

Possibilities of Reforming Family Laws in the Arab World:

National Issues Forums II

ANSD/ 2010

Proposal

Family laws or personal status codes in the Arab World are civil codes that regulate marriage, divorce, personal maintenance, paternity, and child custody. They are an integral part of a complex and highly sophisticated system of Islamic jurisprudence known as Shari'a which rests mainly on the Quran as the main source and the Sunna¹ (Prophet's Tradition) and Fiqh² as additional sources. Right from the very beginning of Sharia formation significant theological and jurisprudential differences existed not only between Sunni and Shi'a Muslims (the main division between Muslims today), but also among the different schools of thought (known as *Madhahib*, sing. *Madhhab*³) of each tradition.

In fact, besides the obvious differences in handling family related matters between Sunni and Shi'a communities who sometimes coexist within the same country (as in Iraq, Bahrain, Lebanon⁴, Saudi Arabia, and Pakistan), different schools and opinions may be followed by the Muslim public within the same country, though probably not formally applied by the courts. This means that judicial practice may not necessarily be in accordance with the school observed by the majority of the Muslim population in the country. Some Arab North African countries provide a good example on this. Although many of those countries have inherited the official Ottoman preference for the Hanafi Fiqh School, popular practice goes in according to the Shafi'i or Maliki Schools. In Bahrain and other Gulf states like Oman, Qatar, Saudi Arabia and the United Arab

¹ *Sunnah* means the sayings, deeds and approvals of Prophet Muhammad.

² *Fiqh* means understanding, comprehension, knowledge, and jurisprudence in Islam. It refers to the legal rulings of the Muslim scholars, based on their knowledge of the shari'a and as such is the third source of rulings after the Quran and the Sunna.

³ *Madhhab* means school of thought. There are four Sunni schools of thought: Hanafi, Maliki, Shafi'ie and Hanbali. The majority of Shi'i Muslims (or 85% of the followers of the 12 Immams) follow the Ja'fari Fiqh School. There are three schools of Ja'fari jurisprudence: Usuli, Akhbari, and Shaykhi.

⁴ Lebanon has in addition to the Shiites and Sunnis 16 other communities, 12 of which are Christians, that follow different churches (Maronite, Greek Orthodox, Catholic, Armenian, etc...). Each community has its own Family law that is related to its jurisprudence or legislation.

Emirates (UAE) personal status law remains unlegislated. The shari'a courts in these countries apply classical Islamic personal status laws to Muslims depending on the Islamic sect people may belong to.

To the Arab public, Family Laws remain central to their cultural identity as Arabs and/or religious integrity as Muslims. Yet, with the acceleration of globalization, social change that is taking place all over the Arab World today, the growth of women's movements, emergence of the international women's rights agenda (mainly CEDAW⁵), and the fact that many Arab states have either signed or ratified the CEDAW, reforming Family laws has become a priority in the region. Over the past two decades, demands for amending family laws have grown and experimentations with reforming them have been taking place in many countries, yet, painstaking and difficult; due to their religious and cultural sensitivity of course. Experimentations have therefore varied in terms of their success and failure. While the Moroccan *Madowna* (Family Law as amended in 2004) stands as a leading successful example amongst these experiments, other attempt to change or challenge family laws were countered by conservative voices of the Islamists and/ or the Tribal leaders who would rather see the laws untouched (as in Jordan, Yemen, and Egypt). To the latter, Family Laws were the only aspect of Shari'a that has successfully resisted displacement by European codes during the colonial period, and survived various degrees or forms of secularization of the state and its institutions since independence of most Arab countries. (The annexed table illustrates the different aspects of Family Laws in selected Arab States and their reference to the CEDAW).

Consequently, family laws have become a contested ground between conservative and fundamentalist groups, on the one hand, and modernist and liberal groups, on the other. While the former group ascertains family laws as the embodiment of Islam itself, the latter criticize them as outdated, rigid and discriminatory against women. Unfortunately, the cause of a legitimate reform is almost lost in this confrontation with each side refusing to "forfeit" any validity to the other's point of view.

⁵ The Convention on the Elimination of all forms of Discrimination Against Women.

Can anything be done at this stage? The ANSD believes that reforming Family Laws is essential to the democratization endeavor of the region and that the reform at this level is not only possible but also needed and desired. In our proposed public forums we seek to engage liberals, Islamists, Tribalists, Government official and the general public in an actual theological, legal and political debate about what family reforms need to be made and how they can be achieved in practice in each respective country. The Forums will help identifying problems and critique aspects of the theory and practice of family laws from the point of view of each stake holder. Explicit objectives of Forums include exploring possibilities of generating internal theological, legal as well as political support for family law reforms.

Our Approach

As an initial preparatory step the ANSD will contract a researcher to conduct empirical and theoretical study of family laws theory and practices in the 8- Arab countries represented by the Network. Members of the ANSD will work with research results and start a process of further local explorations on where the public stands on the reforms. Each team will conduct a series of interviews with local non-governmental organizations, jurists, and activists evaluating and disseminating emerging views and reform proposals among relevant constituencies in the region. Third, an issue book will be issued and communicated with the general public in several forums that will be held by the network members in each country.

Family Laws and the CEDAW in the countries represented by the ANSD

MIDDLE EAST	Marriage Age for Females	Marriage Age for Males	Polygamy permitted?	Is notification of first wife and justification required?	Do men and women have equal rights to divorce?	Divorced woman's right to custody of son till age	Divorced woman's right to custody of daughter till age	Signatory to CEDAW?	With reservations to which articles?
Algeria	18	21	Yes	Yes	No	16 (10 if remarries)	18 (if remarries & spouse within prohibited deg to daughter)	Yes	2, 9(2), 15(4), 16 & 29(1)
Egypt	16	18	Yes	Yes	No	10 (15 by judge)	12 (age of marriage by judge)	Yes	2, 9(2), 16 & 29(2)
Jordan	15 (18 by temporary Law in December 2001)	16 (18 by temporary Law in December 2001)	Yes		No	puberty	puberty	Yes	9(2), & 16(1 c.d.g)
Lebanon	18 (17 with guardian consent); 15 for Shi'a; 18(16) for Druze	17 (9 with guardian consent); 9 for Shi'a; 17(15) for Druze	Yes	Yes	No	7; 2 for Shi'a; 7 for Druze	9; 7 for Shi'a; 9 for Druze	Yes	9(2), 16(1 c.d.f.g) & 29(1)
Morocco	18	18	Subject to judge's authorization and to strict legal conditions	N/A	Yes	Judge grants according to best interests of ward	Judge grants according to best interests of ward	Yes	9(2), 16 & 29(1)
Tunisia	17	18	No	N/A	Yes	7 (then father if he requests)	9 (then father if he requests)	Yes	9(2), 16(c.d.f.g,h) & 29(1)
Yemen	15	15	Yes	Yes	No	9 (then ward chooses)	12 (then ward chooses)	Yes	29(1)