

Distr.  
LIMITED  
E/ESCWA/OES/2015/WP.1  
22 December 2015  
ORIGINAL: ENGLISH

**ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA (ESCWA)**

# **Does Gender Justice Matter?**

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United Nations  
New York, 2015

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15-00537

## I. Introduction

This paper provides a context-specific and in-depth analysis of gender justice in the Arab region. It aims to contribute to the understanding of gender justice and assessing the current progress in achieving it. It contributes to the discussion on Islam<sup>1</sup> - being the official religion of most Arab countries - and its influence on gender justice. It argues that any discussion on gender justice is incomplete without a concurrent discussion on Islam. It examines how some Arab countries were able to introduce a scheme of Islamic law that harmonizes religious and secular perspectives to advance gender justice.

The present paper adopts a nuanced understanding of gender justice that defines it as both a formal process and a substantive outcome. The formal process of seeking gender justice focuses mainly on accountability, while the ultimate substantive outcome is a society in which women enjoy equality with men. The paper applies this definition to the Arab region to assess the existing government accountability mechanisms and women's enjoyment of equality on the socio-economic levels. Results of the analysis show fragmentary success as well as continuing concerns regarding the weak accountability systems on the process level and the unequal outcomes on the socio-economic levels.

The paper consists of six sections. The introduction lays the foundation to the paper and presents the objectives and the methodology adopted throughout the paper. Section two presents the various conceptual definitions of gender justice and calls for a holistic understanding that combines three approaches: gender justice as entitlement, gender justice as absence of discrimination and gender justice as positive rights. Section three focuses on Islam as the main religion of most Arab countries. It unpacks the term "gender justice" to examine how both of its components, "gender" and "justice," are understood within Islam. This shows that the Islamic understanding of justice is relatively straightforward and agreed-upon, but that the Islamic understanding of gender is more contested. It points out that referencing the central religious principle of "justice" in Islam helps to reinforce the legitimacy of gender relations and to show that they are aligned with the existing cultural and Islamic values in the region. It emphasizes a harmonistic approach between religious and secular discourses in advocating for gender justice in the Arab countries, as concerns about imported agendas are widespread. Section four shows how some Arab countries have been able to make notable improvements in gender issues despite its contestation with Islam by promoting relatively progressive *ijtihad* (independent interpretation). It also shows how other countries still feature stagnation in *ijtihad* and in the provision of women friendly interpretation of Islam and the impact on advancing gender justice. Section five applies a broad definition of gender justice in the Arab region. It examines existing government accountability mechanisms as the key process element for gender justice. It also examines the outcome element of gender justice by looking at the existing socio-economic status of women and the level of equality they enjoy with men. The analysis reveals that there is a lack of a robust framework that enables women to hold power holders accountable for the existing injustice. It also points out to women's inferior position in the private sphere and the existing socio-economic gender gaps in the public sphere. Section six provides some forward-looking policy recommendations as a step toward addressing these gaps and developing a cohesive plan of action.

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<sup>1</sup> With the exception to Lebanon, Islam is declared the official religion in the constitution of all Arab countries

## II. Conceptualizing Gender Justice

There are varied definitions of the term “gender justice”. It is often used interchangeably with “gender equality,” “gender equity” and “women’s rights”.<sup>2</sup> In recent years, however, many activists and researchers have come to feel that these latter terms did not fully succeed in addressing the wide range of discrimination against women. Gender justice has therefore come to be preferred as a broader term that has equality as one of its fundamental principles, but that extends beyond formal equality to also include a process that ensures strengthening accountability.<sup>3</sup>

The literature reveals three main conceptual definitions of gender justice: (1) gender justice as entitlement and choice, (2) gender justice as the absence of discrimination, and (3) gender justice as positive rights.

### *Gender Justice as Entitlement*

The approach that understands gender justice as entitlement is greatly indebted to the work of Amartya Sen, along with elaborations by Martha Nussbaum. These authors argued that women’s capabilities are constrained by a lack of knowledge, limited opportunities to develop their abilities, and dependency on others. In this outlook the primary obstacle to achieving substantive gender justice is that women have been socially trained to accept their unequal situation. Therefore, even under the formal conditions of equal rights women’s political and economic participation can be expected to remain less than that of men.<sup>4</sup> To help alleviate this situation, the idea of gender justice as an entitlement was introduced to establish the basic socio-economic and political conditions necessary for women to be able to refuse, negotiate, and propose alternative arrangements in their relationships with others. Nussbaum argued that gender justice requires primarily a more widespread development of human capabilities. Some of the key capabilities described in her work include physical health; bodily integrity; practical reason; freedom to express emotion and affiliation; freedom to play; and control over one’s environment. Nussbaum suggested that these human capabilities should be understood as minimum requirements for unfettered civic participation, and that their distribution among the populace should be respected by governments as a bare minimum for human dignity.<sup>5</sup> This approach to gender justice helps us to articulate the kind of substantive lived experience that is needed for the creation of a just society, though it has also been criticized as failing to fully take into account the issues of power relations and material inequality that result in the development of different gendered capabilities.<sup>6</sup>

### *Gender Justice as Absence of Discrimination*

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<sup>2</sup> Castro Varela, 2015. See also Hannan 2007; and Rawls, 1979.

<sup>3</sup> Goetz, 2007.

<sup>4</sup> O’Neill, 1989, pp. 146-163.

<sup>5</sup> Nussbaum, 2000, pp.78-80.

<sup>6</sup> Cook, 1997, p.187-196.

The second approach, understanding gender justice as the absence of discrimination, was referred to as a “negative liberties approach”.<sup>7</sup> This outlook seeks to prohibit any expression of prejudice or discriminatory practice. The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>8</sup> has this interpretation of gender justice at its heart. The CEDAW provides a legal definition for discrimination against women, and countries that have ratified the agreement promise to outlaw all such discrimination. Nonetheless, critics argue that the provisions of the Convention overlook some features of society that may seem neutral on their surface but are discriminatory in their effect.<sup>9</sup> We might also note that the pattern of reservations on CEDAW does not suggest any relationship with the status of women in a specific country. This can be clearly seen in the case of Latin American countries that did not enter any substantial reservations on CEDAW and are still struggling in achieving equal rights with men<sup>10</sup>. The absence of a clear pattern between raising and/or lifting reservations and the status of women can also be applied to the Arab region. All Arab countries with the exception of Sudan, have ratified the CEDAW, yet as will be discussed in section five, the region has the highest gender gaps in the world. A very specific example can be seen in the case of Yemen that was among the first countries to ratify the convention, and it is the only Arab country that never entered a general or a specific substantial reservation on article 16 governing marriage and family relations. Nonetheless, Yemen continues to have one of the highest rates of child marriage in the region where 32 per cent of women aged 20 to 24 were married before the age of 18<sup>11</sup>. Libya also ratified CEDAW as early as May of 1989, yet since that time women are still lagging behind most Arab countries. The Libyan system currently lacks legislation prohibiting most forms of discrimination, and its laws governing marriage and custody are extremely problematic.<sup>12</sup> The absence of discrimination approach to advocating for gender justice has thus proven to be limited in its implementation and effects.

### *Gender Justice as Positive Rights*

An understanding of gender justice as a matter of positive rights is grounded in the broader rights-based approach. It is perhaps a fundamental approach in that it seeks to establish inalienable rights for citizens and to transform power relations among various actors. Accountability and outcome-based standards to bridge gender gaps are a very important part of this approach. Ann Marie Goetz established a practical working definition for gender justice using this framework. She calls for “the ending of—and if necessary the provision of redress for—inequalities between men and women that result in women’s subordination to men”.<sup>13</sup> The emphasis on accountability and equality in this definition ensures that power-holders are made responsible for the conditions that persist or improve during their tenure. It declares that equal access to and control over resources is a basic moral and legal requirement, not a distant ideal.

Though this paper focuses on the gender justice as positive rights approach, it emphasizes the need for a holistic approach that integrates the understanding of gender justice as an entitlement

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<sup>7</sup> Goetz, 2007, p. 14.

<sup>8</sup> CEDAW is often described as the key international bill of rights for women.

<sup>9</sup> For examples see Cook, 1997, 189-190.

<sup>10</sup> Freeman, 2009, p. 7.

<sup>11</sup> UNICEF, 2010, p. 83.

<sup>12</sup> UN Committee on the Elimination of Discrimination against Women, 2009.

<sup>13</sup> Goetz, 2007, p.18.

and gender justice as lack of discrimination. A region that features women's lowest political and economic participation cannot ignore building human capabilities to improve their situation. It also cannot underestimate the various forms of discrimination and the importance that CEDAW and other international human rights instruments<sup>14</sup> place in influencing governments' decisions. An initial step to boosting gender justice in the region that has been lagging behind for years, is tailoring its own approach that combines these three conceptions.

### III. Gender Justice from a Regional Perspective

Numerous political and social factors shape the understanding of gender as a sociological concept and the struggle for gender justice, in the Arab region. There is a large body of literature describing how politics have contributed to these gender rights and dynamics, especially after the recent slate of protests and Arab uprisings<sup>15</sup>. This paper, however, focuses more closely on the role played by interpretations of Islam in shaping social understandings of gender justice. When discussing Islam, the intent is not to delve into the complex details of religious textual interpretation, but merely to showcase some of the Arab countries in which the promotion of *ijtihad* has been an important strategy in advancing the understanding of women's issues.

Religious discussions are often overlooked in regional analyses. This is despite the fact that Islam is the official religion by constitutional mandate in most Arab states (the sole exception is Lebanon)<sup>16</sup>. Interpretations of Islam have a profound effect in both the public and private spheres in these countries. It is pretty much impossible to discuss practical legislation on women's rights in the region—items such as personal status laws, violence against women, and reproductive health rights—without navigating arguments about Islam. The importance of religion can be further seen in the way that the states frame their commitments to international human rights treaties and how they apply these frameworks at the national levels.

Islam also plays a crucial role in shaping Arab citizens' perceptions of their understanding of women's rights. A 2005 Gallup survey that interviewed 8000 women in eight Muslim countries revealed that 78% of Moroccan women, 71 per cent of Lebanese women and 48 per cent of Saudi women do not consider western values as the way to advance the status of women. They cited attachment to religious beliefs and moral values as the best aspect of their societies<sup>17</sup>. Another Gallup survey conducted in countries experiencing uprising: Egypt, Syria, Yemen, Tunisia and Libya showed that both men and women want some level of religious influence in legislation and favor *sharia* as a source of legislation. In Egypt for example, 50% of men and 44% of women participating in the poll favored *sharia* as the only source of legislation compared to 68% men and 58% women in Yemen. There was also a strong relationship between men's rating of the importance of religion and their attitudes toward women's rights. About 69% of those who rated religion as important supported women's rights to initiate divorce<sup>18</sup>. This

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<sup>14</sup> There are nine human rights treaties, including the CEDAW.

<sup>15</sup> For examples see ESCWA, 2013a; Kandiyoti, 2013; and Arshad, 2013.

<sup>16</sup> According to the Association of Religion Data Archive, Muslims constitute 88.6% of Western Asian countries compared to 6.11% Christians and 5.23% other minorities.

<sup>17</sup> Gallup, 2005.

<sup>18</sup> Gallup, 2012. pp.11-12.

suggests that Islam plays a role in shaping both men's and women's perceptions regarding women's rights and thus merits an in-depth understanding.

Examining the adoption of CEDAW and the reservations associated with it reveals that most of the reservations entered by Arab States have been related to issues of non-compliance with the *sharia* (the Islamic judicial system). Some Arab countries, such as Oman and Saudi Arabia, raised general reservations against any article that was not fully in accordance with *sharia*. Other Arab countries entered more specific reservations against individual articles, also on the basis of *sharia*.<sup>19</sup> The component of CEDAW that received the highest number of reservations from Arab countries was Article 16, which is related to discrimination against women in matters related to marriage and family laws relationships.

The majority of regressive women related legislations that emerge in Arab countries are justified through appeals to religion. In most cases this is very explicit. In Egypt, for example, members of both the Freedom and Justice Party (the political arm of the Muslim Brotherhood), and Al Nour, the ultra-conservative Islamic party, have advocated for a regressive women's rights agenda in the name of Islam. Their proposals for legislative reform included repealing the *khul* law that gives women the right to a "no-fault" divorce, decriminalizing the practice of female genital mutilation, altering child-custody laws to decrease the power of mothers, and lowering the age of marriage for girls. Other suggestions from these actors have included a "wife obedience" law that would force women to return to the marital home and eliminate alimony payments on the basis of disobedience.<sup>20</sup>

The centrality of Islam in struggles for gender justice in the Arab region merits a sustained analysis. To approach this, it is useful to separate out the understanding of "justice" from the understanding of "gender" and to examine how each of these concepts is regarded in Islam. As the paper will describe below, there is a large concurrence in Islam in support of general principle of justice, a concept that focuses on the principles of equality, equity, rights, and participation.<sup>21</sup> However, the meaning and significance of gender—the social attributes associated with being male and female—is an area of much greater contestation.<sup>22</sup> In discussing Islamic discourse on these topics, the paper will refer to the primary and supplementary sources of Islamic law. The primary sources consist of the *Quran*, which is regarded as providing the general basis of ethical principles, and the *hadith*, the oral teachings of the Prophet Mohamed, which together form the *sharia*, which is the Islamic juridical system. The supplementary sources of Islamic law include *qiyas* (analogies), which are judicial rulings on similar situations in the past, *ijmaa* (consensus), which is a general agreement about a topic by religious scholars, and *ijtihad* (independent interpretation), which refers to an exercise of independent judgment, especially in regard to areas of conduct in which the primary sources offer no specific guidelines.

The understanding of justice in Islam is straightforward, and it is one of the most foundational values in the religion (in fact, "justice" is regarded as one of the ninety-nine names of God). The term, *Adl* in Arabic, is used about twenty seven times in Quran, and its meaning is not

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<sup>19</sup> UN Treaties, 2015.

<sup>20</sup> Sholakamy, 2013; and Nagy, 2013.

<sup>21</sup> ESCWA, 2014.

<sup>22</sup> UN-Women, 2015.

particularly contested. English translations always render *Adl* as “justice”<sup>23</sup> and sometimes as, fairness”<sup>24</sup> or “equity”<sup>25</sup>. The right to obtain justice is explicitly described in Quran, in passages where God commands people to render unto others what they are owed, and to evaluate people with justice.<sup>26</sup> Other passages urge believers to stand firmly for the principles of justice and to forbid all unjust deeds.<sup>27</sup> Justice is also widely considered to be the basis of *zakat*, the mandatory requirement for financially secure believers to provide alms for individuals in need, and of *sadaqah*, voluntary charitable giving.

The interpretation of gender in Islam is not as straightforward and progressive as is the religion’s broader understanding of justice. New ideas about gender in the modern world challenge deeply rooted patriarchal relationships that have been enshrined in the interpretation of religion for hundreds of years. To many people, interpretations of Islamic law on matters of gender appear to be stuck within an outdated framework of thinking. It is difficult to analyze all of the related religious concepts within the space of a brief article, but will touch upon few of the most central points.

Ziba Mir-Hosseini has categorized Islamic thought into three discourses: traditionalist, neo-traditionalist, and reformist.<sup>28</sup> The traditionalist discourse relies almost exclusively on classical readings of the Quran and the *hadith*, and provides little space for the exercise of *ijtihad* (independent interpretation). This discourse is indeed stuck within a conservative framework of interpretation about gender relations. In the traditionalist discourse gender roles are taken for granted and sex at birth strongly identifies the destiny of the person. Women are entrusted with the role of bearing children and undertaking household chores, while men are the breadwinners. The marriage contract in this traditionalist thought is almost an explicit form of property transfer, in which women are regarded as the belongings of their husbands (or other male members of the family). Traditionalist Islamic jurists emphasize the centrality of “guardianship” over women, and guardians are allowed to contract marriages of their daughters and sisters to other men. In line with this thought, a man can enter into up to four marriages and can terminate each contract at his own discretion. Women are of course not granted similar leeway, and they are also completely excluded from the public arenas of debate. Clearly, in this traditionalist understanding the social norms associated with gender trump broader constructions of justice.

Neo-traditionalists tend to endorse a greater reliance on the established *principles* of Islam rather than strict readings of the classical texts, and they therefore allow for a much larger exercise of *ijtihad*. Jurists in this school of thought tend to search for ways to offer new religious interpretations and alternatives to upgrade the status of women in selected areas. Neo-traditionalists usually adopt an understanding of gender relations in which long-standing differences in rights and duties between men and women are not interpreted as implying a power imbalance or male ownership. They emphasize the emotional and moral side of marriage, and

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<sup>23</sup> See, for example, the different translations of verse 57:25 given in Khalifa (trans.); Mohsin (trans.); and Ali (trans.).

<sup>24</sup> Dawood (trans.).

<sup>25</sup> Abdul Daryabadi (trans.).

<sup>26</sup> “Alla commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly. Lo! comely is this which Allah admonish eth you.” Quran verse 4:58.

<sup>27</sup> Shafi, 2000.

<sup>28</sup> Mir-Hosseini, 2003.

generally regard men and women as two different species existing in a symbiotic relationship. Neo-traditionalist approaches are undoubtedly better for women than are viewpoints based on strict readings of the classical religious texts. Nonetheless, those who adopt this discourse still hold many discriminatory viewpoints between men and women, such as seeing women's sexuality as partially controlled by men and providing justification for laws that grant unequal rights to divorce. The precise status of women is somewhat ambivalent and contested under this mode of thought, as neo-traditionalists seek to navigate a continuous battle between the traditional and the modern.

Islamic reformists have a much different perspective. They tend to interpret gender inequality as having been constructed by male jurists rather than as being an intrinsic part of Islam. This school of thought allows a considerable space for *ijtihad* and advocates a paradigm shift in thinking about gender relations, in keeping with their overall progressive social outlook. Reformists seek to apply the Islamic principle of justice in the context of modern understandings of gender relations, thereby granting women the same premises of equality that are applied to men.

The progress of gender justice in the Arab region has varied largely in accordance with the schools of Islamic thought that have gained ascendancy in any given country. The neo-traditionalist thought is currently the most widespread. Many Muslim nations have adopted the neo-traditionalist viewpoint of retaining Islamic family codes while introducing very limited and selective reforms. A few nations, however, have started to diverge from this trend.

#### **IV. Reformist Islam and Regional Accomplishments in Gender Justice**

This section presents the experiences of some Arab countries that were able to perform egalitarian interpretation of religion in favor of women. It showcases of some countries that performed selective reform in specific areas of contested women's issues as a result a process of *ijtihad*. The section argues that gender justice is possibly achieved as an outcome of an Islamic scheme that has gender equality at its heart. Focusing extremely on secular debate to advance gender justice in an isolated manner from the Islamic values and culture can lead to its decontextualizing and continued fragmented and disconnected results. Alternatives should focus on reconciling the secular discourse and international commitment with the region's religious identity and values.

Tunisia is one of the first Arab countries to open the door for *ijtihad* constituting a radical shift within the region that has led to great advancements in advancing the status of women. The *ijtihad* embraced in Tunisia resulted in specific progressive legislation, such as improvements in the family codes, changes in laws related to polygamy, and more equitable divorce laws. Women's rights in the areas of child custody and alimony have been greatly expanded.<sup>29</sup> Women's autonomy in matters of Tunisian citizenship have also increased in recent years, for example by reforms that allow a woman to pass on her nationality to children born abroad and to children born from a foreign husband.

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<sup>29</sup> Jones-Pauly, Christins, Abir DajantiTuqan, 2011.



In all of these cases the legislative decisions were based on religious interpretation. In relation to polygamy, legislators argued that Islam only allows for such marriages in cases where the husband can provide equal treatment and support for multiple wives. Explaining that these arrangements are humanly impossible in the modern world, the legislators outlawed polygamy.<sup>30</sup> In relation to divorce rights, the Tunisian legislators drew from a series of *hadiths* from various schools of Islamic thoughts in arguing that women should be allowed to leave marriages that they feel are lacking in fairness, regardless of any conditions stipulated in the marriage contract.<sup>31</sup>

In 2011, the interim Tunisian government decided to begin a process of withdrawing reservations that were placed upon the country's adoption of CEDAW. This groundbreaking action was completed under the auspices of the Islamist En Nahda party, and was officially submitted to the UN Secretary General in 2014. Specifically, the government lifted reservations on articles 9 (2) related to granting women equal rights with men with respect to nationality, article 15 (4) on granting men and women the same rights to the law on movement and freedom to choose residency; articles 16 (c), (d), (f), (g), (h) related to eliminating discrimination in marriage and family matters, and article 29 (1) on managing disputes concerning the interpretation or application of CEDAW.<sup>32</sup> Tunisia's decision to more fully embrace the CEDAW represents a significant step forward for women in that country.

Morocco is another Arab country that introduced selective legal reforms in its family codes. The justification in this instance came from the Morocco's king, who wields considerable influence in the country's constitutional monarchy. As the supreme representative of the nation, the king was able to enact *ijtihad* to analyze and reform the country's legislation representing great advances for women. Since 2003 Morocco has enacted legislation making the role of guardian optional instead of mandatory, establishing equality in regard to the minimum age of marriage, placing extensive limits on the practice of polygamy, allowing women equal access to divorce, acknowledging the paternity of children born outside of registered marriage, and allowed children on the daughter's side to inherit, as opposed to the old law where only children on the son's side were allowed to inherit<sup>33</sup>

Similar to Tunisia, Morocco lifted all reservations on CEDAW that were previously classified as not in accordance with *sharia*. In April of 2011, Morocco sent a notification to the UN Secretary General officially lifting its reservations made upon accession to articles 9 (2) related to granting women equal rights with men with respect to nationality and article 16 on eliminating discrimination in marriage and family matters.<sup>34</sup>

Egypt has also adopted selective measures of legal reform, and in many ways this country can be seen as a test-piece for the interplay of religious interpretation in legislative politics. In 2001, the state issued *khul* (female-initiated divorce) law that granted women the right to dissolve a marriage on the basis of "incompatibility". This legislation was initially criticized by Islamists

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<sup>30</sup> Yakare-Oule Jansen, 2007 p .205.

<sup>31</sup> Johnes-Pauly, Christina, Abir Tuqan, 2011, pp.9-12.

<sup>32</sup> UN Treaties, 2015

<sup>33</sup> Yakare-Oule Jansen, 2007.

<sup>34</sup> UN Treaties, 2015.

who viewed it as pandering to Western ideas, and as a contradiction of *sharia*. A number of religious scholars from Al Azhar declared, in their personal capacity, the law to be inconsistent with Islamic values and argued that it would lead to serious imbalances in Egyptian families. This group of scholars suggested that if women were granted the right to divorce, then men would no longer be the decision-makers which contradict *sharia* that identified them as the bearers of power. In response to these criticisms, the Egyptian state encouraged Islamic *ijtihad* to guide the national discussion. The government recognized that it would be difficult for the law to gain widespread acceptance if it were viewed as a contradiction of religious principles, so it solicited outlooks from relatively progressive Islamic scholars. Various religious interpretations were considered, and in the end both the Islamic Research Academy and Al Azhar, as official institutions, declared that the legislation was not incompatible with Islam. The religious institutions noted that *khul* had been instituted at least twice in Islamic history, once during Prophet Mohamed's era and again during the era of one of his successors. The law was approved with a few amendments, including the addition of a process in which representatives from both parties' families were allowed to facilitate the discussion between the couple. This effort that the government put into encouraging progressive *ijtihad* in regard to the law paid off after the Egyptian revolution in 2011. When conservative Islamists leaders called for repealing the *khul* law, its defenders were able to point to the earlier *ijtihad* discussion and to reassure the public that it was not contradictory to their beliefs and cultural identity<sup>35</sup>.

*Ijtihad* was also used in Egypt to combat the widely spread phenomenon of female genital mutilation. Sheikh Muhammad Sayyid Tantawi (who later became the Grand Imam of Al Azhar) led the *ijtihad* process on this matter during the 1990s by providing evidence that there is no Quranic verse supporting the practice and that the relevant *hadith* is weak.<sup>36</sup> This greatly helped to spread the understanding that female genital mutilation is an outdated custom. In a similar fashion, Egypt used progressive *ijtihad* to navigate between various jurisprudence schools on the matter of women who have been abandoned by their husbands. The country ultimately adopted a moderate law allowing women to obtain a favorable divorce within four years if they had not received financial support from their spouse who had disappeared (previously existing laws were much more restrictive in regard to terms of divorce in such cases).

After the 2011 Egyptian revolution and the multiple threats of losing the hard-won-gains on women's rights, Al Azhar issued two statements shedding light on the relationship between Islam and women's rights. The first is Al Azhar document on the Future of Egypt<sup>37</sup>, which was led by the Grand Imam of Al Azhar, Sheikh Ahmed el-Tayyib. The document voiced support for women's rights and emphasized the commitment towards international treaties and agreements that do not contradict with Islamic values. The second document is the Al Azhar statement on the rights of women<sup>38</sup>, which was an unprecedented document. It emphasized equality between men and women and that *quamma* (men leadership over women) does not mean privileging men over women but rather financial obligation of men towards the entire family. The document highlights the full right of women for political participation and to run for any public leadership position.

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<sup>35</sup> El Awady, 2010.

<sup>36</sup> Johnes-Pauly, Christina, Abir Tuqan, 2011, pp.195-96.

<sup>37</sup> Al Azhar, 2011a.

<sup>38</sup> Al Azhar, 2011b.

The two official documents suggest a serious commitment towards woman's rights and the principle role played by women in the public sphere.

Importantly, the value of *ijtihad* for promoting gender justice in the Arab region is not limited to legislative accomplishments. This religious-based discussion filters down to women at the everyday level, empowering them to make more progressive decisions and to practice their rights. Evidence for this effect has been provided by Elise Giunchi, who studied Moroccan cases of divorce that took place after the institution of religious reforms in that country. Examining divorce cases in Fez (a city known for its conservative mores), Giunchi identified situations in which divorce would not have previously been granted—such as a woman who did not wish to return to her home country to live with her husband, a case of violence perpetuated by the husband, and an accusation that the husband was unable to provide the family with a decent home. In granting these divorces, the religious judges who preside over family law specifically mentioned the use of *ijtihad* to offer solutions for the women, and emphasized the spirit rather than the text of the Quran. Giunchi concluded that progress at the local family-court level was positively impacted by the larger national discourse in which legislators had created an encouraging environment for *ijtihad*<sup>39</sup>.

This progressive outlook on Islam has unfortunately not yet become predominant in many Arab countries. In many locales, intellectual and legal stagnation continues to define the understanding of Islamic law and morality, with detrimental results for the nation and most especially for women. These outlooks are reflected in legal systems that still view women as subordinate to men, and that continue to resist efforts to promote gender justice. The institution of male “guardianship” remains widespread, enforcing patriarchal relationships and curtailing women's rights and freedom of movement.<sup>40</sup> Official reservations against the vital Article 16 of CEDAW governing inequality in family life continue to stand in Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, and Syria.<sup>41</sup> Furthermore, as noted earlier, even some of the countries that have adopted CEDAW without reservations continue to see little substantive or legislative improvements. Comprehensive laws to combat violence against women are still absent in most Arab countries, and faith-based objections are among the strongest obstacles to implementing such laws.

The Arab region is thus not homogeneous in regard to its progress on legal reforms. There are many reasons for these national variations, but one of the most significant is the level of Islamic *ijtihad* that is embraced in a country. It is a key element that contributes to advancing the understanding of how women are viewed in Islam and accordingly their status in society. Accordingly, efforts should be made to harmonize religious and secular approaches to gender discourse. This engaging and interpretive process has positively affected gender justice on both the legislative and practical levels. By promoting the understanding that both *sharia* and gender change over time, the inherent principle of justice that permeates all Islamic discourse can be harnessed to expand the public understanding of the need for justice between men and women. This requires opening the gates for *ijtihad* to advance new interpretations of Islamic law and morality in relation to gender relations. This new discourse will thus not ignore the importance of

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<sup>39</sup> Giunchi, 2014, pp. 125-129

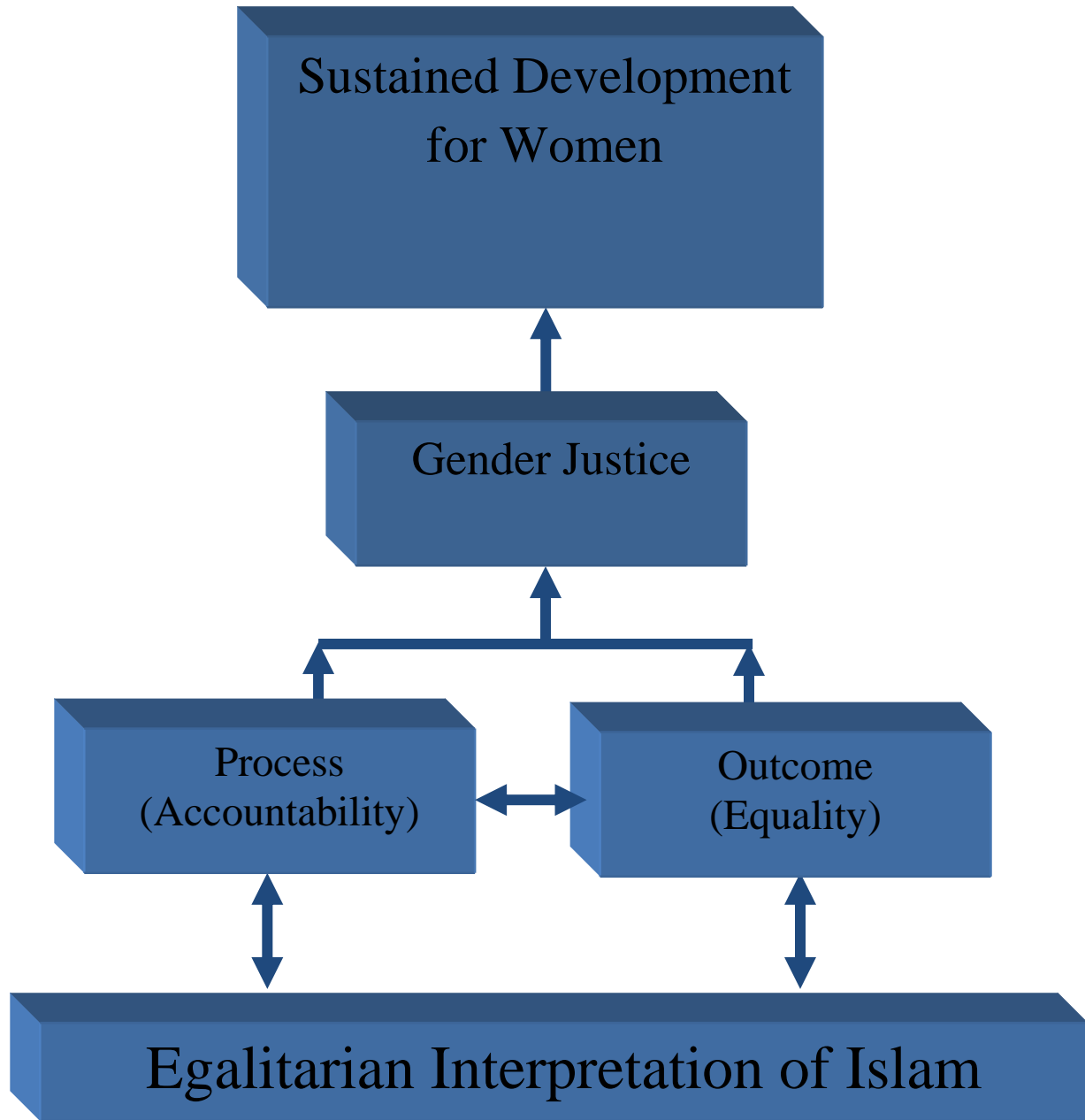
<sup>40</sup> Jabiri, Afaf, 2013.

<sup>41</sup> Akstiniene, 2013.

Islam in the region and/or viewing Islam as an essential hindrance to gender justice. With this approach, the citizens of Arab states will not be forced to choose between their Muslim identity vs. modernity.

## **V. Continuing Challenges for Gender Justice in Process and Outcome**

This section examines some of the ongoing bottlenecks and troubling statistics of gender justice in the Arab region. It describes concerns related to both the formal process and the substantive outcomes of gender justice. The section argues that one of the most important ongoing concerns in regard to gender justice is the mechanisms of accountability—or more specifically, the current lack of such mechanisms—to ensure that power-holders are made responsible for the inequalities that persist during their tenure. The effect of reduced accountability is cyclical and is reflected in the situation of women in both the public and private spheres. This analysis shows that if women are unable to hold governments accountable, then it is unlikely that the governments will provide remedies for women or that women will achieve equality on the political, socio-economic, or household levels. It thus builds on the previous section to emphasize the centrality of Islam and argues that accountability and gender equality are the two pillars of gender justice. Both pillars are equally essential to achieve an overall sustained improvement for women as shown in the following diagram.



National constitutions are one of the key accountability mechanisms for upholding the principles of gender justice at the process level. They help to shape the relationship between citizens and the state, and they allow citizens to hold authorities accountable to the rule of law. For women, constitutional provisions can be a vital component of establishing inalienable rights. Suad Joseph has argued that there is a pervasive problem in Arab constitutions (and in subsequent legislation) stemming from their definition of citizenship in a gender-neutral manner. While this may appear equitable on the surface, it replicates existing social inequalities by failing to make specific

provisions for the rights of marginalized groups. Furthermore, most Arab constitutions define the family, rather than the individual, as the basic unit of society, which leaves women dependent upon traditionally patriarchal structures for their very personhood.<sup>42</sup> The prominent role of the family in these constitutions is the background for the personal status codes and separate judicial processes that govern the various religious sects in some Arab countries. Lebanon is the prototypical example of this kind of proliferation of family codes; personal-status laws in that country are divided up among no less than eighteen different recognized religious. The continuation of these plural systems for handling matters of family law puts many women at high risk of discriminatory practices and conservative religious interpretations.

Additional failures of accountability are pervasive at the national legislative level, in that most Arab countries maintain discriminatory or non-existent laws related to (among others) violence against women, honor killing, sexual harassment, and violence in the workplace. National penal codes related to husbands who commit violence against their wives are absent in Oman and Qatar, and in many other Arab countries such laws are so heavily weighted against women that it is nearly impossible for them to hold the perpetrators of violence accountable. The legal impediments commonly encountered by women who bring charges against abusers include requirements to present two or more witnesses to prove battery, such as in the case of Jordan and the refusal to admit relatives as witnesses, such as the case of Bahrain. Concepts of marital rape are absent from nearly all Arab nations' penal codes, and specific provisions governing honor killings frequently provide reduced sentences and loopholes for those who commit violence against women.<sup>43</sup>

The lack of robust legal accountability is supported by an informal culture that often projects ignorance and shame onto women, further preventing them from developing their capacities as rights-holders. Often women are encouraged, even by law-enforcement officials, to resort to informal conciliation and meditation rather than make an official complaint. Intimidated by the male-dominated scrutiny of the legal realm, many women acquiesce to such informal remedies, where they find that they have even less bargaining power. The poor enforcement of legal accountability is also associated with inadequate budget allocations for investigating women's complaints, designing remedy and rehabilitation programs, and the absence of institutionalized gender-responsive budgets in many Arab countries.<sup>44</sup> Needless to say, the social instability created by armed conflicts in the region acts to further minimize opportunities for women to seek legal accountability and redress.<sup>45</sup>

The lack of accountability in most parts of the Arab world, and the impunity with which violence is enacted against women on a personal level, are signs of the continuation of a classic patriarchal system. John Caldwell and Deniz Kandiyoti have described the Middle East and North Africa (along with other countries in South and East Asia) as the "patriarchal belt" and the "belt of classic patriarchy".<sup>46</sup> Under the existing patriarchal system men exert power over women by controlling their bodies and their mobility, often supported by conservative interpretations of

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<sup>42</sup> Joseph, 2010.

<sup>43</sup> El Solh, 2013.

<sup>44</sup> ESCWA, 2013b, pp. 3-4.

<sup>45</sup> United Nations Committee to End All Forms of Discrimination against Women, 2014, p. 9.

<sup>46</sup> Caldwell, 1982; Kandiyoti, 1988, pp. 274-289.

religion. This control and discrimination is normalized within the family and society to the extent that in many cases it is not even regarded as discrimination but rather as protection and care.<sup>47</sup> Women are carrying higher burden and providing long hours of household work while receiving no financial compensation and having little or no power over the allocation of family resources. The pervasive expectation that women are solely responsible for raising children, cooking and cleaning, and caring for disabled and elderly family members greatly undermines their ability to fully and effectively participate in the formal workplace or the realm of public decision-making, regardless of whatever formal rights they might be granted.

The reduced accountability and continuing gender imbalance inside the household extends to the public sphere, where extensive gender inequality persists. Since it was first published in 2006, the World Economic Forum's gender-gap index has continually located the Middle East and North African at the bottom of its global rankings. In 2013 the index gave the region the lowest overall score, in comparison to other parts of the world. Arab countries overall were reported as having closed 59% of their gender gap (North America occupied the top rank and was reported as having closed 74% of its gender gap). In more specific measurements, the region was also ranked last in terms of closing the political gender gap (7%) as well as in closing the economic gender gap (39%)<sup>48</sup>. This pattern continued in 2014, where again the Middle East and North Africa was located at the bottom of all regions, with no Arab country scoring higher than the overall global average.<sup>49</sup> The Gender Inequality Index (GII) likewise gives extremely low ratings to the region. According to this measurement, the loss of women's potential achievements in Arab countries due to gender inequality in 2014 was 70% (compared to the 56% worldwide average).<sup>50</sup>

Women's participation in the political sphere and formal economy of the Arab world are equally abysmal. Women's representation in the lower and upper houses of Arab parliaments is 18.1% and 7.3% respectively (the Nordic countries, which top the list of political participation, boast a 41.5% rate of women's representation).<sup>51</sup> Only 26% of Arab women participate in the formal labor force, compared to a world average of 51%.<sup>52</sup> Arab women are much more likely to be engaged in unpaid and underpaid activities. In Yemen, for example, women constitute 87.7% of agricultural laborers, but only 2.9% of industry workers and 9.3% of the service sector.<sup>53</sup> As with many other aspects of women's experience, these numbers reflect a combination of formal and informal obstacles. Many Arab countries still officially prohibit women from serving in particular fields of employment. Saudi Arabia, for example, allows women only a very narrow range of participation in the formal economy, which is limited to fields such as teaching and nursing. A large number of Gulf countries continue to prohibit women from serving as judges, a situation that has significant repercussions for the culture of those country's legal systems.

The above reveals the effect of reduced government accountability and its cyclic effect as reflected in the existing gender gaps and inequalities on both the private and the public sphere.

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<sup>47</sup> Foqahaa, 2011.

<sup>48</sup> World Economic Forum, 2013.

<sup>49</sup> World Economic Forum, 2014. pp.13-14.

<sup>50</sup> ESCWA, 2012a.

<sup>51</sup> IPU, 2015.

<sup>52</sup> ILO, 2012, p. 50.

<sup>53</sup> ESCWA, 2012b, p. 4.

This suggests that both accountability and equality are essential pillars for gender justice. Achieving one of them is not sufficient to reach gender justice. Egalitarian interpretation of Islam is an important factor in ensuring that both pillars are effectively implemented.

## **VI. Conclusion: The Way Towards Gender Justice in the Arab Region**

There is no magic formula for eradicating complex, entrenched systems of social inequality and achieving gender justice. The modality and approach to these topics must be tailored to the particular conditions that prevail in any specific region or country. In the Arab region, the influence of Islam and its various interpretations is a crucial social factor that should not be ignored or downplayed. Strategies for gender justice in this region should include the cultivation of alliances between secularists and progressive Islamic outlooks. Further details will need to be tailored to the particular status quos and available human resources in individual nations.

Notwithstanding the challenges to addressing gender justice in the Arab Region it is imperative to develop a roadmap linked to a coherent set of policy recommendations with the aim of promoting gender justice. Previous efforts exerted by Arab countries in support of women's human rights have generally been ad hoc, inconsistent and insufficient. Some countries have undertaken constitutional reform, others have introduced piecemeal amendments, and still others have sought to implement selected legal reform. None of these efforts have proven sufficient to achieve substantial outcome improvements towards gender justice.

There are four central perspectives on gender justice underlying the analysis in the previous sections. First, is the importance of a holistic and harmonistic approach that takes into account the three conceptions of gender justice: as an entitlement, lack of discrimination and right based. Central to fully addressing the challenges is working on all fronts to ensure boosting women's capabilities; and heightening the commitment to internal human rights instruments to abolish existing discrimination. The holistic approach should conceptually address gender justice in terms that is not only limited to gender equality, but also address accountability as a process element. Second, it is important to raise awareness of gender justice as an important need in the region. It's impossible to solve a problem unless people first acknowledge that it *is* a problem. Understanding that the absence of gender justice negatively affects women, and that it also ails the entirety of society in an indirect way, is essential for progress to occur. Thus, raising public awareness should be at the forefront of the countries' development and reformative plans. Third, we cannot underemphasize the importance of Islam in the region. Discussions of *sharia* should not be avoided due to a misguided concept of sensitivity or a belief that secularism is the only legitimate framework for gender justice. Activists and researchers must discuss gender justice in the region in a way that does not present it as an imported agenda or alien ideology. Relevant principles in Islam supporting gender justice can be positively employed to show that it is a legitimate development in Arab culture. Finally, the implementation of an accountability system should be at the core of the overall gender justice framework. This accountability should include a means of measuring outcomes and holding leaders accountable for progress, and it should be grounded in a legislative/constitutional framework that recognizes women as a specific constituency with specific needs for protection. Gender-neutral concepts of citizenship are not adequate for this purpose; it is instead necessary to recognize the different existing social situations of women and men, including the significant gaps that exist in expectations of unpaid



work, educational opportunities, and the ability to pursue one's needs in society without apprehension. Accountability frameworks should provide women with the necessary support to help them navigate their rights within these hostile conditions.

In conclusion, the following list of five specific policy recommendations is an initial step toward developing a gender justice roadmap for Arab States:

- A. Disseminate a more egalitarian interpretation of Islam.** This requires the acknowledgment and promotion of *ijtihad* with gender justice at its forefront. The discourses promoted should take account of contemporary realities and challenges with the aim of advancing gender justice. Qualifications should be put in place for individuals who are engaged in *ijtihad*, including a greater emphasis on their knowledge of jurisprudence, Arabic grammar and language, legal judgment, logical capabilities, and general scholarship.
- B. Developing a welcoming platform for *ijtihad*.** A sincere effort should be made to create a socio-economic platform that will promote the use of *ijtihad* in Islamic law and break down any restrictions that might hinder it. This support of *ijtihad* can also extend into other aspects of social development beyond gender justice, including advancements in educational reform and democracy-promotion.
- C. Plan for inclusive socio-economic reform.** Gender justice as a process and outcome should be a central component of national reform plans. Inclusive planning should clearly identify a framework for gender justice and raise questions such as whether the starting point should be to compensate those who experience gender injustice or to develop a forward-looking plan of rights promotion. Different national contexts might call for different kinds of reform planning, and these decisions will have implications for the role and budget of relevant state agencies. These plans should not be limited to traditional efforts that have proven ineffectual (for example, increasing women's economic participation through job creation); they should instead focus on strategies for removing gender-related constraints and obstacles to improve effective participation outcomes. Programs devoted to changing social norms should go hand-in-hand with legal and regulatory reform to ensure women's full inclusion in the socio-economic and political spheres.
- D. Use both top-down and bottom-up approaches to introduce change.** In addition to the customary top-down legal and institutional mechanisms for implementing change, governments should also promote efforts that arise directly from the public. Such initiatives may frequently take the form of national dialogues, which can offer insight and practical suggestions for helping to develop a national roadmap of gender justice (and/or social justice more broadly). Bottom-up dialogues can help in identifying roadblocks and can serve as a forum for public negotiations. Obviously, women from various classes, ethnic groups, and personal backgrounds should be well represented in this dialogue, which will be an opportunity to present their outlook on different aspects of gender justice.
- E. Developing a gender-sensitive accountability framework.** Arab states need to take stock of their progress toward constitutional and legislative reform and ensure that they are developing accountability framework with a strong emphasis on human rights. These formal

frameworks are powerful tools that can either perpetuate negative conditions or promote positive new social dynamics. Formal accountability frameworks should include strong provisions supporting the rights of women as equal citizens, and enshrining the goal of better, more egalitarian life outcomes for all citizens. Multiple stakeholders, including non-governmental organizations and national human rights institutions, should be involved in the reform process and play an instrumental role in ensuring accountability for rights violations. Appropriate state agencies and gender budgeting should be introduced and employed as a tool to ensure better rights-based outcomes.

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