



The American University in Cairo  
Social Research Center

**Recent Reforms in Personal Status  
Laws and Women's Empowerment**

**"Family Courts in Egypt"**

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### **Preface**

This study was conducted as part of the research activities carried under Pathways of Women's Empowerment Research Program. The study started in January 1<sup>st</sup>, 2007 and was completed on December 31<sup>st</sup>, 2007.

The study was undertaken by a research team consisting of: Mulki Al-Sharmani (principal investigator), Sawsan Al Sharif (research assistant), and Fayrouz Gamal (research assistant). The final report and executive summary were written by the principal investigator.

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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 the personal status Law No. 1 of 2000.

<sup>1</sup> 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.<sup>2</sup> And Article 17 gives women in unregistered marriages (known as *urfi* marriage) the right to file for divorce.<sup>3</sup>

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 to facilitate the implementation of court orders for alimony and child maintenance through Nasser Bank.

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

This report presents the findings of an in-depth study of the litigation process in family courts in Egypt. The main aim of this twelve-month research, which started in January 1, 2007, was to identify the strengths and weaknesses of the new legal system 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.

The report is divided into three 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, which concerns with the establishment of family courts. The aim of the chapter is to shed light on the socio-political and legal contexts in which legal reforms in Egyptian Personal Status Laws

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

(hereafter PSL) are taking place and to show how different factors that are at play in this context impact the reform process.

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 effective reform processes and just family laws.

## Chapter 1

### Family Laws in Egypt: Historical Trajectory and Reform Process

#### 1. Family Law in Egypt: Historical Background

Before the codification of laws in the Middle East, family dispute cases were handled by *qādis* (learned religious scholars). These *qādis* settled the disputes according to the doctrines of one of the five Islamic schools of law (i.e. *Hanbali*, *Shafi*, *Hanafi*, *Maliki*, and *Gafari*). With decolonization and independence, the region witnessed wide scale efforts to codify family laws as part of the agenda of the newly independent states to strengthen their control and to shape the social and cultural reproduction of their societies (Brown 1997, Moors 1999).

Up until the 19<sup>th</sup> century, all aspects of life in Egypt were regulated by Islamic *Shar'ia*. At the end of the 19<sup>th</sup> century, the legal system in the country was codified and secularized. Commercial, civil, and criminal codes, drawn from the French Code, were introduced. Family life, however, continued to be regulated by *Shari'a* Courts. In 1920, Law No. 25, the country's first codified personal status law was enacted. The *Shari'a* Courts applied the new codified law in family dispute cases. In 1934, Court of Cessation designated all matters pertaining to the finances and relations of family members as personal status issues.<sup>4</sup> Thus, family law cases came to be known as personal status cases. In 1955, *Shari'a* Courts were abolished as part of the government's effort to centralize the legal system. And instead of learned religious scholars (*qādis*), judges trained in modern law schools reviewed personal status cases. These judges were not specialized in family law, but reviewed different kinds of cases in the course of their work.

Adherence to the *Hanafi* School of jurisprudence, which was decreed in the Ottoman period, was maintained in the legal system of the modern state. However, the newly codified law borrowed rulings from the other Islamic schools of jurisprudence, particularly the *Malaki* in regard to judicial divorce. Still, the legal system required the judge to apply the dominant opinion of the *Hanafi* School unless there was an explicit test in the Egyptian legislation on the personal matter being reviewed.<sup>5</sup>

The codification, like elsewhere in the region, was motivated by state agenda of establishing a modern nation. But advocates for the rights of Egyptian women such as the Egyptian Feminist Union tried to incorporate their agenda for reforms in family law into the state's modernization project. (Sonbol 1996, Mashhour 2005, Sonneveld 2002). For example, the leaders of the feminist movement such as Huda Sharawi called for raising the marriage age, and reforming divorce and custody laws. These efforts resulted in some reforms. Law No. 25 of 1920, for instance, included some changes in divorce laws that were aimed at improving the legal rights of women. Articles 4-6 in the law allow women to file for divorce on the grounds of husband's failure to provide

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<sup>4</sup> See Court of Cessation Decision, 21 June 1934.

<sup>5</sup> See Article 6 of Law 462/1055, Article 280 of Law N. 78/193; and the current procedural Law No. 1 of 2000, article 3

maintenance, articles 9-12 allow judicial divorce if the husband suffers from contagious disease, while articles 12-14 allow judicial divorce on the grounds of husband's desertion or imprisonment. In December 27, 1923, another reform was introduced and marriage age was set at 18 for men and 16 for women. The women's groups in collaboration with the government tried to introduce further reforms that aimed at restricting polygny by proposing the inclusion of stipulations in marriage contracts. However, the proposal for the marriage contract was rejected by the King in 1926. In 1929, PSL No. 25 was passed. The new law included further reforms such as women's right to file for judicial divorce on the grounds of husband's maltreatment. Also, repudiations that occurred under coercion and intoxication were considered invalid.

The social welfare policy of President Nasser's era brought reforms that improved the conditions of women and strengthened their rights in education and employment. An additional right that women obtained in that period was the right to vote. In 1964, the Ministry of Social Affairs adopted the proposal of issuing new marriage contract with stipulations, but the idea was again dropped. On the whole, it could be said that reforms in PSL at that time were minimal.

President Sadat's era was characterized by different kinds of government initiatives that had interesting and contradictory impacts on family law. Sadat started his rule by courting the Muslim Brotherhood group through acts such as the release of some of their members from prison. In addition, President Sadat amended the constitution in 1971. Article 2 in the new constitution states Islamic *Shari'a* as the main source of government legislation, a strong reflection of the government's espousal of an Islamic discourse. The growing influence of Islamist ideology in the Egyptian society in the 1970s may explain the government's efforts to strengthen its rule through assertions of its religious legitimacy (Lone 1995). Yet at the same time the late President initiated substantive reforms in family law that aimed at the legal empowerment of women. The President decreed PSL No. 44 of 1979, which included revolutionary reforms such as women's right to judicial divorce on the grounds of their husbands' second marriage, and the wife's right to the conjugal home in the case of divorce if she has the custody of the children. The new law also legislated *mut'a* (indemnity) for women who are divorced by their husbands without their desire or fault (Fawzy 2004). To avoid opposition from religious establishment, Islamist groups, and other conservative factions in the society, the President decreed the law at a time when the Parliament was not in session. PSL No. 44 of 1979, however, was later annulled by the High Supreme Court in 1985 because the process through which it was passed was ruled to be unconstitutional.<sup>6</sup>

In short, during Sadat's rule, strong claims on the part of the government to Islamic discourse were coupled with bold efforts to introduce legislative reforms that aimed at establishing a family law that gave women more substantive rights.

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<sup>6</sup> On the grounds of his presidential power to issue decrees at times of emergency, President Sadat passed the law without presenting it first to the Parliament for review. The High Supreme Court ruled that at the time when the law was decreed, there was no emergency that would legally justify the President's use of that power.

When PSL Law No. 44 of 1979 was struck down in 1985, it was replaced in May of the same year by Law No. 100. The reforms that were introduced in the previous law were either crossed out or water-downed in the new law. For instance, Law No. 100 of 1985 does not give a woman the right to file for divorce simply on the grounds of her husband entering into a new marriage. However, the woman in such a situation will be granted divorce only if she proves to the court that she is ‘harmed’ by her husband’s new marriage. In addition, what constitutes ‘harm’ is very loosely defined in the law, which gives judges a lot of leeway in the interpretation process, a practice that has often worked against women in judicial divorce cases (Halim 2005). Moreover, a woman who is filing for judicial divorce on the grounds of her husband’s second marriage can only do so within one year of her knowledge about the new marriage. Another drawback in PSL Law No. 100 of 1985 is that, unlike its predecessor, it does not give divorced women possession of the conjugal home during the period of their custody of their children. Instead, the new law obligates husbands in such cases to pay housing costs. Unfortunately, the implementation of the law showed that in most cases the court ordered husbands to pay very little money for housing costs.

The experiences of many female litigants, in fact, demonstrated that many aspects in the judicial system hindered these women from obtaining fair and quick resolution in family disputes. The number of divorce cases filed yearly was staggering. Some of the literature estimated it as half a million divorce case per year (Shah 2000, Hammond 2000). Other sources estimated that a quarter of million women resorted to court every year (Tadros 2000, Sakr and Hakim 2001) resulting in an enormous backlog of five million cases. The number of judges, furthermore, was insufficient. For example, in 1997, 14 million lawsuits were filed but there were only 4,000 judges to preside on all these cases (Singerman 2005). Whereas a man could divorce his wife unilaterally and without the need for court permission, divorce cases initiated by women sometimes lasted several years during which female litigants’ lives and future plans were put on hold. In addition, court orders that obligated husbands to pay alimony and child support were frequently hard to implement because of corrupt and poorly trained law enforcement authorities as well as the lack of effective sanctions against husbands who failed to comply with court orders. Thus, the new law was perceived by advocates for women’s rights as ineffective because it had many gaps that disadvantaged women, and the reforms that it introduced were for the most part insufficient and inadequate.

## **2. Recent Reforms**

Since the eighties and up till the present day, various efforts have been undertaken by a coalition of women activists, lawyers, local NGOs, government officials, and public thinkers to introduce a series of reforms that would address the above-mentioned gaps in the current family laws and legal system of the country. The most notable of these efforts are the new marriage contract project, the new procedural law (Law No. 1 of 2000), and the establishment of family courts through the promulgation of Law 10 of 2004. In what follows these initiatives will be reviewed.

## 2.1. New Marriage Contract

Ensuring the rights of women through the practice of inclusion of stipulations in their marriage contracts is an old practice that existed in the region as early as the first centuries of the Islamic empire and as late as the Ottoman empire. (Tucker 1998, Hanna 1996, Sonbol 2003). In Egypt, this was also a fairly common practice among marrying couples that was discontinued with the codification of family laws in the first half of the twentieth century. As mentioned previously, re-introducing the practice of issuing marriage contracts with stipulations was one of the main proposals that activists for women's rights adopted at different eras of the modern state to address certain gaps in the substantive family law. For example, in 1926 the idea was proposed with the aim of restricting polygny, but it was killed by the King. In the sixties, the Ministry of Social Affairs proposed again the idea of marriage contracts with stipulations in order to protect women's right to work, but once more the idea was shelved.

In the late eighties, the idea of inclusion of stipulations in a marriage contract was revived again. This latest attempt was initiated by a group of activists, lawyers, and public thinkers who called themselves 'The Communication Group for the Enhancement of the Status of Women in Egypt.'<sup>7</sup> In 1988, this group published a booklet entitled *The Legal Rights of Egyptian Women in Theory and Practice*. The booklet informed women about their rights and showed them how to formulate stipulations in their marriage contracts. The proposed new contract included nine stipulations that were framed as questions that were to be asked by the *mazoun*<sup>8</sup> to the husband, who had the option to accept or reject them. The stipulations covered different rights such as a wife's right to work, pursue education, travel without restriction, to make claims to conjugal home and furniture, to initiate divorce, and to ensure that her husband does not contract another marriage. During the International Conference on Population and Development (ICPD) which was held in Cairo in 1994, the coalition of Egyptian NGOs presented their platform document in which they recommended the new marriage contract. Subsequently, the proposal was adopted by the Ministry of Justice and presented to the Grand Mufti of Egypt for review.

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<sup>7</sup> The group was known as Group of Seven and was led by the lawyer and member of National Council for Women, Mona Zulficar. The other six members of the group were: Aziza Hussein, Chairperson, Family Planning Association; Ingy Roushdy, writer and editor, *Al-Ahram*; Saneya Saleh, Former Professor of Sociology, American University in Cairo; Awatef Waly; Chairperson, Friends of the People Society; Mervat El-Tellawy, former Ambassador to Austria; and Magda El Mofty, teacher of simultaneous interpretation, American University of Cairo. Other main contributors to the work of the group and members of the larger coalition that pushed the proposal were: Zeinab Radwan, Speaker of Parliament and Professor of Islamic Philosophy and Former Dean of *Dar El Ouloum* (School of Arabic and Islamic Studies), Fayoum Branch, Cairo University; Fawzyia Abdel-Sattar, Professor of Islamic Law, Cairo University, Hoda El Sadda, Professor of English Literature, Cairo University; Tahany El Gibaly, Supreme High Court Judge, Fathy Naguib, Chief Justice, High Supreme Court; and Iman Bibars, Director of Association for Development and Enhancement of Women (ADEW). For a detailed analysis, see Singerman, Diane. "Rewriting Divorce in Egypt: Reclaiming Islam, Legal Activism and Coalition Politics." In: Robert W. Hefner. (ed). *Remaking Muslim Politics: Pluralism, Contestation, and Democratization*. Princeton and Oxford: Princeton University Press, 2005. Pp. 161-188

<sup>8</sup> The *mazoun*, who has religious education and carries a license from the government, officiates marriage contracts.

The main opposition to the new marriage contract came from the religious establishment as well as opposition parties that were aligned with Islamist groups such as the Labor Party. The religious establishment rejected the new contract on several grounds: It argued that some of these stipulations 'forbade the permitted and permitted the forbidden.' This referred specifically to the stipulation that restricted the husband's right to polygyny and the one that allowed wives to travel without permission from their husbands. Also, the religious establishment as well as other *ulama* (religious scholars) argued that including stipulations in marriage contracts would cause harm because it would lead to mistrust between couples and discourage young men and women from getting married.

Shaham (1999) argues that the arguments that were made by the religious establishment, however, can be refuted on several grounds. First, according to one of the Islamic schools of Law (*Hanbali*), it was valid to enter stipulations in marriage contracts. Second, entering stipulations in marriage contracts was customary in Egypt in past eras. Third, it is a practice that takes place in other Islamic countries. And finally, since husbands always have the option of rejecting the stipulations, no harm could come of them. Shaham attributes the opposition of the religious establishment to the new contract to their fear that entering stipulations in marriage contracts will turn them into civil contracts. This would undermine the role that the religious establishment plays in regulating family affairs and relations.

*Al-Shaab*, the newspaper published by the Labor Party, also criticized the proposal and presented it as posing a threat to the stability and harmony of family life and relations. Interestingly enough, the proponents of the new marriage contract adopted this project because they perceived it as a less controversial and more effective way of introducing reforms in family law. In addition, their proposal was based on religious grounds. They argued that according to the *Hanbali* School of Islamic Law, inclusion of stipulations in marriage contracts was permissible and the violation of these stipulations would be grounds for the dissolution of marriage. The granddaughter of Prophet Muhammed (Sukayna bint Husayan) included stipulations in her marriage contract which ensured her that she would live in the place of her choosing and that her husband would not contract another marriage. Despite their religious discourse and style of argumentation, the proponents of the new marriage contract failed to gain support from the religious establishment and subsequently the proposal was dropped by the government so as not to risk its religious legitimacy (Sonneveld 2002).

In August 2000, a much changed and watered-down version of the proposed marriage contract was quietly issued. The new contract did not include the nine stipulations that were proposed in the previous draft, but instead it had a blank section in which the couple could insert any stipulations that they wished.

## **2.2 Law No. 1 of 2000**

The efforts to issue a new procedural law were also undertaken by the same coalition that lobbied for a new marriage contract. The coalition's efforts to lobby for the new procedural took nine years and were motivated by two goals. First, the new law was seen as providing a comprehensive and yet simple and straightforward procedures to review

PSL cases. Instead of the several hundred laws that regulated the procedures for family law cases, the new law introduced mere seventy-nine articles. Second, the new law was to be a procedural mechanism through which women would be indirectly given new substantive legal rights. Not surprising, the articles in Law No. 1 of 2000 that caused uproar and a lot of opposition were article 20 on *khul* divorce, article 17 on divorce in *urfi* marriages, and draft article 26 pertaining to woman's right to travel (Zakareyia 2003, Singerman 2005, Shaham 2005). The latter article was crossed out before the law was passed.

Most of the opposition to Law No. 1 revolved around Article 20. The parliamentary debate about the *khul* article was heated and controversial. Opposition to the draft law, particularly the *khul* article, came not only from members from opposition parties but also from those from the ruling party. The argumentation style used by most of these MPs reflected a great deal of fear, alarm, and negative views on women's rationality, morality, and sexuality. The common critique that was voiced by the members revolved around fears that the new law was going to be abused by women because of their assumed lack of moral values and rational thinking. One MP said that the law would be abused by women who wanted to leave their husbands for richer and more attractive men. Another MP feared that if the law was passed, husbands who were enduring the hardship of migration in Gulf countries would be unilaterally divorced by their fickle wives! Other MPs thought that this law would be rewarding adulterous women since it gave them a legal exit out of their marriage. Another argument that was made against the law was that it would only benefit rich women who are able to forfeit their dower and alimony in exchange for divorce. (Zakareyia 2003).

The arguments that were made by the critics of the law in the Parliament reflect biased views and attitudes towards women that are shaped by prevalent gendered norms and discourses. The fears that the MPS expressed are also closely tied to the gap between the socioeconomic conditions of many of families and the model of marriage that is promoted by public culture and dominant religious discourses. In many Egyptian families, more husbands are finding it difficult to make claims to the "guardianship" and "supremacy" that are bestowed upon them by the society because they are no longer capable of providing for their families (Rugh 1993, Sherif 1999, Hoodfar 1996, Singerman and Hoodfar 1996). Married women, on the other hand, juggle multiplicity of roles such as economic providers/ contributors to their families, managers of the conjugal household and its resources, and care providers. The tensions arising from the evolving changes in gender roles in marriage are exacerbated by stifling socio-economic conditions that have led to migration of Egyptian workers, high rate of divorce, and increase in female-headed households (Bibars 1985).

The official position of *Al Azhar* was supportive of passing Law No. 1 of 2000. The position of the Sheikh of *Al Azhar* was that *khul* article, unlike the new marriage contract, was in accordance with religious injunctions. In fact, when the draft law was presented to the Parliament, it was reported that 35 of the forty members of the Academy of Islamic Research at *Al-Azhar* had approved the draft law. However, various articles in *Al-Ahram* as well as opposition party newspapers showed that many of the *ulama*, including a

significant number of those who were members of the Academy were strongly opposed to the *khul* article. The dissenting *ulama* published a letter of opposition which they addressed to the President. They argued that the law violated religious injunctions since it eliminated the consent of the husband and made divorce in *khul* cases irrevocable (“A Manifesto” 2000).

Both the proponents of the law and the *ulama* who attacked it agreed that *khul* as a form of divorce was sanctioned by both the *Quran* and the *Hadith*.<sup>9</sup> Yet both disagreed on their interpretations of how *khul* should be applied in accordance with the religious sources. The interpretation of dissenting *ulama* negated the purpose of *khul*, which was to give a wife the choice to exit a marriage in exchange for giving up her financial rights. In fact, the *khul* that these *ulama* sanctioned did not differ that much from the unilateral repudiation to which husband was entitled to by law. The *ulama* demanded that a husband in a *khul* case, just like in unilateral repudiation, should retain the right to consent and to revoke the divorce within the waiting period.<sup>10</sup> The letter that the *ulama* sent to the President, however, expressed, a lot more than simply a dissenting religious opinion. The *ulama* said that the proposed law negated the “guardianship” of men and threatened the “continuity and coherence of the Muslim Family (A “Manifesto” 2000). Furthermore, the *ulama* claimed that the proponents’ use of religious discourse was insincere and similar to the colonialists’ manipulation of *Shari’a* in earlier periods of the nation. In other words, the letter was also expressing the *ulama*’s fears from changes in the status quo of Egyptian families, particularly the hierarchical relations between husbands and wives, which they believe are sanctioned by Islam. Despite the strong opposition to the *khul* article, it was kept in the final draft of the law that was passed.

Draft article 26 in Law caused even a greater uproar in the parliamentary debates. This article pertained to the wife’s right to travel without her husband’s permission. Most of the MPs opposed the article on the grounds that the *Shari’a* gave a husband the right to his wife’s obedience. Accordingly, it was argued that a wife should not leave the conjugal home without a husband’s permission. As a result of the strong opposition from the majority of the MPs and many religious scholars, article 26 was omitted before the law was passed. Nevertheless, after the promulgation of Law 1 of 2000, the Higher Supreme Court ruled that a husband’s right to restrict the travel of his wife was unconstitutional.<sup>11</sup>

It is significant, though not surprising, that all interlocutors who took part in these public debates used religious-based discourses to make their cases and to undermine the positions of their opponents. However, it would be inaccurate to categorize this debate, as well as others about reforming family laws as merely revolving around what the true interpretations of *Shari’a* injunctions on family relations should be and how they are to be best reflected in modern family laws. Other important issues that come up in such

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<sup>9</sup> The religious injunction for *khul* is based on Quranic Verse 229 in Cow *Sura*. The injunction is also based on the Prophet’s *Hadith* regarding the wife of *Thabet Ibn Qays* who told the Prophet that she did not wish to live with her husband although he had not wronged her. The Prophet told her to return the dower to her husband (a garden) and then he granted her a divorce.

<sup>10</sup> The waiting period is three menstruation cycles for the divorced wife or until the time when she gives birth if she is pregnant at the time of divorce.

<sup>11</sup> See Court Judgment No. 243, 2001, Higher Supreme Court of Egypt

debates are a myriad of concerns and fears that are related to changing socioeconomic conditions, painful and uneven transformation of gender roles and relations, and struggles between different entities in the society (such as the government and religious establishment) over the scope and significance of their role in shaping the cultural and social reproduction of the society.

The significance of Law No. 1 of 2000 does not lie merely in its introduction of two articles that gave women new substantive rights, as well as its simplification of the procedures of PSL cases. The new law also paved the way for two subsequent procedural legislations that were introduced in 2004. Article 10 in Law No. 1 stipulates that all personal status cases will be reviewed by ‘first-instance’ family courts. That is, this article calls for a unified legal system for PSL cases. This was later developed into the system of family courts, which was introduced by Law No. 10 of 2004. In addition, article 72 in Law No. 1 of 2000 stipulates that Bank Nasser, a government-owned Fund, will implement court judgments in alimony and maintenance cases. Again, this new system was later developed into a full-fledged Family Fund through Law 11 of 2004.

In the following subsection, I will outline and analyze the process of advocating for, debating, drafting, and passing the family courts law. This analysis is based on review of secondary materials as well as in-depth interviews with eleven prominent figures who were involved in the process. These figures consist of: members of legislative committees in the National Council of Women and the People’s Assembly, members of women rights groups, prominent judges and lawyers, public thinkers, and journalists.

### **2.3 Law No. 10 of 2004**

In 1999, Nefertiti Tosson, a councilor at the Ministry of Justice, conducted a study on PSL courts. Councilor Tosson was at the time a lawyer and a researcher. She was commissioned by the Alliance for Arab Women, a woman’s rights organization, to carry out the study. The study analyzed PSL cases in five courts in one quarter of the year. The researcher and her team analyzed procedural and substantive laws regulating divorce, alimony, compensation alimony (*mu’ta*), and obedience awards. The study pointed to a number of gaps and shortcomings in the procedural and substantive laws that often resulted in lengthy and unjust legal process for female litigants. One of the main recommendations of the study was the need to establish a specialized and unified legal system that would handle all PSL cases (Tosson 1999).

A year later, the idea of unified and specialized courts for PSL cases was introduced in Article 10 in Law 10 of 2000. Meanwhile, prominent lawyers, judges, and public thinkers were increasingly calling for the establishment of family courts. According to Ms. Mona Zulficar, a prominent lawyer and a key member of the legislative committee in the National Council for Women (NCW), the idea of specialized courts for family disputes was first proposed in the mid-nineties.<sup>12</sup> Prominent lawyers and public thinkers such as Dr. Laila Takla were advocating the idea within the circle of those involved in reforming PSL. Ms. Zulficar and the other members of coalition who spearheaded the recent legal reform initiatives were supportive of the idea and incorporated it in Law 1 of

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<sup>12</sup> Personal interview, September 23, 2007

2000 through the insertion of Article 10. Subsequently, the project of drafting a legislation to establish family courts was undertaken by the Ministry of Justice in coordination with the National Council for Women.

Dr. Laila Takla was one of the pioneers who advocated for the idea of specialized family courts. As a Director of the Association for the Union of Egyptian Women Lawyers, Takla lobbied first the National Council for Childhood and Motherhood (NCCM) and later the National Council for Women (NCW)<sup>13</sup> to advocate the idea to the government. In 2001, the NCCM and NCW held a meeting in which Dr. Laila Takla and the Senior Judge of family courts in Australia presented the new legal system to an audience of women's rights groups and government agencies. In 2002 and 2003, as the legislators were working on drafting the new law for family courts, Takla published a series of articles in the daily newspaper *Al-Ahram* to explain the philosophy and the goals of the new system as well as to comment on the initial drafts of the law. In these articles, Takla says that family courts are based on a distinct vision that should be reflected in their structure, procedures, and the performance of their personnel.<sup>14</sup> She says that a family court is a legal system that takes into account the specificity and sanctity of family relations. The goal of this system, according to Takla, is to make it possible and desirable for a family dispute to be resolved before it reaches the litigation stage. She explains that the work of family court consists of three stages: 1) Reconciliation, 2) Mediation, and 3) Litigation. In the first stage, efforts are made to reconcile the disputants. These efforts are to be carried out by specialists in family relations, psychology, and family law. If reconciliation efforts fail, attempts are made to mediate between the disputants. The aim of second stage is to enable the disputants to resolve the conflict and obtain their rights through a mediated agreement. Takla suggest that this role can be carried out by public prosecutors or retired judges. If mediation fails, then the disputants resort to litigation at which point the case is referred to the court, along with the reports of the specialists and mediators. Takla emphasizes that what ensure the effectiveness of family courts are: 1) well-trained personnel who understand and espouse the philosophy of this new legal system, and 2) the enforceability of mediated agreements and court rulings. Furthermore, to ensure the privacy of disputants in family law cases, Takla recommends that all sessions in family courts be closed and that the children not be present unless it is deemed necessary by the judge.

The NCW asked Ministry of Justice to draft a law to establish family courts. The legislative department at the ministry drafted a law and presented it to the legislative committee at the NCW.<sup>15</sup> The members of the committee found this first draft of the

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<sup>13</sup> The National Council for Women was established by the government in 2000. The council aims at promoting policies to strengthen women's rights and enhance their development as well as monitoring the government's efforts to reach these goals.

<sup>14</sup> Takla, Laila. "Do We Have Family Courts?" In: *Al-Ahram*, April 1, 2003; Takla, Laila. "For the Sake of Egyptian Family," In: *Al-Ahram*, May 6, 2003; Takla, Laila. "Family Court: Characteristics and Foundations." In: *Al-Ahram*, April 15, 2003, Takla, Laila, "They Want a Solution." In: *Al-Ahram*, May 13, 2003

<sup>15</sup> Members of the legislative committee at the NCW include prominent professors of law, Islamic jurisprudence, women's rights activists, and other members of civil society. At the time of drafting and Law 10, some of the members of the committee were Dr. Zeinab Radwan, Speaker of Parliament and

law to be unsatisfactory. The first draft was found to be not well-developed. In addition, some specific points were critiqued. For instance, it was argued that the draft law did not define the structure and role of mediation office clearly. Another point that was critiqued in the draft law was the proposal that the mediation office be headed by retired judges. Some of the critics of this idea argued that this could raise confusion about the nature and the boundaries of the authority of the mediation office.<sup>16</sup> Another concern was that because of their age, retired judges would not be able to provide a long-term directorship to the mediation offices.<sup>17</sup> Another proposal in the draft law was to have the public prosecutor in the family court carry out mediation between the disputants. The opponents of this idea argued that people often associated public prosecutors with their prosecutorial work and thus they would not find their role as mediators persuasive or comfortable.

Subsequently, a joint committee was established to work on another draft of the law. The joint committee consisted of members from the Ministry of Justice, the legislative committee at the National Council for Women, and representatives from the National Council for Childhood and Motherhood. The new committee came up with a second draft, which was further developed and improved on until it was finally passed by the Parliament in March 2004.

The law, which consisted of 15 articles, aims at providing: 1) specialized and effective justice, 2) quality legal service, 3) alternative mechanisms of resolving family disputes, and 4) mechanisms for enforcement of court judgments. 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. The role of the experts involves two things: 1) to provide another opportunity for mediation between the disputants, and 2) to provide the judges with helpful and detailed information about the dispute and the parties involved as well as their professional opinion. In addition, according to the new law a specialized public prosecutor office is established in each family court. The role of the public prosecutor is to attend all court sessions and to submit to the judges a memorandum of opinion on each case. The rationale is to provide another mechanism through the adjudication process is improved. Also, all disputes concerning each family are compiled in a single court file so that the judges can be well-informed about interconnected disputes. Furthermore, special departments have been set up to enforce court judgments.

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Professor of Islamic Philosophy and Former Dean of *Dar El Ouloum*, (School of Arabic and Islamic Studies), Fayoum Branch; Ms. Mona Zulficar, prominent lawyer and women’s rights activists; Councilor Mahmoud Ghoneim, head of the Judicial Inspection Unit at the Supreme Constitution Court. Former Members included Dr. Fawzyia Abdel Sattar, Professor of Criminal Law at Cairo University; Ms. Hosn Shah, a famous columnist in the daily newspaper *Al Aqbar*, a film script writer, and women’s rights activist.

<sup>16</sup> Personal interview with Director of Committees at the National Council for Women, October 28, 2007.

<sup>17</sup> This point was made by the Head of Inspector’s Unit at the Supreme Constitution Court in a workshop on family courts, organized by Alliance for Arab Women, December 12, 2007, Cairo

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 Cessation.<sup>18</sup>

Unlike Law No. 1, Law 10 did not trigger any heated debates in the parliament and was quietly passed. Nevertheless, this did not mean that the process of introducing this new legislation was free from challenges and contestations. The critiques that were directed against the new legal system could be summed up as follows: 1) it was not clear whether the new system was intended to address the specific problems that female litigants confront and whether it was capable of doing so, 2) there were several gaps in the law that would diminish the effectiveness of the new system, 3) the process of drafting and passing the law was not participatory, and 4) the reform process was rushed. I will analyze each of these critiques in what follows.

First, some of the proponents as well as the critics of the new system pointed out that there was confusion about the vision and the central goal of the newly established family courts. Dr. Laila Takla cautioned against perceiving the new court system as a tool of women's empowerment. Takla argued that family court, as a system that was increasingly being adopted in different countries, was not concerned with women per se but aimed at providing family-centered mechanisms to resolution of family disputes. (Takla 2004). Yet a considerable number of the articles that were published in daily newspapers on family courts hailed the new system as another legal accomplishment for women in the family domain. For instance, Councilor Badr El Din Al Sayed, Deputy Senior Judge at Court of Cessation, in an article published by *Al-Ahram* argued that the new family courts would provide protection to widows and their small children from the greed of male family members.<sup>19</sup> Journalist Amal Said also referred to the new court system as another achievement for women in personal status laws, in an article that reported interviews with prominent judges, professors of law, and legislators.<sup>20</sup>

On the other hand, some of critics of Law No. 2004 argued that a new legal system, without changes in the substantive family laws, was not only inadequate but could also be counter-productive. Some of the women's activists, for instance, reported to the author of this paper that they worried that the process of mediation in family courts could work against female litigants since the substantive family laws that are still being applied are

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<sup>18</sup> The court verdicts in *khul* cases, however, can not be appealed at any level.

<sup>19</sup> See Badr El Din Al Sayed. "Family Courts: The Goals and National Requirements." In: *Al-Ahram*, December 12, 2002.

<sup>20</sup> See Amal Said. "The Court of 'Bringing the Family Together'." In: *Al-Ahram*, March 15, 2003

based on gender inequality. Thus, they added that women could be pressured to reconcile with their husbands or agree to a mediated agreement that was unjust.<sup>21</sup>

The second kind of critiques that was targeted against the new law focused on different aspects of the new legal structure and its procedures. For instance, some lawyers and judges argued that the procedure of having a panel of three judges review every single PSL case would result in a backlog of cases since there was an insufficient number of judges nationwide.<sup>22</sup> It was also argued that the abolishment of appealing PSL cases at the level of Court of Cessation would deprive the new legal system of the wealth of court judgments that was provided by the Court of Cessation and through which legal principles were developed.<sup>23</sup> The previous issue was also raised by a prominent legal figure and a member of the legislative committee at the NCW, who had closely reviewed the two drafts of the law over a period of two years and a half before it was presented to the Parliament.<sup>24</sup> The interviewee pointed out the abolishment of appealing PSL cases at the Court of Cessation was particularly detrimental to cases pertaining to ‘guardianship over money’ (e.g. protection of minor’s inheritance, the financial assets of a missing person, legal competence cases). In fact, the interviewee pointed out that the structure and system of family courts was not suitable for reviewing cases pertaining to ‘guardianship over money.’ Yet, according to Law No. 10, Article 3, the new family courts would review all PSL cases (i.e. those concerned with ‘guardianship over self’ meaning martial disputes, and those concerned with ‘guardianship over money’).<sup>25</sup>

The interviewee was also concerned that the role of court experts as defined by Law No. 10 was ineffective; he argued that since the experts did not play any role in the pre-litigation mediation, it was questionable that they could mediate between the disputants during the review of the case in the court. Thus, the experts’ compulsory presence in court sessions, according to the interviewee, would not be helpful and could end up prolonging the legal process.<sup>26</sup> This interviewee also pointed out the law did not put in place adequate mechanisms for the enforcement of court judgments. The establishment of an enforcement department in each family court was ambiguously worded in the text of the law and did not, for instance, stipulate the establishment of special law

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<sup>21</sup> Personal interview with director of a women’s rights organization, May 2, 2007; personal interview with the director of a women’s rights organization, February 22, 2007 and October 3, 2007; personal interview with a women’s rights activist and famous columnist

<sup>22</sup> See Magda Mahna. “Family Court.” In: *Al-Ahram*, 15 April, 2003

<sup>23</sup> Ibid.

<sup>24</sup> Personal interview, October 29, 2007

<sup>25</sup> Laila Takla made a similar comment in her book, *Issues that Pre-occupied Me: Family Courts*. Cairo: The Higher Council for Culture, 2004. In a seminar on family courts organized by Alliance for Arab Women on December 12, 2007, Judge Roushdy Saleh, Senior Judge at Criminal Court and a former family court judge suggested that appealing PSL cases at the Court of Cessation be reinstated in the law with the exception of divorce cases so that women would not be harmed by the prolonged litigation process. But it can be counter-argued that if his suggestion is implemented, litigation process in maintenance, child custody, and dispute of paternity cases will be prolonged, which will negatively impact women.

<sup>26</sup> See Law No. 10 of 2004, Article 11. A similar comment regarding establishing special police force was made by Mohamed Abdallah Al Dakr, Lawyer at the Court of Cessation, in article published in *Al-Ahram*, November 13, 2003.

enforcement police force; something that he thought was necessary.<sup>27</sup> In addition, he thought that the role of the public prosecutor in PSL cases was not well-defined in Law No. 10.<sup>28</sup> The law simply said that the public prosecutor would attend all court sessions, and would submit a memorandum of opinion to the court. But since the prosecutor would not be involved in preparation of the case or in the mediation with disputants, it was not clear how his role as defined by the law would contribute to the adjudication process. Lastly, another critique that was noted by the interviewee was in regard to Article 12 the law which stipulates that the first family court which has geographical jurisdiction to review the first filed case in particular family dispute, also reviews all subsequent cases that emerge from the first case or are brought forward by the same disputants. This article, the interviewee, does not take into account factors such as the change of residential address of disputants or their abuse of the law by deliberating filing cases in different courts or one that is far from the residential area of the other disputant.<sup>29</sup>

The third critique of Law No. 10 of 2004 was related to the process of drafting and passing the law itself. Some women's rights groups thought that the government did not provide them with the opportunity to have a more active participation in the process. They pointed out that they mostly obtained their information about the process from the printed media. Instead of organizing a series of debates with women's rights groups and other members of the civil society, the legislators and relevant government ministries mostly engaged with the NCCM and NCW. One could argue that both the NCCM and the NCW were established by the government to inform and monitor the process of policy making on issues pertaining to women and children. Furthermore, the members of the legislative committee at the NCW include some members of the civil society. Yet, the perception among women's rights groups was that the recent process of reforming PSL had been for most part monopolized by governmental bodies such as relevant ministries and semi-governmental organizations such as the NCCM and NCW.<sup>30</sup> For instance, in a personal interview with director of one of the women's rights groups, she pointed out that her organization mostly followed the process of drafting and passing Law No. 10 through the coverage of the printed media. That is, the center was not given an opportunity by legislators to play an active part.<sup>31</sup> She, nonetheless, sent the center's position on the law in a memorandum to the NCW. However, she adds that since 2005, the NCW has been making noticeable effort to involve women's rights groups and the civil society in its initiatives and activities. For instance, the center that she directs collaborated with the Ombudsman's Office for Women at the NCW in evaluating the performance of family courts in 2006.

Other women's rights activists thought that it was not only them that were excluded from a wider participation in the reform process but also ordinary women whose lives were

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<sup>27</sup> See Law No. 10 of 2004, Article 15

<sup>28</sup> See Law No. 10 of 2004, Article 4

<sup>29</sup> The same critique was voiced by Laila Takla. See Takla, Laila. *Issues that Preoccupied Me: Family Courts*. Cairo: Higher Council for Culture, 2004.

<sup>30</sup> This was voiced in personal interviews with a number of women's rights activists. Some of these also activists pointed out that even current government initiatives to amend the family courts system and to legislate a comprehensive PSL are not made public to them nor are their input solicited.

<sup>31</sup> Personal interview with a director of a women's rights organization, October 3, 2007

affected by these new laws. One of these activists pointed out that those who were involved in the process of drafting and debating Laws No. 1 and No. 10, for instance, did not take solicit the opinions of ordinary women in a meaningful and consistent way.<sup>32</sup>

Lastly, some of those who were involved in the reform process as well as those who were excluded agreed that often reform processes that had been undertaken by the government in PSL were rushed and not well-done because the government was too eager to claim credit for the reforms in the eyes of the Egyptian general public as well as international donors. This led to passing laws and initiating new legal systems without addressing some important legislative gaps as well as putting in place the mechanisms needed for the implementation of the new laws. For instance, a prominent professor of law at Cairo University and the former head of the legislative committee at the Parliament, pointed out that although Law No. 1 of 2004 was good, its positive effects were diminished because the government did not allocate adequate time and resources to training the court personnel and preparing adequate buildings and mechanisms for effective implementation.<sup>33</sup> Another interviewee, who was a member of the legislative committee at the NCW, also expressed a similar viewpoint.<sup>34</sup> He pointed out that lack of specialized and well-trained judges was one main drawback that resulted from the rushing of the promulgation of the law.

To conclude, recent legal reforms such as Law No. 1, law 10, and the subsequent Law No. 11 are interlinked. First, all three reforms were concerned with introducing changes in the procedures and the structure of the legal system in PSL cases. This process involved different actors with various agendas: government agencies who were concerned with addressing problems of backlog of cases and long litigation process, women's rights activists who were strategizing to introduce indirect and gradual reforms that would strengthen women's legal rights, prominent lawyers and judges who were pushing for a new kind of legal system with a different vision, and religious scholars and legislators who were voicing public discourses shaping the cultural reproduction of Egyptian families. While the process of passing Law No. 1 was controversial, Law No. 10 was more quietly passed. Yet the latter was also contested by members of the legal system as well as women's rights activists. While both groups were supportive of the idea of a specialized family-oriented legal system, each had their concerns. On the one hand, flaws in the structure and procedures of the law were pointed out by prominent lawyers and judges. On the other hand, the impact of the new courts in strengthening women's legal rights was questioned by some women's rights activists in the absence of reforms in the substantive laws that governed marriage, divorce, and custody. In fact, some activists worried that a new legal structure such as mediation, which was central to the system of family courts, might have a negative impact on female litigants in the absence of gender-sensitive and just substantive laws. But how has the implementation of the new system worked for and/or against women? I will attempt to answer this question in chapter 2.

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<sup>32</sup> Personal interview, October 28, 2007

<sup>33</sup> Personal interview with Professor of Criminal Law, former head of legislative committee at the Parliament, and former member of legislative committee at the NCW

<sup>34</sup> Personal interview, October 29, 2007

## Chapter 2

### Family Courts: An Ethnographic Study

#### 3. Purpose of Study

Over the course of twelve months, a research team at SRC conducted a study of the different stages of the legal process in a number of family courts in Egypt. The central goal of the study was to reach at an in-depth understanding of the implementation of the new court system and in particular its impact on women's access to justice. Another 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. To achieve these two main goals, the research team undertook the following:

1. We examined the different stages of the new court system through ethnographic research on a number of female and male litigants as well as court personnel.
2. We identified the ways in which the new system was benefiting and/or disadvantaging female litigants.
3. We examined the dominant notions of marriage, female sexuality, and gender roles and relations that were embedded in the legal process and how they impacted female litigants' access to justice. In particular, we focused on the gender politics (e.g. gendered practices, attitudes, interactions) that was played out in pre-litigation mediation sessions and court proceedings. Also, we examined at the strategies used by the female litigants to fulfill their legal goals.
4. We closely looked at the implementation of *khul* law to determine its impact on realizing women's right to a fair divorce.

#### 4. Literature Review

Laila Takla's book on family courts is the pioneer work on the subject in Egypt (Takla 2004). The purpose of the book was to present the philosophy behind family courts and to explain the advantages of such a legal system. In the book, Takla stresses that the idea behind family courts was not to advance women's legal rights but to address the best interests of the families and children who resorted to court to resolve their disputes.

Apart from Takla's book, the existing literature on family courts in Egypt falls into two main categories. First, a series of books was written by judges and lawyers (Al-Lamsawy and Al-Lamsawy 2006, Zuwein 2006, Sheta 2006, Mansour 2006, Al Bakri 2004) on the new court system. This literature mostly explains the structure and functions of the Family Court through an analysis of the different articles of Law No. 10 of 2004. Some of these authors saw the establishment of Family Prosecution Department and the role that it had been assigned in all PSL cases as a positive innovation (Al Bakri 2004, Zuwein 2006).<sup>35</sup> Others criticized the role that Law No. 10 assigned to the court-appointed experts on the grounds that it undermined the authority of the judge (Mansour 2006).

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<sup>35</sup> According to Law 10 of 2004, the Department of Family Prosecution is obligated to provide its opinion on all PSL cases that are reviewed by the court before the judge issues sentences. Prior to Law 10, this opinion was optional.

The second category of literature on family courts addressed the advantages and the drawbacks of the new system and their effects on Egyptian women. In 2004, a workshop on family courts was organized by Association for Advancement and Development of Women in which several academics and women activists presented papers on the strengths and weaknesses of family courts as a mechanism through which to strengthen women's legal rights. Since the new system was just introduced at the time, the analyses in these papers focused on the text of the legislation (Abdel Sattar 2004, Abdel Kader 2004, Al Sayed 2004, Al Menshawy 2004). In subsequent years, other academics and women activists circulated short papers that outlined the drawbacks of the implementation process and its impact on female litigants (Bibars 2007, Al Samaluti 2007). None of the papers were based on primary research.

In 2006, Jamila Chowdry, a lecturer in the School of Law at Bangladesh Open University, wrote an article about Egyptian family courts (Chowdry 2006). The aim of the article was to explain the structure and procedures of the new system and to identify its advantages as a model to be replicated in other Muslim countries. The author commended the new court system and described it as a 'one stop-center' where litigants could have access to multiple mechanisms of dispute resolution (e.g. pre-trial mediation, trial process, and while-trial mediation). Again, the author's analysis was not based on any field research but solely on a theoretical analysis of the model of the new legal system.

In addition, a recent study was conducted by the Ombudsman's Office for Women for Women on the problems that women encountered in family courts. The study collected data from the complaints that the Ombudsman's office received from female litigants in PSL cases. (Ombudsman's Office, National Council for Women 2007). Also, the study team conducted a discussion group with 13 lawyers about their views and experiences with family courts. The main finding of the study was that the effectiveness of the family court system was impaired by the following weaknesses: First, the lack of specialization among the judges affected their competence in reviewing PSL cases. Second, there was a series of factors that hindered the role of mediation offices such as lack of adequate resources, training, and supportive societal attitudes. Litigation process still suffered from lengthy and sometimes ineffective procedures. In addition, the court-appointed social and psychological experts were not well-utilized in most cases. Lastly, the study reported the difficulty of implementing court sentences because of the lack of well-trained and competent law enforcement agencies.

Another relevant literature is a number of studies that were conducted on *khul* and prejudicial divorce cases. For instance, Soliman and Salah El Din (2003) examined *khul* cases over two years (since the enactment of the law) in six governorates: Qena, Suhag, Fayoum, Giza, Cairo, and Alexandria. The study reported the following findings: First, there was no steady increase in *khul* cases, unlike what was predicted in the public media when the law was first passed. Second, most of the cases lasted from 6 to 17 months with longer periods of litigation being more common in regional governorates. The study also found that some of the procedures in these cases were unfair to women and violated the spirit of Article 20 of Law No. 1 of 2000. For instance, some of the female litigants in

these cases were ordered by the judges to pay the deferred as well as the advance parts of the dower although it was customary for wives to collect the deferred part of the dower at the time of divorce or the death of the husband. In other words, these women were forced to pay more than what they had received from the husband in exchange for their divorce.

Halim et al (2005) conducted a comparative study of *khul* and prejudicial divorce cases. The authors examined the court records of 104 *khul* cases and 102 prejudicial divorce cases in Cairo, and Suhag, and Assiut. The research team also conducted interviews with some of the female and male litigants in these cases. The findings of the study showed the following: Women in both kinds of cases were seeking divorce for similar reasons, the most common of which were husband's failure to provide, husband's desertion, and spousal abuse. The advantages of filing for a *khul* rather than prejudicial divorce were the lower costs and shorter period of litigation.<sup>36</sup> On the other hand, there was a lot of stigma attached to *khul*. This study, like the previous one on *khul*, also highlighted similar gaps in court procedures pertaining to *khul*. As a result, these procedural shortcomings prolonged the litigation process and sometimes forced women to forfeit more rights than they were legally obliged to. For example, husbands sometimes disputed the amount of advance dower which was registered in the marriage contract and claimed that they had paid a lot more. In such cases, some judges repeatedly postponed court sessions until investigations were conducted by the Family Prosecution Department. Also, delivery of court summons to husbands was very difficult since some husbands deliberately refrained from receiving the summons so that the law suit would drag on. The authors concluded that despite the advantages of *khul* as a legal right that gave women a way out of an unwanted marriage, the implementation of the law had many gaps that diminished its benefits.

Lastly, ADEW conducted a series of studies on a number of women who filed for *khul* and maintenance court cases in Cairo, Qalyubia, Gharbia, and Menia (ADEW 2006).<sup>37</sup> The findings on the *khul* cases revealed similar problems in the litigation process as those reported in the above-mentioned studies.

To conclude, so far there has been only one study that examined the different aspects of the litigation process in the Family Court and how they impact female litigants (The Ombudsman's Office 2006). In addition, there has been research on specific kinds of law suits in Family Court (the most notable example being *khul*). Both kinds of research point to a number of problems in the implementation of laws, which undermine the benefits of the new legal system. The contribution of this study is to provide an in-depth and critical understanding of how the different structures and stages of the new legal system work on the ground; how this new court system impacts women's access to a fair legal process and to justice; and the ways in which the implementation of the new family court system is gendered as well as the consequences that arise from that.

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<sup>36</sup> More than half of the *khul* cases reviewed in the study lasted 6-12 months. Slightly more than half of the prejudicial divorces, on the other hand, lasted 1-2 years. Also, 28% of the prejudicial divorce cases lasted more than two years.

<sup>37</sup> The number of the women interviewed was 10 in each of kind of lawsuits. ADEW also conducted a third study on the effects of divorce on the living conditions of women.

## **5. 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 were conducted with eleven individuals who were involved in the process of drafting, debating, and passing recent legal reforms. The interviewees were women rights activists, prominent lawyers and judges, public thinkers, legislators, and journalists. The aims of these interviews were to: trace the process through which the family courts law evolved; identify the key actors who were involved in the process; and examine their various agendas, contributions and contestations.

In-depth interviews were carried out with fifty-three female litigants. Twenty-five 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. In addition, a series of subsequent interviews were conducted with two of the interviewees as case studies.

The aims of the interviews with the female litigants were to: 1) examine how the litigants were using and experiencing the new court system; 2) determine if and how the new system (i.e. its structures and procedures) were benefiting these women; 3) identify the problems that the female interviewees were encountering in the new courts as well as the causes of these challenges; 4) determine if and how the new system was gendered and the effect of this on the women's access to a fair legal process and to justice; 5) identify women's knowledge of and views on family courts and substantive laws governing their rights in marital disputes; 6) determine the legal and non-legal strategies (if any) that were being used by the interviewees to resolve the dispute and the effects of these strategies; and 7) examine women's experiences and views on marriage and marital roles. Since this study concerns primarily with the role of family courts in strengthening the legal rights of women, it was women's experiences within this system that was the main focus of the research. Thus, a much larger number of women than men were interviewed. In addition, the female interviewees were recruited through two different mechanism (women's rights groups and lawyers) in order to have a diverse group of women in terms of their legal awareness and socio-economic status.

In-depth interviews were also carried out with 11 male litigants. The interviewees were recruited through informant lawyers. The purposes of the interviews with the male litigants were to: 1) identify the legal strategies of male interviewees and their effects on women's access to a fair legal process, 2) examine how men's legal strategies impact and are impacted by the structures and procedures of the new court system, 3) identify men's knowledge and views on family courts and substantive laws governing the rights of

spouses in marital disputes, and 4) examine men's experiences and views on marriage and marital roles.

The female and male interviewees who were selected in this study were disputants in the following cases: maintenance, *khul* divorce, prejudicial divorce, obedience awards, and 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. The goals of these interviews were to: 1) collect data about the implementation of the structure and procedures of different stages of the legal process in family courts, 2) examine the roles of different court personnel, 3) examine the gendered viewpoints and work practices of the interviewees and their impact on female disputants' access to a fair legal process and justice, 4) identify the problems that the interviewees confront in their work and their causes, and 5) identify the interviewees' knowledge of and views on the new court system and substantive PSLs.

Two focus groups discussions were conducted with 16 male and female lawyers. The goal of these discussions was to determine and examine: 1) the interviewees' views on pre-litigation and while-litigation mediation, 2) the interviewees' work practices in mediation sessions and court sessions, 3) the ways in which the interviewees' work practices, interactions in the legal process, and legal arguments are gendered and their impact on women's access to justice, 5) the interviewees' views on substantive PSLs and the recent legal reforms

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). Most of the observation took place in the first court. The aim of these observations was to document and examine the following: mediation work and court proceedings; the interactions of different court personnel and litigants; and the ways in which this whole performative process is gendered.

Lastly, content analysis was conducted on the files of twenty-five court cases. This involved analysis of court judgments, lawyers' briefs, marriage and divorce certificates, records of husband's income, and reports of mediation specialists. The main goal of this task was to examine the understandings reflected in these documents of women's rights in PSL cases, gender roles and relations within marriage, and the role of the legal process.

## **6. Profile of Interviewees**

### **Female Litigants**

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, 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. When they worked, they mostly held jobs in stores and plants, and some worked as vendors. Two of the women in the non-working group left their jobs when they got married because their husbands desired so. One of these women was working as a flight attendant and another worked in an upscale clothes boutique. Both women started looking for work when they left the conjugal home with the escalation of the marital dispute. One of the women found work as a waitress in a hotel, but her extended family refused because they thought it was not respectable and suitable work for a soon-to-be divorcee with a child. The other woman considered returning to her old job in the clothes boutique but decided against it because she would not be able to juggle child care and the long hours that the job demanded (10:00 a.m. - 11:00 p.m.). Instead, she tried to start small business of selling bed sheets, which she sewed at home. But she could not market her product and thus made very little money, so she discontinued the business.<sup>38</sup>

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. The marriages of many of the interviewees were arranged by family members or neighbors, but the women consented. The reasons that the women gave for marrying included: pressure from family because they were approaching their mid-twenties; desire to have one's own home and independent life away from the family; the husband looked like a good suitor that could provide the wife with security and stability; life with the extended family was poor and hard and marriage was thought to be a way of doing better. Few of the women were romantically involved with their husbands before they got married. All the interviewees had children except for one.

### **Male Litigants**

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: out reach health care provider, cashier in a cafeteria, and a nurse. The marriages of all the interviewees were arranged by family members, neighbors, or friends. The court cases of the male litigants except for two were filed by their spouses. One of these two litigants, a Christian, filed for divorce on the grounds of adultery. The other filed for a dispute of his paternity to his daughter. The majority of the cases that were brought against the litigants were maintenance (9). In response, most of interviewees filed for obedience awards (7).

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<sup>38</sup> The interviewee got the idea of starting a business from an advertisement in the newspaper that promised applicants a one-week training in starting small businesses for a L.E. 50 fee.

### **Mediation Specialists**

The twelve specialists were equally divided between male and female. The legal specialists were graduates of Faculty of Law. The social specialists were graduates of Faculty of Social Work, whereas the psychological specialists graduated from Faculty of Arts, Department of Psychology. The age of the specialists ranged between late twenties to early sixties, with the majority being in their forties. All specialists had been working in family courts since its inception in 2004. All the social and psychological specialists were seconded from the Ministry of Social Solidarity. Prior to their work in family courts, these specialists were social workers in schools, worked with juvenile delinquents or disabled children, or held administrative positions in the ministry. The legal specialists were appointed by the Ministry of Justice. Prior to their present work, some of the legal specialists worked as legal inspectors in government agencies, investigators in the Ministry of Justice, and lawyers.

### **Public Prosecutors**

Two of the prosecutors had been working in family courts for the past three years. The third interviewee worked in a civil court and was transferred to family courts a year ago. The three prosecutors were male.

### **Judges**

Three of the interviewees were junior judges in Cairo, Giza, and Alexandria.<sup>39</sup> Four other interviewees were senior judges in Giza, Cairo, and Banha. The eighth judge was a judge in the Family Court of Appeal in Shibeen El Koum. Only the Appeal Judge and one of the senior judges were exclusively reviewing PSL cases in their courts. The other judges reviewed civil and PSL cases on alternate days of the working day. Two of the judges had eight years of experience in reviewing PSL cases. The remaining judges had a 3-4 year old experience in PSL cases. One of the judges developed great interest in family law, and consequently he had been reviewing different family law codes in the Arab region, and was working on a proposal for legislative changes in the Egyptian substantive PSLs.

### **Court Experts**

The ten interviewees were female and were in the age range of 40-55. They were graduates of Faculty of Social Work or Faculty of Arts, Department of Psychology and Department of Sociology. They were worked in family courts in Giza, Cairo, and Alexandria since 2004.

### **Lawyers**

The 16 interviewees were divided equally between male and female. Their age range was 28-50. Their years of experience in PSL cases ranged between 4 to 15 years. None of the interviewees worked exclusively on family law cases.<sup>40</sup>

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<sup>39</sup> In every family court, the judicial bench consists of three judges: a senior judge assisted by two junior judges.

<sup>40</sup> This is a common practice in the law profession in Egypt since it is much less profitable for a lawyer to be specialized in one kind of law. In addition, PSL cases are much less profitable than civil and criminal cases.

## **7. Results**

This in-depth study of family courts shows that the new court system has the potential to provide female litigants with quick, affordable, and accessible mechanisms of claiming legal redress. However, this benefit is greatly diminished by interrelated problems of legislative gaps, procedural shortcomings, lack of effective implementation mechanisms, and the gendered politics inherent in the legal process. For instance, mediation often does not work. Settlements agreements are often not enforced. In addition, some new procedures that were introduced by Law No. 10 have shown to be ineffective. Some procedures in *khul* cases work against women. Old problems such as delays of court sessions and excessively formulaic and cautiously worded court judgments still persist within the new court system. In what follows, these problems will be analyzed in detail.

### **7.1 Mediation Offices**

#### **Legislative Gaps**

Only 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 No. 10 of 2004, and it is legally sufficient for the legal representatives of the disputants to attend the mediation sessions on their behalf. 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.

#### **Workplace and Resources**

The premises where mediation sessions are carried out are highly inadequate. The offices consist of small and crammed 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. Because of these inadequacies, some mediation specialists depend on the lawyer of the plaintiff or the plaintiff herself to mail the summon papers to the other party in the dispute. Disputants and their lawyers often have to make copies of forms and buy postage for the office from nearby duplicating stores. Sometimes, specialists use their own cell phones to make work-related phone calls.

#### **Mediation Work: Procedures and Patterns**

Most mediation offices are staffed with a director and 3-4 specialists (legal, social, and psychological). When there are more than three specialists in an office, the additional ones tend to be legal or social specialists, but rarely psychological. In fact, there is a nationwide shortage of psychological specialists (Report of Ombudsman's Office for Women on Family Courts, February 2007). For instance, the psychological specialist in one of the observed offices was shared by three mediation offices in the court building. Since mediation offices are located in geographical areas with different population density, the number of cases each office reviews varies greatly. One of the observed offices, for example, scheduled an average of 20 mediation sessions a day; another office

scheduled an average of 12 cases a day; while a third office reviewed an average of 7 cases a day.

The common procedures that were followed in most offices were as follows: A plaintiff (or her lawyer) would come to the office to submit a request for mediation. The office would open a mediation file and request relevant documents, depending on the case. Requested documents included a copy of the plaintiff's I.D, marriage or divorce certificate, the birth certificate of the children, receipts of children's school fees, etc. Then a mediation session was scheduled and a summon paper was sent out to the other party in the dispute (often the husband). As was mentioned earlier, because of lack of mail services in the mediation office, the duty of sending the summon paper was assigned to the plaintiff or her lawyer.

Normally if the number of the scheduled sessions for a day was particularly high, a session could be conducted by one or two specialists at the utmost. In fact, it was very rare for the three specialists to conduct a session together (as observed by the SRC team and reported by the specialists). Another factor that contributed to this was the fact that in many cases only one disputant was present and the legal representatives, or only the latter. Even when both disputants were present and there were sufficient specialists in the office, it was not always the case that the three specialists sat with the disputants. There were few things that all three specialists were expected to do in order to conduct a session on their own, namely: to obtain all needed documents from the disputants; to record the session and the reached agreement (if one is reached) properly since this document was legally significant; and to interact well with the parties present in the session and work towards reaching an agreement between them.

The specialists interviewed in this study defined their roles as follows: the legal specialist informed the parties of the legal aspects of the case and provided legal guidance, the social specialist probed into the social aspects of the conflict with the aim of reaching a resolution and settlement, and the psychological expert dealt with the psychological factors pertinent to the conflict as well as with the psychological conditions of the disputants. Nevertheless, when asked about the role that each one of them actually played in their daily work, the specialists reported that the boundaries between their responsibilities were blurred. A common practice was whoever specialist was available first sat with the plaintiff and recorded initial information about the nature of the dispute. If disputants were noticeably agitated or distraught, the psychological specialist could meet with them first but only if he or she had the personal skills to calm them down and diffuse the situation. In some of the observed sessions in one office, the legal specialist was more experienced and able to carry out the role of the psychological specialist than the latter, and consequently often ended up juggling both roles. Yet in another other office, the psychological specialist was well-trained and highly motivated and thus played a distinct and significant role.

### **Lawyers' Views**

A major obstacle to successful mediation was the negative views that lawyers had about 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 because according to them most disputants had already tried family-based ways of resolving the conflict before resorting to court. Also, these lawyers expressed very strong beliefs about the incompetence of most mediation specialists. They said that most specialists were low-level government employees who did not even have college degrees and lacked the education and training that was needed to mediate between disputants. These same views were expressed by lawyers that the principal investigator talked to in different family courts as well as those who were present in a workshop on the performance of family courts, which was organized by the Office of Ombudsman for Women in February 2007. Specialists, on their end, thought lawyers for the most part did not facilitate their work. Specialists said that lawyers were often unwilling to bring their clients to mediation sessions. Specialists also complained that lawyers censored their clients during sessions, and sometimes pressured them into adopting rigid positions.

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. The lawyers in this association believed that the work of the mediation specialists was important. In addition, the mediation specialists referred female disputants who had no lawyers to ADEW. It would be important to research to what extent this is true of lawyers in other women's rights groups and how it could be related to the kind of training that such lawyers receive and the conceptual framework which they adopt in their work.

### **Judges' Views**

Judges thought that it would be very helpful to the court if mediation specialists were more successful in settling cases because the number of cases reviewed in most courts was very high. Thus, in theory the judges were supportive of the role of the mediation offices. However, they had a different opinion on the actual reports that they received from mediation offices. Each case file that is referred to the court normally contains a document from the mediation office verifying that the litigants went through mediation as well as reports written by the social and psychological specialist and the written records of the mediation specialists, which are often written by the legal specialists.<sup>41</sup> Six out of the eight judges interviewed in this study did not find the reports of mediation specialists helpful to them. The judges merely verified that litigants completed mediation before the case was accepted for court review; however, they did not depend in any substantive ways for background information about the conflict and the litigants. These judges believed that the reports that were sent from mediation offices were superficial and did not contain any useful information. As one judge put it: "It (i.e. mediation report) just repeats what the woman recounted to them (mediation specialist). I already get her story from the lawyer's brief. The report has no additional information that can help me with the case." The two other judges had a different opinion. They read the mediation reports carefully and compared them with information given in the case file submitted by the

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<sup>41</sup> Mediation specialists who were interviewed reported that not all judges asked for the mediation reports to be added to the case file. Some judges only asked for the documents that verified that mediation took place, and did not consult the mediation reports.

lawyer. One of these judges pointed out that because of his access to the mediation reports, he was able on several occasions to find discrepancies in the case file because the lawyers had omitted some important information, which were earlier given by the disputants to the mediation specialties. This often happened in maintenance cases and information about husband's earning capability or the existence of children in the marriage was sometimes concealed in order to influence the court to issue a beneficial judgment to the husband or the wife. It may be relevant that these two judges, who found mediation reports to be useful, were working in courts that were located in small rural communities, while the other six judges were working in urban courts that were located in large and densely populated areas. This rural/urban distinction was again observed in regard to the judges' views on the role of court experts.

It is important to note that mediation specialist did not adopt standard procedures in the ways they wrote their reports. Some of the reports that the principal investigator obtained from mediation offices were detailed and reflected good skills in the presentation and the analysis of the dispute. Other reports were scant in information and professional analysis of the dispute and read more like fill-in the blank forms that provided basic information about the disputants and the nature of their conflict.

### **Disputants' Views and Experiences**

Some of the female and male litigants did not have a clear understanding about how mediation fits into the legal process in family courts. 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. They pointed to the poorly equipped work place, and thought very little of the specialists' mediation skills.

Female litigants had mixed views on mediation offices. Some thought pre-litigation mediation was useful in two specific ways: Some perceived it 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. Second, the cases that were more likely to be settled in mediation offices were the ones in which the husband had not been paying court orders for maintenance, and subsequently the wife was filing for the enforcement of the court judgment. In such cases, the husband would be imprisoned for a month if he was found to be able to pay but refused to do so.<sup>42</sup> In some of these cases, a settlement was reached in the mediation office in which the husband would pay the court ordered sum in installments. Although receiving the maintenance money in installments often inconvenienced the women, still they found that settling the case in mediation offices was an easier and faster way to receive much needed financial support from the husband. However, this was not always

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<sup>42</sup> See Law No. 1 2000, Article 76

feasible since there was no formal mechanism of enforcement in place.<sup>43</sup> For example, in one of the observed mediation sessions, the plaintiff was a wife in her late twenties who had filed for a new mediation request in order to enforce an earlier settlement agreement by which her estranged husband was obligated to provide L.E. 75 every month for the maintenance of their baby daughter. The husband had not implemented the agreement, and the wife could not enforce it because the enforcement unit did not consider the settlement agreement as legally binding as a court judgment would be. Thus this plaintiff was forced to file again for maintenance claim and once more go through the compulsory pre-litigation mediation. Some specialists used creative ways such as writing in the settlements that husbands had to pay the installments in the mediation office and in the presence of the specialists, at which time the husband received a payment slip co-signed by the specialists and the wife. But these strategies only worked with husbands who were willing to pay maintenance and respected the authority of the mediation offices, and these were very few.

While some female litigants found the mediation office to be of some use in maintenance cases or as a mechanism of reaching a satisfactory reconciliation with their husbands, a considerable number of the women thought that the mediation process was ineffective and even counterproductive and hurtful in some cases. The women cited the failure of the husband to show up, the inadequacy of the premises, and drawbacks in the performance of some specialists. The shortcomings in the specialists' performance that were listed by some female litigants included the specialists' lack of interest in the female disputants' problems, their pressuring the disputants to reconcile with their husbands, and their disapproval of the disputants' request for *khul*. This point was also confirmed by the views expressed by two of the interviewed specialists. These specialists argued that female disputants abused their right to *khul*, and thus they thought there needed to be restrictions on women's right to *khul*. For instance, one of the specialists suggested that a woman who filed for *khul* should not only give back the advance dower but also the furniture in the conjugal home, because in many cases the furniture was worth a lot more than the advance dower and thus would be a fairer compensation for the husband. Both specialists were women.

The observation of mediation sessions 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

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<sup>43</sup> Although according to Law No. 10, Article 8 settlements reached by mediation offices are legally binding, the text is interpreted differently by judges and enforcement agencies. Some do not consider these settlements to have the same legal standing as court judgments and thus would argue that a husband's failure to pay maintenance agreement, reached by the mediation office, does not result in his imprisonment as it would in the case of his failure to implement a court judgment for maintenance. The ambiguity of the legal status of the settlements of mediation offices was reinforced by Decree 148 of 2006, which was issued by the Board of Nasser Bank, the government-established family fund for implementation of court judgments for maintenance. The decree suspended the implementation of maintenance settlements reached by the mediation offices. In addition to citing the problem of the rising number of fraudulent cases, the Board of Nasser Bank argued that agreements reached by mediation offices were not court judgments and thus the Bank had no obligation to implement them.

while remaining objective, and maintained their patience and clam despite the difficult conditions of the workplace. Other specialists showed less confidence, interest, and ability in conducting the sessions.<sup>44</sup>

### **The Role of Families of Disputants**

Often the families of disputants accompanied them to mediation sessions. In many cases, specialist did not find their presence helpful. Accompanying relatives tended to be the parents and siblings of the disputants. They tended to be agitated and emotionally involved in the dispute. Often, they dominated the session and spoke for their daughter or son. So specialists first had to calm relatives down and in some cases would try to persuade them to leave the room, although this was not always possible. For instance, in one of observed sessions, the father of the wife was present along with his wife and his daughter. The daughter was filing for prejudicial divorce. She had been living with her husband in his mother's house. The mother-in-law was abusive to the daughter-in-law and subsequently the couple started having problems and the husband became physically abusive to the wife. Throughout the mediation session, the father spoke and the plaintiff, a woman in her late twenties with three children, remained quiet. In the first half of the session, the father was very emotional and exchanged angry words with the lawyer of his son-in-law who also happened to be the husband's neighbor and friend. But after the mediation specialist calmed them both down, the father started negotiating for a separate dwelling for the couple in exchange for dropping the case.

One could argue that this father came to the mediation session to provide support for his daughter. But the fact remains that his domineering presence in the session did not make it possible to ascertain what the wife needs were and what she thought would be a fair and beneficial settlement for her. Even when family members were not present in mediation sessions, they still exercised power. For instance, in one of the observed sessions the plaintiff who filed for *khul* did not come because her family had become too involved in the dispute. The husband and the wife's brother had gotten into a fight and filed police reports against one another. The husband, who had come to the two scheduled mediation sessions, told the specialist that he had talked to his wife on the phone earlier and she told him she was coming to the mediation sessions. But he believed that his in-laws had stopped her from coming. The wife's lawyer corroborated the husband's claim; he pointed out that the husband's altercations with the wife's family made them determined not to let their daughter resolve the conflict with the husband in the mediation stage.

Lastly, the statistical data the research team gathered from some mediation offices in Alexandria and Giza show a low success rate. The reported figures showed that the number of successfully mediated cases was consistently low in all seven offices that were

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<sup>44</sup> All interviewed and observed specialists reported that they took sporadic and limited training since they first started working in family courts. The competent and effective specialists tended to be those who took initiatives to develop their professional skills. For instance, one of the psychological specialists pursued a doctorate degree in psychology. Another specialist, on her own initiative, attended training workshops and seminars that were held by the NCW and a number of NGOs on personal status laws. This specialist was currently in the process of providing free legal counseling and mediation services to married couples in one of the neighborhoods of Giza as a preventive measure before couples resort to mandatory mediation.

listed, while the number of cases referred to court was consistently high (See Tables 1, 2, 3).

**Table 1**  
**Cases Reviewed in Six Mediation Offices in Alexandria (from 1/1/2007 to 12/6/2007)**

<b>Office</b>	<b># of cases submitted</b>	<b># of cases settled</b>	<b># of cases closed*</b>
First	1200	114	971
Second	242	67	141
Third	362	72	264
Fourth	435	54	331
Fifth	145	41	95
Sixth	1793	245	1189

Source: Office of Public Prosecutor, Family Court, Alexandria

\* This category encompasses: a) cases in which no agreements were reached and may or may not have proceeded to court, and b) cases in which the disputant did not complete all procedures for pre-litigation mediation. According to Law No. 10 of 2004, Article 8, the mediation offices notifies the court of cases in which no agreements were reached but the it is up to the plaintiff to file a suit if he/she wishes for the case to proceed.

**Table 2**  
**Monthly Statistics of Cases Reviewed in a Mediation Office in Alexandria**

<b>2007</b>	<b># of cases submitted</b>	<b># of cases settled</b>	<b># of cases pending</b>	<b># of cases referred to court</b>
January	145	14	55	100
February	142	11	51	118
March	148	13	50	113
April	181	12	52	145
May	171	15	57	125

Source: Office of Public Prosecutor, Family Court, Alexandria

**Table 3**  
**Cases Reviewed in a Mediation Office in Giza**

Period		# of cases submitted	# of cases settled	# of cases closed*	# of cases referred to court	# of cases pending
From	To					
1/10/2005	30/9/2006	1382	233	212	937	8
	4/2007	138	30	6	70	32

Source: Mediation Office, Giza

\* This category refers to: a) cases in which no agreements were reached but the disputants have not filed for suit, and b) cases in which disputants did not complete all procedures for mediation.

**Addressing Mediation Problems: Recent Initiatives**

Lastly, it is important to point 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 extensive and well-designed 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 will be implemented by a number of NGOs that will receive grants and training from the NCCM. Up until December 2007, 62 NGOs have been selected to be implementing partners in the project. The NGOs will receive 41% of the funds secured for the project. These NGOs will undertake a variety of activities. Some NGOs will provide mediation services to families and protections services to vulnerable children such as the disabled and the children of imprisoned parents. Other NGOs will focus on training family court personnel, whereas others will work on the communication strategy which aims at raising the awareness of the general public about the new court system.

*The Family Justice Project* is a commendable initiative, and 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.

Problems at the mediation offices are not the only shortcomings in the new court system. The interviewees (litigants and court personnel) also pointed to other drawbacks that emerged in the implementation. I will analyze these in the subsequent sub-sections.

## **7.2 Role of Public Prosecutor**

Although a number of new procedures introduced by Law No. 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 No. 10, Article 4 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. All interviewed judges agreed that the memorandums that the prosecutors submit to the court for the most part merely recommend deferring to the court's opinion. Thus, they say the role of the public prosecutor as redundant and merely adding to procedures that prolong the litigation process. One of the judge interviewees argued that the public prosecutor can play a useful and much needed role in investigating husbands' income and financial assess in maintenance cases. This judge suggested that there should be a special unit in each court that carries out these investigations and the public prosecutor in each family court should lead this unit. Other interviewee judges thought that public prosecutors should only focus on cases related to 'guardianship over money' in which they normally play central roles. The three public prosecutors that were interviewed agreed that their role in 'guardianship over self' cases (e.g. divorce, child custody, paternity disputes, and maintenance) was not significant. However, one of these prosecutors pointed out that their attendance of all court sessions and submission of memorandum of opinion was a good way of training those of them who might later on join the judicial bench. One of the interviewed public prosecutors pointed out that since he started working exclusively on PSL cases, he had acquired a lot of legal expertise because he had been doing careful study of the laws and reflecting through the case files before he wrote the memoranda of opinion. The interviewed judges, however, argued that most public prosecutors submitted formulaic memoranda that did not add anything new to the judicial bench. In fact, one of the judge interviewees said in order to cut down on the amount of time spent on new and unnecessary procedures (e.g. submission of public prosecutor's memorandum and reports of court experts), he initiated the practice of having these procedures lumped together and carried out during the period of one court delay.

Lawyers also reported that the role of the public prosecutor in marital dispute cases merely prolonged the litigation process, without serving any meaningful purpose. They said that the memoranda that the public prosecutors had to submit on each case resulted in additional court delays. Yet, these memoranda did not have any impact on the case since the prosecutors almost always deferred to the opinion of the judicial bench. In addition, the lawyers noted that public prosecutors were quiet and passive during court sessions, and their presence seemed to be a mere formality.

The office of the public prosecutor, however, plays an important role in child kidnap cases. This impacted many women who had the legal custody of their children, but their spouses or ex-spouses seized the children. According to PSL procedural laws, if children are seized illegally from the custodial parent, she or he has the right to go directly to the office of public prosecutor in order to reclaim the children.<sup>45</sup> However, this was not always known to female litigants. For instance, while conducting observation in mediation offices, the principal investigator noted that on several occasions a number of women came to the office with a similar child custody problem; the women did not know the role that the public prosecutor played in such cases. One of the female litigants who were interviewed in this study also had a similar problem. She first went to the police station to report that her husband kidnapped her two-year old daughter. Yet, the police was not sure whether they had any legal authority to take action since she and her husband were still married. It was only after she hired an experienced lawyer that she found out that she could reclaim her child through the office of the public prosecutor.

Thus, on the one hand 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. 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. Finally, an increasing number of actors involved in the reform process people (in addition to the judges interviewed for this study) have been calling for the active involvement of the public prosecutor in maintenance cases, and particularly in the often difficult task of verifying the income and financial assets of husbands.<sup>46</sup>

### **7.3 Role of Court Experts**

The usefulness of the role of court experts was another aspect in the new court system that was questioned by lawyers, judges, and even some of the court experts themselves. 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. One of the interviewed judges from Alexandria argued that the contribution that the experts could make in terms of last efforts at mediation was very limited because they were not involved in the pre-litigation mediation. The judge said that the experts merely depended on what he referred to as “superficial” and “general” information about the dispute that was provided by reports of mediation specialists. According to this same judge, when the expert met with the

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<sup>45</sup> See Law No. 1 of 2000, Article 70.

<sup>46</sup> These actors include women’s rights activists, prominent lawyers, and judges. Personal interviews, February 2007, October and November 2007.

disputants (who was often just the female litigant), they only got a recount of the same version of the dispute that they had read in the mediation reports. So the judge's conclusion was that the role of the experts was often futile and a waste of time.

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. Court experts in rural-based family courts, who were interviewed for this study, also pointed out that it was easier for them to meet with both litigants for the purpose of mediation since they had ties with the local community and could persuade both disputants to come. In addition, the familiarity and the links that the experts had with small rural communities helped them to be better informed about the nature and details of the dispute in question and accordingly they were able to submit more in-depth and useful reports to the court. Furthermore, the court experts were able to follow up on cases in which settlements were reached and litigation was discontinued.

Experts in urban and larger geographical areas, on the other hand, were confronted with a number of challenges and the benefits of their work were much more limited. This is illustrated in the case of one of the female litigants interviewed in this study. She was in her late twenties with a baby daughter and had filed for prejudicial divorce to end a three-year old marriage to her husband, a migrant laborer who worked for eight months of the year in Saudi Arabia. During the marriage, she lived in a conjugal home which was below her in-laws apartment. She had a very abusive relationship with her in-laws who denied her autonomy and independence in finances and daily meals. The conflict escalated into physical abuse inflicted by both the in-laws and the husband and depriving her and her daughter from all financial support. During the review of the case, the judge ordered the court experts to sit with the husband and wife and to attempt reconciliation or mediation. The experts sat with the couple and were able to work out an agreement that was satisfactory to the wife. The husband promised that they would rent a place away from his family, the husband would send his wife L.E. 250 while he was gone in Saudi Arabia, and that they would both work things out. The wife was happy with the agreement and agreed to drop the case. In fact, she left the experts office with her husband and her daughter and they all spent the night in her nieces' apartment with the understanding that the next day, the husband would start looking for an apartment. The wife reported that she even consented to having sexual intercourse with her husband that night, although they had been estranged for nine months, because she had decided to salvage the marriage and honor the agreement she reached with the experts. She woke up the next day and found neither the husband nor her baby daughter. The husband left with his daughter and for the following month attempt to blackmail the wife into agreeing to return the *shabka* (jewelry gifted by a husband to a wife at the wedding) and forfeiting her right to deferred dower and compensation money (*mu'ta*), which she would be entitled to if she wins the case in court. The litigant's feeling was that while it was her husband did not honor the agreement, the role of the latter in itself was not very helpful. The experts could not get her husband to come to an earlier scheduled meeting, and it

was only at a last whim that her husband decided to come to the second meeting. Also, there were no mechanisms of monitoring and enforcing the agreements reached in these meetings. Another factor that hindered the work of the experts was most litigants reported that by the time they had reached the stage of bringing their case to court, they were very skeptical that any attempts at reconciliation or mediation could work. The female interviewees also added that most husbands considered that their wives' resort to court as an affront to their male pride and as a sign of the wives' turning back on their marriages. Subsequently, the husbands were usually very uncooperative, unwilling to mediate, and sometimes hostile. Male litigants and experts also made the same point.

But about the second goal of the experts' work: providing informed opinion and advice through the reports that they submit to the panel of judges? The extent to which this goal was achieved varied greatly from one court to the other. Six of the judge interviewees stated that the reports they received from the experts did not have any additional information and often restated old information already provided in lawyers' briefs and mediation reports. Moreover, the judges added that the experts in their courts were middle-aged women, so they hardly sent them to inspect conjugal homes in obedience award or dispute of custody cases. As mentioned earlier, the two judges who were based in rural communities thought that their court experts were able to provide them with new and relevant information about the cases they were reviewing because of the contacts they had with the local community.

The ten interviewed experts, all of whom worked in large urban areas, reported that their ability to mediate between litigants and 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.

#### **7.4. Judicial Bench**

The majority of the interviewed judges had presided on PSL cases in the old legal system before family courts were established (7). Therefore, they were able to compare the old and new systems, and shared some views about the strengths and the shortcomings of the new court system. Most of them 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 made more possible an adjudication process that was based on a good understanding and implementation of both substantive and procedural laws that govern PSL cases. One of the junior judges from Alexandria, for instance, reported that on several occasions he had pointed out to the senior judge in his court that the latter failed to follow some of the procedures in a number of the cases that they were reviewing. This senior judge had only been working for a year in family courts, while the interviewee had been working exclusively in PSL cases for the past five years. Thus the interviewee naturally had more expertise than the senior judge, and the latter made use of this experience. That is, had there been no structure of a panel of three judges reviewing each

PSL case, there would have been more room for errors in the adjudication process, which would normally impact the litigants.

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 if followed, and enhancing the litigants' access to justice. This last point was made by all the interviewees despite the fact that not all of them were personally interested in specializing in family law. However, they all pointed out that in reality many of the family court judges were not specialized. That is, these judges were reviewing different kinds of cases (PSL, civil, and criminal) on different days of the working week. The specialization of family court judges seemed to be slowly increasing in Cairo and Giza, but still 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. One of the judge interviewees pointed out that the senior judge in each family court, in particular, had to be well-experienced in PSL cases. He noted that during the five years that he (as a junior judge) had worked on PSL cases, two senior judges were head his court, both of which had no experience in reviewing PSL cases before their appointment.

How do we build a cadre of specialized family court judges? The interviewees argued that this process should start much earlier, i.e. in college. That is, they argued that the courses on *Shari'a* and family law that are taught at faculties of law needed to be redesigned in such a way that they provide law students with good knowledge of the new court system and its laws. In addition, 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. Thus, the judges often carried out this procedure in a ritualistic manner or in a way that was offensive to the litigants (often the wife).

All the judges agreed that mediation offices could play an important role in providing an alternative and expeditious mechanism of resolving family disputes; however, they all reported that mediation work was greatly impaired by a number of factors. One of the main challenges they cited was the absence of a legal text that obligated both disputants to come to mediation sessions. Another problem that the judges pointed to was their lack of effective monitoring. Some of the judge interviewees pointed out that in theory the mediation office was under the supervision of the judicial bench that was presiding in the court where the office was located. However, they pointed out that judges did not have time to oversee the work of the mediation office. One of the judge interviewees recommended the establishment of a special unit in each court, which would closely monitor and supervise the work of the mediation offices. He also proposed that this unit fall under the supervision of the public prosecutor. His argument was this suggestion would ensure that the mediation offices received much needed monitoring and guidance, and that the public prosecutor was involved in the cases from their initial stages.

Some of the interviewees also pointed to another ambiguity in Law No. 10 of 2004, which also led to implementation challenges: according to Article 12 in the law, all disputes concerned with the same disputing couples are compiled in one family file. When family courts first started operating, some of the interviewees said that judges had problem interpreting the above-mentioned article. Some interpreted it to mean that they had to rule on all interrelated family disputes simultaneously, and thus held off issuing court judgments in an individual case (even if it were ready) until other interconnected cases were also ready for ruling. Other judges interpreted the article to mean that the judges were to make use of the information available in the family file but they did not have to unify the timing of judgment on all the cases pertaining to the family in question.

The interviewed judges concluded that the new court system could work as a good structural and procedural framework for PSL cases, but its effectiveness was impaired by the factors that were previously mentioned. But how does this new system work for or against women in particular? According to some of the judges, the combination of gaps in the substantive PSL laws and the shortcomings in the new court system result in an unjust legal process for some women. For instance, one of the interviewees pointed out that judges are obligated to attempt to reconcile the husband and wife in divorce cases. Yet this procedure is often futile and creates a burden on female litigants. By the time the disputants reach the litigation stage, they are no longer interested in reconciliation. Still the wife (or her legal representative) is obligated to send a written summon to the husband to appear in front of the court for reconciliation efforts. This unnecessarily prolongs the process for the female litigants. The problem (for female plaintiffs) is confounded by other unnecessary procedures that are introduced by the new court system such as submission of public prosecutor's memorandum of opinion and court experts' reports.

The interviewees also added that other gaps in substantive laws that regulate maintenance cases continue to persist in the new court system: it is still very difficult to verify income and financial assets of husbands, and yet the office of public prosecutor is not utilized in order to address this problem.

In short, the majority of the judges concluded that the benefits that the new family court system could offer to female plaintiffs are diminished by a combination of drawbacks in the new system as well as persisting gaps in other substantive PSL laws.

### **7.5 *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.

Based on observations of court sessions and the reports of the female litigants interviewed, the procedures that are followed in *khul* cases are as follows: As in any

other PSL case, the plaintiff first files for mediation. If mediation fails, then the following steps follow: 1) The plaintiff brings the case forward to court, 2) A court summon is sent to the husband and normally the plaintiff and her legal representative have to ensure that the husband has received the court summon, 3) The plaintiff gives back the advance dower to the husband, 4) she states to the court that she is resolved to end the marriage, 5) the judge proposes reconciliation between the couple, 6) the court experts meet with the disputants, and 7) arbitration is carried out by either two family relatives (from the wife's and husband's families) or an arbiter appointed by the court.<sup>47</sup>

There are several drawbacks in these procedures that have a negative impact on female litigants in a number of ways: First, reconciliation is often unwanted by female litigants and thus these procedures end up unduly prolonging 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 (i.e. the woman) is obligated to pay arbitration fees, which is a burden for many women.<sup>48</sup> In addition, sometimes husbands dispute the amount of the advance dower that was written in the marriage contract and claim that they had paid a higher amount.<sup>49</sup> Accordingly, some judges order an investigation. This involves each disputant bringing their witnesses to court so as to be interviewed by one of the members of the judicial bench. This again lengthens the duration of the litigation. Yet, the judge interviewees in this study were divided on this issue. Some thought that disputes about the advance dower should be settled first by the family court that was reviewing the *khul* case, before a divorce judgment is pronounced. Other interviewees thought that the dispute about the advance dower was a civil case that needed to be settled in a civil court after the *khul* case was completed. Yet one of the judge interviewees reported that when he took this action in some of the *khul* cases that he presided over, the civil court sent him back the dispute over the advance dower on the grounds that it emerged from a PSL dispute and thus had to be settled in a family court. This ambiguity and confusion arise because there are no articles in Law No. 1 of 2000 that specify what procedures to be followed in the case of dispute over the amount of the advance dower.

Most of the above-mentioned challenges emerge from both gaps in Article 20 in Law No. 1 of 2000, which regulates the content of *khul* as a substantive right and the procedures that are undertaken in order to claim that right. For instance, the stipulation of undertaking multiple efforts of reconciliation was inserted in the law to calm the fears of the critics of the *khul* law; who warned of the collapse of Egyptian families and the society if women's right to *khul* was not conditioned. However, in the daily realities of many family courts, these procedures that were put in place to meet this stipulation do not accomplish their goal (i.e. reconciliation), but are often mere formalities that prolong the litigation process and sometimes even add to the expenses of the plaintiff.

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<sup>47</sup> The court appointed arbiter is normally from the Committee of Guidance and Preaching at Al-Azhar

<sup>48</sup> Female interviewees reported that they had to pay L.E 100 for arbitration.

<sup>49</sup> It is very common to find many marriage contracts in which the paid advance dower that is recorded is P.T. 25 or L.E. 1. In some contracts, no amount is specified and instead the term 'the agreed upon' amount.

But how has the system of family courts impacted the process through which women claim their right to *khul*? Since the prevalent societal attitudes towards *khul* are still very negative, mediation in such cases is very difficult and often unsuccessful.<sup>50</sup> 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. Our interviews with some of the mediation specialists also indicated that some of these specialists had negative views about women's use of their right to *khul* as well as the law regulating this kind of divorce. They thought that many women (particularly young plaintiffs) filed for *khul* for fickle reasons, and thus were not rational enough to have this right. For example, one specialist reported that in one of the *khul* cases in which she was mediating, the plaintiff wanted to end the marriage because her husband would not serve her breakfast in the morning. Another specialist reported that in another case, the plaintiff wanted to file for *khul* because her husband interrogated her about her whereabouts. Moreover, some of the specialists thought that the financial rights that the plaintiff forfeited in exchange for *khul* was not just to the husband. For instance, one of the specialists thought that in addition to the advance dower, women should also give up the furniture in the conjugal home.

Yet, 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.<sup>51</sup> The reasons that these women wished to end their marriage included: the husband's failure to support the wife and children, physical and emotional abuse inflicted on the wife by the husband and in-laws, sexual abuse inflicted on the wife by the husband, sexual abuse inflicted on one of the children by the husband, and constant problems with live-in- in-laws. Many of the interviewees claimed not only one kind of 'harm' but multiple. Staying married to a husband who was not supporting the family was particularly 'harmful' to the interviewees because as *married women* they were not eligible for government's welfare benefits nor for financial assistance provided by religious and privately-owned charity organizations in their local communities. This is significant since fifteen of the interviewees were economically underprivileged. For instance, in one of the cases the interviewee, a sixty year-old women, had been married for over thirty years and had four children with her husband. For the last twenty years, the husband remarried several times and had not been supporting her and their children. Meanwhile, the wife worked as a maid and as a peddler to support her children. But now she had developed health problems and could no longer support herself with precarious jobs. Therefore, she wanted to end her marriage so that she would be eligible for social

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<sup>50</sup> These negative attitudes are reflected in the way *khul* cases are routinely covered in the media since 2001 up till now. The coverage routinely depict plaintiffs as fickle and irrational women who file for *khul* for shallow reasons such as having an argument with the husband about the naming of their born child or the color of the furniture to buy for their living room. *Khul* is also depicted as an affront to the husband's manhood. For an analysis of societal attitudes towards *khul* as reflected in the media coverage as well as the parliamentary debate about *khul* in 2001, see Tadros (2002). Halim et al (2005) also report similar attitudes in their comparative study on *khul* and prejudicial divorce.

<sup>51</sup> Earlier studies such as Halim et al (2005) also reported that the reasons that women filed for *khul* and prejudicial divorce were very similar, which were based on grounds of 'harm.' Yet, an increasing number of women were resorting to *khul* because it took less time and was much more likely to be granted by the court.

assistance (L.E. 80) that was given by the government to unmarried women who had no male relatives to support. According to this interviewee, although her husband had been estranged from the family for twenty years, he still would not agree to *khul* because he thought it was insulting to his manhood that his wife would initiate divorce. He had not shown up for mediation sessions and the case went forward to court. Moreover, the husband had tried to delay court proceedings by evading reception of court summons and not showing up for court sessions. The case had been in progress for over a year.

In another case, the forty-year old plaintiff wanted to end her marriage because her husband had been sexually abusing their teenage daughter. The husband had not been supporting the family on a regular basis, and the wife worked intermittently to support their three children. Yet, the wife did not want to file for prejudicial divorce because the standards of proof of harm that were set by the law in such cases were very difficult to meet. The alleged 'harm' had to be substantiated by testimonies based on visual witnessing of the harm. Moreover, the interviewee in this case did not want to subjugate her daughter to the ordeal of disclosing details of the alleged sexual abuse to mediation specialists, court experts, and the judge. Accordingly this interviewee opted for *khul* although it was economically detrimental to her and her children. Since she had filed for *khul*, the wife and her three children moved in with her parents and five siblings. At the time of the interview, the *khul* case had been in progress for nine months and the plaintiff was still unable to find a permanent job. In addition, the interviewee was suffering from living as a dependent on her extended family, who was controlling her movements and wanted to have the final say in decisions regarding her case and the future of her immediate family.<sup>52</sup>

To conclude, because of the strong societal opposition to women's right to *khul*, the new family court system, with its incorporation of mediation and arbitration as alternative mechanisms of resolution of conflicts and fulfilling disputants' legal rights, does not necessarily facilitate women's access to *khul*. Our findings suggest that while plaintiffs find it easier and faster to obtain *khul* than prejudicial divorce, the process of filing for *khul* can be difficult and long. Moreover, some plaintiffs who have strong grounds to file for prejudicial divorce do not so and forfeit the financial compensation that they could have obtained had they filed for such divorce. Instead, these women opt for *khul* because filing for prejudicial divorce continues to be lengthy, difficult and highly uncertain process.

## **7.6. 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 reasons for filing for prejudicial divorce included: husband's failure to support and maltreatment, husband's

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<sup>52</sup> The interviewee's eighteen year- old brother insisted on accompanying her whenever she went to ADEW office to follow up on her case. On one occasion, the interviewee came to the office alone. While she was discussing her case with the ADEW lawyer, her brother called her repeatedly on the cell phone to inquire about her whereabouts and to insist that she stay in the office until he came to fetch her.

travel and failure to support, sexual abuse, the imprisonment of husband, husband's polygyny. 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. That is, most of these interviewees had complete financial and emotional support of their extended family. In addition, some of the interviewees earned an income and/or had some savings acquired during marriage.

The biggest legal challenge that the interviewees faced was proving the 'harm' that was inflicted on them. As mentioned in the first chapter, 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 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. Furthermore, disputants and their lawyers try to get around the challenges of this legal requirement by reporting bogus allegations of assault to the police or actually provoking fights with the other party in order to file for police report charging assault.

But in what ways and to what extent do the structures and the mechanisms of the new court system help or impede female plaintiff's access to a fair and expeditious legal process in prejudicial divorce cases? 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 (which we discussed previously) 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 to gather information about the case, whatever information that may be 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. But again the question arises: How effective is that role? 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 a 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 her wife. One of the duties that court

experts carry out is to inspect the conjugal home that the husband provides in these cases. The findings of this study show that not all court experts inspected 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 meaningful or helpful to plaintiffs. For instance, one of the interviewees pointed out that proof of the existence of an adequate conjugal home should not be the main issue in obedience award cases. In her case, her husband was able to prove to court that he had an adequate conjugal home. Yet for her, his failure to support her and the children for eleven years and his ignorance of the school grades that his children went to were more relevant matters that the court should consider in such case. One of the interviewed judges also expressed similar point of view. He 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.

But would the court experts be able to gather information that would enable the judges to have insight into the grounds on which a plaintiff is claiming harm and accordingly asking for divorce? Once again, the previously-mentioned problems that we pointed out in regard to the work of experts become an issue. The difficulties that experts may face in meeting with both disputants and establishing cooperative relationship with them impact the kind of information they could gather about the case. Moreover, experts may need to have access to other kinds of information that are not be provided by the involved parties such as husband's financial capabilities, information about spousal abuse, or family conditions that exacerbate the conflict (e.g. abuse inflicted by in-laws on either spouse, disputants' earlier history of inflicting or suffering from abuse, etc). And lastly, even the best-written and most informative reports that are provided by court experts still remain a professional opinion that the judges may consider or disregard. Moreover, the opinions of the experts in themselves do not constitute proof of harm.

Thus, the benefits that female plaintiffs who apply for prejudicial divorce gain from the new family court system remain negligible.

### **7.7. 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 1-4 years. The period of litigation in the pending cases ranged 1-2 years. Most of the interviewees filed for multiple cases, maintenance being the first.

As mentioned earlier, mediation is most useful in maintenance cases. When the specialists succeed in working out a settlement between the disputants, the signed agreement is legally binding. In theory, this means that plaintiffs use this signed agreement to collect maintenance. However, as mentioned before, enforcement of these agreements is a major challenge that confronts plaintiffs. This may explain why only two out of the fifty-three interviewees settled their maintenance cases in the pre-litigation-mediation stage.

In the litigation stage, plaintiffs are confronted with a host of problems. The biggest challenge is providing proof of husband's financial assets and earning capabilities. When a female plaintiff files for spousal and/or child maintenance, the court orders investigation of husband's earning capabilities. The plaintiff takes the court order for income investigation to the police station in the neighborhood where the husband lives. The police agency then assigns the task of investigation to *Sheikh El Hara*, i.e. the law enforcement official who is in charge of that particular neighborhood. *Sheikh El Hara* conducts informal investigation in the area to find out about the earning capabilities of the husband. 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. This was true of female interviewees who used the system of *Sheikh El Hara*. In the cases when husbands work in the formal sector, plaintiffs take a court order for husbands' salaries to their workplace. Once again, employers in this sector do not always provide accurate information about their employees' salaries to the court, either as a sign of support to the employee in question or because the employer's financial records are not in order. Again, several of the interviewees reported confronting this problem. For instance, the husband of one the interviewees worked for a private tourist office. The husband's job involved driving tourists around and cleaning apartments that were rented out by the office to the tourists. The office did not keep its financial records in accordance with the requirements of the labor law Egyptian labor. In addition, the husband had personal relationship with his employers. Thus, the office provided false records to the court, which underreported the husband's actual income. In another case, the interviewee's husband was a music instructor who was working in private music school. Again, the school provided false records about the husband's income. In such cases, all plaintiffs can do is to dispute the submitted income records and ask for further investigation. Obtaining income records from government-owned businesses and offices, on the other hand, does not involve the same challenges. However, in this study all interviewees except for one were married to men who mostly worked in the informal sector. Few of the husbands also worked in privately-owned businesses.

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 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 our observations of court sessions, we noted that issuing court orders for temporary maintenance was not always done by judges. 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, plaintiff's lawyer tended to become sloppy and 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, 11 interviewees were collecting court-ordered maintenance from Nasser Bank, 4 from the spouse's work place, and 1 through a relative. The remaining three of the 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 legal process. That is, plaintiffs once again had to go through mediation. And if mediation failed, they had to bring their case to court. Then the court once again ordered the investigation of husband's financial assets and earning capabilities. Many plaintiffs thought that this whole process was unnecessary since they had already obtained court orders for maintenance. To avoid imprisonment, husbands often agreed to pay the owed amount of maintenance money in installments. But some husbands did not honor the schedule of the payment of the installments, and the wife was forced more to resort to court.

Reaching agreements about payments of owed court-ordered maintenance in the mediation stage was beneficial for the plaintiffs since it saved them the lengthy process of litigation. But once again, these mediated agreements were not always honored by husbands. Furthermore, plaintiffs could not collect unpaid maintenance that the husband owed as well as deferred dower and compensation money (*mut'a*) from Nasser Bank. A legal recourse that these plaintiffs sometimes resorted to in such cases could resort to was to file for the seizure of husband's possessions so that they can be auctioned. But this process was often difficult and unsuccessful since husbands resorted to concealing their possessions. Also, this strategy did not work in the cases when husbands did not have valuable possessions that could be seized and auctioned in order to raise the owed amount of maintenance money. In short, even with court orders, there were many cases when women could not claim their financial rights and were totally dependent on their husband's or ex-husbands good will in order to access these rights.

To conclude, there are a number of problems that make the legal process in maintenance cases difficult, lengthy, and burdensome to female plaintiffs. These problems arise from procedural drawbacks (e.g. mechanisms of investigating husband's income, separate litigation process for unpaid maintenance, etc). These problems continue to exist within the new family court system. Mediation can function as a faster alternative mechanism of resolving maintenance cases; however, this positive role is diminished by the problem of enforcing mediated agreements as well as other previously mentioned drawbacks in the structure and work of mediation offices. The findings of this study also showed that court experts who worked in rural areas also played a beneficial role in maintenance cases. But this role was the result of creative assignment of tasks on the part of the judges in these courts as well as the small size and closely knit communities in these areas, which enabled the experts to have good knowledge of many the residing families. So it remains to be investigated if it helpful and feasible and helpful to put in place a system through which court experts can facilitate the legal process in all maintenance cases either through gathering information or acting as a monitoring mechanism.

Lastly, it is to be noted that several judge interviewees as well as women's rights activists (with legal background) recommended that the best way to make use of the role of the public prosecutor in the family court was to assign them the task of carrying out the investigations of financial assets and earning capabilities of husbands in maintenance cases, and subsequently the public prosecutor would submit the necessary documents to the court.

### **7.8. 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 had the opportunity to examine 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. 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 the personal status laws that are being applied (Law. No 25 of 1929 and Law No. 100 of 1985). But there is little explanation on how a particular law applies to the case in question. In other words, judgments of a particular type of cases read almost the same and the differences are mostly in the names of the disputants. Judges handwrite the judgments and hand them over to court clerks, to be handwritten in a set format. Lawyers often arrange for the handwritten judgments to be typed and then have them signed by the senior judge and sealed by the court clerk.

At the start of a case, lawyers submit a brief (*sahifat El dawa*) in which they state and make the argument for their clients' claims. The document explains the ways in which the plaintiff is wronged and the legal redress that she is claiming. However, these documents tend to be fairly short and do not include many details about the dispute.

Lawyers' briefs, like court judgments, quote copiously the particular articles from Law No. 25 of 1929 (amended by Law. No. 100 of 1985) that apply to the case in question.

The case file that is presented to the court include a document that verifies that the disputants have tried mediation before coming to court, but the file does not often include mediation reports. Documents produced by mediation offices are: a report written by the psychological specialist, one written by the social report, records of mediations sessions, and the agreement reached between disputants. These documents, in general, include more details about the dispute and the disputants than lawyers' documents. But quality of the documents, as noted earlier, varies greatly from one mediation office to another. In some mediation offices, the reports consist of short forms which include the names of the disputants, their residential addresses and jobs, a brief description of the dispute and the claims of the disputants. Then the report may or may not end with the specialist's recommendation. In other offices, reports are lengthier and include more information and analysis about the dispute and the disputants.

The handling of documents constitutes the core of the court proceedings. That is, most of the interactions between the judges, lawyers, and the litigants in the court room revolve around whether required documents have been submitted. 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 much less time to hearing from lawyers and litigants and interacting with them than they do to the process of ensuring that all procedures have been fulfilled by reviewing closely the submitted documents. This is understandable considering the number of cases that is reviewed in most 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).

What can be concluded from the above is that, 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 abuse and legal tricks, which sometimes husbands and their lawyers resort to. For instance, many of the female disputants (interviewed in this study) 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 dire 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 procedures 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 enhance their roles.

### **7.9 Gendered Legal Process**

The legal process in the new court system is gendered in a number of ways: First, 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. Women are entitled to be the custodial parents of their children in the event of divorce until the children reach 15<sup>53</sup>; however, they lose custody if they remarry. In addition, in the case of divorce, women lose claim to the conjugal home, and are instead entitled to housing allowance (often meager and inadequate) only if they are custodial parents. Fathers have full legal guardianship over their minor children; while mothers-even when they are the custodial parents- do not have that right. The point is that the differentiated and unequal legal standing and rights that men and women are granted by the 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. Therefore, in so much as some of the substantive family laws are biased against women, the benefits that women can gain from the new court system are diminished.

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 frequently articulated in court proceedings and mediation sessions. One of these views, for instance, considers women as emotional and hasty, and therefore often incapable of making rational decisions about dissolving their marriage and obtaining divorce. Some of the mediation specialists and court experts pointed out how young women resort to *khul* hastily over petty reasons such as the husband's refusal to buy them the kind of shampoo they prefer or because of a disagreement over the color of the upholstery for the furniture in the conjugal home. This skepticism about women's rationality, particularly when it comes to decisions about divorce, was also accompanied by questionable strategies that some mediation specialists and judges used when they attempted to reconcile disputants. A common strategy that was used 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.

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<sup>53</sup> 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.

Another common view expressed by court personnel is that women's sexuality is to be controlled and guarded by their husbands. According to the court personnel (as well as the disputants), one of a woman's main duties in marriage is to be sexually accessible to her husband. However, a woman's right to have sexual access to her husband, while not disputed by court personnel and disputants, is never mentioned by them as one of her basic rights. Rather, what is stressed is her right to be supported by her husband. Furthermore, female disputants' views on what constitutes violation of their sexual rights were different from those expressed by court personnel. Mediation specialists, court experts, lawyers, and judges often defined spousal sexual abuse in narrow exclusive 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 disputants who were interviewed for this study, on the other hand, identified forced sexual intercourse and sexual relations that are accompanied by emotional maltreatment as a serious form of a spousal sexual abuse. Furthermore, a considerable number of these women (11) suffered from this abuse and considered it as one of the reasons why they wanted to end their marriage. One of the interviewees, for instance, suffered from severe bleeding because her husband forced her to have sexual intercourse with him not long after she delivered their child in a difficult cesarean operation and against the orders of the obstetrician. However, this interviewee as well as the others who suffered from similar forms of spousal sexual abuse chose not to make their legal claims on these grounds. They thought it was humiliating to recount such experiences to the court personnel; moreover, they did not think it would be helpful to their case. While judges and lawyers agreed that forced sexual relations and emotional abuse were forms of 'harm' against wives, they felt that the boundaries of this form of harm were ambiguous and fluid and thus hard to identify.

It has to be noted; however, that these gendered views on women's sexuality and sexual rights in marriage do not always hinder female plaintiffs' access to the legal redress which they are seeking. For instance, in one of the interviewed prejudicial divorce cases, the wife's lawyer argued that the husband was not fulfilling two of his fundamental duties as a husband, namely supporting his wife and protecting 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. The fact that the husband entered into a second marriage and concealed it from the first wife was mentioned in passing in the brief. But the latter reason, unlike the husband's failure to support the wife and guard her sexuality, was not stressed as the main form of 'harm' which justified the plaintiff's right to claim divorce. Again, the court based its judgment to grant divorce on the grounds of the husband's failure to support and guard his wife's sexuality. In other words, this plaintiff was able to access her right to prejudicial divorce by making use of the gendered legal discourse on women's sexuality and the differentiated sexual and financial roles expected of a husband and a wife.

## **8. Disputants' Strategies of Claiming Redress**

Female plaintiffs used a number of legal and non-legal strategies to resolve their marital conflicts to their benefit. Family was often the first mechanism of redress that women resorted to: the female interviewees sought the assistance of their extended family as

well as trustworthy and influential relatives in the husband's family in order to resolve the conflict. But in most cases, this mechanism either did not work or worked for a short time and then the conflict resurfaced.<sup>54</sup> Some of the interviewees continued seeking family-based forms of mediation even during the period of litigation. But in none of the studied cases, did these family-based mediation efforts result in agreement and accordingly ended the litigation.

Few interviewees used mediation as a strategy of sending a message to the husband and intensifying efforts to reach a compromise and reconcile. In some of these cases, although the husband did not come to the mediation office, negotiations took place between the couple through family channels, but they were not successful. Subsequently the interviewees decided to proceed with litigation. However, most female interviewees understood mediation to be a stepping stone to litigation. This was partly due to female plaintiffs' lack of understanding of mediation as an alternative mechanism of resolving family disputes in order to avoid or diminish the need for litigation. But other reasons were that husband's absence from mediation sessions and the weak legal power of mediation office persuaded many plaintiffs that mediation was merely a pre-litigation formality.

Female plaintiffs also tried to use the gendered aspects of the legal process to their advantage. Interviewees tended to emphasize to mediation specialists and their lawyers how they fulfilled their sexual duties towards their husbands and how they continued to guard their sexuality even though their spouses were estranged from them and had forfeited their roles as providers and protectors of their wives' chastity. In addition, as mentioned earlier, interviewees did not report spousal sexual abuse which was inflicted on them because they thought that such claims were more difficult to be accepted by the legal system, and instead opted for gendered but more guaranteed claims (e.g. husband's failure to support despite of the wife's obedience and sexual availability).

In short, the findings of the study show that a number of female plaintiffs make use of mediation as an additional strategy (in addition to family-based ones) to negotiate for an expeditious and acceptable resolution of their marital conflicts. But the significance of this strategy remains limited because a number of legislative gaps and implementation problems undermine the work of mediation offices. Furthermore, plaintiffs continue to use family-based forms of mediation during litigation but for the most part the latter is often unsuccessful. Some female litigants succeed in making use of the gender biases in the legal process to their advantage. Yet for the most part, these biases in addition to the previously-mentioned problems in the new family court work against women.

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<sup>54</sup> What frequently happens is that family-based mediation efforts focus on calming the couple, but fail to resolve the roots of the conflict. For instance, in one of the interviewed cases, the marital conflict was caused by the fact the couple lived with the in-laws and the mother-in-law controlled the money that the husband allocated for living expenses. Family mediators could not push for the option of a separate housing for the couple because it was not acceptable to the mother-in-law. Also the husband was opposed to a separate living arrangement because he wanted his family to "guard" his wife while he was away. Furthermore, since he had to remit money to his parents, he did not want to send additional money to support his wife and child in the event of their living in a separate housing.

## 9. Non-Legal Obstacles: Politics of Marriage

I conclude this chapter by discussing briefly some of the politics of marriage, which contributes to marital conflicts that end in litigation and dissolution of marital relations. On the one hand, marriage continues to be an important social institution in which families as well as their sons and daughters invest heavily to seek stability, security, and social acceptability for the children as well as to forge alliances and maximize resources for the family. On the other hand, the costs of marriage have become a monumental economic burden for many young Egyptians and their families. Egypt Labor Market Panel Survey of 2006 show that the nominal national cost of marriage between 1995-1999 was LE25, 705, and in the subsequent five years, it rose to LE32, 329.<sup>55</sup>

Young men work for many years, migrate, and solicit the assistance of their families in order to save for the costs of marriage. Women and their families also have to strategize in order to save for their share of the costs of marriage.<sup>56</sup> Young women, from low and middle classes, work and join savings pool (*gam'iya*) in order to save for the costs of their marriage.<sup>57</sup> In addition, a husband with financial assets becomes the most desirable marriage partner for daughters. The most important of these assets are a job with a regular source of income, an apartment, and the ability to cover the costs of marriage. This strategy of seeking a husband with adequate financial assets, however, does not always work. In the first place, there are not many men who are able to shoulder the financial responsibilities and costs of marriage without having to work for many years and delay marriage or depend on the assistance of their families. In addition, sometimes when the husband's family contributes to the establishment of the new conjugal home, it makes claim on the resources of the new couple and wants to play a central say in the use and management of these resources.

The economic burden of marriage coupled with the great social need to get married creates a lot of stress and strain on single women and men. Thus, often women and men partake in the process of getting married with a sense of caution and fear and a conscious effort to protect oneself from a unilateral dissolution of marriage by the other partner and the potential losses that they may incur in case this actually happens. However, what is sometimes lost in this process is an effort to create a marital relationship on the basis of mutual respect, trust, and shared ownership of the new conjugal life.

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<sup>55</sup> Cited in Diane Singerman. *The Economic Imperatives of Marriage: Emerging Practices and Identities among Youth in the Middle East: A Middle East Youth Initiative Working Paper*, Number 6, September 2007. Washington D.C., U.S.A and Dubai, United Arab Emirates: Wolfensohn Center for Development and Dubai School of Government.

<sup>56</sup> According to Egypt Labor Market Panel of 2006, the bride and her family contribute 31% of the costs of marriage, while the groom and his family contribute 69%. Although the bride's side's share is less than the groom's, it is still a considerable percentage, particularly for lower and lower middle classes. Cited in Diane Singerman. *The Economic Imperatives of Marriage: Emerging Practices and Identities among Youth in the Middle East: A Middle East Youth Initiative Working Paper*, Number 6, September 2007. Washington D.C., U.S.A and Dubai, United Arab Emirates: Wolfensohn Center for Development and Dubai School of Government

<sup>57</sup> See Amin, Sajeda and Al-Bassusi, Nagah. *Wage Work and Marriage, Perspectives of Egyptian Working Women: Population Council Working Papers*, No. 171, 2003. New York, U.S.A: Population Council

The female interviewees in this study sought marriage to seek the social acceptability and sense of personhood that are attached to the role of a wife and a mother. Economic factors also motivated the interviewees' pursuit of marriage. Some got married to escape the life of economic hardships that they led in the household of their extended family, others sought marriage to relieve their families from the responsibility of having to support them, and some of the women felt pressured to get married in order to escape the stigma that their community and the larger society attached to being an older unmarried woman. For many of the women, the process of their getting married was filled with challenges and tensions arising from inhibiting socio-economic factors that shape the politics of marriage. These problems, furthermore, had an impact on their marriages. In what follows, I will elaborate on this point using ethnographic material gathered from a case study conducted with one of the interviewees.

Nadia is a twenty-nine year old woman with a sixteen-month old daughter.<sup>58</sup> She had been married for three years, but had been in a legal conflict with the husband for the past twelve months. She filed for prejudicial divorce and child alimony. Recently, she received a court judgment to collect temporary maintenance of L.E 200 a month for herself and her daughter from Nasser Bank. The source of Nadia's marital conflict was that she had been living with her in-laws in their apartment building. She lived in a separate apartment in the building, but she had to share meals with her in-laws in their apartment where she was expected to do house cleaning and cooking every day. Her in-laws had a key to her apartment and accessed it freely to use the washing machine and the bathroom heater. Her husband, who worked as an air-conditioner repair man in Kuwait, sent monthly allowance to his family, but no separate money for his wife since he expected her to share meals with his family. Nadia suffered from the lack of privacy and independence, in addition to constant fights with her mother-in-law. She asked her husband for a separate apartment, but he and his family refused. Nadia's problems with her in-laws impacted her relationship with her husband. As a result of one of several family-initiated mediations, it was agreed that although Nadia would continue to live in her in-laws' building, her husband would send her L.E. 200 a month so that she would cook her meals separately and manage her daily expenses. But this agreement only lasted for a month: the husband's family objected and put pressure on him because they were concerned that he would cut down on the monthly sum of money which he remitted to them to pay for the annual taxes of the family-owned auto repair shop.

Nadia's own family background and the strategies she used to make decisions about her marriage partner and to cover for the costs of marriage shed a lot of light on the difficulties and contradictions of the politics of marriage. Nadia's father, an illiterate manual laborer, worked in Libya for several years until he saved enough money to purchase a small apartment in a poor urban area in Giza. When he returned, he opened a small candy and soda store in his neighborhood. The father had three daughters from a first marriage before he married Nadia's mother. After giving birth, Nadia's mother had 11 miscarriages before she gave birth to a son ten years ago. Because the family made little money from the store and her father's health was getting frail, Nadia started working since she was sixteen. She worked in summer in a variety of service and

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<sup>58</sup>The real name of the interviewee has been changed for the purpose of confidentiality.

cleaning jobs such as a sales assistant in a pet shop and a cleaning worker in a hairdresser's. She used the money she made to cover her own personal expenses. When she joined a two year vocational institute after high school, she got a full time job working as a sales person in an upscale make up and women's lingerie store. She worked twelve hours a day and made L.E 500 a month in addition to L.E 100-150 commission from the sales profits. Nadia focused on her job and stopping going to the vocational institute, but she managed to sit for the final exams in and successfully graduated. During the six years she had worked before getting married, she had two goals: to save enough money to buy her trousseau (*gehaz*), to cover her personal expenses, and to help out her family. She managed to buy the furniture for the living room, the washing machine, the kitchen stove, some chinaware, carpets, bed sheets and kitchen utensils, etc. She also paid for the costs of painting her parents' apartments and changing the upholstery of their living room furniture. In addition, she was able to save L.E 5000.

Nadia sought marriage in order to have an autonomous life in which as she put it, "I have my own place, I can arrange the furniture and cook as I please." But as she approached her mid-twenties, her mother was worried that she was getting too old and pushed to her pursue marriage. Nadia's criteria for choosing a marriage partner are indicative of the economic challenges that shape marriage politics. She wanted to have a partner who was able to provide for her and had enough financial assets to cover his share of the costs of marriage. She turned down a number of suitors since her late teens because although they had enough cash to cover the costs of marriage, they held precarious forms of informal work (*arzagi*),<sup>59</sup> so she feared that they might lose their work and would be unable to support her.

Before her present husband, she was engaged to her co-worker's fiancée. He held a government job, had a similar level of education as hers, and had an apartment. Moreover, she liked him and thought that he was good-looking. But the marriage plans fell through because they could not agree on the marriage costs. Her finance wanted her to split the costs of the wedding party with him, but since she had already paid for the engagement party, she and her family thought that they should not contribute to the wedding party. Therefore, they broke the engagement, but her fiancé came back few months later and wanted to pursue the marriage plans. This time, he agreed to pay for the wedding party but said that he would not be able to buy her a jewelry gift (*shabka*). She agreed, but once again the marriage plans failed because they disagreed on what to write in the *qayma*, i.e. record of items and furniture in the conjugal home which the wife claims at the event of the dissolution of marriage. Although Nadia wanted to marry him and was trying hard to make things work, she decided that if she were to compromise on the *qayma* and give up her right to *shabka*, she would enter into the marriage with insufficient financial leverage and protection. Having this kind of financial protection was important for Nadia, particularly since she did not plan to work after marriage. Her reasons for opting out of the labor market after marriage were related to the kind of work she was doing and her expectations about the role of her marriage partner. Although her job as a salesperson in a fancy store was financially lucrative, the working hours were

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<sup>59</sup> Examples of such jobs are street vendors, construction workers, and vocational workers who were employed on temporary basis.

very long and it would very difficult to juggle this kind of work with married life and child rearing. Moreover, she was fearful that if she continued working after marriage, her future husband would forfeit his role as the primary provider for the family. She recounted the experiences of several of her friends whose husbands expected them to contribute all their salaries to the household expenses. She pointed that these husbands were fearful that their wives would become defiant because they had their own source of income, and accordingly they put too many financial demands on their wives.

After her first engagement failed, Nadia was even more convinced that the financial assets of a future husband were the crucial criteria for the choice of a partner. Her present husband, whose parents and siblings lived in the same street as her family, proposed. His education level was lower than hers; he was an elementary school drop-out. Also, she did not feel an emotional attachment to him, as she did with her previous fiancé. But the present suitor had an apartment in his family-owned building and held a well-paying job as air-conditioner repair man in Kuwait. In addition, unlike her previous fiancé, he agreed to buy her a L.E. 5000 *shabka* and sign the *qayma* that she and her family proposed.

Nadia felt that she did the best she could considering the inherent difficulties and challenges of pursuing a stable marriage. She said, "From all that I heard from people around me I knew marriage was all financial problems. So all my attention was focused on saving and buying my trousseau so that I would not need anything after marriage. I knew I had to take someone who had steady work and was not doing odd jobs." Her insistence on a receiving a *shabka* served her well when the marriage fell apart. She sold her jewelry and used the money to pay for the costs of the caesarian operation that she had when she was delivering her daughter. In addition, because of her possession of a *qayma*, she filed an additional law suit against her husband to reclaim her possessions in the conjugal home. But she is saddened that she did not fulfill her main goal of living in a stable and secure marriage. She pointed out that in hindsight she might have had a longer engagement period to get to know her fiancé and her in-laws. Also, before the marriage took place, she could have insisted on living separately from her in-laws.

In other words, the process of pursuing marriage entails for many women finding a suitable and compatible partner, negotiating each partner's share of costs of marriage, and entering into marriage with adequate protection against divorce and abandonment. However, these different aspects of the process are not necessarily congruent to one another. Negotiations and compromises have to be made. Some women strategize better than others, but still many enter into marriages which are inherently based on highly precarious foundations. In the case of the interviewees in this study, examples of these weak foundations included reliance meager resources that are shared with in-laws, husband's precarious employment status, discrepancy between husband's and wife's perceptions about their financial roles in the marriage and the realities of their economic needs, pursuit of partners with economic assets at the expense of emotional and educational compatibility.

To conclude, legal reforms such as the establishment of mediation-oriented family courts have also to be examined within the context of these inherent problems in the politics of marriage in present day Egypt. It can be inferred that for such reforms to be effective there is a need for a supportive and enabling socio-economic environment. For instance, even when specialists succeed in mediating between disputants, such agreements will not be fruitful unless the root causes of the marital conflict have been addressed. This means that there is a need for follow-up mechanisms that could be based in non-legal institutions. One of the main activities that are currently being carried out under *the Family Justice Project* consists of providing a cluster of services to married couples in order to help them overcome problems that lead to marital conflict. This is a commendable and much needed effort. However, what is also needed is to provide diverse services that target single women and women who are pursuing marriage. Such services should, of course, include creating opportunities for adequate employment and economic independence. But equally important is promoting a new model of marriage among young people: one that is based on mutual respect, affection, trust, and shared responsibilities and rights.

## Chapter 3

### Towards a Just and Gender-Sensitive Family Law: Assessing Recent Legal Reforms

#### **Introduction**

This final chapter sums up the main findings of the study. The conclusions drawn from the study are then used to examine how recent reforms in Egyptian family laws can be a pathway to women's legal empowerment. The chapter discusses the different agendas that drove the reform efforts, the strategies used, their benefits and pitfalls, and the changes that are still needed in the reform process in order to bring about just and gender-sensitive family laws. Then the chapter concludes with a number of recommendations.

#### **Family Courts in Egypt: A Success Story for Women?**

This ethnographic study of the legal process in family courts in Egypt shows that the new legal system suffers from a number of problems. These problems can be summarized as follows: First, the new court's alternative mechanisms of dispute resolution (i.e. mediation offices and court experts) are unable to play an effective role because they lack authoritative legal structure, adequate training and resources, enforcement mechanisms, and a supportive legal and societal environment. Second, the new court, like its predecessor, continues to be heavily reliant on procedure-oriented approach towards the implementation of the law, which sometimes results in abuse of the system on the part of lawyers and disputants. Third, the public prosecutor is not well-utilized and his current role (i.e. submission of memorandum of opinion to the court) does not contribute to the adjudication process and merely prolongs the legal process. Lastly, the current judges in the new courts do not work exclusively on family law cases, and some continue to be transferred from and to different types of courts (civil, criminal, and family). The lack of specialized family court judges hinders the development of adequate judicial expertise and accordingly impacts the quality of the adjudication process. This is particularly problematic when senior judges lack sufficient experience as was shown by some of the ethnographic data reported in the study.

Yet, some of the new structural changes that were introduced by the new system have also shown that they *do* benefit women –albeit in small and uneven ways for now. First, having a panel of three judges review and adjudicate each family case can facilitate a due and fair process. Our court observations and interviews with the judges suggest that members of the judicial panel tend to share with one another their knowledge and expertise in family law and their deliberations can help the court reach more informed interpretations of the laws. However, the key to the success of this process is to have specialized and experienced judges who also have comprehensive and critical understanding of the laws that they are implementing.<sup>60</sup>

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<sup>60</sup> From my court observations and interviews, I noted that judges who had these characteristics played an active and influential role in deliberations with other members of the judicial bench. They also adopted less literal interpretations of the laws, which worked better for women. For instance, one of the interviewed judges, who exhibited such knowledge and skills, thought that the provision of an adequate conjugal home was not the deciding factor in awarding obedience ordinances to husbands, but often was even less important than other factors that may directly relate to the reasons why the wife left the conjugal home such as lack of maintenance, subjugation to spousal abuse, etc.

Second, agreements reached by mediation offices regarding maintenance provide women with a fast way of accessing the financial support that they are seeking while saving them a lengthy litigation process that would cost them a lot of money. Currently, the enforcement of these agreements is contingent on the goodwill of husbands. Furthermore, the decision of the board of Nasser Bank not to enforce maintenance agreements that are issued by mediation offices has diminished the usefulness of mediation in maintenance cases. But if these enforcement obstacles are overcome, resolving maintenance disputes through mediation will be one of the major benefits that the new court can offer to female plaintiffs.

Furthermore, to enable mediation to function as an effective alternative mechanism of dispute resolution, particularly in divorce cases, two additional issues have to be addressed. The first concerns the need to establish a cadre of professional mediation specialists with excellent mediation skills. These skills should include the ability to communicate with disputing parties, to guide the process of mediation, to be impartial but also cognizant of any differential power relations between the disputing parties, and to ensure that the vulnerable disputant is not disadvantaged by their lack of power vis-à-vis the other party.<sup>61</sup> The second issue relates to the broader point of weighing the advantages and the disadvantages of compulsory mediation. The international literature on mediation in family law cases is divided on this issue.<sup>62</sup> On the one hand, there are studies that show that mandatory mediation saves time and effort that would be spent unnecessarily on litigation. On the other hand, some studies show that compulsory mediation can lead to discrimination against the weaker disputant. For instance, the more powerful disputant may deliberately not show up for mediation sessions, or choose to hinder the mediation work by being hostile and uncooperative. In such cases, mediation becomes a mere procedure that prolongs the process for the weaker disputant and an additional obstacle to overcome.

As shown by the ethnographic data presented in this study, some of these problems feature in mediation work in Egyptian family courts. Moreover, since mediation is

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<sup>61</sup> There is a large body of feminist literature that argues that mediation is not suitable for domestic violence cases since a female disputant may be hindered by her fear of abuse or violence from the other disputing party and thus she is unable to bargain and participate in mediation sessions. This literature also cites other factors that inhibit women's beneficial participation in mediation such as particular patterns of family relations and cultural/societal norms that encourage women to be passive and deferential. See Weingarten, Helen and Douvan, Elizabeth. "Male and Female Visions of Mediation." In: *Negotiation Journal*, 1, 4, 1985: 349-358; Pickett, Elizabeth. "Familial Ideology, Family Law, and Mediation: Law Casts More than a 'Shadow'" In: *Critical Criminology*, 3, 1, 1991: 27-45; Strang, Heather and Braithwaite, John. *Restorative Justice and Family Violence*. Cambridge: Cambridge University Press, 2002; Field, Rachel. "A Feminist Model of Mediation: Using Lawyers as Advocates for Participants Who Are Victims of Domestic Violence." Retrieved on January 15, 2008 at <http://www.dvirc.org.au/Publications/ub/Autumn%2005RachelField>

<sup>62</sup> See Roberts, Simon. "Mediation in Family Disputes." In: *The Modern Law Review*, 46, 5, 1983: 537-557; Coulson, R. *Fighting Fair: Family Mediation Will Work For You*. New York: The Free Press, 1983; Liebmann, Marion. *Mediation in Context*. Great Britain: Jessica Kingsley Publishers, 2000; Robert Emery et al. "Divorce Mediation: Research and Reflections." In: *Family Court Review*, 43, 1, 2005: 22-27; Randall W. Leite Kathleen Clark. "Participants' Evaluations of Aspects of The Legal Child Custody Process and Preferences for Court Services." In: *Family Court Review*, 45, 2, 2007: 260-273

mandatory, it becomes essential for the government to put in place all legal and administrative mechanisms that will enable the provision of adequate, effective, accessible, and affordable mediation services. However, these commitments may not be adequately fulfilled (as is the case in Egypt) due to a number of reasons such as lack of resources, policy gaps, implementation problems, etc. In such cases, the purpose of mandatory mediation as an alternative mechanism of dispute resolution becomes even more difficult to achieve.

Finally, the role of court experts, when adequately utilized by the judiciary bench, can be beneficial to women. Court experts in rural areas, as reported by some of the judge interviewees, have been able to assist the court with accessing adequate information about husbands' income. In addition, settlements reached between disputants with the help of court experts shorten the litigation period and provide female plaintiffs with an alternative mechanism of claiming redress. But once again, a number of factors hinder the role of court experts either as mediators or as informants who provide the court with insight and professional advice on the disputes in question. These inhibiting factors include the following: lack of legal instruments that would enforce both disputants to come to meetings with court experts, insufficient and inadequate training and knowledge of mediation skills, absence of well-developed structure for the role and responsibilities of court experts, and lastly the ambivalence of some judges towards the role of court experts and the scope of their power.

To sum up, we can draw three main conclusions from the present study: First, 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. Second, the benefits that family courts are currently providing to female plaintiffs are diminished due to a number of gaps and shortcomings in the legislation, mechanisms of implementation, resources, and the capacity and the training of court personnel. Third, because some of the substantive family laws that are being implemented in the new courts continue to reflect gender inequality and biases against women, the new legal system is limited in its ability to strengthen the legal rights of women. Thus, men's right to unilateral repudiation and polygny, for instance, continue to be unrestricted. Women still face a great obstacle in proving 'harm' in prejudicial divorces. A swift court judgment in maintenance cases is impaired by the intricate obstacles to providing proof of husband's financial capabilities. Obtaining *khul* divorce is slowed by a number of unhelpful procedures (e.g. compulsory reconciliation efforts) and lack of clear procedures to address issues such as dispute over advance dower. And the legal process is conducted through a gendered discourse on female rationality, female sexuality, and the unequal duties and rights of wives and husbands.

This leads us to ask: in the absence of comprehensive legal changes that eliminate the biases against women in current substantive family codes, to what extent can present procedural reforms, such as family courts, strengthen the legal rights of women? In other words, how is the lack of reforms in substantive family codes impacting the recent accomplishments in procedural laws? And what kinds of changes are needed in order to bring about just and gender-sensitive substantive family laws?

In what follows, the role that recent legal reforms in Egyptian family laws can play in the legal empowerment of women will be evaluated through an analysis of the agendas that drove the reform efforts, the strategies that were used, the nature and scope of changes that were made, and those that are still lacking.

## **Reforming Egyptian Family Laws: Assessment of Process and Outcomes**

### **Diverse Agendas**

Recent legal reforms in Egyptian family law were driven by multiple agendas. On the one hand, legislators, the judiciary, and government officials were keen to get rid of the old legal system which was overloaded, inefficient, and taxing to litigants in the amount of time, procedures, and money that were involved in the legal process. The goal was to put in place a specialized and efficient system that offered accessible, affordable, and effective legal services. This goal was sought through: 1) developing a concise and comprehensive body of procedural laws to regulate PSL cases (i.e. Law No. 1 of 2000), and 2) the establishment of specialized legal system that handles all PSL cases (i.e. family courts).

But the government's efforts in reforming family law also need to be understood within the context of two competing and sometimes conflicting agendas which it has undertaken. On the one hand, the government is constantly striving to assert its religious legitimacy by partaking in and legitimizing dominant religious discourses that regulate family relations and gender roles. The significance of this goal has increased after the rise of the influence of Islamic groups in the 70s and onwards. On the other hand, the government sees family law reform as a means of modernizing the country, enhancing the development process, and maintaining the support of international organizations that generously fund the country's various development projects.<sup>63</sup> These conflicting goals of the government have often translated into an uneven and mixed process of reform in family law (Lone 1995, Shaham 1999, Ibrahim 2000, Mashhour 2005, Sonneveld 2002, Moors 2003, Singerman 2005).

Women's rights activists who participated in the reform process, on the other hand, used the new procedural legislation as a vehicle through which they successfully pushed for few but significant legal changes that widened women's legal rights in divorce. For instance although Law No. 1 of 2000 is a procedural legislation, it contains two articles that grants women additional substantive rights to obtain judicial divorce (i.e. *khul* divorce and divorce from *urfi* marriages). Law No. 10 also introduced an important

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<sup>63</sup> Much of the recent literature on family law in Egypt notes the chronological proximity between various family law reforms that have been adopted by the government and the holding of international conferences on women's issues and rights. For instance, PSL No. 44 of 1979 was passed before the July 1980 United Nations World Conference on Women in Copenhagen; PSL N. 100 of 1985 was enacted before the UN Conference on Women in Nairobi that took place in the same year; the new marriage contract proposal was considered by the government right after the International Conference on Population and Development in Cairo in 1994; and the latest legal reforms, namely, Law No. 1, Law No. 10, and Law No. 11 were passed before the UN Conference on Women in 2005 and the 2005 World Summit. See Shaham 1999 and Sonneveld 2002.

stipulation in Article 14, which abolishes appealing PSL cases at the level of the Court of Cessation. While this was opposed by some judges and lawyers, the goal of the new stipulation was mainly to protect women who obtained judicial divorce from the legal maneuvers of husbands who dragged divorce cases through lengthy appeal process.

But the reforms that were introduced through Laws No. 1 and 10 are still perceived by most women's rights groups as inadequate. There is a consensus among these organizations that there is a need for a new and comprehensive family law code that would be based on gender equality, unlike the current substantive laws, which are seen as discriminating against women (Law No. 25 of 1929 and Law No. 100 of 1985). In fact, as a result of the lobbying of women's rights groups and semi-governmental organizations such as the National Council for Women, the government is currently working on drafting a comprehensive family law code.

The changes that are being pushed for by women's rights groups concern mostly the following: raising the minimum marriage age for women from 16 to 18, restricting husband's right to unilateral divorce and polygyny, shortening the length of time required for spousal abandonment as grounds for prejudicial divorce, setting new and equitable requirements for the evidence of 'harm' in prejudicial divorces, looking into granting women the right to conjugal home in the case of divorce, particularly when there were no children in the marriage, and granting mothers full guardianship over their children. Some of the women's rights activists, moreover, are seeking transformative legal changes that redefine the model of marriage espoused in the current laws. For instance, organizations such as the Center for Egyptian Women's Legal Assistance (CEWLA) proposed a draft for a new family law code that is based on a model of marriage in which husbands and wives have equal rights and duties.<sup>64</sup> Currently, the Network for Women's Rights Organizations (NWRO) is also working on an initiative to contribute to the drafting of a comprehensive family law code through well-coordinated, participatory, and grass-root-based multilevel efforts.<sup>65</sup> These efforts include building the capacity of the staff members of the nine women's rights groups that have so far joined the network since its establishment in April 2006, drafting a position paper that outlines the network's vision and proposals for new family code, and nation-wide campaigns to raise awareness and build grass-root support for the proposed reforms. Similar to the CEWLA, the starting point for NWRO's reform initiatives is a new model for marriage that is based on equal partnership and shared responsibilities between husbands and wives.<sup>66</sup>

## **Strategies**

The reform strategies that were adopted by Egyptian legislators thus far have been cautious and piecemeal.<sup>67</sup> In an article on legal reforms in Egyptian family law, Lama

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<sup>64</sup> See Center for Egyptian Women's Legal Assistance (2007). Proposal for Reforming Personal Status Laws.

<sup>65</sup> Personal interview with the Senior Consultant for NWRO, October 28, 2007

<sup>66</sup> Ibid.

<sup>67</sup> One exception was PSL Law No. 44 of 1979, which was decreed by President Sadat but struck down by the Supreme Constitution Court in 1985 on the grounds of the unconstitutionality of the process through which the law was passed. Although law No. 44 did not introduce comprehensive family law code, it contained a number of revolutionary reforms that increased women's rights. Among these reforms were

Abu Odeh (2004) points out that since the codification of family law Egyptian legislators adopted a partial gradual approach in order to accommodate both the advocates for change and gender equality and the religious establishments. As a result, this approach did not seek to change the gendered and hierarchical model of marriage that is sanctioned by Egyptian PSLs in which the husband provides for his wife and in exchange the former is granted more rights (e.g. claim to wife's obedience, full guardianship over children, unilateral divorce and polygyny). However, Egyptian legislators tried to check the power that was granted to husbands through a number of reforms such as : extending a husband's maintenance duties towards the wife so as to include payment of the wife's medical expenses as well as food, clothes, and shelter; granting the wife the right (albeit restricted one) to judicial divorce; restricting husband's right to unilateral divorce and polygyny through imposing financial deterrence such as payment of maintenance to a divorced wife during the waiting period (*idda*) and payment of indemnity (*mu'ta*) to a wife divorced against her wishes.<sup>68</sup>

Abu Odeh adds that the judiciary, like legislators, also maintained this intermediate position between the religious establishments and women's rights activists. She cites a number of cases that were brought in front of the Supreme Constitution Court (SCC) in the nineties in which some of the reforms introduced in PSLs were challenged on the grounds that it violated Article 2 in the Egyptian Constitution, which states that Islamic *Shari'a* is the main principle of state laws. For example, in one of these cases, a wife's right to file for prejudicial divorce on the grounds of harm inflicted on her by her husband's polygyny was challenged. Abu Odeh points out that in its judgment, the Court affirmed the husband's absolute and universal right to polygyny according to the *Shari'a*, but added that the wife still has a right to claim prejudicial divorce if she can prove that the harm that she suffered, while "occasioned by the marriage," was "real and independent of it."<sup>69</sup> Abu Odeh gives this example to show how the SCC was trying to maintain the new reforms such as woman's legal right to prejudicial divorce on the grounds of suffering harm from her husband's new marriage, while at the same time asserting the hierarchical model of marriage that is upheld by the personal status laws.

Some of the recent reforms also reflect this piecemeal cautious approach of seeking changes. The *khul* article, for example, was sandwiched in a body of procedural laws so that it would not be perceived as a call for drastic changes in the legally sanctioned model

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preserving the right of a woman to spousal maintenance if she left the conjugal home to work; considering polygyny automatic grounds for filing for prejudicial divorce; granting women the right to indemnity (*mu'ta*) if their husbands divorce them against their wishes or inflict harm on them that made it impossible for them to live with them; and the custodial female parent's automatic right to the conjugal home during the period of child custody.

<sup>68</sup> One could make the counter-argument that despite the wife's right to *mut'a* when she is divorced by her husband against her wishes or due to harm inflicted by him, she, unlike the husband, still does not have the right to unilateral divorce. She can only seek judicial divorce for which she has to prove to court that she was harmed by the husband or seek *khul* in exchange of forfeiting her financial rights. Furthermore, a wife does not enjoy an automatic right to prejudicial divorce when her husband enters into a new marriage; rather she has to prove first that she suffered from harm that was caused by the new marriage.

<sup>69</sup> Supreme Constitution Court, Case No. 35, Year 9, 1994 cited in Abu Odeh, Lama. "Modernizing Muslim Family Law: the Case of Egypt." In: *Oxford University Comparative Law Forum* 3,2004, retrieved at [ouclf.iuscomp.org](http://ouclf.iuscomp.org)

of marriage. Moreover, the stipulation of compulsory reconciliation and arbitration efforts between the disputing couple in *khul* cases was inserted<sup>70</sup> in order to meet the demands of religious scholars and a large number of members of parliament for restricting women's right to this kind of divorce; a condition which they thought was necessary in order to protect the institution of family from what they believed to be endless demands for divorce from reckless wives. Yet, once Law No. 1 of 2000 was passed, Egyptian women had another legal option of seeking a way out of unwanted marriages. Furthermore, the new kind of divorce was easier to obtain than prejudicial divorce in which female plaintiffs had to prove 'harm.' In fact, the number of women who file for *khul* has been increasing steadily in the past three years. According to the national statistics compiled by the Ministry of Justice, in 2004 two thousand eight hundred and eighty six (2886) *khul* cases were filed. In 2005, the number of *khul* cases increased to three thousand four hundred and ninety- two (3492). Lastly in 2006, the number jumped to eight thousand and forty five *khul* cases (8045).<sup>71</sup> Our ethnographic data also suggests that this kind of divorce is increasingly becoming a popular legal option that more women are resorting to in order to find a quick way out of destructive marriages. But the point remains that the *khul* law that was passed was a much more restrictive one (to female plaintiffs) than the original draft that was proposed by the reformers.

A similar strategy of accommodation was also adopted with the new marriage contract. Unlike the original draft, the marriage contract that was issued at the end of 2000 did not list the stipulations that women could insert but rather included a blank space in which either party could insert the conditions that they agreed upon. As mentioned in chapter 1, the initial draft was changed due to the strong objections that were voiced by the religious establishment towards the kinds of stipulations that the reformers wanted to include in the contract.<sup>72</sup> Unlike the *khul* law, which despite its limitations granted women a new legal right, the new marriage contract did not lead to any benefits to women since the insertion of stipulations remained optional and the kinds of conditions that women could include were not even listed. In other words, in the absence of binding legal instruments, the purpose behind the new marriage contract could not be fulfilled due to prevalent societal norms that frown upon the idea of women entering stipulations into their marriage contracts in order to increase their legal rights during marriage and in the event of divorce.

One could argue that the benefit of adopting a strategy of negotiation and accommodation was that reformers (e.g. legislators, women's rights activists, and the judiciary) were able to push through some legislative changes. But the question remains: Can this approach lead to transformative changes that many women' rights activists believe are needed, i.e. a new model of marriage that is based on equal partnership and responsibilities between

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<sup>70</sup> According to Article 20 in Law No. 1 of 2000, the court has to attempt reconciliation and arbitration between the disputants in *khul* cases once if they do not have children and twice if they do during a period of time that does not extend ninety days.

<sup>71</sup> Ministry of Justice, Department of Judicial Statistics. Statistical Data for Family Court Cases, 2004, 2005, and 2006

<sup>72</sup> Religious scholars at the *Al-Azhar* argued that stipulations such as a wife's right to ask for divorce if her husband takes a new wife violated the *Shari'a* because it forbade what was permitted by the religion

spouses? This inevitably leads us to discuss the issue of the *Fiqh*-based model of marriage.

### **Marriage in Islamic *Fiqh* and Modern Family Laws**

In all Middle Eastern countries with the exception of Turkey, family laws continue to be based on *Shari'a*-based doctrines, which were compiled and interpreted by the five main Islamic schools of Jurisprudence (*Fiqh*). These schools are *Shafii*, *Hanafi*, *Hanbali*, *Malaki*, and *Gafari*. Thus, it is inevitable that any reform efforts have to engage with the model of marriage and marital relations that is sanctioned by Islamic legal schools. But is the *Fiqh*-based model of marriage inherently discriminatory against women? Abu Odeh (2004) argues that Islamic schools of jurisprudence share a gendered model of marriage in which the relations between husbands and wives tend to be hierarchical. In this model, Islamic marriage is based on a contractual agreement between a man and a woman in which the husband has the duty to provide for his wife and their offspring and in return the wife avails of herself to him and puts herself under his authority and protection. The husband's exclusive right to his wife's sexual and reproductive labor is earned through and conditioned upon his economic role. This model of marriage does not recognize shared matrimonial resources. Whatever possessions and assets the wife brings to the marriage remain hers. Likewise, apart from maintenance for herself and her children, the wife cannot make claims to resources acquired by the husband during marriage. In addition, the husband has unilateral right to repudiation and polygamy. However, the schools of Islamic *Fiqh* differ to some extent on some of the rights that they grant to wives. For instance, according to the *Hanafi* School, a woman of maturity age can contract her own marriage and does not need a male guardian to represent her. This is not the case in the other schools. On the other hand, the *Malaki* School of *Fiqh* grants women the right to divorce on the grounds of harm, abandonment, and lack of maintenance.

Ziba Mir-Hosseini (2003) divides Islamic legal discourse on gender into three types: classical, neo-traditional, and reformist. The first, which she traces to classical Islamic legal schools, conceives of gender relations and roles as unequal and women as inferior to men. These gendered notions, the author points out, were shaped by prevalent metaphysical and philosophical views at the time, which thought of women as "sexual beings" who "are made of and for men." (Mir-Hosseini 2003: 10). This discourse promoted a model of marriage that could be traced to a Pre-Islamic form of marriage called "marriage of dominion." In this type of marriage, women were considered the property of their husbands. Similarly, the model of marriage that was espoused by the classical *Fiqh* was one based on the notion of sale. That is, marriage was conceived as a contract in which women exchanged their sexual and reproductive labor for the husband's financial support. Mir-Hosseini argues that it is important to understand Classical *Fiqh* as a contextualized human endeavor on the part of learned religious scholars to interpret the rules of the sacred texts on how Muslims should live their lives in accordance with the teachings of their faith. That is, the religious knowledge that was produced by these schools was shaped by the historical and social contexts of the time.

With the establishment of modern nation-states in Muslim countries in the 19<sup>th</sup> century, family laws were codified. In most of the countries in the region, these modern laws continue to be based on the doctrines of Islamic *Fiqh*. Thus the *Fiqh*-driven hierarchical gendered model of marriage was maintained, but was further strengthened through state institutions and governing practices. Mir-Hosseini calls the gender discourse that was reflected in those modern personal status laws as neo-traditional. This discourse introduced some reforms but continued to maintain and justify unequal rights of husbands and wives through the idea of complementarity of gender roles.

Towards the end of the twentieth century, the author adds a third discourse emerged, which she calls the reformist. This new discourse revisits the gender inequalities inherent in the classical *Fiqh*-based model of marriage and tries to illuminate the contradictions between the gendered interpretations of the sacred texts that were produced by Classical *Fiqh* and its subsequent scholarship, and the universal values of the Islamic faith (i.e. equality, justice, and freedom).

It is important to stress that historically the *Fiqh*-based model of marriage has been interpreted and put into practice with a lot of fluidity and diversity which did not necessarily assert male dominance or negate women's rights (Sonbol 1996, Brown 1996, Tucker 1998, Moors 1999, Esposito and DeLong-Bas 2001). For instance, through the practice of inserting stipulations in their marriage contracts, women in different Islamic eras were able to restrict their husband's right to polygamy and repudiation; they were able to negotiate a wide range of rights such as adequate maintenance for themselves and their children, maintaining their economic activities after marriage, choosing their place of residence, pursuing education, etc (Hanna 1996, Sonbol 2005).

Some of the historians who studied the development of Islamic legal schools and modern Muslim family laws also point out that gender inequality and biases against women that are found in present day family codes are not simply due to their religious foundations. Historians like Abdel Rahim and Sonbol have also traced the discrimination against women that is embedded in modern family laws to modernist notions of building cohesive nuclear families that could be disciplined and controlled by modern-nation states (Abdel-Rehim 1996, Sonbol 1996, Sonbol 2005). Sonbol (2005) argues that the process of codification of Muslim family laws was not only based on the doctrines of one or several Islamic legal schools but also on borrowings from colonial European laws.<sup>73</sup>

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<sup>73</sup> Scholars like Mayer (1996) also shows how the model of marriage that is based on the husband's financial and protective role versus the wife's obedience was adopted in the Napoleon Code of 1804, English Victorian laws and the German legislation in the 19<sup>th</sup> century. Then the author traces this gendered notion of marriage in the Tunisian Family Code of 1956, the Moroccan Family Code of 1958 and the Algerian Family Code of 1984. The central point that scholars like Mayer and Sonbol are making is that it is misleading to attribute the gender inequalities that are found in Modern Muslim family laws to a *Shari'a*-based model of marriage. See Mayer, Ann Elizabeth. "Reform of Personal Status Laws in North Africa: A Problem of Islamic or Mediterranean Laws" In: *Women Living under Muslim Laws Occasional Paper*, 8, 1996: 1-20; Sonbol, Amira Al-Azhary. "History of Marriage Contracts in Egypt." In: *Hawwa*, 3, 2, 2005: 159-196. See also Wright, Danaya C. "Legal Rights and Women's Autonomy: Can Family Law Reform in Muslim Countries Avoid the Contradictions of Victorian Domesticity." In: *Hawwa*, 5, 1, 2007: 33-54; El Satta Hoda. "Gendered Citizenship: Discourses on Domesticity in the Second Half of the Nineteenth Century." In: *Hawwa*, 4, 1, 2006: 1-28

She shows that the project of subject making and nation-building that was undertaken by modern Muslim nation-states in the 20<sup>th</sup> century incorporated modernist European notions that perceived nuclear families as the essential blocks for progressive and well-governed societies. This discourse shifted the purpose of marriage from regulating a contractual relationship between a man and woman to creating nuclear families and maintaining their cohesiveness. Modern nation-states saw the nuclear patriarchal family as the institution in which individuals were reproduced as citizens and dutiful members of the nation. To enable families to fulfill their roles in the process of subject making, these states devised family laws that regulated the rights and duties of family members. Husbands were bestowed with the responsibility of heading the family and providing for its family members. In return for the protection and financial support that women and children received from the husband/father, they owed him obedience and submission.

In short, there is a wide perception among legislators, religious establishments, and the general public in Muslim societies that there is a uniform model of marriage that is sanctioned by the *Shari'a*. However, this perception is negated by the contradictions between the universal principles of the sacred texts that regulate all Muslim relations and practices including marriage, and the *Fiqh*-model of marriage. While the *Shari'a*, as exemplified in the *Quran* and the *Hadith* calls for values such as equality, justice, and freedom to govern human activities and relations, classical *Fiqh* schools promotes a model of marriage that is based on unequal and hierarchical relations between husband and wives. This *Fiqh*-based notion of marriage was shaped by the philosophical and social outlook of the times of the early Islamic jurists who established these main schools. Modern family laws in most Muslim countries continue to espouse the *Fiqh*-based model of marriage. Moreover, the biases against women in these laws are also reinforced by a codification process, which borrowed from colonial European laws that were filled with modernist notions such as building strong governable modern societies through the creation of state- disciplined patriarchal nuclear families.

### **Lessons from Regional Initiatives: Towards A Just Family Law**

This study demonstrates that the recent changes in Egyptian family law have had mixed impact on the legal empowerment of women. But it is certain that these procedural reforms have created a momentum for change and started a journey towards a new and comprehensive substantive family code. It remains to be seen what kind of changes the new substantive PSL that is being drafted would bring and more importantly what kind of marriage model it will sanction. As Egyptian reformers push for a new kind of legal marriage in which husbands and wives share equal duties and rights, there are a number of lessons to be learned from the Moroccan and Tunisian family law reforms.

In both cases, 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 family is the joint responsibility of both husband and wife. Thus, the wife is no longer legally perceived as a dependent on her husband. The legal consequences of this new model of marriage are substantial and 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 the 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 reasons for his request to remarry and guarantees that he will treat both wives equally. Also, the wife is notified of her husband's request and is involved in the court proceedings. Moreover, in order to facilitate the wife's access to divorce, the grounds on which she could prove 'harm' are expanded. In addition, a husband's failure to honor the stipulations that are entered in the marriage contract by the wife is considered as automatic grounds for divorce. Also, the law allows mothers in certain circumstances to retain the custody of their children if they remarry or travel to a different location than where the father lives. Another advantage of the new *Mudawwana* is that its language is purposefully free of any terms that refer to women as inferior or dependent. Other benefits that the new Moroccan family law offer to women is a higher minimum age for marriage (18), a set time period in which divorce cases have to be litigated and adjudicated (6 months), and the legal right to register children who were born in unregistered marriages.<sup>74</sup>

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, polygny is considered a form of 'harm' to individuals and to the public welfare. The *Majallah* also makes judicial divorce as the only form of legally sanctioned divorce that is equally accessible to husbands and wives. In addition, in divorce cases, the court makes decisions about child custody on the basis of the best interest of the child.<sup>75</sup>

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<sup>74</sup> See Wuerth, Orlana. "The Reform of the *Mudawwana*: The Role of Women's Civil Society Organizations in Changing the Personal Status Code in Morocco." In: *Hawwa*, 3, 3, 2005:309-333; Oulé-Jansen, Yakaré. "Muslim Brides and the Ghost of *Shari'a*: Have the Recent Law Reforms in Egypt, Tunisia, and Morocco Improved Women's Position in Marriage and Divorce and Can Religious Moderates Bring Reform and Make it Stick?" In: *Northwestern Journal of International Human Rights*, 5, 2, Spring 2007: 181-212; Buskens, Léon. "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere." In: *Islamic Law and Society*, 10, 1, 2003: 71-131

<sup>75</sup> Lama Abu-Odeh argues that despite the transformative reforms that were introduced in the Tunisian *Majallah* of 1993, it is still not free from some gendered notions that are biased against women. For instance, the *Majallah* still defines the husband as the head of the family and the wife's role as a provider for the family is considered secondary to that of the husband. Also, the wife assumes guardianship over children in the event of the absence or death of the husband. According to the author, this means that the law does not grant mothers and fathers equal rights to guardianship over children in all events. See Lama Abu-Odeh. "Modernizing Muslim Family Law: the Case of Egypt." In: *Oxford Comparative Forum* 3, 2004, retrieved at [ouclf.iuscomp.org](http://ouclf.iuscomp.org). For analyses of Tunisian reforms in family law, see also Mashhour, Amira. "Islamic Law and Gender Equality-Can There be a Common Ground? A Study of Divorce and Polygamy in *Shari'a* Law and Contemporary Legislation in Tunisia and Egypt." In: *Human Rights Quarterly*, 27, 2005: 562-596; Oulé-Jansen, Yakaré. "Muslim Brides and the Ghost of *Shari'a*: Have the Recent Law Reforms in Egypt, Tunisia, and Morocco Improved Women's Position in Marriage and Divorce and Can Religious Moderates Bring Reform and Make it Stick?" In: *Northwestern Journal of International Human Rights*, 5, 2, Spring 2007: 181-212; Charrad, Mounira. M. "Contexts, Concepts and Contentions: Gender Legislation as Politics in the Middle East." In: *Hawwa*, 5, 1, 2003: 55-72

I think that the most significant lesson that we can learn from the Moroccan and Tunisian reform initiatives is that a central component of transformative legal changes is a new model of marriage that is free of the notion of exchanging the wife's obedience and sexual access for the husband's financial support. Instead, this new legal marriage is based on shared rights and responsibilities between husband and wives. But a marriage that is based on equal partnership and responsibility may entail a number of things that will affect women differently. For instance, in this kind of marriage, the wife may no longer enjoy the exclusive right to her own financial assets, which she may be obligated to contribute to the family if there is need. Moreover, it may follow that she will not be able to file for divorce on the grounds of lack of maintenance, if she is financially able. Will this model of marriage be fair to all Egyptian women? On the one hand, the realities of many Egyptian marriages show that women contribute significantly to the financial support of the family. Yet, unlike their husbands, they do not acquire any legal rights from their financial role. The ethnographic data presented in this study also supports this observation. 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 the husband 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? In other words, there needs to be a debate about what the bases for gender equality in the new model of marriage should be, and what the implications of these new foundations would be for the legal duties and rights of both spouses.

In Morocco and Tunisia, the new model of marriage was justified on the basis of religious arguments as well as modern factors such as human rights and the socio-economic needs of Muslim families. Reformers in Morocco, including the King, appealed to the principle of adhering to the underlying purposes of *Shari'a* doctrines (*maqasid*) as well as upholding the Islamic value of justice (*adl*). Also, in the Tunisian case, the principle of justice (*adl*) was used to justify abolishment of polygny. But often the religious discourse that is used by reformers in many Muslim countries (including the above-mentioned) 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 as well as their usefulness to 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 and call for legal reforms should go beyond being a mere strategic tactic. There is a growing body of literature that shows how gender equality in both the private and public domain is not only compatible with the teachings of Muslim sacred texts but also 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*.<sup>76</sup> However, this scholarship

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<sup>76</sup> 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.

remains confined to academic circles, and in my opinion, is not adequately accessible to legislators and reform actors.

I think it is particularly important for Egyptian reform efforts to include the development of a body of religious scholarship that provides new theories and methods for the interpretation of sacred religious texts and Islamic legal knowledge. This necessity emerges from three issues: a growing public support for the importance of religion in regulating the private and public lives of the citizens; the contestation of religious knowledge as it is increasingly being produced and consumed by diverse actors and through multiple channels; and the government's contradictory practices of legitimizing and appropriating the religious establishment and particular religious discourses on the one hand, and diminishing the role of the religious establishment in the cultural and social reproduction of Egyptian families on the other hand.

It has been argued that the recent reform processes in Egypt, Morocco, and Tunisia lacked grass-root support and participation.<sup>77</sup> In Morocco, the women's rights groups that pushed for the reforms were affiliated with political parties and came mostly from the upper class. The reform agenda of these women was hotly contested by other sectors of the civil society such as the Islamic group *Al Adl wa Il Ihsan*. In addition, it was the support of the king that was instrumental to the passing of the *Mudawwana*. But the support of the Moroccan king and government was also partly motivated by the goals of curtailing the growing influence of Islamist groups after the Casablanca bombings in 2003 and presenting to international bodies such as the EU and Western countries an image of a liberal Moroccan state that respects human rights.<sup>78</sup> In Tunisia, the reforms that were introduced first in 1956 served the state's agenda to build a modern Tunisian society and a strong state that did not derive its power from kin-based groups.<sup>79</sup> While the 1993 reforms were lobbied by women's, they were also part of the government's agenda to solidify its power in the face of growing influence of Islamic groups. The recent reforms in Egypt were also driven by both the agenda of women's rights groups and that of the government which was interested in modernizing and developing its overloaded and ineffective legal system. In other words, to what extent can reforms that

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"Muslim Jurists' Quest for the Normative Basis of *Shari'a*: Inaugural Lecture. Leiden: ISIM. Retrieved at [http://www.isim.nl/files/inaugural\\_masud.pdf](http://www.isim.nl/files/inaugural_masud.pdf), January 15, 2007

<sup>77</sup> See Oulé-Jansen, Yakaré. "Muslim Brides and the Ghost of *Shari'a*: Have the Recent Law Reforms in Egypt, Tunisia, and Morocco Improved Women's Position in Marriage and Divorce and Can Religious Moderates Bring Reform and Make it Stick?" In: *Northwestern Journal of International Human Rights*, 5, 2, Spring 2007: 181-212; Buskens, Léon. "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere." In: *Islamic Law and Society*, 10, 1, 2003: 71-131; Zuhur, Sherifa. "The Mixed Impact of Feminist Struggles in Egypt during the 1990s." In: *Middle East Review of International Affairs*, 5, 1, March 2001. Electronic version: <http://meria.idc.ac.il/journal/2001/issue1/jv5n1a6.html> visited May 24, 2007

<sup>78</sup> See Wuerth, Orlana. "The Reform of the Moudawana: The Role of Women's Civil Society Organizations in Changing the Personal Status Code in Morocco." In: *Hawwa*, 3, 3, 2005:309-333

<sup>79</sup> See Charrad, Mounira. M. "Contexts, Concepts and Contentions: Gender Legislation as Politics in the Middle East." In: *Hawwa*, 5, 1, 2003: 55-72

are introduced through a top-down approach (as was the case in the three countries) 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 and substantive changes in the lives of disputants, particularly the underprivileged ones such as women. This requires adequate and effective mechanisms of implementation and enforcement on the one hand, and supportive environment on the other hand. The establishment of the latter takes time but is more possible if the reform process is participatory and takes place on the grass-root level. In other words, reform strategies need to go beyond lobbying the government. What is lacking in the reform efforts are to build support among different sectors of the society (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 acceptance and respect for others.

### **Recommendations**

In conclusion, this study proposes the following recommendations to bring about legal reforms that will lead to equality and justice to Egyptian women in the family domain:

1. Draft a new and comprehensive family law that is based on a new model of marriage reflecting gender equality.
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 cases (e.g. investigating and gathering information about the dispute).
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 opportunities for economic independence, training in

communication and conflict resolution skills, legal awareness, and sensitivity to gender rights.

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 training and awareness raising workshops organized by women's rights groups and the Ministry of Justice.

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