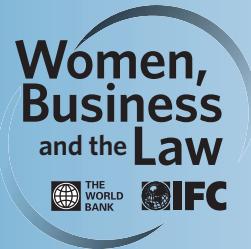


# Mapping the Legal Gender Gap in Accessing Business Environment Institutions



by Mohammad Amin, Yasmin Bin-Humam, and Sarah Iqbal

## From a Garage to a Global Enterprise: A Woman Entrepreneur's Story

In 1976 Anita Roddick was a young mother supporting herself and her two daughters in Brighton, England, while her husband traveled in Latin America. To provide for her family, Roddick started a business selling a range of environmentally inspired body care products.<sup>1</sup> As Roddick put it, "I started The Body Shop in 1976 simply to create a livelihood for myself and my two daughters."<sup>2</sup> The World Bank's *Voices of the Poor* (2000) shows that women, like men, look to entrepreneurship and employment as the best ways out of poverty.

Roddick was fortunate that she lived in the United Kingdom, which started treating married women as legal entities distinct from their husbands in 1870 when it enacted the first in what would become a series of Married Women's Property Acts.<sup>3</sup> Before that, a woman's legal identity was subsumed by that of her husband's once she married, and she could not enter a contract without his permission. Nor was she entitled to keep any wages, inheritance, or investments, because they were the property of her husband. It would have been impossible for a married woman to start a business without her husband. Many countries have changed legislation on the legal capacity of married women relatively late in their legal trajectories. For example, in Germany until 1957 a husband could prevent his wife from working if he deemed the work was counter to her familial duties.<sup>4</sup> In 16 of the economies covered by *Women Business and the Law*, husbands can still stop their wives from working.

Within ten months, by the time Roddick's husband had returned to England, she had opened a second store. Twenty years later, she had a chain of stores that were sold to the cosmetics company L'Oréal for one billion dollars.<sup>5</sup> Today the Body Shop has more than 2,500 stores in 60 countries.<sup>6</sup> And it all began with a female entrepreneur able to pursue a business idea.



Bill Lyons/World Bank

Trevor Samson/World Bank

## Why Does Equal Access to Institutions Matter for Women?

In addition to the challenges that all entrepreneurs face in starting businesses, female entrepreneurs can face challenges in meeting the legal prerequisites before business registration. Some can face legal hurdles in matters as simple as traveling outside their homes or countries, choosing where to live, or making decisions for themselves and their households. More direct impediments might restrict women from signing contracts or require them to get permission to get jobs or pursue professions. Without the basic ability to make decisions for themselves, women may have fewer economic opportunities or be less competitive in business. Women may also lack access to the resources needed to start a business, such as finance and banking services<sup>7</sup> and have greater need of services such as childcare and education.<sup>8</sup>

Single women generally have the same rights as single men. But in many economies when women marry, they legally give up some of their decision making capacity to their husbands. Though business regulations are likely to be gender neutral, family law often constrains married

women's ability to interact with the business environment.<sup>9</sup> Some regulations also make women go through extra steps, such as requiring married women to provide a copy of their marriage certificate to complete basic transactions.

### What We Measure and Why

*Women, Business and the Law* measures the different legal treatment of men and women in areas affecting women's participation in economies around the world. It complements the World Bank Group's *Doing Business* dataset, which measures regulations on domestic small and medium-size companies.<sup>10</sup>

Many activities integral to entrepreneurship were granted to women relatively recently. In France, married women used to require the permission of their husbands to open bank accounts. In 1943, a reform allowed married women who had separate assets and separate professions from their husbands to open bank accounts without their husbands' consent. In 1965, the law was equalized stipulating that each spouse had the right to open accounts in their own name and to freely dispose of the assets in those accounts.<sup>11</sup>

The Accessing institutions indicator measures the extent to which the law allows men and women the same legal ability to participate in the economy by providing them with equal opportunities to interact with the private and public sectors. It does so by examining three areas.

### Rights of Married and Unmarried Women

To determine a woman's legal ability to access institutions in an economy, this indicator examines 10 transactions to see whether they can be conducted in the same way by men and women. Because a woman's legal capacity is often determined by her marital status, each question is examined separately for unmarried and married women.

The 10 economic activities examined are getting a job, registering a business, signing a contract, opening a bank account, choosing where to live, getting a passport, traveling domestically and internationally, conveying citizenship to children, and becoming heads of households. These questions are designed to see how much freedom women have to function in the economy and to what extent marriage affects that freedom.

Because these 10 actions work in concert, together they provide an overall picture of women's legal ability to function independently in the business environment. A sample of how these activities interact is shown in figure 1.

### Division of Responsibility in Marriage

This indicator examines the division of rights and responsibilities between husbands and wives in a household, and reflects the amount of autonomy women have both within and outside the home.

Three areas are examined: whether women can convey nationality to non-national spouses in the same way as men, if wives are legally required to obey their husbands,

FIGURE 1

A WOMAN'S QUEST TO GET A JOB OR START A BUSINESS



and whether married couples share the legal responsibility for financially maintaining families. The ability to convey nationality to a non-national spouse has implications for the ability of the non-national spouse to work domestically. Thus, it can influence a couple's livelihood and their choice to remain in a country. There are also ramifications for the nationality of children if only fathers are able to pass on citizenship.

The legal requirement that wives obey their husbands can influence a wife's decisions because her husband might be able to stop her from working or from conducting certain transactions. Similarly, the question of who is responsible for family expenses, the couple or solely the husband, points to differing allocations of roles within the family. The *World Bank's World Development Report 2012* highlights the limited progress towards more comprehensive legal agency for women.<sup>12</sup>

### Constitutional Rights

The final part of the indicator examines constitutional rights on nondiscrimination and gender equality, and looks at the sources of law in an economy. The indicator considers whether there is a nondiscrimination clause on gender in constitutions and examines constitutional guarantees on gender equality. It also examines whether customary or personal law are valid sources of law and subject to constitutional provisions on nondiscrimination and equality. Where customary or personal law are not subject to constitutional provisions on nondiscrimination or equality, or in the rare instances where no such provisions exist, there is no constitutional recourse for women where there is gender discrimination in the law.

In addition to the economic implications of a woman's legal inability to interact with the business environment, gender equality is a central tenet of international human rights. Several areas overlap between the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and *Women, Business and the Law's* Accessing institutions indicator (table 1).

### Gender Differences in Institutional Access: Where Do We Stand?

Regional variations are clear in women's access to institutions. OECD and Eastern Europe and Central Asia have equal legislation in this regard, as do most economies in Latin America and the Caribbean, with a few notable exceptions. Although customary law is recognized in Latin America and the Caribbean, nowhere is it exempted from constitutional provisions on nondiscrimination. East Asia and the Pacific is equal on women's ability to get a job independently of their husbands, and generally equal for passports and citizenship (Malaysia is the exception), as well as head of household stipulations (Indonesia is the exception). South Asia and Sub-Saharan Africa differentiate between men and women in a variety of areas, though the Middle East and North Africa has the most legal differences based on gender across all areas measured within the indicator.

### Passports and Citizenship

The Middle East and North Africa has the most inequality among regions when it comes to married women applying for passports. Married women in the region are

#### BOX 1

#### MY MOM IS JORDANIAN AND HER CITIZENSHIP IS MY RIGHT

Ten economies in the Middle East and North Africa (out of 14 covered) do not allow married women to convey citizenship to their children (only Algeria, Egypt, Morocco and Tunisia allow them to do so). When women cannot convey citizenship to their children, children may not have the right to access government health insurance or go to public universities at subsidized rates, causing them to pay higher rates for health care and education, if they can access it at all. Later in life, the children will face hurdles in obtaining residency permits, and sometimes security clearances, in order to get work permits and remain in the country.

Nima Habashna, a Jordanian woman married to a Moroccan husband lives in Jordan and is the mother of six children. She is also the only Jordanian citizen in her family. To raise awareness around the issue she created a Facebook page entitled, "My Mom Is Jordanian and Her Citizenship Is My Right". Jordan's Information and Research Center (IRC) estimates that approximately 66,000 such couples live in Jordan.

Source: New York Times. 2011. "In Jordan, a Struggle for Gender Equality."

Information and Research Center, King Hussein Foundation. 2011. "Children of Jordanian Mothers, Foreign Fathers Suffer Social Exclusion."

usually required to get their husbands' permission to get passports or to provide the names of their spouses and copies of their marriage certificates. Saudi Arabia is the only covered economy in the region where unmarried women cannot apply for passports without permission from a male guardian. In almost all Middle Eastern and North African economies, women cannot convey citizenship to their foreign spouses, and in just over 70% married women cannot confer citizenship on their children in the same way as married men.

The requirement that women provide their marriage certificates or the names of their spouses when applying for passports also occurs in one-quarter of the economies in Sub-Saharan Africa covered by this report. Citizenship issues for spouses and children are also prevalent in the region, with almost half of the economies restricting the passage of citizenship by women to their non-national spouses, and just under one-fifth restricting the passage of citizenship to children by married women.

In South Asia, Bangladesh and Pakistan do not allow married women to get passports in the same way as men.<sup>13</sup> Nepal restricts the passage of citizenship to children by both married and unmarried women. Meanwhile, Bangladesh, Nepal, and Pakistan have inequalities on the passage of citizenship to spouses by women.

In Latin America and the Caribbean, only Honduras imposes restrictions on conveying citizenship to spouses. Wives must take on the citizenship of their husbands.<sup>14</sup> Only if a treaty exists between economies for dual nationality, can women keep their Honduran citizenship and pass that on to their husbands if they are Honduran by birth. Men are not obligated to take on the nationality of their wives.<sup>15</sup>

In the economies covered in East Asia and the Pacific, women and men generally have the same ability to apply for passports, but inequalities remain on citizenship laws in Malaysia. Malaysian women can only confer their nationality on their children if they are born in Malaysia. And only Malaysian men can convey citizenship to their spouses.

**TABLE 1**

**CORRESPONDENCE BETWEEN THE CONVENTION ON THE ELIMINATION OF ALL FORMS  
OF DISCRIMINATION AGAINST WOMEN AND WOMEN, BUSINESS AND THE LAW'S  
ACCESSING INSTITUTIONS INDICATOR**

CEDAW Article	<i>Women, Business and the Law Question</i>
Freedom from discrimination on the basis of sex (Art. 2)	<ul style="list-style-type: none"> <li>Is there a non-discrimination clause covering gender or sex in the constitution?</li> </ul>
Equal rights with respect to nationality (Art. 9)	<ul style="list-style-type: none"> <li>Can a woman confer citizenship on her children in the same way as a man?</li> <li>Can a woman convey citizenship to her non-national spouse in the same way as a man?</li> </ul>
Equality in all areas of economic and social life (Art. 13)	<ul style="list-style-type: none"> <li>Can a woman get a job or pursue a trade or profession in the same way as a man?</li> <li>Can a woman sign a contract in the same way as a man?</li> <li>Can a woman register a business in the same way as a man?</li> <li>Can a woman open a bank account in the same way as a man?</li> </ul>
Equality before the law and legal capacity identical to that of men (Art. 15)	<ul style="list-style-type: none"> <li>Can a woman apply for a passport in the same way as a man?</li> <li>Can a woman travel outside the country in the same way as a man?</li> <li>Can a woman travel outside her home in the same way as a man?</li> <li>Does the constitution guarantee equality before the law?</li> </ul>
Equality in all matters relating to marriage and family relations (Art. 16)	<ul style="list-style-type: none"> <li>Can a woman be "head of household" or "head of family" in the same way as a man?</li> <li>Can a woman choose where to live in the same way as a man?</li> <li>Are married women required by law to obey their husbands?</li> <li>Do married couples jointly share legal responsibility for financially maintaining the family expenses?</li> </ul>

In Eastern Europe and Central Asia, and OECD high-income economies there is no differentiation between men and women in the area of passports and citizenship.

### Domestic and International Travel

In the Middle East and North Africa married women cannot travel outside their homes in the same way as married men in the Islamic Republic of Iran, Saudi Arabia, and Yemen. These 3 economies also require married women to obtain permission to travel internationally, as does the Syrian Arab Republic—where husbands can stop their wives from traveling internationally by submitting their names to the Ministry of the Interior. Saudi Arabia is the only economy in the region where unmarried women cannot travel internationally in the same way as unmarried men.

In Sub-Saharan Africa, Sudan is the only economy that restricts women's freedom of movement. Married women cannot travel outside their homes in the same way as married men. To travel internationally, unmarried women require the permission of their fathers, while married women require the permission of their husbands.

No economies in any other region restrict the ability of women to travel domestically or internationally.

### Permission to Work

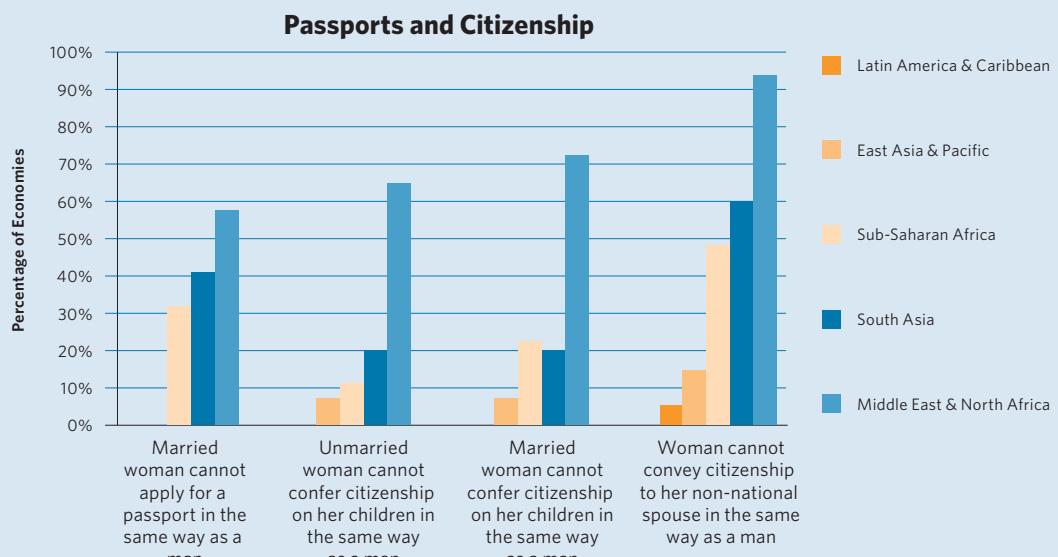
In Sub-Saharan Africa, South Asia, and the Middle East and North Africa husbands can restrict their wives from pursuing trades or professions, with 20% of economies in South Asia, 29% in Sub-Saharan Africa, and 36% in the Middle East and North Africa doing so.

In the Middle East and North Africa the restrictions include a loss to the right of maintenance<sup>16</sup> if a woman works without the permission of her husband. The same is true in Jordan and Syria. Kuwaiti law states that husbands should not forbid their wives from working outside the home unless it undermines family interests. Similar laws exist in Iran and the United Arab Emirates. In Sub-Saharan Africa, where applicable, the restriction is phrased such that women can work if their husbands do not object, based on the interests of the family.

In some instances the head of the household may also be legally owed obedience by his family. However, the formal designation of head of household entitles the bearer to a much broader set of rights, including those pertaining to interactions with government institutions.

FIGURE 2

DIFFERENCES IN HOW WOMEN GET PASSPORTS AND CONVEY CITIZENSHIP



Source: *Women, Business and the Law 2012*.

### Head of Household and Family Obligations

The most pervasive restrictions on where women cannot legally be designated the head of household are in the Middle East and North Africa, followed by Sub-Saharan Africa (figure 3).

In the Middle East and North Africa the proportion of economies where the head of household designation is solely the provenance of the husband correlates with the proportion of economies where the husband is solely legally responsible for family finances. This correlation does not hold in Sub-Saharan Africa. In the majority of economies in the Middle East and North Africa, men are entirely responsible for providing financially for their families. Any separate earnings of the wife are her own (figure 4).

In addition to having the highest rates of male head of household stipulations, the Middle East and North Africa

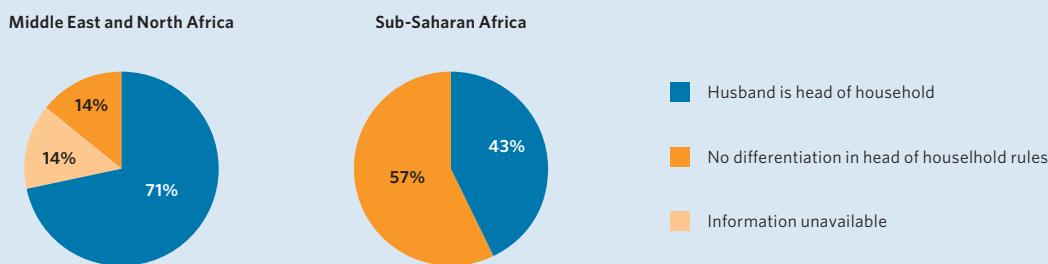
has the highest proportion of economies with the separate legal requirement that wives obey their husbands (8 of 14 of the economies covered).<sup>17</sup> Three economies covered in Sub-Saharan Africa also have such a separate legal stipulation: the Democratic Republic of Congo, Mali, and Sudan.

In Latin America and the Caribbean, only Chile and Honduras stipulate that husbands are the heads of households. Couples are jointly responsible for providing financially for their families, and wives are not legally obliged to obey their husbands.

In South Asia, only India restricts married women from becoming heads of households. It is also the only economy covered where unmarried women face differentiation in becoming heads of households. Other family dynamics include that husbands are responsible for the financial maintenance of their families in Bangladesh and Pakistan.

FIGURE 3

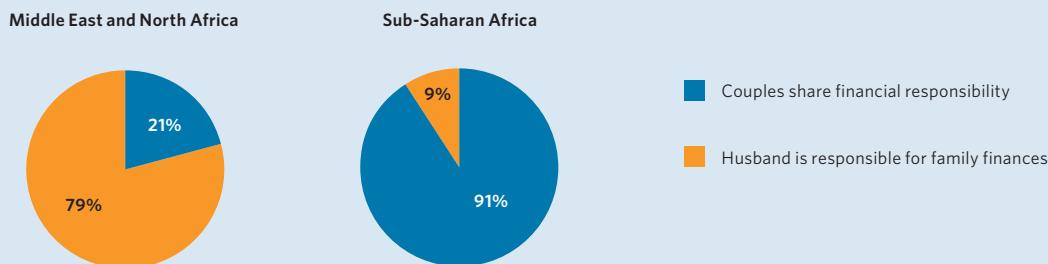
HEAD OF HOUSEHOLD DESIGNATIONS



Source: *Women, Business and the Law 2012*.

FIGURE 4

WHO IS RESPONSIBLE FOR FAMILY FINANCES?



Source: *Women, Business and the Law 2012*.

In East Asia and the Pacific, only Indonesia restricts married women from becoming heads of households and stipulates that husbands are solely responsible for financially providing for the family. But Indonesia does not have an explicit legal provision that wives obey their husbands, putting it in the same category as other East Asian and Pacific economies.

In Eastern Europe and Central Asia as well as OECD economies, there is either gender equality in the designation of the head of household or the designation is not utilized. Couples are jointly responsible for family finances, and there are no legal provisions mandating that wives obey their husbands.

### Gender and Constitutions

Eastern Europe and Central Asia is the only region where neither customary nor personal law is recognized in any constitution (figure 5). Among OECD economies, Canada and Israel recognize customary law as a valid source of law under their constitutional regimes. Australia's legal system draws on certain principles not enumerated in the Constitution and codified elsewhere (as for example in the Sex Discrimination Act of 1984), to prevent discrimination,

while Canada requires that customary law conform to nondiscrimination provisions in the constitution.

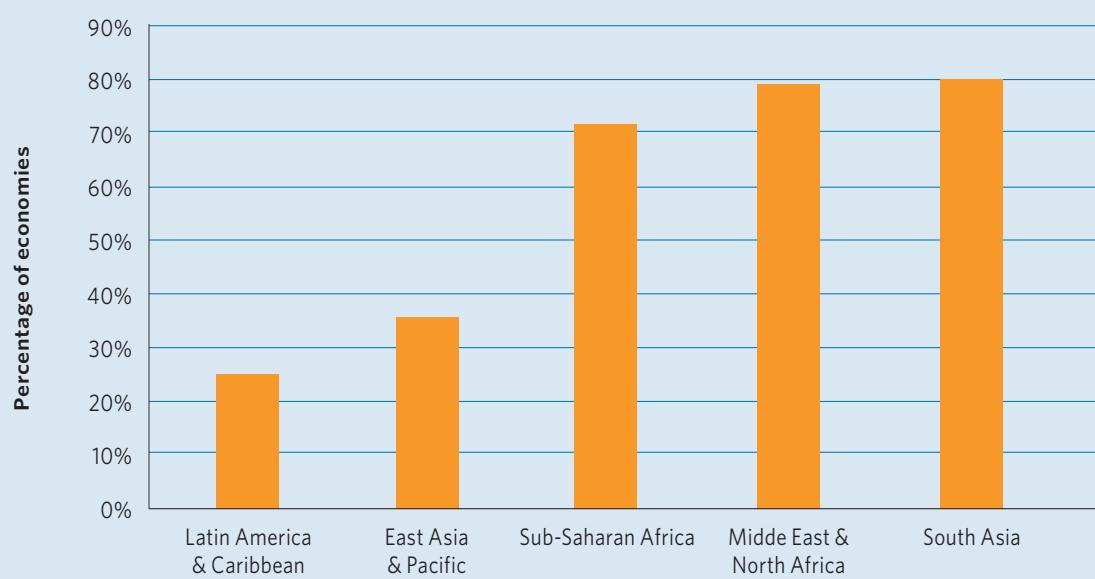
In the Middle East and North Africa customary and personal law are not required to conform to constitutional provisions on nondiscrimination (figure 6).<sup>18</sup>

In this context it is useful to consider which economies lack nondiscrimination provisions for gender in their constitutions. Some countries, such as Norway, do not cover it in their constitutions, but in gender equality acts. In the Middle East and North Africa 79% of the covered economies do not have nondiscrimination clauses that mention gender in their constitutions.<sup>19</sup> Though South Asia has a high rate of recognition of customary or religious law, all the economies covered have nondiscrimination clauses that include gender as a protected category.

In Sub-Saharan Africa more than 70% of economies covered recognize customary or religious law as valid sources of law, and over 90% have constitutional provisions banning discrimination based on gender. Most of the economies recognizing customary or religious laws require that such laws not violate Constitutional provisions on nondiscrimination, but in 9 economies the constitution

**FIGURE 5**

**RECOGNIZING CUSTOMARY OR RELIGIOUS LAW AS VALID UNDER THE CONSTITUTION**



\* High-income OECD has been omitted from this chart because only 2 economies recognize customary or religious law. In Europe and Central Asia no economies recognize customary or religious law.

Source: *Women, Business and the Law 2012*.

does not stipulate that customary law is bound by constitutional constraints.

### Gender Differences in Institutional Access—Where and How is it Changing?

Family law tends to be the main source of restrictions on women's legal capacity to interact with the business environment.<sup>20</sup> Due to social and cultural factors, it is also one of the areas where change is slowest. For example, between June 2009 and March 2011, *Women, Business and the Law* found that 20 economies reformed in the Getting a job indicator—covering labor law for women. But only two economies—Kenya and Tunisia—reformed in the Accessing institutions indicator.

#### Kenya

Kenya's 2010 constitution eliminated gender differences in passing citizenship to spouses and children, entitled every Kenyan to a passport as well as all registration and identity documents, guaranteed freedom of movement in and out of Kenya for all citizens, and no longer exempted customary law from constitutional nondiscrimination provisions.

Under Kenyan customary law, upon death homes revert to husbands' families and wives are no longer entitled to live there. Under the new constitution, there is equality before, during and after marriage and customary law that is contrary to this is void, though implementing legislation is still being enacted.<sup>21</sup>

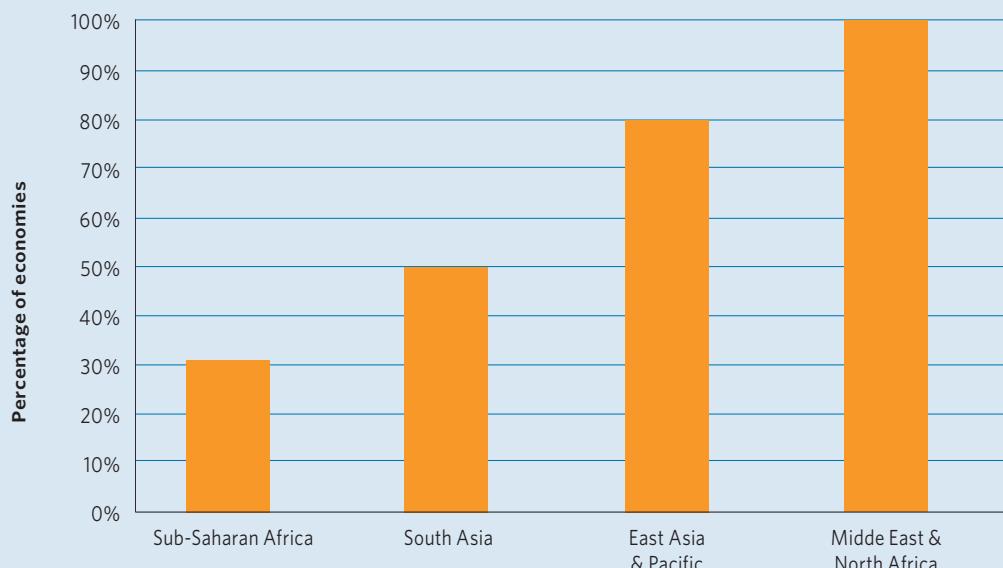
Kenya's new constitution resulted due to political upheaval, though constitutional reform with an eye toward women's rights had been ongoing for decades.<sup>22</sup> Previous attempts at promoting women's rights had been hampered by the fact that their passage would have required constitutional amendments because customary practices were exempt from nondiscrimination.<sup>23</sup>

#### Tunisia

Citizenship inequalities persist throughout the Middle East and North Africa and have proved difficult to change. Tunisia moved toward gender equality in the 1950s and 1990s. In the Maghreb, citizenship traditionally flowed through fathers. In 1993—largely due to advocacy by women's associations—Tunisia broke with this concept by allowing mothers to pass citizenship on to their children<sup>24</sup> if the father was unknown, lacked a citizenship, or was of unknown citizenship.<sup>25</sup>

FIGURE 6

CUSTOMARY OR RELIGIOUS LAW EXEMPT FROM NONDISCRIMINATION



\* In Latin America and the Caribbean, no customary or religious laws are exempt from nondiscrimination provisions.

Source: *Women, Business and the Law* 2012.

Children born outside the country could obtain citizenship through their mother if the parents made a request on behalf of the child, or the child made the request with the approval of both parents.<sup>26</sup> So instances arose where women fleeing domestic violence abroad returned to Tunisia, only to be hampered in attempting to pass citizenship to their children.<sup>27</sup> In 2010, all of that changed when the Nationality Code was amended to allow Tunisian citizenship to be granted to a child born either of a Tunisian father or mother, regardless of the child's birthplace.<sup>28</sup> Of all the other economies covered in the region, only Algeria, Egypt and Morocco allow married women to convey citizenship to their children in the same way as married men.

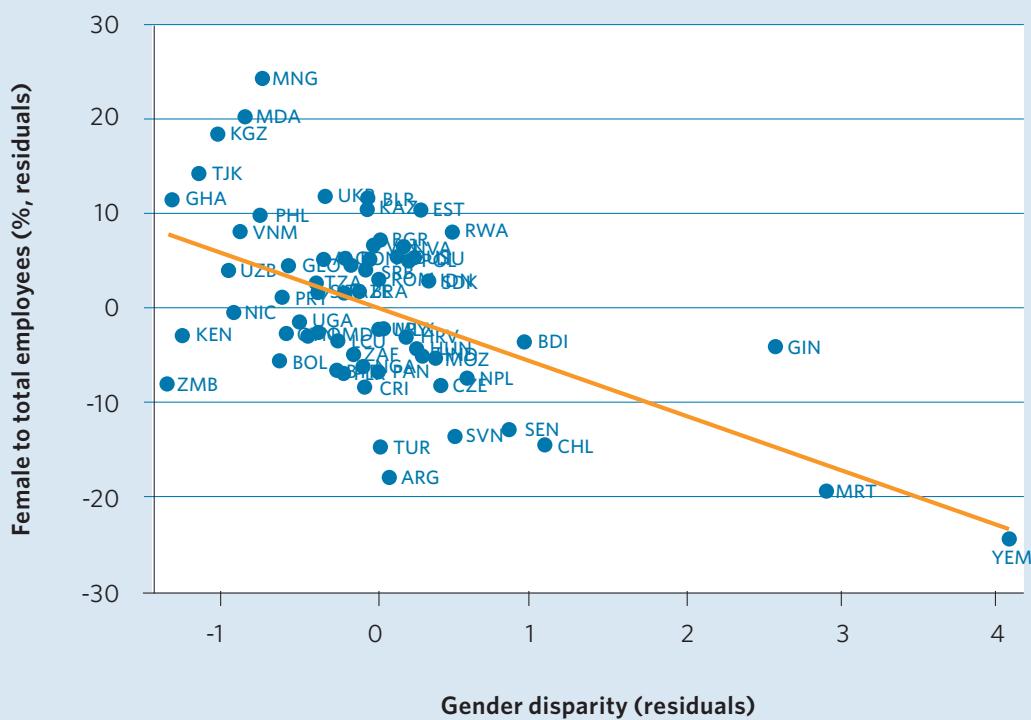
## Gender Differences in Institutional Access—Why Does it Matter?

For a particular economy, the more restrictions on a woman's ability to function in the legal environment (as measured by the subset of questions encompassing the rights of married and unmarried women), the lower that economy's rate of female to male labor force participation.<sup>29</sup>

Taken together, the questions are a proxy for women's agency because they capture how much autonomy women have to function in the business environment. Because these areas function interdependently they are reflected as a composite indicator, in which each area is

FIGURE 7

THE IMPACT OF DIFFERENTIAL LEGAL TREATMENT



Source: Enterprise Surveys, Women, Business and the Law 2012.

Note: The figure is a partial scatter plot of residuals of 66 economies controlling for GDP per capita (2009 values, PPP adjusted and at constant 2005 prices). Gender disparity means number of inequalities for women.

equally weighted. While these laws measure the de jure situation, it is possible that they reflect the de facto reality. As figure 7 shows, the percentage of women among employees decreases sharply with greater differences between how men and women are treated under the law. When women can make their own decisions, they may be more likely to work.

## Conclusion

Change is occurring, but it is happening slowly, and much remains to be done. Changes in women's rights in one economy or in one legal system can catalyze legal reform in others. The passage of the Married Women's Property Acts in the United Kingdom paved the way for similar legislation granting married women equal legal capacity within many common law legal jurisdictions. International human rights treaties have also been a major catalyst for change in this area, with several OECD economies such as Austria, France, and Germany reforming their family codes in the 1970s as a result of CEDAW. And as Kenya has recently shown, as societies undergo social change, the opportunity to pursue legal reform for women can arise.

The data indicate that the most emphasis for legislative reform should occur in South Asia, Sub-Saharan African, and the Middle East and North Africa. In the Middle East and North Africa unequal access to institutions correlates with lower rates of female labor force participation. In the remaining regions, while there is generally equality on the books, implementation of the law can remain a challenge.

Only when women have the same opportunities to pursue the occupations of their choosing, will their labor force participation and entrepreneurship rates reflect their freely made choices.

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## ENDNOTES

- 1 <http://entrepreneurs.about.com/od/famousentrepreneurs/p/anitaroddick.htm>.
- 2 <http://www.anitaroddick.com/aboutanita.php>.
- 3 See United Kingdom Married Women's Property Act, 1870.
- 4 Dethloff. 2001.
- 5 <http://www.npr.org/templates/story/story.php?storyId=14442261>.
- 6 [http://www.thebodyshop-usa.com/about-us/aboutus\\_company.aspx](http://www.thebodyshop-usa.com/about-us/aboutus_company.aspx).
- 7 Lack of collateral often deters women from approaching banks for financing. Women may also need the permission of a male family member to open bank accounts or get the identification documents needed to open them (such as national identity cards or passports). World Bank. 2011.
- 8 Cassirer, Naomi, and Laura Addati. 2007.
- 9 U.N. Women. 2011.
- 10 World Bank *Doing Business*, 2012.
- 11 Colomer. 1966.
- 12 Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) deals with eliminating discrimination against women in all matters related to marriage and family relations. Twenty-nine countries that are party to the Convention have entered reservations to Article 16, pointing to the difficulty of changing relations within the family.
- 13 In Bangladesh and Pakistan, married women must include their husband's names in their application forms, and provide marriage certificates.
- 14 Civil Code of Honduras, Art. 48.
- 15 Constitution of Honduras, Art. 24(6).
- 16 Maintenance is the husband's obligation to maintain his wife by providing essentials including food and clothing.
- 17 Information is unavailable for Kuwait and Oman.
- 18 *Women, Business and the Law*'s methodology requires there to be an explicit constitutional provision invalidating customary law should it be contrary to the Constitution. Otherwise, for the purpose of the indicator, customary law is considered to be a valid source of law even if it violates constitutional provisions on nondiscrimination.
- 19 Of these economies, only Saudi Arabia lacks a provision on equality before the law.
- 20 UN Women. 2011.
- 21 Nesoba. August 31, 2011.
- 22 Kameri-Mbote. and Nzomo. 2003.
- 23 Id.
- 24 Charrad. 2009.
- 25 Code de la Nationalité, Art. 6.
- 26 Code de la Nationalité, Art. 12.
- 27 Arafaoui. 2010.
- 28 Code de la Nationalité Tunisienne.
- 29 Amin. 2012.

This note presents research to encourage the exchange of ideas on women's economic participation and the law. The data utilized are current as of March 2011. Any reforms occurring after this date will be covered in the next round of data collection for the *Women, Business and the Law* report. The note carries the names of the authors and should be cited accordingly. The findings, interpretations, and conclusions expressed in this note are entirely those of the authors. They do not necessarily represent the views of the International Bank for Reconstruction and Development/World Bank and its affiliated organizations, or those of the Executive Directors of the World Bank or the governments they represent. Financial support from the UK's Department For International Development is gratefully acknowledged for the production of the note.

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For media inquiry, please contact: Nadine S. Ghannam, Phone +1 202-473-3011, email: [nsghannam@ifc.org](mailto:nsghannam@ifc.org).