

ESSAY

THE “ARAB FALL”: THE FUTURE OF WOMEN’S RIGHTS

*Adrien K. Wing**

TABLE OF CONTENTS

INTRODUCTION	446
I. THE JASMINE REVOLUTION IGNITES THE ARAB WORLD	448
II. CHALLENGES FACING ARAB WOMEN.....	454
III. THE NEED FOR AN INTERNATIONAL RESPONSE IN SUPPORT OF WOMEN’S RIGHTS	464
CONCLUSION.....	467

* Bette & Wylie Aitken Distinguished Visiting Professor at Chapman University School of Law, Fall 2011 and Bessie Dutton Murray Professor at the University of Iowa College of Law; A.B. Princeton; M.A. University of California, Los Angeles; J.D. Stanford. This lecture was presented at University of California, Davis School of Law (U.C. Davis School of Law) on September 27, 2011 as part of the annual Speaker Series of the *U.C. Davis Journal of International Law & Policy*. This year the series was entitled “Human Rights, Transitional Justice and Emerging Democratic Movements in the Middle East and North Africa.” The California International Law Center (CILC) at U.C. Davis School of Law was also a cosponsor of this event. The draft was presented at the Chapman faculty workshop as well, and I would like to thank my colleagues there. Versions of this lecture were also presented at the Latino Critical Legal Studies Conference, the University of Windsor (Canada) Law School, the Orange County Bar Association International Law Committee, Florida State University Study Centre (London), University of New Mexico Law School, and UCLA Law School. This Essay draws upon Adrien K. Wing & Peter Nadimi, *Muslim Women’s Rights in the Age of Obama*, 20 *TRANSNAT’L L. & CONTEMP. PROB.* 431 (2011); and Adrien K. Wing & Hisham Kassim, *After the Last Judgment: the Future of the Egyptian Constitution*, 52 *HARV. INT’L L. J. ONLINE* 301 (2011), http://www.harvardilj.org/2011/04/online_52_wing_kassim. Many thanks to my research assistants at the University of Iowa: Hasti Barahmand, Dominique Booker, Warner Brockett, Malick Djiba, Sara Ghadiri, Alexandra Hemenway, Julie Mehta, Luke Stauffer, and Marie Sullivan. I would also like to thank Dean Kevin Johnson and CILC Director Professor Anupam Chander at U.C. Davis School of Law, as well as lecture commentator Professor Suad Joseph of the U.C. Davis Anthropology and Women’s Studies Department, and the Journal staff.

INTRODUCTION

The world was in shock and awe in the winter of 2010 when Tunisia, a small North African country, was able to remove its twenty-three-year leader President Zine El Abedine Ben Ali from power in less than a month—and with relatively little violence.¹ The spark that set off this remarkable event was the self-immolation of a young man, a twenty-six year old fruit vendor named Mohamed Bouazizi.² The local police in his small town prohibited him from selling produce as a means to eke out a poor living.³ Shockingly, rather than accepting this fate, Bouazizi set fire to himself. The acts of the Tunisian police had violated Bouazizi's basic human dignity and revealed the hopelessness of a corrupt system in which he could see no future. Bouazizi's bold final act touched off a firestorm of activity throughout the Middle East and North Africa—and ignited global attention.⁴

Tunisia was an unlikely birthplace as a catalyst for revolution and change. It was a favorite playground of European tourists with warm weather, self-contained seaside resorts, fantastic Roman ruins, and sizzling hot sands made famous by the Star Wars movies.⁵ It is not a nation that is immediately associated with warriors on the battlefield. I have visited this beautiful country several times, and it always brings to mind the smell of jasmine. This national flower is often sold even in small restaurants. Men regularly place it behind their ears and people accept it in the form of fragrant garlands. As homage to this national symbol, the recent events taking place in Tunisia are often referred to in popular media outlets as the Jasmine revolution.⁶

This unforeseen revolution and the subsequent revolutions it inspired in other countries have created an unprecedented opportunity for greater

¹ See Mona Eltahawy, *Tunisia's Jasmine Revolution*, WASH. POST (Jan. 15, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/14/AR2011011405084.html>.

² *Tunisia Suicide Protester Mohammed Bouazizi Dies*, BBC WORLD NEWS (Jan. 5, 2011), <http://www.bbc.co.uk/news/world-africa-12120228>.

³ *Id.*

⁴ Yasmine Ryan, *The Tragic Life of a Street Vendor*, ALJAZEERA (Jan. 20, 2011), <http://english.aljazeera.net/indepth/features/2011/01/201111684242518839.html>.

⁵ See official site of the Tunisian National Tourist Office in London, <http://www.cometotunisia.co.uk/>.

⁶ Elizabeth Arrott, Lisa Bryant & Henry Ridgwell, *Tunisians Mourn Losses in Jasmine Revolution*, VOICE OF AMERICA (Jan. 21, 2011), <http://www.voanews.com/learningenglish/home/world/Tunisians-Mourn-Loses-in-Jasmine-Revolution-114390324.html>.

regional grassroots movements seeking democracy and greater respect for human rights. The Arab world, as conceptualized by popular media in comprising the diverse nations of the Middle East and North African region, cannot move forward as a whole unless men and women experiencing oppression are able to participate freely in their own governance and development. As someone who has specialized in women's rights in this region for nearly thirty years, I am particularly concerned that females in the region will be able to benefit from the changes that may take place.⁷ While

⁷ See Adrien K. Wing, *Critical Race Feminism in the Age of the War Against Terrorism*, in MULTICULTURALISMS: DIFFERENT MEANINGS AND PERSPECTIVES OF MULTICULTURALISM IN A GLOBAL WORLD 91 (Barbara Pozzo ed., 2009); Adrien K. Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, in GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER 332 (Adrien Wing ed., 2000); Adrien K. Wing & Hisham Kassim, *Founding Mothers for a Palestinian Constitution*, in CONSTITUTING EQUALITY 290 (Susan H. Williams ed., 2009); Adrien K. Wing, *Palestinian Women and Human Rights*, in 3 WOMEN'S INTERNATIONAL HUMAN RIGHTS: A REFERENCE GUIDE 567 (Dorean Koenig & Kelly Asken eds., 2001); Adrien K. Wing, *The War against Terror: Religion, Clothing, and the Human Right to Peace*, in ACTIVATING HUMAN RIGHTS AND PEACE (Bee Chen Goh et al eds., 2012); Adrien K. Wing, *Women, Gender and International Conventions*, in 2 ENCYCLOPEDIA OF WOMEN AND ISLAMIC CULTURES, FAMILY LAW, & POLITICS 306 (Suad Joseph ed., 2005); Adrien K. Wing & Samuel Nielson, *An Agenda for the Obama Administration on Gender Equality: Lessons from Abroad*, 107 MICH. L. REV. FIRST IMPRESSIONS 124 (2009)[hereinafter *An Agenda*], available at <http://www.michiganlawreview.org/firstimpressions/vol107/wing&nielson.pdf>; Adrien K. Wing, *Critical Race Feminism and The International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for Lat-Crit Theory*, 28 MIAMI INTER-AMERICAN L. REV. 337 (1997); Adrien K. Wing & Monica Nigh Smith, *Critical Race Feminism Lifting the Veil?: Muslim Women, France and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743 (2006); Adrien K. Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 15 TRANSNAT'L L. & CONTEMP. PROB. 655 (2006) [hereinafter *Constitutionalism*]; Adrien K. Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALBANY L. REV. 943 (1997); Adrien K. Wing, *Custom, Religion and Rights: The Future Legal Status of Palestinian Women*, 35 HARV. J. INT'L L. 149 (1994); Adrien K. Wing & Hisham Kassim, *The Future of Palestinian Women's Rights: Lessons from a Half Century of Tunisian Progress*, 64 WASH. & LEE L.J. 1551 (2007) [hereinafter *Tunisian Progress*]; Adrien K. Wing & Samuel Nielson, *Gaza, Gender, and the Age of Obama*, 36 RUTGERS L. REC. 150 (2009); Adrien K. Wing, *Global Critical Race Feminism: A Perspective on Gender, War and Peace in the Age of the War on Terror*, 15 MICH. ST. J. INT'L L. 1 (2007); Adrien K. Wing, *Global Critical Race Feminism Post 9-11: Afghanistan*, 6 WASH. U. J.L. & POL'Y 19 (2002); Adrien K. Wing & Hisham Kassim, *Hamas, Constitutionalism, and Palestinian Women*, 50 HOWARD L. J. 480 (2007); Adrien K. Wing & Ozan Varol, *Is Secularism Possible in a Majority-Muslim Country in the Post 9/11 World?: The Turkish Example*, 42 TEXAS J. INT'L L. 1 (2007); Wing & Nadimi, *Muslim Women's Rights in the Age of Obama*, *supra* note *; Adrien K. Wing, *Palestinian Women and Human Rights in the Post 9-11 World*, 24 MICH. J. INT'L L. 421 (2002); Adrien K. Wing & Shobhana Kasturi, *The Palestinian Women's Charter: Beyond the Basic Law*, THIRD WORLD LEGAL STUD. 141 (1994-1995); Adrien K. Wing, *Palestinian Women: Their Future Legal Status*, 16(1) ARAB STUD. Q. 55 (1994); Adrien K. Wing, *Polygamy from Southern Africa to Black*

some women took unprecedented public roles during revolutionary moments, others experienced a cultural backlash, as well as government-sponsored discrimination and abuse. This Essay examines the current socio-political status of women in the Arab world throughout the “Arab Spring” and “Fall”, and proposes the need for people in other countries, in particular the United States, to take a more active grassroots and dynamic cross-cultural approach to promoting women’s rights in the region.

Part II of this Essay will provide some background and insights into several national movements that have been inspired by the Jasmine Revolution in 2011;⁸ the primary emphasis of this Essay, however, is on events and social transformations taking place in Tunisia, Egypt, and Libya. Part III of this Essay focuses on the turbulent status of women in these nations.⁹ While some women were able to speak out, organize and participate in revolutionary activities, many others may have been unable to become involved, or even harassed or arrested for their involvement.

Part IV of the Essay will propose the need for the United States to take a more dynamic, democratically engaged role in enhancing women’s rights, and will suggest a series of both short and long term efforts.¹⁰ These initiatives may not be possible in an U.S. election year in a restrained global economy. No doubt that after the election, the need will remain. Part V concludes that the future of women’s rights continues to be uncertain and that 2012 may not represent a year of significant measurable advancements for women’s rights in the region.¹¹ In fact, some electoral victories by more conservative, traditional Islamist parties may indicate certain political setbacks for women’s rights this year.

I. THE JASMINE REVOLUTION IGNITES THE ARAB WORLD

The Jasmine revolution ignited with such force that it quickly spread to other parts of the region—most notably, Egypt.¹² This country carries the

Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century, 11 J. CONTEMP. LEGAL ISSUES 811 (2001) [hereinafter *Polygamy*]; Adrien K. Wing & Sylke Merchan, *Rape, Ethnicity & Culture: Spirit Injury From Bosnia to Black America*, 25 COLUM. HUM. RTS. L. REV. 1 (1993); Adrien K. Wing, *Twenty-First Century Loving: Gender Equality in the Muslim World*, 76 FORDHAM L. REV. 2895 (2008) [hereinafter *Twenty-First-Century Loving*].

⁸ See *infra* notes 12-41 and accompanying text.

⁹ See *infra* notes 42-118 and accompanying text.

¹⁰ See *infra* notes 119-27 and accompanying text.

¹¹ See *infra* note 128 and accompanying text.

¹² Paul Salem, *How Tunisia's revolution transforms politics of Egypt and region*, L.A. TIMES (Jan. 29, 2011), <http://latimesblogs.latimes.com/babylonbeyond/2011/01/arab-world-how-tunisia-revolution-changed-politics-of-egypt-and-region-.html>.

cultural mantle of the Arab world, with several thousand years of rich history and culture.¹³ The thirty-year President of Egypt, Hosni Mubarak, appeared to aspire to the reign of the greatest pharaoh, Ramses II, whose monuments can still be seen throughout the country some three thousand years later.¹⁴ The fall of Mubarak thus marked a truly momentous occasion across the Arab world. Most significantly, the internet activity of the "Facebook generation,"¹⁵ along with the support of the military, as well as massive labor and community organizing, managed to achieve Mubarak's fall in an astonishingly short period of time.¹⁶ Egypt's uprising included the efforts of both men and women, from all different socio-economic spheres, who held a variety of social and political opinions.¹⁷ This diverse pool of citizens united to achieve a common goal—to remove Mubarak from power, and to implement a democracy capable of addressing national issues such as poor education, rising agricultural prices, the growing gap between the rich and the poor, and the inadequate quality of social services and support.¹⁸

Tunisia's revolution and Mubarak's overthrow fostered the assumption that the rest of the Arab world would follow suit – with dictators and repressive regimes falling like dominos.¹⁹ However, this assumption was premature. Some kingdoms, such as Morocco and Jordan, have engaged in limited political reform.²⁰ Saudi Arabian officials chose to appease Saudi citizenry by preemptively paying millions of dollars to young and

¹³ Mark Tutton, *Egypt's Cultural Influence Pervades Arab World*, CNN WORLD (Feb. 12, 2011), http://articles.cnn.com/2011-02-12/world/egypt.culture.influence.film_1_arab-countries-youssef-chahine-egypt-and-lebanon?_s=PM:WORLD.

¹⁴ See *Ramses 2*, LOOKLEX ENCYCLOPAEDIA, http://i-cias.com/e.o/ramses_2.htm.

¹⁵ John D. Sutter, *The Faces of Egypt's 'Revolution 2.0'*, CNN WORLD (Feb. 21, 2011), <http://www.cnn.com/2011/TECH/innovation/02/21/egypt.internet.revolution/index.html> (Facebook and other tech-savvy activists communicated over the internet starting even before the specific protests related to Mubarak, with one of their activities including organizing the "We Are All Khaled Said" Facebook page in honor of a young man beaten to death by the police).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Cengiz Gunay, *Mubarak's Egypt: bad paternalism, and the army's interest in managed transition*, OPENDEMOCRACY (Feb. 3, 2011), available at <http://www.opendemocracy.net/cengiz-g%C3%BCnay/mubaraks-egypt-bad-paternalism-and-armys-interest-in-managed-transition>.

¹⁹ David Hutchins, *Analysis: Why Arab Springs Falter: Bahrain*, VOANEWS (May 16, 2012), available at http://www.voanews.com/content/is_arab_spring_over_in_bahrain/666797.html (discussing how efforts to overthrow Arab regimes in places like Bahrain have failed in the past either due to the old regime promising reform and then repressing the populace or new regimes replacing the old and engaging in the same repressive behavior).

²⁰ Alan Greenblatt, *In Arab States, It's Good to be the King*, NPR (Nov. 12, 2011), <http://www.npr.org/2011/11/10/142218146/in-arab-states-its-good-to-be-the-king>.

unemployed citizens—including fifty-three million dollars to help people understand the Qur'an.²¹

In other countries, such as Syria and Yemen, political leaders expressed unwillingness to be taken down like Mubarak or suffer exile in Saudi Arabia like the former Tunisian President Ben Ali. These leaders engaged in horrific acts of violence against their people in order to avoid being wheeled out on a gurney or sickbed into a courthouse, behind a cage, like Mubarak.²² As a result of these kinds of acts by the Assad regime, the Arab League terminated Syria's membership, and yet violence continues.²³ The Yemeni leader held tightly onto power as well. President Ali Abdullah Saleh refused to leave gracefully and returned to the country after medical treatment in the U.S. due to injuries received in an assassination attempt, although he did ultimately resign.²⁴ Bahrain continues to hold on as a Sunni minority governs a Shia majority.²⁵

Forty-year Libyan leader Colonel Muammar Qaddafi's (also referred to in the English-speaking media as "Gaddafi" or "Gadhafi") best efforts to avoid a fate similar to Mubarak and Ben Ali ultimately proved unsuccessful. Shortly after the lecture upon which this Essay is based was delivered, Qaddafi was dug out of a drainage pipe; his bullet-ridden body and that of his son Mutassim were displayed for several days after their deaths.²⁶

Despite the dramatic events involving Tunisia, Egypt, and Libya, it appears that the "Arab Spring" did not develop its momentum into an "Arab

²¹ Mary Phillips Sandy, *Saudi Arabia Giving Citizens a 15 Percent Raise to Avoid Becoming the Next Libya*, AOL NEWS (Feb. 23, 2011), <http://www.aolnews.com/2011/02/23/saudi-arabia-giving-citizens-a-15-percent-raise-to-avoid-becomi>.

²² *Hosni Mubarak Trial Postponed until the End of the Year*, BBC WORLD NEWS (Oct. 30, 2011), <http://www.bbc.co.uk/news/world-middle-east-15513248>.

²³ *See Arab League Votes to Suspend Syria in Four Days*, USA TODAY (Nov. 12, 2011), <http://content.usatoday.com/dist/custom/gci/InsidePage.aspx?cId=dailyrecord&sParam=51176558.story>.

²⁴ *See Amid Uprising, Yemen President Quits after 33 years*, MSNBC (Nov. 23, 2011), http://www.msnbc.msn.com/id/45413404/ns/world_news-mideast_n-africa/t/amid-uprising-yemen-president-quits-after-years/; Laura Kasinof, *Official Survives Attack in Yemen*, N.Y. TIMES (Sept. 28, 2011), <http://www.nytimes.com/2011/09/28/world/middleeast/yemen-defense-minister-survives-assassination-attempt.html>.

²⁵ *See Hutchins, supra note 19.*

²⁶ *See Gaddafi Dead: Bodies of Leader, Son, Aide Taken from Misrata Freezer*, HUFF. POST (Oct. 24, 2011), http://www.huffingtonpost.com/2011/10/24/gaddafi-dead-body_n_1029418.html; *Qaddafi Killed*, N.Y. TIMES (Oct. 21, 2011), available at <http://www.nytimes.com/2011/10/21/world/africa/qaddafi-killed-as-hometown-falls-to-libyan-rebels.html?pagewanted=all>.

Fall" that headed in a positive direction.²⁷ For example, the longstanding Palestinian-Israeli conflict appears to have no end in sight and has yet to receive a real bounce from the events of the Arab Spring; ironically, it was Hamas, a group lacking diplomatic relations with either Israel or the U.S., which was nonetheless able to score a massive diplomatic coup when it traded hostage Israeli soldier Gilad Shalit for over 1000 Palestinian prisoners.²⁸ At the same time, Palestinian Authority officials sought full state membership in the United Nations and the U.S. indicated that it planned to veto any vote on the matter in the Security Council.²⁹ The Palestinian Authority thus failed to receive even a General Assembly Resolution which would merely confer non-member Observer Status, without any increased control over the West Bank.³⁰

In Egypt, the Arab Fall encountered a similarly dim outlook. The government initially delayed parliamentary elections for several months.³¹ When the elections commenced, the Muslim Brotherhood and the even more conservative Islamist groups known as Salafists won almost two-thirds of the votes.³² The Muslim Brotherhood, founded in Egypt in 1928, was considered an illegal organization for several decades.³³ Nevertheless, its members are well known and were elected to office under the guise of other affiliations.³⁴ In sum, the Muslim Brotherhood was the only organization with solid experience in political organization and enjoys a strong base of political power in the country. Due to these inequities, at first glance, it appears that the elections in Egypt ultimately did not offer people the opportunity for full involvement or representation. The subsequent Presidential elections resulted in a win for the Brotherhood candidate

²⁷ Jim Lobe, *Saudi Counter-Revolution Cools Arab Spring*, AL JAZEERA (Apr. 24, 2011), <http://english.aljazeera.net/indepth/opinion/2011/04/2011424133930880573.html>.

²⁸ See Gilad Shalit, *Home at Last*, ECONOMIST (Oct. 18, 2011), available at <http://www.economist.com/blogs/newsbook/2011/10/gilad-shalit?page=4>.

²⁹ See Alex Spillius, *Barack Obama Tells Mahmoud Abbas US will Veto Palestinian Statehood Bid*, TELEGRAPH (Sept. 22, 2011), <http://www.telegraph.co.uk/news/worldnews/barackobama/8780859/Barack-Obama-tells-Mahmoud-Abbas-US-will-veto-Palestinian-statehood-bid.html>.

³⁰ See *Q & A: Palestinian Bid for Full Membership*, BBC (Sept. 24, 2011), at http://www.bbc.co.uk/news/world/middleeast_13701636.

³¹ See *Egyptian Elections to Begin November 28*, GUARDIAN (Sept. 28, 2011), <http://www.guardian.co.uk/world/2011/sep/28/egypt-announces-november-elections-mubarak>.

³² Sarah Lynch, *Muslim Brotherhood Top Winner in Egypt*, USA TODAY (Nov. 4, 2011), <http://www.usatoday.com/news/world/story/2011-12-04/israel-egypt-elections/51641978/1>.

³³ *Id.*

³⁴ *Id.*

Mohamed Morsi, while the military government disbanded the newly elected Parliament after a Supreme Court decision invalidated the process.³⁵

In Tunisia, the moderate Islamist party Ennahda, which was previously banned under the Ben Ali regime, won the October 2011 election with forty percent of the vote.³⁶ Many fear that the Ennahda party will cut back on Tunisia's well-known secularist approach to governance,³⁷ reversing decades of progress in the field of women's rights.

In my view, many people in the region suffer from severe "spirit injuries." This term is a concept that I use in my research to signify psychological and emotional distress on an individual or group wide basis.³⁸ While many nations throughout the Middle East and North Africa had achieved political independence in another era, from that moment of political independence until to the tumultuous events of the past two years, many citizens throughout the region have never been able to attach much meaning to their national independence. Dictators, sheiks, emirs, and others who have often served as de facto or de jure presidents for life, appeared to have nearly robbed the concept self-determination of any value.³⁹ Against this backdrop, several governments in the region often continue to prioritize oil over people.⁴⁰

It did not take the actual death of Al Qaeda leader Osama Bin Laden to surmise that the people of the region are actually interested in changing the present political state of their countries, rather than joining an extremist global jihad under the banner of Al Qaeda.⁴¹ While many citizens in the

³⁵ Hamza Hendawi, *Islamist Morsi is Sworn in as Egypt's President*, YAHOO NEWS (June 30, 2012), available at <http://news.yahoo.com/islamist-morsi-sworn-egypts-president-110500403.html>.

³⁶ *Tunisia's Islamist Ennahda Party Wins Historic Poll*, BBC (Oct. 27, 2011), <http://www.bbc.co.uk/news/world-africa-15487647>.

³⁷ *Id.*

³⁸ See Wing, *Rape, Ethnicity & Culture*, *supra* note 7.

³⁹ Robert Fisk, *Bonfire of the Dictator*, INDEPENDENT (Dec. 31, 2011), <http://www.independent.co.uk/news/world/middle-east/bonfire-of-the-dictators-6283351.html> (discussing the endurance of Middle East dictators and listing techniques they use to avoid real political change).

⁴⁰ See Giacomo Luciani, *Oil and Political Economy in the International Relations of the Middle East*, in INTERNATIONAL RELATIONS OF THE MIDDLE EAST 81, 93-94 (Louise Fawcett ed., 2nd ed. 2009) available at <http://www.princeton.edu/~gluciani/pdfs/Chapter%20in%20Fawcett.pdf>; *Arab Forum for Environment and Development*, RIO + 20: UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT, <http://www.uncsd2012.org/rio20/index.php?page=view&type=510&nr=139&menu=20> (last visited May 20, 2012).

⁴¹ Peter Baker, Helene Cooper & Mark Mazeti, *Bin Laden is Dead, Obama Says*, NY TIMES (May 1, 2011), <http://www.nytimes.com/2011/05/02/world/asia/osama-bin-laden-is-killed.html?pagewanted=all>.

region may or may not be interested in achieving a form of government similar to those of the U.S., British, or even South African democracies, many in the region want the opportunity to speak, think, write, and participate in ways they have never done before. The people of the region have made it loud and clear that they want the right to experience democratic participation on their own terms.⁴²

What will democracy throughout the Middle East and North Africa mean? It will certainly mean international support as citizens begin to develop culturally and religiously relevant interpretations of various democratic rights and standards of governance. For example, in Spring 2011, Egypt revised its constitution radically: it limited the term of the President to two four-year terms.⁴³ Prior to this change, the constitution was silent regarding presidential term limits, permitting Mubarak to stay in power indefinitely.

In terms of constitutional reform, the nations in the region and other countries, including the U.S., could learn from the constitutional experiences of countries like South Africa that have developed constitutions, which contain relevant checks and balances for the twenty-first century, and which address universal gender rights in diverse cultural contexts. The South African Constitution, for example, prohibits domestic violence, protects environmental rights, and overtly requires the use of international law in domestic law.⁴⁴ South Africa also permits the use of affirmative action, comparative law, and even maintains an equality clause addressing sex and gender.⁴⁵ When I served as a legal advisor to the Palestinian Legislative Council on its Constitution-like document known as the Basic Law back in 1996, the constitution they were most interested in was that of South Africa.⁴⁶ In particular, they required me to translate the section on human rights. In my experiences and travels throughout the Arab world, I have

⁴² The concept of a right to democracy was discussed in the work of the late New York University law professor, Tom Franck. See generally Thomas M. Franck, *The Emerging Right to Democratic Governance*, 82 AM. J. INT'L L. 46 (1992).

⁴³ Wing & Kassim, *After the Last Judgment*, *supra* note 7, at 307.

⁴⁴ Some U.S. Supreme Court justices do not embrace the understanding that international law applies to the U.S. See Stephen Breyer & Antonin Scalia, Debate on Foreign Law at American University (Jan. 13, 2005) (transcript available at <http://www.freerepublic.com/focus/news/1352357/posts>).

⁴⁵ S. AFR. CONST., art. 9.

⁴⁶ For my publications comparing the South African Constitution and Palestinian Basic Law, see Adrien K. Wing, *From Liberation to State Building in South Africa: Some Constitutional Considerations for Palestine*, in PALESTINE AND INTERNATIONAL LAW: ESSAYS ON POLITICS AND ECONOMICS 199 (Sanford R. Silverburg ed., 2002). For more on the South African constitution, see e.g., HEINZ KLUG, THE CONSTITUTION OF SOUTH AFRICA: A CONTEXTUAL ANALYSIS (2010).

learned that the South African document remains the constitution most people are interested in drawing from.

II. CHALLENGES FACING ARAB WOMEN

The Arab Spring clearly established an opportunity or a revolutionary moment for some women to take up unprecedented public roles alongside men.⁴⁷ The international community acknowledged this fact when Yemeni activist Tawakkul Karman became one of three women who won the 2011 Nobel Peace Prize.⁴⁸ Many other women worked visibly at the front lines of the revolutions, breaking gendered cultural norms and fighting for the freedom of their fellow citizens.⁴⁹

Despite promising indicators, these women face oppression condoned in part by deeply held patriarchal customs and religious practices, as well as marginalization, due to insufficient resources.⁵⁰ This section of the Essay will address the situation that Arab women faced prior to the development of the Arab Spring, and that women largely continued to confront during the Arab Spring and Arab Fall as it unfolded in their respective countries.

Women throughout the region have expressed concern on a wide variety of issues including but not limited to: poor access to education; lack of career opportunities; “domestic” and external violence; forced marriages;⁵¹ restricted participation in public life;⁵² and unequal inheritance rights.⁵³

⁴⁷ Xan Rice et. al., *Women have Emerged as Key Players in the Arab Spring*, GUARDIAN (Apr. 22, 2011), <http://www.guardian.co.uk/world/2011/apr/22/women-arab-spring>.

⁴⁸ See Tawakkul Karman Says Yemenis Will Continue With Their Peaceful Revolution, AL ARABIYA (Nov. 10, 2011), <http://english.alarabiya.net/articles/2011/11/10/176398.html>.

⁴⁹ See Rice, *supra* note 47.

⁵⁰ Wing & Nielson, *An Agenda*, *supra* note 7; see also Gila Stopler, “A Rank Usurpation of Power” - *The Role of Patriarchal Religion and Culture in the Subordination of Women*, 15 DUKE J. GENDER L. & POL’Y 365, 367–72 (2008) (explaining that culture and religion have led to patriarchal structures that have hindered women’s ability to achieve equality).

⁵¹ See Wing & Kassim, *Tunisian Progress*, *supra* note 7 (explaining that the law in Palestine requires that a father consent to his daughter’s marriage, regardless of his daughter’s age); see also Hannibal Travis, *Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq*, 3 NW. J. INT’L L. 4 (2005).

⁵² See e.g., Susan Tiefenbrun, *The Semiotics of Women’s Human Rights in Iran*, 23 CONN. J. INT’L L. 1, 16 (2007) (explaining that women’s involvement in public life is limited because they are restricted to activities in the home).

⁵³ See Wing & Kassim, *Tunisian Progress*, *supra* note 7, at 1560 n.65 (explaining that Palestine and Tunisia only guarantee women half the inheritance amount that a man receives).

With respect to education, women suffer from significant underrepresentation.⁵⁴ In fact, the MENA Region is one of the only regions where women are not the majority of the college students, as in much of Europe and in the United States.⁵⁵ Patriarchal practices give little priority to the education of women, oftentimes prompting outright cultural disapproval.⁵⁶ Women’s access to education is dismal,⁵⁷ with literacy rates for women hovering around fifty percent on average.⁵⁸ In Yemen, for example, only forty-five percent of girls attend primary school and fifteen percent of girls attend secondary school.⁵⁹ Palestinian men and women also experience significant educational disparities: males have higher literacy rates, more male children attend kindergarten, and more male students attend college than do females.⁶⁰

Women’s poor access to education directly affects another major issue—lack of employability and a subsequent lack of economic empowerment.⁶¹ While women’s participation in the workforce has

⁵⁴ *Id.*

⁵⁵ See Mark Mather & Dia Adams, *The Crossover in Female-Male College Enrollment Rates*, POPULATION REFERENCE BUREAU (Feb. 2007), <http://www.prb.org/Articles/2007/CrossoverinFemaleMaleCollegeEnrollmentRates.aspx>.

⁵⁶ See Wing, *Custom, Religion, and Rights*, *supra* note 7, at 152–63 (explaining that custom and religion in Palestine has hindered the development of women in Palestine).

⁵⁷ It should be noted that some countries are succeeding at providing women with a proper education. For example, nearly 60 percent of college students in Iran are women. Monitor Editorial Board, *Step by Step for Middle East Women*, CHRISTIAN SCI. MON. (Feb. 17, 2009), available at <http://www.csmonitor.com/Commentary/the-monitors-view/2009/0217/p08s01-comv.html>. Additionally, there are more women in college than men in Bahrain, Kuwait, Qatar, and the United Arab Emirates. *Middle East: Women’s Status Up in Saudi Arabia, Down in Syria, Says Study*, L.A. TIMES (Nov. 11, 2009, 7:13 AM), <http://latimesblogs.latimes.com/babylonbeyond/2009/11/middle-east-womens-status-up-saudi-down-syria-study-says.html>.

⁵⁸ Mary Ruberry, *The Effects of Landmines on Women in the Muslim World*, J. MINE ACTION (Feb. 12, 2010), available at http://maic.jmu.edu/JOURNAL/5.3/focus/Mary_Ruberry/Mary_Ruberry.htm.

⁵⁹ *Yemen*, USAID, http://www.usaid.gov/locations/middle_east/countries/yemen/ (last visited Nov. 2, 2011).

⁶⁰ Wing, *Constitutionalism*, *supra* note 7, at 707.

⁶¹ In addition to poor education, customary law and religion have also hindered women’s development in the workforce. For example, some Muslim countries have enacted laws to make it more difficult for women to join certain professions. See Adnan Zulfiqar, *Religious Sanctification of Labor Law: Islamic Labor Principles and Model Provisions*, 9 U. PA. J. LAB. & EMP. L. 42, 440 (2007). Furthermore, the duty of obedience in Islam further diminishes women’s involvement in the workforce since “[t]he majority of Islamic jurists [from all Islamic sects] rule that there shall be no maintenance for the wife who goes out to work without permission of her husband.” Therefore, a woman will likely not work if the husband does not allow it. See *e.g.*, Kathryn J. Webber, *The Economic Future of Afghan Women: The*

increased since the 1990s, they continue to experience low employment rates.⁶² In Syria, for example, only 23.2 percent of women work outside the home.⁶³ Women constitute the majority of agricultural workers.⁶⁴ Further, in Saudi Arabia, women only account for a dismal five percent of the formal workforce.⁶⁵

Women also face the threat of both external and internal violence – from both the state and within their homes, by family members.⁶⁶ In Iraq, for example, recent social instability and frustration contributed to an increase in domestic violence incidents since the U.S. invasion in 2001.⁶⁷

In addition to the customary practices of physical chastisement, one of the prime contributing factors to the rise in violence is the religio-cultural idea of *ta'ah* or obedience.⁶⁸ In the Muslim faith, men and women are often considered to have different responsibilities, despite being equal in the eyes of God.⁶⁹ Men who subscribe to this interpretation of the Qur'an, which has been codified in several national legal codes, may often employ the duty of *ta'ah* that women owe to men under this interpretation to justify physical violence towards women.⁷⁰ The alleged purpose behind women's obedience

Interaction Between Islamic Law and Muslim Culture, 18 U. PA. J. INT'L ECON. L. 1049, 1066 (1997).

⁶² See Edward Gardner, *Creating Employment in the Middle East and North Africa*, INT'L MONETARY FUND, at Table 2, <http://www.imf.org/external/pubs/ft/med/2003/eng/gardner/index.htm> (last visited Nov. 2, 2011). Between 1990 and 2000, the average percent of women's participation in the workforce went from 16.7 percent to 20.4 percent in a study involving Algeria, Egypt, Iran, Jordan, Morocco, Pakistan, and Tunisia. *Id.* Some countries are doing better than others at increasing women in the workforce. For example, women in the workforce increased from 25.4 percent in 2003 to 28 percent in 2008. Anahita Ferasat et al., *Regional and Comparative Law*, 43 INT'L L. 1143, 1147 (2009). Additionally, women in some countries have been receiving high government positions—as evidenced by 25 percent of the judges in Tunisia and 20 percent of the judges in Morocco being women. Kathleen A. Portuan Miller, *The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law—Do Muslim Women Really Have Fewer Rights Than American Women?*, 16 N.Y. INT'L L. REV. 65, 127 (2003).

⁶³ Samira Soubh, *Women's Role in Agriculture and Gender Related Issues in Syria*, at 9 (National Agricultural Policy Center ed., Apr. 2006), http://www.napcsyr.org/dwnld-files/working_papers/en/18_womenrole_ss_en.pdf

⁶⁴ *Id.* at 11 (women constituted 58.1% of the agricultural sector in 2002).

⁶⁵ Brian Whitaker, *Saudi Arabia: Women and Employment*, WOMEN LIVING UNDER MUSLIM LAWS (Feb. 23, 2006), <http://www.wluml.org/node/2771>.

⁶⁶ *Id.*

⁶⁷ *Iraq: Focus on Increasing Domestic Violence*, IRIN (Oct. 14, 2003), <http://www.irinnews.org/report.aspx?reportid=22380>.

⁶⁸ See Wing & Kassim, *Tunisian Progress*, *supra* note 7, at 1562–63 (discussing legal reforms made in Tunisia to eliminate obedience and deter domestic violence).

⁶⁹ Wing, *Twenty-First-Century Loving*, *supra* note 7, at 2900.

⁷⁰ *Id.*

is to “keep the family unit running as smoothly as possible,”⁷¹ and some Islamic jurists have found that a husband must give his wife permission before she can leave the home.⁷² Conversely, under this interpretation, while women owe a duty of obedience to men, men owe a duty of guardianship (*qawama*) to women.⁷³

Over time, a number of legal systems in the region incorporated these religious duties into the legal codification of rights and duties that defined citizenship, as well as the consequences of violating them.⁷⁴ If a married woman has been said to have violated *ta’ah*, for instance, her husband could decide to stop financially supporting her or even physically abuse her – with the apparent consent of the national judicial system.⁷⁵ As a result, many women in a number of countries throughout the region may remain in violent relationships because custom, religion, and the legal system often intertwine and reinforce religio-cultural norms that may eliminate any alternatives.⁷⁶

Marriage is another problematic area where women often exert little or no control. One religio-cultural practice common throughout the region includes the all too frequent practice employed by poor, rural families – forced child marriages and marriages against the will or choice of the woman.⁷⁷ The familial and private natures of marriage make it difficult to regulate, even where countries implement laws to protect women. For example, Yemen has one of the worst records for child marriages in the world, despite the language of the 1994 Yemeni Constitution, which guarantees equal rights for all citizens. While an April 2010 law set minimum age of marriage at 17, official figures reveal that nearly ninety-nine percent of Yemeni women have been married before the age of 18, with fourteen percent married before the age of 15.⁷⁸ The majority of countries in

⁷¹ Sherif Mohammed, *Marriage in Islam*, JANNAH.ORG, <http://www.jannah.org/sisters/marr.html> (last visited Apr. 10, 2011).

⁷² Webber, *supra* note 61.

⁷³ Wing, *Twenty-First-Century Loving*, *supra* note 7, at 2900.

⁷⁴ *See id.* at 2899–2901 (explaining that most majority-Muslim countries in the Muslim World have adopted the *Shari’a* in different areas of the law, although there are nuanced differences in each country). Countries that have specifically adopted obedience laws include Jordan, Kuwait, and Syria. Webber, *supra* note 61, at 1065.

⁷⁵ Webber, *supra* note 61, at 1065–66.

⁷⁶ *See* Wing & Kassim, *Tunisian Progress*, *supra* note 7, at 1562–65 (discussing examples of the interplay of obedience, cultural characteristics of marriage, and penal codes in Tunisia, Jordan, and Palestine).

⁷⁷ *See* Farzaneh Roudi-Fahimi, *Child Marriage in the Middle East/North Africa*, POPULATION

REFERENCE BUREAU, <http://www.prb.org/Articles/2010/menachildmarriage.aspx>.

⁷⁸ Simba Rousseau, *Arab Women Seek a Place in the Spring*, IPS (Nov. 27, 2011), at <http://ipsnews.net/news.asp?idnews=105974>.

this region also restrict Muslim women from marrying outside of their faith, although Muslim men are permitted to marry non-Muslims.⁷⁹ In almost all the countries in the region except Tunisia and Turkey, Muslim men may marry up to four wives.⁸⁰

Women throughout the region also suffer severe underrepresentation in the political spheres. Cultural and social customs often work to prohibit women from actively participating in the political and public life of their respective national societies.⁸¹ Currently, the percentage of women in parliament in Arab nations is lower than any other region of the world.⁸² Saudi Arabia, Bahrain, Yemen, and United Arab Emirates have no female representation at all, and Lebanon is only better by comparison with a dismal two percent female participation.⁸³ Syria, Morocco, Algeria, and Jordan also exhibit disparate political representation with twelve percent or less of the parliament consisting of women.⁸⁴ The U.S. itself has only seventeen percent female representation in its Congress.⁸⁵

The Fall 2011 Egyptian elections required each party to include a woman on its party list, but women candidates only won two percent of the vote,⁸⁶ reflecting the customary views on women discussed above.⁸⁷ This disappointing trend continued in Libya, where the government dropped the proposed ten percent quota for women after negative reaction from many quarters.⁸⁸

⁷⁹ See Wing & Kassim, *Tunisian Progress*, *supra* note 7.

⁸⁰ See DAWAOUD EL ALAMI & DOREEN HINCHCLIFFE, ISLAMIC MARRIAGE AND DIVORCE LAWS OF THE ARAB WORLD 16 (1996); Wing, *Custom, Religion and Rights*, *supra* note 7, at 158; Adrien K. Wing, *International Law, Secularism, and the Islamic World*, 24 AM. U. INT'L. L. REV. 407, 422–23 (2009) (explaining the customary and religious justification used in Tunisia to ban polygamy). See generally Wing, *Polygamy*, *supra* note 7. For examples of Islamic family law codes that depart from classical laws permitting polygamy, see summaries of Bangladesh Family Laws, Tunisia Family Laws, and Indonesia Family Laws. *Islamic Family Law: Possibility of Reform through Internal Initiatives*, EMORY LAW, available at <http://www.law.emory.edu/IFL/index2.html> (last visited Oct. 15, 2011).

⁸¹ See Wing & Kassim, *Tunisian Progress*, *supra* note 7.

⁸² See AMAL SABBAGH, ENHANCING WOMEN'S POLITICAL PARTICIPATION 52 (2005), available at http://www.idea.int/publications/wip2/upload/Arab_World.pdf.

⁸³ *Id.* at 58–59.

⁸⁴ *Id.*

⁸⁵ See JENNIFER MANNING & COLLEEN SHOGAN, WOMEN IN THE U.S. CONGRESS 1917-2011 (Congressional Research Service ed., Jan. 17, 2012), www.fas.org/sgp/crs/misc/RL30261.pdf.

⁸⁶ Heather Moore, *Experts Weigh in on Low Female Representation in Parliament*, DAILY NEWS EGYPT (Jan. 27, 2012), <http://www.thedailynewsegypt.com/experts-weigh-in-on-low-female-representation-in-parliament.html>

⁸⁷ See notes 94-97 and accompanying text.

⁸⁸ *Libya Drops Election Quota for Women; New Assembly to be Elected in June*, AL ARABIYA (Jan. 20, 2012), available at <http://english.alarabiya.net/articles/2012/01/20/189513.html>.

On the positive side, new Tunisian election laws required fifty percent of candidates running for office and listed on the ballots to be female.⁸⁹ Although women were not at the top of the party lists, they managed to win twenty-four percent overall for the constituent assembly in Tunisia.⁹⁰ In a promising move, the newly elected president, longtime rights activist Moncef Marzouki, promised equal rights for women in Tunisia. Nevertheless, continued incidents of sociopolitical coercion against women with respect to dress—such as forcing female university lecturers to wear a veil—cast some uncertainty on the outlook for gender equity in Tunisia.⁹¹

Historically, women in the region have often faced a severe backlash when asserting their rights.⁹² In the 1950s Algerian Revolution, social equality during social unrest eventually gave way to the status quo with the words: “[Women], you had your moment; now go back to your traditional roles.”⁹³ In the Arab Spring, similar incidents occurred with respect to women participating in political activities. Human Rights Watch obtained statements from politically active women who described their detention at a Egyptian military base, which included forced virginity tests by the military personnel.⁹⁴ An official confirmed the military had performed the virginity tests, which constitute unlawful assault under both Egyptian and international law. In a blow to women’s rights, many women who were tested were charged with prostitution and the army doctor who performed the tests was acquitted.⁹⁵

⁸⁹ Eileen Byrne, *The Women MPs Tipped to Play Leading Roles in Tunisia’s New Assembly*, GUARDIAN (Oct. 28, 2011), available at <http://www.guardian.co.uk/world/2011/oct/29/women-mps-tunisia-government>.

⁹⁰ INT’L CIVIL SOCIETY ACTION NETWORK, WHAT WOMEN SAY: THE ARAB SPRING & IMPLICATIONS FOR WOMEN (Dec. 2011), available at <http://www.icanpeacework.org/wp-content/uploads/2011/12/ICAN17.pdf>.

⁹¹ Or Avi-Guy, *New Order, Same Rules*, SYDNEY MORNING HERALD (Dec. 27, 2011), <http://www.smh.com.au/opinion/politics/new-order-same-rules-20111226-1paf2.html#ixzz1kx11wnXn>.

⁹² Isobel Coleman, *Are the Mideast Revolutions bad for Women’s Rights?*, WASH. POST (Feb. 20, 2011), <http://www.washingtonpost.com/wpdyn/content/article/2011/02/18/AR2011021806962.html>.

⁹³ Salima Ghezali, Louisa Hanoune, & Khalida Messaoudi, *Engendering or Endangering Politics in Algeria?*, 2(2) J. MIDDLE EAST WOM. STUD. 64 (Spring 2006).

⁹⁴ See Molly Hennessy-Fiske, *EGYPT: Government Defends Military Trials, ‘Virginity Tests’ to Human Rights Advocates*, L.A. TIMES (June 7, 2011, 11:16 AM), <http://latimesblogs.latimes.com/babylonbeyond/2011/06/egypt-government-justifies-military-trials-virginity-tests-to-human-rights-advocates.html>.

⁹⁵ *Id.*; Abdel-Rahman Hussein, *Egyptian Army Doctor Cleared over ‘Virginity Tests’ on Women Activists*, GUARDIAN UK (Mar. 20, 2012), <http://www.guardian.co.uk/world/2012/mar/11/egypt-doctor-cleared-virginity-tests>.

The prospects for women's rights in Egypt remain bleak. Despite their active participation in Mubarak's downfall, the Spring 2011 revisions to the Egyptian constitution largely ignored women's rights.⁹⁶ As human rights activist and physician Dr. Nawal El Saadawi observed, "The blood of the women killed in the revolution is still wet, and we were being betrayed."⁹⁷ No women sat on the appointed eight-person Constitutional Committee.⁹⁸ Additionally, the 2011 revisions now require the president of Egypt to marry an Egyptian wife – effectively limiting the presidency to a man, even in the language delimited by the founding document.⁹⁹

On International Women's Day 2011, a month after the fall of Mubarak, marchers for women's rights in Tahrir Square encountered crowds of men who shouted verbally abusive statements and sexually harassed them. At one stage, men held up a woman in full niqab face-veil and chanted, "this is a real Egyptian woman!"¹⁰⁰

In December, horrifying images circulated in the mainstream international press showed Egyptian military police dragging a woman wearing traditional Egyptian Islamic dress through the street, beating her and stomping on her stomach; her bright blue bra was exposed as she lay on the street, becoming a symbol for the military oppression.¹⁰¹ Subsequent protesters held up signs with her images, chanting warnings such as, "This is the army that is protecting us!"¹⁰² Despite the discouraging events, Egyptian female journalist Bothaina Kamel ran for President as the only female

⁹⁶ Yasmine Saleh, *Rewrite Egypt Constitution from Scratch, Say Critics*, REUTERS (Feb. 16, 2011), <http://af.reuters.com/article/topNews/idAFJ0E71F0N620110216>.

⁹⁷ Jenna Krajeski, *Rebellion*, NEW YORKER (Mar. 14, 2012), http://www.newyorker.com/talk/2011/03/14/110314ta_talk_krajeski.

⁹⁸ Richard Spencer, *Egypt: Islamist Judge to Head New Constitution Committee*, TELEGRAPH (Feb. 15, 2011), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/8326469/Egypt-Islamist-judge-to-head-new-constitution-committee.html>.

⁹⁹ Nathan Brown & Michele Dunne, *Egypt's Draft Constitutional Amendments Answer Some Questions and Raise Others*, CARNEGIE, available at <http://egyptelections.carnegieendowment.org/2011/03/03/egypt%E2%80%99s-draft-constitutional-amendments-answer-some-questions-and-raise-others> (last visited Jun. 23, 2012).

¹⁰⁰ *Egypt's Quiet Gender Revolution*, THINK AFRICA PRESS (Aug. 24, 2011), <http://thinkafricapress.com/egypt/egypt-quiet-gender-revolution>.

¹⁰¹ Isobel Coleman, *'Blue Bra Girl' Rallies Egypt's Women vs. Oppression*, CNN (Dec. 22, 2011), <http://www.cnn.com/2011/12/22/opinion/coleman-women-egypt-protest/index.html>.

¹⁰² Inderdeep Bains, *Day of shame in the Middle East: Female protesters beaten with metal poles as vicious soldiers drag girls through streets*, DAILY MAIL ONLINE (Dec. 19, 2011), <http://www.dailymail.co.uk/news/article-2075683/Egypt-violence-Female-protesters-brutally-beaten-metal-poles-vicious-soldiers.html>.

candidate.¹⁰³ While some questioned the seriousness of her campaign, Kamel explained that she was interested in asserting and enforcing the rights of both men and women; unfortunately, however, Kamel did not collect enough signatures to actually achieve placement on the ballot.¹⁰⁴

In Libya, women have been mentioned in various roles during the revolutionary period; significantly, the role and mistreatment of women in Qaddafi’s internal guard – an estimated 400 women over ten years, has been widely publicized.¹⁰⁵ Some of these guards were involved in combat, often shooting rebels.¹⁰⁶ The media also covered the mistreatment and plight of Qaddafi’s son’s Ethiopian maid, who was doused with boiling water by his wife after refusing to beat a three-year-old child for crying.¹⁰⁷ There was also coverage regarding Qaddafi’s daughter, Aisha, an attorney who represented Saddam Hussein.¹⁰⁸ Aisha was also designated to speak on her father’s behalf while he was in hiding.¹⁰⁹

In a different light, Aisha Gdour, a school psychologist, smuggled bullets in her brown leather handbag;¹¹⁰ Fatima Bredan, a hairdresser, tended to wounded rebels¹¹¹ and Hweida Shibadi, a family lawyer, also helped NATO find airstrike targets.¹¹² Amal Bashir, an art teacher, used a secret code during the struggle for democratic change in Libya to collect orders for

¹⁰³ Catriona Davies, *The Woman Who Wants to be Egypt’s First Female President*, CNN (Sept. 16, 2011), <http://www.cnn.com/2011/09/13/world/meast/egypt-bothaina-kamel/index.html>.

¹⁰⁴ *Bothaina Kamel Says She Has No Regrets on Dropping Out of Race*, EGYPT INDEPENDENT (Apr. 8, 2012), available at <http://www.egyptindependent.com/news/bothaina-kamel-says-she-has-no-regrets-over-dropping-out-race>.

¹⁰⁵ See *Gaddafi’s Female Bodyguards Say They were Raped, Abused by the Libyan Leader*, WASH. POST (Aug. 29, 2011), http://www.washingtonpost.com/blogs/blogpost/post/gaddafis-female-bodyguards-say-they-were-raped-abused-by-the-libyan-leader/2011/08/29/gIQA8TOKnJ_blog.html.

¹⁰⁶ *Id.*

¹⁰⁷ See *Ethiopian Maid Burned and Abused by the Wife of Gadhafi’s Son Gets Treatment*, ALL VOICES, available at <http://www.allvoices.com/contributed-news/10286104/video/86430345-ethiopian-maid-burned-and-abused-by-the-wife-of-gadhafi-son-aline-skaf-gets-treatment> (last visited Jun. 23, 2012).

¹⁰⁸ See *Gaddafi Daughter to Defend Saddam*, BBC (July 3, 2004), <http://news.bbc.co.uk/2/hi/3862875.stm>.

¹⁰⁹ *In her father’s footsteps: Gaddafi’s daughter Aisha whips crowds into a frenzy as she calls on West to ‘leave our skies’*, MAIL ONLINE (Apr. 15, 2011), <http://www.dailymail.co.uk/news/article-1377043/Libya-Gaddafis-daughter-Aisha-calls-West-leave-skies.html#ixzz1eY6xLj68> (last visited June 23, 2012).

¹¹⁰ Ann Barnard, *Libya’s War-Tested Women Hope to Keep New Power*, N.Y. TIMES (Sept. 13, 2011), http://www.nytimes.com/2011/09/13/world/africa/13women.html?_r=1&ref=africa.

¹¹¹ *Id.*

¹¹² *Id.*

munitions: small-caliber rounds were called “pins,” larger rounds were “nails,” and a “bottle of milk” meant a Russian automatic Kalashnikov.¹¹³

The current draft of the Libyan interim constitutional document is problematic, however.¹¹⁴ In particular, many commentators have focused on the clause that reads, “Islam is the national religion”, which is standard in most Arab countries, and which can hold variable meanings depending on the country.¹¹⁵ Contravening the standards of most modern constitutions, however, the interim document neglects to address discrimination based on gender.¹¹⁶ In addition, the interim leader Mustafa Abdul-Jalil announced that polygamy will be reintroduced in Libya and that any laws conflicting with Islam would be null and void.¹¹⁷

In contrast to Egypt, Libya and other countries in the Arab Spring, recent events in Tunisia saw the country to take positive steps towards increasing women’s rights. The Tunisian interim government removed almost all of its reservations to the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),¹¹⁸ an amazing decision, in light of the fact that the CEDAW contains the most reservations of any international convention.¹¹⁹ The majority of these reservations indicate that a treaty binds a government only so far as it does not conflict with local customs and religion—effectively gutting the practical purpose of the document.¹²⁰ The Tunisian elimination of most of these reservations is a revolutionary and laudatory act for a country in the region, though it is difficult to gauge its long-term significance at this juncture.

One area of difficulty for Tunisian women may be the fact that the government has retained one general reservation: that Tunisia will not take

¹¹³ See Barnard, *supra* note 110.

¹¹⁴ See Draft Constitutional Charter for the Transitional Stage, available at <http://www.al-bab.com/arab/docs/libya/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf>.

¹¹⁵ Ali Gomaa, *In Egypt’s Democracy, Room for Islam*, N.Y. TIMES (Apr. 1, 2011), <http://www.nytimes.com/2011/04/02/opinion/02gomaa.html>.

¹¹⁶ Of course, the U.S. does not have gender equality in the constitution yet either.

¹¹⁷ See Adam Nossiter, *Hinting at an End to a Curb on Polygamy, Interim Libyan Leader Stirs*

Anger, N.Y. TIMES (Oct. 29, 2011), <http://www.nytimes.com/2011/10/30/world/africa/libyan-leaders-remark-favoring-polygamy-stirs-anger.html?pagewanted=all>.

¹¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess. Supp. No. 107, U.N. Doc. A/Res/34/180 (Dec. 18, 1979) [hereinafter CEDAW].

¹¹⁹ See Brian Whitaker, *Tunisia is Leading the Way on Women’s Rights in the Middle East*, GUARDIAN (Sept. 20, 2011), <http://www.guardian.co.uk/commentisfree/2011/sep/10/tunisia-un-human-rights-women>.

¹²⁰ *Id.*

any legislative action conflicting with Chapter 1 of the Constitution.¹²¹ Chapter 1 includes a statement that the national religion is Islam, which could potentially invite various religious-based arguments against legal reform for women’s rights; however, until now, Tunisia has not used Chapter 1 as an excuse for maintaining laws or practices that violate CEDAW. Perhaps there is a fair chance that Tunisia will be making a serious effort to meet its obligations under CEDAW, providing inspiration for other reforms in the region to follow.¹²²

The recent Tunisian elections placing the conservative Islamist party Ennahda in power have since sparked controversy, debate, and demonstrations by women throughout the country.¹²³ Many women view the introduction of a socially conservative Islamist party as a threat to the advancements and strides gained through their efforts over many years as the most secular country in the region.¹²⁴ Concerns regarding the reinstatement of polygamy and potential changes to currently egalitarian divorce laws sparked a renewed effort by Tunisian women to politically engage themselves and continue the momentum of the Arab Spring to protect their rights.¹²⁵ Some Tunisians are worried that the new conservative government will roll back such gains.¹²⁶

Finally, full information on the status of women in other countries remains unclear. For example, Iraqi statistics indicate that this period actually correlated with increased levels of violence, prostitution, and sex

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Bouazza Ben Bouazza, *Tunisian Women Demonstrate to Protect their Rights*, ASSOCIATED PRESS (Nov. 2, 2011), <http://www.google.com/hostednews/ap/article/ALeqM5iBwopsJzONk0IPtzGRdBdjjCK9PA?docId=3b92f6a715784eccb490d4a50e24b7be>; Hassene Dridi, *Tunisian Women Demonstrate to Preserve Their Rights Following Islamist Election Victory*, ASSOCIATED PRESS (Nov. 2, 2011), http://www.washingtonpost.com/world/africa/tunisian-women-demonstrate-to-preserve-their-rights-following-islamist-election-victory/2011/11/02/gIQAJnh4fM_story.html; Yasmine Ryan, *Tunisia’s Election Through the Eyes of Women*, ALJAZEERA (Oct. 23, 2011), <http://english.aljazeera.net/indepth/spotlight/2011tunisiaelection/2011/10/20111022104341755235.html>; Karem Yehia, *On Tunisia’s Elections*, AL AHRAM, <http://weekly.ahram.org.eg/2011/1071/re4.htm> (last visited on June 23, 2012).

¹²⁴ Louise Loftus, *Mixed Messages for Tunisian Women*, NY TIMES, (Nov. 21, 2011), <http://www.nytimes.com/2011/11/21/world/middleeast/mixed-messages-for-tunisian-women.html>

¹²⁵ *Id.*

¹²⁶ See Nadya Khalife, *Tunisia on Board with Women’s Rights*, HUFF. POST (Sept. 29, 2011), http://www.huffingtonpost.com/nadya-khalife/tunisia-on-board-with-wom_b_981689.html.

trafficking in Iraq.¹²⁷ Saudi Arabia permitted women to vote and run in municipal elections as of 2015, and the right to drive may soon be attained as well.¹²⁸ Glacial as the pace may appear to many Americans, these events did occur in large response to the popular democratic movement and momentum generated by the Arab Spring.¹²⁹

III. THE NEED FOR AN INTERNATIONAL RESPONSE IN SUPPORT OF WOMEN'S RIGHTS

All the efforts made by the people throughout the Middle East and North Africa to attain greater rights for women and men need the support of the international community and international civil society. This section will suggest a few ideas that people in the United States could potentially pursue.

First, Americans must improve their own understanding of the situation. Attending and creating educational events in local communities and on campuses such as the September 2011 lecture I had the opportunity to present at the University of California, Davis School of Law is a good start. Engaging and interacting with media outlets including Al Jazeera English, BBC and other sources that augment U.S. coverage can be helpful. Engaging conversations on Facebook, Twitter and other social media can also be similarly useful. If the security situation is relatively solid, people can visit the countries in question and create people to people contacts on the ground to learn more, observe, and report back on the new constitutional processes and electoral reforms taking place.

My many visits to Egypt over twenty-five years have enabled me to make contacts and gain an understanding of events that would not be possible if I had never visited in person. As a professor, I have also taken law students—who otherwise would not have traveled to the region on their own—along with me to engage in making those connections and providing insightful legal analysis upon their return. Law students can also attend exchange study programs directly in the area, such as Seton Hall's summer law study program in Cairo.¹³⁰

¹²⁷ See HUMAN RIGHTS WATCH, *World Report: Iraq 2012*, available at http://www.hrw.org/sites/default/files/related_material/iraq_2012.pdf.

¹²⁸ Neil MacFarquhar, *Saudi Monarch Grants Women Right to Vote*, N.Y. TIMES (Sept. 26, 2011), <http://www.nytimes.com/2011/09/26/world/middleeast/women-to-vote-in-saudi-arabia-king-says.html?pagewanted=all>.

¹²⁹ *Id.*

¹³⁰ For an example of a law school study abroad program in Egypt, please see the website of the Seton Hall University program at <http://law.shu.edu/Students/academics/studyabroad/Cairo/index.cfm>.

Second, Americans can support organizations working for human rights in the region. Contributing to a U.S.-based group, such as Human Rights Watch, may also confer numerous advantages such as eligibility for tax-deductible contributions. People based in the United States can also seek out foreign groups for assistance. One has to be very careful since some groups may be fronts for terrorist or other causes, and there is no domestic tax deduction for the overseas charity.¹³¹

My third suggestion is that the U.S. Congress should pass the International Violence against Women Act ("IVAWA"),¹³² which would directly incorporate codified carrots and sticks into U.S. foreign assistance programs, such as conditioning U.S. financial aid on the promotion of economic opportunity and programs that address violence against girls in school. Under such a proposed reform, the U.S. government would also be required respond to critical outbreaks of gender-based violence in armed conflict.¹³³

Fourth, the U.S. government and private sector should focus on increasing access to quality education by providing funding for education and college scholarships for women throughout the region. It would be very meaningful, for example, if strong foundations like the Bill & Melinda Gates Foundation would expand their emphasis on global development to include enhancing women's education.¹³⁴

Fifth, I recommend a push for additional public and private funding and resources to help Muslim countries enhance women's job opportunities through the means of microfinance.¹³⁵ Women in the Middle East have ably maximized the use of minimal resources to register greater gains for their families and communities. Given how well they have handled small amounts, in my opinion, women should be trusted to handle larger amounts

¹³¹ See *UPDATED: Treasury Data Shows Charities Not Significant Source of Terrorist Support*, CHARITY & SECURITY NETWORK, Table 1 (Mar. 5, 2011), available at http://www.charityandsecurity.org/background/Treasury_too_much_emphasis_charities%3F#Table_1:_Charities_Designated_as_Specially_Designated_Global_Terrorists__SDGT__by_the_US. For the Internal Revenue Service Rules that disallow foreign charitable deductions, see *Charitable Contribution Deductions*, IRS <http://www.irs.gov/charities/charitable/article/0,,id=134331,00.html>.

¹³² Int'l Violence Against Women Act, H.R. 4594, 111th Cong. § 111(c) (2010) [hereinafter IVAWA], available at <http://www.govtrack.us/congress/billtext.xpd?bill=h111-4594>.

¹³³ See *Violence against Women*, WOMEN THRIVE WORLDWIDE, http://www.womenthrive.org/index.php?option=com_content&task=view&id=366&Itemid=115.

¹³⁴ See Bill & Melinda Gates Foundations website at <http://www.gatesfoundation.org/global-development/Pages/overview.aspx>.

¹³⁵ For an example of an organization devoted to microfinance, please see *About Microfinance*, KIVA, <http://www.kiva.org/about/microfinance>.

as well. Sixth, the United States should provide additional funding for the programs at the State Department's Office of Global Women's Issues and the U.S.-Middle East Partnership Initiative.¹³⁶ The current State Department Office of Global Women's Issues' budget is about 1.3 million dollars.¹³⁷ This amount is inadequate for the scale of the problems involved. In my opinion, the problems affecting women require billions, not millions, to be spent.

Seventh, the U.S. government and private sector must show support for grassroots women's rights movements in the Muslim World by supporting advocates of women's rights, including those who use an Islamic legal framework to justify equality for women. Supporting grassroots movements may help the U.S. government and private sectors gain a deeper, more direct understanding to respond to people's needs and priorities.¹³⁸ A top-down approach dealing only with governmental or private elites is not a smart position for the United States at this moment in history. Women who are at the bottom of a society should also have access to education and opportunities to reformulate and integrate government accountability structures, mechanisms and processes across class strata.

Finally, the United States could consider leading by example on the legal front. The U.S. must *join* the rest of the world on women's rights issues. While the United States, as a matter of foreign policy, has encouraged equal rights for women in the Arab world, we ourselves have yet to ratify CEDAW as a nation.¹³⁹ The U.S. is currently one of only six nations in the world that have failed to ratify the treaty.¹⁴⁰ Moreover, apart from the Nineteenth Amendment,¹⁴¹ the U.S. Constitution still does not directly address gender equality in its language, even as the U.S.-funded Iraqi constitution requires a twenty-five percent female gender quota for seats in the Iraqi legislature.¹⁴²

¹³⁶ See *Office of Global Women's Issues*, U.S. DEP'T OF STATE, <http://www.state.gov/s/gwi/>.

¹³⁷ See Interview by Christine Ahn with Charlotte Bunch, Founder of the Center for Global Women's Leadership (Feb. 6, 2010), available at <http://www.ipsnews.net/news.asp?idnews=50091>.

¹³⁸ See Stephanie Willman Bordat, Susan Schaefer Davis & Saida Kouzzi, *Women as Agents of Grassroots Change: Illustrating Micro-Empowerment in Morocco*, 7(1) J. MIDDLE EAST WOMEN'S STUD. 90 (2011).

¹³⁹ Wing & Nielson, *An Agenda*, *supra* note 7, at 124.

¹⁴⁰ *Id.* The nations that have not ratified CEDAW are: United States, Sudan, Somalia, Iran, Palau and Tonga. See *Frequently Asked Questions*, CEDAW 2012, <http://www.cedaw2010.org/index.php/about-cedaw/faq>.

¹⁴¹ See U.S. CONST. amend. XIX.

¹⁴² See art. 47, Doustour Jounhouriat al-Iraq [The Constitution of the Republic of Iraq] of 2005.

CONCLUSION

This Essay has explored the aftermath of the Jasmine Revolution in the Arab Spring and Fall of 2011. These events will continue to have important repercussions around the world. One visible example is the Occupy Wall Street Movement in the United States; Occupy organizers have cited to the recent popular democratic movements throughout the Middle East and North Africa as a source of inspiration.¹⁴³ In 2012, the world is watching closely in Egypt, Tunisia, Libya, and Yemen as they go through political and constitutional reform. The international community, including civil society, continues to look forward to the possibilities for popular democratic change and social change with regard to women's rights in other countries such as Syria and Bahrain, as well.

It remains critical to continue to observe the challenges that Arab women face based upon the patriarchal norms that have persisted in the past and continue to persist throughout the region. While some women have played a critical role on the frontlines of the revolutionary changes that have taken place, many women have confronted backlashes as well. It will be essential for civil society in other countries, specifically, the United States, to take an active role in supporting these grassroots movements seeking to enhance women's rights.

I fear that 2012 may not represent a year of advancement for women's rights in the region. Electoral victories by socially conservative Islamist parties may represent steps backward for women in the Middle East and North Africa. New regimes may exclude women from access to run for prominent positions in all three branches of government. New constitutions may potentially limit women's rights even further than in the past, and could potentially remain subject to legal interpretations that only reinforce dominant traditional patriarchal norms.

There may also be increased social and religio-cultural pressure for women to comply with these dominant norms. Given the weaknesses in the global economy, men may feel that women need to stay out of the labor force in order for male breadwinners to find suitable employment. In Tunisia in particular, it is possible that the secular gains of more than fifty years may be turned back, and it will lose its hard-earned status at the forefront of women's rights in the region.

A conservative result in the 2012 U.S. presidential election may mean less attention will be given to the Middle East and North Africa, other than a perennial politicized focus on oil or anti-terrorism agendas. Fiscal cutbacks

¹⁴³ See *Arab Spring Inspired Occupy Wall Street Protest*, FORBES INDIA (Nov. 12, 2011), <http://ibnlive.in.com/news/arab-spring-inspired-occupy-wall-street-protest/201270-55.html>.

in the U.S. may signal further cuts to the foreign policy budget so that the military budget can stay robust; foreign assistance going towards rights protections and economic incentives for women throughout the Middle East and North Africa may end up becoming further sacrificed.

To conclude, while I am cautiously pessimistic, I do have dreams about the possibilities of democratic social change in the region. I hope the U.C. Davis community can relate to these dreams as they study at King Hall, an institution named in honor of the legacy of human rights and popular democratic social change that Dr. Martin Luther King, Jr. helped to spark in this country. I have a dream that my seven grandchildren, granddaughters and grandsons ages six to thirteen – and any more that I have in the future – will one day join together with children from throughout the Middle East, Africa, Europe, Latin America, and all over the world. These children may be Christian, like my children, and they may be Muslim, Jewish, Hindu, Buddhist, and atheist.

I dream that all these children, both male and female, will be able to travel, study and learn together in friendship and harmony as they visit Tunis, Cairo, Tripoli, Damascus, Washington, Jerusalem, and Tel Aviv. My hope is that together, we can all help make this dream become a reality. We can only hope for as much as we look forward and dream towards the creation of real social transformation in recognition of human rights and women's rights throughout the region and the world, in 2012.