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# Gender, Development, and the Law in the Middle East and North Africa

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# GENDER, DEVELOPMENT, AND THE LAW IN THE MIDDLE EAST AND NORTH AFRICA

Nadereh Chamlou†

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## I. INTRODUCTION

This article will examine how laws and labor regulations affect women as economic actors and how this in turn affects economic growth rates and development, as demonstrated in the case of the Middle East and North Africa. Gender inequality imposes heavy costs on family welfare and economic growth in any region and country. A company's most valuable assets walk in the door in the morning and out the door every night. Reducing barriers to female labor force participation (FLFP) is increasingly seen as an important lever for growth in developed countries, because it expands labor supply and the available talent pool which is important of improved productivity. This article will demonstrate that economic activity and growth is impeded by outdated regulations, and that there is a need for additional legal review and reform to reduce such costs.

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The World Bank defines gender equality as (a) equality under the law; (b) equality of opportunity, including opportunity for equal rewards for work and equal access to productive resources; and (c) equality of voice, including the ability to influence policies that contribute to the development process.<sup>1</sup> Equality of outcomes will not be considered the definition of gender equality for purposes of this paper.<sup>2</sup>

## II. LAWS DEFINING THE STATUS OF WOMEN IN THE MIDDLE EAST AND NORTH AFRICA

Many Middle Eastern and North African (MENA) states signed the Millennium Declaration, demonstrating their commitment to gender equality.<sup>3</sup> MENA states are working towards the Millennium Development Goals (MDG). The third MDG is about gender equality and the empowerment of women.<sup>4</sup> The progress of this goal is measured by the rate in which women attain and bridge the gender gap in educational,

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<sup>1</sup> THE WORLD BANK, MENA DEVELOPMENT REPORT, GENDER AND DEVELOPMENT IN THE MIDDLE EAST AND NORTH AFRICA: WOMEN IN THE PUBLIC SPHERE, xviii (2004) [hereinafter MENA DEVELOPMENT REPORT]. A comment may be helpful here on the difference between sex and gender. Sex is something one is born with. The American Heritage Dictionary of the English Language, New College Edition, 1187 (1979) (Sex is defined as "[t]he property or quality by which organisms are classified according to their reproductive functions.") On the other hand, gender is defined as the "[c]lassification of sex." In other words, gender can be described as the role society assigns to a particular group. This role can evolve over time. For example, gender roles in the United States are very different now from one-hundred years ago. The industrial and technological revolutions and overall economic development has contributed to significant changes in gender roles because these advances have affected the distribution of tasks within the family structure.

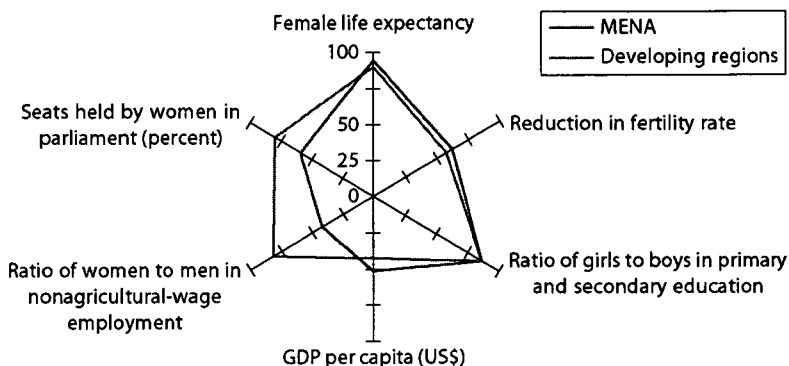
<sup>2</sup> While this paper focuses on equal access rather than equal results, a 50-50 outcome may indicate that access is equal. For instance, one can expect that school-aged children consist of girls and boys in roughly equal proportion. When the school completion rate shows significant disparities between girls and boys, one can explore to establish if there is gender-based inequality of access to education.

<sup>3</sup> For complete information on the states participating in the Millennium Campaign see United Nations, Millennium Campaign: Voices Against Poverty, Country Info, <http://www.millenniumcampaign.org/site/pp.asp?c=grKVL2NLE&b=173889>.

<sup>4</sup> United Nations, Millennium Campaign: Voices Against Poverty, About the Goals, <http://www.millenniumcampaign.org/site/pp.asp?c=GRKVL2NLE&b=185529> (last visited Apr. 13, 2006). See also UNITED NATIONS, PROGRESS OF THE WORLD'S WOMEN, 4-5, 7, (2002), available at [http://www.unifem.org/attachments/products/07\\_introduction.pdf](http://www.unifem.org/attachments/products/07_introduction.pdf).

labor and political presence in these counties.<sup>5</sup> Though the MENA states have made significant progress on healthcare and education for women, and are likely to comfortably meet MDG goals related to these sectors, they continue to lag behind the rest of the developing world with regard to women's roles in the labor force and political representation (see Figure 1).<sup>6</sup>

FIGURE 1. PROGRESS IN EMPOWERING WOMEN IN MENA AND OTHER DEVELOPING REGIONS, 2000<sup>7</sup>



Note: These are normalized indicators; the aim is to show comparison.

Sources: World Bank 2003j and World Bank staff estimates.

The legal framework plays a major role in slowing the bridging of the gaps between men and women in the labor force participation. The legal structure affecting women's status in MENA states, and perhaps worldwide, is comprised of three building blocks. The first includes numerous international conventions and proclamations, most notably the International Convention to Eliminate All Forms of Discrimination against Women (CEDAW).<sup>8</sup> Nearly all countries have ratified this Convention. (except Iran, which together with the United States are the only two non-signatories of CEDAW). However, most of the

<sup>5</sup> See UNITED NATIONS, PROGRESS OF THE WORLD'S WOMEN, *supra* note 4, at 7, 11-53.

<sup>6</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/34/46 (Sept. 3, 1981), available at <http://www1.umn.edu/humanrts/instree/e1cedaw.htm>.

MENA countries have ratified it with some reservations, particularly in the areas of inheritance and family law.<sup>9</sup>

The second building block is a country's national constitution. With the exception of Saudi Arabia, which adopted the *Shari'a*,<sup>10</sup> (Islamic law) in lieu of a constitution, all national constitutions in the Middle East give equal rights to men and women regarding citizenship, voting and labor.<sup>11</sup>

The third building block involves the state's written laws – or ordinary legislation. In MENA states, two broad categories of legislation affect the status of women. The first category is comprised of personal status laws, which are based on the *Shari'a*, and focus on issues in the private sphere, such as marriage, divorce, child custody, and inheritance rights between men and women.<sup>12</sup> The second category is the civil status code, which relates to the public sphere, and includes laws concerning labor, nationality, pensions, commerce, investments, and social security.<sup>13</sup> These are frequently modeled after Western laws of the time when they were integrated into national legal structures. Some were taken from French, Belgian or British laws.

Unlike national constitutions in the MENA states, both the personal status laws and the civil code accord differential treatment to men and women.<sup>14</sup> For example, the personal status laws give men the unilateral right to divorce, similar to a no-fault divorce, but a woman's right to divorce is conditional upon a host of factors and can be initiated and granted if there is sufficient proof of cause.<sup>15</sup> Similarly, in child custody disputes a woman seeking a divorce is likely to lose the right to care for her children—if they are above a certain age, custody of children is granted to the husband since he has to provide for them.<sup>16</sup> These conditions result in an unequal balance of power within the family structure.<sup>17</sup>

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<sup>9</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 144.

<sup>10</sup> *Id.* at 152.

<sup>11</sup> *Id.* at 133.

<sup>12</sup> *See id.* at 98, 132.

<sup>13</sup> *Id.* at 134.

<sup>14</sup> *Id.* at 132, 134.

<sup>15</sup> *Id.* at 11.

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

As mentioned above, much of the civil code of the MENA countries was 'imported' from Western models which at the time contained significant gender disparities, which have since been eliminated through legal and judicial processes. However, the resistance to changing these laws in MENA states is supported by arguments that can be categorized along four different lines. The first argument involves the centrality of the family.<sup>18</sup> Unlike most constitutions in the world, where the individual is considered the unit of society, MENA constitutions consider the family a basic unit of society.<sup>19</sup> Consequently, laws are interpreted based on how they affect the family, and within the family, roles and powers can be influenced by gender.<sup>20</sup> The second tenet is that the man is considered to be the breadwinner of the family and hence the head of the family.<sup>21</sup> In many countries, the man is still considered *de facto* head of the family;<sup>22</sup> however, in the MENA states this principle is codified into many laws, making women legally secondary income earners within the family structure, even when she is effectively not.<sup>23</sup> This often affects women's employment opportunities, where employers believe that men, since they have to support a family, are more deserving job applicants.

The third basic tenet involves the concept of equity as distinct from equality.<sup>24</sup> These are two very different concepts in the MENA states. Equity means that each person is given what that person needs in order to perform the function that is assigned to them. Equality involves the division of shares so that each person is given an equal part. Therefore, it is often argued that since women are not legally expected to provide for the family, they do not need equal resources, and resources should be allocated on the basis of responsibility *vis-à-vis* the family.<sup>25</sup> While the members of the family have claim to the man's resources, the resources allocated to a woman belong to her entirely. Consequently, the concept of equity, if construed strictly,

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 94.

<sup>20</sup> *See id.*

<sup>21</sup> *Id.* at 10.

<sup>22</sup> *Id.* at 107.

<sup>23</sup> *Id.* at 98.

<sup>24</sup> *Id.* at 10.

<sup>25</sup> *Id.* at 11.

could disadvantage women who actually contribute to and are responsible for all or part of the family's upkeep – which is increasingly the case when one income can no longer provide for the family.<sup>26</sup>

Finally, the fourth tenet involves a code of honor.<sup>27</sup> This is a complex concept. The honor and reputation of a family is heavily dependent on the virtuous reputation and behavior of its women. Men have the duty to ensure that the honor of the women in their family is protected.<sup>28</sup> This responsibility is linked to a man's authority to oversee his wife's or daughter's access to the world outside the family, such as her ability to work and travel, because a breach of honor to the women is also a breach of honor for the man.<sup>29</sup> In return, a woman is expected to obey the man who protects her, who could also be her father, brother, or husband. As the husband is also responsible for his wife's upkeep, most MENA states have laws requiring women to be obedient to her husband as long as he financially supports her.<sup>30</sup> A husband is permitted to divorce his wife, if she does not obey him. As such, a woman's disobedience involves substantial risks, and if divorced, she potentially can lose custody of her children.<sup>31</sup> Although women are supposed to be equal to men under the constitution, these considerations, though well meaning to ensure that women are protected, can considerably impact a woman's rights and at times be used against her.<sup>32</sup> The legislative framework of MENA states which grant men more responsibilities, because of their presumed financial and protective roles, also afford them more authority and more rights and powers vis-à-vis women, both within the household and with regard to accessing the public sphere.<sup>33</sup> Establishing the limit of these powers between public and private spheres depends largely on the interpretation of the law, which is done by male judges, since women cannot be judges. Increasingly,

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 10.

<sup>28</sup> See MENA DEVELOPMENT REPORT, *supra* note 1, at 10.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See *id.*

<sup>33</sup> *Id.*

women establish the respective rights and privileges within marriage contracts.<sup>34</sup>

Gender-based differential treatment and inflexibilities under the law can often result in negatively impacting the economies of MENA states. For example, certain facets of labor laws can have the practical effect of reducing women's ability to work and contribute to the economy.<sup>35</sup> In most MENA states, constitutions give both women and men the right to work, and labor laws do not discriminate explicitly against women in the workforce.<sup>36</sup> On the contrary, labor laws stipulate firmly that women should receive equal compensation for equal work, grant generous maternity leave benefits, and protect women from being fired due to marriage or pregnancy.<sup>37</sup> However, as these benefits are often mandated to be paid by the employer, they may not always be attainable for a high number of women if they work in small businesses which cannot afford these benefits or when such benefits cannot be effectively enforced.<sup>38</sup>

Some labor regulations may indirectly discriminate against women, and in turn their families, through a host of conditions on non-wage employment benefits.<sup>39</sup> For example, families qualify for tax and employment-related benefits only through men since they are considered the main breadwinner.<sup>40</sup> Regardless of her contributions to her family, a woman can receive benefits only if she is officially declared the head of the household, which is usually granted only if she is widowed if or she can prove that her husband is incapacitated.<sup>41</sup> Consequently, this differential treatment reduces a woman's compensation

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<sup>34</sup> A bride and groom may legally negotiate a marriage contract that provides the woman with rights within the marriage and household, including the right to work, study, divorce, and, in the event of a divorce, gain custody of the children and a financial settlement. These contracts generally supersede relevant law and are enforced. However, not all women command the resources necessary to execute such contracts, which depend heavily on the woman's bargaining power prior to marriage. Furthermore, the existence of these contracts creates confusion about to whom the law applies, and who it exempts.

<sup>35</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 10-11.

<sup>36</sup> *Id.* at 10.

<sup>37</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 10.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.*



through her benefits, even when she participates in the same work as a man.<sup>42</sup>

A range of gender-based regulations govern the specific times that women may work and the type of work they may do.<sup>43</sup> Some of these gender-based restrictions include limits on the amount of hours worked, the time of day a woman can work, as well as the type of work. These restrictions can reduce the flexibility that a private employer may have in hiring a man or a woman by implicitly increasing the uncertainty of return on or the cost of this employee.

Other examples of regulations that indirectly discriminate against women are labor laws that require employers with more than a certain number of women to provide employees with a child care center, regardless of whether the women working there need these services.<sup>44</sup> This law increases costs to employers who hire women, thereby reducing employers' demand for women workers.<sup>45</sup> The law should be amended to base the day-care requirement on the number of *employees* rather than the number of women.<sup>46</sup> This would place women in a more equal position regarding employment opportunities.

In general, while labor laws generally discourage discrimination against women, many regulations based on outdated foreign models directly or indirectly discriminate against women in the workplace.<sup>47</sup> Some labor laws that are intended to benefit women actually discourage employers from hiring them, and effectively reduce the number of women in the workforce.<sup>48</sup>

### III. IMPACT OF LAWS ON WOMEN AS ECONOMIC ACTORS

Over the last several decades, MENA states have significantly improved the amount and quality of education for girls.<sup>49</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 121.

<sup>45</sup> *Id.*

<sup>46</sup> *See id.*

<sup>47</sup> *Id.* at 94.

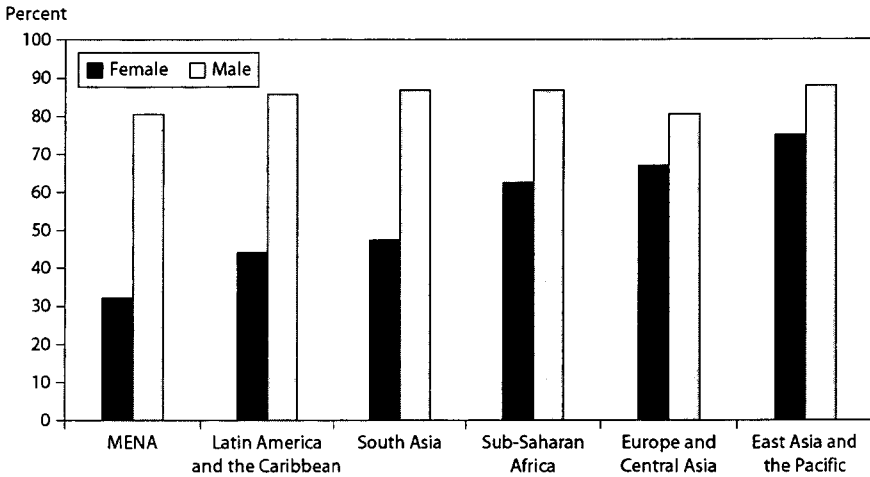
<sup>48</sup> In MENA, age discrimination against women and job segregation play a role in discouraging women from working, but are not out of line with the patterns found in other regions. In combination with existing social norms and the traditional gender paradigm, however, they pose constraints on women's work.

<sup>49</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 5-6. *See also* THE WORLD BANK, MENA Development Report, *Unlocking the Employment Potential in the*

Trends show that gender gaps in primary and secondary education are likely to have closed by 2005, while more than one in four girls enroll in tertiary education, and in several countries, women outnumber men in colleges and universities.<sup>50</sup>

However, less than one-third of women in MENA states participate in the formal labor force. Although this rate has been growing, it remains the lowest in the world at thirty-two percent. (see Figure 2).<sup>51</sup>

FIGURE 2. MALE AND FEMALE LABOR FORCE PARTICIPATION, BY REGION, 2000<sup>52</sup>



Source: ILO 1996; United Nations 2002.

Figures are for 2000 or latest year available.

Moreover, female unemployment is twice as high as for males, and it is highest among those women with higher education. (see Figure 3).<sup>53</sup> This may be partially due to the fact that educated women are mainly among the young, who in general experience high unemployment. Second, unemployment is also

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*Middle East and North Africa: Toward a New Social Contract*, 67 (2004), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDS/IB/2004/06/03/000012009\\_20040603143832/Rendered/PDF/288150PAPER0Unlocking0employment.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDS/IB/2004/06/03/000012009_20040603143832/Rendered/PDF/288150PAPER0Unlocking0employment.pdf).

<sup>50</sup> *Id.* at 5.

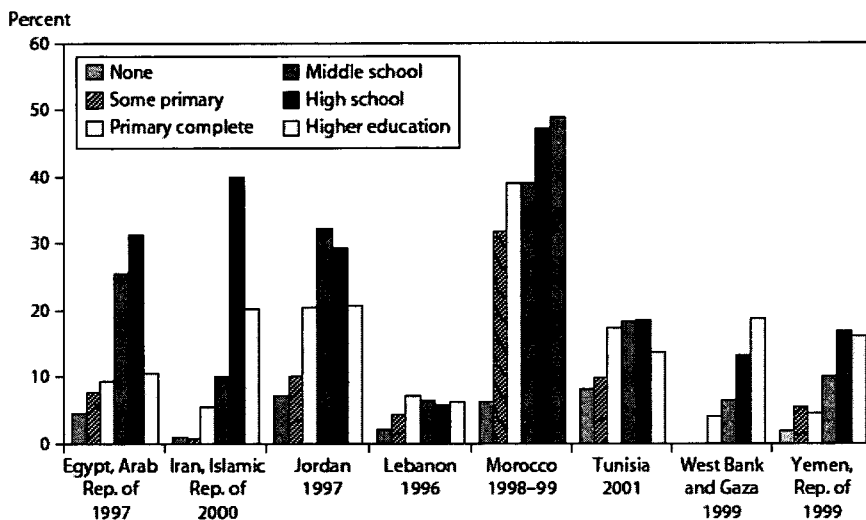
<sup>51</sup> *Id.* at 6.

<sup>52</sup> INTERNATIONAL LABOR ORGANIZATION, *ECONOMICALLY ACTIVE POPULATION, 1950-2010* (4th ed. 1996).

<sup>53</sup> *Id.* at 76.

a function of jobseekers who enter the labor market. While, it appears that those women with lower education may have an easier time finding jobs if and when they participate in the labor force, the higher unemployment rate among the educated can also be a function of declaring themselves jobseekers. Women with lower education may decide simply to stay away from the work force.

FIGURE 3. FEMALE UNEMPLOYMENT RATES BY EDUCATIONAL LEVEL IN MENA COUNTRIES, VARIOUS YEARS<sup>54</sup>



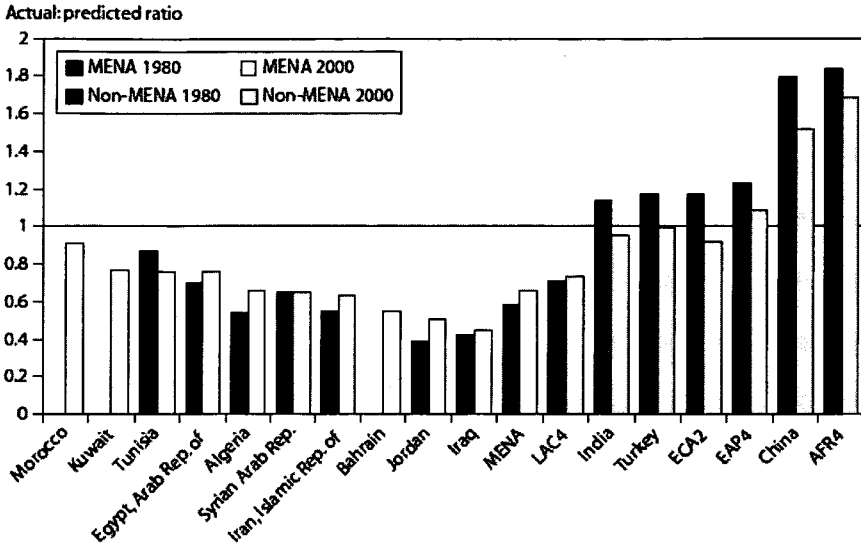
Source: World Bank household and labor force surveys of the most recent official date for each country.

Nevertheless, women's formal participation rate in MENA states is far beneath that which would be expected based on the statistics of women in MENA states concerning education, fertility, and age distribution (*see* Figure 4).<sup>55</sup>

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 62.

FIGURE 4. RATIO OF ACTUAL TO PREDICTED FEMALE PARTICIPATION IN THE LABOR FORCE IN MENA AND SELECTED COUNTRIES AND REGIONS, 1980 AND 2000<sup>56</sup>



Note: AFR4 – Cameroon, Ghana, Kenya, and Senegal; EAP4 – Indonesia, Malaysia, the Philippines, and Thailand; ECA2 – Hungary and Poland; and LAC4 – Argentina, Brazil, Chile, and Mexico. Bahrain and Kuwait estimates are based on total female participation in the labor force (which includes foreign workers).

Source: World Bank staff estimates.

Women in MENA states tend to leave the labor force when they marry and have children to a much greater extent than women in other developing regions.<sup>57</sup> This pattern differs from other regions, where women's participation in the labor force is at its highest when women are in their late thirties to early forties. This can be partially explained by the legal and societal considerations explained above.<sup>58</sup>

To demonstrate the effect of legal constraints and economic consequences, one can liken the imposition of the sex-based regulations in the region to the imposition of a neutral regulation. Assume that men and women workers are perfectly substitutable for each other, and that qualified men and women exist in equal numbers. This may increasingly be the case for MENA countries, given the significant gains women have made over the last 5-6 years to outnumber men in universities and in

<sup>56</sup> *Id.* at 62.

<sup>57</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 93.

<sup>58</sup> *Id.*

nearly all fields. We can compare the impact of this differential legal treatment to the imposition of a minimum wage. If the minimum wage is applied only to women and not to men, this would raise the cost of employing women, or reduce the benefits, and effectively create inequality between men and women in the workforce. As demonstrated in Figure 9, imposing a minimum wage regulation for women divides the labor market into two segments; one segment of the labor market will affect other segments in accordance with prominent economic theory.

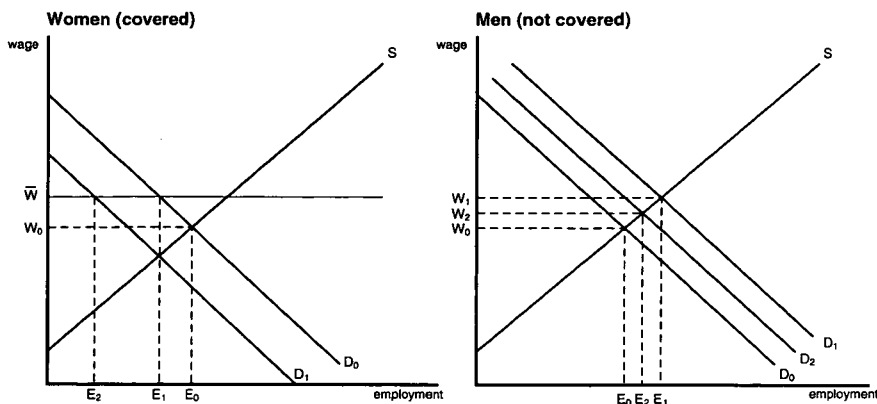
In the two graphs depicted in Figure 5, the demand curve  $D$  and the supply curve  $S$  meets initially at  $E_0$ , resulting in an initial equilibrium wage rate of  $W_0$ . The imposition of minimum wage  $W$  for women decreases the number of employed women from  $E_0$  to  $E_1$ , as shown in Figure 5a. For men not subject to the minimum wage, the imposition of a minimum wage for women shifts the demand curve outward from  $D_0$  to  $D_1$ , and raises their wages to the women's minimum wage level, as shown in Figure 5b.

These effects take place in the short-term, during which production technology does not change. However, in the medium to long-term, as employers face an increasing shortage of manpower and a declining margin of labor productivity, they will shift their production from labor intensive to capital intensive methods. For women workers, this shifts the demand curve down to  $D_1$  and reduces employment to  $E_2$  (Figure 5a). For men, it shifts the demand curve down to  $D_2$ , reducing their employment to  $E_2$  (Figure 5b).

In the medium to long-term, women will lose jobs as a result of their above-equilibrium minimum wage. This is the difference between  $E_0$  and  $E_2$ , while the job gains for men will be the difference between  $E_0$  and  $E_2$ . The loss of jobs for women is greater than the gain of jobs for men.

The overall result of the implementation of a minimum wage for women is a reduced number of jobs in the economy and reduced output. Based on this analysis, one can conclude that laws that increase the cost of employing women relative to men ultimately reduce the number of jobs in the economy as a whole.

FIGURE 5: THE EFFECT OF GENDER-DIFFERENTIATED LABOR REGULATIONS<sup>59</sup>



(a) Women (covered by minimum wage) (b) Men (not covered by minimum wage)  
 Source: Adapted from Jacobsen (1998).

Having such a small proportion of women in the labor force is costly to the MENA economies, although not all of the state's investment in education for women is wasted because educated women tend to raise healthier and better educated families. Nonetheless, the failure to more productively utilize the region's increasingly educated women restricts overall prosperity and limits the ability of regional producers to compete against countries that make full use of their human capital.

Given that the MENA nations have very high rates of unemployment, policymakers and others are understandably concerned that increasing the participation of women in the labor force could exacerbate an already serious situation. Figure 6 directly disputes the allegation that women take jobs away from men.<sup>60</sup> Statistics show that countries with higher percentages of women in the labor force are those with lower overall rates of unemployment, and that some countries with only a small percentage of women in the labor force are those with relatively high overall unemployment rates.<sup>61</sup> The lower right side of the graph shows rich members of OECD, which have equitable legal structures and good economic performance.<sup>62</sup> For example, in

<sup>59</sup> See JOYCE JACOBSEN, *THE ECONOMICS OF GENDER*, 34 (1998).

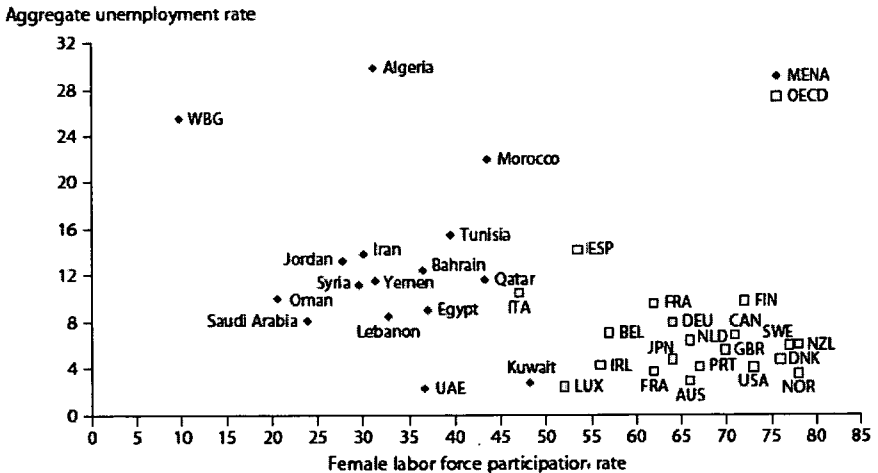
<sup>60</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 7-8.

<sup>61</sup> See *id.*

<sup>62</sup> *Id.* at 8.

Spain 50% of women participate in the labor force with a 15% overall unemployment rate, while in Norway 80% of women participate in the labor force with approximately 4% overall unemployment.<sup>63</sup> In comparison, most of the individual MENA states have relatively low rates of female labor force participation combined with high unemployment rates.<sup>64</sup> These numbers are consistent with the argument that eliminating legal barriers that burden women's participation in the labor force will actually increase the overall number of jobs and reduce the unemployment rate.

FIGURE 6. FEMALE LABOR FORCE PARTICIPATION AND UNEMPLOYMENT IN MENA AND OECD COUNTRIES, 2000<sup>65</sup>



Note: AUS - Australia, AUT - Austria, BEL - Belgium, CAN - Canada, DEU - Germany, DNK - Denmark, ESP - Spain, FIN - Finland, FRA - France, GBR - Great Britain, IRL - Ireland, ITA - Italy, JPN - Japan, LUX - Luxembourg, NLD - Netherlands, NOR - Norway, NZL - New Zealand, OECD - Organisation for Economic Co-operation and Development, PRT - Portugal, SWE - Sweden, UAE - United Arab Emirates, USA - United States of America, and WBG - West Bank and Gaza.

Source: Scarpetta (1994).

#### IV. BENEFITS FROM EXPANDING WOMEN'S EMPLOYMENT OPPORTUNITIES

Another benefit to allowing women to join the workforce is that a second income for families in MENA states could reduce the overall poverty level. The World Bank simulated how the

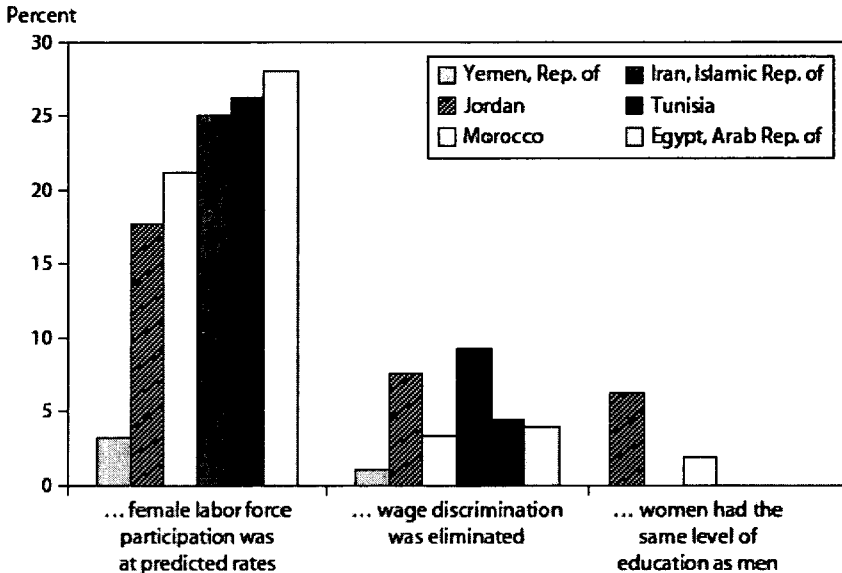
<sup>63</sup> *Id.* at 8.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 8.

earnings of the average household in some MENA states would change if female participation in the labor force increased from its actual rate to the rate predicted based on the state's statistics concerning female education, fertility, and age profile.<sup>66</sup> As shown in Figure 7, most household incomes would rise substantially if women participated in the labor force at their predicted rates.<sup>67</sup> For example, in Egypt household income would increase by more than 25%.<sup>68</sup> Notably, Figure 7 indicates that further reducing the education gap between men and women would have relatively little impact on household incomes unless women begin to participate in the workforce.

FIGURE 7. POTENTIAL INCREASES IN AVERAGE HOUSEHOLD INCOME<sup>69</sup>



Source: World Bank staff calculations based on World Bank household and labor force surveys.

<sup>66</sup> See *infra* Figure 4. The World Bank ran simulations for all countries where background data based on household surveys were available, including Egypt, Jordan, Morocco, Tunisia, the Islamic Republic of Iran, and the Republic of Yemen. The increase in household income is the result of an increase in the number of household members working. The data is based on an assumption that women who enter the labor force are able to find jobs, but the current level of wage discrimination would continue.

<sup>67</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 71.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*



The World Bank also simulated the effect that higher female participation in the workforce would have on income growth at the state level.<sup>70</sup> In the 1990s, when the population of the MENA states was increasing most rapidly, the World Bank noted that the economies studied would have grown at an average of 2.6% per capita per year if the projected proportion of women had been participating in the workforce.<sup>71</sup> In reality, these countries' economies grew at a rate of only 1.9%. In other words, 0.7% per capita per year was lost. For MENA states, this was a tremendous loss, which had to be offset by greater dependence on foreign aid, a faster depletion of natural resources, and budget cuts that impacted social programs and poverty reduction measures.

## V. NECESSARY LEGAL REFORM

The evidence strongly suggests that relaxing the legal restrictions that impact women in the workforce would provide important benefits for both family welfare and overall economic well-being of MENA nations. MENA states should pursue a new policy agenda under the twin principles of equity and efficiency, with the goal of granting women greater access to job opportunities and economic security. It is a popular belief that all the legal structures in the MENA states are based on the *Shari'a*. However, much of the law is non-*Shari'a* based, and is open for change and reform. Significant progress could be made by reducing the disparities and barriers created by civil legislation based on outdated Western models.

MENA states should adopt changes in four broad policy areas. First, MENA states should conduct a review of the current legislative environment with an emphasis on reforms that provide consistency between women's constitutional rights and or-

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<sup>70</sup> The World Bank used cross-country regressions for the period 1960-2000 to estimate the effect of fuller female participation in the workforce on the growth rate of gross domestic product per capita. The analysis was limited to Algeria, Egypt, the Islamic Republic of Iran, Jordan, Morocco, Syria, and Tunisia due to data limitations. The study controlled for the male participation rate, education, fertility, and a variety of variables that are commonly found to affect economic growth. The point estimates from these regressions were used to estimate how much higher the income growth might have been if female participation in the labor force had been at the rates predicted for each country.

<sup>71</sup> The U.S. economy grew at 1.6% per capita during this time.

dinary legislation.<sup>72</sup> Second, MENA states should implement a supportive infrastructure to facilitate women's participation in the public sphere.<sup>73</sup> For example, MENA states should adjust public school hours to make them more compatible with those of working parents, invest in physical infrastructure such as roads, expand the supply of drinking water, and develop safe means of public transportation.<sup>74</sup> Third, MENA states should continue their focus on education, particularly in areas that provide women with the skills necessary to obtain paid employment and open their own businesses.<sup>75</sup> Continuing education opportunities are particularly important for women, who may enter, leave, and re-enter the labor force as their child care responsibilities evolve.<sup>76</sup> Fourth, MENA states should reform labor laws to create incentives to employ women in the private sector.<sup>77</sup> Such reform may include eliminating regulations that prevent women from participating in certain job sectors or that restrict their working hours, and eliminating gender-specific family benefits that would tilt the benefits toward one sex versus the other, such as the provision of childcare centers, that are based on the sex of the employees.<sup>78</sup> These could be either phased out or, when provided, denominated in the name of the employee rather than male or female. Such sex-based regulations distort the costs of employing women as compared to men.<sup>79</sup> With the exception of maternity leave, which is sex-based in that only women give birth, all other family benefits should be offered regardless of the sex of the employees and based on demand; fifty year old women, regardless of the fact that they are female, will not need maternity leave.<sup>80</sup> Policies that generally enhance women's ability to enter and thrive in the workforce include new legislation in areas such as sexual harassment (important to safeguard women's reputational safety particularly in a tradition that is centered around wo-

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<sup>72</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 132.

<sup>73</sup> *Id.* at 134.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 134-35.

<sup>76</sup> *Id.* at 135.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *See id.*

men's honor as the anchor of the family's honor and respect) and increase the flexibility of work schedules, conditions, and opportunities for self-employment.<sup>81</sup>

As such, the MENA region needs a much updated labor and family policy to increase the supply of labor, rather than be concerned about the unemployment rate per se which could be reduced artificially by pushing women out of the labor market. These updated labor and family policies will need to be tailored to the labor supply needs of the respective countries. If a country's export and economic growth depends on low cost labor, these sectors universally tend to employ many women. Providing subsidized daycare will ensure that relatively lower educated but cheap labor is provided. If cutting-edge industries are at the forefront of the economic growth, such as India's (technology?) sector, providing world class childcare is a critical policy that will draw highly educated women, for whom the education of their children matter at whatever cost. . If the servicesector is the driving growth sector, more mature women could provide the necessary labor force. Here, providing appropriate after-school programs is the key to attract them back into the labor force. In all cases, removing labor regulations<sup>82</sup> could be beneficial to remove barriers to the expansion of the talent pool that companies increasingly need in order to survive in a world of narrow margins and cutthroat competition.

Women's participation in politics is crucial for change; however, increased representation is likely to be gradual.<sup>83</sup> In MENA's political setting, a bottom-up approach by grassroots women's groups will not succeed unless it is matched by government intervention and founded upon a commitment to nourish a gender-egalitarian environment.<sup>84</sup> The positions of state elites, their policies and institutions, and their definition of policies over time are at the center of the debate.<sup>85</sup>

The legal profession in the region can play a key role in furthering gender equality in several ways. The first is in the in-

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<sup>81</sup> *Id.*

<sup>82</sup> Such as the permission of the husband to work, permission of the husband to travel, amount of hours a woman is permitted to work, sectors of work force open to women, etc.

<sup>83</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 14.

<sup>84</sup> *Id.* at 141.

<sup>85</sup> *Id.*

terpretation of the law. Since the layers of civil law and *Shari'a* based personal status laws make women's rights opaque in several areas, the discretion of the judiciary is critical in the evolution of law in the region.<sup>86</sup> The second is in the staffing of legislative institutions. In most MENA states, women can enter the legal profession, and some governments have even permitted the appointment of female judges.<sup>87</sup> However, the numbers of women in the legal profession are still small throughout the region and the judiciary remains dominated by men.<sup>88</sup> The third role the legal profession can take is to inform and educate women about their legal rights.<sup>89</sup> Advocacy groups have emphasized the need to educate women about their legal rights to encourage the empowerment of women.<sup>90</sup>

## VI. CONCLUSION

Pressures for gender equality can easily be seen as a threat to the social order and as an erosion of the established power structure. Yet gender inequality is restricting the Middle East and North Africa region in the areas where it most needs to make progress: economic growth, increasing the number of jobs and reducing poverty. The differential treatment of women under the law has an economic cost that is ultimately borne by society in many forms, either in terms of poverty when the family's potential second income cannot find employment, or in terms of higher cost to businesses because they will have to recruit their worker from only half the talent pool, or in terms of unutilized investment in women's education. Removing these barriers will not just benefit women, but will create more flexible labor markets. Only with flexible labor markets can countries achieve more flexible product markets which are necessary for global competition.

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<sup>86</sup> *Id.* at 142.

<sup>87</sup> *Id.*

<sup>88</sup> MENA DEVELOPMENT REPORT, *supra* note 1, at 142.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*