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Recent Reforms in Personal Status Laws and Women's Empowerment Family Courts in Egypt

Executive Summary

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Introduction

In the last decade a series of reforms have been introduced in Egyptian family laws. On January 26, 2000 the Egyptian Parliament passed procedural Law No. 1 of 2000.¹ The goal of this law was to address the problems of backlog of cases and inefficient legal procedures, challenges which were mostly confronted by women since they tended to be the majority of plaintiffs in family law cases. Law No. 1 also introduced two significant articles for women. Article 20 gives women the right to file for no-fault divorce (known as *khul*) in exchange for forfeiting their financial rights. And Article 17 gives women in unregistered marriages (known as *urfi* marriage) the right to file for divorce.

Also, in August 2000, a new marriage contract was issued. The new contract had a blank space in which the couple could insert stipulations. Then, in 2004, two more legal reforms were passed: Law No.10 and Law No. 11. Law No. 10 introduced new family courts with the aim of establishing a legal system that is non-adversarial, attentive to the best interests of the family, accessible, and affordable. Law No. 11 set up a government-run Family Fund, called Nasser Bank, to facilitate the implementation of court orders for alimony and child maintenance.

But have these legal reforms enhanced women's rights in the family domain? Have they enabled them to access justice?

¹ Law No. 1 of 2000, for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters, cut down the 318 clauses of previous procedural laws to mere 79. The law replaced Law 78 of 1931; Part 4 of Civil and Commercial Code; Articles 868-1032 of Law No. 77 of 1949, and some of the procedural articles included in the substantive personal status laws.

Purpose of Study

This report presents the findings of a field study on family courts in Egypt. The aim of this twelve-month ethnographic research, which started in January 1, 2007, was to conduct an in-depth study of the litigation process in family courts in order to identify its strengths and weaknesses in regard to meeting the legal needs of female disputants and strengthening their rights. A secondary goal of the study was to examine the effect of the new structures of family courts (e.g. mediation) on the implementation of *khul* law

Methodology and Data Collection

In this study, legal reforms were studied as a dynamic process through which the laws are performed, negotiated, and sometimes subverted through the practices, the views, and interactions of disputants, their accompanying families, court personnel, and lawyers. The following instruments were used to collect data:

In-depth interviews

Interviews were conducted with eleven individuals who were involved in the reform process (i.e. advocacy, debate, drafting the law). The interviewees were women rights activists, prominent lawyers and judges, public thinkers, legislators, and journalists.

Fifty-three female litigants were interviewed. Twenty-five of the female interviewees were selected from the clients of the Association for Development and Enhancement of Women (ADEW), an NGO that provides legal assistance, micro loans, and capacity building services, as well as other services to women. The remaining twenty-eight interviewees were recruited through informant lawyers. Case studies were also conducted with two of the interviewees through a series of interviews. The female interviewees were from the following governorates: Cairo, Giza, Gharbeya, and Qalubeya. Their age range was 21-62, with the majority being in their thirties. Their level of education ranged from illiterate to a holder of a masters degree, the majority being holders of secondary level vocational degree. Thirty-three interviewees were working at the time of the study. They held a variety of jobs such as teacher, secretary, maid, office cleaner, and government clerk, salesperson in a store, street vendor, and farmer. The remaining twenty women were not working at the time of the study. However, the majority of the women in this second group worked intermittently. The jobs that the husbands of the interviewees held included: musician, security guard, baker, mechanic, carpenter, cashier, social worker, government employee, porter, street vendor, electrician, and construction worker.

Eleven male litigants were also interviewed. The male litigants were recruited through informant lawyers. The age range of the male interviewees was 20-60, with the majority being in their thirties. Their level of education ranged from illiterate to a college graduate, but the majority held a secondary-level vocational degree. The jobs that they held included: carpenter, plumber, accountant, government employee, waiter, baker, factory worker, computer instructor, and teacher. The majority of the litigants' wives also held secondary-level vocational degree. Some of the jobs that the wives held included: outreach health care provider, cashier in a cafeteria, and a nurse.

The female and male interviewees were disputants in the following cases: maintenance, *khul* divorce, prejudicial divorce, obedience awards, visitation rights for non-custodial parents, child custody, paternity disputes, destruction of marital furniture, and repossession of conjugal home.

In-depth interviews were conducted with thirty court personnel: 12 mediation specialists, 8 family court judges, 3 public prosecutors, and 10 social and psychological experts. The interviewees worked in family courts in Cairo, Giza, Alexandria, Gharbeya, Qalubeya, and Qena.

Focus Group Discussions

Two focus groups discussions were conducted with 16 male and female lawyers.

Observation

Over the period of the first six months, mediation sessions in four mediation offices in Cairo and Giza were observed. Also, in the same period of time, court sessions in two family courts in Giza (First-Instance Court) and Cairo (Appeal Court) were observed. Most of the observation took place in the first court.

Content Analysis

The contents of the files of twenty-five court cases were analyzed. These files contained court judgments, lawyers' briefs, marriage and divorce certificates, and reports of mediation specialists.

Outline of Report

The report is divided into 3 chapters. Chapter 1 briefly outlines the main initiatives for legal reforms in Egyptian family law in the last four decades. Then the chapter examines the process of drafting, debating, and passing Law No. 10 of family courts.

Chapter 2 reports the findings of the ethnographic research that was conducted on the litigation process in family courts in Egypt. Through an analysis of the findings of the study, the impact of the new legal system on women's access to justice and their legal empowerment is examined.

Lastly, chapter 3 sums up the main findings and conclusions of the study. The chapter assesses the recent family law reforms by shedding light on the main strategies used, their resulting benefits, and the arising challenges in regard to strengthening the rights of women in the family sphere. In addition, lessons are drawn from two regional initiatives to legislate gender-sensitive family. Finally the chapter concludes with a number of recommendations for a just family law.

Results

Family Courts: Pathway to Women's Empowerment

This in-depth study of family courts shows that the new court system's role in strengthening women's access to a fair legal process and affordable and fairly swift justice is diminished by interrelated problems of legislative gaps, procedural

shortcomings, lack of effective implementation mechanisms, and the gendered politics inherent in the legal process. In what follows, I will outline these shortcomings as well as the benefits that women can gain from family courts.

Mediation

Benefits of Mediation for Female Disputants

- ❖ Some of the female disputants used the pre-litigation mediation as a strategy (in addition to family-based ones) to negotiate with the husband before escalating the conflict to court. This was particularly beneficial for women who still believed that their marriages could be saved.
- ❖ Maintenance cases were more likely than other suits to be settled in mediation offices. In cases concerning husband's failure to pay court-ordered maintenance, a settlement was reached in which the husband would pay the amount in installments. But again enforcement was contingent on the goodwill of husbands.

Obstacles to Successful Mediation

- ❖ Although pre-litigation mediation is mandatory, the presence of either or both disputants in mediation sessions is not obligatory according to Law No. 10 of 2004. Therefore, husbands often do not show up. Sometimes even wives do not show up. Thus many of the mediation sessions are attended by the legal representatives of the disputants, who are often keen to take the case to court in order to charge more fees.
- ❖ The premises where mediation sessions are carried out are highly inadequate. The offices consist of small and cramped rooms with insufficient number of chairs for the mediation specialists and disputants. Frequently more than one mediation session is held in the same room with no partitions or other means of maintaining the privacy of the disputants. The offices do not have any telephones, photocopying machines, or postage to send out mail.
- ❖ There are no standard procedures through which mediation is carried out. In some offices, the three mediation specialists (social, psychological, and legal) have distinct roles to play in mediation sessions, while in other offices the boundaries between their roles are blurred. Sometimes, the three specialists conduct the mediation session with the disputants. Other times, one or two mediation specialists (depending on availability) conduct the sessions. Reports written by mediation specialists (and submitted to the court) also vary in their professional quality and the usefulness of the information that they provide about the dispute in question.
- ❖ Interviewed and observed specialists reported that they lacked adequate training in mediation skills and work procedures.

- ❖ Lawyers hold highly negative views of the role of mediation and the competence of mediation specialists. For instance, all sixteen lawyers who participated in our focus discussions believed that pre-litigation mediation was a waste of time since disputants had already tried family-based ways of resolving the conflict before resorting to court. Also, these lawyers thought that mediation specialists lacked legal knowledge and adequate mediation skills. The research team, however, observed that lawyers who were working with women's rights groups such as the Association for Development and Enhancement of Women, had a positive working relationship with mediation specialists.
- ❖ For the most part, judges do not review mediation reports and thus do not make use of the information included in these documents. Six of the eight interviewed judges did not find mediation reports helpful.
- ❖ Some of the female and male litigants did not have a clear understanding about the role mediation in the legal process. Litigants with low-level education, in particular, did not understand that mediation was a pre-litigation (though compulsory) step. Many of the male interviewees perceived the wife's filing for a mediation petition as a hostile act that aimed at dragging them to court. Thus, they were not interested in attending mediation or court sessions except at the times when they were told by their lawyers that it was necessary for them to attend. Male litigants who went to mediation sessions reported that they thought that these sessions were useless and a waste of time.
- ❖ Families of female disputants tended to accompany them to mediation sessions. Relatives who attended the mediation sessions became emotional, spoke for female disputant, and hindered mediation.
- ❖ Some of the female interviewees reported that some of specialists they worked with showed lack of interest in their problems; pressured them to reconcile with the husband; or articulated disapproving views about the female disputants' demand for *khul*.
- ❖ There were no legal mechanisms in place to enforce the reached agreements. Enforcement problems were confounded by the recent decree issued by the board of Nasser Bank to discontinue the implementation of maintenance agreements reached in mediation sessions.

The observation of mediation sessions, however, did not reveal any biased or discriminatory practices and behaviors on the part of the mediation specialists towards the disputants. The mediation skills that the observed specialists displayed varied: some of the specialists were competent in guiding the sessions, showed empathy to the disputants while remaining objective, and maintained their patience and calm despite the difficult conditions of the workplace. Other specialists showed less confidence, interest, and ability in conducting the sessions. The competent and effective specialists tended to be those who took initiatives to develop their professional skills.

In addition, we note that there has been a recent initiative on the part of the government to address the problems encountered in mediation offices. Since December 2006, the Ministry of Justice, along with the National Council for Childhood and Motherhood (NCCM) launched *The Family Justice Project*. This five-year project is funded by USAID and consists of two main components. The goal of the first component, which falls under the supervision of the Ministry of Justice, is to upgrade the capacities of mediation offices. This involves training programs for mediation specialist where they are taught the philosophy and vision of family courts, mediation skills, and standardized procedures and practices for carrying out their roles. The first phase of the project targeted mediation offices in Giza, Menya, and Port Said. The second component of the *The Family Justice Project* is under the supervision of the NCCM and aims at: 1) raising awareness of family court, positive parenting, and reconciliation techniques among Egyptian families and the general public, 2) establishment of counseling offices inside NGOs to provide counseling and mediation services to families, 3) providing child protections services , and 4) empowering Egyptian families through provision of cluster of services that include micro loans, capacity building, legal assistance, child care, etc. These goals are being implemented by a number of NGOs that are receiving grants and training from the NCCM.

The Family Justice Project is a commendable initiative that needs to be documented and assessed. However, one main issue that the project does not address is the lack of effective mechanisms of enforcing settlement agreements and court judgments. Also, the project does not target single men and women who are in the process of seeking a marriage partner, a group that is in need of preventive support and empowerment services before they enter into marriages and start families.

Role of Public Prosecutor

The implementation of the new role assigned to the public prosecutor in Law No. 10 of 2004 shows that it has very limited benefits in terms of facilitating fair and expeditious process. All interviewed judges agreed that the memorandums that the prosecutors submitted to the court were not helpful and merely recommended deferring to the court's opinion.

On other hand, the office of the public prosecutor can be very important and useful to female litigants in urgent custody dispute cases that often involve forced seizure of children. Yet, this latter role is not widely utilized due to the lack of adequate legal knowledge and awareness among litigants, some mediation specialists, and law enforcement personnel. Recently there has been a call for the active involvement of the public prosecutor in maintenance cases, and particularly in the task of verifying the income and financial assets of husbands.² The majority of the interviewed judges held the same viewpoint.

Court Experts

² This was advocated by women's rights activists, prominent lawyers, and judges. Personal interviews, February 2007, October and November 2007.

While the court case is in progress, experts are supposed to meet with the litigants in order to provide another opportunity for mediation as well as to collect information about the dispute that would be helpful for the court. However, litigants are often not interested in mediation since they are not confident of the possibility of enforcing the agreements that are reached with the experts. Sometimes, one of the disputants (usually the husband) does not come to the meetings with the experts, and there are no legal consequences for their absence. Consequently, the reports that are submitted by the experts to the court often do not add any helpful information to the case file. Six of the interviewed judges thought that the role of court experts was not useful. Two of the judges who worked in rural communities disagreed with the above-mentioned argument. They reported that they made very good use of the social and psychological experts in their court. For instance, in maintenance cases these judges relied on the court experts to investigate the income and financial assets of the husbands. This task was facilitated by the small size and the closely-knit nature of the local community where the court was located.

The ten interviewed experts, all of whom worked in large urban areas, reported that their ability to mediate between litigants and to provide helpful and informed expert opinion to the court was conditional on a number of factors. The most important of these factors were whether litigants came to the meetings, and if they were willing and cooperative to try mediation. Another factor that impacted the experts' work was the judges' belief and support of their role. Thus, these experts argued that their performance and usefulness varied from case to case and from one panel of judges to another.

Judicial Bench

The interviewed judges thought that the feature of having a panel of three judges review each case was an advantage. Because this new feature allowed for deliberation, it facilitated an adjudication process that was based on a good understanding and implementation of both substantive and procedural laws. In addition, all eight judge interviewees also commended the idea of specialization on which the new system was based. They believed that this was particularly important in the case of the senior judges. Having a specialized judge, they argued, played an important role in shortening the duration of litigation, ensuring due process was followed, and enhancing the litigants' access to justice. However, the interviewees pointed out that in reality many of the family court judges, including six of them, were not specialized. The specialization of family court judges seemed to be slowly increasing in Cairo and Giza, but many courts in these governorates as well as others still adopted the old system of reviewing different kinds of cases in the same court on alternate days.

The interviewees thought that judges who were working in family courts needed regular training to help them acquire specific knowledge and skills that were directly beneficial to adjudication process in their courts. For instance, one of the interviewees pointed out that judges hardly ever received any training in the effective ways of mediating and reconciling between the litigants, particularly in divorce cases.

***Khul*: Procedures and Problems**

Seventeen out of the 53 female interviewees, who participated in this study, filed for *khul* divorce. Thirteen of these cases were still in review, while four were concluded. The period of litigation in the pending cases ranged between 1 to 2 years. One of the concluded cases lasted a month and a half, while the other three lasted between 1 and 2 years. The seventeen female interviewees who filed for *khul*, in fact, had grounds for prejudicial divorce, but opted for the former type of divorce because it was thought to be easier and faster to obtain.

There are several drawbacks in the procedures followed in *khul* cases. First, reconciliation is often unwanted by female litigants and thus this procedure merely prolongs the process. Second, both the husband and wife often do not trust the spouse's relatives to act as arbiters, and therefore they opt for a court-appointed arbiter. However, the plaintiff is obligated to pay arbitration fees, which is a burden for many women.³ In addition, sometimes husbands dispute the amount of the advance dower that is written in the marriage contract and claim that they have paid a higher amount.⁴ Some judges order an investigation before they issue the *khul* judgment, while others refer the dispute over the advance dower to a civil court. This ambiguity arises from the lack of articles in Law No. 1 of 2000 that specify the procedures to be followed in the case of dispute over the amount of the advance dower.

Since the prevalent societal attitudes towards *khul* are still very negative, mediation in such cases is very difficult and often unsuccessful. Husbands feel offended and resentful that their wives filed for this particular *type* of divorce. Thus, they are unwilling to come to mediation sessions and when they do, they are not cooperative.

Prejudicial Divorce: Procedures and Problems

Eight of the female interviewees filed for prejudicial divorce. One of the cases was concluded at the time of the interviews, while the remaining seven were still pending. The period of litigation in the concluded case was a year and a half. The period of litigation in the pending cases ranged between 1 and 3 years. The plaintiffs filed for prejudicial divorce rather than *khul* because they did not want to forfeit their right to spousal alimony during waiting-period (after divorce) and compensation money for spousal harm inflicted on them (*mut'a*). The main difference between interviewees who filed for *khul* and those who filed for prejudicial divorce was that the latter had better means (financial and familial) to go through lengthy legal process.

The biggest legal challenge that the interviewees faced was proving the 'harm' that was inflicted on them. Granting divorce on the grounds of 'harm' was introduced in Egyptian PSL on the basis of the pronouncements of the *Malaki* School of Jurisprudence. Nevertheless, the proof of 'harm' continues to be determined by the rulings of the *Hanafi* School of Jurisprudence, which requires credible eyewitness to the alleged harm. This

³ Female interviewees reported that they had to pay L.E 100 for arbitration.

⁴ It is very common to find many marriage contracts in which the paid advance dower is recorded as P.T. 25 or L.E. 1. In some contracts, no amount is specified and instead the term 'the agreed upon' amount is written.

requirement is often difficult to fulfill since sometimes the abuse (particularly emotional and sexual) that one spouse inflicts on another may not be witnessed by outsiders. In addition, even when there are eyewitnesses, not many of them are willing to go to court to testify.

One could argue that some of the new structures in the new family court system such as pre-litigation mediation and while-litigation meetings with court experts may help provide the panel of judges with adequate and in-depth information about the details of the dispute in question. Furthermore, this could be useful in shedding light on the 'harm' that female plaintiffs claim. Our findings suggest two things: First, the numerous problems that undermine the work of mediation specialists also impact their role in prejudicial divorce cases. That is, since many disputants (particularly male) do not come to the mediation sessions, specialists have limited insight into the details of the dispute. Moreover, since judges do not routinely read mediation reports, whatever information that is provided by mediation offices is often not used by the court.

Court experts, however, may have a bigger role to play in prejudicial divorce cases. When a wife files for prejudicial divorce on the grounds of husband's failure to support, the husband responds by filing for obedience award. The claim for obedience award is based on providing proof of the existence of an adequate conjugal home where the husband is willing to provide for his wife. Then the wife responds by disputing the obedience award within thirty days. This involves proving that the conjugal home is not appropriate or safe for the wife and the children, or that the husband has not protected or provided for his wife. One of the duties that court experts carry out is to inspect the conjugal homes that the husband provides in these cases. The findings of this study show that not all court experts inspect conjugal home in such cases. Some of the judge interviewees reported that since the experts in their court were middle-aged or elderly women, they did not send them out to inspect homes. Instead, other male administrative clerks in the court carried out this task and reported to the experts who then included the gathered information in their reports. But even when court experts inspected conjugal homes, this was not necessarily helpful to plaintiffs. One of the interviewed judges, for instance, reported that he did not send experts to inspect conjugal homes because he thought that the inspection of conjugal home was not particularly helpful. He pointed out that husbands often resorted to legal tricks and claimed that their parents' or friends' apartments were the conjugal home. The judge argued that even if there were an adequate conjugal home that the husband was providing, this in itself was not sufficient to award him obedience. If the wife was asking for divorce on the grounds of the husband's failure to support, the latter needed to prove to the court that he was able and willing to support his spouse.

The difficulties that experts may face in meeting with both disputants and establishing cooperative relationship with them impact the quality and quantity of information they can collect about the cases. In addition, experts lack mechanisms through which they can access important information about the cases such as husband's financial capabilities, family conditions that contribute to the conflict, disputants' earlier history of inflicting or suffering from abuse.

Maintenance: Procedures and Problems

Thirty-eight female interviewees filed for maintenance, which makes the latter the highest number of filed cases in the study sample. At the time of interviewing, nineteen cases were still pending and nineteen were concluded. The period of litigation in the concluded cases ranged one to four years. The period of litigation in the pending cases ranged one to two years. Most of the interviewees filed for multiple cases, maintenance being the first.

Mediation is most useful in maintenance cases, but enforcement of agreements is a major challenge that confronts plaintiffs. In the litigation stage, the plaintiff also faces the problem of providing evidence of husband's financial assets and earning capabilities. This is particularly difficult for women whose husbands worked in the informal sector. In this case, the investigation of the husband's income is carried out by a *Sheikh El Hara*, the law enforcement official who is in charge of that particular neighborhood. This mechanism of investigation is informal, unsystematic, and is often abused by litigants. That is, husbands often pay bribes to *Sheikh El Hara* so that the latter would conceal their true income and assets to the court. Women whose husbands worked in private businesses also reported lack of cooperation from the husband's workplace in providing the required documents to the court.

According to Article No. 6, PSL Law No.100, plaintiffs who are financially in need are entitled to court-ordered temporary maintenance while their case is being reviewed. Such order should be issued by the court within two weeks of the start of the litigation process, and the amount of temporary maintenance dispensed to the plaintiff is later deducted from the sum total of maintenance which is ordered by the court in its final judgment. Access to temporary maintenance is very helpful for plaintiffs because it provides the women with an income during the lengthy period of litigation. Yet, only three of the interviewees in the study had court orders for temporary maintenance. Also, based on my observations of court sessions, I noted that judges did not always issue court orders for temporary maintenance. The interviewed judges were divided on this issue. Some said that they refrained from giving court orders for temporary maintenance because they noted that when they did so, the plaintiff's lawyer tended to become sloppy and would drag the case for a long time. Other interviewed judges reported that they issued orders for temporary maintenance if the plaintiff's lawyer proved the financial need of his or her client.

In general, enforcement of court judgments in maintenance cases was much less difficult than agreements reached by mediation offices. Women whose husbands worked in the informal sector collected court-ordered maintenance from Nasser Bank. Plaintiffs whose husbands worked in the formal sector (whether government-owned or private) collected from the husband's workplace. Some plaintiffs made arrangements to collect the maintenance directly from the husband (e.g. through money order or through family members). In the concluded nineteen cases that were sampled in this study, eleven interviewees were collecting court-ordered maintenance from Nasser Bank, four from the spouse's work place, and one through a relative. The remaining three interviewees were

unable to enforce the court judgments, and two of them had filed for unpaid maintenance. It was quite common for plaintiffs who failed to implement court orders for maintenance to file for unpaid maintenance. In such cases, if the court ruled that the husband was able but unwilling to pay, he was imprisoned for a month. However, plaintiffs complained that filing for unpaid maintenance involved starting a whole new and often lengthy litigation process.

Court Documents

Twenty-five court files were analyzed to examine court personnel's understanding of: substantive PSLs, women's legal rights in PSL cases, gender roles and relations within marriage, and the legal process in the new family court system. These files included court judgments, lawyers' briefs, marriage and divorce certificates, and records of husbands' income. The principal investigator also examined some of the reports written by mediation specialists during visits to mediation offices. Collected court judgments were compared to judgments that were issued before the new family court was established. Our results show that there is no change in the way court judgments are written in the new court system. Like before, judgments are written in highly formulaic style that quotes profusely from Laws No. 25 of 1929 and No. 100 of 1985. But there is little explanation on how a particular law applies to the case in question.

Most of the interactions between the judges, lawyers, and the litigants in the court room revolve around the submission of documents. Such documents include the power of attorney given by the litigants to their lawyers, summons sent to the husband and proof of receipt, lawyers' briefs, proof of fulfilling the requirement of pre-litigation mediation, marriage and or divorce certificates, records of husband's income, children's birth certificates, etc. In fact, judges devote little time to interacting with lawyers and litigants. This is understandable considering the number of cases that is reviewed in court rooms each day. For instance, in the court room where most of the observations for this study took place, the number of cases reviewed per day ranged 150-200. Many of the interviewed judges also reported that they reviewed at least 100 cases per day, while the number was less in court rooms in rural areas (60-70).

In other words, the new legal system, perhaps like its predecessor, continues to be heavily reliant on a procedure-oriented approach towards the implementation of the law. This sometimes works against female litigants if their lawyers are not competent enough to submit adequate and necessary documents on time. Moreover, in this kind of procedure-oriented legal process, there is room for legal tricks and abuse of the system. For instance, many of the female interviewees pointed out that the lawyers of their husbands (or ex-husbands) submitted false documents that reported a much lower income than what their spouses were actually earning. Thus, there is a need to improve the material and human resources of the legal system so that the panel of judges in each court room would review fewer cases and accordingly have more time to communicate with litigants and their lawyers. A much more needed change, though, is for the court not only to rely on submission of documents but also on other mechanisms that would enable the judges to have a better understanding of the nuanced aspects of the cases being reviewed. Such

mechanisms already exist, namely mediation specialists and court experts. But what is needed is to develop and strengthen the structure of their work and to enhance their roles.

Gendered Legal Process

The substantive personal status laws that are implemented in family courts do not give husbands and wives equal rights: men have unconditional right to unilateral divorce and polygny; they are entitled to women's obedience and sexual submission in exchange of financial support. Women's right to divorce is conditioned by the fulfillment of numerous procedures and requirements, some of which can be very difficult such as the proof of 'harm' in the case of prejudicial divorce or waiting for a period of a year after the sentencing of an imprisoned husband in order to obtain divorce. Divorced women are entitled to be the custodial parents of their children until the children reach 15⁵; however, mothers lose child custody if they remarry. In addition, in the case of divorce, women who are custodial parents lose claim to the conjugal home, and are instead entitled to housing allowance (often meager and inadequate). Fathers have full legal guardianship over their minor children; while mothers do not have that right. This differentiation in the legal standing and rights between men and women in substantive personal status laws *do* impact the work of family courts. The gendered content of the laws are mirrored in court documents and are at play in mediation sessions and court proceedings.

Another gendered dimension of the legal process is court personnel's views on female rationality, female sexuality, and gender roles in marriage. These views are articulated in court proceedings and mediation sessions. One of these views, for instance, considers women as emotional and hasty, and therefore incapable of making rational decisions about dissolving their marriage and obtaining divorce. This skepticism about women's rationality, particularly when it comes to decisions about divorce, is also accompanied by questionable strategies that some mediation specialists and judges use when they attempt to reconcile disputants. One strategy that was observed in this study was to warn the female disputant of the difficulties and stigma that awaited her if she became a divorced woman. One judge, for instance, tried to persuade a plaintiff to reconsider her divorce claim by warning her that her young daughter would probably have a difficult life with limited prospects for marriage and respectability if her mother became a divorcee.

Another common view expressed by court personnel is that women's sexuality is to be controlled and guarded by their husbands. According to the interviewed court personnel (as well as the disputants), one of a woman's main duties in marriage was to be sexually accessible to her husband. However, a woman's right to have sexual access to her husband, while not disputed by the court personnel and disputants, was not highlighted as one of her basic rights. Rather, what was stressed is her right to be supported by her husband. Furthermore, female disputants' views on what constitutes violation of their

⁵ According to Article 20 in Law No. 25 of 1929 (amended by Law No. 100 of 1985) a mother is entitled to the custody of her children until the son reaches the age of 10 and the daughter the age of 12. At that time, the judge may rule that the daughter stays with her mother until she marries. In 2005, Law No. 4 was issued, which stipulates that the mother maintains custody of both daughter and son until they are 15, at which time the judge finds out the preference of the children in regard to parental custody and takes that into consideration in his ruling.

sexual rights were different from those expressed by court personnel. Mediation specialists, court experts, lawyers, and judges defined spousal sexual abuse in narrow categories, namely: if husbands had anal sex with their wives or if they abstained from having sexual relations with them for a long period of time. Female interviewees, on the other hand, identified forced sexual intercourse and sexual relations that were accompanied by emotional maltreatment as a serious form of a spousal sexual abuse. Furthermore, eleven of these women suffered from this abuse and considered it as one of the reasons why they wanted to end their marriage.

It has to be noted; however, that these gendered views on women's sexuality and sexual rights in marriage did not always hinder female plaintiffs' access to the legal redress which they are seeking. Furthermore, women plaintiffs and their lawyers sometimes made use of these gendered notions and practices in order to claim legal redress.

Family Courts: Where Do We Go from Here?

We can draw the following conclusions from the present study:

- ❖ The new court system has the potential to provide speedy legal redress to female plaintiffs through its alternative mechanisms of dispute resolution and new judiciary structure.
- ❖ The benefits that family courts are currently providing to female plaintiffs are small due to a number of shortcomings and gaps in the legislation, mechanisms of implementation, resources, and the capacity and the training of court personnel.
- ❖ Because some of the substantive family laws that are being implemented in the new courts continue to reflect biases against women, the new legal system is limited in its ability to strengthen the legal rights of women.

Women's rights activists used recent procedural reforms as a vehicle through which they successfully pushed for few but significant legal rights for women. But these reforms are still perceived by most women's rights groups as inadequate. There is a consensus that a new and comprehensive family law code is needed; one that espouses a marriage that is based on gender equality.

Regional Initiatives: Lessons Learned

As Egyptian reformers push for a new kind of legal marriage, there are a number of lessons to be learned from the Moroccan and Tunisian family law reforms. In both countries, the legal changes were based on a new model of marriage that promoted equal duties and rights for husbands and wives. In the recent Moroccan *Mudawwana*, which was introduced in 2004, the wife is no longer demanded to be obedient to her husband; and the family is the joint responsibility of both husband and wife. The legal consequences of this new model of marriage are significant. For instance, a woman of maturity age does not need a male guardian to represent her when contracting a marriage. The husband's right to unilateral divorce is restricted: he has to file for a court's permission before he can divorce his wife and the court orders arbitration efforts between the couple and if these efforts fail, the wife is compensated for the harm inflicted on her.

A husband's right to polygny is also curtailed: he has to file for a court's permission before he can remarry and he has to establish strong "objective" reasons for his request and guarantees that he will treat both wives equally. In addition, the wife's access to prejudicial divorce is facilitated by expanding the grounds for 'harm' are expanded, while a husband's failure to honor the stipulations in the marriage contract is also considered automatic grounds for divorce.

The Tunisian family law of 1993, the *Majallah*, is also premised on a model of marriage in which husbands and wives share familial responsibilities. Like the Moroccan *Mudawwana*, the *Majallah* does not obligate a wife to be obedient to her husband. But she is required to contribute to the support of the family if she has the means. Also, the legislation outlaws polygny on the grounds that it is not mandatory in Islam and that it is not humanly possible for a husband to treat his wives equally. Accordingly, polygyny is considered a form of 'harm' to individuals and to the public welfare. The *Majallah* also makes judicial divorce the only form of legally sanctioned divorce as well as being equally available to husbands and wives. In addition, custody cases are determined on the basis of the child's best interest.

The most significant lesson that we can learn from the Moroccan and Tunisian reform initiatives is that transformative legal changes that lead to gender equality in the family domain require a new model of marriage. The new model needs to do away with the notion of exchanging the wife's obedience and sexual access for the husband's financial support. Instead, marriage should be based on shared rights and responsibilities between spouses. But a marriage that is founded on equal partnership and responsibility may impact women differently. For instance, in this kind of marriage, the wife may no longer enjoy the exclusive right to her own financial assets, and she may be obligated to contribute to the family if there is need. Will this model of marriage be fair to all Egyptian women? On the one hand, the realities of many Egyptian marriages show that they contribute significantly to the financial support of the family. Yet, unlike their husbands, they do not acquire any legal rights from their financial role. But some women may be ambivalent or even opposed to being legally obligated to contribute to the conjugal household and to give up their claim to the financial support of their husbands in exchange for equal marital and parental rights. What about the cases when women are not generating income and do not wish to be employed? Thus, while it is certain that we need a new model of marriage that is based on justice and equality, there needs to be a debate about what the bases for this equality would be, and what the implications for the duties and rights of both spouses.

Often the religious discourse that is used by reformers in many Muslim countries (including the above-mentioned as well as Egypt) is not based on well-thought out and developed religious arguments. Reforms are introduced because of successful lobbying of the government on the part of women's rights groups and because these legal changes serve the government's agenda. However, these reforms do not necessarily enjoy support among religious groups and large sectors of the general public. My point is that the religious arguments that are used to justify the call for legal reforms should go beyond being a mere tactic. There is a growing body of literature that shows how gender equality

in both the private and public domains is essential in order to fulfill Islamic principles of justice (*adl*), doing good (*ihsan*), and monotheism (*tawhiid*). This literature calls for the use of a systematic and hermeneutical methodology of reading and interpreting the *Quran* and the *Hadith*.⁶ However, this scholarship remains confined to academic circles, and in my opinion, is not adequately accessible to legislators and reform actors.

Lastly, it has been argued that the recent reform processes in Egypt (as well as Morocco and Tunisia) lacked grass-root support and participation. To what extent can reforms that are introduced through a top-down approach impact the daily realities of people? Legal reforms (even the most emancipating ones) are not the end result. These reforms are only meaningful in so far as they actually lead to positive changes in the lives of disputants, particularly the underprivileged ones such as women. The reform strategies need to go beyond lobbying the government. What is lacking in the current Egyptian reform efforts is to build support among different sectors of the society (e.g. religious scholars, Islamic NGOs, legislators, families and communities) through dialogue and awareness raising, and to partake in the process of imparting to new generations of children and young people enlightened religious knowledge and sensibilities that are appreciative of justice, equality, and doing good.

Recommendations

In conclusion, this study proposes the following recommendations:

1. Legislate a new and comprehensive family law that espouses a new model of marriage that is based on justice and equal partnership.
2. Draft the new law through a participatory grass-root process of debate with different sectors of the society (different women's rights groups, other members of civil society, religious establishment and scholars, the media, the government, the general public)
3. Strengthen the role(s) of mediation offices and court experts through the following: capacity building and training in mediation skills and gender sensitivity; adequate and sufficient workplace resources; the empowerment of mediation specialists and court experts through legislative amendments that obligate disputants to come to mediation sessions and enforce the reached agreements.
4. Enforce the specialization of family courts judges and provide them with regular capacity building and training.
- 5- Assign the public prosecutor the task of investigating and submitting to the court evidence of husband's income in maintenance cases.
6. Eliminate the current role of the public prosecutor (submission of memorandum of opinion to the court), or enhance this role by enabling the office public prosecutor to be involved in preparing the case (e.g. investigating and gathering information about the dispute).

⁶ See An-Na'im, Abdullahi Ahmed. "Islam and Women's Rights: A Case Study." In: *Women Living under Muslim Laws Dossier*, 14-15 September 1996: 1-9; Wadud, Amina. "Quran, Gender and Interpretative Possibilities." In: *Hawwa*, 2, 3, 2004: 316-335; Mir-Hosseini, Ziba. "The Construction of Gender in Islamic Legal Thought and Strategies for Reform." In: *Hawwa*, 1, 1, 2003: 1-28; Masud, Muhammad Khalid. "Muslim Jurists' Quest for the Normative Basis of *Shari'a*: Inaugural Lecture. Leiden: ISIM. Retrieved at http://www.isim.nl/files/inaugural_masud.pdf, January 15, 2007

7. Evaluate the *Family Justice Project* and mainstream the services and support which NGOs (through this project) provide to families who are prone to marital conflicts (e.g. couples who are economically underprivileged, unemployed, living with their extended families, or have sick and/or disabled children).
8. Create projects similar to the *Family Justice Project* to provide multiple forms of support to single men and women who are in the process of seeking a marriage partner. These services would include training in communication and conflict resolution skills, legal awareness, sensitivity to gender rights, and opportunities for economic independence.
9. Promote public awareness of the purpose, structures, and procedures of family courts through well-planned and diversified media campaigns. These campaigns could include newsletters, TV and radio advertisement, and talk shows.
10. Raise the legal awareness and gender sensitivity of people working in the media through workshops organized by women's rights groups and the Ministry of Justice.