

# MIDDLE EAST PROGRAM & GLOBAL WOMEN'S LEADERSHIP INITIATIVE

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Introduction 1

The Role of Women's  
Human Rights Norms in  
Transnational Justice 4

Can International  
Conventions Protect  
Women? 9

Arab Women at a Glance 10

Women's Rights in Yemen:  
Between Rhetoric and  
Practice 13

Barriers to Women's Political  
Participation in Jordan 17

Transcending Barriers to  
Human Rights in the Region:  
The Way Forward 19

Egypt's Case 21

Lifting of CEDAW  
Reservations by Tunisia  
in the Context of the  
Arab Spring 25



## Can International Human Rights Norms Secure Women's Rights in the MENA Region?

### INTRODUCTION

On July 10, 2013, the Global Women's Leadership Initiative and the Middle East Program—in collaboration with the Environmental Change and Security Program and the Global Health Initiative—hosted two panel discussions at the Woodrow Wilson International Center for Scholars on the topic, "Can International Human Rights Norms Secure Women's Rights in the MENA Region?" Jane Harman, President, Director, and CEO of the Wilson Center, provided introductory remarks. Haleh Esfandiari, Director of the Middle East Program (MEP), moderated the first panel, and Rangita de Silva de Alwis, Director of the Global Women's Leadership Initiative (GWLI), moderated the second panel. The event also marked MEP's 129th meeting on gender since the program's launch in 1998.

Jane Harman opened the meeting by introducing MEP and GWLI's Women in Public Service Project and referred to the Wilson Center and GWLI's involvement in the previous day's Women in Public Service Project (WPSP) Institute at Bryn Mawr College. She recapped the remarks made by Hillary Clinton and emphasized Clinton's revolutionary statement from the Beijing Conference on Women in 1995: "women's rights are human rights." Harman further outlined the important role the WPSP and MEP play in realizing Clinton's vision and inspiring women to explore their capacity to be change agents in their own societies and around the world. She then went on to emphasize the unique pedagogy central to the WPSP learning institutes: the idea that learning is a two-way process in which younger and older generations of women can learn from one another.

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## About the Middle East Program

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

## About the Global Women's Leadership Initiative (GWLI)

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

**The following papers are based on the authors' presentations at the Woodrow Wilson International Center for Scholars on July 10, 2013. The opinions expressed herein are those of the authors and do not reflect those of the Woodrow Wilson Center.**

Harman concluded by reiterating the WPSP’s “50 by 50” goal of at least 50 percent female representation in political and civic leadership around the world by 2050, concluding with the optimistic thought, “what a different world it will be.”

Haleh Esfandiari introduced the first panel by alluding to the recent developments in Egypt where women’s rights have been increasingly eroded and marginalized. She asked the panelists whether they thought existing international human rights conventions could supersede laws and traditional practices that undermine women’s rights, and whether international human rights conventions could salvage the rights that women have lost. Each panelist shared their thoughts on these issues; panelists included Fatima Sbaity Kassem, Visiting Scholar for the Institute for Research on Women and Gender (IRWaG) at Columbia University, and former Director of the UN-ESCWA Centre for Women; Lilia Labidi, Visiting Research Professor for the Middle East Institute at the National University of Singapore, former Minister of Women’s Affairs for Tunisia, and former Fellow at the Woodrow Wilson Center; and Moushira Khattab, former Public Policy Scholar at the Woodrow Wilson Center, former Egyptian Ambassador to South Africa and to the Czech and Slovak Republics, and former Minister of Family and Population for Egypt.

Rangita de Silva de Alwis moderated the second panel. She began by reminding the panel that human rights are universal and not limited to one region or community. She also outlined the cornerstones of a universal human rights framework. Her framework articulated that human

rights are indivisible and inextricably interlinked; for example, civil and political rights are connected to economic, social, and cultural rights. Economic rights cannot be vindicated or asserted in a vacuum, and access to economic resources is often premised on access to information and freedom of movement, which are civil and political rights. She referred to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was one of the first human rights conventions to develop a holistic framework of rights. Finally, de Silva de Alwis emphasized that state accountability is the critical bedrock of the rights framework and is the touchstone to translate the rhetoric of rights into reality. She asked the panelists—Fahmia Al Fotih, Communication Analyst for the United Nations Population Fund (UNFPA) in Yemen; Kahina Bouagache, women’s rights activist and corporate and international lawyer in Algeria; and Eman Hussein, Professor of Education at Al-Balqa’a Applied University in Jordan—to speak to the ways in which human rights guarantees have been diluted and minimized, even when they are enshrined in the constitutions and legal frameworks of many of the Middle East and North Africa (MENA) countries.





## The Role of Women's Human Rights Norms in Transnational Justice

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

Two years after the Arab Spring, we are at another inflection point in the history of the Middle East and North Africa (MENA). As countries in the MENA region continue in their social and political transformations toward democracy, it is critical to examine the importance of human rights tools in this transition. Justice processes in times of transition must be marked by an allegiance to international law and human rights, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been ratified by all but seven countries (United States, Palau, Iran, Somalia, South Sudan, Sudan, and Tonga).

The human rights framework is defined as a universal and inalienable set of legal guarantees protecting individuals and groups against actions and omissions by state and non-state actors that affect their freedom and human dignity. A fundamental cornerstone of the human rights framework is the accountability of the state to respect, protect, and fulfill the rights of every individual.

The international human rights discourse is a universally accepted framework and is a powerful tool to advocate, articulate, and monitor women's rights. Most importantly it provides the tools to draft, enforce, and implement gender-sensitive laws. As a universally agreed upon framework, the human rights discourse can be used as a benchmark and a standard-setting document in law reform, litigation, and advocacy. Framing gender equality and women's access to justice in rights terms also guarantees the vindication of those rights and ensures remedies for the violation of rights.

The human rights-based approach also emphasizes the accountability of duty-bearers who are both state and non-state actors, and provides legal remedies to claim holders. When duty-bearers fail to comply with human rights instruments, aggrieved rights holders are entitled to remedies before a court or other adjudicator. The

justiciability of rights affords powerful redress mechanisms to protect women. In an interconnected framework, women's right to equality is dependent and predicated upon women's equal right to decision-making both in the private and public spheres. Finally, the human rights framework has galvanized powerful movements on women's rights which can revitalize the women's movements in the MENA region.

The now established indivisibility of rights affords an important channel through which women can exercise their rights to the full panoply of civil, political, economic, social, and cultural rights. In order to level the playing field for women in political and public life, women must be bearers of *de facto* and *de jure* equality to citizenship, property, land, inheritance, employment, and economic resources (including benefits). There must also be equality in the family and in marriage, and freedom from all forms of violence both in the public and private spheres.

A rights-based approach to gender was first acknowledged in 1993 at the World Conference on Human Rights in Vienna. The Vienna Declaration and Programme of Action states:

*The human rights of women and the girl child are an alienable, integral and indivisible part of human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.<sup>1</sup>*

Another milestone was the final document of the 1995 Fourth World Conference on Women, the Beijing Platform of Action. The Platform of Action is an international political program of 12 strategic areas of critical concern (women and poverty, education and training for women,



women and health, violence against women, women and armed conflict, women and the economy, women in positions of power and decision making, institutional mechanisms for the advancement of women, human rights and women, women and the media, women and the environment, and rights of the girl child).<sup>2</sup> Paragraph 134 of the Beijing Platform reads in part: “The equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security.”<sup>3</sup>

Without the active participation of women and the incorporation of women’s perspective at all levels of decision-making, the goals of equality, development, and peace cannot be achieved.

Despite the widespread movement towards democratization in the MENA region countries, women are largely underrepresented at most levels of government, especially in ministerial and other executive bodies. Women in the MENA region have made little progress in attaining political power in legislative bodies or in achieving the target endorsed by the Economic and Social Council in 1995 of 30 percent women in positions of decision-making.

Transitional periods provide powerful windows of opportunity to address deep-seated gender inequalities, reevaluate the status of women, and recast constitutions and legal frameworks. CEDAW and the seven core human rights treaties are critical bulwarks in the fight for the advancement of women’s rights in the MENA region and are powerful tools to address the gaps in law and practice. The transformative potential of human rights law must be a benchmark of standard setting in drafting and revising national constitutions and legislations. Transitional justice processes provide an opportunity for governments in the region to take further steps to align national laws with existing international commitments under CEDAW.

Several CEDAW articles, including Article 7,<sup>4</sup> call for greater representation of women in political and public life in addition to the implementation of targeted policies and programs. This includes temporary special measures—in accordance with Article 4, Paragraph 1<sup>5</sup> of the Convention and the Committee’s General Recommendation No. 25—which strive to increase the number of women in the formal workforce, especially the public sector. United Nations Security Council Resolution 1325, adopted on October 31, 2000, provides language that reinforces the significance of gender throughout the transitional process and mandates that Member States “ensure increased representation of women at all decision-making levels... for the prevention, management, and resolution of conflict.”<sup>6</sup>

Articles 2 through 4 of CEDAW call on States Parties to actively pursue the elimination of discrimination in women’s political participation through legal and temporary special measures. An example of a special measure to speed up achievement of *de facto* equality are quotas for women’s seats in the legislative, executive, or judiciary branches of government.

Article 8<sup>7</sup> brings women’s political rights to the international arena. It instructs States Parties to “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.”

The CEDAW Committee’s General Recommendation No. 23 on Women in Political and Public Life provides overviews of women’s political and public lives and needs in various parts of the world. Importantly, it clarifies how CEDAW provisions on women’s political participation and priority measures can be implemented at national, local, and international levels.

The international bill of human rights—the Universal Declaration of Human Rights (UDHR), the International Covenant on

Civil and Political Rights (ICCPR), and the International Convention on Economic, Social and Cultural Rights (ICESCR), all work together to provide a holistic foundation for women's right to political participation. The Universal Declaration of Human Rights states that everyone has the right to take part in the government of his or her country. The empowerment and autonomy of women and the improvement of women's social, economic, and political status is essential for the achievement of both transparent and accountable government and administration, and sustainable development in all areas of life.

The ICCPR includes two over-arching non-discrimination rights: Article 2<sup>8</sup> guarantees to all individuals, within a State party's territory and subject to its jurisdiction, that the rights enshrined in the ICCPR will be respected and ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; and Article 3<sup>9</sup> guarantees the equal right of men and women to enjoy all the civil and political rights contained in the Covenant.

## MOVING BEYOND RHETORIC

The international human rights framework provides a comprehensive set of policies to preserve and protect women's rights worldwide, but how do we take concrete measures to move beyond rhetoric and ensure that such legislation is implemented?

The application and implementation of CEDAW and the CEDAW Committee's recommendations into law and policymaking is essential to the integration of human rights into national laws. A number of countries emerging out of conflict have enshrined equal protection provisions in their constitutions. Article 2 of CEDAW<sup>10</sup> provides a blue print for a strong anti-discrimination clause which includes gender as a category of discrimination.

Special temporary measures or quotas are an effective way of reaching the goal of equality in political life. However, these quotas must go hand in hand with awareness raising, education, mentoring, and training on gender sensitivity.

Women's unequal right to citizenship is a barometer to women's equality in the MENA region. In many countries in the MENA region, women do not have equal rights to pass on their nationality to their children.

In Jordan and Lebanon, women married to foreigners are mobilizing and organizing to fight for their children's citizenship rights. In both countries, women who marry non-nationals are unable to pass on nationality to their children or spouses, thus disallowing them access to public services such as health care, education, or social security. In contrast, men who marry foreigners do not experience such disparate treatment. When Jordan ratified CEDAW in 1992, it entered a reservation to Article 9, Paragraph 2, which calls for "Parties to grant women equal rights with men with respect to the nationality of their children,"<sup>11</sup> as well as on Article 15, Paragraph 4, which relates to freedom of movement and the right to choose residence and domicile.<sup>12</sup> The Nationality Law does not grant a Jordanian woman the right to pass her nationality to her children, even though Article 9 of the law states, "The children of a Jordanian shall be Jordanian wherever they are born."<sup>13</sup>

Family law is often the litmus test for women's equality. Equal rights in the family is enshrined in Article 9 of CEDAW. Despite this guarantee, many countries in the MENA region have made reservations to this Article. The government of Algeria declared that it is prepared to apply the provisions of this article on the condition that they do not conflict with the provisions of the Algerian Family Code. The Algerian government initially expressed reservations concerning the provisions of Article 9, Paragraph 2, which was stated to be incompatible with the former provisions of the Algerian Nationality Code and the Algerian Family Code. Under Article 26 of the former Algerian Nationality Code, a child may

acquire the nationality of the mother (provided that the Ministry of Justice does not object) only when the father is either unknown or stateless, when the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria, or when the child is born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory.<sup>14</sup>

The Nationality Code was amended in 2005, giving Algerian women the right to transfer their nationality to their children born to a foreign father—a right which already applied to men with wives who were foreign nationals. Following this reform, Algeria officially removed their reservation relating to Article 9. However, reservations to Articles 2, 15, and 16 have yet to be lifted. These reservations violate the object and purpose of the CEDAW Convention.

Restrictions to women's freedom of movement are another human rights violation that must be addressed in the MENA region. Although many countries have removed restrictions in the laws on women's freedom of movement, in Yemen, women can only obtain personal identity cards or passports with their male guardian's consent. Customary practice, however, can still require women to demonstrate proof of their husband's or guardian's consent. Several countries in MENA also consider that women don't have equal rights over the choice of domicile.

In addition to reforms of *de jure* laws, these laws must be translated into practice and rights into action. Access to justice enables women to claim these rights and vindicate human rights guarantees. Access to justice calls for women's representation in the judicial branch, the creation of an independent judiciary, legal aid for women, and gender-sensitivity training for judges.

Unless women are guaranteed their human rights both *de jure* and *de facto*, the democratization in the MENA region will not meet its full promise.

## ENDNOTES

- 1 Vienna Declaration and Programme of Action, 25 June 1993 <http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>
- 2 The Fourth UN World Conference on Women generated the Beijing Platform for Action, which is organized around 12 Critical Areas of Concern. <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>
- 3 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995)
- 4 **Article 7** – 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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article7>
- 5 **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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4>
- 6 S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000)
- 7 **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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article8>
- 8 **Article 2** – 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- 9 **Article 3** – The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.
- 10 **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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2>
- 11 **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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>
- 12 **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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article15>
- 13 Immigration and Refugee Board of Canada, *Jordan: Information on whether children born in Jordan or outside Jordan, of a mother who is a Jordanian citizen and a father who is a stateless Palestinian (married in Jordan) have rights of citizenship and/or residence in Jordan and if so, the procedures to be followed to obtain this status*, 1 February 1995, JOR19723.E, available at: <http://www.refworld.org/docid/3ae6ac4137.html>
- 14 *Law No. 1970-86, 15 December 1970, Nationality Law []*, 18 December 1970, available at: <http://www.refworld.org/docid/3ae6b4d714.htm>



## Can International Conventions Protect Women?

Haleh Esfandiari, Director, Middle East Program, Woodrow Wilson Center



The revolutions that have been sweeping the Middle East and North Africa (MENA) region have not been gender-friendly. They have marginalized women and dismantled some of the rights women had previously won. Today, in the countries of the Arab Spring, women are harassed on the streets. They have to watch what they wear, how they walk and talk, and in whose company they are seen. The situation varies from country to country. In Egypt, a group of young women demonstrators were arrested by the police and subjected to virginity tests. In Iran, women who did not observe the proper *hijab* were punished by receiving 70 lashes. In Tunisia, little girls are encouraged to cover their hair.

The last three decades witnessed major but uneven changes for women in the MENA region. Women made great progress in the fields of education, political participation, and economic empowerment. But the personal status laws that regulate women's personal rights either changed in incremental steps, or took a turn for the worse. The personal status law in Iran was suspended following the 1979 Islamic Revolution. Thirty-four years later, women still do not enjoy the same rights they had before the revolution.

In 1978, Iranian women in the millions joined men on the streets of Tehran and other Iranian cities to call for an end to the monarchy and the establishment of an Islamic republic. They certainly did not demonstrate for a diminution of their rights, and the Tunisian, Libyan, Yemeni, and Egyptian women who poured in the millions into the streets of Arab capitals two years ago did not expect to be treated as second-class citizens. Moreover, people in these countries did not march for an Islamic republic. They called for *democracy, dignity, and the rule of law*. For decades and for generations they had been deprived of all three.

The Arab Spring we remember started in Tunisia with the self-immolation of a street vendor, Mohamed Bouazizi, in the city of Sidi Bouzid, who could no longer tolerate the harsh-

ness of his life and the harassment he suffered at the hands of the police. His death sparked a revolt that neither Tunisia nor any Arab country had witnessed in decades. Little, sleepy, secular Tunisia became the symbol of the quest for dignity of the Arab citizen. In Tunisia, nobody was surprised to see men and women demonstrating together. After all, Tunisia was the most secular country in the Arab world. By contrast, in Yemen, women and men took over two sides of the square and did not mix.

However, this was not the case in Egypt. In Cairo, men and women gathered together in Tahrir Square. Egyptian women had never felt fully safe on the streets, but Tahrir opened a new chapter in civility and respect for women. Women—young and old, Islamist and secular—felt safe demonstrating alongside men in Tahrir Square. The Arab Spring, it was thought, was going to change prevailing attitudes and the patriarchal culture. From now on, women were going to be treated respectfully as equal citizens. In the longing for democracy, all eyes in the region were on Egypt. As the most important country in the region, Egypt was going to set an example of respect for the rights of citizens, women, and for human rights. Once Egypt walked down the path of democracy, it was said that all the other countries in the Arab world would follow suit.

The reality turned out differently—as it turned out to be the case in Iran after the establishment of an Islamic regime. After the Iranian Revolution, the fate of women was sealed. The Constitution of the Islamic Republic accorded women rights in the framework of Islamic law; theoretically, they enjoyed equal rights as citizens—as long as this did not conflict with Islamic law.

So, too, in Egypt. The Muslim Brotherhood came to power with a slim majority. As such, they were able, among other things, to influence the drafting of the Constitution. The new Egyptian Constitution was not gender-friendly. Women suddenly felt marginalized. The army that took power after the overthrow of President

Hosni Mubarak abolished the quota system that guaranteed a certain percentage of parliamentary seats for women. In the parliamentary elections of 2011, only two percent of the parliamentarians were women. It was one of the members of this parliament who proposed lowering the age of marriage for girls to nine and decriminalizing female genital mutilation. Both laws had passed under the Mubarak regime. It was as if parliament had no other matter to discuss but two laws pertaining to women's rights. In Tunisia, two years after the fall of President Zine El Abidine Ben Ali and the rise of the Islamist Ennahda party, the third draft of the constitution is being debated. All along we witnessed a struggle between the secularists and the Islamists over a large number of issues, including women's rights and the role of *shari'a*. Once the constitution is drafted, a referendum will decide its fate.

In the absence of gender-friendly constitutions, women across the region have been forced to turn to international conventions—like the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and UN Security Council Resolution 1325—as platforms from which to press for their rights. Here, too, there are problems. The interim Tunisian government that took over after the removal of

President Ben Ali withdrew the reservations it had registered against CEDAW, but the coalition government led by Ennahda has not yet notified the United Nations. Most Arab countries that have ratified CEDAW have objected to a number of its articles, making it difficult for women to use CEDAW to push for their rights. In Iran, efforts by Iranian women's groups notwithstanding, the Iranian government, to this day, has not ratified CEDAW.

Women in the MENA region today can only press their governments to respect the international conventions that their governments have signed on to, hoping in time that these conventions will supersede national laws. It is vital that articles of these international conventions are included in the constitutions when it comes to women's rights.

The conventions are there, and the constitutions are being drafted; what women need in the region are bold and imaginative governments that will promote and adopt these conventions and once and for all provide women with total equality under the law. The governments in the MENA region must adhere to the concept that Hillary Clinton said in Beijing in 1995: "Human rights are women's rights and women's rights are human rights."



## Arab Women at a Glance

**Fatima Sbaity-Kassem**, *Visiting Scholar, Institute for Research on Women and Gender (IRWaG), Columbia University, and former Director, UN-ESCWA Centre for Women*

I would like to start by invoking the words of Hillary Clinton from the 1995 Beijing Conference on Women: "Women's rights are human rights, and human rights are women's rights." Women's rights in the MENA region have really advanced since the United Nations Decade for Women, which started in 1975. Since then, there have been four global conferences on women that have raised gender awareness worldwide.

These conferences were the birthplace of several international instruments that were developed

to ensure that the rights of women were protected. For example, there is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979, and the Beijing Platform for Action, which sets quotas for women in politics at 30 percent. Additionally, we have UN Security Council Resolution 1325, which deals with women's roles in peace-building. This was a very important resolution—it was a landmark—as it was the first resolution adopted by the Security Council

addressing women. Then we have the Istanbul Convention adopted in July 2013 on preventing violence against women and girls and the Millennium Development Goals (MDG 2 and 3). Pressure from the international community has been a positive contribution to the advancement of the rights of women and girls in the region.

Since 1975, there have been significant advances in women's rights, access to health services, socio-economic gains, and political participation in the MENA region. Countries have established ministries, commissions, councils, and committees for women; have developed national strategies and plans of action for women's advancement; and have adopted policies and affirmative action measures for women's empowerment. There have been efforts to mainstream gender into policymaking, as well as advancements in building national and regional observatories on women in cooperation with civil societies and NGOs.

In recent years, there have been significant strides toward greater gender equity. Countries have made efforts to review and amend discriminatory personal status, family, nationality, labor, and social security laws; have reviewed and amended their penal codes to address violence against women; and have enforced compulsory elementary education for boys and girls. Women have been granted suffrage rights in almost all Arab countries, the last of which were Kuwait (2005) and Saudi Arabia (2013). Additionally, countries have adopted parity in electoral law in Tunisia and Morocco, and a 30 percent nomination quota in Algeria. Despite such efforts, there are still lingering gender gaps in the status of women and men in society, and the greatest gap exists in women's political participation. However, this is true across the board. If we look at the global ratios of women in parliament, it is rarely more than 20 percent.

The link between wars, political instability, feminization of poverty, violence against women, and the deterioration in the status of women has been established in the findings of several scholarly research studies. Thus, how can we ensure that women's rights are secured through implement-

ing the human rights instruments and policies that have been established?

In order to highlight the challenges that women in the region face, it is important to consider two cases: education and employment. Statistics show that 50 percent of women in the Arab world over the age of 15 are still illiterate. Of course, there is diversity among countries, and even within the same country there are wide disparities. The highest illiteracy rates are in Morocco, Yemen, and the least economically developed countries such as Somalia, Mauritania, Djibouti, and Comoros. We always link education to employment, so when literacy rates increase, you see an increase in women joining the labor force. However, the global average shows that there are only 22 percent of women in the labor force.

With regard to female representation in parliament, I have compiled a comparison of the statistics just before the region's uprisings in 2010 and the current situation in 2013.<sup>1</sup> For example, in Algeria, between December 2010 and April 2013, the proportion of women in parliament increased from 7.7 percent to 31.6 percent. Saudi Arabia is a particularly interesting and important case, where the number of women in parliament increased from zero to 30. It is true that these women were appointed, but it is a step in the right direction. Looking at the cumulative statistics in the MENA region, women's participation in parliament is now at 15.6 percent, whereas a year ago it was 6.7 percent. This has increased due to quotas. In Iraq, because there is a quota, female representation is 25 percent, which is higher than the United States and further highlights the importance of quotas. However, women's participation at any level, not only the parliamentary level, should be encouraged. Women's role and visibility in civil society should not be understated. Women have been appointed as judges for the first time in Egypt and Saudi Arabia; and in Lebanon, women's representation in the judiciary is up to 40 percent.

I see the cup as half full. By observing these trends and patterns over the last three years, we can already see that there are positive and impactful changes being implemented. Things are improving, but social change does not come

overnight. Numbers are important, but there is also a need for changes in culture and institutions. In the midst of the ongoing uprisings in several countries in the MENA region, in which women stood courageously side-by-side with men, violence against women increased, as did threats to roll back previous advances in women's rights. Thus, the question posed herein, as to whether international human rights norms can secure women's rights, is timely. What are the chances that international instruments such as CEDAW can continue to secure women's rights?

Despite successes and achievements in women's rights, gender gaps persist due to innate structural and functional challenges. This is exacerbated by the ongoing conflict and the rising influence of Islamists and political religious groups. Nineteen out of 22 countries in the MENA region are party to CEDAW, but it is not implemented. There is a need to disseminate information about human rights treaties and create mechanisms to ensure accountability; and most importantly, countries must withdraw their reservations to CEDAW. The road to democracy is long and bumpy, but without democracy, and without peace, there will not be gender equality.

### CHALLENGES

1. Gap between *de jure* and *de facto* laws and legislation;
2. Failure to publish, disseminate, implement, and withdraw reservations on CEDAW;
3. Discrimination against women in recruitment, wages, promotion, and training persist, especially in the private sector;
4. High illiteracy, poverty, and unemployment, especially among rural women and female-headed households;
5. Negative stereotyping about women in Arab countries is prevalent, especially in the media;
6. Inadequacy of financial and human resources allocated to national machineries for women;
7. Weakness of coordination, monitoring, evaluation, and follow-up of programs and plans for women's empowerment;
8. Paucity and inaccuracy of sex-disaggregated statistics on women;
9. Absence of gender-awareness and capacity-building programs to sharpen women's skills and disseminate gender equality concepts.

### RECOMMENDATIONS

1. Lobby to enact women-friendly legislation;
2. Disseminate and publicize CEDAW;
3. Raise gender-awareness to change mentalities and eliminate gender bias;
4. Build alliances with champions of women;
5. Create mechanisms for implementation, monitoring, and follow-up of CEDAW;
6. Urge governments to withdraw all reservations to CEDAW;
7. Ensure that *shari'a* is not misinterpreted and women-friendly;
8. Keep religion in the private sphere;
9. Employ all multimedia communication modes including mass media and social media to the advantage of women;
10. Women must impose their presence and participation in all transitional councils by launching campaigns to criminalize failures to involve women.

### ENDNOTES

- 1 See Appendix A for table on women's political representation.

## Women's Rights in Yemen: Between Rhetoric and Practice

Fahmia Al-Fotih, *Communication Analyst, United Nations Population Fund, Yemen*

When I obtained my first personal identification card (ID) and passport, I was with my father. His presence was unquestionable because he had to sign papers and give his approval. It reminded me of the first day he took me to school. At that time, I was not aware of my rights, and I had never read the Constitution of Yemen. Later on, after working in journalism and engaging with civil society organization (CSO) work, I learned a lot about human rights and women's rights in particular. More importantly, I recited the article of the Constitution stating, "All Yemeni citizens are equal."

In 2010, armed with my human rights knowledge and the Yemeni Constitution's equality clause, I went by myself to the Immigration and Passports Authority to renew my passport. I was the only woman there who was not with her male guardian. Confidently, I approached the officer there and asked to renew my passport. Without looking at me, he asked me, "Are you married?" I replied, "No." He said, "Then bring your father or brother so we can process your request." I told him that there was no need for any male guardians and no need for their approval. He finally looked at me, "We here abide by the Constitution that asks for a *mabram* (a male guardian) and cannot disobey it." Happily, I replied that I read the Constitution and there was no such restriction. On the contrary, I told him that the Constitution states that men and women are equal citizens. He replied, confused, "Then it must be there in the Qur'an," but I told him that I read the Holy Book and that it said no such thing about a *mabram*. I asked him to quote the verse from the Qur'an, but he failed to do so. Then, he started saying that the law of *mabram* was applied in Saudi Arabia, and we Muslims had to follow the Kingdom. I stayed strong in my position and told him that I would take the issue to the press. Then, he told me that they could not grant a woman a passport or ID without the approval of her male guardian because she might run away and escape the country, which would cause them problems.

However, in the end, he conceded that he would make an exception, and he would renew my passport without the presence of my *mabram*.

For Yemeni women, obtaining their IDs is like a nightmare. It is a serious dilemma and stories similar to mine are echoed every day in the corners of the Immigration and Passports Authority, where women feel as if they are treated as "second-class" or "half" citizens.

The Republic of Yemen has signed and ratified a number of international human rights treaties—more than 61 of them, according to the National Report of the Ministry of Human Rights. For example, Yemen is one of the few Arab countries that signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984 and the Convention on the Rights of the Child (CRC) in 1991. Unlike other Arab and Muslim countries, Yemen has not made reservations on articles of "gender" or "equality" in CEDAW; the only reservation is on Article 29 (1) regarding "settlement of disputes."<sup>1</sup>

It is worth mentioning that before 1990, and before the unification of Yemen, women in the former People's Democratic Republic of Yemen (South Yemen) were enjoying more freedom and more rights, especially under the Personal Status Law. However, upon unification, this was buried by conservatives, and women had to go back to square one.

Noticeably, Yemen hurried to sign and ratify human rights conventions without taking into account that it would be held accountable for implementing them later on. According to official reports such as the National Human Rights Report (2004), Yemen has improved the status of women, stating that there is "general success in incorporating human rights obligations in domestic laws and regulations." However, in reality, these laws and regulations do not translate into real gains for women, and "legal harmonization does not guarantee implementation and adherence to human rights standards."<sup>2</sup>





Despite signing the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages in 1962, Yemen is still one of the countries where the child marriage rate is high. Every day, we witness tragic stories of child brides.<sup>3</sup> The world has heard the story of 10-year-old Nujood who ran from her 30-year-old husband seeking divorce. There have been campaigns to set a minimum age for marriage at 18 years old, and it was about to be passed when the former cabinet approved the amended law. However, it was delayed in parliament by conservative members. That is why, for instance, the CEDAW Committee expressed concern in its concluding observations to Yemen's sixth periodic report (CEDAW/C/YEM/6, 2007) about the unclear status of the Convention in the national legal system and the lack of compliance with its provisions.

It may be true that Yemen has taken steps to advance the status of women by creating special bodies and departments to tackle women's and children's issues, such as the Women's National Committee and the Supreme Council for Motherhood and Childhood. Yemen has even developed a comprehensive National Strategy for Women's Development (2006-2015). However, these steps are still lacking the mechanisms to implement and confer equality in reality.

Women's movements in Yemen, headed by CSOs, have managed to identify a number of discriminatory laws toward women in the Constitution (particularly child marriage, nationality laws, and the penal code) that were submitted to the cabinet of the ex-regime. As a result, some laws were amended such as the nationality law, whereby a Yemeni woman can grant her nationality to her children from a non-Yemeni husband. However, the discriminatory policy has not fully been removed because a woman can only pass on her nationality to her children from a non-Yemeni husband on certain conditions, such as if her husband dies or he is unknown. Presently, seeing a new window of opportunity in the current transitional period, more than 24 discriminatory laws that were previously identified have been submitted to the National Dialogue,

which will be taken into consideration while drafting the new Constitution. Additionally, Article 232 of the Yemeni Penal Code is one of the most discriminatory laws and actually encourages "honor crimes." It states, "If a husband finds his wife in [an] adulterous situation and he attacks her to the extent she dies, he is sentenced to one-year prison or a fine."<sup>4</sup> That also applies to other male family members if they find their female family members in similar adulterous situations. In practice, the punishment could be reduced to six months or less, or would require merely paying a fine. If a woman, on the other hand, finds her husband in an adulterous situation and she kills him, she is executed.

Between 1998 and 2007, there were 500 recorded murders of women under the scope of "honor crimes." Forty percent of these women were killed due to their husbands' and relatives' suspicion of their behavior; 25 percent were killed for marrying without the approval of their families; 20 percent were killed for being found alone with a man who was not a relative; 5 percent were killed due to doubts about their virginity on their wedding day; 5 percent were killed for objecting to an arranged/forced marriage; and 5 percent were killed for other reasons.<sup>5</sup> This shows that a husband or a male family member can simply kill a woman or girl due to speculation. The law makes the soul of a woman as cheap as a sheep's. This poses the question as to why the religious legislators who first drafted the Constitution did not stick to *shari'a*, which has an equal punishment for men and women. This exemplifies how selective and contradictory some religious scholars are when it comes to women's rights.

The problem is not only related to the state's commitment and its discriminatory laws, but it also has to do with the mindsets of the community and the population. For example, Yemeni law does not criminalize female genital mutilation (FGM). Nonetheless, the Ministry of Health has banned practicing FGM in all health facilities. Now FGM is being practiced outside health facilities and in the absence of medical care, which greatly jeopardizes the lives of girls subjected to this harmful practice.

The list of women's rights violations is long. Despite the fact that the Arab uprising has shaken some stagnant cultural and social norms and made people more cognizant of their rights, a human rights culture is still absent in Yemeni society, and "people's awareness of human rights is blurry."<sup>6</sup> For example, in a recent survey about the knowledge of human rights in Yemeni society, over 78 percent of respondents said that neither their own nor their relatives' rights had been infringed upon, despite the fact that most of them lived in governorates that suffer from shortages in public services, poor infrastructure, and/or security problems. Only 21.5 percent stated that such situations had affected them or one of their relatives.<sup>7</sup> Sadly enough, in the same survey, women respondents did not rate the struggle for women's rights as highly as other human rights concerns. That is not surprising in a country where illiteracy is shamefully prevalent among Yemeni women and poses one of the major challenges to development in society, especially in rural areas where the majority of the female population lives.

In an environment of illiteracy, women are more vulnerable, submissive, and disempowered. Their basic rights are easily violated, and they could easily be forced into early marriage. For example, more than eight Yemeni women die every day due to labor and pregnancy complications. A woman usually does not have the right to choose her partner in the first place, and later on, her choices—such as choosing family planning methods, spacing between births, or even accessing health services—are in the hands of her husband. However, if she is more educated and empowered, she can claim her rights and break this vicious cycle.

A more serious concern is when women are enemies of women's rights, and, in effect, enemies of themselves. A female member in the National Dialogue, who is affiliated with the Yemeni Salafi conservative party, stood strongly against the 30 percent quota that women are fighting for. She claimed that men and women are equal in Islam, so why are women asking for a "Western" quota? In response, a women's rights activist said to her, "I strongly agree, so we have to ask

for 50% female-representation in government then!" This startled the Salafi woman.

Strangely, among all international conventions, CEDAW is seen to pose a threat to so-called "Islamists" and has constantly been under attack since its inception. The Islamists envisage CEDAW as a tool that will disrupt the Muslim family, particularly the roles of women and children. Their anti-CEDAW (or "CEDAW-phobic") writings demonstrate that those who have been attacking CEDAW either have never read the treaty or they read it but have a fundamental problem with CEDAW's basis in gender equality.

In March 2013, the Yemeni Religious Scholars Authority issued a statement condemning the Yemeni government for hosting a regional workshop on "Compulsory Education and Gender Mainstreaming." The religious scholars particularly attacked Amnesty International for trying to integrate gender in school and university curricula. According to them, the practice entails "a blatant call to cancel provisions of Islamic *shari'a* laws and encourages adultery, sodomy and homosexuality, moral decay, and prostitution."<sup>8</sup> The statement accused the United Nations of issuing resolutions that aim to destruct and dismantle the family, such as resolutions that call for ending and preventing violence against women and girls, which is regarded as a "clash for encroachment and provisions of Islam and its laws."<sup>9</sup> The statement contained *fatwas* to ban women's electoral quotas, as quotas are considered to be "confiscating peoples' freedom and imposing women [on people/nations]."<sup>10</sup> The same hostile statement has been distributed in other Arab countries where Islamists have flagged unfriendly agendas toward women.

Admittedly, the development work of international NGOs and the United Nations becomes more challenging and requires more novel strategies and approaches to work in the tumultuous MENA region. In general, human rights could be secured in times of prosperity. However, if the turmoil in the Middle East continues, human rights, and especially women's rights, will be greatly infringed upon and violated.

Currently, the MENA region, including Yemen, lives in a very critical and transitional time in the post-“Arab Spring” context. Since the Arab Spring, there have been drastic changes taking place in the MENA region, and we have seen the fall of dictatorships and changing power actors. Today, there are more challenges than ever. The political situations in most Arab countries have vastly deteriorated, like in Iraq and Syria, and these situations have created insecurity and instability in the region. There are floods of refugees, as well as internally displaced people (IDPs), which have caused a serious humanitarian crisis in the region. Violence is prevalent and has become the daily headline in the MENA region, and this has gravely affected various aspects of daily life for the population. Under such circumstances, women and children are particularly vulnerable, as their needs and rights are overlooked and given less priority.

In Yemen, the social and economic situation has become worse since 2011. Yemen is suffering from many challenges, among which are inflation; poverty, which has recently increased dramatically; increased malnutrition among children; the absence of the rule of law; and the ramifications of recent conflicts in the North and South of the country that have caused a humanitarian crisis. Despite this, Yemenis are pinning their hopes on the outcomes of the ongoing National Dialogue that wrapped up in September 2013. Throughout the Dialogue, Yemeni women have been struggling to secure their rights in the to-be-drafted Constitution of New Yemen. Despite the gloomy situation and negative indicators, Yemeni women are striving for a better a future and a better Yemen in which their rights and dignity are enshrined, secured, and protected.

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2. Yemeni citizens' main concerns, perception of human rights and CSOs, Yemen Polling Center Report, September 2012 [p. 20, 22].
3. <http://www.aljumbhor.net/portal/news-14301.htm> [accessed 03/16/2013]
4. <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> [accessed on 07/01/2013]
5. <http://www.unicef.org/gender/files/Yemen-Gender-Eqaulity-Profile-2011.pdf> [accessed on 06/16/2013]
6. <http://yemen-press.com/news17807.html> [accessed on 06/20/2013]
7. <http://www.yemenstreet.net/news-3080.htm> [accessed on 06/20/2013]

## ENDNOTES

1. **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 1 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. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article29>
2. National Human Rights Report, 2004
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4. Country Assessment on Violence Against Women, Yemen (UN, 2010) [http://www.un.org/womenwatch/ianwge/taskforces/vaw/Country\\_Assessment\\_on\\_Violence\\_against\\_Women\\_August\\_2\\_2010.pdf](http://www.un.org/womenwatch/ianwge/taskforces/vaw/Country_Assessment_on_Violence_against_Women_August_2_2010.pdf)

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## Barriers to Women's Political Participation in Jordan

**Eman Alhussein**, *Professor of Education, Al-Balqa'a Applied University, Jordan*



I am an academic and an activist who had the honor of being raised in a tribal environment in Jordan. I was raised by my mother, who was and still is my role model. She lost her husband when she was still in her 20s, so when we talk about the barriers that women in my country face, we are talking about what my mother lived through and what I witnessed. These experiences made me understand that there will continue to be economic, cultural, religious, and political barriers, but how can we live through and overcome them?

With regard to economic and cultural barriers, I will use my mother and myself as examples. My mother had the right to work, but she did not have fair pay, which I do now. As a widow with six children, my mother was the breadwinner of the family. If, God forbid, something had happened to her, we would not have been able to get an education because children were, and still are, unable to access their mother's retirement benefits.

Another cultural barrier is the concept of family land as sacred. Some men still believe that women cannot inherit land because it will end up with a stranger who happened to be her husband. In certain areas in Jordan, women still worry that they will not be able to inherit land from their fathers because there is a cultural belief that land

is like honor and, thus, it should be inherited within the same family and tribe.

Unfortunately, religious barriers mainly result from misinterpretations of Islam. For example, some women fear that they will be abandoned by their husbands because some men think that they have a green light for a second, third, or fourth marriage. I will give a real example that happened in July 2013. In Al-Mafraq, a city in Jordan that was overwhelmed by an influx of refugees after the Syrian crisis, a mother-in-law threatened her daughter-in-law that she could get her son a second wife who would be "more beautiful and cost less." This scenario, in addition to being humiliating and intimidating, is emotionally stressful for many women in the area.

In terms of legislative barriers, one main issue is that men still have the exclusive right to divorce their wives without providing any legal reason. This compromises and threatens the security and wellbeing of families, especially of children. Another legislative barrier for women is the age of marriage. The minimum age for marriage for girls is 18; however, a judge can lower that to 15 if they believe that it is "for her own good." Honor crimes are another example of both a poor interpretation of religion and poor legislation. Honor killings used to be punished by an average of 6-12 months due to mitigating circumstances;

for example, young boys who carry out the honor killings on behalf of their families will be put in a rehabilitation center. Although the reduction of penalty has been changed, Articles 98<sup>1</sup> and 340<sup>2</sup> of the penal code have not yet been removed.

There are still political barriers to women's full participation in government positions. Since 1974, women have been granted the right to vote and run in parliamentary elections by a royal decree. In 1982, a similar right was granted with regard to municipality elections, again by the power of a royal decree. In fact, the first woman in parliament was elected due to a Circassian quota, not a women's quota.<sup>1</sup> The success of the first woman in parliament encouraged other women to run in later elections. However, no women were elected until the women's quota was granted by another royal decree in 2003. Currently, Jordan has 18 women members of parliament, 15 of whom won using the quota and three without it.

When we talk about women's empowerment, we are talking about several fields and sectors. The success in parliament was echoed by similar successes through the appointment of 99 women in the different municipalities all over the country. This move was initiated by Princess Basma bint Talal, who is considered one of the main catalysts for women's issues in Jordan. The new electoral law for municipalities, endorsed in 2011, increased the quota for women from 20 to 25 percent at each municipal council, and the Judicial Institute regulation introduced a quota for female judges at a minimum of 15 percent. Jordan has prominent female figures in legislative branches, not only at the national level but also internationally. For example, Judge Taghreed Hikmat was a judge in the International Criminal Court. It is also notable that the Jordanian Ambassador in Washington, DC is a woman, and Jordan is the first Arab country to appoint a female Ambassador to the United States.

In Jordan, we believe that there are two theories applied to transcend barriers. The first theory is a belief in political will, which is unfortunately limited. For example, Article 6<sup>3</sup> in the Jordanian

Constitution states that all Jordanians are equal before the law, but in the last two years there has only been one female minister appointed. Additionally, Jordan maintains reservations to CEDAW Articles 9 (2)<sup>4</sup> and Article 16 (1 c, d, and, g).<sup>5</sup> Thus, there is a need to harmonize CEDAW articles with national legislation.

The second theory concerns the mobilization of women, non-governmental organizations (NGOs), and communities. The women's movement has been lobbying for the protection and promotion of their rights, focusing on violence against women and honor crimes in particular. They launched awareness programs, lectures, trainings, and conventions that took place across the country. There is a need to launch more networks, especially outside Amman, to strengthen women's capacity and strategic outreach and their political participation at the municipal level.

A list of demands were presented to parliament by the Jordanian National Commission for Women and other NGOs who lobbied for a women's quota at the parliamentary and municipal levels by petitioning, collecting signatures, and organizing sit-ins. Nationwide campaigns were launched to lift the two remaining reservations to CEDAW.

We must be engaged in dialogue with all levels of decision-makers, especially local decision-makers, because we believe that the most effective campaigns are grassroots movements. It is no wonder that *TIME* magazine's "Person of The Year" in 2011 was dedicated to the protester in the street, referring to the Arab Uprisings and similar movements across the globe.

## ENDNOTES

- 1 **Article 98** stipulates that an extenuating justification can be invoked by anyone who commits a crime in a fit of rage as a result of a wrongful and dangerous act carried out by the victim
- 2 **Article 340** (as amended by Temporary Law no. 86 of 2001), reads as follows: 1. There shall benefit from the mitigating excuse whosoever surprises his wife or one of his ascendants or descendants in the crime of adultery or in an unlawful bed, and kills her immediately or kills



the person fornicating with her or kills both of them or attacks her or both of them in an assault that leads to death or wounding or injury or permanent disability; 2. Shall benefit from the same excuse the wife who surprises her husband in the crime of adultery or in an unlawful bed in the marital home and kills him immediately or kills the woman with whom he is fornicating or kills both of them or attacks him or both of them in an assault that leads to death or wounding or injury or permanent disability; 3. The right of lawful defense shall not be permitted in regard to the person who benefits from this excuse nor shall the provisions of “aggravated circumstances” apply.

3 **Article 6** — (i) Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion; (ii) The Government shall ensure work and education within the limits of its possibilities,

and it shall ensure a state of tranquility and equal opportunities to all Jordanians.

4 **Article 9 (2)** — Parties shall grant women equal rights with men with respect to the nationality of their children.

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

## Transcending Barriers to Human Rights in the Region: The Way Forward

**Kahina Bouagache**, *Women’s rights activist and corporate and international lawyer, Algeria*

*“A revolution is not all about toppling a dictator. Fulfilling a revolution’s democratic promises and the institutionalization of democracy are the main aim of a revolution.”* – Shirin Ebadi



Women have always played a significant role during revolutions. In Algeria, La Kahina, Lalla Fatma N’Soumer, and many others took an active role during the French Revolution. Although they survived the battles, they all ended up back in minor roles after the battles were over. Then, and even today, women wrongly assumed that their rights were guaranteed and that equality would be a natural consequence resulting from a popular revolution.

The Arab Uprising was another historical moment when women played a heroic role by occupying the streets of Tunis, Cairo, Benghazi, and Sana’a. It was a movement where men and women stood together against failing regimes by demanding transparency, democracy, accountability, and good governance. Today, two and a half years later, women have been isolated again.

The push to introduce *shari’a* within state laws and in the national constitutions of Middle East and North Africa (MENA) countries will undermine the legal weight of women in those societies. We have already witnessed that the recently elected regimes in the region have found multiple new ways to undermine the status of women by denying their rights and their access to justice, equality, and fair treatment.

On the other hand, through its different legal advancements for women, Tunisia is a leading model for women’s rights in MENA countries. Today, non-governmental organizations (NGOs) and women’s rights activists find themselves fighting to safeguard the rights that women have already gained, while the discourse from the government questions whether the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are

in opposition to religious principles. This is a propaganda move, which misleads the young generation and undermines the principle of equality under CEDAW (e.g., the principle of economic equality, which guarantees women complete financial protection under *shari'a* law).

Unfortunately, we have realized that once the old regimes fell, old barriers grew higher and threats to women's rights became more apparent. More than ever, our region has an urgent need to implement internationally recognized human rights mechanisms, which can play a key role in the protection of women by safeguarding equality and promoting women's empowerment.

Among such mechanisms is CEDAW, which is a powerful tool for positive change and the promotion of women's rights. However, it must be recognized as such and embraced by governments and civil society. While legislative and other measures to protect women's rights should be undertaken once states ratify CEDAW, these actions toward gender equality do not happen automatically. For CEDAW to be effective, it requires efforts from states and governments in implementing its principles.

The main issue we face in our region is not ratification; rather, it is the various reservations made by MENA states. Among the 19 MENA states that have ratified CEDAW, most reservations have pertained to the same key articles.<sup>1</sup> For example, the most common reservations are made on Article 2 (a country's duty to eliminate discriminatory laws and practices in its national legal framework); Article 9 (the nationality law and right for women to acquire, change, and retain nationality of their children); Article 15 (equality before the law; the right to enter into a contract, own property, and choose residence); Article 16 (marriage and family); and Article 29 (which refers cases of disputes between two countries to the International Court of Justice).

I believe that ratification with reservations is a pure fraud. It is a way by which member states show integration in the international arena without the obligation of implementation at the national level. Reservations provide states the necessary space to argue against the obligation of

implementing CEDAW principles, which should be unconditionally guaranteed.

In Algeria, women and families lived under the Civil Code until 1984. After this, the government introduced *shari'a* law in cases regarding family and women, and Algeria's first Family Code was introduced. Thanks to the reservations, even after the ratification of CEDAW in 1996, the government never bothered to make any changes within the Family Code. Despite the amendment and advancements made to the Family Code in 2004, many texts remain discriminatory with regard to women's rights.

Moreover, Algeria lifted its reservations on Article 9 of CEDAW, which related to citizenship during the Gaza strike in 2008. This was due to the need for Algerian women married to Palestinians, who were not accepted at the Algerian Embassy with their Palestinian spouses and children. In the meantime, many local NGOs took the lead in fighting on behalf of women in Gaza to allow them the right to transfer their citizenship to their families, which therefore allowed them to flee safely. The event pushed the president to sign a decree to lift the reservation on Article 9 and thus amend the Nationality Law. However, despite this advancement, we still have to face a patriarchal administration, where even if a woman can transmit her nationality, she is still not allowed to open a bank account for her children or travel with her children without the father's permission.

Today, it is clear that the government discourse in the region does not reflect the views or aspirations of civil society regarding the elimination and prevention of violence against women and girls. NGOs are concerned that many MENA governments are adopting policies that undermine the very basis of the Universal Declaration of Human Rights (UDHR), which supports the universality and indivisibility of human rights.

While implementing human rights treaties requires government commitments to gender equality and strategic efforts by civil society in order to hold states accountable to their obligations under CEDAW, today, several MENA countries—including Algeria, Morocco, and Tunisia—have ensured the primacy of

international law within their constitutions. However, the implementation of this principle remains unsuccessful within local judiciary processes. Women's access to justice on the ground is limited and based on patriarchal interpretations of religious texts.

We cannot achieve democracy by ignoring and marginalizing half of the population. As we work toward more inclusive, just, and equitable societies, we can only achieve democracy through the full and equal participation of women. The intersection of violence, poverty, race, national origin, and sexuality must be at the center of our social justice frameworks, language, and negotiations on the status of women.

## Egypt's Case

**Moushira Khattab**, *former Public Policy Scholar, Woodrow Wilson Center; former Egyptian Ambassador to South Africa and to the Czech and Slovak Republics; and former Minister of Family and Population, Egypt*

This gathering could not have taken place at a more opportune time for Egypt and Egyptians. I stand before you as a proud Egyptian woman, full of confidence and optimism for my country. Had this meeting taken place at an earlier time, my demeanor would have been full of pessimism. On June 30, 2013, over 30 million Egyptians took to the streets determined to overthrow an oppressive regime and give their country a second chance at creating a modern democracy founded on accountability. *Tamarod* (or “rebel”), a movement instigated by young women and men, triggered national mobilization that saved Egypt and Egyptians from the darkness of political Islamists. Given Egypt's regional significance, these events likely signified the end of political Islam in the region, if not the whole world.

Although short lived, political Islam rocked many foundations throughout the region; most significant for our purposes is the regional commitment to human rights norms. In the name of cultural specificity, certain religious groups have portrayed these norms as being part of a

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## ENDNOTE

- 1 See Appendix B for table of status of CEDAW ratification.



Western agenda. Such groups use religion to justify human rights violations, namely the rights of women and children. Both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are under attack as contravening religion or *shari'a*. Such attacks disregard the fact that the two conventions are offshoots from the globally embraced Universal Declaration on Human Rights (UDHR). States negotiated and adopted both CEDAW and CRC, exactly like the UN Convention against Torture, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention for the Protection of All Persons from Enforced Disappearance, and negotiated the UN Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. All these conventions share the same core values and grant the same rights but are tailored to the specific needs of the groups they cater to. We

must caution that human rights norms are crucial guarantees for women's rights, more so when domestic legislation and the cultural environment fail to ensure such rights. If women lose international guarantees, they will be under the mercy of whoever is in power. As we witness the rise of political groups that are against women's rights, the need for such human rights norms is even greater, and women, like other sectors of the society who might be threatened, must fight for them.

Both CEDAW and CRC provide a comprehensive strategy for the protection of a host of rights that are interdependent and indivisible. More importantly, they provide for core principles that must guide the implementation of all rights such as the right to non-discrimination. These conventions also establish treaty bodies or committees to assist states in implementing these strategies. In other words, these instruments provide a road map toward the fulfillment of human rights, including those of women and children. However, the road map will not see daylight if there is no political commitment. States need to see their role as fulfilling clear legal obligations to each and every citizen, including women and children, and not be seen as a charitable process. This is the irreducible minimum. Toward this end, states are committed to take a host of measures, including reviewing and harmonizing legislation, allocating adequate resources, making policies and programs, establishing adequately mandated national entities for monitoring and coordination, and establishing a central data system capable of revealing pockets of deprivation and marginalization. In taking such measures, states are committed to accountability, transparency, and partnering with the civil society. The state is also committed to removing any obstacles that may hamper the full enjoyment of such rights.

Very crucial is the obligation of states to conduct a comprehensive review of all domestic legislation to ensure full compliance with human rights norms. It is not only important to ensure compliance article by article, but to also holistically recognize the interdependence

and indivisibility of human rights. Moreover, it is a legal obligation to ensure self-execution and the incorporation of human rights norms into domestic law. Incorporation should mean that the provisions of the conventions can be directly invoked before the courts and applied by national authorities; further, it means that the convention will prevail where there is a conflict with domestic legislation or common practice. This is in light of Article 27<sup>1</sup> of the Vienna Convention on the Law of Treaties.

The events that preceded the January 2011 Egyptian revolution present a case worth examining. Egypt's Constitution of 1971 explicitly bestowed this elevated status of human rights norms ratified by Egypt. Moreover, Law No. 126/2008, known as the Child's Law and which I am honored to have pioneered, guarantees in Article 1 "as a minimum, the rights ensured by the Convention on the Rights of the Child, its two optional protocols and all Treaties enforced in Egypt."<sup>2</sup> This provision consolidates rights guarantees and raises the ceiling for human rights. It also set a precedent for subsequent legislation, such as the penal code, the personal status law, and the law on human trafficking. The original draft was much stronger, and Law 126 was below our ambitions; it was watered down inside the government and later in Parliament. Therefore, we continued our campaign to raise awareness among decision makers as much as among the grassroots to complete the journey toward full harmonization with international norms, and we were getting there. We succeeded in creating an environment supportive of the Rights of the Child, notably the girl child. We succeeded in raising the minimum age of marriage to 18 years and criminalizing female genital mutilation (FGM). Reservations on CRC were completely lifted in 2003, and reservations on CEDAW (to Article 9, Paragraph 2) were lifted in 2009. State competition with conservative political Islam to appear as guardians of *shari'a* has always been an obstacle. The human rights norms were constantly put under attack and portrayed as pushing a hidden foreign agenda. Neither the UN development agencies nor the donors could quell

such allegations. After the uprising of 2011 and the rise to power of political Islam, the image of human rights norms deteriorated even further. The right to non-discrimination and affirmative action went into jeopardy.

### EGYPT'S 2012 CONSTITUTION: A SETBACK TO WOMEN'S RIGHTS

The uprising of January 2011 consolidated the recognition of women's leadership and activism that surpassed all expectations. However, a paradox emerged. The first Constitutional Declaration in March 2011 cancelled the women's quota for parliamentary seats, and the process of nation-building ignored and marginalized women. The outcome was bound to be deformed and handicapped to say the least. The process of constitution writing was flawed, neither transparent nor participatory. It excluded most political actors and produced a constitution that violated the goals of the 2011 uprising, as well as the minimum core values of human rights norms. The Constitution made token gestures to human rights and its guarantees. It bestowed a vague role on religion in a context that restricted the exercise of certain fundamental rights and put clerics over elected legislators. It divided Egyptians according to religion. It removed the explicit prohibition of discrimination on the basis of religion, sex, or political views, which was a tenet of previous Egyptian constitutions.

The preamble of the 2012 Constitution<sup>3</sup> is more gender-sensitive than its operative section. Equality of all citizens is reiterated three times, albeit as principles not as a right. In the operative section of the Constitution, equality is mentioned five times: in Articles 6, 8, 9, 33, and 64.

The Egyptian Constitution of 1971 is stronger on women's rights. It allocated Article 11 for women,<sup>4</sup> which acknowledged women's equal status with men in the fields of political, social, cultural, and economic life, and committed the state to ensure the rights of women "without contravening the provisions of Islamic *shari'a*." This was a good step forward, although it positioned religion against equality. Moreover, women were the only group whose right to equality hinged

upon interpretation of *shari'a*. Women struggled to remove this caveat of *shari'a* from the 2012 Constitution, but the outcome was disappointing.

The Constitution of 2012 dealt a blow to women's struggle for equality. It only recognizes women as a distinct group within the family and the moral foundation of society and not under human rights. According to Article 10 of the 2012 Constitution, the family is based on "religion, morality and patriotism," and not on equal rights. This article maintained the one sentence of the 1971 text that reflects the tension between the duties of a woman toward her family and her public work, and the article reduced state commitment to reconcile the two. Reference to women's equality with men, and the commitment of the state to achieve it, was removed altogether from the 2012 Constitution. The state's commitment was to "preserve the genuine character of the family, and to protect its moral values" and to provide services for childhood and motherhood free of charge. Again, this is hollow and unrealistic rhetoric. How can such services come free to over 1,250,000 children born every year when financial resources are hard to come by? To its credit, Egypt's 2012 Constitution allocated a whole chapter to human rights and its guarantees. It expanded the identification of rights and freedoms, mostly economic and social rights, to 51 compared to 21 articles in the 1971 Constitution.<sup>5</sup> Nevertheless, Article 10 on the family and women came void of any reference to rights.<sup>6</sup> It contains three levels of state commitment. The state is "keen" to keep the authentic nature of the family and "ensures" free services of childhood and motherhood; however, it "gives special care" for female heads of household, divorcees, and widows.

Women would not need special reference had the Constitution included a sound provision on equality and non-discrimination, as is the case in the constitution of South Africa. In the Egyptian Constitution of 2012, Article 6, on the foundations of the political system, includes the principle of citizenship that infers equal rights and duties of citizens. Article 8, under the chapter on moral and social foundations of the state,



provides for a strong commitment as it “ensures achieving justice, equality and freedom” but then uses paternalistic and vague language: “along with channels of social charity and solidarity... to protect honour and property and provide adequate subsistence as regulated by legislation.” The right to non-discrimination is relegated to Article 33 and is placed under “personal rights.” The 1971 explicit prohibition of discrimination on the bases of sex, religion, language, origin, or any other ground was removed altogether, thus leaving the 2012 Constitution well below internationally acceptable minimum standards observed by almost all democratic constitutions.

The 2012 Constitution does not prohibit human trafficking, servitude, or slavery, thus raising concern about intentions to lower the minimum age for marriage.<sup>7</sup> The Constitution bestows a vague role for religion; *shari'a* is the source of legislation and jurisprudence, which is ambivalently restricted by Article 219 and through a religious body (Article 4)<sup>8</sup> and Article 76, which allows punishment based on a vague constitutional clause. Women risk losing acquired rights such as unilateral divorce granted by Law No. 1/2000, protection from child marriage, criminalization of FGM (Law No. 126/2008), and custody of children, to mention a few.

Children's rights are also compromised in the 2012 Constitution. The article on children came under economic rights, despite the fact that it refers to a civil right, namely the right to identity. It lacks a child's rights approach as defined by the CRC. Article 67 selectively singled out few rights, but many more are omitted, including the right to education, protection from violence, and the right to be heard. Child labor and child detention are not categorically prohibited. The Constitution marks a setback to the progress previously achieved and existing Egyptian legislation.

The omission of international human rights norms from Egypt's 2012 Constitution poses a serious threat to human rights, including those of women and children. In many cases, the Constitution has subjected itself to the law that will regulate most of the rights. To make matters

worse, the Islamist-led Parliament has not shown respect for women's rights either.<sup>9</sup> Controlled by the Islamists, Parliament rejected a bill to put women on the first half of the electoral list and was busy examining four bills on NGOs, election laws, right to freedom of information and to demonstrations—all of which stifled freedoms. If Egypt were to stand before CEDAW or CRC committees, both bodies would express their serious concern that the state has not honored its commitments under both conventions and other international human rights norms. As of June 2013, Egypt would have had no hope of rectifying this situation. The outlook was grim. Egypt has been given a second chance at undoing this and other damage thanks to the brave women and men who waged a corrective revolution on June 30, 2013—a revolution that has thus far suspended the constitution and dissolved the Shura Council.

The Constitutional Declaration of July 2013 rectified some of, but not all, the loopholes and shortcomings of the suspended 2012 Islamist constitution. The reference to equality before the law and equality in rights and duties was pushed to the forefront of the document as Article 4. The Constitutional Declaration also restores the explicit prohibition of discrimination on the bases of sex, origin, gender, language, religion, or belief; and the state ensures equal opportunities. The notorious Article 11 on the family and women was removed altogether. The new document stipulates that the determination of a crime or punishment can only take place through legal provisions (with the reference to constitutional provisions being removed). However, the document maintains Article 2 and the controversial Article 219 on the definition of Islamic *shari'a*.

It is still too early to determine the constitutional status of women. A new committee will be formed to amend the 2012 Constitution. However, the revived civic boom provides cause for optimism that the damage to women's rights will be rectified and that women will once again resume their struggle to consolidate their gained rights and build upon them.

## ENDNOTES

- 1 **Article 27:** Internal law and observance of treaties – A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)
- 2 Law No. 126/2008: Child’s Law – [http://www.nccm-egypt.org/e7/e2498/e2691/infoboxContent2692/ChildLawno126english\\_eng.pdf](http://www.nccm-egypt.org/e7/e2498/e2691/infoboxContent2692/ChildLawno126english_eng.pdf)
- 3 Available in Arabic: <http://mubasher.aljazeera.net/news/2012/11/20121130113251987535.htm#>  
English: <http://www.acus.org/egyptsource/unofficial-english-translation-egypts-draft-constitution>
- 4 **Article 11:** The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal status with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence. <http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>
- 5 This was among my recommendation when I was asked for my input on an earlier draft, and I am glad to see this one, unlike others, taken into account – MK
- 6 **Article 10:** The State provides mother and child services for free and guarantees for women health, social, and economic care
- 7 Yasser Burhamy of Salafis among others defended child marriage not only as low as 9, but even 7 and 6 years old
- 8 Al-Azhar, the highest seat of learning in Sunni Islam, given a vaguely defined role in vetting any laws that might touch on shari’a. Rumor has it that the Salafis are eager to take over Al Azhar, which is currently headed by the moderate and enlightened Dr. Ahmed El Tayeb.
- 9 The Legislative is composed of two chambers, the House of Representatives as the lower house mandated with legislation and the Shura Council. The lower house was dissolved as unconstitutional and the Shura council, elected without mandate and with only 7% of the votes, was assigned the mammoth task of legislation (131).

## Lifting of CEDAW Reservations by Tunisia in the context of the Arab Spring

**Lilia Labidi**, *Visiting Research Professor, Middle East Institute, National University of Singapore; former Minister of Women’s Affairs, Tunisia; and former Fellow, Woodrow Wilson Center*

My discussion here focuses on the lifting of Tunisia’s reservations regarding the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Following the fall of the Zine El Abidine Ben Ali regime in January 2011, the transitional government that came into office lifted the country’s CEDAW reservations regarding matters such as equality of men and women in choice of domicile, and in rights and responsibilities relating to marriage, divorce, parenting, ownership of property, etc.<sup>1</sup> My broader aim is to examine the debates over women’s rights that occurred after January 2011 in Tunisia and ask whether the Nahda Party, which emerged from the first democratic elections in the country since independence as the most powerful party, has kept its electoral promises since it gained power. The Nahda Party ruled as a “troika,” in coalition with two secularist parties—the Congress for the Republic (CPR) and the Democratic Forum for Labour and Liberties (Ettakatol). In its election campaign,

Nahda included the preservation and improvement of the Personal Status Code (PSC). I will look at the Nahda Party’s response to the lifting of Tunisia’s CEDAW reservations by the first transitional government (in office from January to December 2011). I will also explore civil society’s reaction to the fact that this measure has not been transmitted to the UN Secretary-General by the subsequent Nahda-led governments under Prime Ministers Hamadi Jebali and Ali Larayedh, which is required for the lifting of reservations to be internationally recognized.

I will also discuss three incidents among the many that have occurred that generated sharp controversy and widespread debate throughout Tunisia and helped to raise public awareness about the dangers of weakening or sacrificing women’s rights. The incidents include the proposed use of “complementarity” rather than “equality” between the sexes in the new constitution, the rape of a young woman by members of the police force, and the rape of a three-year-old



girl by a guard of the kindergarten she attended. Such events accentuated the conflicts between the parties and pushed many women to choose which party would best defend their rights. My approach is anthropological, growing out of my decades as a researcher on women's rights and as Minister for Women's Affairs from January to December 2011 immediately following the revolution, and grounded in my close observation of the situation during 2012-2013.

### I. KARAMA (DIGNITY), FREEDOM, AND DEMOCRACY: SLOGANS OF THE ARAB SPRING

Following the fall of Ben Ali's regime and his flight to Saudi Arabia, all of Tunisia lived in a period of great intensity: all dreams seemed achievable, and anticipation was high regarding Tunisia's first free and democratic elections that were to be held in a context of political pluralism. Among the demands, formulated in a series of demonstrations without leaders following the self-immolation of Muhammad Bouazizi on December 17, 2010, was the need to achieve dignity, freedom, and democracy. However, the country faced the challenge of translating these slogans into facts. For women, freedom of expression was signaled by regaining the right to dress as they wished, by the voting for political parity between the sexes, and by the lifting of Tunisia's CEDAW reservations.

Gains in freedom of expression included removing the prohibition on wearing the *hijab* in public institutions and permitting photographs with the *hijab* for the national identity card. This prohibition had been in effect since 1981 and, following January 2011, a number of women, including wives and female relatives of Islamist activists, testified to suffering torture, sexual abuse, and threats of rape at the hands of the police force, simply for wearing the *hijab*.<sup>2</sup> In addition, the prohibition had pushed some young women to discontinue their studies or leave their jobs in order to avoid the administrative and official harassment their *hijabs* produced.

The vote for political parity was also an essential element in the debate over equality between the sexes. To the surprise of many, the Nahda party voted in favor, and although one might

expect the secular parties and parties of the left to vote for parity, many voted against it. One exception was the Democratic Modernist Pole (*Pole Démocratique Moderniste*), which was the only party to apply the principle of parity in choosing the heads of their electoral lists. The other parties, even those who voted for parity, did not apply it to the heads of their electoral lists, with many explaining their position by arguing that women were reluctant to participate and were resistant to political activity. They did not question their own failure to attract women.

Nonetheless, despite opposition from many parties and organizations, political parity was adopted with the support of the Nahda Party. While many women were gratified by this success, they later saw that the particular electoral process adopted for the first free elections in October 2011 led to an under-representation of women in the National Constituent Assembly (ANC, *Assemblée nationale constituante*). Hafidha Chekir, a law professor, argued that although this experience had been a failure on the level of formal politics, women were at the head of electoral lists in only 7 percent of political party lists, 3 percent of independent lists, and 35 percent of coalition lists. This led to only 64 women among the 217 elected ANC deputies. It had been a success in getting women to participate in election campaigns and to carry out political action on the ground.<sup>3</sup>

The first transitional government's lifting of Tunisia's CEDAW reservations was carried out in the spirit of equality and the defense of women's rights, so that this step would not belong to a minority or to a particular social category. It was also carried out in the context of debates organized by the Ministry for Women's Affairs on two themes: (1) "the economy of solidarity," elaborated with the participation of women from each of Tunisia's regions and with consideration of their specific projects; and (2) "the culture of citizenship and democracy," where issues such as the meaning of democracy, the role of a constitutional assembly, and the purpose of voting were addressed. It is important to mention here the crucial role that a diverse and varied civil society played throughout these discussions, which, with the revolution, gained enormous vitality and

voiced its demand for the lifting of the CEDAW reservations.

In the Ministry for Women's Affairs, we used a comparative approach, drawing on the experiences of other Muslim countries and giving them visibility. This method allowed participants to see the progress made by a number of these countries in the areas of women's rights and lifting CEDAW reservations, and it showed that Tunisia was not alone in these regards. Among other positive outcomes, this process led to the first transitional government's decision in August 2011 to lift Tunisia's CEDAW reservations—a move that was in the direct line of reformist culture that had led to the promulgation of the PSC in 1956. Lifting the CEDAW reservations was widely accepted apart from the criticism of a small number of individuals.

## II. THE NAHDA PARTY FACES WOMEN'S DEMANDS

Among those who voiced criticism of this initiative—all of whom were members of the Nahda Party between 2011 and 2013—was Souad Abderrahim. She was the party's only woman heading an electoral list and was an important figure leading up to and following the elections. Souad Abderrahim was a pharmacist and entrepreneur who had been an activist in the 1980s in the UGTE, an Islamist-oriented student group; during that period, she wore the *hijab*. Nahda's choice to be represented by a woman who called herself "independent" and no longer wore the *hijab* was very successful in attracting women voters to the party. During the election campaign, her conservative positions—such as her criticism of Tunisia's lifting its CEDAW reservations and her wish to change the name of the Ministry for Women's Affairs to the Ministry of the Family—contradicted other aspects of her campaign. Her campaign was based on her maintaining and improving the protections provided by the PSC, her insistence that she would fight to forbid polygamy in the new constitution, and her view that the *hijab* would not be imposed. She also argued that she wanted to improve the status of women and that the Nahda Party hoped to help Tunisians reconcile family and profession.

These positions, and the occasional contradiction between them, did not attract particular attention from public opinion before the elections, nor did she draw attention to them.

Although it was expected, the success of the Nahda Party nonetheless caused a shock and raised awareness of the risks for women's rights. Women, both in organizations and working independently, decided to continue the struggle for their rights outside the ANC to demand that their rights be enshrined in the new constitution, as stipulated in the PSC and in the resolution on parity adopted for the October 2011 elections.

Three shocking incidents that took place within a six-month period in 2012-2013 contributed to the mobilization of women, associations, and youth throughout Tunisia, and increased women's fears. The first concerned the proposed Article 28 in the new constitution, which spoke of "complementarity" between the sexes rather than "equality." This led to demonstrations in front of the ANC and in many of the country's regions, ending with the elimination of the word "complementarity" from the proposed constitution.

The second incident occurred when, after police discovered a young woman and her fiancé in a car, two of the policemen raped the woman while the third policeman took the fiancé to a cash machine, forcing him to hand over money. In order to push the woman to withdraw her complaint against the police, she was charged with insulting public morals. The Minister of Justice, a Nahda Party member, did not support the victim. This, too, led to demonstrations, with activists carrying posters proclaiming, among other things, "Results of a stolen revolution: women raped, young girls veiled"; "In my country the police rape me and the courts accuse me"; and "They rape our bodies and our hearts." In the end, the case against the rape victim was dismissed, and the three policemen were charged for their crimes.

In the third incident, a three-year-old girl was raped by her kindergarten's guard, and the Minister for Women's Affairs provided excuses for the kindergarten, saying that the crime had been committed in an "extended family context." This provoked the anger of the victim's family and of the wider population. Demonstrations

were held before the Ministry for Women's Affairs, calling for the protection of the rights of young girls. An appeal was launched "to throw a million shoes" in front of the Ministry in protest and to call for the minister's resignation. Nejla Bouriel (a member of the "Democratic Alliance," or *al-Kutla al-democratiyya*, which was composed of several small political parties that had become the second largest group in the ANC by December 2012) criticized the minister for not condemning the child's rape and put forward a motion in the ANC to have the minister questioned. Neziha Rjiba, alias Oum Ziad and founder of the Yakadha (Vigilance) Association, accused the minister of having failed in her duties. However, the minister continued to be supported by her own political party (the CPR) and by Nahda, and she remained in her position. In both rape cases, the Nahda Party appeared to not support the victims, something that shocked the Tunisian population.

These three events were publicized internationally, further darkening the image of a country that had been known for championing women's rights in the Arab-Muslim world. In the context of these multiple attacks on women's rights, women were further surprised to realize that neither the government under Hamadi Jebali (in office from December 24, 2011 to March 13, 2013) nor under his successor Ali Laarayedh (Prime Minister at the time of this writing) had notified the UN Secretary-General of Tunisia's lifting of CEDAW reservations, although this decision had been published in the *Journal Officiel Tunisien* of the Tunisian Republic.<sup>4</sup> The publication of the decision further strengthened the population's suspicions that women's rights were at risk.

While civil society waited expectantly to hear that women would be protected against all forms of discrimination, the Nahda Party organized a conference to widespread surprise on the occasion of International Women's Day in Kébili, in the south of Tunisia. There, Nouredine Khademi, a member of the Nahda Party and Minister for Religious Affairs, declared that the lifting of CEDAW reservations was "a flagrant insult to national sovereignty, to cultural specificity, and to the values of Islam, notably as concerns equality in inheritance and the delay required

before a widow or divorced woman can remarry." Questioned about the delay in implementing the decree lifting Tunisia's CEDAW reservations, Khademi responded that lifting the reservations was "an individual decision and precipitous" and that "Islam preserves the woman's humanity by respecting her status as woman, in her social, political, religious, and civic responsibilities, in taking into account her equality with men and her role in the family."

This position was not surprising. In addition to hostility toward women's rights, various Islamist movements never set up programs in schools and universities on figures in Islam such as Saida Khadija, the Prophet's first wife and the first person to testify to Muhammad's prophecy; the Prophet's youngest wife, Aisha, and her role in transmitting *hadiths*; Fatima, the Prophet's daughter, who continues to inspire Muslims; Sufi women from Rabaa Al-Adawiya to the Tunisian Saida Aicha Manoubia (1180-1257) (Manoubia's mausoleum was the first in Tunisia to be plundered by the Salafists in October 2012). Additionally, these movements did not cover the following themes: women and Islam in a context of globalization, the role of women in the sciences and trade, and the conversion of women to Islam. Thus, in calling the lifting of CEDAW reservations "an individual decision and precipitous," the Minister for Religious Affairs revealed how little he understood the history of both the Tunisian women's movement and the reformist movement. Furthermore, he misread the social dynamics and expectations of women, especially among those most exploited and most exposed to discrimination, such as poor women, women living in rural areas, and women who are otherwise marginalized.

In such circumstances, the Nahda Party had been in the habit of putting forward Souad Abderrahim (mentioned above) or Meherzia Laabidi. Laabidi (no relation to the author) is a mother of three and daughter of an imam who, after studying in Sousse and France, worked as a translator/interpreter and became president of the Global Women of Faith Network in 2006. Since 2009, she has been a member of the European Council of Religious Leaders, was elected in France as a Nahda Party member rep



resenting Tunisians abroad, and is currently Vice President of the ANC. However, in this particular situation, the Nahda Party sent Selma Sarsout, a member of the ANC Commission on Rights and Freedoms, to denigrate the lifting of CEDAW reservations. A biographical note published by the ANC tells us that Sarsout was born in 1964 in Redeyef, in Gafsa province, and that she has a Master's degree obtained in 1985 in Morocco. After being active in the Islamist movement, since 1989 she devoted herself to working with associations. On Radio Jawhara, she insisted on reminding listeners that the Tunisian state, under Habib Bourguiba and Ben Ali, repeatedly formulated CEDAW reservations. This comparison served as a justification for her views by dissociating herself with the two regimes that her own party had denounced as lacking respect for human rights. She also claimed that the transitional government following January 2011 "lifted its reservations... whereas that was the prerogative of the ANC."

Here again, the Nahda Party appeared to misunderstand the role played in the Arab Spring by both the Tunisian women's movement and by civil society, as well as the context of a democratic transition where international human rights norms can help secure women's rights in the absence of a national constitution. Nahda also did not seem to appreciate that the decree that authorized the lifting of CEDAW reservations had legislative force, as Sana Ben Achour, law professor and former president of the Association Tunisienne des Femmes Démocrates (ATFD), has pointed out.<sup>5</sup> Various national and international figures joined an appeal calling upon the Tunisian authorities to adopt the measures appropriate to the lifting of CEDAW reservations. Michelle Bachelet, former president of Chile and former Executive Director of UNWomen, was among the first to appeal to the Tunisian authorities in this direction.

Three lessons emerge. First, the shocking incidents mentioned above show the conditions under which women mobilized for the lifting of Tunisia's CEDAW reservations and how recourse in international human rights norms can help secure Tunisian women's rights and allow them to avoid being isolated in their struggles. The second lesson concerns the Nahda Party's failure to fulfill its electoral promises regarding

improving women's rights. It shows how two successive Nahda-led governments did not transmit Tunisia's lifting of its CEDAW reservations to the UN Secretary-General, despite the fact that the relevant decree had legislative force. The failure to follow through on lifting CEDAW reservations was widely perceived as giving in to the appeals of the very well-known Egyptian Islamic theologian Yusuf al-Qaradawi, Chairman of the International Union for Muslim Scholars, who argued that Tunisia must not lift its CEDAW reservations. Al-Qaradawi's analysis was interpreted by women and feminists as an effort to "bury Tunisia's adherence to CEDAW." The third lesson is that most political parties, both Islamically-oriented and secular, continue their patriarchal practices and insist on maintaining outdated political positions despite the fundamental societal changes that have occurred over the past decades—all of which have seriously tarnished their image in the eyes of the electorate.

## ENDNOTES

- 1 Specifically, previous Tunisian governments had stated reservations regarding Articles 9 (Section 2), 15 (Section 4), 16 (Section 1, Points c,d,f,g,h), and 29 (Section 1) of CEDAW.
- 2 See the testimony of Zayneb Marzouki, a children's supervisor and ex-prisoner, and of Moufida Kalai Slama, wife of M. Nejib Slama (former advisor to the Minister of Culture and Protection of the Patrimony), delivered during an international seminar organized by the Ministry for Women's Affairs in June 2011. In March 2013, Saida Akermi, president of the Association for the Defense of Political Prisoners, launched an appeal to mobilize former political prisoners, estimated to number 450, with the aim of bringing torturers to justice and of collecting testimony on the persecution suffered under the dictatorship by prisoners and their families.
- 3 "Des constituantes vont demander l'inscription de la parité dans la Constitution." <http://directinfo.webmanagercenter.com/2013/03/27/tunisie-des-constituantes-sengagent-a-demander-linscription-du-principe-de-la-parite-dans-la-constitution/> (27 March 2013)
- 4 *Journal Officiel Tunisien* of the Tunisian Republic, Number 82, 28 October 2011, pp. 246 – 247
- 5 Sana Ben Achour. "Qu'attend le chef de l'Etat pour jouer son rôle et notifier la levée des réserves à la CEDAW au secrétariat des nations Unies ?" [www.fidh.org/Tunisie-Qu-attend-\(7/4/2013\)](http://www.fidh.org/Tunisie-Qu-attend-(7/4/2013))

## Appendix A

### WOMEN'S REPRESENTATION IN PARLIAMENT:

Country	December 2010 (%)	April 2013 (%)
Algeria	7.7	31.6
Tunisia	27.6	26.7
Iraq	25.2	25.2
Sudan	25.6	24.6
Mauritania	22.1	22.1
Saudi Arabia	0	19.9
UAE	22.7	17.5
Morocco	10.5	17.0
Libya	7.7	16.5
Somalia	6.8	13.8
Palestine	12.8	12.8
Djibouti	13.8	12.7
Syria	12.4	12.0
Jordan	10.8	12.2
Bahrain	2.5	10.0
Kuwait	7.7	6.2
Lebanon	3.1	3.1
Comoros	3.0	3.0
Egypt	12.7	2.0
Oman	0	1.2
Yemen	0.3	0.3
Qatar	0	0.0
Arab States	12.5	15.6

## Appendix B

### CEDAW RATIFICATION IN MENA COUNTRIES:

Country	CEDAW Ratification	CEDAW Reservations	SCR 1325 National Action Plans
Algeria	Y	2, 15, 16, 29	N
Bahrain	Y	2, 9, 15, 16, 29	N
Djibouti	N		N
Egypt	Y	2, 29, 16	N
Iran	N		N
Iraq	Y	2, 9, 16, 29	N
Israel	Y	7, 16, 29	N
Jordan	Y	9, 16	N
Kuwait	Y	9, 16, 29	N
Lebanon	Y	9, 16, 29	N
Libya	Y	2, 16	N
Morocco	Y	Lifted	Y
Oman	Y	9, 15, 16, 29	N
Palestine	N		N
Qatar	Y	2, 9, 15, 16, 29	N
Saudi Arabia	Y	9, 29	N
Somalia	N		N
Sudan	N		N
Syria	Y	2, 9, 15, 16, 29	N
Tunisia	Y	Lifted, need to be registered	Y
UAE	Y	2, 9, 15, 16, 29	N
Yemen	Y	29	N

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Wilson Center Middle East Program special publication

<http://www.wilsoncenter.org/publication-series/challenges-to-women%E2%80%99s-security-the-mena-region>

### **For Women of the Arab Spring, Iranian Women Provide a Warning and a Model** (Winter 2013)

Turkish Policy Quarterly

[http://www.turkishpolicy.com/dosyalar/files/vol\\_11-no\\_4%20esfandiari.pdf](http://www.turkishpolicy.com/dosyalar/files/vol_11-no_4%20esfandiari.pdf)

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