





Islamic feminism and Arab family laws

Perspectives from Morocco, Egypt and Lebanon

Contents

Foreword	4
Dr. Lina Abirafeh, Executive Director of the Arab Institute for Women	4
1. Islamic feminism and Arab family laws. Increasing the impact?	6
Connie Carøe Christiansen	
Introduction	8
A gap between Islamic feminist knowledge and reform	9
A transnational social movement approach	11
Aims and strategies of Islamic feminist organizations	13
Disseminating Gender equality as an Islamic norm	16
Recommendations	17
References	18
Appendix	20
2. The 2004 Moroccan family law (Moudawana): A Homegrown Islamic feminism with potential to grow	22
Fatima Outaleb and Fatima Sadiqi	
Introduction	24
The 2004 Moudawana reforms: A brief genesis	26
How did the 2004 reform come about?	26 27
The Post- 2011 Moment	29
Recommendations	30
References	30 32
References	32
3. Reforming the Egyptian Personal Status Laws. A case for Islamic feminism Azza Soliman and Sara Abdel Ghany	34
Introduction	36
The emergence and development of the Personal Status Law	37
The history of change	38
Substantive Reform: The case for Islamic feminism	42
Recommendations	44
References	46
References	40
4. Reform of Arab family law within an Islamic framework in Lebanon	48
Youmna Makhlouf and Reem Maghribi	50
Introduction	50
Transnational Islamic feminism and the Lebanese reform process	51
General Overview	52
Secular and religious initiatives	53
Cultural relativism and transnational movement	55
Conclusion	56
Recommendations	58
References	59
Brief bios of contributors	62
arrer 0003 or c000 10000 3	02

The Arab Institute for Women, Lebanese American University, Beirut, March 2020

Foreword

Dr. Lina Abirafeh, Executive Director of the Arab Institute for Women

I often start my speeches with grim global gender statistics. I say that the gender gap needs 200 years to close, that women and girls are the majority of the world's poor, that 15 million young girls will never get the chance to read or write, and that women hold a fraction of the world's parliamentary seats. It doesn't end there.

I say that in 49 countries, domestic violence is not considered a crime. And where it is, those laws are incomplete, unapplied, or outright ignored. I say that 750 million girls were married before the age of 18 – that's 33,000 girls a day, or one girl every two seconds. And then I say that one in three women and girls worldwide will experience some form of gender-based violence in their lifetime.

These sobering figures are the manifestation of our persistent inequality.

So, what of the Arab region?

This diverse grouping of 22 countries lands at the bottom of all social indicators, with the widest gender gap, the greatest security challenges, and the longest running crises – all of which increase preexisting inequalities and magnify vulnerabilities. Of the ten worst countries to be a woman, five are Arab. At times it seems an impossible quest to advocate for women's rights in such a landscape.

In the Arab region, we say we're always on the brink of an emergency - in perma-crisis. If we define "emergency" from the perspective of women, we are living in a perpetual state of emergency in every single country.

Meanwhile I run an Institute, a 46-year old pioneer, operating at the intersection of academia and activism. The Arab Institute for Women at the Lebanese American University is the first of its kind in the region, and among the first globally. The Institute covers the 22 Arab countries, serving as a bridge, a hub, a voice, a network, and a platform – fighting for real change for women in the region.

Such are the moments, and movements, that bring possibility.

The critical research shared in Islamic Feminism and Arab Family Laws: Perspectives from Morocco, Egypt and Lebanon bring some of these challenges to light. This work starts with Connie Carøe Christiansen, who locates this work in an Islamic feminist activist frame, by paying homage to the founding feminist foremothers whose early explorations of this subject opened analytical and activist doors for us.

Dr. Christiansen shepherds us through a progression not unlike that of the Institute itself

- building transnational social movements by finding spaces of engagement and the norm translators already operating within those spaces. As such, transnational feminist networks can have socio-contextual strength and sticking power.

I love this word, feminism. It is so very central to the challenges we face as women in the Arab region. Fatima Outaleb and Fatima Sadiqi use the 2004 Moroccan Family Law to remind us that feminism is not – and never was – a Western import. Rather, they examine the fundamental role of secular and Islamic feminists and build on this understanding to expose avenues and potentials for transnational Islamic feminism.

Building on this analysis, Azza Soliman and Sara Abdel Ghany use Egypt's Personal Status Laws to make a case for Islamic feminism, concluding with recommendations challenging the Egyptian government to promote reforms, foster dialogue, and implement new models of the old structures that were built on inequalities.

Youmna Makhlouf and Reem Maghribi apply a similar lens to Lebanon, where reforms of family law have been met with resistance. Islamic feminism is both the lens and the tool to advance such reforms, despite the challenges

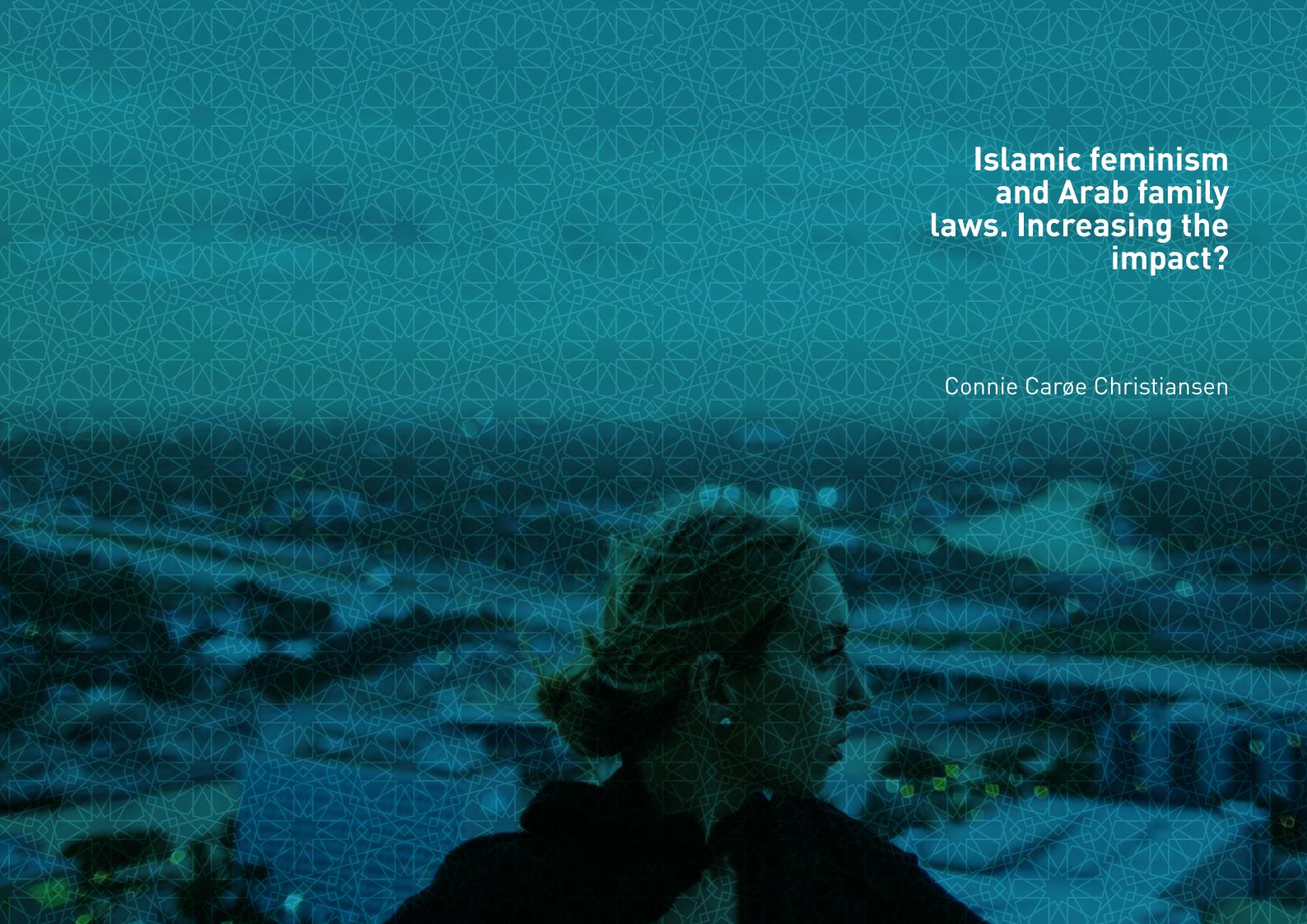
of Lebanese diversity. There is no substitute for a socio-cultural analysis and yet no doubt that there must be reforms.

I love this word, feminism. It is so very central to the challenges we face as women in the Arab region.

I am delighted to write the foreword to this important work, for which support was provided by a grant from The Carnegie Corporation of New York. Gender equality is not a luxury, not an afterthought, and not an addon. It is a fundamental prerequisite to any and all reforms. After all, generations of evidence show that the strongest indicator of peace, progress, and prosperity in a country is anchored in one thing: how the country treats its women.

Lina Abirafeh





Islamic feminism and Arab family laws. Increasing the impact?

Connie Carøe Christiansen

Introduction

The formulations that Islamic family laws were given in the Arab region¹ when they became written laws have determined women's unequal rights in Muslim families. This process of codification generally occurred in Arab countries after independence from colonial rule (Mir-Hosseini 2015). Within recent decades, activities of transnational

Today Islamic feminism is transgressing national borders, thus form part of civil society seeking influence at different levels of policy making.

social movements that are relevant to Islamic family laws have increased based on the pioneering work of Fatima Mernissi, Azizah Al-Hibri, Leila Ahmed, and Amina Wadud. In the early 1990s they engaged in Islam and women's rights by reinterpreting the Qur'anic verses and ahadith - the reported sayings and deeds of the Prophet - on which classic Islamic jurisprudence of family laws are based². Following in the footsteps of these scholars is a diverse group of scholars and activists such as Asma Lamrabet, Omaima Abou Bakr, Ziba Mir-Hosseini, Asma Barlas and Nimat Hafez Barazangi who apply a number of innovative hermeneutical strategies, enabling new perspectives on gender relations and women's rights in Islamic scriptures. One of them is tawhid, or emphasizing the overall egalitarian message of the Qur'an when interpreting particular verses and ahadith. Another is contextualizing Qur'anic verses in the historical time and place of their revelation. This type of scholarship and activism is frequently labeled Islamic feminism. Today Islamic feminism is transgressing national borders, and as a constituent of civil society seeking influence at different levels of policy making. Not all scholars accept the term; in the view of some, the notion of Islamic feminism encompasses irreconcilable lines of thought, moreover, many scholars identify

linkages between feminism and colonial thought.

Transnational social movements are constituted by activists and organizations at local or 'grass roots' level that connect with counterparts in other countries, some of which expand to national and global levels. Advocacy and pressure from these movements may contribute to the transformation of social norms in global governance. Accordingly national governments and institutions are under pressure to react or to take a stance on issues that are raised by these social movements. However, the influence of transnational networks and organizations, frequently operating at an international level on the national framework are a contested and sensitive issue. In this brief a transnational

More than a century of critique of women's legal status in the Arab region, changing family patterns, and a booming young female adult population aspiring to professional lives, these laws still endorse inequality between the spouses.

social movement perspective is applied to discuss in a policy lens the strategies and methods of Islamic feminist networks and organizations.

Although diverse and subject to reform processes Arab family laws are characterized by features that discriminate against women, whether as unmarried, married or divorced. Despite more than a century of critique of women's legal status in the Arab region, changing family patterns, and a booming young female adult population aspiring to professional lives, these laws still endorse inequality between the spouses in cases of such as adultery, child custody, and inheritance. This is unjust, and constitutes an obstacle to development, preventing women's self-determination and contribution to their

societies. Are recent initiatives to review family laws and interpretation of their core concepts from an Islamic perspective able to influence reform of gender discriminatory Islamic family laws? If not, or if not sufficiently, how is such impact enhanced?

Islamic feminist activism is here defined as researcher-activists who individually and/or in international & local NGOs, in networks and knowledge-building projects align on the finding that Islam, gender and human rights are compatible. This activism represents a strategy, which opens for the critique of gender inequality in classical understandings of Islamic scriptures, and in the versions of modernity hitherto promoted by Arab states. Consequently, there is a potential for transnational networks and organizations more forcefully setting the direction and ambition for reform of family laws (also known as personal status codes) across the Arab region.

A gap between Islamic feminist knowledge and reform

In order to address the slow, uneven progress of legislative reform this brief offers points of attention for policies - activism and other initiatives - in transnational contexts that would strengthen women's rights across the Arab countries. The goal is to ensure that future policies take Islamic feminist scholarship within and beyond the region - into account for reformulation and reform of family laws. While acknowledging the crucial level of legal practices, the paper addresses the current gap between Islamic feminist knowledge and the jurisprudence (figh) that informs reform processes of Arab Islamic family laws. It builds on the research project titled "Transnational Social Movements of Family Law Revisions within an Islamic Framework" (2019-2017, hosted by the Arab Institute for Women, the Lebanese American University, Beirut Lebanon). The project reviews research and activism relevant for family law revision within an Islamic framework as

¹ In this brief, 'Arab region' does not include Arab states in the Gulf

² However, already in 1982 Azizah al-Hibri wrote about 'Islamic herstory' (Al Hibri 1982), a topic that she also pursued in more recent publications.

a transnational social movement in the Arab region, and relates findings directly to the reform processes of three selected national family laws – of Morocco, Egypt and Lebanon. The overall objectives are to a) inform policy processes in Arab states through research findings on transnational social movements, particularly regarding insights on family law revisions that further gender equality, b) engage Arab states in law reforms that combine communitarian co-existence and gender equality with democratic governance, and c) suggest how Arab states may become more inclusionary by accommodating gender equality.

Organizations of Islamic feminism have transnational reach; they are involving activists and scholars from a range of countries in both the global North and global South, and they engage in conversation on gender equality and Islam (Sharify-Funk 2008). The participants in this conversation are professionals and activists, whose output including academic contributions and 'knowledge-building projects' are extensive. An assessment of the 'trickling down' (Keck & Sikkink 1999) or the adoption in national contexts of norms

Organizations of Islamic feminism have transnational reach; they are involving activists and scholars from a range of countries in both the global North and global South, and they engage in conversation on gender equality and Islam (Sharify-Funk 2008).

guiding international policies, among which gender equality is contested as a norm for regulating the family, entails a focus on the openings and opportune moments for shifting and reinterpreting norms. Clearly, the ability of the Islamic feminist movement to mobilize broader parts of Muslim populations, let alone policy makers, depends not only on how Islamic feminist organizations that do not necessarily address reform directly work and relate to other relevant actors; undoubtedly political and economic power structures are usually resilient to Islamic feminist strategies. Finding the potential for more influence involves identifying relevant insights and strategies, not yet brought into play among activists and policy makers in transnational and national contexts.

Transnational and local networks or organizations of Islamic feminism may thus enhance their influence on national reform processes by taking insights from social movement theory into consideration. Islamic feminist organizations and networks are in this brief approached as a transnational social movement that is constituted by social spaces of activism – seminars and workshops, training and advocacy - localized in several places within a range of diverse national frameworks in the Global South and in the Global North, in international fora and in transnational organizations. In other words, the locus of transnational Islamic feminism is not the international, the national or the local level. Rather, in knowledge-building and other forms of activism, activists connect among diverse contexts.

A transnational social movement approach

Social movement theory is addressing bottomup pressure for social change, demonstrating how 'grass roots' and social movements expand at local, national and global levels of government. Feminism has given rise to social movements that are now transnational, aided by travel and communications technologies.

A range of networks and organizations have identified an Islamic framework as relevant for enhancing Muslim women's rights. These networks and organizations are diverse in their set-up and framing, and do not usually collaborate, rather they compete for support and funding. This

A range of networks and organizations have identified an Islamic framework as relevant for enhancing Muslim women's rights.

diversity and competition shape them as 'spaces of engagement' - spaces in which governmental and institutional actors invite activists to collaborate on the problem identified by the activists (Yanacopolus 2015). Non-governmental organizations (NGOs) are perceived to be independent from government and public bodies; they are assumed to be self-governed. This assumption is modified by frequent interconnections between state, political parties, and civil society. When an NGO/International NGO is registered, it may be for purposes of governmental recognition, but 'spaces of engagement' are constituted by mutually dependent actors (Yanacopolus: 2015 4), meaning that the lack of independence of Arab civil societies from both state institutions and international agencies is not exclusive to Arab countries. In these countries, however, registration is a prerequisite for the legality of the activities of the organization (Krause 2012, Clark & Salloukh 2013). Thus, Arab states are often able to control NGOs and agencies that operate within their territories, whereas international NGOs are able to evade this control by locating their headquarters within environments, which are more responsive to their mission.

The consequences and potential for law reform represented by Islamic feminist organizations like Musawah and WISE and yet other organizations³ are closely related to the kind of activism that these transnational networks engage, their effectiveness and

magnitude. Moreover, their relations to organizations on the national and global arena that work for similar aims and to policy makers, governments and international agencies are core. A mapping of a number of networks and organizations whose activities are most relevant for reform of Islamic family laws provides some insights into the particular mission, funding and strategies of this movement (see Appendix).4 These organizations, though different in approach and organizational structure, share an analysis - or in social movement theory perspective – diagnosis of the problem at hand as a widespread assumption that Islamic figh is divine and not man-made, and therefore not subject to re-interpretation. They also share their prognosis or strategy and plan for what needs to be done, as a quest for women's religious leadership and/or perspective on the Qur'an, while embracing human rights.

³ In addition the International Congresses on Islamic Feminism organised by the Catalan Junta Islamica, and the Barcelona based International Group of Studies and Reflection on Women and Islam (GIERFI) are 'global actors' of Islamic feminism (Pruzan-Jørgensen 56:2012), however not included in this study. ⁴ Not all organizations mentioned work exclusively within an Islamic feminist framework, thus WLUML and Oslo Coalition are both including secular perspectives.

Musawah

for equality in Muslim families
(http://www.musawah.org)
- is a global civil society organization or INGO, targeting individual activist women and organizations, based in Malaysia with funding from private, government and and international agency funds

Karamah

Muslim Women Lawyers for Human Rights (www.karamah.org) – was previously supported by a private family fund, but supporters now include a range of private funds and US government funding. It is based in Washington with an EU office in Belgium, and as revealed by the name, it targets primarily lawyers but also other Muslim women and men, in the US and beyond;

WISE

or Women's Islamic Initiative in Spirituality and Equality, http://www. wisemuslimwomen.org/)- is based in New York, promotes Muslim women leaders, and is supported by a range of government and private donors, including private individuals;

the Oslo Coalition on Freedom of Religion or Belief

(https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/) - is a network of scholars on religion and religious institutions, hosted by University of Oslo and funded by the Norwegian government

WLUML

Women Living Under Muslim Law (www.wluml.org) although a secular and international solidarity organization shares some of the approaches to Islamic family laws with the organizations already mentioned, e.g. the observation that Islamic family laws are diverse, and therefore man-made. WLUML supports women who live under Muslim laws in all kinds of societies in order to strengthen their rights. Its main office is in London with regional offices in Pakistan and Senegal, and since its Foundation in 1984 funders are multiple.

Viewed as a whole, a majority of the organizations are collaborating with donors located in the US or Western Europe and moreover in considerable distance from Arab countries.

In accordance with observations from Iraq and Palestine –

Transnational networks include Western governments, Western aid agencies, Western-based NGOs and contractors, UN agencies, Iraqi and Palestinian official bodies and diaspora activists...

(Al-Ali & Pratt, 2009: 256)

Transnational networks include Western governments, Western aid agencies, Western-based NGOs and contractors, UN agencies, Iraqi and Palestinian official bodies and diaspora activists....

(Al-Ali & Pratt, 2009: 256)

With the reservation that war and conflict, as discussed by Al-Ali and Pratt, tend to increase Western interference, feminist NGOs in the Arab region involved in transnational networks may not only be promoters of women's rights. In spaces of engagement they need to adapt to the formats and constellations of funding and collaboration, and risk to become 'conduits of neo-liberalism' (Al-Ali & Pratt, Ibid.) or of other normative frameworks

that tend to accompany international policies intended to promote gender equality. On this background, it becomes important to emphasize that 'transnational feminism' is not constituted simply by a transnational network of feminists; rather it is a designation for activism that connects feminist agendas across boundaries of race, cultures, regions, faiths (Al-Ali & Pratt, ibid: 260), thus taking into consideration power asymmetries in feminist networks and beyond.

These measures have also contributed to the fact that Islamic feminist organizations are challenging gender discriminatory Islamic jurisprudence at global and national levels.

In a transnational social movement approach, the scaling up – or in more accurate terms – shift or transfer to a transnational context, bridging to local grassroots, and campaigning and advocacy are strategies generally applied by the international NGOs (INGOs) that work systematically for the aims of the movement, as steps towards extending effectiveness and influence (Yanacopolus 2015). These measures have also contributed to the fact that Islamic feminist organizations are challenging gender discriminatory Islamic jurisprudence at global and national levels.

The trickling down of norms from global to national and local levels is not a smooth process and does not always succeed. Research on the norms expressed in human rights have demonstrated that a change of norms requires actors who interpret and adapt norms accepted at international levels to national and local contexts, i.e. norm translators. This is often a task performed by local NGOs (Zwingel 2016, Merry 2006). The assumption of a smooth transfer signified by the metaphor of 'trickling-down' is modified by this need for 'norm translators', and the one-way direction of influence indicated is more directly challenged, particularly in the case of Morocco, where

Islamic feminism is 'home-grown', rather than inspired by international NGOs (see the paper by Sadigi and Outaleb). Consequently, a modification of the the 'trickling-down'-hypothesis is required; it is supplemented, and sometimes replaced with influence going in multiple directions, from national settings to transnational organizations; exchange of norms at different scales may therefore be a more accurate description. Islamic feminist networks and organizations may take on this task, but they are, needless to say, not able to univocally set an agenda for change in Arab states that are formally sovereign and whose leadership since independence have insisted on the origin of their family laws in divine regulations. However, some developments constitute openings for Islamic feminist influ-

Recently, in Lebanon, a group of feminists, "the Family Rights Network" managed to take a small step towards more gender justice in the Muslim family, when they successfully pushed for rising the age of custody for children of divorced mothers who are regulated by the Sunni Muslim family code (one of 15 in Lebanon). The issue was strategically chosen since the age of custody is not mentioned in the Qur'an demonstrating an awareness of the contentious nature of Qur'anic interpretations in the local setting, as discussed in the paper by Maghribi & Mahklouf. However, by the same token, this incident indicates the presence of a potential for further pursuit of inequalities in the Sunni family code of Lebanon by local norm translators, while building on Islamic feminist knowledge.

Aims and strategies of Islamic feminist organizations

A number of strategies are applied and numerous activities and projects have been applied by transnational Islamic feminist organizations to disseminate knowledge to relevant actors about the gender egalitarian Islamic norms in the Qur'an and other Islamic scriptures. International NGOs are political spaces that foster particular ways to

engage the public, and particular strategies of advocacy, relative to the normative missions of the INGO, and they are dependent on available avenues for funding. The table in appendix (see p. 17) summarizes the aims and means of major transnational organizations reinterpreting Islamic scriptures and promoting gender equality in Muslim societies. The aims of the selected organizations are ranging from gender equality in the Muslim family, to the promotion of Muslim women as agents of change, and freedom of religion or belief.

Three of the organizations included in the mapping have been founded by a single activist, and established between 2004 and 2009, a relatively short span of years, whereas KARA-MAH and WLUML both date back earlier. This timing may indicate a momentum around the millennium created by new approaches to gender equality within an Islamic framework, and new spaces of engagement emerging during the 'war on terror'. Following the 9/11 attack in New York, Western funds and governments attempted to stimulate dialogue in order to promote a 'moderate Islam' (Salime 2007, Mahmood 2008). The business model of the organizations comes into question, since it depends on funding from donors as well as individual donations. The risk that governments involved in the war on terror use Is-

Some scholar-activists initiate their activism in transnational contexts, but more typically a scaling up of the activism from a national framework to a transnational takes place.

lamic femimnism for their own purposes may however in the eyes of some seem as a lesser evil compared with the inequality that women endure in their families (Abu-Lughod 2013). Some scholar-activists initiate their activism in transnational contexts, but more typically a scaling up of the activism from a national framework to a transnational takes place.

Among Islamic feminists, scaling up occurs in, roughly, three ways; either 1., individuals otherwise active in national organizations initiate organizations that operate in transnational contexts (examples are founders of Musawah) or 2., individual activists within national frameworks participate in activities organized by transnational organizations, or

In this project, Musawah commissioned expert scholars to write papers that investigated and challenged meanings of qiwamah in Islamic jurisprudence - authority, responsibility, and wilayah, quardianship.

3., organizations active in national activities supplement them with activities in transnational contexts (KARAMAH). Malaysian Sisters in Islam was already engaged in activities with transnational WLUML before some of the members became engaged in the initiation of Musawah (Al-Sammah 2012). This indicates an on-going exchange in diverse contexts and on different scales.

Knowledge-building is a core activity of Islamic feminist organizations (Al-Sharmani 2014). Thus, Musawah conducted a knowledge-building project 2010-2015, which now constitutes a resource for advocacy and campaigning, enabling the organization to transfer its message about gender equality within Islam to collaborators, beneficiaries and supporters. In this project, Musawah commissioned expert scholars to write papers that investigated and challenged meanings of giwamah in Islamic jurisprudence - authority, responsibility, and wilayah, guardianship. Together the two terms constitute "the DNA of Islamic family laws" and their current interpretations are obstacles to reform that enhance gender equality (Mir-Hosseini 2015). Documenting the problems generated by long-standing interpretations of the

two terms, Musawah collected stories of 55 women in 9 countries and published them, addressing local actors and giving them advice on how to build egalitarian relationships (Musawah 2016). Other organizations, including WLUML (2006) and the Oslo Coalition for Freedom of Religion or Belief (Mir-Hosseini, Moe, Vogt and Larsen, 2009) have similarly built knowledge and published strong and insightful scholarly work that question classical Islamic exegesis and taken-for-granted truths about legal power asymmetries in the Muslim family. Training in Muslim women's rights is offered to activists and legal actors by e.g. KARAMAH and Musawah in several national contexts. Musawah has organized conferences and meetings with local actors, e.g. institutions of higher religious learning,

Musawah, WISE, WLUML, and Karamah rely on the Islamic principle ijtihad – the principle of independent reasoning – and on the authority of Islamic exegesis, on human rights and on international law.

feminist research networks or women's NGOs in Morocco, Egypt, and Lebanon, and beyond.

Islamic feminist organizations have firm social media strategies and their websites constitute resources for information and knowledge on Islam and women's rights. Each organization is nevertheless framing its cause and mission in particular ways. Differences in emphasis and approaches or framing contests between Islamic feminist organizations indicate that they, just like other actors in the fields of religion, must "operate in a competitive religious marketplace of ideas" and that the framing of their cause needs to appeal to targeted audiences (Wiktorowicz 2004: 162). Consequently, the way that organizations appeal to authority in their campaigning and advocacy (or in the way that they frame their message) is significant

for their ability to influence in national contexts. The 'beneficiaries' or the ones who in their everyday lives have to handle the problem that the organization is addressing do not differ significantly between the organizations; with the exception that WLUML tend to prioritize minority women as beneficiaries. Apart from this, the selected organizations address Muslim women generally, although there clearly is e.g. a social class dimension affecting the ways and extent to which a given family law regulates Muslim families. Mu-sawah, WISE, WLUML, and KARAMAH rely on women's experiences to document the need for law reform, but it is far from the only source of authority that they bring forward in their advocacy. In addition, they rely on the Islamic principle *ijtihad* – the principle of independent reasoning - and on the authority of Islamic exegesis, on human rights and on international law. Further, particularly Musawah, KARAMAH and Oslo Coalition give authority to scholarly hermeneutic methods. whereas the authority presented by WLUML arguments derives from international law and human rights, rather than Islam. Karamah draws on authority within legal frameworks of international law and 'gender-equited' Islamic jurisprudence, maintaining that there is no contradiction. The sources of authority of each organization are in other words multiple; emphasis varies, with human rights and other secular legal framework at one pole, and Islam or the Qur'an at the other.

On the website of Musawah, the organization is reaching out to local organizations in need of knowledge and tools to confront gender unequal family laws. Musawah's 'ambassadors' are local allies of Musawah who may support local organizations to carry out the work of translation and adjusting of gender equality as a norm for regulating the family. Similarly, WISE is gathering so-called WISE women from around the globe, i.e. women Muslim leaders, by listing them on the WISE homepage, but it is not clear if connecting to these figures amounts to a bridging and le-

gitimacy in the context of particular societies, in which women experience inequality in their families.

In Geneva, at the Higher Council of Human Rights, Musawah is a reviewer of the performance of states that operate with Islamic family laws vis-á-vis the Convention on Elimination of all Discrimination Against Women (CEDAW), and particularly Article 16 that refers to equality within the family. Apart from formulating critique in these reviews, the organization is avoiding interfering directly with law reform or law formulation of any state or national society. Instead, as one of the founders, Ziba Mir-Hosseini, has pinpointed⁵, Musawah expects local organizations to develop their own national or local movement. This strategy secures local anchorage and is advantageous in a situation of local hostility towards foreign or transnational direct interference. As discussed in the paper by Soliman and Abdel Ghany, there is evidence that local women's organizations are not ready to confront figh or family law legislators with arguments deriving from Islamic feminist knowledge in order to promote gender equality within the family.

...there is evidence that local women's organizations are not ready to confront figh or family law legislators with arguments deriving from Islamic feminist knowledge in order to promote gender equality within the family.

Given the diverse specific aims of the selected organizations, spanning from establishing a Muslim women's Council to solidarity with minority women in Muslim majority societies, to research and reinterpretation of Islam's holy scriptures in a perspective that emphasizes Islam's spirit of equality, it is noteworthy that the major funders of all organizations derive from US or West European governments or funds (with KARAMAH's

initial private funding as the exception). This gives reason for caution. As mentioned, in the eyes of critics, Islamic feminist organizations have entered spaces of engagement that are motivated by 'the war on terror' and de-radicalization strategies, intending to "shape the hearts and minds of Muslims", based on general presumptions about Muslims as particularly prone to radicalism (Mahmood 2008, Abu-Lughod 2013) often regarded as unjustified interference, these collaborations risk hamper the influence of Islamic feminism.

Disseminating Gender equality as an Islamic norm

Transnational networks are specific, calling for their spatial conceptualization as 'spaces of engagement' and as political within particular contexts. The knowledge-building, bridging, advocacy and campaigning of these networks give authority to independent Islamic exegesis and scholarly methods combined with international norms of human rights, and depend on a business model, where funding from sometimes powerful donors are crucial.

Family laws in Arab countries tend to be focus of political attention, and are deeply ingrained in political and economic structures. A social movement perspective clarifies that the study of local appropriations of Islamic feminist reinterpretations of religious norms with a potential to influence Arab jurisprudence is not just a study of how gender equality as an Islamic norm is 'trickling down' from transnational levels and 'received' in local settings. It is more particularly a study of how these norms are emerging, resisted, challenged and adapted in these contexts. When approaching transnational Islamic feminist networks and organizations as one actor among a range of actors seeking influence on norms affecting power structures in the family, norm transla-tion and adjustment to local settings emerge as points of attention. Particular formations in spaces of engagement matters; they dis-courage or encourage local appropriations of new norms.

Recommendations

Attention to social, political and economic structures at national and local levels sustaining inequality in Muslim families is a core task to adjusting gender equality as an Islamic norm to local societies, but hardly enough to effect change, due to the politicized char-

acter of the issue that goes right to the core of power hierarchies. Increasing the impact of Islamic feminist knowledge in local settings could nevertheless be further sustained by a number of initiatives.

Arab governments

have generally been reluctant, if not directly opposing transnational Islamic feminist knowledge. These governments should:

- Commit to gender equality in the Muslim family as a transnational policy issue
- Instead of leaving the initiation of spaces of engagement on this issue to US or Western European governments and funds, e.g. Arab Ministries of Justice should invite Islamic feminists and their transnational networks, Islamic scholars and judiciaries to dialogical hearings and seminars
- Importantly, these spaces of engagement should include transnational Islamic feminism by emphasizing it as knowledge, thus disconnect it from the divisions of domestic politics, particularly the polarization between conservatives and reformers

Transnational Islamic feminist networks

operate in 'spaces of engagement' where considerable support derives from US or West European governments or funds. Influence on reform processes in a national framework depends on institutions and INGOs or donors...

Organizing collaborative spaces so as to encourage norm translation, or norm exchanges; local organizations are in a core position to translate and adapt norms deriving from transnational Islamic feminism, and should be deliberately positioned as

17

- Empowering local norm translators: Islamic feminist individuals and NGOs are potential norm translators. INGOs of Islamic feminists that have relatively strong links to the Arab region should make resources available to local actors, and organize training in Islamic feminist knowledge, all aiding local actors to in fact assuming this task.
- Further attention to power asymmetries in transnational feminist networks; collaboration between INGOs and local NGOs of Islamic feminism should mirror the salient position of local actors, enabling them to be selfaware as mediators, and to act accordingly
- Considering local perceptions of authoritative knowledge in campaigning and advocacy: the appeal to authority that Islamic feminist organizations and networks make in the way that they frame their message is significant for their ability to gain popular support for gender equality in the family;
- Increasing insights into what is considered authorized knowledge in local settings, and adjusting campaigning and advocacy accordingly.

⁵ Skype interview by author February 2019

<u>"</u> 18

References

Abu-Lughod, Lila, 2013:

Do Muslim Women Need Saving? Cambridge, Massachusetts: Harvard University Press

Al-Ali, Nadje & Nicola Pratt, eds., 2009: Women and War in the Middle East. London: Zed Books

Al-Hibri, Azizah, 1982:

A study of Islamic Herstory: Or how did we ever get into this mess? *Women's Studies International Forum*, Vol. 5, No. 2, pp. 207-219

Al-Samman, Hanadi, 2012:

North American Women's Movements and the Politics of Islamic Feminine Hermeneutics. In Arenfeldt, Pernille & Nawar S. Golley, eds.: Mapping Arab Women's Movements: A Century of Transformation from within. Cairo & New York: American University in Cairo Press

Al-Sharmani, Mulki, 2014:

Islamic feminism. National and Transnational Perspectives. *Approaching Religion*, Vol. 4, No. 2: 83-94

Clark, Janine and Bassel Salloukh, 2013:

Elite Strategies, civil society, and sectarian identities in post-war Lebanon. *International*

Journal of Middle Eastern Studies, vol. 45: 731-749

Keck, Margaret E. & Kathryn Sikkink, 1999:

Transnational Advocacy Networks in International and Regional Politcs. *International Social Science Journal*, no. 159. Maden, MA: UNESCO & Blackwell Publishers.

Krause, Wanda, 2012: Civil Society and Women Activists in the Middle East. London: I.B Taurus

Mahmood, Saba, 2008:

Feminsm, Democracy and Empire: Islam and the War on Terror. In Scott, J.W., ed.: Women's Studies on the Edge. Durham, N.C: Duke University Press

Merry, Sally Engle, 2006:

Human Rights and Gender Violence: *Translating International Law into Local Justice*. Chicago: Chicago University Press.

Mir-Hosseini, Z., Moe, C., Vogt, K., and Larsen, L. (2013); Gender and Equality in Muslim Family Law:

Justice and Ethics in the Islamic Legal Tradition. London: I.B Taurus

Mir-Hosseini, Z., 2015: Muslim Legal Tradition and the Challenge of Equality. Mir-Hosseini, Z., Al-Sharmani, M., and Rumminger, J., eds.:

Men in Charge? Rethinking Authority in Muslim Legal Tradition. London: Oneworld Publications: 13-43

Musawah, 2016: Women's Stories, Women's Lives. Male Authority in Muslim Contexts.

Malaysia: Musawah, available at:
https://www.musawah.org/resources/womens-stories-womens-lives-male-authority-in-muslim-contexts/

Pruzan-Jørgensen, Julie, 2012:

Islamic women's activism in the Arab world. Potentials and challenges for external actors. DIIS Report 2012: 2, available at: https://www.diis.dk/files/media/publica-tions/import/extra/rp2012-02-islamic-womens-activism web 1.pdf

Salime, Zakia, 2007: The War on Terrorism: Appropriation and Subversion by Moroccan Women. Signs Journal of Women in Culture and Society Volume 33(1):1-24

Sharify-Funk, Meena, 2008:

Encountering the Transnational. Women, Islam and the Politics of Interpretation.

London: Routledge

Wiktorowicz, Quintin, 2004:

Islamic activism. A Social Movement Theory Approach. Bloomington: Indiana University Press

Women Living Under Muslim Laws (WLUML), 2006:

Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World, available at: http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor 2006 en.pdf, accessed 14th June 2018

Yanacopolus, Helen, 2015:

International NGO Engagement, Advocacy, Activism. The Faces and Spaces of Change. London: Palgrave Macmillan

Zwingel, Susanne, 2016:

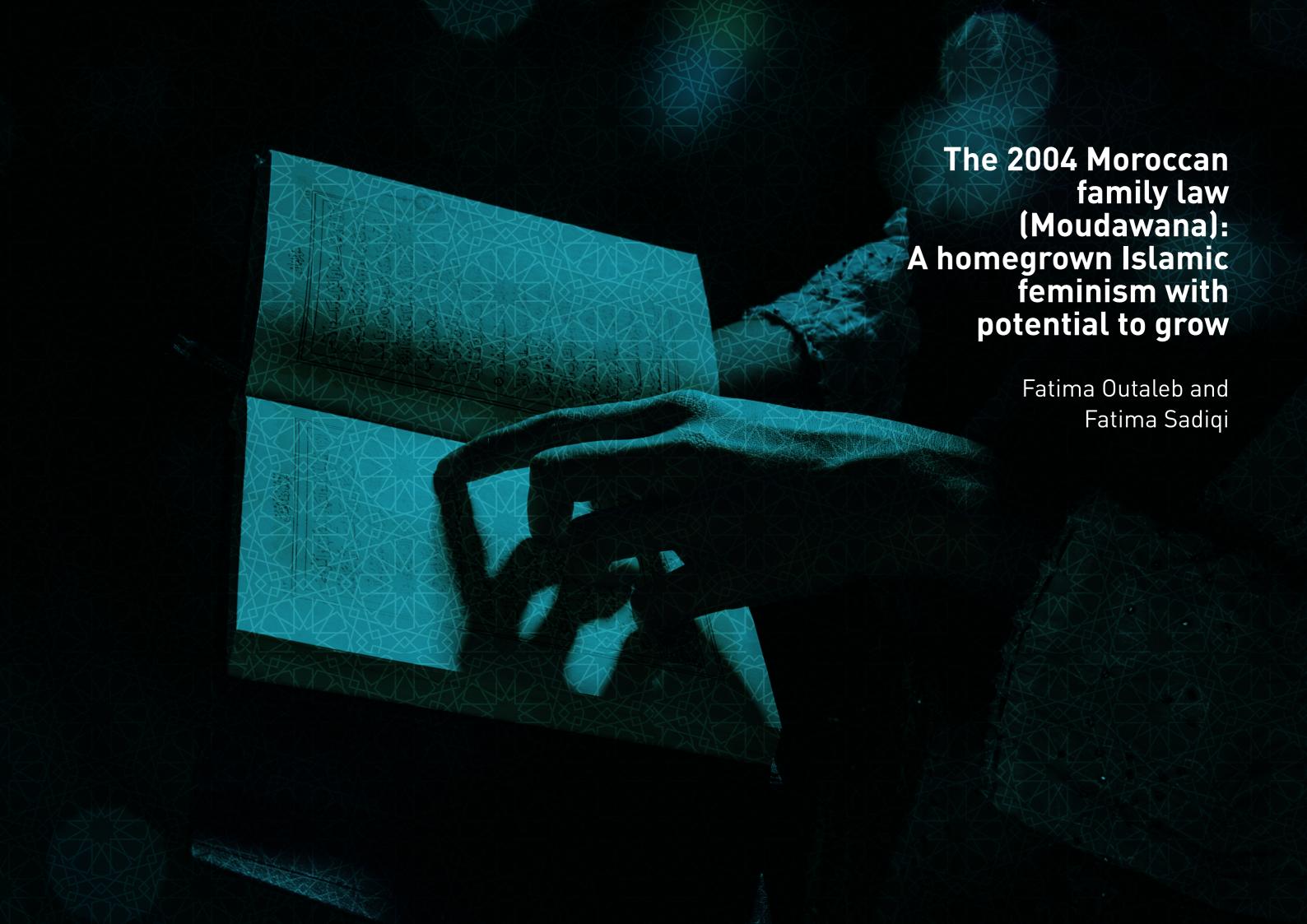
Translating International Women's Human Rights. The CEDAW Convention in Context, London: Palgrave Macmillan

Appendix

*Organization and type	Musawah Research and advocacy network	WLUML Solidarity and advocacy network
Year	2006 (launched in 2009)	1984
Aim	Gender equality in the Muslim family	Bridging identities, solidarity/protecttion of marginalized women in Muslim majority
Founder	Zainah Anwar, Ziba Mir- Hosseini, Azza Soliman	Marie Aimee Hélie Lucas
Supported by	Ford Foundation, Norwegian Foreign Ministry, UN Women, etc.	Urgent Action FLOW, The Channel Foundation, Hivos, Wallace Global Fund, Funderbirds etc.
Audiences and beneficiaries	Activists, governments, Islamic scholars, jurists and judges, Muslim families	Muslim women and women of religious minorities in Muslim majority countries
Prioritized authority in framing	Women's experiences; ijtihad and hermeneutical tools, the overall value of equality in the Quran, human rights	Women's experiences, International law – human rights

WISE Faith-based development organization	Karamah Research-based women lawyers' association	Oslo Coalition Dissemination network of researchers, stakeholders, and NGOs
2006	1993	2004
Promotion of Muslim women as agents of change	Dignity for all, gender equality	Promote freedom of religion or belief worldwide
Daisy Khan	Azizah Al-Hibri	Norwegian Centre for Human Rights, University of Oslo
Dutch Foreign Ministry and a host of other Western govern-ments and funds	Al-Hibri Charitable Fund, US Dept of Justice, etc.	Norwegian Foreign Ministry
Muslim women leaders globally	Muslim (women) lawyers and leaders, Muslim women in the US and beyond	Religious leaders, policy makers, stakeholders and advocates of reform
Islam and human rights	Gender-equited Islamic jurisprudence	Scholarly methods, international norms of gender equality

^{*)} Sources of information are websites of the organizations, Al-Samman 2012, Moghadam 1995, Abu-Lughod 2013, Mir-Hosseini et al 2015



The 2004 Moroccan family law (Moudawana): a homegrown Islamic feminism with potential to grow

Fatima Outaleb and Fatima Sadiqi

Introduction

The 2004 Moudawana reforms are designed within an Islamic framework that has been historically initiated and gradually developed by feminist academics (MoulayRchid 1981, Mernissi 1984), modernist religious scholars (Khamlichi 1981), and feminist NGOs (Association Démocratique des Femmes Marocaines- Democratic Association of Moroccan women - known as ADFM) and Union de l'Action Féminine - Union of Feminine Action - known as UAF). The Islamic feminism nature of the Moudawana - the Moroccan family law - has also been recognized outside Morocco (Badran 2002, among others).

As early as 1981, Fatima Mernissi, a feminist academic, created a research group that included male jurists and religious scholars (Ulama) with the aim of reforming the Moudawana within the framework of a modernist Islam (Rhouni 2010). She also created in the same year "Woman, Family and Child", another multidisciplinary research group with the aim of researching the situation of women, children and family in Morocco (Ibid). The latter group also included influential male religious scholars and jurists, and also targeting the reform of the Moudawana within a progressive Islamic framework. Both groups resulted in publications such as the book series "Approches" (Approaches) to which prominent male and female academics, jurists, and religious leaders contributed. Another feminist collective. Femmes Marocaines Citoyennes de Demain (Moroccan Women Citizens of Tomorrow), followed with the same goals in 1992 (Rhouni 2010).

In addition to Mernissi, Moulay R'Chid, an academic and jurist, defended a doctoral thesis in 1981, which came to be acknowledged as the first Moroccan academic thesis to underline the importance of reforming the Moudawana on the basis of equality and within an Islamic framework. Furthermore, he and Ahmed Khamlichi, a prominent religious scholar, published a study where they criticized the

first version of the Moudawana (promulgated in 1957-58) and called for more progressive reform. Rhouni (2010: 204) states in this regard:

"[MoulayR'Chid and Khamlichi's] assessment criticizes the law's exclusive reference to the Maliki school and its closure to other schools whose jurisprudence may be more progressive. This is the case, for instance, of the Hanafi school, which abolishes the institution of marital quardianship. The two scholars also denounce the refusal of the Moudawana creators to incorporate progressive readings dealing directly with the two sources of legislation, the Qur'an and the Sunna (the Prophet's tradition mainly based on the Hadith), without automatically going through figh teachings. They call for taking social context into consideration and criticize the orthodoxy's refusal to accept the intervention of the social sciences, which explains the Moudawana's clear alienation from the changing social reality."

According to Rhouni (2010), it was the involvement of progressive male elites that occasioned Mernissi's (and we would add Morocco's) shift from a purely secularist to a modernist and Islamic take on feminism.

A few years later, in 1987, Mernissi wrote "The Veil and the Male Elite", where she clearly locates Moroccan feminist thought within the Qur'anic discourse. According to Rhouni (2010), it was the involvement of progressive male elites that occasioned Mernissi's (and we would add Morocco's) shift from a purely secularist to a modernist and Islamic take on feminism. This shift attracted the attention of transnational Islamic feminists and feminist groups like Musawah- for equality in the Muslim family, which made a point of inviting Mernissi and other Moroccan scholars and activists to its launch in 2009.

In the following decade, the 1990s, more and more women's feminist associations started to seriously engage in public demands for the reform of the Moudawana. Salient among these is UAF which organized and led the 1992 One Million Signatures Campaign to reform the Moudawana. The influence extended to some political parties, especially the Union Socialiste des Forces Populaires - Socialist Union of Political Forces - known as USFP and the Parti du Progréset Socialisme, Progress and Socialism Party – known as PPS, hence impacting political will in the face of mounting political Islam in Morocco (Sadigi 2014). This influence was enhanced by the weight of prominent religious scholars like Ahmed Khamlichi and Ahmed Abbadi and other scholars from the High Council of Ulama, a religious organization that advises the king as "Commander of the Faithful" in matters of Moudawana reforms.

It is in this sense that it is 'homegrown', and the fact that women's associations and feminist politicians hailed the 2004 reforms as "revolutionary" attest to its historical context as a unifying process that brought together academics, religious scholars, activists and politicians. The May 2003 terrorist attacks in Casablanca and the fear of terrorism worldwide in the eve of the twenty-first century only accelerated a reformist process that started as early as 1981 and is still continuing.

25

This historical development accounts for the Islamic feminist nature of the 2004 Moudawana. For example, by using progressive ijtihad (interpretational efforts of the two sources of Islamic law: the Qur'an and Hadith for the sake of reform), terms like 'equality' and 'justice', the language of the Moudawana relates to transnational Islamic feminism, which is generally defined as both knowledge and a strategy that seeks to establish equality in the Arab family laws (Mir-Hosseini 2015, see also Christiansen's paper). Indeed, within a Moroccan national framework, the Moudawana as an equality-based text has become central

⁶ The adopted Maliki school version of law was approved by the Ulama (religious scholars).

2019b).

27

at the level of the grassroots in the sense described by Al-Sharmani for the case of Egypt (2014); at the grassroots level most local associations, including the Berber feminist ones, place the Moudawana center stage in discussions of women's legal rights, (Ennaji 2013, Sadigi 2016). Another Islamic feminism feature of the Moudawana is its relation to citizenship (Benradi et al. 2006) and women's rights and feminisms in general (Sadigi 2008); it is also related to gender dynamics and Moroccan women's understanding of feminism (Gray 2012) and to social norms and patriarchy (Sadigi 2019a). At the intellectual level, the Moudawana is related to the equality-based debates that have pitted conservatives against modernists in Morocco (Sadigi

In the aftermath of 2004 and with the advent of the so-called Arab Spring in 2011, secular and Islamic feminist discourses such as the ones that call for equality in inheritance continued to call for progressive ijtihad. However, the source and nature of Qur'anic text interpretation is still subject to heated debates between secular and Islamist political wings as they increasingly intersect with 'Islamic feminism', which espouses equality-based interpretations. While secular voices consider Islamic feminism a reflection of conservative political views that resist progressive reform. conservatives, especially Islamist politicians, consider "feminism" (whether Islamic or not) a 'Western' import.

However, women obtained additional rights including cultural rights in the reformed 2011 constitution during the Arab Spring moment as Berber (now in official language 'Amazigh') became an official language. The space of feminist voices became more versatile as Berber feminists started to emerge in the public sphere prior to and after the 2011 turmoils in Morocco (Sadiqi 2014).

These post-Arab Spring developments were accompanied by a rise of transnational fem-

inism worldwide and an increasing ease of communication, positioning the Moudawana and demands for more legal rights at an interesting intersection between national and transnational Islamic feminisms. For instance, topics such as equality in inheri-

While secular voices consider Islamic feminism a reflection of conservative political views that resist progressive reform, conservatives, especially Islamist politicians, consider "feminism" (whether Islamic or not) a 'Western' import.

tance, early marriage, wilayah (male quardianship over women), polygamy, and shared property between spouses are rekindling the feminists' 1980s and 1990s demands amidst growing interest in transnational Islamic feminism associations like Musawah and Women Living Under Muslim Law (WLUML). In this overall context, we ask the following guestion: To what extent can the Moudawana be impacted by and/or impact transnational Islamic feminism? This is a pressing question for a policy paper because the potential for transnational Islamic feminism is a serious avenue of research to be explored. Whether opposed or embraced, this potential is forcing itself and may gain momentum if the search for an overarching reform of Islam garners more appeal. In the long run, an adoption of this type of Islamic feminism may bridge the historically persistent gap between the secular and the religious in Morocco and perhaps the region (Mir-Hosseini, personal communication).

To address this issue, our policy brief is structured into two main sections: (i) the role of secular and Islamic feminisms in the current and future dynamics of the 2004 reforms and (ii) the possible avenues and potentials for influence by transnational Islamic feminism. The second section is partly based on twen-

ty-one interviews with four types of actors in the Moroccan reform-linked context: scholars, activists, lawyers, and politicians. Our central concern in this brief is to underline the homegrown Islamic feminism nature of the 2004 reforms. We consider the implementation of the law a separate matter, although it is clearly just as important.

The brief forms part of a project that seeks to understand what may increase the influence of transnational Islamic feminism on reform processes of Islamic family laws in selected Arab countries. Morocco is one of the three countries selected; Lebanon and Egypt the other two (see Christiansen's paper or http://iwsaw.lau.edu.lb/development-projects/research/carnegie-project.php).

The 2004 Moudawana reforms: A brief genesis

The Moudawana reforms evolved around three main axes: equality between spouses, family equilibrium, and the protection of children (Benradi, AlamiM'Chichi, Ounnir, Mouagit, Boukaïssi, and Zeidguy, 2007). This law reform was accompanied by the establishment of family courts by the Ministry of Justice, as well as the training of judges and magistrates. However, substantive issues such as polygamy and inheritance remained unresolved and have ever since continued to be real issues of contention (a daughter still inherits half of what her brother inherits) and polygamy does not seem to be topical on the grounds that the scored legal reforms were considered already significant, especially that the implementation of Moudawana faced resistance among judges (Sadigi and Ennaji, 2006).

In spite of these limitations, the three axes of the Moudawana resulted in the following legal breakthroughs reflecting the impact of Morocco's homegrown Islamic feminism (See the box).



Equality between spouses

- Legal age of marriage: 18 for both sexes.
- Legal responsibility: both spouses are legally heads of the family.
- Equality in rights and duties: abolition of the right of obedience in return for the economic support (qiwamah).
- N o tutorship (wilayah) for «majors» (18 years of age) women.
- Severe constraints on polygamy, rendering it almost impossible.
- Repudiation and divorce in the hands of the judge, who also handles 3 types of divorce: consensual, compensation (khula'), and shiqaq (cohabitation impossible).
- Boys and girls choose parent to live with at 15.
- Grandchildren from the daughter inherit in the same way as grandchildren from the
- Sharing of accumulated porperty and benefits garnered during marriage.



Family Equilibrium

 Thepublic Ministry automatically intervenes in any application of the Family Law.

- Establishment of Family Courts throughout Morocco.
- Reinforcement of means of re-conciliation through family.
- Creation of a fund for family assistance.
- Recognition of Moroccan marriages contracted abroad according to the legislations of the host countries.



The protection of children

- In the interest of children, the right of the mother's tutorship is not lifted if she remarries or if her residence is far from the father's.
- The judge may alter the order of the family members eligible to tutorship: the mother, the father, the maternal grandmother, etc.
- The social status of the child is taken into consideration at the moment of divorce: decent dwelling, standard of living should be similar to that he/she was leading before divorce.
- Recognition of paternity when the child is conceived during courtsip (before the marriage is formalized).
- Provisions of the relevant international agreements ratified by Morocco are part of the Family Law.

How did the 2004 reform come about?

In practice, the process of the Moudawana reform was initiated in 1993 by the Union de l'Action Féminine - UAF's One Million Signatures Campaign to reform this law. This initiative was immediately supported by secular activists, proponents of the academic Islamic feminism described above, and Human Rights organizations. This general support was enhanced by the then mounting conservative Islamist ideology (Sadigi 2014). This initiative was also strongly supported by the Socialists' secular initiative, known as 'The Plan for integrating women in development' and spearheaded by the then Minister of women's issues Mohamed Said Saadi. The fact that the Socialists led the government for the first time in Moroccan history was a particularly strong source of support that promoted the necessity of the Moudawana reform. In 2002 a Commission to reform the Moudawana was established, a move that was greatly accelerated by the Casablanca terrorist attacks and the state's backlash on the Islamists (Sadigi Ibid).

This quickly developing process was also enhanced by the uninterrupted work of individual feminist voices like those of Fatima Mernissi and more recent voices like Asma Lamrabet, the voices of secular feminists like Latifa Jbabdi who used Islamic arguments to promote equality between the sexes, and the voice of several male moderate Ulama such as Ahmed Khamlichi and Ahmed Abbadi who highlight passages from the Qur'an and Hadith that promote women in public media and conferences. These collective efforts were accompanied by the state's endeavour to encourage an equality-based version of Islam where women could participate in public religion as Murshidas (female religious guides) and as such preach moderate Islam (Ennaji 2013). Such state initiatives are referred to as "state Islamic feminism" (Eddouada and Pepicelli 2010).

Islamic feminism in the Moroccan context differs from female voices that operate within the Islamist political party Justice and Development (PJD) and the radical Islamist associ-

The women belonging to the Islamist party view the Moudawana as a positive change and as an achievement, which guarantees the best interest of the child and the family unity including joint responsibility of spouses.

ation Justice and Benevolence (JB). While the PJD is a moderate Islamist party that operates within the monarchical system, the JB is a radical association that does not recognize the authority of the king. Both the PJD and the JB have platforms for women who can resort to them to reclaim rights from within Islam albeit along the ideological guidelines of their party and association, respectively. For both groups of women, the biological difference between men and women is the basis for their different social statuses and different rights; hence they target equity and complementarity between the sexes, and not a liberal understanding of equality. The women of the PJD and JB share other goals, among which the following are salient: a strong position that Islam provides women with rights, an adherence to the veil, and a tendency to consider women as part of the family and prioritize the best interest of the family, which according to secular and Islamic feminists occults women's individual rights. Preaching and activism are the main channels that both groups of women use to disseminate their thoughts.

The women belonging to the Islamist party view the Moudawana as a positive change and as an achievement, which guarantees the best interest of the child and the family unity including joint responsibility of spouses. Their position still differs from the position of secular feminists as women from this party

oppose law proposals against early marriage, marital rape, and the amendments to the marriage rape law (a law that was subsequently amended under pressure from civil society in 2014). This position is, for example, espoused by Bassima Hakkaoui, who became Minister of women's issues in the 2011 Islamist-headed government. Furthermore, these women do not recognize women's wilayah (ability to be their own guardians) to marry themselves at the age of 18, and women's right to claim divorce and get divorced through the procedure called al-shiqaq (divorce on the grounds on incompatibility between the spouses).

In sum, during the process leading to the Moudawana reform, local and specific women's issues were addressed by various stake-holders including feminists (academics and activists), the state, and political parties, who all agreed on the amendment of the 2004 Family law; however divergence still emerg-es: whereas secular actors seek reform re-garding marital rape and early marriage, Is-lamists resist it and instead defend current laws on the grounds that what happens inside the family is a private matter that should not be exposed, lest the family collapses. In such cases local issues are addressed but Islamic feminist knowledge, able to challenge such positions as Islamic, is applied only superfi-cially; hence the trickling down or application of this knowledge in local settings is still not clear. This state of affairs is exacerbated by a lack of endeavors to translate the norms of academic Islamic feminism. Very few people understand the concepts of qiwamah and wilayah from a feminist or egalitarian perspective, let alone agree that women who work may be said to have giwamah, or authority. There seems to be a clear limitation of Islamic feminist knowledge in the reform process.

The Post- 2011 Moment

In the post-2011 period, also called 'post-Islamist' era (Tripp 2019), political Islam has

Recommendations

been weakening, and Berber activism has been gaining in visibility in an overarching context where the Berber dimension instead of Islamism is used by the state to curb extremism (Ibid). We believe this last development may well strengthen Islamic feminism in Morocco and potentially open the door to gender equality as proposed by Moroccan academic and transnational Islamic feminism.

Here are a couple of indicators. First, some Moroccan feminist activists, using social media such as Qandisha, heavily criticize the top-down Moudawana reforms and underline the importance of bottom-up approaches as the sole guarantor of collective and inclusive thinking towards implementing gender equality.

Some Berber feminist NGOs, such as Voix de la Femmes (Voice of Woman) or Thaziri (Moonlight), fight, among other social problems, Berber women's legal illiteracy, given their lack of access to standard Arabic in which the laws are couched, and underline the importance of local understandings of legal equality (Sadiqi 2016). In interviews with these young Berber activists and academics, Sadiqi noted their assertion that only Islam-tied feminism can mobilize collective action at the local level. This is due to the remarkable role of Berber women as transmitters of Islamic knowledge, which is not only historical (Rausch 2006).

However, research is still needed on whether the promotion of Berber rights in itself is weakening Islamism in Morocco, and on whether such a weakening also opens the door for Islamic feminism.

First

• Homegrown Islamic feminism is central in dealing with the 2004 Moudawana reforms. This has precedence over external factors. The fact that law is based on progressive ijtihad needs to be differentiated from demands of women's rights as advanced by Islamist political parties in order for key actors in Morocco, namely the activists, politicians, academics, and practitioners to understand that progress (more individual rights) needs the collaborative work of the state (political will) and feminist civil society, including Islamic feminists. This differentiation is needed because there is resistance from parts of the Moroccan population that will not accept an Islamic framework simply because it is associated with the policy ideas of Islamist parties.

Second

 Local feminist activists need to be more acquainted with the knowledge production of both homegrown and transnational Islamic feminism, which remains scarcely recognized in Morocco.

Third	 Academic, legal, and activist actors need to pay more attention to areas in which there is an opening for Islamic feminism. For example, they need to encourage bridging the gap between the conservatives and modernists, as well as the secularists and Islamists, in campaigns to further reform the Moudawana, notably regarding early marriage and marital rape. They also need to encourage the translation of Islamic feminist knowledge and strategies to people who do not seek such knowledge. Another way of doing this is by creating channels of communication between academics, universities, civil society, and Islamic feminists. For instance public hearings could be organized to create an enabling environment.
Fourth	The promotion of Berber activism may weaken Islamism and serve as a drive to equality between the sexes and hence an increase in the influence of Islamic feminism. Research in this domain needs to be promoted and sustained.
Fifth	 Bridging the gap between all stakeholders through public hearings will allow more debates of the concepts and discourse of Islamic feminism, in the spirit of progressive <i>ijtihad</i>, and thereby disseminate egalitarian understandings of gender relations in Muslim families.
Sixth	 Arguments from figh (Islamic jurisprudence) may be packaged in Islamic feminist critique and used in campaigns fostering effective communication among feminists in general and academics. This is crucial for legal or policy reform.

31

aws | Perspe

References

Al-Sharmani, Mulki. 2014.

Islamic Feminism Transnational and national reflections. *Approaching Religion*, Vol. 4, No. 2: 83-94 https://helda.helsinki.fi//bitstream/handle/10138/162143/1207.pdf?sequence=1

Badran, M., 2002:

What's in a Name? American Research Center & *Al-Ahram Weekly Online*, 569, 17-23 January 2002.

Benradi, M., Alami M'Chichi, H., Ounnir, A., Mouaqit, M., Boukaïssi, F., and Ziedguy, R., 2006: Le Code de la Famille. Perceptions et Pratique Judiciaire. Rabat: Friedrich Ebert Stiftung.

Eddouada, S. & Pepicelli, R., 2010: Morocco: Towards an "Islamic State Feminism". *Cairn. info.*

https://www.cairn.info/revue-critique-internationale-2010-1-page-87.htm.

Ennaji, Moha, 2013: Women and Religious Knowledge: Focus on Muslim Women Preachers. In Sadiqi, F. (ed). *Women and Knowledge in the Mediterranean.* London: Routledge.

Gray, Doris., 2013: Beyond Feminism and Islamism: Gender and Equality in North

Africa. London: I.B. Taurus.

Khamlichi, A. & MoulayRchid, A., 1981:

Moudawanat al-ahwal al-shakhssiaba' dakhamsata 'asharasanatin min suduriha" [The Moudawana: Fifteen years after its issue]. *Al-Majalla al-maghribia li al-qanunwa al-siyassawa al-iqtissad* [The Moroccan magazine of law, politics, and economics], no. 10: 128–53.

Mir-Hosseini, Z., 2015: Muslim Legal Tradition and the Challenge of Equality. Mir-Hosseini, Z., Al-Sharmani, M., and Rumminger, J. (eds): *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London: Oneworld Publications.

MoulayRchid, A., 1991: La Femme et la loi au Maroc [Woman and law in Morocco]. Casablanca: Le Fennec.

Rausch, M. 2006: Ishelhin women transmitters of Islamic knowledge and culture in Southwestern Morocco. In *The Journal of North African Studies*, 11:2, 173-192, DOI: 10.1080/13629380600704852

Rhouni, R. 2010: Secular and Islamic Feminist Critiques in the Work of Fatima Mernissi. Leiden and Boston: Brill.

Sadiqi, Fatima, 2019a.: The Sources of Patriarchy's Public Authority in Morocco. In McKanders, K. (ed). Arabs at Home and in the World: Human Rights, Gender Politics, and Identity. London: Routledge.

Sadiqi, Fatima, 2019b: The Center: A Theoretical Framework for Understanding Women's Rights in Pre- and Post- Arab Spring North Africa. In Darhour, H. & Dahlrup, D. (eds). Double-Edged Politics on Women's Rights in the MENA Region. Switzerland: Palgrave Macmillan.

Sadiqi, Fatima, 2017: The Moroccan Feminist Movement (1946-2014). In Badri, B. & Tripp, A. (eds): *Women's Activism in Africa*. London: Zed Books.

Sadiqi, Fatima, 2016: Emerging Amazigh Feminist Non-governmental NGOs. *Journal of Middle East Women's Studies.* 12(1): 122-125.

Sadiqi, Fatima, 2008: The Central Role of the Family Law in the Moroccan Feminist Movement. *The British Journal of Middle Eastern Studies*, vol. 35, no. 3: 325-337.

Sadiqi, Fatima & Ennaji, M., 2006: The Feminization of Public Space: Women's Activism,

the Family Law, and Social Change in Morocco. In Moghadam, V & Sadiqi, F. (eds.), *Journal of Middle East Women's Studies*, Special Issue. vol. 2, no 2: 86–110.

Tripp, Ali Mari, 2019: Seeking Legitimay. Why Arab Autocracies Adopt Women's Rights. London: Cambridge University.



Reforming the Egyptian Personal Status Laws. A case for Islamic feminism

Azza Soliman and Sara Abdel Ghany

Introduction

The Personal Status Law (the family law code) of Egypt plays an essential role in defining, framing, and controlling socio-economic relations and gender dynamics in the country. By delineating the framework of marriage, divorce, custody, and inheritance, through a rigid patriarchal hierarchy, the law determines the rights and duties of citizens towards each other in their everyday life. The Law is based on the codification of Islamic jurisprudence, mostly from the Hanafi School of jurisprudence, on all issues related to marriage, divorce, inheritance, and child custody. Islamic jurisprudence, including the Hanafi School, sustains a hierarchical regime of gendered spousal roles and rights to the advantage of the husband and the father in the family.

The main conceptual principle for this regime is based on the male inherent right to quardianship and authority (wilayah and giwamah). Through a marriage contract, a husband is under the obligation to financially provide for his family, and in reciprocity he is obeyed by his wife and children. Consequently, the right of the husband to wifely obedience (ta'a) is conditioned by his financial role in spousal maintenance, or nafaga (Sharmani 2004: 13-14). Wifely obedience, or conjugal society, is when the wife "places, or offers to place, herself in the husband's power so as to allow him free access to herself at all lawful times" and "obevs all his lawful commands for the duration of marriage." (Nasir 1998: 90). Also, as the financial obligation to provide falls solely on the husband, there are no communal household assets: both the wife and the husband retain individually their assets, possessions, and properties. Finally, based on the gendered system of quardianship and obedience, husbands have the exclusive rights to divorce, polygamy, and guardianship over the children (Abu-Odeh 2004).

Islamic ethical concepts and hermeneutical approaches, recently emphasized by Islamic feminists, can however be a strong tool not

only in transforming the change-resistant Personal Status Law (the legal framework of the private realms), but also more importantly in weakening the foundation of a legal and political system of injustice and violence. The potential for substantial reform should be

Through a marriage contract, a husband is under the obligation to financially provide for his family, and in reciprocity he is obeyed by his wife and children

viewed in relation to the historical emergence of the Personal Status Law and its later development.

This policy brief uses gender legal analysis to examine the Egyptian family code, the Personal Status Laws, by referring to the historical origins of the law, as well as legislation itself, its modification, and scholarly comments. With this focused gender-legal analysis, we aim to demonstrate how the legal system may be enhanced to bring gender equality and justice. By drawing on Holy Islamic texts, Islamic feminism can be a strong tool not only in transforming the change-resistant Personal Status Law (the legal framework of the private sphere), but more importantly in weakening the foundation of the public/private dichotomy that imprisons women in a distorted citizenship, paving the way for a more just society for all. Obviously, the legal focus means that other areas that may be relevant for policy-making, notably Egypt's economic and social structures are given less attention. Our recommendations therefore all relate to the legal sector, but involve non-legal actors, such as parliamentarians. The paper forms part of a project that seeks to understand what may increase the influence of transnational Islamic feminism on reform processes of Islamic family laws in selected Arab countries. Egypt is one of the three countries selected; Lebanon and Morocco the other two (see Christiansen's paper, or

http://iwsaw.lau.edu.lb/development-projects/research/carnegie-project.php).

The emergence and development of the Personal Status Law

The Personal Status law, written in 1929, and based on a hierarchal medieval structure of governance, has been controlling the modern lives of Egyptian women to the advantage of men in the public and private spheres. Even though there have been many reforms, judicial and legislative, they have only touched on the periphery of the structure of discrimination and violence, without eliminating the discrimination or violence itself.

The Personal Status Law was strategically excluded from the process of modernization and secularization of the law. With limited power and jurisdiction, the religious elite held tightly to its authority over family law. The ruling elite, in return, controlled this contentious battle by preserving the patriarchal system of the family, and only cautiously limiting the absolute powers granted to men under that system, reforming only "the outer limits of the law":

"In order for family law to be legislatively reformed, progressively interpreted by secular judges, or actively protected by elite constitutional judges, the outer limits have to be convincingly defined for a difficult-to-please religious audience. It is through making patriarchal pronouncements on the outer limits that the "reformer" gains legitimacy for his or her reforms in the eyes of watchful religious contenders".

[Abu-Odeh 2004]

Therefore, even though women were guaranteed political and economic rights by the 1956 Constitution, and were actively encouraged to take part in the public life of the new welfare state, 1920s family laws, which sustained a medieval patriarchal system remained unchanged. This anomalous legal/political system was sustained for over six decades un-

⁶ The adopted Maliki school version of law was approved by the Ulama (religious scholars).

der different presidential systems. Egyptian presidents, with strikingly different political ideologies.

The Egyptian State was able to construct a modern secular identity, while also preserving its patriarchal structure. By defining the private realms as Islam, the sacred ground on which the secular State cannot interfere, the State ensured the immunity of the private sphere from any changes in society. Furthermore, even though it only sought to change the "outer limits" of the patriarchal legal code governing the private sphere, it established its identity as the modernizer fighting against the traditionalists and religious institutions for women's rights.

The history of change

A number of attempts to reform Egypt's Personal Status Law have been initiated since its initial codification; however none of them succeeded in bringing gender justice to the system:

The calls for reform to jurisprudence regarding personal status issues started in the beginning of the 20th century under an Islamic reformist movement. The movement was led by prominent political activists and Islamic ideologists, most importantly Sheikh Mohammed Abduh - one of the key founders of Islamic Modernism. Abduh, the prominent jurist,

Abduh's writings and teachings offered a new vision to the definition of the marriage institution, the connection between husband and wife, and their duties and obligations towards one another.

scholar, and theologist, led the movement of Islamic modernism and reform in Egypt. Abduh's writings and teachings offered a new vision to the definition of the marriage institution, the connection between husband and wife, and their duties and obligations towards one another. Regarding the definition of marriage, for example, he opposed the idea that the marriage contract reflects a man's ownership of a woman sexually. He stated that the idea of marriage in Islam is the most civilized concept that ever existed, as it reflects the Quranic principles of mercy, compassion, affection, and tranquility. Abduh also opposed polygamy as it is against what he argued to be the constituting condition placed in the Quranic text for marriage (and polygamy), which is justice (Abu-Zayed 2018).

- In 1915, a committee of senior religious scholars, representing the four schools of Sunni Islamic jurisprudence (Hanafi, Maliki, Shafii, and Hanbali), was established to create a family code. The Committee hoped to extract the jurisprudence, from any of the four schools, which represented the well-being of society, and is compatible with modern society. It succeeded in producing a list according to the criterion. However, the Committee's work was heavily criticized by the judges, lawyers, and Islamic jurisprudence experts, and never got the chance to produce a family code (Abu Zahra 1995).
- In addition to Islamic Modernism, Egyptian scholars and activists led the feminist movement in the region. The feminist movement, like the Islamic Modernism Movement, advocated for better personal status jurisprudence for women. For example, Malak Hifni Nasif (1886-1918), Egyptian feminist, and Islamic modernist and writer, was vocal against the injustice of the divorce and polygyny systems, and called for the reform of the personal sta-

tus code. Another example, Huda Sha'rawi (1879-1947), the pioneer who created a social revolution in Egypt and the region, advocated in 1921 for the minimum age of marriage to be sixteen for girls, and eighteen for boys, as well as restricting men's absolute powers of divorce. Furthermore, in 1923, Sha'rawi established the Egyptian Feminist Union, which advocated for women's suffrage, reforms to personal status laws, and increased educational opportunities for girls and women.⁷

In 1926, at the peak of the religious reform movement, a committee of religious scholars, mainly students of Sheikh Mohammad Abduh, came up with a set of recommendations. Interestingly, the Committee did not restrict itself to the four schools of Sunni Islamic jurisprudence, but borrowed from general jurisprudence what they regarded reflects the well-being of the family. Accordingly, the recommendations, which were based on the Quran and Sunnah, did not completely comply with the existing jurisprudence. The recommendations, which did not follow the four schools of Sunni Islam, however, were rejected, and Law no. 25 of the year 1929 (the current Personal Status Law) included only the jurisprudence of the four schools, mostly borrowing from the Hanafi school of jurisprudence.

The following are examples of some of the recommendations that diverged from the existing jurisprudence:



To restrict polygamy, the Committee demanded that the second marriage must be approved by a judge. The judge can only approve the second marriage if the claimant can provide amiable marriage relationship with all his wives, and ensure they are financially supported.



The Committee demanded that the husband must abide by all the conditions stipulated by the wife upon entering a marriage contract, including the right to demand the husband does not marry another.



The Committee gave the right to divorce to the wife for any damage caused by the marriage.

• The Personal Status Law was not influenced by either the Islamic Modernism Movement or the Feminist Movement, and was strategically sacrificed by the State-led Modernization Movement. In Egypt's era of modernization, during the second half of the nineteenth century, the state abandoned the Islamic legal system for a modern and secular legal code. The Egyptian family law code, however, was not part of the newly secularized law, even though it was an essential component in its construction. In order to appease an audience skeptical of the Europeanization and secularization of the law, modernists abandoned family law from the new secularized legal code. Lama Abu Odeh states that family law historically presented "the limit of, the exception to, or the sacrificial lamb of secularization" (Abu Odeh 2004). Similarly, Talal Asad describes family law as "the expression of a secular formula, defining a place in which 'religion' is allowed to make its public appearance through state law". The public appearance of religion through the Egyptian Personal Status Laws ensured legislators the confinement of religion to the private realms. Accordingly, the de-

⁷ See for instance Hawkins 2018.

⁸ See Ellen McLarney, "Women's Equality: Constitution and Revolutions in Egypt," in Women and Gender in Middle East Politics, POMEPS, vol. 6, 2016, 19 (accessed 10 September 2018).

Legal reforms to the Hanafi-based personal status law have aimed to cautiously limit the periphery of men's absolute powers under the jurisdiction. sign and construction of the Egyptian legal framework was grounded on a clear distinction between the public, the embodiment of the state's identity of modernity and secularization, and the private, the state's giveaway to the traditional and the religious.

- Legal reforms to the Hanafi-based personal status law have aimed to cautiously limit the periphery of men's absolute powers under the jurisdiction. For example, in contrast to the denial of women's right to divorce according to the Hanafi school, Law 25 of 1929 allows women to be granted divorce if they prove that the marriage, or the husband, is causing them harm impossible for them to tolerate, and if they have failed to prove harm, but continuously demanded divorce, Law 100 of 1985 demands judges to divorce them. Similarly, the Hanafi categorization of working women as "disobedient" is challenged under law, by providing that she is only "disobedient" if her work is an "abuse of right", "contrary to the interests of the family", and her husband asked her not to work. Furthermore, in 1967, the practice of using the police to enforce obedience judgments, by forcefully returning women who chose to leave their marital home, was abolished. However, obedience itself remains a legal duty that wives owe their husbands in exchange for their "maintenance". With these reformers, the law ensured the sustainment of a gendered structure in favor of men, and only curtailing what is considered an "excess of the transactional deal of maintenance for obedience" and its vile consequences on the lives of women (Abu Odeh 2004).
- The new millennium introduced a series of interconnected procedural laws that were the result of a long advocacy process by a coalition of diverse actors. The laws were formulated by three different groups, and in its priorities each group was relating to its own main agenda: One was that of the pioneer of the Family Court idea, Lawyer Laila Takla, who had a vision of establishing a therapeutic, problem solving, and family-friendly justice system based on a global model. The other agenda was that of a coalition of professional women who were pursuing (through a top-down, state-centered advocacy) gender-reform in the family domain by lobbying for a series of new personal status laws. And thirdly, there was the agenda of state institutions, driven by the goals of development and governance (Al-Sharmani 2017: 38-39)
- On the 26th of January 2000, the Egyptian parliament adopted the **Personal Status Law No.1 of 2000**, "The Law for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters". ⁹ The law was procedural, designed to make the procedures of Personal Status Law cases more efficient, and consequently minimizing the time and financial resources spent by litigants (mostly women). The Law did not deviate from the expected jurisprudence, or offer substantive change, and accordingly did not meet the expectations of those waiting for change for so long. However, it did introduce significant articles, including:



One of the most important, and most controversial, articles introduced is Article 20 on non-fault based divorce (*khul*). Consistent with Islamic jurisprudence, khul divorce allows women the right to divorce without grounds, and without the consent of either the husband or the judge, in exchange of returning dowry to the husband, and giving up all post-divorce financial rights.



Another important addition by the law is Article 17. The law grants women, who were under unregistered marriage (*urfi*), the right to seek divorce. Prior to the law, the women under urfi marriages had no access to justice, in all issues related to marriage including spousal maintenance, alimony, and inheritance.

- In the same year, **Personal Status Law No. 10** was passed. The law introduced new family courts. "The thought behind the new courts is to empower disputants to determine their contentions through lawful instruments that are non-ill-disposed, family-accommodating, economical and productive." (Al-Sharmani 2017: 33-34)
- Also in the same year, Personal Status Law No. 11, was passed which created the Family Security Fund. The role of the fund is to provide spousal and child maintenance to vulnerable plaintiffs, as well as take the responsibility of collecting maintenance, as per court order, from husbands and fathers.
- In 2005, Personal Status Law No. 4 was passed. This law gives divorced women the right
 of custody to her children until the age of 15.
- In 2000, the Ministry of Justice produced a new marriage contract with marked blanks, which allows couples to put their conditions for the marriage contractually.
- In the absence of gender-based reforms provisions in the substantive personal status laws regulating family domain, neither the new courts system nor the new laws succeeded in bringing gender justice to the system. 10 The new millennium reform efforts, which focused only on procedural not substantive or conceptual framework

"The thought behind the new courts is to empower disputants to determine their contentions through lawful instruments that are non-ill-disposed, family-accommodating, economical and productive."

of the hierarchal system, were part of the long strategy by the Egyptian state concerning reforming family law to preserve the status quo. The adapted strategy attempts to curtail the conspicuously brutal aspects of husband and father power without dismantling the hierarchy between the spouses or between father and daughter.

⁹ The Law for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters", Personal Status Law No. 2000] 1). See Al-Sharmani 34-33:2017 for an excellent summary of the Law, and the laws that followed in 2000s.

¹⁰ See Al-Sharmani' analysis on the failure of the laws of the 2000s and the new courts in producing either their intended goals or bringing greater gender justice to the system: Al-Sharmani 2017, pp.146-144,142-141,110-108. See Human Rights Watch's report on the limitation of Khul in bringing equality in divorce: "Divorced from Justice: Women's Unequal Access to Divorce in Egypt." Human Rights Watch, December November 2004,30, vol. 16, No. 8(E), 24-23.(accessed 10 September 2018). https://www.hrw.org/report/30/11/2004/divorced-justice/womens-unequal-access-divorce-egypt.

Substantive Reform: The Case for Islamic Feminism

Egypt has a rich history of activism that has utilized an Islamic conceptual framework in challenging the gender framework of the private constituted by traditional Islamic jurisprudence. In this section, we will argue that this rich history of Islamic modernism (which includes all activism using Islam as a conceptual framework for change) can be utilized today and built upon through the work of Islamic feminists.

As outlined in the history of change section, Islamic modernism in Egypt, created through the activism and legacy of Mohammed Abduh, has challenged the understanding of marital relationships in traditional Islamic jurisprudence, and the exercise of this jurisprudence on family life. Abduh invoked Islamic principles, mercy, compassion, affection, tranquility, and justice, to be the defining framework of a marital relationship.

Furthermore, the Egyptian feminist move-

Abduh invoked Islamic principles, mercy, compassion, affection, tranquility, and justice, to be the defining framework of a marital relationship.

ment has long used an Islamic framework to advocate for gender justice. For example, Malak Hifni Nasif (1886-1918) established one of the founding discourses of feminism that emerged in Egypt and the region. Nasif advocated the advancement of girls and women, from de-colonial, anti-Western, and Islamic angles (Yousef 2011). The same reform was adopted by activists of this century. In Sharmani's analysis of these various attempts of the 2000s reforms and the actors who adopted an array of reformative Islamic discourses, the importance of these discourses is explained: "...the significance of these actors and their efforts lay in their making visiblein a more vibrant and consistent way- the linkage

knowledge and the reform of gender norms rights. This linkage is particularly relevant not only for the goal of the substantive reform of the existing fiqh-based family law but also for the reform of socio-religious norms that shape gender relations and rights in the lives of individual women and men."

[Al-Sharmani 2017: 160-161]

Egyptian NGO activists started to articulate a reformative discourse, based on both their understanding of the Quran and human rights, after witnessing the suffering that the Personal Status Law has caused women and families. The resulting discourse is a positive change in challenging the governing jurisprudence. Conversely, its lack of coherence is due firstly, to the absence of clarity regarding how this discourse relates to relevant places in the Quran, which leaves many methodological and epistemological questions unanswered, and secondly, to the simultaneous use of both the human rights' concept of equality and the jurisprudence's concept of equity (Sharafeldin 2015).

These gaps in the discourse can be addressed by Islamic feminism. This feminism, the work of Muslim women scholars from across the globe, comprises of scholarship "that critically revisit and unpack dominant religious interpretations that are patriarchal and discriminatory against women, and aim to produce new knowledge that makes the case for gender equality and justice from within an Islamic paradigm." (Al-Sharmani 2014: 89).

Even though many of these scholars have focused on bringing greater gender justice in Muslim family laws, the creators of this knowledge see their work as a transformative justice movement for all. Ziba Mir-Hosseini, scholar and one of the pioneers of Islamic feminism, stated:

I think the issue of gender relations within the family – which is what personal laws are all

about – actually relates to the core of power in society at a broader level. Since the family is the basic unit of society, only if there is justice and democracy within the family can you possibly have justice and democracy in the wider society. In other words, the key to democratizing the whole society is to democratize its basic unit, the family, and for this legal reform is crucial.

The agenda of gender justice, shifting in accordance with the political leadership in Egypt, calls for the need for an ethical feminist movement to bring justice for all. This ethical feminist movement stands against institutional patriarchy and political opportunism and authoritarianism, and speaks to the poor, marginalized, and disempowered women (Abou Bakr 2015). Islamic feminism can according to Omaima Abou Bakr constitute this ethical movement, and she invokes, like Mohammed Abduh, the principles of Islam to be defining elements for change:

The agenda of gender justice, shifting in accordance with the political leadership in Egypt, calls for the need for an "ethical" feminist movement to bring justice for all.

"An Islamic feminist vision is able to underline the convergence of both theological and political authoritarian patriarchy through conceptualizing and invoking specific, relevant, ethical tenets: resisting all forms of zulm (injustice), istikbar (pride), and baghy/tughian (transgression) for the pursuit of a holistic 'adl (justice). These are more than simply the equivalent Arabic words for these meanings, as the systematic recurring of each in specific moral contexts throughout the Qur'an forms together a thematic and conceptual cluster of an Islamic ethos and imperative. ... the above-mentioned Qur'anic concepts

and themes...can be applied to both political tyranny and patriarchal injustice directed at women."

(Abou Bakr 2015: 200-201)

Abou Bakr references the work of Amina Wadud, philosopher and another pioneer of Islamic feminism, on the Islamic concept of tawhid, uniqueness of God in Islam, in erasing patriarchy, and a cornerstone in formulating gender justice and equality under an Islamic framework of action. In accordance with Wadud, "the overarching concept tawhid, or the uniqueness of Allah, forms a trajectory organizing Islamic social, economic, moral, spiritual, and political systems." (Ibid.)

The concept of *tawhid*, in addition to other Islamic concepts and themes emphasized by Islamic feminists, can be utilized in deconstructing the nexus between patriarchal public-private concepts, like men's *wilayah* and *qiwamah* over women. With their innovative approach to Holy Islamic texts, Islamic feminism can be a strong tool not only in transforming the change-resistant Personal Status Law (the legal framework of the private sphere), but also more importantly in weakening the foundation of a legal and political system of injustice and violence.

⁸ See Ellen McLarney, "Women's Equality: Constitution and Revolutions in Egypt," in Women and Gender in Middle East Politics, POMEPS, vol. 6, 2016, 19 (accessed 10 September 2018).

Recommendations

In close collaboration with Egypt's civil society

The Egyptian Parliament

is recommended to assign the legislative committee in the parliament to propose a draft law for the personal status and to include it on the legal agenda of the parliament. At the same time, there should be hearing sessions for the initiatives and the organizations that are working on changing the law, as well as creating a social dialogue through the media.

- These laws should be derived from the legalization of philosophy and principles of Islamic feminism of equality and justice and should regard women as citizens in this country who are equal to men in legal positions.
- Call for a drastic review of the legal vision that is based on the concepts of *qiwamah* and *wilayah* and making use of the knowledge and information that has been presented by experts and Islamic feminist institutions.
- Include Islamic feminists scholars and activists in the building of a real partnership with the human and women's rights Egyptian community to elaborate a vision of the law and draft its texts.

The legal and justice system

is recommended to conduct comprehensive revision of jurisprudence of Personal Status Law cases in compliance with the principles and philosophy of Islamic feminism.

The legal and justice system

is also recommended to train justice providers and work on Family Court cases, in order to eliminate gender bias when handling Family Court cases, under the framework of Islamic feminism. The trainings should include:

- Members of the Family Courts' judiciary, as well as the Prosecutors who consult the Court, and other Court personnel, who provide legal, social, and psychological assistance to claimants.
- The forensic division, particularly those who are responsible for cases of domestic and sexual violence.
- The police force, particularly those who are responsible for cases of domestic and sexual violence, custody, and child abduction.
- Any specialized law enforcement task force, which enforces Family Court cases decisions.

The Ministries of Education, Culture and Al Azhar

are recommended to:

- Increase social awareness on the necessity of building a new marriage model based on equality and true partnership, instead of *qiwamah*, *wilaya* and *ta'a*, based on the principles of the Constitution, human rights, and Islamic feminism.
- Based on the rich knowledge of Islamic feminism, open a dialogue on this new marriage model with different sectors of society, particularly Al Azhar, civil society, legislators, and the judiciary, while ensuring appropriate representation of disadvantaged groups.

45

Islamic feminisi

References

Abou-Bakr, Omaima, 2015: Islamic Feminism and the Equivocation of Political Engagement: 'Fair is Foul, and Foul is Fair.' in El Said, Meari, & Nicola Pratt (eds), Rethinking Gender in Revolutions and Resistance: Lessons from the Arab World. London: Zed Books

Abu Odeh, Lama, 2004: Modernizing Muslim Family Laws: The Case of Egypt, Vanderbilt *Journal of Transitional Justice*, vol. 37: 1102-1112

Abu Zahra, Muhammad, 1995: *Al-Ahwal Al-Shakhsiyyah* [Personal Status Law], Cairo: Islam Kotob, 1995, 10-11.

Abu Zayed, Haytham, 2018: Fatwai El Imam El Egtmeia (2) [The Imam's Social Fatwas (2)] Aswat, June 13, 2018. <a href="http://aswatonline.com/2018/06/13/-فتاوى-الإمام-الاجتماعية-للمرأة-في-الإمام-الاجتماعية-للمرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-الإمام-الاجتماعية-المرأة-في-المرأة-في-الاجتماعية-المرأة-في-الاجتماعية-المرأة-في-الاجتماعية-المرأة-في-الاجتماعية-المرأة-في-الاجتماعية-المرأة-في-الاجتماعية-الحرائة-

Al-Sharmani, Mulki, 2014: Islamic Feminism: Transnational and National reflections. *Approaching Religion*, 4 (2)

Al-Sharmani, Mulki, 2017: Gender Justice and Legal Reform in Egypt: Negotiating Muslim Family Law. Cairo: The American University in Cairo Press.

Hawkins, Kat, 2018: Huda Shaarawi: Egyptian Feminist who Started a Revolution, BBC, July 18, 2018. https://www.bbc.co.uk/news/av/world-africa-44814874/ huda-shaarawi-egyptian-feminist-who-started-a-revolution

Nasir, Jamal J., 1990: The Islamic Law of Personal Status London; Boston: Graham & Trotman

Sharafeldin, Marwa, 2015: Islamic Law Meets Human Rights: Reformulating Qiwamah and Wilayah for Personal Status Law Reform Advocacy in Egypt. In Mir-Hosseini, Z., Al-Sharmani, M. & R. Rummiger, eds.: Men in Charge? Rethinking Legal Authority in Muslim Legal Tradition, London: Oneworld Publications, 2015, 167-168

Sikand, Yoginger, 2010: Interview with Ziba Mir-Hosseini *Qantara*, 2010. https://en.qa-ntara.de/content/interview-with-ziba-mir-hosseini-we-need-to-rethink-old-dogmas.

Yousef, Hoda, 2011: Malak Hifni Nasif: Negotiations of a Feminist Agenda between the European and the Colonial. *Journal of Middle East Women>s Studies* (2011) 7 (1): 70-89. https://doi.org/10.2979/jmiddeastwom-stud.2011.7.1.70



Family law reform in Lebanon: A strategic role for Islamic feminism

Reem Maghribi and Youmna Makhlouf



Lebanon, like most Arab countries, delegates authority in matters relating to what is referred to as "personal status" to religious courts. Almost all of the over four million Lebanese residing in Lebanon are officially affiliated to one of eighteen religious sects recognized by the state and are thus subject to one of fifteen personal status laws (PSL, often also referred to family laws). These laws underpin issues related to marriage and its consequences, such as divorce and custody and also, in the case of Muslim communities, inheritance. By defining the role, responsibilities and rights of men and women entering into marriage PSLs and the religious courts that adjudicate on all matters related to them have the power to greatly influence the gender dynamics of a country. Lebanon's patriarchal and discriminatory laws, both civil and personal status, have been described as contributing to violence against women and positioning them as second-class citizens.

While inequality between men and women is present in PSLs across the Arab world, the religious diversity of Lebanon's population and its many PSLs differentiate it from other countries. In Lebanon, inequality is not only present between men and women, but also

Lebanon's patriarchal and discriminatory laws, both civil and personal status, have been described as contributing to violence against women and positioning them as second-class citizens.

between women of different religious sects. This has complicated the feminist agenda and led to a lack of synchrony and strategy, with different groups calling for very different approaches to pushing for gender equality. Attempts at reforming family law in Lebanon – over which there have been many over several decades - have faced several obstacles. They include monolithic patriarchal interpretations of religious texts. A number of scholars and

activists have in recent decades made significant attempts to produce interpretations of Islam's holy book, the Quran, that complement gender equality and dispel the notion that feminist principles and Islam are incompatible. This hermeneutic approach has given rise to the phrase "Islamic feminism," which is used hereafter to refer to the application of Quranic interpretation to support calls for gender equality.

This policy brief forms part of a project that seeks to understand what may increase the influence of transnational Islamic feminism on reform processes of Islamic family laws in selected Arab countries. Lebanon is one of the three countries selected; Egypt and Morocco the other two (see the brief by Christiansen, or http://iwsaw.lau.edu.lb/development-projects/research/carnegie-project.php). Though some reform initiatives in Lebanon have challenged patriarchal interpretations, the contribution of Islamic feminism remains limited. In fact, reformists have not made use of the Quran or hermeneutics in their work in Lebanon except when it comes to the issue of custody (hadana), which is governed under family law. In assessing what impact Islamic feminism has or could have on family law reform, this brief includes a review of various approaches initiated by the different women groups in Lebanon to determine the extent to which those strategies relied on Islamic fe-minism. It further considers the obstacles that currently hinder family law reform and the role transnational Islamic feminism may play in overcoming them.

Transnational Islamic feminism and the Lebanese reform process

Transnational Islamic feminist groups such as "Musaswah - for Equality in the Muslim Family" have engaged with some Lebanese organizations through knowledge workshops, but there is little evidence of a trickling down of their knowledge outputs to activist groups and reformist lobbying efforts. That said, the impact of trickling across - between reform-

Though not yet strategically utilized in Lebanon, transnational Islamic feminism may prove effective in addressing some of the objections hindering family law reform that are normally expounded by religious authorities, such as those deriving from a necessity to respect religious identities and values and protect "the family unit".

ist groups in different Arab countries – is evident, suggesting a willingness among Lebanese actors to be influenced by the strategies and successes of different reformists pursuing the same agenda. This was highlighted in the summer of 2017 when, in the space of two months and following coordination between reform groups in different countries, laws that protected rapists from prosecution should they marry their victims were repealed in Tunisia, Jordan and Lebanon.

Though not yet strategically utilized in Lebanon, transnational Islamic feminism may prove effective in addressing some of the objections hindering family law reform that are normally expounded by religious authorities, such as those deriving from a necessity to respect religious identities and values and protect "the family unit". It may also serve to counter presuppositions and arguments that gender equality is a Western concept incompatible with Middle Eastern cultures. This conclusion is based on an assessment of the Lebanese power structure and attitudes of some reformists, and not on observations of the use of gender-equal interpretations and approaches to the Islamic concepts of wilayah (guardianship) and qiwamah (stewardship) by stakeholders in Lebanon, of which there are

The intersection between civil and religious authorities in the political and legal power-bases that dominate family law in Lebanon requires that multiple stakeholders be ad-

 $^{^{6}}$ The adopted Maliki school version of law was approved by the Ulama (religious scholars).

tions addressed to different groups of stakeholders on how they may engage with Islamic feminism strategically to advance family law reform specifically and gender equality more broadly. In so doing, this brief considers the historical use and potential mobilization of Islamic feminism by advocates of family law reform and gender equality in Lebanon and more pertinently considers the potential for such an approach in countering the arguments invoked in opposition of such reform.

dressed in any attempt at reform. This policy

paper therefore concludes with recommenda-

General Overview

Lebanon is characterized by its legislative and judicial pluralism pertaining to family law. This pluralism translates from the recognition by the state of the religious historical communities' jurisdiction in matters related to personal status, which derives from article 9 of the Constitution (Decree number 60 L.R. dated 13 March 1936): "There shall be absolute freedom of conscience. The state in rendering homage to the Most High shall respect all religions and creeds and guarantees, under its protection, the free exercise of all religious rites provided that public order is not disturbed. It also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, is respected."

In this regard, the pluralistic system of family law is viewed as an extension of religious freedom and is therefore connected to the preservation of collective identities (Gannagé 2013). Though legal scholars argue that the promulgation of a unified civil family law (applicable to all citizens) would guarantee religious freedom (Gannagé 2003, Najm 2003), it is also argued that the abolition of the religious communities' jurisdiction over family matters contradicts the Constitution and that only an optional, not a unified, civil family law may be promulgated by the legislator to that effect (Gannagé 2003). While fifteen different religious family codes govern the lives

of those who marry (and divorce) in Lebanon, legislation does in fact exist that would allow for the development of a sixteenth code for those who choose to remove their sect from their official identification records. Such a code has however not yet been written, despite various campaigns pushing for an optional civil code, which itself is but one of a number of strategic approaches adopted by champions of family law reform.

While fifteen different religious family codes govern the lives of those who marry (and divorce) in Lebanon, legislation does in fact exist that would allow for the development of a sixteenth code for those who choose to remove their sect from their official identification records.

The religious and pluralistic legislative and judicial system adopted in Lebanon has influenced the strategic approach adopted by many champions of gender equality who denounce religious PSLs and argue that they are part of or contribute to a patriarchal system where gender equality is sacrificed in favor of an equality among religious communities (Gannagé 2003).

Mobilizations in favor of gender equality in family laws have developed within the above described context. Two main approaches have been observed: A secular approach aiming at the promulgation by the state of civil laws protecting women's rights; and a religious approach that seeks reform within existing religious laws. Historically, Islamic feminism has not played a central role in either approach. Arguments put forward in both secular and religious initiatives have hardly, if at all, taken into consideration alternative interpretations of the Quran. Those who in 2006 chose to start a campaign for reform within the Sunni PSL strategically chose custody as their focal point because of a lack of reference in the

Quran. They believed that this strategy would avoid the need for argument over interpretation and be more likely to lead to change, which indeed it did some years later.

Secular and religious initiatives

For many years, feminist movements in Lebanon have been predominantly secular, engaging in approaches stressing the necessity of adopting secular family laws in order to achieve gender equality (Ghamroun 2013). In fact, the secular and feminist movements in Lebanon have been heavily mutually reliant, with both highlighting the incompatibility of sectarianism and gender equality. Indeed, most visible feminist movements have demanded the introduction of a civil family law, be it mandatory or optional. 10

This positioning has implications for legal demands, since the violence against Lebanese women in their families and their environment is perceived as violence by religious law itself. It is therefore the abolition of the legal and judicial autonomy of religious communities in family matters, guaranteed by Article 9 of the Lebanese Constitution of 1926, that is required, or its neutralization through the creation of a civil and optional family law that would be added to existing religious laws. The protest has therefore often been expressed only from outside the system, with no notable results since half a century of mobilizations has failed to undermine the monopoly of the family's religious laws or their provisions, despite some victories in other areas of ci-vil law such as commercial or oriminal law. (Ghamroun 2013, p. 205-206)

Despite their visibility and public presence, such movements have not yet succeeded in their demands for a civil marriage law but were still able to lead fruitful campaigns pertaining to the adoption of a "domestic violence law" - which passed in May 2014 following a mass rally led by the staunchly secular organization KAFA https://www.kafa.org.lb/en and the amendments of certain provisions of

Arguments put forward in both secular and religious initiatives have hardly, if at all, taken into consideration alternative interpretations of the Quran.

the criminal code. 11 This strategy of demanding the development and adoption of civil laws that pertain to issues normally under the purview of family laws is continually opposed and interfered with by religious authorities, even in civil and political arenas where they have no official status.

Their ability to amputate provisions from the domestic violence law related to gender-based violence that were deemed incompatible with religious family laws - among which the criminalization of marital rape and coercion to marriage (Najm 2012) - has thus far neutralized further attempts towards the adoption of a civil marriage law.

Initiatives led by secular movements do not rely on Islamic feminism as they derive from an understanding according to which gender equality may only be achieved through secular laws. Nevertheless, in 2015, faced with fierce opposition from Lebanon's Sunni authority Dar al Fatwa to the adoption of a domestic violence law, the National Coalition for the Protection of Women from Family Violence issued a press release in which they referred to a hadith by the Prophet Mohammad. The coalition used the quote - "Only a man of noble character will honor women, and only a man of base intentions will dishonor them" - in a bid to emphasize compatibility, indeed complementarity, between Islam and the fight against gender-based violence.12

That was not the first time Islam and religious authority had been utilized to strengthen calls for gender justice. Earlier, in 2013, the NGO Abaad (https://www.abaad.mena.org/) initiated group discussions attended by religious leaders and representatives that resulted in

¹⁰ For a description of these initiatives: Rita Stephan, "Four Waves of Lebanese Feminism, 7th November, 2014, retrieved from https://www.e-ir.info/07/11/2014/four-waves-of-lebanese-feminism/;

¹¹ Law number 162 dated 17th August, 2011 repealing article 562 of the criminal code and law number 53 dated 15th of September, 2017 repealing article 522 of the criminal code.

¹² Statement issued on the 29th of June, 2011 retrieved from https://www.kafa.org.lb/ar/node/23.

the development of "a manual detailing different approaches civil society organizations children working on women's issues can use to engage religious leaders in compating GPV and the approaches

gage religious leaders in combating GBV and ending violence against women". 13

Two years earlier, in 2011, the Sunni family law was amended following a five-year campaign by a feminist group that identify themselves as "the Family Rights Network", led by activist lawyer Igbal Doughan. The group was able to gain the support of religious authorities and as a result, under Sunni family law, mothers now have custody of their children until the age of 12, up from the age of 7 for boys and 9 for girls. Interpretation of religious texts was not however part of the strategy as there is no mention of custody in the Quran. It is in fact for this reason that the group chose to focus their efforts on hadana knowing that it would be less controversial and challenging than other issues: "Our strategy was to start with what was possible and then get to the more difficult issues, such as inheritance", explained Head of Legal Agenda Doughan in an interview.¹⁴

Calls for reform to family law have also been present within the Druze and Shi'a religious communities, the two other Islamic sects with a personal status law in Lebanon. Mobilizations by women groups in the Druze community for family law reforms were enhanced in 2007. At the end of 2009, the Mazhabi council for the Druze community (which gathers among its members female participants) established a committee in order to prepare a draft law (Berjis 2017). In August 2017, the parliament promulgated law number 58 amending the Druze personal code of 1948 based on the draft law that had been previously adopted by the Mazhabi council for the Druze community. The amendments included raising the legal *hadana* age to 14 for girls and 12 for boys. It also allowed daughters to inherit the entire estate from a deceased

father notwithstanding the absence of male children.

As for the Shi'a community, though no amendments have been made to the current religious legal frame, a national campaign to raise the age of the

"Our strategy was to start with what was possible and then get to the more difficult issues, such as inheritance", explained Doughan in an interview.

hadana - named "Protecting Lebanese Women" - emerged in 2013, which led to at least one judgement by a religious court granting a mother custody of her children despite them being above the legal age. Within the context of the campaign, some members invoked a fatwa issued by Shi'a cleric Sayyed Mohammad Hussein Fadlallah that challenged the monopoly of religious interpretation since the gate of ijtihad is still open (Hamdan 2017). However, in a statement issued in 2016, the Higher Shi'a council disregarded any alternative interpretations than the Sistani Fatwa followed by the Jaafari, the Shi'a law in Lebanon courts and according to which mothers should have custody of boys until they reach the age of two and of girls until they reach the age of seven. 15 This was later challenged by MP Inaya Ezzedine who in 2019 called for the reform of personal status laws referencing a Quranic verse and stressing the fact that ijtihad is still open, allowing for interpretations favoring raising the hadana age and improving equality and justice.

Though Islam and the authorities who claim guardianship over the religion and its teachings may have been utilized in some campaigns and calls for reform, the actual interpretation of Islamic texts – the foundation for Islamic feminism – has not. Though the various campaigns appear to share with

The evident willingness to engage in reform from within, solicit the support of religious authorities and reference the Quran suggests that future campaigns may embrace a strategy based on interpretation. As Lebanese legal sociologist Samer Ghamroun (2013, p. 210) explains regarding the Family Rights Network campaign:

"The reasoning in the face of Sunni religious authorities takes place entirely within the normative and discursive Sunni religious framework, to the surprise of religious leaders who have been until then exposed to rather secular criticism. The reasoning is not new, but its specificity lies first in its surprisingly effective translation within the legal balance of power in the face of religious leaders. It extends above all outside the traditional patterns of Islamic feminism, for which religion is not what the exclusive interpretation of men has done to it. Instead of a reflection on what a religion freed from its sexist readings would really be, this is a pragmatic attempt to carefully dismantle the discourse of sanctity erected as a bulwark against the will of women to reform."

Cultural relativism and transnational movement

Champions of gender justice in Lebanon often face a recurrent argument that pivots around religious communities' claims for exclusive jurisdiction over matters related to family law, the protection of religious identities and the necessity to fight against the intrusion of Western values.

Though Islam and the authorities who claim guardianship over the religion and its teachings may have been utilized in some campaigns and calls for reform, the actual interpretation of Islamic texts – the foundation for Islamic feminism – has not.

Dar El Fatwa, the Sunni court, has repeatedly stated that calls for an optional civil marriage law represent an insidious attempt to impose Western values that would lead to the destruction of the family. In 2013, Mufti Qabbani issued a Fatwa according to which:

"Any Muslim with legal or executive authority in Lebanon who supports the legalization of civil marriage is an apostate and outside the religion of Islam considering that "There are predators lurking among us, trying to sow the bacteria of civil marriage in Lebanon, but they should know that the religious scholars will not hesitate to do their duty".".16

The Higher Shi'a Council in 2013 also refused "the concept of civil marriage from a religious, national, legal, and ethical perspective". ¹⁷

Even the civil law against domestic violence was presented as a negative Western influence, with Dar El Fatwa suggesting it was "presented not to improve women's status, but rather to break up the family similar to Western ways which are foreign to our society and values". 18

This rhetoric has hindered advancement regarding the adoption of a civil marriage code and hampered the domestic violence law, which passed without including the criminalization of marital rape and coercion in marriage. Indeed, instead of criminalizing marital rape, the law only punishes physical harm induced in order to obtain one's marital

Islamic feminism a desire to engage, if not appropriate, religious discourses, arguments based on Quranic interpretations and the need to follow a "gender-just hermeneutic Quran exegesis" (Schröter 2017) are still restricted and have only addressed the absence of scripture (in the case of hadana) and not the interpretation of it.

¹³ "3 questions to Iqbal Doughan", Legal agenda, 18th December, 2017, retrieved from http://legal-agenda.com/article.php?id=4113.

¹⁴ "Statement issued by the Higher Shiite Islamic Council in Lebanon: Respect for religions and putting an end to media chaos", 8th of October , 2016, retrieved from: http://www.alarabi.press.

¹⁵ Statement issued by the Higher Shiite Islamic Council in Lebanon: Respect for religions and putting an end to media chaos", 8th of October, 2016, retrieved from: http://www.alarabi.press.

¹⁶ Fatwa issued on the 28th of January, 2013 retrieved from http://www.naharnet.com/stories/en/70066.

¹⁷https://www.weeportal-lb.org/news/-51lebanese-support-civil-marriage-and-42-are-against-fatwa-issued-kabbani-newspapers-arabic

¹⁸ Dar al-Fatwa statement on the 23rd of June, 2011 published in the Daily Star retrieved from the following link: https://www.dailystar.com.lb/News/Lebanon-News/2011/Jun-142000/23-dar-al-fatwa-rejects-draft-law-protecting-women-against-domestic-violence.ashx

rights. Until the promulgation of the domestic violence law, the concept of "marital rights" was never acknowledged.

Arguments suggesting that beliefs, values and practices should be understood within cultural contexts - referred to as cultural rela-tivism - efficiently block reform in national laws and influence Lebanon's international commitments. Lebanon has, based on cul-tural relativism, issued reservations to arti-cle 9, paragraph 2 (regarding granting equal rights to women with men with respect to the nationality of their children) and article 16, paragraph 1 (regarding taking all appropriate measures to eliminate discrimination against women in **Conclusion** all matters relating to marriage and family relations) of the Convention on the Elimination of All Forms of Discrimination against Women relating to personal status issues, deeming their ratification of the convention problematic.

In the various periodic reports, Lebanon has always stated that these reservations were due to the pluralistic religious nature of Leba-nese family law, supporting the idea that these laws are incompatible with gender equality. Islamic feminism - in so much as it provides for alternative readings of religious texts without promoting a disassociation of religion from governance – may be key to addressing this hurdle. Transnational Islamic feminism not only provides well-considered arguments that counter those presented by men who have been given religious authority by almost exclusively male politicians, it also enables activists to invoke reforms undertaken in neighboring or nearby states that are culturally and religiously similar.

Indeed, in the course of the campaign led by the "the Family Rights Network", the group advocated for raising the age of custody by invoking reform in other Arab countries that had been inspired by Sharia Islamic law. Among them was the campaign "Protecting

Lebanese Women", which referred to amendments in Iranian law.¹⁹

Women activists in Beirut are multiplying references to foreign legal practices and interpretations without risking abandoning the Sunni Muslim normative repertoire. The interpretation of Sharia law by Moroccan or Tunisian legislators and family law reforms that have been adopted in recent years as a result are thus invoked: if Sharia law is interpreted in a certain way in Tunisia or Egypt regarding the custody of the child, why would it not be interpreted in the same way in Lebanon? (Ghamroun 2013, p. 211)

An assessment of the different women groups associated with reforming family laws

Indeed, instead of criminalizing marital rape, the law only punishes physical harm induced in order to obtain one's marital rights.

shows that some approaches may be inspired by Islamic feminism that challenges the monolithic patriarchal interpretation of the law. The recourse to such reasoning is still limited. To date it has only addressed the issue of the hadana, based on the fact that there is no scriptural text pertaining to it.

Making use of Islamic feminist thought and references may however prove to be even more fruitful since a transnational feminist Islamic approach may allow reformers to push for further amendments such as equality within inheritance law and criminalizing child marriage.

A study of the current achievements reveals that any family law reform, whether through secular or religious channels, necessitates addressing different target stakeholders due to the interactions that exist between state

and religious institutions.

Even when promulgating civil laws, legislators often refer to religious authorities that tend to interfere in the legislative process even though such practice is denounced by legal scholars as contrary to the constitution (Najm 2012, Salem 2000). This has been the case when the domestic violence law was submitted to parliament and it is currently the case in the multiple draft laws that are being discussed pertaining to the adoption of a bill to end child marriage (Allaw 2018).

An assessment of the different women groups associated with reforming family laws shows that some approaches may be inspired by Islamic feminism that challenges the monolithic patriarchal nterpretation of the law.

Similarly, religious initiatives led by women groups have also relied on the support of state actors and institutions, specifically legislators within parliament and political leaders taking part in the discussions related to reform of religious legislations,

An assessment of the different women groups associated with reforming family laws shows that some approaches may be inspired by Islamic feminism that challenges the monolithic patriarchal interpretation of the law.

further highlighting the importance of addressing multiple stakeholders.

Given the role of the courts in the interpretation of the laws, it is essential to also involve academics, judges and lawyers. In fact, when applying the domestic violence law, some judges adopted an extensive academic and legal interpretation of the concept of violence offering remedies to the shortcomings of the promulgated text (Saghieh 2018).

Finally, given the role played by civil society organizations in initiating family law reforms. it is also necessary to address the multiple local and international CSOs.

Recommendations

To legislators and politicians:

- Recognize the multiplicity of interpretations within religious family laws and challenge the monolithic stand taken by religious authorities. When civil laws pertaining to gender equality within the family are promulgated, objections from religious authorities may be addressed by invoking alternative interpretations.
- Moreover, the existing constitutional legal framework does not grant religious authorities exclusive jurisdiction regarding family matters. As such, legislators and politicians may push for family law reform and overcome obstacles related to religious values by referring to the existence of multiple, possibly incompatible, religious interpretations, among which are Islamic feminist approaches towards gender equality. Parliamentary committees in charge of studying family law reforms may therefore take into consideration discussions with religious authorities, including Islamic feminists, but are not constitutionally bound by them, particularly if they do not present a single unified interpretation.

To religious authorities:

• The idea that religion and gender equality are inherently incompatible may be addressed by recognizing the legitimacy of Islamic feminism that challenges patriarchal interpretations which translate into the existing religious family laws. Religious authorities in favor of family law reform can engage with and find support among Islamic feminist thought and leaders. The presence of women representatives within religious bodies would aid the process of reform further still.

To academics, judges and lawyers:

Judges and lawyers practicing within religious courts must often deal with interpretation of texts – both legal and religious. They may integrate a wider repertoire that includes Islamic feminist scholars and activists in cases brought up in front of religious courts. While lawyers and judges may utilize studies and Quranic interpretations that have been published by feminist academics, it would be beneficial if further studies were produced by lawyers and academics in Lebanon that focused on Lebanon and Lebanese laws and communities in particular.

To local and international CSO's:

- Building coalitions of civil and religious women's groups is necessary for improving gender equality. Adopting an exclusively secular or religious approach to women's rights may result in the exclusion of women who do not share the same secular or religious values.
- Local strategies may benefit from transnational feminist Islamic networks and organizations in order to translate gender-just Quranic interpretations into the religious and secular family related laws. As such, Islamic feminism can be seen as a bridge between those who work within a secular framework and those who hold dear their religious values.

59

References

Allaw, Saada, 2018: The obsession with satisfying the sects hanging over the dome of the Parliament: the proposal to "marry minors" allows the exception at their request", 8th of March 2018, retrieved from: http://legal-agenda.com/article.php?id=4290.

Berjis, Ilham, 2017: Women at the heart of the Druze community decision-making: How did women change the course of the movement to amend the personal status law and its consequences?, 18th of December, 2017, retrieved from: http://legal-agenda.com/article.php?id=4112.

Gannagé, Léna: 2003: Religion and fundamental rights in Lebanese family law, in Droit et religion, colloque Cedroma, Bruylant

Gannagé, Pierre, 2013: Lebanese law in the face of diversity of communities and cultures. In *Au fil du temps, Études* juridiques libanaises et proche-orientales, Presses de l'Université Saint-Joseph

Ghamroun, Samer, 2013: The law of the Lebanese Sunni community seized by women. In Normes religieuses et genre, 2013: 203 – 216

Hanan Hamdan, 2017: Lebanon's mothers see glint of hope in custody ruling, 27th of December 2017, retrieved from: https://www.al-monitor.com/pulse/originals/2017/12/lebanon-shiite-mothers-children-custody-laws.html#ixzz5uJFxlVSq.

Najm, Marie-Claude, 2004: For a unified civil family legislation in Lebanon. In Travaux et Jours, n° 74, automne 2004

Najm, Marie-Claude, 2012: The religious' control over civil life and individual rights. The example of Lebanese law. In *Mélanges* en l'honneur de Marie-Stéphane Payet. Au*delà des code*s, Dalloz

Saghieh, Nizar, 2018: Interpreting Lebanon's Law Against Domestic Violence: Jurisprudence as Legal Reform", published on the 30th of June, 2014, retrieved from: http://legal-agenda.com/en/ article.php?id=626&lang=en

Salem, Jean, 2000: Overshadowing the Constitutional order: Religion and Constitutionalism in Lebanon. In Droit et religion, colloque du Cedroma, Beyrouth

Schröter, Susanne, 2017: Islamic Feminism National and Transnational Dimensions. In J. Cesari and J. Casanova, eds.: Islam, gender and democracy, Oxford University Press, p. 115-138



Brief bios of contributors

Connie Carøe Christiansen

Connie Carøe Christiansen, Ph.D., is Principal Investigator in the collaborative research project "Reform of Islamic Family Laws – a Transnational Social Movement Perspective", and 2017-2019 visiting Associate Professor at Arab Institute for Women/ School of Arts and Sciences, Lebanese American University. Previously, she was an Associate Professor at Roskilde University, Denmark, and Senior Advisor at KVINFO, the Centre for information and research on Gender in Copenhagen, Denmark. She managed the 2009-2016 programme of developing a Master Programme in International Development and Gender at Sana'a University, Yemen.

Fatima Outaleb

Fatima Outaleb has over 27 years of experience in national and regional women's issues with a special focus on gender mainstreaming and women's empowerment. She is a *Union de Action* Feminist Board of Directors-member, and Director and cofounder of the first women's shelter in Morocco. She is the MENA representative in the Global network of women shelters, North-South expert group member of The Council of Europe, focal person and gender technical advisor of many national and international human right orga-

nizations (DANNER, FAR, ABAAD WILPF, UN-FPA, UNDP ICAN), and part of many regional networks. She has publications on GBV and contributed to the elaboration and editing of shelter training toolkits and briefs on women's rights in MENA region.

Fatima Sadigi

Fatima Sadiqi is Professor of Linguistics and Gender Studies at the Sidi Mohammed Ben Abdellah University of Fez, and currently teaching a course, "Gender, Politics and Society", at Al-Khawayne University in Ifrane, Morocco. Her work focuses on women's issues in modern North Africa, the Middle East, and the Mediterranean world. In June 2018, she was elected President of the Association for Middle East Women's Studies – AMEWS. She is author and editor of numerous volumes and journal issues.

Sara Abdel Ghany

Sara Abdel Ghany has worked in human rights and women's rights in Egypt for 10 years. She has also worked as a project manager at UN Women Egypt, on gender access to justice. She is a researcher, human rights defender and cur-rently a PhD Candidate at Politics and Inter-national Studies at Warwick University, U.K.

Azza Soliman

Azza Soliman is an Egyptian lawyer and women's human rights defender. She is the board president of the Center for Egyptian Women's Legal Assistance (CEWLA Foundation) that is a women's rights organization established in 1995. Azza Soliman has been working in the field of Human Rights and development for more than 25 years and has expertise as a trainer in the field of human rights concepts, women's human rights, and gender equality. She is also a co-founder of the Musawah movement (a global movement of women and men who believe in enhan-cing and protecting equality and justice within the family and the community in addition to finding alternatives through developing new concepts for Islamic jurisprudence). Azza Soliman won several international awards, including 'Pedro de Lemonauria award for the ethical commitment', 2018, Spain, and 'Martine Anstett Prize Association', 2018, Switzerland.

Youmna Makhlouf

Youmna Makhlouf is a PhD candidate in law at the Université Paris II Panthéon-Assas. Her dissertation examines the question of the "identity of the individual in the Lebanese private law". She is a Teaching Assistant and researcher at the Faculty of Law at Saint Joseph-University of Beirut. She is also a member of the NGO Legal Agenda and an attorney at the Beirut Bar Association.

Reem Maghribi

Reem Maghribi is a communication and gender specialist and managing director of the pan-Arab NGO, Sharq.Org. A former journalist, Maghribi now focuses on the development of media professionals and oral history collections in the Arab world. Her research interests include human rights, the role of women, and cultural heritage, and she has presented on these topics at various academic and political conferences in Europe, Africa, and Asia. As a communication consultant, she has worked with UN agencies, NGOs, and academic institutions in strategy development, content production, and capacity building.