knowing Our Rights*, pp. 262 and 269

⁵¹ Asia Social Issues Program. “Islamic Family Law and Justice for Muslim Women.” : <http://www.asiasource.org/asip/muslimwomen.cfm#divorce>, accessed 18 June 2005.

supervision, and in accordance with legal conditions set for each party.” The new law adopts “the principle of divorce by mutual consent and under judicial supervision.”

New law consolidates “the women’s right to file for divorce because of the harm suffered (conjugal violence, unjustifiable absence, lack of financial support ...) divorce is pronounced by the judge, at the wife’s behest. Moreover, failure to fulfill any of the conditions stipulated in the marriage contract entitles the woman to ask for divorce. (It is currently very difficult for the wife to prove the harm suffered).”⁵²

Algeria. A wife can petition for divorce based on a range of grounds:

- Nonpayment of maintenance for which judgment has been made
- Infirmary that prevents the achievement of the aims of marriage
- The refusal of marital relations by the husband for a period of more than four months
- The sentencing of the husband to prison for a period of more than one year, during which he leaves her without maintenance
- Any harm that is legally recognized as such—e.g., not providing maintenance or marrying other wives without justification
- Any moral impropriety, if it is grave and reprehensible and has been proven.

One of the grounds for divorce is “the will of the husband.” However, divorce can only be established through a court judgment, which must be preceded by a judge’s attempt to reconcile the couple (over a period not to exceed three months). The court’s rulings are not subject to appeal.⁵³

Countries Whose Laws Recognize Recovery of Financial Settlements

Tunisia. The court determines the financial compensation the parties owe each other in the event of a divorce. Courts interpret this to mean that if a woman is “wrongfully” divorced, she may be awarded *mata’a* in the form of a lump sum, a property transfer, or monthly installments. The amount may be determined by the standard of living to which the wife is accustomed.⁵⁴

Malaysia. A woman divorced “without just cause” may apply for *mata’a*, and she retains her claim to *mahr*. The amount of *mata’a* is to be fair and just. The spouses are to inform the court of any agreement or demands regarding maintenance and accommodation for the wife and children, custody, and division of marital assets.⁵⁵

Right to Divorce: Summary	
Country	Rights of Divorce
Algeria	<i>Talaq</i> is not recognized. Divorce by mutual consent is allowed. The wife can apply for divorce on specific grounds. A reconciliation attempt is mandatory.
Egypt	Wife may apply for divorce; must relinquish <i>mahr</i> .

⁵² L’Association Démocratique des Femmes du Maroc (ADFM), accessed 13 April 2005.

⁵³ *Knowing Our Rights*, p. 262.

⁵⁴ *Knowing Our Rights*, p. 320.

⁵⁵ *Ibid.*

Indonesia	All divorces must go through the court. The grounds do not distinguish between husband and wife.
Iran	<i>Talaq</i> requires two witnesses. The wife may seek a divorce for specified reasons.
Jordan	Either party may apply for divorce on many grounds, including discord or physical or mental health.
Lebanon	The wife may apply for divorce on many grounds, including discord. A reconciliation attempt is mandatory. Religious minorities may follow different rules.
Malaysia	Either party may apply for divorce. Notification and registration of <i>talaq</i> are required.
Morocco	<i>Talaq</i> must be issued in court. Divorce by mutual consent is allowed. The wife may apply for divorce on specified grounds.
Syria	The wife may divorce on many grounds, including discord. A reconciliation attempt is mandatory.
Tunisia	Either spouse may divorce at prerogative or injury. <i>Talaq</i> is not recognized. A reconciliation attempt is mandatory.

CHILD CUSTODY AND MAINTENANCE

Muslim countries often restrict the rights of mothers to raise or even to have the right to visit their own children in the event of a divorce. Instead, these countries cite a “natural right” of fathers to have guardianship over their children; custody defaults to the father after a child reaches a particular (often very young) age. Paternal grandfathers or other male relatives of the father have preference in the event of his death, irrespective of the wishes or needs of the child. Loss of their children is a powerful threat, keeping women in otherwise unendurable marriages.

Goals

- Ensure that men and women have equal custodial rights to children, as caregivers and providers
- Prioritize the child’s well-being over patriarchal “ownership” rights

Key Challenges

1. The issues of the guardianship, custody, and maintenance of children are best addressed through laws that look to the best interests of the child and that assign equivalent responsibilities to both parents following a separation. Article 182 of the **Turkish** Civil Code states, “As a principle, the judge grants the custody of the children to the parent he or she believes will look after the children better. Men do not have any superiority over women in this respect.”⁵⁶
2. Following divorce, Muslim women are typically given only limited custody over their children. The age at which that custodial arrangement ends differs among countries but is almost uniformly higher for girls than for boys. For example, **Tunisian** law (Article 67) dictates that a child be transferred to the father from the mother at age 7 for a boy and age 9 for a girl, unless a judge rules otherwise.⁵⁷ A range of other Islamic countries, such as **Egypt, Lebanon, and Pakistan**, apply the same sort of formulaic model.⁵⁸ Some countries, such as **Algeria and Iran**, render it yet more unfavorable to the mother by having custody revert to the father if the mother remarries.
3. In some cases, even if the father is not deemed suitable for guardianship and custody, family members of the father are given priority over the mother and her relatives.

⁵⁶ South Eastern European Women’s Legal Initiative. “Family Law Report: Turkey.” http://www.seeline-project.net/FamilyLaw/TurkeyFL.htm#_ftn1

⁵⁷ Jamal J. Nasir. *The Islamic Law of Personal Status*. 3rd Ed. Kluwer Law International. 2002. p. 171.

⁵⁸ According to The Law and Religion Program of Emory University. “Islamic Family Law.” <http://www.law.emory.edu/IFL/index2.html>: “Child custody in Pakistan continues to be governed by the Guardians and Wards Act 1890. The Act stipulates that the courts are to be guided by the personal law to which the minor is subject. The general rule for Muslims is that the divorcee is entitled to custody until 7 years for males ... and puberty for females. The courts are also directed to consider the age, sex and religion of the minor and the character and capacity of the proposed guardian, as well as considering the minor’s own opinion if s/he is old enough to form an intelligent preference. If the minor is very young or is a female, the courts are directed to give preference to the mother. In all cases, the interests of the ward are paramount.”

Rights Involving Children: Summary					
Country	Mother's Right to ...			Father's right to ...	
	Custody of ...		Child Support	Visitation	
	Boys	Girls			
Algeria ^{a,b}	10 (16) ^c	Marriage/18		Yes	
Egypt ^a	10 (15) ^c	12 (marriage) ^c			
Indonesia	Decided by court, usually with mother to 12; child's preference thereafter				
Iran ^b	7				
Jordan ^a	Puberty		Classical law ^e	Yes	
Lebanon ^a	7 ^d	9 ^d	Classical law	Decided by court	
Malaysia ^a	Decided by court, father presumed "natural" guardian			Not addressed	
Morocco ^a	Majority (i.e. 18)				
Pakistan ^a	7 ^f	Puberty ^f			
Syria	9 ^f	11 ^f	During idda, up to nine months ^e		
Tunisia ^a	7	9	Paid by the state	Yes; custodian must also pay transport	
	Then decided by court				
Turkey	Decided by court		Alimony required	Yes	

^aRefuses or restricts custody to non-Muslims.
^bWomen lose custody on remarriage.
^cCourt may extend to age in parentheses.
^dCourt has power to overrule.
^eLonger maintenance for *talaq*.

4. Ideally, custody policies should provide equal access to both the mother and the father, treating both mothers and girls as equals with their male counterparts, neither disqualifying women from guardianship nor fixing the year of the end of custodianship to the child's gender. Many Islamic countries deny women custody of their children altogether in the event that she renounces Islam, commits acts of "immorality" or adultery, or geographically moves too far away from the father.⁵⁹ In **Iran** the mother loses custody of her children, regardless of their age, if she remarries.⁶⁰

5. Maintenance of the child after separation of the couple is equally variable, receiving specific attention in some statutes but left mostly to the disposition of the courts in others. This pertains to both financial support and to the visitation rights of the parent who has not received custody. It is difficult to enforce maintenance, however, especially in cases of

⁵⁹ *Knowing Our Rights*, p. 339.

⁶⁰ According to U.S. Department of State, Bureau of Democracy, Human Rights and Labor. "Country Reports on Human Rights Practices—2004." Iran. Feb. 28, 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41721.htm>: "In November 2003, the Government amended the existing child custody law, which in the case of divorce gave a mother custody of a son up to 2 years of age and a daughter up to age 7 years, with custody reverting to the father thereafter. The new law gives a mother preference in custody for children up to 7 years of age; thereafter, the father has custody. After the age of 7 years, in disputed cases, custody of the child is to be determined by the court, taking into consideration the well being of the child."

divorce, and when the parent is self-employed. **Tunisia** and **Turkey** give equal rights of custody and guardianship to both parents, and courts support decisions based on the best interest of the child—typically, this means that the father contributes maintenance until adulthood, and the mother has custody. Though this is highlighted as a best practice, the father as guardian often has more rights than the mother, leaving her with many responsibilities but few supervisory rights.

6. Single mothers are often disadvantaged with regard to child custody and maintenance. An unregistered marriage is often seen as invalid, or void, and the child and mother are penalized through both social norms and legal codes that leave the unmarried woman the sole guardian of her child, often unable to provide adequately. **Egyptian** courts often criticize women who try to establish paternity.⁶¹ In **Turkey**, reformers removed the term “illegitimate” from the legal code and provided legal means of establishing descent and providing maintenance and inheritance.⁶² When paternity is in dispute, procedures should be in place to allow mothers to establish paternity and receive maintenance for children.
7. Non-Muslim mothers rarely get custody; in **Tunisia**, non-Muslim mothers retain custody until the child is five years old, “provided that there is no risk that it shall become inclined towards her religion.”⁶³ Even legal statutes that do not specifically mention the loss of child custody for a non-Muslim mother make it difficult for a woman to retain custody if she changes religion. **Algeria, Lebanon, Egypt, Morocco, and Pakistan**, among others, require that the primary consideration in the awarding of child custody be “the interests of the ward,” a definition that is sometimes interpreted to include religious cultivation.⁶⁴ **Pakistan**’s Enforcement of the *Shari’a* Act of 1991, affirms that all statute laws are to “be interpreted in light of the *shari’a* and that all Muslim citizens of Pakistan shall observe the *shari’a* and act accordingly.”⁶⁵

Trends Toward Change

- In ensuring equal access for women to custody of their children following separation, varied implementation is a major factor. Guaranteeing the equality of the man and the woman in issues of child custody does not mean that other issues, such as the woman’s decision to remarry or her choice of residence, if distant from the father, will not override that fundamental right. This also applies to issues of alimony, where loopholes in the law allow the payment of only a fraction of what both mother and child might need. Implementation of these statutes is highly regionalized, even within countries where the national law is quite specific.
- The **Moroccan** family code in its revised form contains language guaranteeing a women’s right to custodianship regardless of her proximity to the father or marital status. It also makes a distinction between money paid as restitution or compensation to the mother and the sum

⁶¹ *Knowing Our Rights*, p. 230.

⁶² *Knowing Our Rights*, p. 230

⁶³ Tunisian Code of Personal Status (1956), as amended in 1981, Article 59. Translation in Mahmood, Tahir. *Statutes of Personal Law in Islamic Countries*, 2nd Revised Ed., 1995, p. 176.

⁶⁴ The Law and Religion Program of Emory University. “Islamic Family Law.” <http://www.law.emory.edu/IFL/index2.html>

⁶⁵ *Ibid.*

required to maintain the same quality of life of the child, ensuring that one alimony payment will not take the place of parental obligation of continued support.⁶⁶

Model Cases

In the aftermath of reform of **Morocco's** *Moudawwana* in 2004, a woman not only has equal (and frequently primary) standing in judicial dispensation of children, her proximity to the father, choice of employment, or future marital status do not disqualify this standing. She also has the right to appeal when custody is awarded to the father and can regain custody herself by showing that the reason that caused her to lose this right has disappeared. "Child custody is now to be granted to the mother, then the father, then the grandmother on the mother's side. Should this prove to be impossible, the judge will entrust custody to the best qualified relative in the child's family, keeping in mind the child's interest."

Additionally, biological functions, and hence expectations of familial duties, do not have a bearing on the age at which a girl is not subject to the care of a guardian. Both male and female children gain majority at 18.⁶⁷

According to **Tunisian** law, parents have equal rights in child custody and guardianship. When married, mothers and fathers share equal rights and responsibilities regarding their children. After a divorce, a judge decides custody based on the best interests of the children. If the mother is awarded custody, she retains guardianship authority with respect to the child's travel, education, and financial affairs.⁶⁸ Furthermore, the Tunisian Code of Personal Status specifies that "the court shall provide, even if not asked to, for all important matters relating to the residence of the spouses, maintenance and custody of children and the meeting of children," unless such aid is specifically renounced by both spouses, and that the guardian not only may not refuse the other spouse the right to visitation but must pay travel expenses.⁶⁹

The reformed **Turkish** Civil Code (codified January 1, 2002) not only guarantees to both parents the right to personal relations with the child but also forbids the actions of any parent from harming the child's relationship with the other. "The boundaries of [these] personal relations are: Each of the parents has to avoid harming the personal relations between the child and the other party. He or she has to avoid hampering the education and upbringing of the child."⁷⁰ Moreover, it guarantees a sum of alimony to be paid, gives the judge discretion in assessing the financial capacity of the parent, and gives precedence to keeping a level quality of life for the child.

⁶⁶ L' Association Démocratique des Femmes du Maroc (ADFM), accessed 13 April 2005

⁶⁷ *Ibid.*

⁶⁸ *Knowing Our Rights*, p. 344.

⁶⁹ Tunisian Code of Personal Status (1956), as amended in 1981, Article 32. Translation in Mahmood, Tahir. *Statutes of Personal Law in Islamic Countries*, 2nd Revised Ed., 1995, p. 174-5; Nasir, Jamal J. *The Islamic Law of Personal Status*. 3rd Ed. Kluwer Law International. 2002. p. 169.

⁷⁰ Article 324/1. South Eastern European Women's Legal Initiative, "Family Law Report: Turkey." http://www.seeline-project.net/FamilyLaw/TurkeyFL.htm#_ftn1

ISSUES FOLLOWING HUSBAND'S DEATH

Almost worldwide, widows comprise a significant proportion of all women, ranging from 7 percent to 16 percent of all adult women.⁷¹ These numbers are higher following an extended conflict; thus, forward-looking Islamic countries have found it important to safeguard the rights of widows. The main issues at stake are maintenance and residence of a widow during the customary waiting period—the amount of time allotted to determine whether there is an additional pregnancy, thus affecting inheritance, the right to remarry, and custody and guardianship of children.

Goals

- Ensure maintenance and inheritance rights for widows
- Guarantee custody rights for mothers

Key Challenges and Implementation

1. Maintenance and Inheritance rights of widows
 - a. Widows should maintain the right to remain in the marital home during the waiting period (this avoids immediate economic strain and homelessness). However, it must be by their own choice, not mandatory. A widow should not be obliged to remain in the marital home if she prefers another solution.
 - b. Widows should retain the right to a specified waiting period. The waiting period should not be prolonged excessively, but it should be long enough to reveal an existing pregnancy and to address any inheritance or maintenance issues that may arise.
 - c. Law and custom are often vague on whether a widow is entitled to maintenance during *idda* upon death of a husband or only entitled to her share of the estate. In most cases, wives and children are maintained by the husband's property before it is shared.⁷²
 - d. A woman is entitled to one-eighth of her husband's estate and to one-half her male siblings' share of the parent's estate.⁷³ Unfortunately, in practice, male relatives often deprive Muslim widows of their rightful inheritances.⁷⁴ A 1995 survey on property inheritance in **Bangladesh** revealed that only 25 percent of the widows sampled had received their rightful shares of inheritance from either of their parents and only 32

⁷¹ "Women 2000: Widowhood: invisible women, secluded or excluded." United Nations. December 2000, pg 7. http://www0.un.org/womenwatch/daw/public/wom_Dec%2001%20single%20pg.pdf

⁷² "Knowing our Rights: Women, family, laws and customs in the Muslim World," Women living under Muslim Laws, p. 303, 2003, London: UK.

⁷³ "Women 2000: Widowhood: invisible women, secluded or excluded." United Nations. December 2000, pg 7. http://www0.un.org/womenwatch/daw/public/wom_Dec%2001%20single%20pg.pdf

⁷⁴ Ibid.

percent from their husbands.⁷⁵ Where inheritance rights are not enforced, widows may find themselves totally dependent on the charity of their husband's relatives.

2. Custody rights of widows

- a. The general practice throughout the region has historically been that if both parents are Muslims, and the husband dies, minor children have the right to live with a blood-related female rather than a blood-related male as head of family.
- b. The definition of a minor child varies considerably by country. There is also a distinction between *financial custody* and *care-providing custody* or *guardianship*. Financial custody (the management of a minor's property) often remains with the paternal grandfather, even when the mother is the care-providing custodian. This dates back to an era when women had less or no education and little experience in managing affairs of daily life, and so a man's assistance was necessary for handling such practical matters. This no longer reflects reality in most of the region.
- c. In some countries, women still have to prove in the court of law that they are capable of being the financial custodian, as well as the care-providing custodian. This is not the case in **Turkey** and **Tunisia**, where women exercise equal rights in custody and guardianship.

Case Studies

Issue 1: Maintenance and Inheritance Rights

The waiting period for widows should have a clearly defined starting date and length. The following are some examples:

Algeria. Under Article 61 of the Code de Famille (family code), a widow is not obliged to leave the matrimonial home during her waiting period except in the case of proven moral impropriety.⁷⁶

Indonesia. The waiting period for widows lasts 130 days and there is no distinction between menstruating and nonmenstruating women.⁷⁷ Thus, whether or not the woman is still of childbearing age is irrelevant, thus guaranteeing the widow a transitional period during which her maintenance rights are assured.

Issue 2: Custody Rights of Widows

A widow should be entitled to the custody and guardianship of her children on the death of her spouse, if she so desires. The following are some examples:

Tunisia. Laws in Tunisia recognize the equal rights of parents in custody and guardianship. In the event of a husband's death, and the courts award custody (generally of minors) to the mother, who also exercises the authority of guardianship in relation to their travel, education, and financial affairs.

⁷⁵ Ibid.

⁷⁶ "Knowing our Rights: Women, family, laws and customs in the Muslim World," Women living under Muslim Laws, p. 307, 2003, London: UK.

⁷⁷ Ibid.

Turkey. In the event of a separation, divorce, or death of a spouse, the rules regarding custody and guardianship do not discriminate between the father and the mother. Under A. 182, the judge awards custody to whichever parent will best look after the child. In the case of a death of a husband, it would likely be the mother. Men are not looked at by the courts as being superior to women in this area.⁷⁸

Indonesia. Under the Marriage Law, in the event of dispute, the court decides custody of the children. In general, courts grant custody of children under 12 to the mother. Above that age, priority is given to the child's preference.⁷⁹

Issues following Husbands Death: Summary			
Country	Widow's Right to...		
	Maintenance/ Inheritance	Waiting Period	Custody and/or Guardianship of Children
Algeria ^d	Yes	Four months and 10 days ^a	Custody; and Guardianship ^b
Egypt ^d	Yes	3 menstrual terms	Custody only
Indonesia	Yes	130 days ^c	Custody and Guardianship
Iran	Yes	Four months and 10 days ^a	Custody only
Jordan	Yes	3 menstrual terms	Custody only
Lebanon	Yes		Custody only
Malaysia ^d	Yes		Custody; and Guardianship ^b
Morocco ^d	Yes	Four months and 10 days ^a	Custody only
Pakistan	Yes	Four months and 10 days ^a	Custody only
Syria	Yes		Custody only
Tunisia	Yes	3 months	Custody and Guardianship
Turkey	Yes	300 Days	Custody and Guardianship
^a If a widow is pregnant, until delivery, whichever is later ^b unless the Will provides otherwise (for guardianship only) ^c except in cases where women who are not menstruating, where the waiting period is 3 months. ^d a widow is not obliged to leave the matrimonial home during her waiting period.			

⁷⁸ "Knowing our Rights: Women, family, laws and customs in the Muslim World," Women living under Muslim Laws, p. 344, 2003, London: UK.

⁷⁹ "Knowing our Rights: Women, family, laws and customs in the Muslim World," Women living under Muslim Laws, p. 344, 2003, London: UK.

FEMALE EMPLOYMENT AND RIGHT TO WORK

Over the past decade, female employment in the Middle East has risen significantly. Yet, despite increases in women's educational levels and improvements in health care in the MENA region—which, in conjunction with lower fertility rates, have accelerated women's entry into the labor force—female employment in the region remains among the lowest worldwide.⁸⁰

Goals

- Ensure equal access for men and women to employment opportunities
- Establish nondiscriminatory employment practices (including wages)

Key Challenges

1. Promoting female employment is an essential part of human capital development in the region. Female employment in the Middle East has risen in the past quarter-century, but it still lags far behind the world average. According to the United Nations Development Program, about 33 percent of Arab women had entered the workplace by 2004, compared to 55 percent of women worldwide.⁸¹ Notions of female seclusion and segregation, of guarding an unmarried daughter's reputation by keeping her out of the workplace, or of restricting wives to purely domestic labor, still persist.
2. Female employment is a particular challenge within the MENA region. The expectation of obedience on the part of wives is often used by husbands within the MENA region to limit women's ability to find work outside the home. In a traditional Islamic marriage, the husband owes the wife maintenance (he must provide for her); in return, she is expected to be obedient to him.⁸² The extent of his authority is a matter of debate, but traditional society often grants him broad discretion, and husbands commonly restrict their wives' activities, forbidding them to seek higher education and employment or to travel.⁸³ In some Islamic countries, such pronouncements are still backed up by the force of law, as in **Iran, Jordan, and Qatar**. In **Qatar**, for example, a woman seeking employment must have written permission from her husband; the country even seeks to impose this ruling on non-Muslim, non-Qatari residents. Other countries interpret obedience much less strictly or strike it from the law altogether, as in **Morocco, Turkey, and Tunisia**.

⁸⁰ MENA Development Report, "Gender and Development in the Middle East and North Africa: Women in the Public Sphere" The World Bank. Unedited Edition, September 2003, P.42

⁸¹ United Nations Development Program. *Human Development Report 2004*, online at <http://hdr.undp.org/statistics/data/>, accessed 17 June 2005.

⁸² Religious scholars typically base this ruling on verse 4:34 of the Qur'an: "Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard." The verse also details the appropriate means for men to elicit obedience from their wives. Some Muslims contend that this verse is specifically referring to adultery. See <http://www.islamweb.net/ver2/archive/article.php?lang=E&id=38534>, accessed 17 June 2005

⁸³ Freedom House. P. 5

Women's Right to Work: Summary					
Country	Independent of Husband's Approval	Gender Discrimination Illegal	Equal Pay	% Econ. Active Women ^{a,b}	Further Provisions
Algeria		Yes	Yes	31	
Egypt	No	Yes ^c	Yes	36	
Indonesia		No	Yes	56	
Iran	No	Yes ^c	No	30	
Jordan ^c	No	No	No	28	Equal work and education for all, incl. women
Lebanon ^c	No	No	No	30	
Malaysia ^c	No	No	No	49	
Morocco	Yes	Yes	Yes	42	
Pakistan				36	
Syria	Yes	Yes	Yes	29	Legally, state must remove obstacles to women's employment
Tunisia	Yes	Yes	Yes	38	Mandatory military service for women
Turkey	Yes^d	Yes	Yes	51	

^aUNDP Human Development Report 2004, online at <http://hdr.undp.org/statistics/data/>, accessed June 17, 2005.
^b"Economically Active Women" are either employed or actively seeking a job in the formal workplace.
^cNo specific legal provisions for gender at all
^drequired to consult, but not binding
^eEquality is with reservation for contradictions with *shari'a*.
Note: Countries in bold have laws that give favorable treatment to women in the workplace.

These attitudes are far less in evidence in Muslim countries outside of the MENA region, such as **Indonesia, Bangladesh, and Malaysia** (see Realities, below), where female employment is comparable to or exceeds the world average.

- Preventing women from working, and thus having a source of income independent of their husbands, severely limits their autonomy and makes survival more difficult in the event of a divorce. With increasing economic pressures, however, households are turning to dual-income approaches to supporting a family, which has the potential to decrease the opportunity and real costs of a large, nonworking portion of the population.⁸⁴
- When women do gain entry to the workplace, some Islamic countries assure them equal pay—on paper—for equal time and performance. **Morocco's** new labor law, passed in 2004, affords men and women equal rights regarding labor. Furthermore, it "reinforces the principle of non-discrimination against women, improves maternity rights and recognizes women's right to unionize." Yet lax enforcement of the new law severely limits its effectiveness.⁸⁵ New labor regulations in **Egypt** also contain language favorable to women but still contain discriminatory clauses (see Egypt case study).

⁸⁴ MENA Development Report. P.3

⁸⁵ Make Trade Fair, "Morocco": http://www.maketrade-fair.com/en/index.php?file=labour_morocco.htm, accessed 28 July 2005.

5. Women are often prevented from employment in certain occupations, being limited by law or by custom to such professions as teaching, manual labor in clothing and textiles, social work, and agriculture.⁸⁶ Professions that require mixing with men, or supervising men, are disapproved of. This includes nursing, where consequently many Muslim countries have serious shortages. Benefits, such as pensions, are not equally granted.⁸⁷
6. In some countries (particularly in **Tunisia** and **Morocco**), a limited number of women have risen to prominent positions in the professions, but the majority of women work in the service sector, or informally. Women frequently are expected to labor in agriculture and in small, personal businesses without contracts or benefits. Here, formal labor laws do not apply, and women are not calculated among those competing for formal-sector employment. Neither are the rights of women in the informal sector protected under established statutes. In Turkey, the dominant form of employment for women in rural areas, 84 percent, is unpaid work in family businesses. Even large cities see majorities of women engaged in informal work. In Pakistan, 64 percent of women in urban areas work in the informal sector.⁸⁸

Realities

1. Female employment is rising around the world, and Muslim countries are no exception. According to the United Nations Development Program, female participation in the labor force has nearly doubled in the Arab world since 1995, from 17 to 33 percent in 2004.⁸⁹
2. Female employment in the MENA region (Arab states) is dramatically lower than the world average, as well as in many non-Arab Islamic countries, such as **Afghanistan** (48 percent female employment), **Malaysia** (49 percent), **Turkey** (51 percent), **Indonesia** (56 percent), and **Bangladesh** (66 percent).⁹⁰
3. CEDAW, Article 11, deals with women's right to employment. Article 11 reaffirms women's right to work, equal opportunity, equal employment, free choice of profession, and social security and health care, as well as protections for maternity leave and other issues related to reproduction and child care. Only one of the countries surveyed here, **Malaysia**, expressed reservations to Article 11; however, several other signatories (e.g., **Jordan** and **Lebanon**) have not implemented the convention's provisions into law. Enforcement, too, remains a serious problem, particularly in countries where informal work is prevalent.

⁸⁶ H.R.H. Princess Basma bint Talal, "Women in the Arab World," International Institute for Labor Studies, March 1996: <http://www.ilo.org/public/english/bureau/inst/papers/publics/basma/>, accessed 28 July 2005.

⁸⁷ Freedom House, p. 5. Among the survey's top recommendations are the following: "4. Legal and traditional barriers to women's participation in politics, government, and the private sector should be removed. Governments should take concrete steps to promote women's leadership in politics and business, including various forms of affirmative action and complaint mechanisms for victims of bias.... 6. Governments should take aggressive steps to eliminate legal and social obstacles to women's economic equality. In particular, labor laws should ensure that women are not denied equal access to jobs or employment benefits at any level. Governments should facilitate the social needs of women workers, such as transportation and daycare facilities, in order to decrease the social pressures that discourage women from working. Labor laws that mandate equal opportunity should be enforced." pp. 13, 14.

⁸⁸ World Bank GenderStats Project, <http://genderstats.worldbank.org/>

⁸⁹ United Nations Development Program, *Human Development Report 1995*, p. 24; United Nations Development Program, *Human Development Report 2004*: <http://hdr.undp.org/statistics/data/>.

⁹⁰ United Nations Development Program, *Human Development Report 2004*: <http://hdr.undp.org/statistics/data/>.

Model Cases

Morocco's major overhaul of the *Moudawwana* in 2004 eliminated as archaic the concept of obedience in marriage. Husbands cannot prevent their wives from receiving education or employment, leaving women entirely free to seek jobs.⁹¹ Even prior to the reforms to the *Moudawwana*, however, female employment in Morocco was high. In 2004, 41.8 percent of Moroccan women were economically active.⁹² While most women in Morocco work in the service industry, one-third of Morocco's doctors and one-quarter of the country's university professors are women.⁹³

Tunisia guarantees women the right to work, as well as equal pay. In 2003, some 2,000 businesses were led by women.⁹⁴ In 2004, 37.5 percent of Tunisian women were in the labor force, the third highest female employment of any MENA nation.⁹⁵ Tunisia also puts women into compulsory military service, believing that this will enhance gender equality.⁹⁶

Turkey altered its constitution to make household management a shared responsibility between husband and wife and to shift the responsibility for household expenses from the husband to both spouses, as part of its reforms leading up to European Union consideration. Though 51 percent of women are engaged in measurable economic activity (it is the most industrialized MENA country), they are not yet nearing parity with men in much of the industrial and service sectors, where more than twice as many men find employment.⁹⁷ The trend, however, is toward higher female participation in nonagrarian jobs. In 1980, 88 percent of economically active women were engaged in agriculture; this had dropped to 65 percent by the 1990s and women comprised 25 percent of manufacturing workers.⁹⁸ By 2002, the percentage of women in agriculture had dropped to 56 percent.⁹⁹ Female wages are still a fraction of those of their male counterparts. In spite of these accomplishments, "There are no specific legal provisions regarding offering employment to women or sexual harassment in the workplace. ... And though different wages cannot be paid to men and women workers working with equal productivity in jobs of the same quality in the same workplace, in the absence of an objective evaluation system to determine value and equal productivity, traditional biases dominate."¹⁰⁰

⁹¹ United Nations Development Program - Program on Governance in the Arab Region (UNDP-POGAR) "Country Index: Gender—Morocco": <http://www.pogar.org/gender.asp?cid=12>, accessed 17 June 2005.

⁹² United Nations Development Program *Human Development Report 2004*, online at <http://hdr.undp.org/statistics/data/>, accessed 17 June 2005.

⁹³ United Nations Development Program - Program on Governance in the Arab Region (UNDP-POGAR) "Country Index: Gender—Morocco": <http://www.pogar.org/gender.asp?cid=12>, accessed 17 June 2005.

⁹⁴ U.S. State Department, "Country Reports on Human Rights Practices 2004—Tunisia," 28 February 2005.

⁹⁵ United Nations Development Program *Human Development Report 2004*, online at <http://hdr.undp.org/statistics/data/>, accessed 17 June 2005.

⁹⁶ United Nations Development Program - Program on Governance in the Arab Region (UNDP-POGAR) "Country Index: Gender—Tunisia": <http://www.pogar.org/gender.asp?cid=20>, accessed 17 June 2005

⁹⁷ Valentine M. Moghadam. *Modernizing Women: Gender and Social Change in the Middle East*. Second Edition. Lynne Rienner Publishers, Boulder, 2003.

⁹⁸ Valentine M. Moghadam. p. 43

⁹⁹ <http://die.gov.tr/english/SONIST/ISGUCU/040603ie.htm>

¹⁰⁰ Women for Women's Human Rights, <http://www.wwhr.org/images/newlegalstatus.pdf>, accessed 28 June 2005.

Other Case Studies

While **Egypt**'s laws are generally favorable to women in the workplace, and provide for equal pay in the workplace, gender discrimination in Egypt remains powerful, and social pressure strongly opposes women's pursuit of careers outside the home. For instance, although a new labor law was passed in 2003 containing language favorable to a woman's right to work, it still reflected certain social expectations. Women are forbidden from working after 7 p.m. or before 7 a.m. Furthermore, any employer wishing to hire women is required to guarantee their protection and transportation (Article 89). These may constrain women's rights to employment.¹⁰¹ Seventeen percent of Egyptian private business owners are women, and they have made notable inroads into the professions, such as banking, and many women in higher economic classes have become successful entrepreneurs or "penny capitalists."¹⁰² But even as women's relative wages rose in the formal sector (from 70 percent of male wages in 1988 to 86 percent in 1998), they declined precipitously in the informal sector (from 82 percent in 1988 to only 53 percent in 1998).¹⁰³

Iran's law provides equal status and equal rights "in conformity with Islamic criteria," including economic rights.

¹⁰¹ Egyptian Center for Women's Rights

¹⁰² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. "Egypt." Country Reports on Human Rights Practices—2004. February 28, 2005 <http://www.state.gov/g/drl/rls/hrrpt/2004/41720.htm>; "Women's Rights in the Middle East and North Africa, ed. Sameena Nazir and Leigh Tomppert, Freedom House, p. 70: <http://www.freedomhouse.org/research/menasurvey/>, accessed 28 July 2005.

¹⁰³ L. Josh Bivens. and Sarah Gammage, "Will Better Workers Lead to Better Jobs in the Developing World," Economic Policy Institute, 2005, Table 8, http://www.epi.org/content.cfm/books_good_jobs , accessed 29 July 2005.

RIGHT TO FULL LEGAL STATUS

Most Middle Eastern countries' constitutions include a clause that assures the equality of all citizens. However, in the same countries, women often do not enjoy equal rights as citizens in practice and often lack a full autonomous legal identity, which is essential for achieving the equality of all citizens.

Goals

- Ensure constitutional equality for men and women as a first foundational step
- Remove ongoing legal discrimination by working toward full legal status for women
- Create a bias-free justice system, with proper execution of the law
- Allow women equal rights to terminate contracts and to administer property
- Treat women equally in all stages of court proceedings

Key Challenges and Implementation

1. **Afghanistan, Algeria, Bahrain, Libya, Oman, Palestinian Authority, Qatar, Syria, Turkey, and Tunisia** declare in their constitutions that “[a]ll citizens are equal and there shall be no discrimination on the basis of sex”. The constitutions of **Jordan, Pakistan, Egypt, Lebanon, Morocco, Kuwait, the United Arab Emirates, and Yemen** do not specifically mention gender but instead declare that “all citizens are equal under the law.”¹⁰⁴
2. Even though the concept of equality is enshrined in the national constitutions of all countries in the Middle East,¹⁰⁵ de facto women across the region do not enjoy legal equality as of yet. Citizenship rights apply inequitably; in the majority of countries, women are susceptible to harsher penalties than men are for the same crimes, and the testimony of a woman in court counts half as much as a man's.
3. Even in countries where women are legally stated to be equal to men, implementation of the law is a key issue. **Morocco**, which recently established women as equal to men under the law, still witnesses inequalities in the implementation of the law. Moroccan women have difficulties obtaining their legal rights because of bias and a lack of support in the justice system. Court cases involving divorces are prolonged, and women are often not able to obtain what is legally theirs because of improper execution of the law.

¹⁰⁴ Freedom House. Women's Rights in the Middle East and North Africa: Citizenship and Justice. 20 May 2005. <http://www.freedomhouse.org/research/menasurvey/> [accessed 11 July 2005]

¹⁰⁵ Saudi Arabia has no constitution, women are not equal under the law (women do not have the right to vote, the right to drive, etc.).

Conventions

1. As of 18 March 2005, 180 countries—over 90 percent of the members of the United Nations—are party to CEDAW, binding themselves to do nothing in contravention of its terms.¹⁰⁶ Article 15 of the convention reads as follows:
 - a. States Parties shall accord to women equality with men before the law.
 - b. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
 - c. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
 - d. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.
2. Most countries of the MENA region are signatories of this convention and need to bring themselves into alignment with its terms.

Model Cases

The King of Morocco recently reformed the legal status of women, overturning the legal definition of women as inferior to men and establishing equality under law. Speaking to his country's parliament, King Mohammed VI said, "How can society achieve progress while women, who represent half the nation, see their rights violated and suffer as a result of injustice, violence, and marginalization, notwithstanding the dignity and justice granted to them by our glorious religion?"¹⁰⁷

Tunisia's Personal Status Code gave women full legal full legal status (allowing them to run and own businesses,

Equal Rights: Summary		
Country	Equal Rights for Both Sexes...	
	Guaranteed by Law? ^a	With an Exception for <i>Shari'a</i> ?
Algeria	Yes (Con, A. 26)	Nonspecific ^b
Egypt	Yes (Con., A. 11)	Yes (Con., A. 11)
Indonesia	No	Nonspecific ^b
Iran	Yes (Con., A. 20)	Yes (Con., A. 11)
Jordan	No	Nonspecific ^b
Lebanon	No	No ^c
Malaysia	No	Nonspecific ^b
Morocco	Yes (Con., A. 5, 8)	Nonspecific ^b
Pakistan	Yes (Con., A. 25)	Indirectly (Con., A. 227)
Syria	No	Nonspecific ^b
Tunisia	No	Nonspecific ^b
Turkey	Yes (Con., A 10)	No

^aAbbreviations: Con. = constitution, A. = article. All surveyed states guarantee equal rights for all citizens; a "yes" indicates their equal rights provision specifically mentions gender as an inadmissible basis for discrimination.

^bThe passage does not contain a specific exception to this provision for Islamic law, but other parts of the law or constitution could be interpreted in such a way.

^cLebanon's family laws are sectarian; there are no exceptions for shari'a in the constitution, but family laws governing Muslims do treat men and women differently.

¹⁰⁶ The Convention on the Elimination of All Forms of Discrimination against Women. United Nations. <http://www.un.org/womenwatch/daw/cedaw/reports.htm#s>. [accessed 18 July 2005]

¹⁰⁷ IRI. President Bush Discusses Freedom in Iraq and Middle East. 6 November 2003. <http://www.iri.org/11-6-03-wp.asp> [accessed 11 July 2005]

have bank accounts, and seek passports under their own authority).¹⁰⁸

In **Lebanon**, a common civil code guarantees that women can own businesses and that their testimony will be given equal weight to men's in court.

Algeria has no legal provisions in either civil law or criminal law that discriminate between women and men. "The constitutional principle of equality of the sexes is scrupulously respected when it comes to civil and political rights: women have full status as citizens Like men, women have full legal capacity and can use that capacity freely They have the right to acquire, administer, use and dispose of any property and the right to sign contracts and commercial documents" ¹⁰⁹

¹⁰⁸ United States Department of State. Background Note: Tunisia. <http://www.state.gov/r/pa/ei/bgn/5439.htm> [accessed 11 July 2005]

¹⁰⁹ The Permanent Mission of Algeria to the United Nations: 2nd Report of Algeria to the CEDAW. 1 January 2005. <http://www.algeria-un.org/default.asp?doc=2171> [accessed 11 July 2005]

RIGHT TO MOBILITY

The right to mobility has several aspects that are important to women's quality of life, as well as for their basic human rights. Frequently, decisions to emigrate or to flee are made without consulting the female members of the family, who are instead obliged to leave their homes and their familiar environment when they may not wish to do so and when it may be against their best interests. Conversely, their right to domestic freedom of movement, even to leave the family home, is frequently and arbitrarily curtailed. Finally, their right to leave the country, or even to obtain personal travel documents, may be contingent on the permission of a male family member or a husband.

All these practices are violations of the principle of equality, of the woman's equal citizenship status, and of the right to personal freedom of movement. They also present a significant obstacle to the educational and economic advancement of societies that tolerate such infringements.

Goals

- Guarantee women the right of self-representation in official and travel documentation
- Enable women to initiate travel freely and independently
- Ensure that women have an equal voice in decisions concerning their freedom of movement and place of residence

Key Challenges

1. As the United Nations stated in *Migration and Mobility and How This Movement Affects Women*, "the ability to move and seek both economic and personal growth and freedom remains a right of all and a main source of opportunity for women seeking advancement."¹¹⁰
2. In many Muslim countries, a woman's right to travel is restricted by her husband's wishes. In **Iran**, married women must receive permission from a husband in writing before leaving the country.¹¹¹ Cultural norms present an additional, non-judicial obstacle for women. It must not only be legal to travel independently but be culturally acceptable as well.
3. Obtaining and maintaining official documentation is often a bureaucratic obstacle. Women can face impediments to the issuance or maintenance of passports.¹¹² In **Syria** a husband may request that his wife's travel abroad be prohibited.¹¹³ In **Jordan**, women need permission from their husbands to obtain a passport. In **Morocco**, although women nominally enjoy complete citizenship, notaries can still require male witnesses for some documents, such as establishing proof of marriage or paternity.¹¹⁴ Women must have the

¹¹⁰ United Nations Division for the Advancement of Women. *Migration and mobility and how this movement affects women*. <http://www.un.org/womenwatch/daw/meetings/consult/Sweden03.htm> [accessed 18 July 2005]

¹¹¹ <http://www.state.gov/g/drl/rls/hrrpt/2004/41721.htm>

¹¹² 2004 U.S. Department of State's Human Rights Reports

¹¹³ *ibid*, Syria.

¹¹⁴ Freedom House; "Survey of Women's Rights Country Reports; <http://www.freedomhouse.org/research/menasurvey/>

right to apply for and receive travel documentation and be able to do so without fear of arbitrary revocation.

- Restrictions on children’s travel also restrict women’s rights. In **Tunisia**, a woman is completely free to travel around or outside the country, but taking her children outside the country requires their father’s permission.¹¹⁵

Mobility Rights: Summary	
Country	Permission Required to Travel
Algeria	Married and under 18 ^a
Egypt	Unmarried and under 21
Jordan	Male relative, for passport
Syria	Husband may prohibit
Tunisia	No
Turkey	No

^aWomen under 18 are not typically allowed to marry in Algeria, but may do so with a judge’s consent.

Implementation

- Implementation of legal changes is frequently governed by acceptable social norms. Although many laws in Muslim countries have relaxed restrictions on the travel rights of women above a certain age, there is a cultural expectation that women do not travel alone. Accordingly, although unmarried **Egyptian** women over the age of 20 should not technically need permission to travel, the way this is applied varies regionally.¹¹⁶
- There is a strong regional element in the application of travel limitations. In parts of **Pakistan**, women are obliged to spend most of their life inside their homes. An exception to this is in the very poorest areas, where women are required to participate in daily chores for family subsistence.¹¹⁷ Much of this is dictated not by the law but by custom and practice.
- The idea of regional application is particularly important in travel. Women leaving one region, where travel is permitted, might have to transit through another, where it is not. Permission to travel abroad does not necessarily translate into that same freedom at home, either; travel restrictions vary within countries, and family pressure or tradition often keep women home at their husbands’ discretion.

Trends Toward Change

- The constitutions of several countries in the MENA region have enshrined the principle of freedom of movement by specifying equality not only between genders but also between spouses. This eliminates the concept of a male “head of household” who makes unilateral decisions).
- Still others, such as **Egypt** and **Jordan**, are shifting toward a system that permits more female autonomy in mobility by allowing women to travel freely. However, obtaining a passport still requires a husband’s or father’s signature. Obviously, this conflicts with the principles of equality, equal citizenship, and free movement.

¹¹⁵ U.S. Department of State Bureau on Democracy, Human Rights, and Labor, “International Religious Freedom Report 2004: Tunisia”: <http://www.state.gov/g/drl/rls/irf/2004/35509.htm>, accessed 3 August 2005.

¹¹⁶ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor

¹¹⁷ Federal Research Division; Library of Congress; “Pakistan, A Country Study;” http://womenshistory.about.com/library/ency/blwh_pakistan_gender.htm

Conventions

1. The rights of migrants or travelers have been enshrined in numerous international documents. *The Universal Declaration of Human Rights* provides that every person has the right to leave and reenter his or her own country of origin, and to seek and—if it is granted—to accept asylum.¹¹⁸
2. Basic human rights include the right to life, liberty, and security; not to be held in slavery or servitude; not to be subjected to arbitrary arrest, detention, or exile; to freedom of movement and residence within the borders of each state; to marry and to found a family; and to work, free choice of employment, and just and favorable conditions of work. All these are imperiled when a woman's autonomous freedom of movement can be restrained arbitrarily.

For example, the Taliban requirement that women had to be accompanied in public by a *mahram*, a male guardian, not only caused hardship but also prevented women from being able to seek necessary medical treatment; to purchase food; and, especially in the case of widows, to work to support themselves and their dependents. Also, giving a man the right to act essentially as his wife's jailor, granting or withholding permission for her to leave the house, violates both her civil rights and her most basic human rights and is incompatible with the principles of spousal and gender equality and of a democratic family.

3. CEDAW also includes a number of provisions applicable to migrant women. The most directly relevant of these is Article 15(4), which requires that men and women have the same rights to move freely and to choose a residence. However, many states from the MENA region have filed reservations exempting themselves from the requirements of this article.¹¹⁹ Among other provisions, CEDAW requires the elimination of sex-role stereotyping, the suppression of traffic in women and exploitation of prostitutes, and the ending of discrimination in employment and citizenship.¹²⁰

Model Cases

In **Algeria**, the constitution protects the principles of freedom of movement and of freedom to choose places of residence and domicile, stating that all citizens have the right to choose their places of residence and to move freely within the national territory. The same article also guarantees the right of entry to and exit from the national territory. The freedom of movement applies collectively to men and women, without any form of discrimination.¹²¹

¹¹⁸ United Nations. The Universal Declaration of Human Rights. <http://www.un.org/Overview/rights.html> [accessed 18 July 2005]

¹¹⁹ Algeria, Bahrain, Jordan, Morocco, Syria and Tunisia have filed specific reservations to Article 15, paragraph 4, and several other countries have general reservations exempting themselves from applying any article held to conflict with *shari'a*. See www.un.org/womenwatch/daw/cedaw/text/econvention.htm

¹²⁰ United Nations Division for the Advancement of Women. Convention on the Elimination of All Forms of Discrimination against Women. <http://www.un.org/womenwatch/daw/cedaw/> [accessed 18 July 2005]

¹²¹ The Permanent Mission of Algeria to the United Nations: 2nd Report of Algeria to the CEDAW. 1 January 2005. <http://www.algeria-un.org/default.asp?doc=2171> [accessed 11 July 2005]

In **Tunisia**, the constitution provides for freedom of movement within the country and for foreign travel, regardless of gender.¹²²

In 2002, the **Turkish** legislature passed a revised Civil Code, requiring that travel be free and unhindered for women abroad, where passports and proper documentation might logically govern, and within Turkey, where such a law might require more local application.¹²³ This strengthens other areas of Turkish reform, such as education and the right to work, allowing not only the freedom to engage in these activities but the capacity to actually arrive at the door.

Other Cases

In **Pakistan**, superior courts have consistently upheld a women's right to autonomy when women have vied for mobility without a husband's consent.¹²⁴

In **Egypt**, unmarried women under the age of 21 must have permission from their fathers to obtain passports and to travel. Married women do not require such permission.¹²⁵

In **Jordan**, both married and unmarried women currently need a signature from a husband or guardian to obtain a passport, but efforts to change this rule have begun.

¹²² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. "Tunisia." Country Report on Human Rights Practices. <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm> [accessed 18 July 2005]

¹²³ Women for Women's Human Rights; "The New Legal Status of Women in Turkey;" <http://www.wwhr.org/images/newlegalstatus.pdf>

¹²⁴ "Knowing our Rights: Women, family, laws and customs in the Muslim World," Women living under Muslim Laws, p. 158, 2003, London: UK.

¹²⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. "Egypt." Country Reports on Human Rights Practices—2004. <http://www.state.gov/g/drl/rls/hrrpt/2004/41720.htm> [accessed 15 July 2005]

CITIZENSHIP

In most Muslim countries, separate sets of laws for men and women govern their rights of mobility and full citizenship. While women have the legal right to the title of “citizen,” men retain principal standing as the bearers and passers of citizenship to children and spouses in most countries.

Goals

- Establish equal and full benefits of citizenship for women, including the ability to pass citizenship on to children and spouses

Key Challenges

1. Throughout most of the MENA region, men are allowed to pass citizenship to their spouses, but women who marry foreigners cannot pass citizenship to either their spouses or their children. Under **Lebanon**’s law, which is fairly typical for the region, children born to citizen mothers and foreign fathers are not eligible for citizenship; however, citizen widows may confer citizenship on their minor children.¹²⁶ In **Jordan**, married women do not have the legal right to transmit citizenship to their children. Furthermore, women may not petition for citizenship for their noncitizen husbands.¹²⁷ In extreme cases, such as in the **United Arab Emirates**, women must forfeit their citizenship if they marry men who are not citizens of a Persian Gulf state. Such statutes make it difficult for children to enter public school or receive medical treatment, among other things. To receive such benefits, parents must obtain residency permission for their children, even if the children are born in their mother’s country and remain there throughout their lives. Such policies ultimately penalize a woman for marrying a foreigner.¹²⁸
2. In spite of civil and family code reform in several countries in the past decade, older statutes often govern the issue of citizenship. For example, although **Morocco** passed a major round of legislative reform in 2004, some citizenship issues are still dictated by a nationality code passed in 1958, limiting mothers’ ability to pass citizenship to their children.¹²⁹
3. Nearly all Arab nations have ratified CEDAW, but most have taken a reservation to Article 9, paragraph 2 of the Convention, which reads:

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.¹³⁰

¹²⁶ Bureau of Democracy, Human Rights, and Labor. Pg. 13.

¹²⁷ 2004 US State Department’s Human Rights Reports

¹²⁸ *Women’s Rights in the Middle East and North Africa: Citizenship and Justice*, ed. Sameena Nazir and Leigh Tomppert, Freedom House, 2005, p. 5-6.

¹²⁹ Freedom House; “Survey of Women’s Rights Country Reports; <http://www.freedomhouse.org/research/menasurvey/>

¹³⁰ Convention on the Elimination of all forms of Discrimination Against Women: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>, accessed 28 July 2005. Despite the logic of its reservation, Egypt now allows women to transfer citizenship to their children, as noted below.

Such reservations are based on the argument that this provision contradicts *shari'a* law. However, it is not clear that such a contradiction exists. *Shari'a* long predates the idea of citizenship, and *shari'a* does not lay down how nationality should be transferred. The thinking has been that children follow their father's religion and lineage, and some scholars have interpreted this to include nationality.¹³¹ Other countries, such as **Egypt** and **Kuwait**, do not raise *shari'a* issues in their reservations to this article but refer instead to the practices of existing nationality law, in which citizenship is transmitted through fathers only. Egypt's reservation declares, "it is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child."¹³² There is no evidence given for why this is "clear."

Rights of Citizenship: Summary			
Country	Women Passing Citizenship to ...		Reservation on CEDAW 9-2
	Children	Husband	
Algeria	No	No	Yes
Egypt	No	No	Yes
Indonesia			No
Iran	No	No	Not signatory
Jordan	No	No	Yes
Lebanon	Widows only	No	Yes
Malaysia			No
Morocco	If resident	No	Yes
Pakistan			No ^a
Syria			Yes
Tunisia	If resident	No	Yes ^a
Turkey	Yes	No ^b	No

^aAdditionally, there is a general reservation against the contradiction of the country's constitution

^bTurkish women marrying foreign men can actually lose their citizenship.

4. Laws restricting the ability of women to pass on their nationality constitute "a series of legal texts that protect and nurture the culture of discrimination, steer social awareness so as to ... accept [women's] deprivation of basic rights that would firmly establish full citizenship."¹³³ They also make life difficult for the affected children and families.

Trends Toward Change

1. In **Kuwait**, women gained the right to vote in May 2005. Their rights of citizenship are still in the process of being defined.
2. Countries wishing to retain the children of a native mother and a foreign-born father are relaxing citizenship laws to give women the right to bear not only the title but also the privileges of full citizenship to allow her to give that child her family's nationality. For example, in 2004, **Egypt**'s nationality law was amended to allow women to transmit citizenship to their children. This will enable children of Egyptian mothers and foreign

¹³¹ Bennani and Maadi. "Nationality of a Woman's Children."

¹³² <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> , accessed 3 August 2005.

¹³³ Farida Bennani and Zainab Maadi. "Presentation of Research Study: The Nationality of a Woman's Children, Between the Rationale of Affiliation with the Islamic Nation and the Rationale of Belonging to the International Community," United Nations Development Program - Program on Governance in the Arab Region (UNDP-POGAR), 2003, p. 2: <http://www.pogar.org/publications/gender/nationality/nationality.pdf>, accessed 27 July 2005..

fathers to enroll in public schools, serve in the Egyptian military and police, and enjoy other aspects of citizenship that had been denied them.¹³⁴

Model Cases

Turkey permits the transmission of citizenship from wife to husband but a lengthy bureaucratic process is required, much beyond what is required in the opposite instance for a husband wishing to pass on citizenship to his foreign-born wife.

In **Tunisia**, the Code de Nationalité was amended in 1993 to allow mothers more rights to transfer their citizenship to their children. The law now allows a child born abroad to a Tunisian mother and a foreign-born father to become Tunisian if the child or both parents make the request before the child reaches majority and if the father does not object.¹³⁵

As of 2004, **Egypt** also permits a woman to pass citizenship on to her children if the husband is foreign-born. The Egyptian Nationality Law made an estimated one million people living in Egypt newly eligible for citizenship. The law gives a one-year window in which citizenship may be claimed, but there have been significant difficulties with the law's implementation.¹³⁶

In **Morocco**, women may transfer citizenship to their children if the children are born in Morocco and claim citizenship two years prior to reaching majority.¹³⁷

The draft constitution of **Iraq** provides for women, as well as men, to give their citizenship to their children.

¹³⁴ Reem Leila. "Citizens at last," *al-Ahram Weekly On-Line*, 7 July 2004: <http://weekly.ahram.org.eg/2004/697/eg10.htm>; accessed 3 August 2005.

¹³⁵ Freedom House, "Survey of Women's Rights Country Reports: Tunisia," p. 297: <http://www.freedomhouse.org/research/menasurvey/>, accessed 3 August 2005; Smith, Monica, "Mothers in Arab world feel like prisoners in their own homes," *The Daily Star*, http://www.amanjordan.org/english/daily_news/wmview.php?ArtID=4115, accessed 3 August 2005.

¹³⁶ Reem, "Citizens at last."

¹³⁷ Freedom House, "Survey of Women's Rights Country Reports: Morocco": <http://www.freedomhouse.org/research/menasurvey/>, accessed 3 August 2005.

DOMESTIC VIOLENCE

Domestic violence is a global problem, although it often goes unreported because it occurs in the private sphere, because of the social stigmas associated with being a victim of gender-based violence, and because of the lack of consistent regulation and enforced legal punishment. Some Muslims believe that Islam justifies wife-beating and spousal abuse, which complicates the fight domestic violence.

Goals

- Ensure safety for women (freedom from abuse, ability to report abuse)
- Promote independence of women (awareness of rights and legal mechanisms to report abuse, access to resources, and networks to enable leaving an abusive situation)
- Emphasize standardized and serious government-regulated measures to protect women in their homes and punish perpetrators of violence
- Educate the public about the detrimental impact of family violence¹³⁸

Key Challenges

1. Islamic scholars generally condemn family violence, but traditional thinking still persists on this issue. Education and awareness campaigns are required.
2. Explicit laws against domestic violence are important in preventing the problem. Many countries, such as **Algeria** and **Pakistan**, have no specific law against domestic violence; spousal abuse is subsumed under their standard laws against assault.¹³⁹ This often makes prosecution of domestic assault cases difficult: Such laws are usually not uniformly applied or enforced. Specific domestic violence legislation helps to delegitimize the practice and may discourage practices like those reported in **Pakistan**, where police actively turn away women who want to report cases of domestic abuse.
3. Laws that are lenient to those who commit domestic violence “with just cause,” such as those in **Lebanon** and **Syria**, make it more difficult for women to seek recourse from or to escape abusive partners who can hide behind such justifications. (See honor killings, below.)
4. Women’s rights can be protected by laws that allow them to escape abusive marriages and that make domestic violence grounds for divorce. However, in many countries, such as

¹³⁸ Violence is a leading cause for the dissolution of marriages in the Muslim world. In Morocco, for example, it is the most common reason cited by women for ending their marriage. Hajjar 233.

¹³⁹ Bureau of Democracy, Human Rights, and Labor, US Department of State, “Country Reports on Human Rights Practices—2004: Algeria,” and “Country Reports...2004—Pakistan,” 28 February 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41718.htm> and <http://www.state.gov/g/drl/rls/hrrpt/2004/41743.htm>, respectively, accessed 30 June 2005.

Pakistan, women are simply returned to abusive households and are thus unable to escape domestic violence.¹⁴⁰ In **Jordan**, wife-battering is grounds for divorce.¹⁴¹

5. Laws that permit a man to escape punishment for rape by marrying the victim are relics from an age when women had no independent stature or claim to justice. Such laws compound the offense committed against the woman by forcing her to marry a criminal who has already proven his intent to abuse her and to disregard her rights and autonomy. These archaic laws are in the process of being cleared from the books. In 1999, Egypt changed its criminal law to remove the exemption for rapists who marry their victims.¹⁴²
6. Support networks for abused women are very important in guaranteeing the rights of women. In many countries, such as **Tunisia**, **Jordan**, and **Malaysia**, NGOs provide hotlines and other resources for abused women; in **Malaysia**, the government does so as well. These resources are critical for women trying to escape abusive relationships. Preventative education and awareness training are also desirable.

Implementation

1. Enforcement of domestic violence laws requires supportive action in all cultures, and the Islamic world is no exception. Even where domestic violence is illegal, victims are often unwilling to report it.
2. Many Muslim countries offer leniency, or even exemption, for violence done “with provocation” (i.e., honor killings).¹⁴³ While most countries, including the United States, offer leniency for crimes committed in response to provocation, judges in Muslim countries frequently apply these statutes with extreme bias against women. Discriminatory laws further aggravate the problem; these include laws that decree that a woman’s testimony is worth half that of a man or that require four male witnesses to a rape to obtain a conviction.¹⁴⁴
3. Inconsistencies in legal policy and enforcement mean that many women are not aware of their legal protections. Education campaigns to make women aware of their rights and legal recourses are necessary for the laws to have full effect.

¹⁴⁰ Bureau of Democracy, Human Rights, and Labor, US Department of State, “Country Reports on Human Rights Practices—2004: Pakistan,” 28 February 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41743.htm>, accessed 30 June 2005.

¹⁴¹ Bureau of Democracy, Human Rights, and Labor, US Department of State, “Country Reports on Human Rights Practices—2004: Jordan,” 28 February 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41724.htm>, accessed 30 June 2005.

¹⁴² Tadros, Mariz. “No escape clause for rapists,” *Al-Ahram Weekly On-Line*, 14 April 1999. <http://weekly.ahram.org.eg/1999/424/eg3.htm>, accessed 4 August 2005.

¹⁴³ Jordan, for example, has a leniency clause for violence committed “in a fit of fury” brought on by “unrightful and dangerous” acts by the victim; furthermore, until an amendment in 2001, Jordan gave a *full exemption from penalty* to men who discover female relatives committing adultery and kill or injure them.

¹⁴⁴ For example, see the case of Dr. Shazia Khalid: Kristof, Nicholas. “Another Face of Terror,” 31 July 2005 and “A Pakistani Rape, and a Pakistani Love Story,” 2 August 2005, *The New York Times*.

Country	Domestic Violence Is....		“Honor Killing” Leniencies Exist
	Specifically Covered in Law	Grounds for Divorce	
Algeria ^a			Yes
Egypt	No		Yes
Indonesia	Yes ^b	Yes	No
Iran			Yes
Jordan	No	Sometimes	Yes
Lebanon	No	Yes	Yes
Malaysia	Yes	Yes	No
Morocco	No	Yes	Yes
Pakistan	No	Yes	Yes
Syria	Yes		Yes
Tunisia	Yes	Yes	No
Turkey	Yes	Yes	No

Model Cases

Domestic violence is illegal in **Tunisia**. Tunisia recognizes domestic violence as a crime independent of other types of assault and doubles penalties for such crimes. Spousal rape is treated no differently from other forms of rape in the legal code; the penalty is life imprisonment or the death penalty if violence was involved.¹⁴⁵

Often, women take advantage of social networks to combat domestic violence, complaining to fathers, other male relatives, or community leaders who mediate in the situation. These are important resources that should be built into public awareness campaigns. In many cases, women are simply unaware of their rights under the law, suggesting the necessity for information campaigns.¹⁴⁶

¹⁴⁵ Bureau of Democracy, Human Rights, and Labor, US Department of State, “Country Reports on Human Rights Practices—2004: Tunisia,” 28 February 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm>, accessed 21 June 2005.

¹⁴⁶ Angel Foster, Associate and Director, Middle East and North Africa Program, Ibis Reproductive Health, speech at Woodrow Wilson International Center for Scholars, 8 June 2005.

In response to initiatives by women's NGOs, most notably the Women's Aid Organization, **Malaysia** passed the Domestic Violence Act of 1994 (enacted into law in 1996), which defines domestic violence quite broadly to include threats of physical violence; compelling the victim to perform acts "sexual or otherwise" from which the victim has the right to abstain; and even "causing mischief or destruction or damage to property" to cause "distress or annoyance" to the victim.¹⁴⁷

Domestic violence continues to occur in Malaysia at high rates. Therefore, the rules of evidence are thought to be in need of review, in order to facilitate legal action against the perpetrators. Also, NGOs and the government both provide counseling services for victims of domestic abuse.¹⁴⁸

¹⁴⁷ http://www.learningpartnership.org/legislation/natl_malaysia.phtml, accessed 21 June 2005.

¹⁴⁸ Bureau of Democracy, Human Rights, and Labor, US Department of State, "Country Reports on Human Rights Practices—2004: Malaysia," 28 February 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41649.htm>, accessed 21 June 2005.

HONOR KILLINGS

“Honor” killings are defined as murder committed within the family to erase a presumed blemish on the family’s reputation caused by a member of the family, usually female. The victim may be accused of what the community or family considers improper conduct, often sexual. Typically, this will include adultery or premarital sexual contact, dating or marrying without the family’s consent, immodest behavior, and the like. An appearance of improper behavior is sometimes seen as sufficient cause, regardless of whether any actual misconduct occurred. In quite a few instances, the dishonor that is supposed to be erased through the killing of the woman occurred through no fault of her own, for example, because she was kidnapped or raped, or simply became the object of malicious gossip, for example by a thwarted suitor. Tradition and tribal custom are usually at the root of these notions of honor and shame. While the incidence is hard to measure, the United Nations Population Fund has estimated that as many as 5,000 women and girls are murdered by family members each year in this context.¹⁴⁹

The murderers of these women often emerge unscathed and, in fact, may receive approbation for their act from the community. In other instances, they will be brought to trial but the penalty may be suspended or be extremely minor. Underlying this are two notions: that female sexual misconduct can force a male to commit a crime for which he cannot be held fully accountable and that it is the right of a husband, father or other male relative to judge and punish the personal conduct of the family’s women, even to the point of taking their lives. Neither of these beliefs is compatible with the rule of law.

It is worth noting that honor crimes occur among Christians in the Middle East, as well as among Muslims. The use of “honor” as a defense has also been recognized in other regions, such as Brazil. Honor crimes are not inherently Islamic; they have more to do with tribal and traditional values.

Goals

- To eliminate honor killings in Muslim countries, making this type of defense illegal
- To remove the distinction between “honor killings” and other forms of murder
- To provide timely recourse for young women threatened by honor killings

Key Challenges and Implementation

1. In these cases, the murderers are always male relatives of the victim, such as a father, brother, or husband. A female relative may also play a role in the crime. Sometimes, a very young member of the family is selected to commit the murder, as this will make it even easier to escape prosecution.
2. Honor crimes are based on the premise that a family’s, tribe’s or clan’s honor is personified in the sexual conduct and conformity of its women and that a woman’s body and behavior

¹⁴⁹ United Nations Commission on the Status of Women. UNFPA in the News. <http://www.unfpa.org/news/coverage/february%2026-march%2011%202005.htm> [accessed June 15, 2005]

are subject to the control, judgment, and sanction of her male relations.¹⁵⁰ In some rare instances, the male partner of the offending female may be killed instead or in addition to the woman. These acts represent the continued existence of archaic, parallel systems of justice derived from tribal and local, patriarchal custom.

3. Killing in the name of honor continues to enjoy a special status in the judicial practice of some Muslim countries. For instance, even though honor killings are illegal in **Lebanon**, men who commit honor killings are allowed to use that as a mitigating circumstance in their trials and might receive only a few months in jail.
4. Similar defenses are not available to women accused of murdering a husband or other male relative.
5. In the case of Pakistan, heirs have the ability to pardon the murderer. This is also the case in some other countries, such as Jordan. “Pardoning” the murderer is an alternative way to enable very light sentences, and the ability to do so lies with the nearest male relative of the victim—a person who is generally also closely related to the perpetrator, often the very person who ordered her death in the first place. So a father who has his son kill his daughter then gets to “pardon” the son so that the son receives a light punishment, if any.

Model Case

Tunisia

In 1993, the Tunisian government passed laws that sentence spousal abusers to five years in prison and eliminate the distinction between “honor killing” and other forms of murder.¹⁵¹

Other Cases

Jordan

The criminalization of honor killings of daughters and sisters and wives has become a major social issue in Jordan and has attracted the attention of some high-ranking opponents of the practice, including the country’s monarch, King Abdullah II.¹⁵² “The king has backed legislation to put honor killings on a par with other murders and has encouraged public support to change the law. ... The fact that the royal palace has taken such a stance has translated into tougher sentencing and investigations of honor killings by the courts and police. The king’s support has also encouraged activist groups to speak out more strongly against honor killings.”¹⁵³ In December 2001, the Jordanian Cabinet approved several amendments to the Civil Status Law. Because of an amendment to the Penal Code, perpetrators of honor crimes are no longer exempt from the death penalty. Judges are still permitted to commute the sentences of the convicted. However, a phrase was added to allow women who killed their husbands in comparable circumstances to benefit from reduced penalties. These changes in Jordanian law were made in

¹⁵⁰ “Addressing Violence Against Women: Piloting and Programming.” UNFPA. Rome, Italy, 15/19 September 2003

¹⁵¹ Tunisia Praised for Efforts To Protect Women’s Rights. US Department of State. <http://usinfo.state.gov/dhr/Archive/2005/June/15-735866.html> [accessed 12 July 2005]

¹⁵² Modingham, Valerie. “Reforming the Family Laws in the Middle East and North Africa.” UNESCO Seminar, *Evolution of Family Laws in the Maghreb and Beyond*. 3 May 2005. [accessed 19 July 2005]

¹⁵³ Stephen Franklin, [“Jordan Begins to Punish Practice of ‘Honor Killings’”](#), *The Chicago Tribune*, 1 September 2000.

the form of a temporary law while Parliament was out of session, because of resistance from the Lower House. Thus, they still need to be ratified in order to become permanent.

Turkey

Recognizing that honor killings are premised on a particular set of values and attitudes, the government of Turkey has embarked on research to look into the backgrounds of those who commit such crimes. By studying the profiles and biographies of prisoners convicted of these kinds of killings, Turkish authorities hope to design education programs and other preventive policies.¹⁵⁴

Honor Killing: Summary	
Country	Legal Status of Honor Killings
Algeria	Article 279 of Penal Code provides an excuse from penalty for either spouse who catches the other committing adultery.
Egypt	Article 237 of the Penal Code provides for reduced penalties for husbands who kill wives discovered in the act of adultery.
Indonesia	Honor killings are unknown.
Iran	Only the father of the victim has the right to demand the death sentence; the punishment under Iranian law remains lenient.
Jordan	Permits honor crime leniency. "He who commits a crime in a fit of fury caused by an unrightful and dangerous act on the part of the victim benefits from a reduction of penalty." A clause was cancelled in the temporary law of 2001 and a new clause was added providing reduced penalties for a wife who kills a husband discovered in the act of adultery.
Lebanon	If a defendant can prove a crime was an honor crime, the sentence is commuted to 1 to 7 years imprisonment. ^a Article 562 of Penal Code (provides a reduced penalty for a man who finds a female relative in the act of unlawful sexual intercourse. Until 1999, this law had provided for an exemption from penalty in some circumstances.
Malaysia	
Morocco	Honor crimes are extremely rare; Article 418 of the Penal Code states "Murder, injury and beating are excusable if they are committed by a husband on his wife as well as the accomplice at the moment in which he surprises them in the act of adultery."
Pakistan	Honor crimes carry a maximum imprisonment of 25 years and a minimum of 10 years for the offence, although the victim's heirs are entitled to pardon the murderer.
Syria	The law (Article 548 of the Penal Code) specifically provides for reduced sentences in honor crimes.
Tunisia	There is no distinction between honor killing and other forms of murder.
Turkey	Murder laws formerly contained a specific provision for reducing the maximum sentence of 24 years imprisonment to 8 years if the perpetrator was "provoked." The sentence was raised to 24 years in 2003. After EU European Union pressure, Turkey prohibited family members from being able to claim "provocation" and thereby receive lighter sentences.
<p>^a"Lower House again rejects canceling Article 340 of Penal Code," Jordan Times, 27 January 2000. http://www.jordanembassyus.org/01272000001.htm [accessed 1 July 2005].</p>	

¹⁵⁴ "Turkey to Study Honour Killings." MSNBC. <http://www.ntvmsnbc.com/news/328660.asp> [accessed 15 June 2005]

APPENDIX INTERNATIONAL CONVENTIONS AND TREATIES

Convention on the Elimination of All Forms of Discrimination Against Women

The text of the Convention can be accessed online at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, in several languages.

Ratification of CEDAW ^a		
Country	Signatory?	Reservations
Algeria	yes	2; 9-2; 15-4; 16; 29-1
Egypt	yes	2; 9-2; 16; 29-1
Indonesia	yes	29-1
Iran	no	N/A
Jordan	yes	9-2; 15-4; 16-1c,d,g
Lebanon	yes	9-2; 16-1c,d,f,g; 29-1
Malaysia	yes	5a; 7b; 11; 16-1a,c,f,g
Morocco	yes	2; 15-4; 9-2; 16; 29-1
Pakistan	yes	29-1*
Syria	yes	2; 9-2; 15-4; 16-1c,d,f,g; 29-1
Tunisia	yes	9-2; 16-1c,d,f,g,h; 29-1, 15-4 ^b
Turkey	yes	29-1

^a<http://www.un.org/womenwatch/daw/cedaw/>, accessed 28 June 2005

^bAdditionally, there is a general reservation against the contradiction of the country's constitution.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly toward the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing

and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned;
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those

parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.¹⁵⁵

¹⁵⁵ Muslim states have placed reservations on some clauses in the convention (see table). Article 2 is a basic condemnation of discrimination, and contains a pledge on behalf of all signatories to combat gender discrimination forcefully in a number of ways. Article 9-2 deals with the transmission of citizenship to children (see the chapter on citizenship for more details). Article 15 deals with the equality of women before the law and guarantees equal rights in court, to conclude contracts, and to choose domicile. Article 16 concerns marriage, divorce, and child custody. Article 29-1 allows states to be brought before the International Court of Justice over violations of the treaty. Article 29-2 specifically makes it clear that acceptance of this jurisdiction is optional to signatories of the treaty, and a large number of nations took this exemption.

GLOSSARY OF ISLAMIC TERMS

- faskh**—revocation of marriage (annulment). *Faskh* can be invoked for a number of reasons, most of which include one or the other spouse converting to or from Islam.
- fiqh**—Islamic jurisprudence and legal rulings. *Fiqh* typically refers to the legal rulings of the four *madhahib*.
- hadith**—the “traditions,” parables from the life of the prophet Muhammad, indicating what he said, did, and approved of in others around him. Along with the Qur’an, the *hadith* form the main basis for Islamic law.
- ’idda**—a waiting period after a woman divorces, usually about three months (but longer if she is pregnant).
- ijbar**—forced marriage, arranged by the bride’s *wali*.
- kafa’a**—equality between potential spouses, usually referring to social and economic standing.
- khul’**—a means by which a woman may obtain a divorce through payments to her husband (usually repayment of some or all of her *mahr*).
- madhhab** (pl. **madhahib**)— schools of thought on Islamic law. There are four *madhahib* in Sunni Islam: Hanafi, Maliki, Shafi’i, and Hanbali. Shi’a religious law is sometimes referred to as a fifth *madhhab*, Ja’fari.
- mahr**—the dowry paid by a groom to his bride at the time of marriage.
- mata’a**—compensation paid by the husband to the wife after *talaq* or if fault for the divorce lies with the husband.
- moudawwana**—the Moroccan code of family law.
- mubarat**—see *khul’*.
- qadi**—a religious judge in an Islamic court.
- shari’a**—canonical Islamic law drawn from the Qur’an and the *hadith*.
- tafriq**—a divorce obtained by either spouse through judicial ruling, due to injury, discord, or a failure of the husband to fulfill his marriage duties.
- talaq**—repudiation of marriage (Islamic divorce). *Talaq* can mean divorce in any form. A particular Islamic divorce, called *triple talaq*, whereby a husband proclaims “*talaq*” to his wife three times to divorce her, is particularly controversial. If a husband delegates his right to *talaq*, to his wife or to a third party, this is called *talaq tafwid*. The delegation can occur at the time of marriage or in a subsequent agreement.
- ta’liq**—conditional divorce, with the conditions usually set at the time of marriage.
- wali**—legal guardian. The *wali* must be male and is typically the father (or the grandfather if the father is deceased); however, the *wali* may be any male relative.

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For nearly 60 years, decisionmakers in the public and private sectors have turned to the RAND Corporation for objective analysis and effective solutions that address the challenges facing the nation and the world. These challenges include such critical social and economic issues as education, poverty, crime, and the environment, as well as a range of national security issues.

Today, RAND researchers and analysts continue to be on the cutting edge of their fields, working with decisionmakers in both the public and private sectors to find solutions to today's difficult, sensitive, and important problems. Through its dedication to high-quality and objective research and analysis and with sophisticated analytical tools developed over many years, RAND is engaged with its clients to create knowledge, insight, information, options, and solutions that will be both effective and enduring.

The RAND Center for Middle East Public Policy (CMEPP) provides expertise on the Middle East. CMEPP analysts are in touch with political, social, economic, and technological developments in and around the region. Through research and analysis, CMEPP helps public and private decisionmakers solve problems, tackle challenges, and identify ways to make society safer, smarter, and more prosperous.

WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

The Woodrow Wilson International Center for Scholars is the living, national memorial to President Wilson established by Congress in 1968 and headquartered in Washington, D.C. It is a nonpartisan institution, supported by public and private funds, engaged in the study of national and world affairs. The Wilson Center establishes and maintains a neutral forum for free, open, and informed dialogue. The Center commemorates the ideals and concerns of Woodrow Wilson by: providing a link between the world of ideas and the world of policy; and fostering research, study, discussion, and collaboration among a full spectrum of individuals concerned with policy and scholarship in national and world affairs.

The Middle East Program at the Wilson Center was launched in February 1998 in light of increased U.S. engagement and the profound changes sweeping across many Middle Eastern states. In addition to spotlighting day-to-day issues, the Program continues to concentrate on long-term developments and their impact on political and social structure, economic development, and relations with the United States. The Middle East Program draws on domestic and foreign regional experts for its meetings, conferences, and occasional papers. Conferences and meetings assess the policy implications of: long-term political, social, and economic developments in the region and individual states; the Middle East's role in the international arena; American interests in the region; the threat of terrorism; and strategic threats to and from the regional states. The Program pays special attention to the role of women, youth, civil society institutions, Islam, and democratic and autocratic tendencies.