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***Social Rights and Working Women:
Examining Labour Laws, International Conventions,
and Women's Economic Citizenship in the Mediterranean Region***

***Towards Formality:
Promoting the Rights of Women and Men
Workers in Arab Countries***

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ABSTRACT*

Structural shifts in the economic policies of the Arab region have left workers with scarce availability of jobs, and many of the employed have had to contend themselves with jobs that have no protection or insufficient protection. Newly created jobs, but also old ones, typically exemplify a retreat from the model of regular employees with stable contracts, social security coverage, and legal safeguards. While this process, called informalization, is not peculiar to Arab countries, the region has largely been excluded from the global debate on the topic.

There has been a growing recognition of the informalization of labour markets in Arab countries, but the response from international agencies, governments, and research organizations has underemphasized gender equality and workers' rights, particularly the rights to social protection and to organizing. Although social assistance to the poor has become a central tenant of social funds and poverty alleviation discussions, these have been driven by a paternalistic perspective rather than a rights-based one. Moreover, an understanding of social protection that includes informal arrangements, such as workers' remittances, has been used to argue away the right to social protection and push risks down to the households rather than the State.

This paper applies a gender equality and workers' rights perspective to the study of informal employment in the Arab region. It highlights key outcomes of a joint regional initiative of the International Labour Organization (ILO) and the Centre of Arab Women for Training and Research (CAWTAR) on "Gender Equality and Workers' Rights in the Informal Economies of Arab States". It summarizes insights on the nature of employment in the informal economies of the region.

The paper looks at informality of employment as a deficit in social and economic rights. It emphasizes the centrality of the right to work, the right to social protection, and the right to organize. Rights more specifically relevant to gender equality include equal pay for equal value of work, protection from discrimination, equal treatment of men and women workers in fulfilling family responsibilities, and maternity benefits. Accordingly, the analysis draws on the principles put forth in key human rights and labour standards to provide a way forward, and is informed by the framework of the capability approach.

Particular attention is given to the implications of certain social norms with regard to the advancement of women's employment and the nature of labour governance systems as impediments to better working conditions for women and men in the region. The paper also emphasizes organizing as a path towards formality and concentrates on contributing to the creation of a more favourable policy and institutional environment and capacities for the working poor, especially women.

* This paper summarizes outcomes of a joint regional initiative by the International Labour Organization (ILO) Regional Office for Arab States and the Centre of Arab Women for Training and Research (CAWTAR) on "Gender Equality and Workers' Rights in the Informal Economies of Arab States", funded by the International Development Research Centre (IDRC), Arab Gulf Programme for United Nations Development Organizations (AGFUND), and the ILO. It draws on two forthcoming publications from the initiative, including the introduction and conclusion chapters of the regional overview (Simel Esim and Mansour Omeira, Forthcoming a,b), and the second regional expert group meeting report (ILO, Forthcoming a). Responsibility for opinions expressed in this paper rests solely with their authors and publication does not constitute an endorsement by their institution.

I. The context of informality

The global transformation in the nature of work poses different challenges for promoting the rights of women and men workers. First, it is worth examining the most appropriate normative approach to adopt to ensure better standards of formality for protecting the rights of workers. Second, it is necessary to establish a better grasp of the concepts, terms, and overall language that best lends itself to understanding informality and helping move workers to better terms and conditions of work. Third, social policy and organizing must be investigated as strategic pathways out of the vulnerabilities faced by the informally employed.

This paper highlights key lessons learned from recent efforts in Arab States, mainly in the context the research component of a regional initiative on *Gender Equality and Workers' Rights in the Informal Economies of Arab States*. Central to the approach adopted by the regional initiative was the emphasis on social protection as a key strategy for reversing informalization, and workers' agency and voice to advance such a process by organizing the unorganized, and taking collective action to bring visibility to their concerns and influence policy.

Arab States are unique for the centrality of oil, violent conflicts, and authoritarian regimes in the political economy of the region (Ibrahim El Badawi and Samir Makdisi 2007). Structural shifts in the economic policies of the Arab region have left workers, particularly women, with scarce availability of jobs, and many of the employed have had to contend themselves with jobs that have no protection or insufficient protection, including a large share of survivalist activities. Flexibilization of labour markets, in the absence of adequate compensation policies for workers, have contributed to the growing informalization of jobs and economic insecurity. Newly created jobs, but also old ones, typically exemplify a retreat from the model of regular employees with stable contracts, social security coverage, and legal safeguards. While this process, called informalization, is not peculiar to Arab countries, the region has been excluded from the global debate on the topic.

The paper looks at informality of employment as a deficit in social and economic rights. It emphasizes the centrality of the right to work, the right to social protection, and the right to organize as ways toward formality. Rights more specifically relevant to gender equality include equal pay for equal value of work, protection from discrimination, equal treatment of men and women workers in fulfilling family responsibilities, and maternity benefits. At the cusp of informality of employment and gender equality considerations are also the consideration of the rights of home workers, and domestic workers - the majority of whom are migrant labourers. Accordingly, the analysis draws on the principles put forth in

key human rights and labour standards as informed by the framework of the capability approach to provide a way forward, and understands formalization as overcoming the rights deficits of informal workers.

II. The standards of formality: Rights, international labour standards, legislation, and capabilities

The human rights framework provides a powerful normative basis for women and men's agency (Diane Elson and Jasmine Gideon 2004). It asserts the "universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the obligation of all States to ensure the full promotion, protection and realization of all human rights" (Human Rights Council 2007). It provides mechanisms for identifying and working towards overcoming rights violations. The most recent mechanism came with the December 10, 2008 United Nations General Assembly's unanimous adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Its ratification and entry into force open the way for individuals and groups under the jurisdiction of a State Party, who claim their relevant rights are violated, to submit a written communication for examination by the Committee on Economic, Social and Cultural Rights (United Nations General Assembly 2008).

Feminist critics have pointed out that human rights standards are often built on traditional gender norms such as the man as sole breadwinner model (Elson and Gideon 2004). Indeed, international rights documents typically lack gender responsiveness and do not cover the private sphere, where gender relations are negotiated. Women's rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) thus fill an important gap. In the context of patriarchal structures, references to the family may reinforce the status quo in the world of work. The Montréal Principles on Women's Economic, Social and Cultural Rights came in response to such concerns and gave a gender perspective to human rights (International Federation for Human Rights 2002).

The International Labour Organization and the Office of the High Commissioner for Human Rights are two United Nations agencies with normative functions. Central to the mission of the ILO as stated in its constitution is that "universal and lasting peace can be established only if it is based upon social justice" and that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity." Through its tripartite structure involving governments, employers' and workers

organizations, the ILO has for over a century developed International Labour Standards to improve the conditions of everyone in the world of work. ILO conventions are legally binding international treaties, while ILO recommendations serve as non-binding guidelines for ILO member states.

The ILO promotes ‘decent work,’ a concept that encompasses its four strategic objectives: the promotion of rights at work, employment, social protection, and social dialogue. The strategic objectives are related to the right to work, the right to social protection and the right to organize, which are enshrined in key human rights instruments such as the Universal Declaration of Human Rights and the ICESCR. From a gender equality perspective, there are four key ILO Conventions: Equal Remuneration Convention, 1951, No. 100; Discrimination (Employment & Occupation) Convention, 1958, No. 111; Workers with Family Responsibilities Convention, 1981 (No. 156); and the Maternity Protection Convention, 2000 (No. 183). Ratification of human rights conventions and international labour standards requires that national legislation be harmonized accordingly. The process, however, is not automatic for countries that ratify them, let alone for countries that do not.

For policy purposes, it is important to differentiate whether there is absence, inadequacy, or lack of enforcement of legislation (José Luis Daza 2005). The fulfilment of rights, however, is not contingent on the status of legislation only, since other obstacles may impede a person from enjoying her rights. The concept of ‘capability’, defined as “the opportunity to achieve valuable combinations of human functionings - what a person is able to do or be” can shed light on the analysis (Amartya Sen 2005). Looking at the opportunities available to people, a distinction needs to be made between whether they have the “means or instruments or permissions” to pursue what they would like to do, and whether they are actually able to do what they would like to do. In addition, being free to do something is different from actually doing it, since a person may choose not to do it (ibid.). Whereas human rights touching on ‘substantive opportunities’ (such as doing what one chooses to) can be understood as capabilities, human rights touching on ‘freedom of processes’ (such as a fair trial) cannot.

In the world of work, capability for employment implies capability for non-employment (a viable exit option) such as cash benefits, and capability for defining employment itself (a viable voice option), through organizing and influencing the policy process (Bonvin and Farvaque 2005). Such an understanding is consistent with the framework of the ILO Employment Policy Convention, 1964 (No. 122). In it, a tension exists between the protective function of suitable employment involving free choice of employment, and its

binding function involving the moral duty to engage in work one is capable of as long as one's wishes are respected, at least partly, and in conditions of decent work (Frans Joseph Smit 1998). Accordingly, "work which is undertaken under the pressure of need," such as survivalist activities, "is not suitable employment and is a violation of the human right to work" (ibid.).

III. The words of formality: Concepts, terminology, and language as contested territories

"[E]conomic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements" constitute the informal economy (ILO 2002a). Employment in the informal economy closely relates to rights deficits. Employment consists of self-employment and paid employment. The self-employed include employers, own-account workers, owners of producers' cooperatives, and contributing family workers. The last category is by definition in informal employment, whereas for the others informality depends on the informality of the establishment (such as unincorporated enterprises below a certain size or lacking registration). Employees have informal jobs if "their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits" (ILO 2003).

The concept of informality of employment has been criticized for covering too many different situations, adding jobs and establishments, conflating survivalist activities and advanced entrepreneurship, relinquishing the State of its responsibilities while transferring them to non-State actors, and undermining the importance of the diverse experiences of different workers (Dwight W. Justice 2002). Such criticisms are not new, and indeed have in the most part been raised during the 2002 International Labour Conference, where governments, employers, and workers agreed on a definition of the informal economy despite their diverging interests (ILO 2002b).

Employers supported the adoption of the term 'informal economy', with the Employer Vice-Chairperson calling it "the *fairest* assessment of the kind of economic activity under discussion" (emphasis added). In contrast, workers voiced strong concerns against its use, with the Worker Vice-Chairperson labelling it a "“one-size-describes-all” approach that caused it to be used in contradictory ways". The disagreement on the value of the informal economy concept also led to opposing stances on whether concepts and terminology should

be further discussed, with workers emphasizing the importance of conceptual clarity and employers preferring to focus solely on policy discussion.

The reaching of an agreed definition of the informal economy despite the contrasting views expressed at the 2002 ILC is the outcome of the tripartite structure of the ILO. The structure reflects the capability approach in that the parties affected by decisions are all involved in the process through membership-based organizations that have representational power. A criticism has been raised, however, that with growing informalization and the parallel decrease in representational power of workers' and employers' organizations, it was necessary to include other stakeholders in the process, such as non-governmental organizations. The logic behind such inclusion is depicted in various labour instruments, such as the Employment Policy Convention, 1966 (No. 122), which indicates that "representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies."

Often in the development community, concepts and terminology are set and modified with the participation of 'experts', government, and NGO representatives. Globally, the advocacy for the content of concepts and terminology is prone to contestation, even when they appear value-free (Andrea Cornwall 2007). The position of skipping conceptual discussions and focusing on practical measures is a reminder of the often repeated quote from the economist whose emphasis on regulation is back in fashion during these times of crises: "Practical men, who believe themselves quite exempt from any intellectual influences, are usually the slaves of some defunct economist" (Keynes 1936).

The (re)conceptualization of approaches and major themes by the development community, such as the adoption of a rights-based approach, runs the risk of falling into self-congratulating 'moral high ground' that can in fact be ineffective in challenging underlying power structures (Uvin, 2007). Often the rethinking takes place in the headquarters of international organizations or at the request of major donors, rather than through the struggles of the people whose rights are the underlying concern. In addition to giving claims to the target groups of various projects, a rights-based approach needs incorporation in the development process itself, including in the practices of development organizations (ibid.). Standards of transparency and accountability are necessary, as well as inclusive and participatory processes, such as active local participation in research, design, budgeting, implementation, monitoring, evaluation, and knowledge sharing. Additional criteria must be incorporated as needed. For example, the promotion of gender equality in the world of work necessitates gender-responsive analyses and approaches at all levels.

Definitions of the informal economy and informal employment are outcomes of long negotiations not only between tripartite constituents at the international level, but also between statisticians and other specialists and practitioners at the international, regional, and country levels. The international definitions themselves allow for operational criteria determined at the national level, opening the room for further bargaining among different actors. In non-English speaking countries, an additional dimension of contestation is language itself, and determining which words to use in translating frames of thought. Since the translation process is often more decentralized and spread across different users and producers of knowledge, the multiplicity of terminology can lead to confusion.

In Arab States, the knowledge base on informality of employment has remained limited. There has been a growing recognition of the informalization of labour markets in Arab countries, but the response from international agencies, governments, and research organizations has underemphasized gender equality and workers' rights, particularly the rights to social protection and to organizing. Concepts related to informality of employment, not unlike other concepts in development, were often introduced by international donor initiatives, while key references on the issue were not made available in Arabic. The region was introduced to the informal sector discourse in the 1990s, with a delay of 10-15 years compared to other regions. Statisticians in the region continue to disagree on the terminology and measurements to adopt; there thus remains a multiplicity of terms used in Arabic for the same concepts.

Terms in Arabic referring to the 'informal' have included 'unofficial', 'unorganized', and 'non-structured'. The region is also characterized by the diversity in the labour force terminology used in different countries, the lack of agreement on basic definitions for international comparability, and interchangeable use of different terms to explain the same phenomena even when their meanings differ. The experience from the regional initiative pointed to divergence of opinions ranging from the need for unification to the necessity of clarity and agreement on the different meanings of terms used, including because:

- 'unofficial' suggests that formality is only in the public sector, while public sector employment itself is witnessing informalization;
- 'unorganized' is insufficient since 'unorganized' workers are 'non-unionized', and although organizing is an important strategy towards formalization, it is not itself a criterion for defining informality according to international definitions;

- ‘non-structured’ is misleading, as is it strictly focusing on establishments rather than jobs, moreover structuralists emphasize the subordination of the informal sector to the formal sector.

The consensus emerging from the regional initiative recognized the continued differences in terminology across countries and institutions in the region. It emphasized, however, the necessity to ensure that national definitions related to informality in the world of work are consistent with the international statistical definitions as set by the most recent International Conferences of Labour Statisticians (ICLS). A glossary of terms in English and Arabic was prepared to guide various users, by including international definitions, as well as the multiple terms used in English and Arabic to refer to the same concepts (ILO, Forthcoming b).

IV. The responsibility for formality: Social protection under the purview of the State

Social protection and social security

The “right of everyone to social security, including social insurance” is enshrined in the ICESCR. The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) is considered an up-to-date reference on social security as a labour standard, despite its gender-biased language (Anne Trebilcock 2004). It covers health care and family benefits and provides income security in the event of such contingencies as sickness, unemployment, old age, invalidity, employment injury, maternity or loss of a breadwinner. There are social assistance schemes, universal schemes, social insurance, and public or private provisions (ILO 2001).

The wider concept of social protection includes not only public social security schemes, but also private or non-statutory schemes with a similar objective, such as mutual benefit societies and occupational pension schemes. Social protection includes all sorts of non-statutory schemes, formal and informal, provided that, if the scheme is contributory, contributions are not wholly determined by market forces. These schemes may feature for example group solidarity, or an employer subsidy, or perhaps a government subsidy (ILO 1999). ‘Social security’ and ‘social protection’ are often used interchangeably, even in ILO publications. Social protection has become a ‘buzzword’ among other terms that have been used with confusion in parallel with the retreat of the welfare state (Standing 2007). An understanding of social protection that includes informal arrangements, such as workers’

remittances, has been used to argue away the right to social protection and push risks down to the households rather than the State.

Arab States have been undergoing changes at different levels, which lead to changing social protection needs of women and men and necessitate changing ways in which the needs are met. Demographic changes, including changes in population size, fertility, life expectancy, and in the supply of labour are also influenced by the demand for labour, as women postpone marriage and childbearing for employment purposes. There must be greater awareness of the need to adapt provision to the changing size and structure of households. In the region, government cuts in the provision of social welfare, particularly in resource-poor countries, have increased the reliance on non-state actors including religious charities contributing to the provision of social services. In Jordan, for example, the number of family associations has boomed in the economic liberalization era, and their importance has increased, creating new identities among groups of the population (Anne Marie Baylouny 2006). Emigration has also contributed to alleviating the negative impact of social welfare cuts, through emigrants sending remittances to their families back home. In Lebanon, foreign capital inflows, transfers, and remittances have been estimated at a yearly average of one third of GDP in the 1993-2005 period (Jean-Claude Berthélemy, Sébastien Dessus, and Charbel Nahas 2007).

Social protection, economic liberalization, and violent conflicts

It is interesting to contrast the Arab States' social welfare cuts in the economic liberalization era, with other regions' governments, which increased social benefits as a compensation for greater job insecurity. Policy responses have included increasing the size of the government (Dani Rodrik 1998), and improving respect of trade union rights, which can be interpreted as an additional compensation to workers (Eric Neumayer and Indra De Soysa 2006). The Arab States' different policy course is related to the exclusion of various stakeholders from the policy process, and the restrictions on the policy space amidst authoritarian government structures, coupled with the prescriptions of International Financial Institutions (Mansour Omeira, Simel Esim, and Sufyan Alissa 2008). Arab States have been revisiting existing legislation, particularly as relates to labour 'flexibilization', to attract investment (especially foreign investment) and receive recognition of international financial institutions, as depicted in, for instance, the World Bank's Doing Business rankings. Changing policies and legislation have encouraged deindustrialization and informalization of employment in the public and private sectors and raises the share of newly generated jobs that

are informal. The subsequent expansion of informality of jobs further undermines social security schemes through decreasing contributions.

The absence of adequate social protection is particularly critical in countries affected by conflict. Even the most recent Israeli aggression in Gaza, occupation and related closures, including the Separation wall, and boycott of the Hamas government, have led to a humanitarian crisis and rights violations of epic proportions in the face of all international principles. More than half of the population in Gaza Strip was already dependent on aid and a substantial portion of the Palestinian Authority public budget that has been based on foreign aid since its inception goes to public servant salaries. Since the second Intifada began in 2000, job opportunities further shrunk, particularly in Israel and settlements that became less accessible, and salaries dropped, with periods of non-payment even for public sector employees (Jamil Hilal, Saleh Al Kafri, and Eileen Kuttub 2008).

Social protection and women's economic activity

Globally, the consequences of the retreat of the welfare state have had different impacts on women's social and economic rights, since the drops in household earnings have encouraged women's labour force participation, even if in survivalist activities with low earning and poor working conditions, which violate the right to work and international labour standards. It has been argued that despite the exploitation and discrimination, women's increased labour force participation can curtail the role of patriarchy, by increasing their autonomy and individual rights (Lourdes Beneria 2001). In Arab States, women's labour force participation has been on the rise in recent years, mainly in informal jobs, yet the pattern is not uniform. In Morocco, for instance, their participation increased because economic liberalization encouraged feminine occupations such as in textile, while in Egypt their participation dropped because they lost public sector jobs and the new jobs were mainly in masculine occupations such as in tourism (Ragui Assaad 2006). Using the scarce data available for the region, it has been recognized, that the share of women in informal employment in Arab States is below that of men, in contrast with other regions (table 1). When in informal employment, women are more likely to be found in non-agricultural wage employment or as contributing family workers in agriculture. Instead, informally employed women are more likely to be own-account workers in other regions.

Although social assistance to the poor has become a central tenet of social funds and poverty alleviation discussions, these have been driven by paternalistic and charitable perspectives rather than rights. In many countries of the region, institutions concerned with

women's issues typically target 'women and children', which mirrors a persistent legacy of patriarchal social norms confining women strictly to their reproductive roles as mothers and wives. One critical irony noted in this regard is that women who work in these often religious charitable organizations promoting women's place in the home are actually putting their own rhetoric to test by being active in the public sphere and away from home.

Economic necessity pushes women to seek employment even if they prefer not to engage in it. As an illustration, based on data from the fourth wave of the World Values Survey in the Middle East and North Africa, Omeira (2007) suggested that young women's adoption of the man as sole breadwinner model had neither an economically nor statistically significant relationship with their labour force participation. A more important factor was preference for interesting jobs; moreover young women valuing job security and jobs meeting their abilities had lower employment rates. In effect, traditional gender norms and economic realities often come in conflict: a person's non-conformity with her socially set gender role weakens her status, while engagement in a job strengthens it. Omeira (2007) found that for MENA youth (15-29) the bargaining power effect of different labour market outcomes dominated the gender-role deviance effect, while for prime-age (30-49) people the growing need to compensate for gender-role deviance dominated the bargaining power effect.

Social protection must be provided by securing rights through social security schemes, and not through temporary, unsustainable, and insecure assistance schemes. The main challenge, however, remains knowing sources for funding the extension of social security. Given the balance of power on the ground, the question translates into finding a space where the interests of workers, employers, and governments do not necessarily clash. One possibility is that given the large numbers of young persons looking for a job, decreasing employers' contribution rates to social security may generate employment opportunities and economic growth, which in turn would increase funds available for social security. The argument also is related to what demographers often refer to as the 'demographic gift' with regard to large cohorts of young people reaching working age (Ragui Assaad and Farzaneh Roudi-Fahimi 2007). The demographic gift, however, is not automatic: the demographic dividend, which involves increased economic growth, requires appropriate economic and social policies to generate enough jobs with at least some social security.

Social protection needs to be responsive to the changing needs of women across their lifecycle, taking into account the different stages from birth to old age. In childhood, girls need a shelter, typically the parental home, which should provide her with her basic needs, including good nutrition and quality education. If the household is not able to provide for the

girl's needs, other social care institutions should contribute to meeting her needs. Education, starting from nursery school, to kindergarten, and primary and secondary school, should be compulsory and free. Girls must have access to health care and psychological care on equal terms with boys in both school and home, and children with special needs should receive appropriate care. More generally, girls need an environment that is conducive for intellectual and physical development, including playgrounds and gardens. Wherever they are, they must have protection from violence and sexual abuse (Esim and Omeira, Forthcoming a).

Protection from violence and sexual harassment is necessary across the lifecycle, particularly in adolescence. A legally set minimum age for marriage, completion of compulsory education, sexual education, and moral support, including from social welfare institutions, are some of the measures needed for this purpose. The full respect of the Convention on the Rights of the Child, including freedom of expression and freedom of association, is necessary for all States.

In adulthood, the availability of conditions conducive to education, including habitat, health care, scholarships, and transportation is necessary, as well as general educational and vocational orientation. Women's physical mobility remains constrained in many countries of the region; States need to ensure that women have the right to travel freely, without the need for a male guardian's permission or presence. Widows need to receive special assistance. Proper mechanisms must be in place to protect women from violence in the workplace and domestic violence requires, and particular attention must be given to protection from human trafficking and sex trade.

Social protection and International Labour Standards

States must ensure that working women receive equal pay for equal value of work, which is different from equal pay for equal work, as women and men tend to work in different occupations, with jobs where women are concentrated being significantly underpaid compared to men. In the Arab region, the Equal Remuneration Convention, 1951 (No. 100) has been ratified by eleven countries: Algeria, Egypt, Iraq, Jordan, Libya, Lebanon, Morocco, Sudan, Syria, Tunisia, and Yemen. However, the interpretation of the convention in the national laws is one of "same pay for the same job" which often is the case in public sector. However, this understanding of the equal pay principle does not take into account the pervasiveness of gender based occupational segregation in the region that even permeates informal employment.

In June 2004 the ILO adopted a Resolution for Pay Equity calling for governments, social partners and the ILO to take a set of specific actions to address the gender wage gap. Specifically, the resolution proposes that social partners negotiate the introduction of gender neutral job evaluation schemes, statistical indicators, as well as gender and race reviews at the workplace. It calls on the ILO to strengthen its commitment to gender equality and improve its training and advocacy programmes, as well as research of minimum wages and the provision of public services on the gender wage gap, taking into account also other forms of discrimination. The main problem is that women are not a large force in the private sector, except in Lebanon; so issue of pay equity may be less important than creating conducive work conditions in the private sector.

Working women need to receive rehabilitation after injury or after long work interruptions for care responsibilities; the period of interruption should be included in employment years for calculating work-related benefits. States should also ensure that working women are protected against unfair dismissal from employment. Women in motherhood must not be unfairly denied the right to custody of their children and the right to open a bank account in the name of their children under their custodianship. Moreover, maternity needs to be protected.

The ILO's Maternity Convention, 2000 (No. 183) sets out the basic requirements of maternity protection at work, including the right to a period of leave before and after childbirth, cash and medical benefits, health protection at work, entitlements to breastfeeding breaks, and employment protection and non-discrimination. In Jordan, a new scheme is envisaged to provide a cash benefit equal to the previous earnings of the woman concerned during the maternity leave period. The new scheme would be financed through contributions, to be paid by employees (1/3) and their employers (2/3). The financial projections of the proposed scheme suggest that the actual annual costs fall each year reflecting lower fertility rates, and would allow either a reduction of the contribution rate in subsequent years, or an enhancement of the benefit provision.

ILO's Workers with Family Responsibilities Convention, 1981 (No. 156) emphasizes the notion of equality in responsibilities where men must share family responsibilities with women to ensure equal participation of women in public life. Only Yemen has ratified this convention among Arab States without any significant efforts toward harmonization of national laws to reflect the provisions of this convention. Paternal leave is one of the key provisions introduced for fathers to have the opportunity to contribute to the care of their new-borns, children and wives. In old age, women who tend to outlive men must have income

security, including pensions for retirement, and access to care, including health care, which requires the availability of appropriate social care infrastructure.

Most of the Labour Codes of the Arab States provide for the full cost of paid maternity leave to be borne by employers. The enforcement of this provision in public sector establishments has signified that many women in the region have opted for such employment. In fact, this is the only region where the ratio of women's non-agricultural paid work reaches as much as 50 per cent of their total employment. In the private sector, however, such provisions often lead to the adoption of discriminating employment practices against women workers by some employers who consider the cost of maternity benefits payments too high for justifying the hiring of a woman worker. Hence they consider employing male workers who do not have any paternity leave provisions in law or in practice more suitable candidates. [Moghadam 1998] The employers perceive the obligations around providing paid maternity leave and benefits as costs simply to be avoided by not hiring women at all. The employers further assume, if hiring unmarried women or women without children, that the women will opt for dropping out of the labour market to raise children. Another assumption among employers that is associated with the reproductive roles of women is that of lower productivity especially if they have children (such as extra sick leave/day offs to take care of children, unwillingness to work overtime).

V. The path towards formality: Organizing for increased voice and visibility

Trade union rights and practice

The right to organize is enshrined in the Universal Declaration of Human Rights. The ILO's Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) set the framework for the free exercise of the right of workers and employers to associate for the purpose of furthering and defending their interests. The capability to organize, however, is available only to small numbers of workers in certain Arab States, as denials of fundamental workers' rights remain rampant (Omeira, Esim, and Alissa 2008). In countries where freedom of association exists, civil servants, domestic workers and migrant workers are often excluded from organizing. Data are scarce, yet informed estimates suggest that only 5-10 per cent of workers in the region are members of trade unions, and with the decline in the number of public sector jobs, the region's trade unions, which had a strong hold in public sector are losing their grip without gaining similar grounds in private sector establishments. Women

workers, who historically had a strong presence in the public sector, have witnessed a sharper fall in their union membership.

There is a link between the weakening of trade unions and the weakening of the International Labour Organization's normative power. In this light, trade unions are faced with the challenge of expanding their membership, while building alliances with other organizations active on workers' issues. An important question is whether trade unions really are willing to endorse issues of women workers, migrant workers, home-based workers, domestic workers, and more generally workers in the informal economy, and if so, whether they have the capacity to do so.

Trade unions, informal workers, and women workers

A broad understanding of workers is necessary in light of the changes affecting the traditional employment relationship around the globe. The low labour force participation rates of women in the region, due to lack of opportunities, structure of the labour market, and the lack of social care infrastructure, also requires the need to give persons engaged in non-economic activities, such as unpaid care workers, greater visibility and the need to raise awareness on a more balanced sharing of care responsibilities between women and men. As previously discussed, all stakeholders, particularly women, need to take part in a redefinition of work that includes all forms of work, including activities that currently fall outside the realm of System of National Accounts.

In recent years, civil society organizations have taken on a larger role in Arab States. Reasons include the retreat of the welfare state following the logic of neo-liberal globalization, the concurrent transformation of the nature of work away from the traditional employment relationship, the restricted political space available to contest policies, and the political economic of foreign aid. Some of these organizations have filled the gap left by weakened or inexistent trade unions. While the trade union view of these non-membership based organizations is bleak, there are instances of civil society organizations and trade unions working together around the world. Worker education organizations for instance often work with trade unions around the globe and within the region to provide training to members of trade unions, such as the International Solidarity Committee and the International Federation of Workers' Education Associations.

In some cases organizations that start as associations, civil society, community, and non-governmental organizations may also turn into trade unions. The major example is the Self-Employed Women's Association (SEWA) in India, which in 2006 became an affiliate of

the International Trade Union Confederation as the largest organization of informal women workers with seven hundred thousand members across sectors to achieve affiliation.

Workers' representatives from Arab States who participate in major events with institutions that affect their conditions have often lacked the capacity to contribute effectively to the discussions, a situation that has further undermined the position of workers in the region and their lack of independence from governments and employers. Most illustratively, when women's participation is requested, trade union delegates are often junior staff or members of these institutions with little decision-making power or influence, but often closely associated with the men in power.

Although the situation of trade unions in the region is austere, ongoing initiatives are a source of optimism and follow up with adaptations and plans. Some trade unions, particularly in North Africa, have gone through reform efforts revising their bylaws, holding elections bringing in new leadership and recognizing the importance of empowering women and youth, and building bridges with other actors. While there are women worker departments in a number of national trade unions in the region, they are often established with support from international and foreign unions and received funding from them. They have not had much success in expanding women's membership, let alone leadership. Local union leaders are not always supportive of these women worker departments and may endure them, at times dismissing and at other times marginalizing them.

While in other regions women-specific unions have been formed to gain voice for women workers traditionally excluded from the leadership and decision-making of conventional trade unions (including South Korea and India), Arab States have not witnessed such a change. Women who could organize in trade unions are often members in associations mainly of the self-employed. In fact, self-employed women's associations are encouraged extensively by the international community, even though their record to date has been limited. Rural women cooperatives, especially in non-farm activities, provide an untapped opportunity for improving women's economic positions, but have not received sufficient support.

The fact remains that organizing in trade unions is still a key to pressuring for formalization and securing workers' rights. Trade unions in Arab States were originally established mainly within the public sector. With the changing role of the State in the past two decades, particularly under structural adjustment programmes induced by international financial institutions with privatization and smaller public expenditures as their main tenants, trade unions have faced an economic context they had never experienced before.

On the other hand, trade liberalization has meant increase in cheaper imports displacing local producers, enterprises and workers and exports not quite managing to cancel out the negative effects in most of the countries of the region. Recognition of the changing nature of work, and the smaller share of workers engaged according to the traditional employment relationship, with increasing numbers of own-account workers, but also outsourcing and trafficking in persons, poses additional challenges to workers. For example, people who own even a small amount of capital can become self-employed, and become vulnerable to new types of risks they are not prepared to cope with.

In addition, State repression of independent union activity has formed a major obstacle to meaningful independent organizing of workers. In Arab countries where trade unions exist, their accounts are often monitored by the state; the decision on strikes is often not in the hands of trade unions but the Ministers of Labour. Legal impediments include the large size requirements for trade union registration of workers in enterprises, collective bargaining, and union recognition, as well as exclusion of workers from labour and social security legislation.

Economic impediments include the lack of job opportunities in general, with informal employment absorbing the unemployed, leading to growth of jobs featuring precariousness and lack of social protection. Both States and employers have a responsibility in the growth of informal employment, and a trend of employers participating with the State in shaping economic development, but without mechanisms for the communities to participate. Sometimes specific groups of people control segments of the informal economy, and they may have their own associations (for example, street vendors' associations). Other external factors have included wars and instability in product markets, labour markets, and financial markets, and fluctuating incomes.

SEWA was the primary actor in getting the ILO Convention Concerning Home Work, 1996 (No. 177) for home-based workers adopted. The Convention sets forth minimum labour standards for home-based workers such as: the right to organize; minimum wage; health and safety protections; social security protection; access to training; maternity benefits; and minimum wage. It took some six years of lobbying and coalition building by SEWA, together with the international federations of food workers and of textile, leather and garment workers to which it was - and still is - affiliated, with some national trade union centres, like the Dutch FNV, and the international network of home workers' organizations.

While no such organizing of similar breadth and scale has been in place for informally employed women or men in the region, some efforts have been in place. What is interesting to note in Arab States, however, is the eagerness of conservative governments and religious

charities to jump on the bandwagon of promoting home based work for women. Comfortably fitting the more traditional framework of women as mothers, wives and homemakers, home work has been promoted by religious charities like Al Zahar in Lebanon (acting as middle people in brokering subcontracting work for poor women with businesses in food, apparel and leather work) and the Supreme Council of Women in Bahrain and Sharjah in UAE (encouraging highly capitalized enterprises which specialize in high value products and services targeting mainly women clientele – designer clothes, apparel, jewellery, specialty goods, perfumes, as well as online marketing, graphic design, interior design, landscape design, translation work, and home design.

Another large group of women who work in homes are domestic workers. Since their work is done in homes (not considered as workplaces) for households (not considered employers) that cannot be supervised by labor inspectors, the specificity of their employment relationship is not addressed in national legislation (labor laws), denying them their status as “real workers” entitled to labor protection. The particular vulnerability of domestic workers to abuses, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances. In March 2008, the ILO Governing Body agreed to place “decent work for domestic workers” on the agenda of the International Labour Conference (ILC) in 2010.

In Arab States, a wide spread phenomenon is that of hiring Asian and African migrant women as domestic workers under a sponsorship system that keeps them locked in the home. Millions of women migrant domestic workers from poor families leave their homes, and loved ones to work for very little pay in total dependence on their employers/sponsors. Recently a number of countries such as Lebanon and Jordan have initiated steps to improve legal protection for domestic workers and others are considering doing so.

Trade union challenges

Challenges to effective organizing are also internal to the trade unions themselves (Omeira, Esim, and Alissa 2008). Trade unions have failed to change their leadership regularly by practicing internal democracy, change in leadership, and holding the leadership accountable to its constituents, a situation mimicking the lack of democracy at the State level. The lack of democracy came in parallel with shrinking membership, as trade union leaders found it necessary to preserve their powers and closing the door to new membership from

women, youth, migrant and informal economy workers. As a result, non-unionized workers' incentives to join unions decreased.

Trade unions in the region have been politically marginalized resulting, and their power to effect change has decreased. Recognition of their reduced bargaining power, has led many trade unions to shift their focus from effective promotion of workers' rights to general rhetorical support and personal fights over union leadership. Another factor related to both union structure and official legislation is the lack of union pluralism, as legislation designates by name the officially recognized representative organizations. Dealing with the reasons of the emergence of informality, the question becomes one of regulation, including integration of non-unionized workers, and recognition of the experience of the self-employed and other informal workers for calculating social security benefits.

Low levels of trust in trade unions, major companies, and States are a major obstacle in the path towards formality. The fourth wave of the World Values Survey indicates that in Algeria and Morocco the public has "not very much confidence" in either labour unions or major companies; in Egypt, the public has "quite a lot of confidence" in labour unions but only limited confidence in major companies. Low trust is intrinsically linked to limited representative power. For example, with the exception of successful efforts in countries like Tunisia, trade unions generally fail to recognize and represent informal workers, including migrant workers. Also, trade unions in general do not take the initiative with respect to international labour standards, before official government approval of them.

The collusion of governments and big business in a number of Arab States, sometimes even with workers' organizations, has captured policy direction, at the expense of the issues of smaller businesses and workers more generally. Governments need to understand that free trade unions can enable them to govern better; the downward trend in working conditions can lead to instability if workers refuse to continue working under poor circumstances. 'Bread riots' and mass protests are a reminder that if workers' reaction is not institutionalized through social dialogue platforms, it could lead to social and political instability.

VI. Conclusion

This paper has provided highlights of the ongoing dialogue that is taking place in Arab States to promote the rights of women and men workers. Disagreements involve differences in conceptualization, terminology, language, the influence of social norms especially on the lives of women and, omnipresent yet often hidden in the background, conflicting economic and political interests.

The knowledge generation process of the ILO/CAWTAR regional initiative on *Gender Equality and Workers' Rights in the Informal Economies of Arab States* involved an international advisory group, and the cultivation of a regional research network from the onset; it also included two regional expert group meetings at the preliminary and final phases of the research component. The involvement of international specialists contributed to the researchers' exposure to the most recent concepts and methods involved, and contextualized Arab States comparatively to other regions, which fed into the approaches adopted in the country case studies.

Local stakeholders applied the approach and adapted it to the local contexts in close collaboration with national statistical agency representatives, engaged in an assessment and evaluation of the approach itself, and participated in a dialogue ranging from suggestions for refining the approach to recommendations for replacing it altogether. The engagement of the regional initiative with resource people from the national statistical agencies has already borne fruits in national practices. The Central Administration for Statistics in Lebanon has integrated new questions to capture informality in its surveys. Syria has already included six questions on working conditions to their upcoming labour force surveys to identify the type of social protection deficits facing workers.

REFERENCES

- Assaad, Ragui. 2006. "Why Did Economic Liberalization Lead to Feminization of the Labor Force in Morocco and De-feminization in Egypt?" Presentation at the MENA Development Forum (Beirut).
- Assaad, Ragui and Farzaneh Roudi-Fahimi. 2007. *Youth in the Middle East and North Africa: Demographic Opportunity or Challenge?* (Washington, DC, Pop. Ref. Bureau)
- Baylouny, Anne Marie. 2006. "Creating Kin: New Family Associations as Welfare Providers in Liberalizing Jordan." *International Journal of Middle East Studies*, 38:349–368.
- Beneria, Lourdes. 2001. "Shifting the Risk: New Employment Patterns, Informalization, and Women's Work." *International Journal of Politics, Culture and Society* 15(1).
- Berthélemy, Jean-Claude, Sébastien Dessus, and Charbel Nahas. 2007. "Exploring Lebanon's Growth Prospects." World Bank Policy Research Working Paper 4332.
- Bonvin, Jean-Michel and Nicolas Farvaque. 2005. "Promoting capability for work: The role of local actors", in S. Deneulin, M. Nebel, N. Sagovsky (eds.), *Capability and justice: Towards structural transformation* (Kluwer Academic Press).

- Cornwall, Andrea. 2007. "Buzzwords and fuzzwords: deconstructing development discourse," *Development in Practice* 17(4–5).
- Daza, José Luis. 2005. "Informal Economy, Undeclared Work and Labour Administration," ILO Social Dialogue, Labour Law and Labour Administration Dept. Paper No. 9.
- Elson, Diane and Jasmine Gideon. 2004. "Organising for Women's Economic and Social Rights: How Useful is the International Covenant on Economic, Social and Cultural Rights?" *Journal of Interdisciplinary Gender Studies* 8(1–2): 14–30.
- El Badawi, Ibrahim, and Samir Makdisi. 2007. "Explaining the democracy deficit in the Arab world." *Quarterly Review of Economics and Finance* 46: 813-831.
- Esim, Simel and Mansour Omeira. Forthcoming a. "Gender equality and informality in the Arab region", in ILO Regional Office for Arab States, *Gender equality and workers' rights in the informal economies of Arab States* (Beirut).
- . Forthcoming b. "Conclusion". in ILO Regional Office for Arab States, *Gender equality and workers' rights in the informal economies of Arab States* (ILO RO-Beirut).
- Heintz, James. Forthcoming. "The structure of employment in the Arab States: A comparative statistical analysis of informality, gender equity, and social protection," in ILO Regional Office for Arab States, *Gender equality and workers' rights in the informal economies of Arab States* (ILO RO-Beirut).
- Hilal, Jamil, Saleh Al Kafri, and Eileen Kuttub. 2008. *Unprotected Employment in the West Bank and Gaza Strip: A Gender Equality and Workers' Rights Perspective*. Beirut: ILO Regional Office for Arab States/CAWTAR.
- Human Rights Council. 2007. *Resolution 4/1. Question of the realization in all countries of economic, social and cultural rights*.
- International Federation for Human Rights. 2002. *Montréal Principles on Women's Economic, Social and Cultural Rights*.
- International Labour Office (ILO). Forthcoming a. *Regional expert group meeting report on informal employment in Arab States: A gender equality and workers' rights perspective* (ILO RO-Beirut). [English & Arabic].
- . Forthcoming b. *Gender, employment, and the informal economy: Glossary of terms* (ILO RO-Beirut). [English & Arabic].
- . 2003. *Guidelines concerning a statistical definition of informal employment, adopted by the Seventeenth International Conference of Labour Statisticians* (Nov.Dec. 2003).
- . 2002a. *Resolution concerning decent work and the informal economy, Governing Body, 285th Session* (Geneva).

- . 2002b. *International Labour Conference, Provisional Record 90th Session, Sixth item on the agenda: The informal economy (general discussion), Report of the Committee on the Informal Economy* (Geneva)
- . 2001. *Conclusions concerning social security*, International Labour Conference, 89th Session (Geneva).
- . 1999. Report of the Committee on Employment and Social Policy, Governing Body, 276th Session (Geneva).
- Justice, Dwight W. 2002. "Work, law and the "informality" concept." *Labour Education* 2002/2 No. 127: 5-10.
- Keynes, John Maynard. 1936. *The general theory of employment, interest and money* Harcourt Brace, New York, 1936.
- Neumayer, Eric, and Indra De Soysa. 2006. Globalization and the Right to Free Association and Collective Bargaining: An Empirical Analysis." *World Development* 34(1): 31–49.
- Omeira, Mansour, Simel Esim, and Sufyan Alissa. 2008. "Labor governance and economic reform in the Middle East and North Africa: Lessons from Nordic countries". Economic Research Forum Working Paper No. 436 (Cairo).
- Rodrik, Dani. 1998. "Why Do More Open Economies Have Bigger Governments?" *Journal of Political Economy* 106(5): 997–1032.
- Sen, Amartya. 2005. "Human rights and capabilities." *J. of Human Dev.* 6(2): 151-166
- Smit, Frans Joseph. 1998. "Suitable employment as a human right." In P. J. I. M. de Waart, Erik Denters, Nico Schrijver (eds.), *Reflections on International Law from the Low Countries: In Honour of Paul de Waart* (Martinus Nijhoff Publishers).
- Trebilcock, Anne. 2004. "International labour standards and the informal economy." In J.C. Javillier, B. Gernigon, and G. Politakis (eds.), *Les Normes Internationales du Travail: Un Patrimoine pour l'Avenir* (Geneva, ILO).
- United Nations General Assembly. 2008. Report of the Human Rights Council, Sixty-third session, Third Committee, Agenda item 58.
- Uvin, Peter. 2007. "From the right to development to the rights-based approach." *Development in Practice* 17(4–5): 597–606.

Table 1. Distribution of women's and men's total employment by employment category

TUNISIA	Non-Agricultural Emp.		Agricultural Employment		EGYPT	Non-Agricultural Emp.		Agricultural Employment	
	Men	Women	Men	Women		Men	Women	Men	Women
	INFORMAL EMPLOYMENT					INFORMAL EMPLOYMENT			
<i>Own-account</i>	8.8%	5.1%	6.6%	4.9%	<i>Own-account</i>	8.2%	7.6%	1.0%	4.5%
<i>Informal employers</i>	4.7%	1.9%	0.1%	0.1%	<i>Informal employers</i>	7.6%	2.0%	8.4%	1.9%
<i>Contributing family workers</i>	0.5%	0.8%	1.6%	5.5%	<i>Contributing family workers</i>	1.9%	3.2%	5.7%	26.0%
<i>Informal paid employees</i>	11.8%	19.8%	4.4%	3.9%	<i>Informal paid employees</i>	25.5%	13.9%	5.5%	1.5%
<i>Informal (non-enterprise)</i>	n/a	n/a	n/a	n/a	<i>Informal (non-enterprise)</i>	n/a	n/a	n/a	n/a
	FORMAL EMPLOYMENT					FORMAL EMPLOYMENT			
<i>Formal employers</i>	1.4%	0.6%	0.0%	0.0%	<i>Formal employers</i>	n/a	n/a	n/a	n/a
<i>Formal paid employees</i>	57.2%	56.5%	2.9%	1.0%	<i>Formal paid employees</i>	35.9%	39.2%	0.2%	0.1%
	TOTAL EMPLOYMENT					TOTAL EMPLOYMENT			
TOTAL	84.5%	84.6%	15.5%	15.4%	TOTAL	79.2%	66.0%	20.8%	34.0%
	INFORMAL SECTOR					INFORMAL SECTOR			
Employees in informal sector	7.5%	0.3%	6.4%	3.8%	Employees in informal sector	17.2%	2.0%	2.5%	0.2%
YEMEN	Non-Agricultural Emp.		Agricultural Employment		LEBANON	Non-Agricultural Emp.		Agricultural Employment	
	Men	Women	Men	Women		Men	Women	Men	Women
	INFORMAL EMPLOYMENT					INFORMAL EMPLOYMENT			
<i>Own-account</i>	17.9%	10.8%	17.7%	14.6%	<i>Own-account</i>	29.6%	9.0%	4.9%	1.3%
<i>Informal employers</i>	3.9%	1.2%	2.0%	1.2%	<i>Informal employers</i>	5.1%	0.9%	0.6%	0.0%
<i>Contributing family workers</i>	3.1%	5.5%	7.5%	40.4%	<i>Contributing family workers</i>	2.5%	2.7%	0.5%	1.4%
<i>Informal paid employees</i>	11.8%	12.0%	0.1%	0.4%	<i>Informal paid employees</i>	23.8%	28.4%	2.5%	0.6%
<i>Informal (non-enterprise)</i>	24.5%	4.0%	11.4%	9.9%	<i>Informal (non-enterprise)</i>	n/a	n/a	n/a	n/a
	FORMAL EMPLOYMENT					FORMAL EMPLOYMENT			
<i>Formal employers</i>	n/a	n/a	n/a	n/a	<i>Formal employers</i>	0.6%	0.1%	0.1%	0.0%
<i>Formal paid employees</i>	n/a	n/a	n/a	n/a	<i>Formal paid employees</i>	29.5%	55.5%	0.2%	0.1%
	TOTAL EMPLOYMENT					TOTAL EMPLOYMENT			
TOTAL	61.2%	33.5%	38.8%	66.5%	TOTAL	91.1%	96.6%	8.9%	3.4%
	INFORMAL SECTOR					INFORMAL SECTOR			
Employees in informal sector	7.6%	0.2%	0.1%	0.0%	Employees in informal sector	n/a	n/a	n/a	n/a

Source: James Heintz (Forthcoming).