

Family Courts in Egypt: Pathway of Women's Empowerment?¹

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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 2000.² 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 claimants in family law cases. Law 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.³ And Article 17 gives women in unregistered marriages (known as *urfi* marriage) the right to file for divorce.⁴ In 2004, two more legal reforms were passed: Law 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. Also, Law 11 of 2004 set up a government-run Family Fund, called Nasser Bank, to facilitate the implementation of court orders for alimony and child maintenance. Lastly, in 2005 Law 4 was passed, which gives divorced women the right to maintain the custody of their children until they reach age 15.

But have these legal reforms enhanced women's rights in the family domain? Have they enabled them to access justice in family law cases? This paper attempts to provide some answers to these questions by reporting the findings of an eleven-month ethnographic study of the new family courts in Egypt.

Family Courts: An Ethnographic Study

Family courts in Egypt are designed to establish a specialized, mediation-oriented, and efficient legal system. First, instead of the old system of dividing family law cases between 'summary' and 'first instance' courts, the new law stipulates that all cases are to be handled in 'first instance' family courts. Secondly, each case is reviewed by a panel of three judges who are assisted with two social and psychological experts. These experts, one of whom must be a woman, are obligated to attend court sessions, meet with disputants, and submit reports to the court. Also, all disputes concerning each family are compiled in a single court file. In addition, a specialized public prosecutor's office that deals solely with family law cases has been established. Furthermore, special departments have been set up to enforce court judgments.

The most significant feature of the new system is the incorporation of mediation into the legal process. Before a disputant can file a suit, she/he is obligated to file for mediation. Mediation offices are housed in the family court, and mediation is carried out by 3 mediation specialists who have training in law, psychology, and social work. Mediation sessions are conducted over a period of fifteen days. Upon the consent of the two parties, the mediation period can extend to two more weeks if there is a hope of reaching a settlement. If mediation fails, disputants can file a court case within a week. However, if settlement is reached and approved by disputants, it is legally binding.

Lastly, court sentences in the new system can only be appealed at the Court of Appeal but not at the Court of Cession.⁵

Purpose of Study

In this study, I seek to : 1) examine how this new legal system is implemented , 2) identify the ways in which the system is benefiting and/or disadvantaging female litigants, 3) analyze the gender politics that are played out in the mediation process, litigation procedures, and the interactions between court personnel and litigants, 4) shed light on the dominant notions of marriage, female sexuality, and gender roles and relations that are embedded in the legal process and how they impact female litigants' access to justice, and 5) determine if and how female litigants are negotiating and manipulating these notions to achieve their goals.

Methodology and Data Collection

My theoretical approach is to study recent legal reforms 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. For data collection, in-depth interviews were conducted with: 1) ten individuals who were involved in the process of drafting, debating, and passing recent legal reforms⁶, 2) fifty-three female litigants and 11 male litigants⁷, and 3) thirty court personnel such as mediation specialists, judges, public prosecutors, and social and psychological experts.⁸ Also, two focus groups discussions were conducted with 16 male and female lawyers. In addition, over the period of the study, mediation sessions and

court proceedings were observed in two courts in Giza and Cairo. Lastly, content analysis was conducted on the files of twenty court cases.

Results

The findings of the study show that there are several factors that undermine the role of family courts and diminish their effectiveness. First, mediation, for the most part is not benefiting female litigants; two out of the 53 female interviewees were able to reach a settlement with their spouses during mediation sessions. A major obstacle is that the presence of either or both disputants in mediation sessions is not obligatory according to Law 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. Also, family members who accompany disputants to mediation sessions hinder the process since they tend to exacerbate the dispute. In addition, lack of resources such as adequate training and well-equipped and suitable workplace as well as the gendered views of specialists impair the mediation work.⁹

However, mediation offices have been effective in settling some maintenance disputes, which has been beneficial to female litigants since agreements reached by mediation offices are legally binding. However, this successful role of mediation offices has been disrupted by a recent governmental decree which has stopped enforcing maintenance agreements reached by mediation offices because of an increasing number of fraudulent cases.

Second, lengthy litigation still continues to be a problem. The period of litigation in the researched cases was fairly long: the range was 1-4 years in maintenance cases, 1-2 years in *khul* divorce, and 1.5-3 years in cases of divorce on grounds of 'harm.'

Third, although some of the new procedures introduced by Law 10 were intended by the legislator to make the adjudication process more effective, implementation has shown that these procedures end up being unhelpful steps that merely prolong the legal process. For instance, Law 10 obligates the public prosecutor to submit a memorandum on each case to the court. However, in reality the public prosecutors do not play any role in collecting and substantiating information for court cases, and therefore they are often unable to provide helpful opinion to the court. In fact, the interviewed judges point out that the memorandums that the prosecutors submit to the court for the most part merely recommend deferring to the court's opinion.

Litigants, judges, and court-appointed social and psychological experts have also reported that the effectiveness of the role of experts is limited. 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 even 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. Nevertheless, some of the judges who work in rural areas point out that they have been able to make use of the experts in maintenance cases: they assign them to investigate the financial assets of husbands in order to help the court make an informed judgment about the husband's ability to provide for the family. It seems that the small and closely-knit features of rural communities enable experts to gather such information, a task which is very difficult to do in urban areas.

Another problem is the gender politics embedded in the legal process. During court proceedings, judges, lawyers, and mediation specialists voice highly gendered views on female sexuality, female rationality, and gender roles. Such views sometimes hinder a just legal process for female litigants. For instance, it has been observed that one of the strategies that some mediation specialists and judges use in their attempts to reconcile disputants in divorce cases is to warn the wife of the difficulties and stigma that awaits her as a divorcee. Furthermore, mediation specialists have expressed negative views about women who file for *khul*: they have argued that the women that come to their offices do not exercise this right rationally and file for *khul* divorce on what they thought to be 'fickle' grounds such as being interrogated by husbands about their whereabouts or scolded for not doing the housework. These views in some cases seem to affect the specialists' opinion on what a wife should give up in exchange for *khul*. For instance, one mediation specialist has argued that she thinks a woman who files for *khul* should not only forfeit her right to the dower but also the furniture in the conjugal home.

Legal arguments by lawyers advocating for female clients are also filtered through similar gendered views about marriage and the roles of the husband and wife. For instance, in one of the observed divorce cases, the lawyer for the wife argued that the husband was not fulfilling two of his fundamental duties as a husband, namely supporting his wife and protecting/controlling her sexuality. He pointed out the husband did not maintain his wife, and he frequently traveled and left his 'young beautiful' wife alone with his brother who was living with them.

Nonetheless, some of the legal strategies used by female litigants reflect an understanding of the gendered aspects of the legal process and show ways in which these women subvert the gendered system for their benefit. For instance, some of the female interviewees disclosed to the researcher that sexual abuse was one of the main reasons why they wanted to end their marriages. Yet, these women added that they often made strategic choices about the reasons they cited as grounds for their legal claims (e.g. failure to provide rather than sexual abuse against the wife) because they believed such reasons were more persuasive and easier to establish to the court.

Conclusion

According to the 2006 statistics of the Ministry of Justice, 80% of the annual cases in family courts were concluded.¹⁰ Also, the ministry recently stated that the rate of success in the work of mediation offices is 40%.¹¹ But this in-depth study of family courts reveals a more complex and problematic picture.¹² Mediation often does not work, and when it does, it may not be just or beneficial to women. The role that the new courts can play in

strengthening women's legal rights is weakened by interrelated problems of legislative gaps, lack of effective implementation mechanisms, and the gender politics of the actors involved in the legal process.

The above-mentioned drawbacks, I believe, are centrally linked to two larger issues. First, substantive laws that regulate marriage and the roles and rights of married couple continue to be biased against women. For instance, men's right to repudiation and polygny is unrestricted, women's ability to prove spousal harm is diminished and thus their right to prejudicial divorce is restricted, and women's guardianship over their children is curtailed. There is exhaustive literature that debates the causes of this gender inequality, which range from patriarchal and historically specific interpretations of Islamic laws to incongruence between legal models of marriage and its lived realities to an increasing state control over the family domain through centralized and standardized laws.¹³ But the main point is that without reforming the substantive laws, the recent changes in the system and procedures of family law will remain ineffective.¹⁴

The second issue concerns the process of legal reform and how it shapes the end result of legislation. Interviews with women's activists, public intellectuals, legislators, and policy makers have shown that the process of drafting, debating, and lobbying for recent changes in family law was filled with contestations.¹⁵ Some of the women's rights groups felt that the process was monopolized by the National Council for Women and government agencies. These activists add that the reforms introduced cosmetic changes without addressing the root causes that weaken women's rights. Some prominent judges who partook in the process of debating the draft laws also argue that the reform process

was not based on sound legislative work and was rushed because of the government's political agenda of seeking the approval and support of international donors.¹⁶ The question then arises: how are interpretations and implementations of these new laws impacted by these various contestations of the reform process?

To conclude, the problems of the new family courts in Egypt highlight not only the contradictions and limitations of the process of legal reform but also its complexity and multidimensionality.

Endnotes

¹ This project is one of a series of studies that are being undertaken by the Social Research Center at the American University in Cairo as part of the research activities of the 'Pathways to Women's Empowerment Research Consortium in partnership with Institute for Development Studies at U.K.

² Law No. 1 of 2000, for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters, cut down the 600 clauses of previous procedural laws to mere seventy-nine. The law replaced Decree- Law of 1907, Decree Law of 78/1931, Decree Law 462/1955, and Part 4 of Code of Civil and Commercial Procedural.

³ The law stipulates that the female litigant forfeits the dower and maintenance in the waiting period following divorce in exchange for divorce. In addition, there is a period of 90 day arbitration during which reconciliation is attempted by court-appointed arbiters before the court judgment is issued.

⁴ The idea behind this law is to give women a way out of unregistered marriages, which are not recognized by law and thus deprive women in such marriages from legal rights such as spousal maintenance, alimony, and inheritance.

⁵ The court verdicts in *khul* cases, however, can not be appealed at any level.

⁶ The interviewees were women rights activists, prominent lawyers and judges, public thinkers, and policy makers.

⁷ Twenty of the female interviewees were selected randomly from the clients of the Association for Development and Enhancement of Women (ADEW), an NGO that provides multiple services to women such as legal assistance, micro loans, and capacity building. The remaining twenty-eight interviewees were recruited through informant lawyers. The male litigants were recruited through informant lawyers. Female and male litigants were disputants in the following cases: maintenance, *khul* divorce, divorce on the grounds 'harm,' obedience awards, child visitation rights, child custody, paternity disputes, destruction of marital furniture, and repossession of conjugal home.

⁸ Interviews were conducted with 12 mediation specialists, 8 family court judges, 3 public prosecutors who are specialized in family court cases, and 10 social and psychological experts who work in family courts.

⁹ Since December 2006, the Ministry of Justice and National Council for Childhood and Motherhood launched *The Family Justice Project*. This project aims at addressing some of the gaps in family courts by providing training and capacity building to mediation offices, and working with NGOs to support and empower Egyptian families.

¹⁰ See Annual Statistics on Personal Status Cases, Ministry of Justice, 2006.

¹¹ See the statement of Ministry of Justice, reported in *Al-Ahram*, November 4, 2007.

¹² Prior to this study, there were two studies that examined the work of family courts in Egypt. The Ombudsman's Office at the National Council for Women carried out an evaluation of family courts through an analysis of the complaints reported by female litigants to the office. The Ombudsman's report pointed to some of the problems addressed in this study. See Ombudsman's Report on Family Courts, February 2006. See also Chowdhury, Jamila Ahmed. "Family Court A.D.R. in Egypt and Some Exemplary Provisions for Other Muslim Countries." In: *Studies in Islam and the Middle East*, 3, 2, 2006. Chowdhury's study was more of an analysis of the theoretical model of Egyptian family courts rather than a field-based research on the work of the courts.

¹³ See Sherif, Bahira. "Gender Contradictions in Families: Official versus Practical Presentations among Upper-Middle Class Muslim Egyptians." In: *Anthropology Today*, 15, 4, 1999:9-13; Brown, Nathan. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. New York: Cambridge University Press, 1997; Sonbol, Amira. "Law and Gender Violence in Ottoman and Modern Egypt." In: Sonbol, Amira (ed.). *Women, the Family, and Divorce Laws in Islamic History*. Syracuse, N.Y.: Syracuse University Press, 2001; and Moors, Annelies. "Debating Islamic Family Law: Legal Texts and Social Practices." In: Merithwether, Margaret and Tucker, Judith (eds.). *Social History of Women and Gender in the Modern Middle East*. Boulder, CO: Westview Press, 1999.

¹⁴ There are currently two parallel initiatives being undertaken by the National Council of Women, on the one hand, and the Network of Women's Rights Groups to draft new and comprehensive Family Code.

¹⁵ Among the most outspoken critics of these reforms are prominent women's rights groups such as *the Egyptian Center for Women's Rights, Center for Egyptian Women's Legal Assistance, and New Woman*

¹⁶ Personal interviews with a senior judge at a Family Court of Appeal (July 2007), and with a member of the Judicial Inspection Office at the Higher Supreme Court (October 2007).