

# REFORMING FAMILY LAWS TO PROMOTE PROGRESS IN THE MIDDLE EAST AND NORTH AFRICA

by Valentine M. Moghadam and Farzaneh Roudi-Fahimi

The issue of women's rights is gaining prominence in policy debates, as pressure for democracy in the Middle East and North Africa region (MENA) continues to grow. Area experts contend that a larger role for women in the economy and society is vital to the region's progress. But women in MENA still face gender discrimination that prevents them from reaching their potential, despite their impressive gains in education and health.

To varying degrees across MENA countries, discrimination against women is built into the culture, government policies, and legal frameworks. In particular, the region's family laws codify discrimination against women and girls, placing them in a subordinate position to men within the family—a position then replicated in the economy and society.

This brief highlights recent trends in women's activism and family law reform in the MENA region, with a spotlight on Morocco, which recently adopted an entirely new family law. The new Moroccan law is consistent with the spirit of Islam, yet based on equal rights for both men and women. That a feminist campaign succeeded in altering family law in a MENA country where laws are based on the *Sharia*, or Islamic law, shows how effective coalitions can be built in MENA countries by linking social and economic development to women's rights.

## The Costs of Discrimination

Academic and policy-oriented studies have identified chronic gender inequalities in the MENA region as major obstacles to progress in economic and human development. A decade ago, researchers argued that the low participation of women in the labor force hindered both economic development and women's participation in society. A more recent study found that women's underrepresentation in the workforce

explains why MENA countries lack the capacity to meet the challenges of globalization.<sup>1</sup>

The *2002 Arab Human Development Report*, the first in a landmark series prepared entirely by Arab scholars, concluded that the region suffered from fundamental deficits in three areas: knowledge, political rights, and women's rights. The *2004 Arab Human Development Report* warns that laws and practices doubly exclude women. While governments have made some efforts to raise women's status, success remains limited, according to the report.<sup>2</sup>

A recent report by the World Economic Forum argued that countries that do not fully take advantage of one-half the talent in their populations are misallocating human resources. The report, ranked Egypt at the bottom (58th) and Jordan 55th, based on an analysis of gender gaps in economic and political participation, educational attainment, and health and well-being in 58 countries around the world. Egypt and Jordan were the only MENA countries included in the study.<sup>3</sup>

A World Bank report on gender and development in the Middle East points out that not only are young women in MENA healthier and more educated than their mothers, but the generational improvement has been greater than that in any other major world region. Still, women in MENA face greater obstacles finding jobs and playing active public roles in their society than women elsewhere.<sup>4</sup>

Some scholars link women's relatively low levels of employment to the oil economy and relatively high wages, while others have emphasized state policies, culture, and social institutions such as the region's family laws. As noted in the UN report on *Progress of Arab Women 2004*, many women have no option but to accept patriarchal family structures that limit their ability to participate in both the economic and political realms.<sup>5</sup>



## **The Global Agenda for Empowering Women**

Gender discrimination in the MENA region also prevents women from attaining the standards set by the global women's rights agenda (see Box 1). The "empowerment of women" and the realization of women's human rights were centerpieces of the Beijing Platform for Action, the official document adopted at the United Nations Fourth World Conference on Women in 1995.

The 1995 conference spawned much research and debate on women's empowerment: According to one perspective, women's empowerment is a process that challenges and transforms the patriarchal beliefs and institutions that reinforce and perpetuate women's inequality.<sup>6</sup> Another study sees empowerment as a broader process aimed at achieving legal rights and participation in key social, economic, political, and cultural domains.<sup>7</sup> Thus, women's empowerment is not confined to gains in access to education and employment. It may also encompass progress in political participation, cultural expression, and equitable legal rights.

In 2000, gender equality and women's empowerment were adopted by the United Nations as the third of eight Millennium Development Goals (MDGs) aimed at combating poverty and enhancing human development. One measure of progress for this goal is the proportion of seats in national parliaments held by women. The MENA region lags well behind other regions by this measure, despite some progress.<sup>8</sup>

Gender discrimination is hardly specific to the Middle East; it can be found across the globe. But the gap between men's and women's rights is most visible in MENA countries, where there is greater resistance to closing that gap. The resistance stems in large part from the distinctive way that MENA countries have institutionalized gender discrimination, subjecting women to legal forms of discrimination in addition to patriarchal attitudes and practices.

## **Family Laws in Need of Reform**

Discrimination against women is built into the region's family laws, also known as personal status laws, and in the penal codes of some of the region's countries. Family laws govern marriage, divorce, maintenance, paternity, custody of children, and inheritance. With the exception of

Turkey and Tunisia, where family laws are drawn from mostly secular sources, family laws in MENA countries are mainly or solely based on the *Sharia*. The traditional interpretations of the *Sharia* differentiate between men and women in the allocation of rights and responsibilities and typically place women in the position of minor and dependent.<sup>9</sup>

Besides patriarchal attitudes, codified restrictions limit women's mobility and privileges granted to male kin, notably "guardianship" over women. Men's guardianship over women in the family is then replicated in male authority over women in all areas of decisionmaking in the public sphere. Women's interactions with the state and society are thus often determined and mediated through their husbands, fathers, brothers, or other male relatives.

A woman's position as a dependent of her male guardian is used to justify her second-class citizenship. Traditional interpretations of Muslim family law require a woman to obtain the permission from her father, husband, or other male guardian not only to marry, but also to seek employment, start a business, travel, or open a bank account for a child. In Iran and Jordan, for example, a husband has the legal right to forbid his wife or unmarried daughter to seek employment or stay in a job. While wives who are educated and politically aware may stipulate in their marriage contracts that they be allowed to work, many wives make no such stipulations. And if the issue is contested, courts often side with the husband.<sup>10</sup>

Traditional Muslim family law seeks to treat husbands and wives equitably. For example, because the law gives men the right to unilateral divorce, the groom must pay the bride a sum of money, or *mahr*, that both families agree to. While part or all of it can be paid at the time of the marriage, the *mahr* is generally deferred and paid only in the event of divorce. A husband is also legally and culturally obligated to provide for his wife and children. Indeed, a husband's failure to support his wife is grounds for divorce. In return for *nafaqa*, or the husband's economic support, the wife has to obey her husband (*tamkin*). A wife is under no obligation to share any wealth or earnings with her husband or contribute to the family economy. She is not even required to perform household labor or childcare. In principle, she must be paid for what are considered services rendered to her husband.

*Box 1*

**Where MENA Countries Stand on Women's Rights**

In a recent review of women's rights in Arab countries of the MENA region, Tunisia ranked at the top, followed by Morocco. The findings are the result of an intensive 20-month-long research process by a team of 40 leading scholars, analysts, and women's rights experts, including those from the region. After a committee of specialists on the Middle East, human rights, and Islamic laws and norms developed the methods for the

study, Freedom House, a non-profit organization that promotes democracy and freedom, commissioned the country studies in 2003.

The researchers assessed how women fared in each country in terms of nondiscrimination and access to justice; autonomy, security and freedom of the person; economic rights and equal opportunity; political rights and civic voice; and social and cultural rights. These indicators of women's citizenship and rights are consistent with the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW) and the Beijing Platform for Action, as well as with the Universal Declaration of Human Rights and other international human rights conventions.

The study produced individual country reports and a summary report providing a comparative review of women's rights across the region (see table). The countries were rated on a scale of 1 to 5, with 1 signifying the weakest performance and 5 the strongest. The study does not provide a comparison with countries outside the region.

Country	Nondiscrimination and access to justice	Autonomy, security, and freedom of the person	Economic rights and equal opportunity	Political rights and civic voice	Social and cultural rights
Algeria	3.0	2.4	2.8	3.0	2.9
Bahrain	2.2	2.3	2.9	2.1	2.8
Egypt	3.0	2.8	2.8	2.7	2.4
Iraq	2.7	2.6	2.8	2.2	2.1
Jordan	2.4	2.4	2.8	2.8	2.5
Kuwait	1.9	2.2	2.9	1.4	2.8
Lebanon	2.8	2.9	2.8	2.9	2.9
Libya	2.3	2.1	2.3	1.2	1.8
Morocco*	3.2	3.2	3.1	3.0	3.0
Oman	2.0	2.1	2.7	1.2	2.1
Palestine**	2.6	2.7	2.8	2.6	2.9
Qatar	2.0	2.1	2.8	1.7	2.5
Saudi Arabia	1.2	1.1	1.4	1.0	1.6
Syria	2.7	2.2	2.8	2.2	2.3
Tunisia	3.6	3.4	3.1	2.8	3.3
UAE	1.7	2.1	2.8	1.2	2.3
Yemen	2.4	2.3	2.3	2.6	2.1

\* The study covers development up through the end of 2003. It does not take into account the new developments in Moroccan family law reforms.

\*\* Refers to the Palestinian population living in Gaza and the West Bank (including East Jerusalem).

**SOURCE:** Freedom House, "Women's Rights in the Middle East and North Africa: Citizenship and Justice" ([www.freedomhouse.org](http://www.freedomhouse.org), accessed Sept. 23, 2005).



Such practices and norms may have been progressive in the medieval era, but today they symbolize women's economic dependence on their male relatives and inequality in economic and legal affairs. In making women dependents of men and minors within the family, the traditional interpretations of the *Sharia* that form the basis of family laws have strengthened the male breadwinner/female homemaker ideal.

For example, the Jordanian Civil Status Law requires that all official transactions be recorded in a *daftar*, or "family book." Nearly all contact with the government must be recorded in the *daftar*, including voting, registering children for school or university, acquiring civil service jobs, or receiving social services such as food assistance. A woman remains in her father's family book until she is married. Then she is transferred into her husband's family book. Recent legislation has modified the law in Jordan to allow women to start their own *daftar* if they are divorced or widowed.

Guardianship, a man's exclusive right to polygamy, unilateral divorce, and a woman's smaller share of inheritance are all inscribed in the family laws. For many in the region, these practices do not conform to 21st-century sensibilities and realities. But others consider the family laws divinely inspired and therefore fiercely contest any changes.

### Reform Efforts

Inspired by international human rights conventions, MENA women activists and their supporters are now also looking to the *Qur'an* and the *Sunnah*, the sayings and deeds of the Prophet Muhammad and his Companions, in order to develop new interpretations of the family law. These activists believe that Islam is at heart egalitarian, and that parts of the *Sharia* codified in family laws were interpretations by men whose views were rooted in the patriarchal traditions of the time.

#### Box 2

### An International Bill of Rights for Women

The United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), known as the international bill of rights for women, is the cornerstone of international efforts to advance the status of women. CEDAW establishes a framework for national actions that promote equal rights for men and women. The convention is based on international human rights agreements.

CEDAW was adopted by the UN General Assembly in 1979 and became a binding treaty in 1981. Countries that have signed it commit to undertake a series of measures to end all forms of discrimination against women, including:

- Incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws, and adopting laws prohibiting discrimination against women;
- Establishing tribunals and other public institutions to ensure women are effec-

tively protected against discrimination; and

- Ensuring the elimination of all acts of discrimination against women by persons, organizations, or enterprises.

Aside from civil rights issues, the convention also devotes major attention to women's reproductive rights. The preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination."

As of March 2005, about 90 percent of the UN member states had joined the treaty. In 1981, Egypt was the first MENA country to do so and the United Arab Emirates became the last to join in 2004 (see table). All MENA countries joining the treaty, however, had reservations about some important articles. As a result, they refused to recognize their duty to implement them, thereby undermining the power and universal validity of the convention. Most of the reservations pertain to articles that deal with family laws, particularly those related to women's

rights within the family and women's nationality rights. Saudi Arabia signed with a blanket statement that it would not observe any article that in their view contradicted the *Sharia*.

**REFERENCE:** United Nations High Commissioner on Human Rights, *Declaration on the Elimination of Discrimination Against Women*, accessed online at [www.unhchr.ch](http://www.unhchr.ch), on July 15, 2004.

#### Year Joined CEDAW

Country	Year Joined CEDAW
Algeria	1996
Bahrain	2002
Egypt	1981
Iraq	1986
Jordan	1992
Lebanon	1997
Libya	1989
Morocco	1993
Saudi Arabia	2000
Syria	2003
Tunisia	1985
United Arab Emirates	2004
Yemen	1984



Throughout the region, women's organizations have placed priority on changing personal status laws to grant women more rights and equality within the family. They also have campaigned for the criminalization of domestic violence (including "honor crimes"), equality of nationality rights, and greater opportunities for political and economic participation. Their research, advocacy, and lobbying efforts are directed at their governments, clergy, the media, and international organizations. And their arguments are based on principles related to human rights, international conventions, the global women's rights agenda, and a kind of "Islamic feminist" rereading of the religious sources. They also have appealed to governments to make their domestic policies conform to international conventions, such as the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW—see Box 2) and the Beijing Platform for Action.

The reform of family law is therefore important for several reasons:

- It is a central element in the modernization of religious institutions and norms in Muslim societies.
- It establishes women's human rights and their equality within the family and vis-à-vis male kin.
- It has implications for women's wider citizenship rights and their social participation, including economic rights.
- It brings the MENA region in line with international norms and codes enshrined in such conventions as the Universal Declaration on Human Rights, the CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Beijing Declaration and Platform for Action.

The numbers and types of women's organizations that support these changes are increasing. At least seven types of women's groups have emerged in MENA countries. They include service or charitable organizations, official or state-affiliated women's organizations, professional associations, women's studies centers, women's rights or feminist organizations, nongovernmental organizations working on women's and development issues, and worker-based or grassroots women's groups.<sup>11</sup>

### **A Major Step Forward in Morocco**

The Moroccan *mudawana*, or family code, was drafted in 1957, based mainly on the Maliki school of Islamic jurisprudence. Despite major resistance, a few amendments were enacted in 1993—demonstrating that the *mudawana* was not fixed and could be changed. The amendments limited the guardian's control and emphasized that the woman should give her consent and sign the marriage contract; allowed women over age 21 who did not have a father to contract their own marriage without a guardian; and stipulated that before taking a second wife, a husband needed to inform his first wife. The mother was given the right to legally represent her children if their father died, but she still could not dispose of the children's property.

However, the *mudawana* continued to treat women as subordinate to men: There were double standards in child custody and divorce, for example. And with social change in Morocco, including women's rising employment, the *mudawana* increasingly became outdated. What is more, violence and harassment against women seemed to be increasing and needed to be addressed.

As Moroccan civil society became increasingly organized and more women's associations were formed, a movement began to raise awareness about women's rights. The appointment in 1998 of a progressive prime minister and a minister of women and family affairs who was committed to women's rights led to the formulation of the National Action Plan for the Integration of Women in Development, which called for reforming the *mudawana*. Sustained hostility from religious fundamentalist groups put the plan on the back burner, but the women's organizations and their allies in government pressed ahead. In the 2002 elections, 35 women entered the Moroccan parliament, assisted by a new quota system adopted by the political parties.

Meanwhile, King Mohammad VI, who was personally committed to women's rights, appointed a royal commission to advise him on the family law. Women's rights organizations organized a series of workshops, roundtables, and discussion groups to analyze the details of the draft legislation, renew their efforts to educate the public, and lobby the Parliament for what they argued would be reforms to promote the well-being of women, children, and the family.



Box 3

### Features of the New Family Law in Morocco

The campaign to reform the Moroccan family code, or *mudawana*, has been the work of more than a decade. The reforms reflect a new path between traditionalists and women's rights activists. The main features of the new Moroccan family law are:

- Husband and wife share joint responsibility for the family.
- The wife is no longer legally obliged to obey her husband.
- The adult woman is entitled to self-guardianship and may exercise it freely and independently.
- The right to divorce is a prerogative of both men and women, exercised under judicial supervision.
- The principle of divorce by mutual consent is established.
- The woman has the right to impose a condition in the marriage contract requiring that her husband refrain from taking other wives.
- If there is no pre-established condition in their marriage contract, the first wife must be informed of her husband's intention to remarry, the second wife must be informed that her husband-to-be is already married, and the first wife can ask for divorce due to harm suffered.
- Polygamy is subject to the judge's authorization and to stringent legal conditions (no objection by the first wife) that make the practice nearly impossible.
- In the case of divorce, the woman is given the possibility of retaining custody of her child even upon remarrying or moving out of the area where her ex-husband lives.
- The child's right to acknowledgment of paternity is protected in cases where the marriage has not been officially registered.
- For both men and women, the minimum legal age of marriage is 18 years.

**REFERENCE:** *Women's Learning Partnership, Morocco Adopts Landmark Family Law Supporting Women's Equality*, accessed online at [www.learningpartnership.org](http://www.learningpartnership.org), on July 13, 2004.

In October 2003, in his capacity as Commander of the Faithful, the king announced a new family code, which he asserted was consistent with the spirit of the *Sharia*, and then sent it to the Parliament. This code, which Parliament passed in January 2004, has been heralded as not only a giant leap in women's rights, but also a huge advance in children's rights (see Box 3).<sup>12</sup>

The Moroccan case is a striking example of how women's rights advocates can build coalitions to generate social dialogue, affect key policy debates, help reform laws, and change public policy. Morocco now joins Tunisia and Turkey as the

only countries in the MENA region where the husband and wife share responsibility for the family.<sup>13</sup>

Whether this new law makes a real difference depends on how far and how well it can be translated into practice. Will average women become aware of their new rights? And will they be sufficiently empowered to take action if the need arises? Is the country's judiciary system ready for the change? Many challenges remain, not least of which is religious fundamentalists' resistance to implementing the new family code.

Both the state and civil society must now actively raise awareness about the new law and women's new rights through education, media campaigns, and other activities, which could take years. Efforts are already beginning to address some of these challenges and support the reformed family code in Morocco: New family courts have been established, training for the judiciary has been improved, and women can be appointed as family judges.

Morocco's case is remarkable, because a feminist campaign succeeded in breaking the long taboo against touching the *mudawana*—and this in a very conservative culture. The success of women's rights organizations derived partly from their strategic use of Islamic sources to defend their case for a more contemporary interpretation of *Sharia* to frame the new family law. Arguments about the need to fully involve women in all aspects of public life in order to further socioeconomic development also helped advance their cause.

The Moroccan experience shows that change is possible. Through collective action involving civil society and progressive government, even the most entrenched laws can be revised to improve the lives of women and to advance society as a whole.

In Morocco, the long campaign to improve women's status has been an entirely domestic matter. While Moroccan women's rights groups clearly benefited from a global environment conducive to women's rights, their decade-long struggle was carried out and won through their own efforts. The Moroccan success story certainly can be replicated in other countries, though not in exactly the same way. Moroccan women had the advantage of a sympathetic and supportive political leadership, a factor not present in all the countries in the region.

## Other Countries Take Smaller Steps

While the pressure to reform family law has been felt across the region, other countries' efforts to remove discriminatory laws against women have been largely piecemeal. In 2000, after much national debate, the Egyptian parliament passed a new law that changed procedures associated with the personal status law. The law—known as *khul'*—gives a woman the equal right to seek a divorce without the consent of her spouse, but only if she gives up some of her financial rights. Opposition groups contested the legality of the *khul'* claiming that it violated the *Sharia*, but in 2002 the Supreme Constitutional Court issued an important judgment confirming that *khul'* is constitutional.<sup>14</sup>

Forfeiting financial rights in exchange for the right to seek divorce can be especially hard on low-income women or those without any employment experience. For that reason, some women's rights advocates remain critical of the new law. However, supporters of *khul'* see the new procedure as a rational interpretation of Islam. They argue that it provides an opening for those women whose divorce cases have dragged on for years in the court system or whose suits could be denied.

Because they are less sensitive than issues of divorce, child custody, or inheritance, laws related to a child's right to inherit his or her mother's nationality are generally among the first family laws that women and child advocates seek to reform. In 2004, Egypt and Algeria gave women the right to pass on their citizenship to their children regardless of the father's nationality. These changes related to nationality rights are part of a regional campaign to allow mothers to pass on their citizenship to their children. With the backing of not only local advocacy groups, but also non-governmental organizations and government officials, other countries, such as Bahrain, Jordan, Lebanon, Palestine, and Yemen, are participating in the campaign, making reforms more likely in the near future.<sup>15</sup>

## Conclusion

Societies pay a price for discriminating against women, and social and economic development is best served by the active participation of both sexes. To reach that goal in MENA, governments need to reform a number of policies and laws, including the family laws. Women's rights advocates are calling for the reform of family laws because the laws give men privileges, while discriminating against women. The laws are anachronistic at a time when women's roles are expanding in the family and in society.

Because Muslim family law is said to derive from the *Sharia*, any reform process requires strong political support, sensitivity to religious sentiments, and assurances to the public that the changes are in accord with family values and Islamic norms of justice. This is the strategy that was adopted in Morocco's successful reform of its *mudawana*—a pioneering move for an Islamic country that could spark change throughout the region and beyond.

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- <sup>6</sup> See Naila Kabeer, *The Conditions and Consequences of Choice: Reflections on the Measurement of Women's Empowerment*, Discussion Paper No. 108 (Geneva: United Nations Research Institute for Social Development, 1999); and Naila Kabeer, "Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment," in *Discussing Women's Empowerment—Theory and Practice*, ed. Birgitta Sevefjord, et al., accessed online at [www.sida.se](http://www.sida.se), on Nov. 12, 2004.

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<sup>7</sup> Valentine M. Moghadam and Lucie Senftova, "Measuring Women's Empowerment: Women's Participation and Rights in Civil, Political, Economic, Social, and Cultural Domains," in *International Social Science Journal* 57, no. 184 (2005): 389–412.

<sup>8</sup> United Nations Statistics Division, Millennium Development Indicators Database, accessed online at <http://millenniumindicators.un.org>, on Aug. 19, 2005.

<sup>9</sup> See Abdullahi An-Naim, *Islamic Family Law in a Changing World* (London: Zed Books, 2002). In Israel, family law is based on the Jewish Halacha. In Lebanon, there are 15 personal status codes for the 18 recognized ethnic-religious communities, including Christian ones. In Muslim-dominant countries, non-Muslim communities are exempt from Islamic family law and family matters are governed by religious codes supervised by churches. Thus, Catholics cannot divorce, because their churches do not allow it.

<sup>10</sup> Amira al-Azhary Sonbol, *Women of Jordan: Islam, Labor, and the Law*. (Syracuse, NY: Syracuse University Press, 2003): 89–99.

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<sup>14</sup> Mona Zulficar, "New Signs of Progress for Women in Egypt," *Women Living Under Muslim Laws* (Feb. 12, 2004), accessed online at [www.wluml.org](http://www.wluml.org), on Jan. 9, 2006.

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