

PROMOTION OF WOMEN'S RIGHTS (EGYPT)

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# PERSONAL STATUS LAWS IN EGYPT

## FAQ

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## **Promotion of Women's Rights**

### **Context**

Despite some progress in women's status in Egypt, discriminatory legal provisions still exist along with biased local practices and traditions which undermine women's status in Egypt. While there are several initiatives to enhance women's rights and gender equality, there is still a critical need to consolidate the role of civil society and women's rights NGOs to be an effective actor. Moreover, there is a need to enhance partnership and cooperation between civil society, government and donors in this regard.

### **Objective**

Egyptian women's rights organizations jointly influence policy and legal development in the country, in order to achieve legal equality and equal treatment of women.

### **Partners**

The Egyptian Ministry of International Cooperation (MOIC as coordinating partner) and the Egyptian Ministry of Social Solidarity (MOSS concerned partner)

### **Approach**

The project consists of four complementary components:

1. A coordination team of partner organizations, Network of Women's Rights Organizations (NWRO), and project representatives moderate the planning, implementation, and monitoring processes of measures concerning the legal equality of women.
2. Local grants to the partner organizations will be provided for jointly planned and implemented measures such as studies, lobbying, press work and concrete support measures for women and their families.
3. The partner organizations are supported in acquiring needed knowledge and skills in the joint strategy development and project implementation.
4. Partner organizations and other key stakeholders will receive support for their work to overcome the female genital mutilation.

## **Family Law Reform in Egypt**

A legal guide advocating the core demands for changes in the current family law has been finalized and will be widely disseminated. Also a series of researches that support this guide have been published along with a bibliography of all sources written on the Egyptian family law. Roundtable discussions and seminars with key decision makers took place in Upper and Lower Egypt. In addition, training sessions and study tours have been undertaken with external partners.

The activities carried out so far have given the network the reputation of a serious partner in the women's rights debate locally, regionally and internationally.

# I . G E N E R A L C O N T E X T

## **1. History of Egyptian Personal Status Law**

The provisions of Egyptian personal status law, as applied today, are marked by their Islamic inspiration. If most branches of Egyptian law were secularized in the end of the XIXth century, personal status law remained submitted to the sharī'a and, in particular, to the dominant view of the Hanafi school, which is one of the four official Sunnite schools of law and was the official school of the Ottoman Empire.

Personal status law reform in Egypt has taken place in slow and limited steps and actions. It has been limited in its scope and constrained by the political context, the survival of patriarchy and the role played by conservative and religious opposition. Several draft laws were prepared to codify family law but they always faced strong resistance. Whenever reformists and women rights defenders push for reform, conservative groups and individuals resist. The State, caught between these two trends, tries to keep a balance and remains very cautious in interfering in the patriarchal household and in pushing for unpopular women's equal rights within the family. Amendments of family law are unpopular in the Egyptian patriarchal society and therefore politically costly. The government is keen on presenting the reforms as consistent with the sharī'a and as supported and endorsed by eminent religious authorities.

From the turn of the nineteenth onward, reform of personal status law became the field of conflicting interpretations of the sacred law, each group referring to the same body of religious rules but adopting different readings of them. This shows the flexibility of this set of norms and testifies that even divine law is dependent on its human interpretation and implementation. With the Islamization trend, feminists and women rights NGOs increasingly challenge Islamic doctrine from within. They refer to new interpretations of the sharī'a to legitimize their call for additional legal reforms rather than emphasizing human rights and international conventions to avoid accusations of importing Western cultural and imperialist values. They call for a distinction to be established between patriarchal tradition and authentic Islam.

## **2. What are the Laws Dealing with Personal Status?**

A distinction should be made between laws dealing with the procedure and laws dealing with the substance of family law.

*Main Substantive laws:*

- Decree-Law No 25 of 1920 regarding Maintenance and Some Questions of Personal Status, as amended.
- Decree-Law No 25 of 1929 regarding Certain Personal Status Provisions, as amended.
- Law No 100 of 1985 amending Decree-Laws No 25 of 1920 and 1929.
- Law No 77 of 1943 on Inheritance.
- Law No 71 of 1946 concerning Testamentary Bequests.
- Law No 62 of 1976 amending certain rules concerning maintenance.
- Law No 4 of 2005 amending Article 20 of Decree-Law No 25 of 1920 (raising the age of custody)

*Procedural laws:*

A law of procedure was adopted as early as 1897 to organize the procedure before sharī'a courts. The law currently in force is Law No 1 of 2000 organizing Certain Conditions and Procedures of Litigation in Matters of Personal Status, as amended by Law No 91 of 2000. This law abrogated all previous procedural laws dealing with personal status (the 1931 Regulations for sharī'a courts ; Part. 4 of the Code of Civil and Criminal Procedure that was dealing with personal status cases and Law No 162 of 1955 abolishing personal status courts) and intended to facilitate and speed up litigation in these matters. According to Law No 1 of 2000, the Code of Civil and Commercial Procedure as well as the Proof Law and the provisions of the Civil Code dealing with the administration and liquidation of successions shall apply whenever no provision is provided by that law.

It suppressed fees at all stages of litigation in suits regarding maintenance matters. Though formally a "procedural" law, it included however some "substantive" provisions like an article providing for khul' divorce<sup>1</sup> and one allowing wives married 'urfi<sup>2</sup> to get a judicial dissolution of their marriage. These 2 provisions were "hidden" in this procedural law to be adopted more easily and to avoid the passionate debates a proper substantive law would have generated in the parliament and in society.

In 2004 was adopted Law No 10 Establishing Family Courts (qânûn inshâ' mahâkim al-usra). The law was implemented by several ministerial decrees. On the same day was adopted Law No 11/2004 establishing a Family Insurance Fund (qânûn inshâ' sundûq nidhâm ta'mîn al-usra).

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1 For the meaning of *khul'* see below, Part. 2 (C)(9)

2 A non-registered marriage. See below, Part. 2(A)(3)

### **3. Why is there no Unified Code of Personal Status Law?**

The rules of Egyptian Muslim personal status law have not been codified in a comprehensive and exhaustive code and this makes its knowledge and understanding quite difficult. Experience shows that it is not easy to amend personal status laws in Egypt because of the resistance of the society and conservative religious groups. The policy of the state has been to codify personal status law step by step and to take the opportunity of the codification process to introduce reforms and improve women's status within the family. Even a reformist regime like the Nasser one did not bring any change in family law. Sadat adopted a far-reaching reform that considered polygamy as a sufficient ground to grant a divorce to the first wife. But the reform, adopted by decree-law, was declared unconstitutional a few years later for abuse of power. Because of the re-islamization of the Egyptian society, it seems even more difficult nowadays to re-examine all personal status laws and codify them in a single code. The state seems to prefer the current status quo and is promoting limited isolated indispensable reforms.

### **4. What Shall the Judge Do if the Legislation Fails to Regulate a Particular Matter?**

If no specific reference in the law can be found on a particular point, the judge shall follow the most authoritative opinion within the Hanafi school. This means that non-codified Islamic shari'a will apply only to matters where the law is silent. If a legal provision exists, the judge has to apply the law even if he personally disagrees with its content. All what he can do is to raise a plea of unconstitutionality of the law before the Supreme Constitutional Court on the grounds of violation of Article 2 of the Constitution, according to which the principles of the Islamic shari'a are the main source of legislation. If the Supreme Constitutional Court rules that the legal provision is indeed unconstitutional, judges will not have to apply it anymore to the cases pending before them.

### **5. What are the Main Steps Personal Status Laws Went Through?**

Personal status law went through three main steps:

\* *Before the adoption of the Hanafi Code*

Shari'a was considered the law of the land. A 1813 firman of the Ottoman Empire decided that the principles of the Hanafi school were to apply to all personal status cases regardless of the personal affiliation of the litigants, although most of them adhered to the Shafi'i or Maliki schools. In practice, however, customary practices, local traditions and private arrangements were also important and women enjoyed flexibility in the implementation of the law.

*\* Adoption of the Hanafi Code in 1883*

This code, also called Qadri Pasha Code by the name of the then Minister of Justice, codified shari'a rules regarding family law on the basis of the Hanafi doctrine. The code, made of more than 600 provisions, was never promulgated and never acquired binding legal force. However, it resulted in a concise and accessible account of the Hanafi doctrine and became a standard manual for the judges of the shari'a courts, who did not have to look for legal provisions in multiple medieval treatises and commentaries, hard to access, anymore. The code was taught at University. It advocated a particularly patriarchal structure for the family.

*\* After the codification of the law*

The first codifications of personal status law took place in 1920 and 1929, when two laws were adopted to enlarge the grounds upon which a woman can initiate divorce, to include harm; failure to provide maintenance; absence of the husband; condemnation of the husband to jail and serious or incurable defect or disease. The laws also organized women's maintenance during marriage and alimony after divorce as well as 'idda (waiting period following divorce or widowhood during which a woman may not remarry) and put conditions for a repudiation to be considered valid. These laws are still in force, though they were amended in 1985 by Law No 100.

A 1976 law on maintenance established a system whereby wives who were unable to have court rulings for maintenance enforced could get financial support from a Fund (established within Nasser Social Bank, a national bank), that was to collect it from husbands, ex-husbands and fathers.. This system, however, did not work because the bank was having too much trouble to collect the funds from debtors. New provisions were included in Law No 1 of 2000 and spelled out in Law No 11 of 2004. The fund will be fed by administrative fees levied on the registration of marriages, divorces and births, as well as allocations from the Finance Ministry and private donations. If the debtor is a government employee, 50 per cent of his salary will automatically be deducted towards alimony. If he works in the private sector or has his own business, the Fund will pay a certain amount of money to the wife and the husband will be required to deposit the maintenance in the Bank at the beginning of the month.

Law No 100 of 1985 allowed divorced women to get a financial compensation (mut'a); to keep marital home until the end of children custody; extended female children custody by the mother until 12 for the girls and 10 for the boys; requested that the first wife be informed officially of the new marriage of her husband and allowed husbands to stop spending on their wife if they violate their duty of obedience.

## **6. What are the References the Legislature used in These Laws?**

Laws do not need to mention any specific reference and justify their content. However, some of them are preceded by an “explanatory note” (mudhakkira îdâhiyya) that sums up the history of the provisions, explains the reasons behind their adoption and lists the references the legislature used to justify its content. For instance, the first personal status laws adopted in Egypt, in 1920 and 1929, were both preceded by an explanatory note. A careful reading of them shows that the law makers referred to the sharî’a to legitimate the provisions they were adopting. They presented the reforms as the fruit of an internal renovation process and legitimized them by reference to sharî’a principles.

As these explanatory notes show, the framers of the laws did not hesitate to refer to other schools of law, although the Hanafi school was the official one in Egypt and had to be applied in courts. To bypass the often rigid rules of this school, the reformers referred to rulings from other schools or reputable authorities (using takhayyur process), in particular the Maliki one. This allowed the reforms to be presented as taking place within the Islamic sharî’a and avoided too strong attacks from the conservative religious circles.

Reformers also made eclectic choices of rules between the wide variety of opinions advocated by eminent jurists of the past within the four Sunnite schools of law, primarily the Maliki doctrine and combined between these rules to produce new solutions (tafiq process). This allowed, within limits, the adaptation of Islamic law to modern needs of the society and the improvement of the legal status of the women within the family.

For instance, the Hanafi school of law hardly acknowledges the husband’s impotency or castration as reasons for legal dissolution of spousal bonds. According to the explanatory note to Decree-Law No 25 of 1929, “the welfare commands to adopt Imam Mâlik’s doctrine in case of discord between spouses”, meaning the law granted women the divorce for harm. In the same text, the legislature justified having recourse to the Maliki doctrine to authorize women to petition for divorce in case of the husband’s extended absence, out of fear for the abandoned wife’s honor and chastity. The 1920 law made maintenance a recoverable debt from the moment the husband fails to provide it and not, as under Hanafi law, from the moment the wife demands maintenance at courts, on the basis of the Maliki and Shafi’i schools.

A procedural device was also used by reformers by requiring judges not to decide on certain cases. According to Islamic law, the ruler has the right to confine and define the jurisdiction of his courts. Judges were precluded from reviewing certain kinds of claims. This expedient which left the substantive law intact excluded certain matters from the jurisdiction of the

courts and therefore denied judicial relief. For instance, courts were prevented from examining claims pertaining to marriage contracts concluded by minor children or unregistered marriage contracts. Under-age marriages were not forbidden, nor were unregistered marriages but such marriages could not give rise to judicial claims before the courts in case of denial by the parties, which had a deterrent effect.

### **7. What are the Institutions in Charge of Adopting Personal Status Laws?**

Like any legislation, personal status laws are adopted by the Parliament, meaning the People's Assembly in Egypt. However, in certain cases, laws may be adopted by the President of the Republic and will be called decrees-laws. According to the Egyptian constitution, the President can adopt decrees-laws if he receives a delegation of power by the People's Assembly or if special circumstances require the adoption of urgent measures while the People's Assembly is not sitting. In 1979 President Sadat adopted the famous "Jihan Law" by decree-law but it was declared unconstitutional in 1985 by the Supreme Constitutional Court because the circumstances were not so urgent as to require its adoption by a decree-law: the President could have waited until the next session of the People's Assembly to have the law properly adopted by the Parliament. In Egypt and in the Arab world, most significant family law reforms have been adopted by decree-laws, to avoid long and heated debates in the Parliament.

### **8. What are the Main Substantive Obstacles that Implementation of Personal Status Laws Faced?**

Implementation of personal status laws faced several kinds of obstacles. On the legal level, women are not always aware of their rights. Or they cannot always afford a good lawyer and often have to rely on one they can hardly pay and who may not get very much involved in their cases (not showing up when their cases are heard, not submitting documents in time, not finding good arguments to convince judges, etc.). On other levels, they have to face a patriarchal social structure and have to overcome obstacles in filing a divorce case for instance (they will be stigmatized by the society, and their own family may reject them). Financially, how will they pay their lawyer and the court fees? Where and how will they live after the divorce?

### **9. What are the Main Procedural Obstacles that Implementation of Personal Status Laws Faced?**

Women face difficulties in accessing justice because of social, cultural and financial constraints as well as procedural and administrative impediments inside the courts. Women may get lost in the personal status courts, having to file a separate case for each kind of claim (ex. to get a divorce, to be given custody of the children, to collect child support from the father of

their children, to get their own financial rights, etc.). The litigation process is slow, and it may take years to get a court decision. The compulsory mediation sessions established by Law 1/2000 and implemented by Law 10/2004 slow up the procedure without succeeding in their conciliation attempts.

The fact that until 2007 all judges were male could also have a negative effect on women, who may consider men not as understanding as women, particularly regarding requests for divorce for harm or polygamy of the husband. However, there is no guarantee that women judges will be more liberal than men in family law issues. They too are impregnated by the prevailing patriarchal values and may be keen in proving their independence and capacity to judge as well as men do, by adopting a conservative approach.

There is also a failure to enforce court rulings, in particular those dealing with financial support. The Nasser Social Fund may help women in dire financial needs.

#### **10. What are the Main Fields related to the Family that Contemporary Personal Status Laws did not Solve?**

\* Customary ('urfi) non registered marriage<sup>1</sup> is not considered as illegal; meaning a man and a woman can still get married secretly, without their marriage being registered. Since 2000, the wife married 'urfi can petition for divorce but she will not receive any financial support from her former husband. Besides, it is very difficult to prove the paternity of the father in case children are born from customary marriages. DNA testing is not mandatory in paternity cases, though a draft law was submitted to the People's Assembly in 2009 for that purpose.

\* Marriage lies on the conception that it is an agreement between a husband who provides support and a wife that pledges obedience. The terms and sanction of the wife's obedience have been reinterpreted and restricted but obedience has not been abolished.

\* Divorced fathers almost never retain custody of their children and are granted visitation rights only three hours a week, in a public place. They have no right to residential visits by their children, who cannot stay overnight during week ends or holidays. This negatively impacts on the continued relationship and ties between children and fathers. Besides, relatives of the children of divorced parents, including grandparents, aunts and uncles have no right of access to them.

\* Polygamy has been restricted but not outlawed. Men can marry four wives at one time, without having to request the first wife(ves)' agreement. Women rights activists call for the law to be amended to forbid polygamy or at least require its authorization by a judge on a case

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1 See below, part. II(A)(3)

courts and therefore denied judicial relief. For instance, courts were prevented from examining claims pertaining to marriage contracts concluded by minor children or unregistered marriage contracts. Under-age marriages were not forbidden, nor were unregistered marriages but such marriages could not give rise to judicial claims before the courts in case of denial by the parties, which had a deterrent effect.

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\* How is repudiation to be proven when there are no witnesses and if it has not been registered?

\* The man is the head of the household and guardianship belongs to the father, who is the only one allowed to take the most important decisions for his children. Feminist movements call for the replacement of paternal guardianship with parental responsibility or authority, as is now the case in Algeria and Morocco.

## **12. What are the Main Steps in the Amendment of Personal Status Laws in the Arab and Islamic Community?**

Almost all Arab and Islamic states have codified personal status law but the results of the codification processes are very different from one state to another. Each country adopted its own interpretation of the Islamic shari'a, which shows its flexibility and deconstructs the myth of one homogenous world of Islam. Most of them determine a minimum age for marriage (ex. Jordan, Morocco, Yemen) and require the bride's consent for marriage (ex. Algeria, Kuwait, Iraq, Morocco, Syria). Most countries allow the bride and the groom to add special conditions in their marriage contract (ex. Algeria, Jordan, Kuwait, Lebanon, Morocco, Syria, Tunisia). Tunisia and Turkey went so far as to ban polygamy and repudiation altogether. In Syria and Morocco, the husband who wishes to marry a second wife has to prove to the judge that he has the financial means to spend on two families. In Algeria and Morocco, the wife can petition for divorce if she can substantiate her charges that she suffered harm from the second marriage of her husband. In Morocco, repudiation has been abolished and replaced by judicial divorce, to which men and women have equal access. No-fault divorce is possible in Morocco, where courts can grant a divorce by mutual consent.

## **13. What are the Incentives to Amend Contemporary Personal Status Laws?**

Women's development is part of the development of a society. According to the 2005 Arab Human Development Report of the United Nations Development Programme (UNDP) "Towards the rise of women in the Arab world", the advancement of Arab women is important for the well-being of the entire Arab world. The report highlights the need to eliminate the roots of discrimination against women in cultural constructs. It also argues that the progress of Arab women must entail the empowerment of the broad masses of Arab women. The lived realities of many women in Egypt and the various problems they face show clearly that family law reforms are needed to increase women empowerment within their families

#### **14. How could the Amendments fit with the Constitutional Principles and the International Conventions Ratified by Egypt and the Islamic sharī'a?**

Egypt ratified the United Nations Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) in 1981. This convention prevents all forms of discrimination against women and requires that women be given equal treatment with men.

Article 16 of the convention is particularly important for personal status law since it states the following:

1. States Parties shall take all appropriate measures to eliminate Discrimination against women in all matters relating to marriage and Family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

However, Egypt entered a reservation to this provision upon ratification. It also entered a broad reservation to Article 2 of the Convention which states that CEDAW's Convention shall deter discrimination by specific legislation by promising to comply with Article 2 "(...) provided that such compliance does not run counter to the Islamic sharî'a". Such a general provision has been considered unacceptable by many other state parties because it violates the integrity of the convention.

The 1971 Egyptian constitution forbids any form of discrimination, including discrimination based on gender (Art. 40). Article 8 requires the respect of the principle of equality of chances between all citizens. However, Article 2 of the Constitution, as amended in 1980, states that "the principles of the Islamic sharî'a are the main source of legislation," which may lead to conflicts with Articles 40 and 8. The Supreme Constitutional Court declared that the Constitution is a coherent set of homogeneous and non contradictory principles and decided it will interpret Article 2 in the light of the other constitutional provisions. Principles of the sharî'a, therefore, should not necessarily take precedence over constitutional ones.

However, according to Article 11 of the Constitution, the State shall guarantee the compatibility between the duties of a woman towards her family and her role in society, as well as her equality with men in the fields of political, social, cultural and economic life, without violating the principles of the sharî'a. This provision considers women as the sole responsible party for the family and moves away from considering the family a mutual obligation of men and women. Besides, equality between men and women is conditional and will only take place when and if it is supported by Islamic law. The constitution, therefore, contains some contradictory provisions and it is up to the Supreme Constitutional Court to harmonize between them.

### **15. What is the Meaning of Article 2 of the Constitution according to which the Principles of the Islamic sharî'a are the Main Source of Legislation?**

According to Article 2 of the Constitution, as amended in 1980, "Islam is the religion of the state and the principles of the Islamic sharî'a are the main source of legislation". Until 1980, that provision read "Islam is the religion of the State and the principles of the Islamic sharî'a are a main source of legislation".

The Supreme Constitutional Court has interpreted the meaning of the revised Article 2 in two landmark rulings.

In 1985 the constitutional judge, called upon for the first time to rule on the interpretation of Article 2, decided that the sharî'a could not operate as a binding law in its own right. The Court

said its provisions have to be incorporated into positive state law for judges to be allowed to apply them. Judges cannot refuse to enforce legal provisions, even if they consider that they violate principles of the Islamic sharī'a.

In the same decision, the Court decided that the amendment of Article 2 in 1980 had no retroactive effect, meaning only laws adopted after 1980 have to be consistent with the sharī'a. Pre-existing legislation is out of reach of control by the Supreme Constitutional Court. Laws subsequent to that amendment have to respect the principles of Islamic sharī'a or else be declared unconstitutional for having violated Article 2 of the Constitution. On the other hand, all legislations adopted by the Egyptian legislator before the amendment are exempted from such a control; in other words, the Supreme Constitutional Court is not competent to verify their conformity with the principles of Islamic sharī'a. These texts will, consequently, remain in force as long as they have not been abrogated or amended by the legislator.

In a second landmark ruling, adopted in 1993, the Supreme Constitutional Court made a distinction between two kinds of principles within the sharī'a. On the one side are the rules of the sharī'a whose origin and significance are absolute (*al-ahkam al-shar'iyya al-qat'iyya fi thubutiha wa dalalatiha*), and these are the only ones for which interpretative reasoning (*ijtihad*) is not authorized. Since they incarnate the foundations of Islamic shari'a, they admit no interpretation and no modification. Only the principles "whose origin and significance are absolute", i.e. which represent uncontestable Islamic norms, because of their source and their meaning, must necessarily be applied. They are fixed, cannot be subject to interpretative reasoning and thus cannot evolve with time. Any contrary norm shall be considered unconstitutional.

Along those absolute principles, the Constitutional Court identified a group of relative rules (*ahkam zanniyya*), either with regard to their origin or to their significance, or with regard to both at the same time. They can evolve in time and space, are dynamic, give rise to different interpretations and are adaptable to the nature and the changing needs that take place in society. It is up to the *wali al-amr*, i.e. the legislator according to the Constitutional Court, to carry out the task of interpreting and establishing the norms related to such rules, guided by his individual reasoning and in the interest of the sharī'a. Such an interpretative effort should be based on reasoning and will not be limited by any previous opinion.

Almost all principles of the sharī'a identified by the Supreme Constitutional Court so far have been considered as "relative" meaning the People's Assembly was entitled to codify and adapt their content in accordance with the current needs of the Egyptian society.

## **16. What Courts are in charge of Personal Status Laws?**

Family courts were established in 2004 to bring relief to an over-burdened judicial system and speed up the legal process. All family disputes (alimony, custody, divorce, etc.) are now consolidated into a single case heard by one court, potentially reducing delays, instead of being examined by different courts in different places. They are run by a panel of three judges and their decisions can be appealed before appeal courts. Since 2004, rulings in family law issues cannot be challenged by the parties before the Court of cassation anymore. Only the public prosecution is allowed to bring a case before that Court, on certain conditions. Family courts, however, still suffer from the lack of specialization of judges, lengthy procedures and lack of implementation mechanisms.

Besides, since 2000, all personal status cases must first be submitted to a Family Dispute Resolution office, staffed by three mediation specialists (one trained in law, one trained in social work, and the third in psychology). These specialists hear the two parties and try to mediate between them with the aim of reaching a settlement before the case is referred to the court. Many women consider these offices as a waste of time, since all mediation and reconciliation means (e.g. the family, neighbors, and friends) have already been exhausted and have failed. Most husbands do not show up for these sessions. Besides, women may be reluctant to talk about their private life to strangers and may not get proper advice from the mediation specialists, some of whom try to convince them to withdraw their complaints whatever their circumstances.

The premises of these offices are ill-equipped for conducting mediation sessions in which private matters are to be discussed, since the offices are cramped and often several mediation sessions may be conducted in the same office without any partitions. Finally, there is the problem of the enforcement of settlements reached in these offices, which often depend on the goodwill of the husband. In addition, implementation of maintenance settlements (reached in mediation sessions) through the Family Fund in Nasser Bank has been suspended, which adds to the challenges facing women seeking maintenance.

# II. LEGAL PROVISIONS

## A. CONCLUSION OF THE MARRIAGE CONTRACT

### 1. Are Spouses Allowed to Add Conditions in their Marriage Contract?

Spouses have the right to stipulate conditions in their marriage contract regarding their respective rights and duties. About a third of a page of the contract is left empty to add conditions the partners may want to include. The conditions are registered by the ma'dhun before the signature of the contract, on the request of the spouses.

Examples of such conditions:

- The wife will be allowed to use 'isma (she will be able to repudiate herself);
- The husband will not be allowed to conclude subsequent marriages without the written approval of his wife;
- In case her husband gets married again, the wife will be allowed to dissolve her marriage;
- The wife will benefit of the conjugal home (and/or assets) in case of divorce or death;
- The husband will allocate a lump or a regular amount of money to his wife if he divorces her against her will
- The wife will be allowed to work and/or to continue education
- The mother will have the right to choose the children's schools;
- In case of divorce the mother will be allowed to live with her children in the country of her choice;
- etc.

### 2. What is the Meaning of 'Isma?

'Isma is the right of the married wife to repudiate herself. This option can be stipulated in the marriage contract by the spouses at the time of marriage. The wife will then be allowed to end her marriage unilaterally by going to the ma'dhun with two witnesses and asking him to register her self-repudiation. It is important to specify in the marriage contract that the wife will have the right to use 'isma "whenever she wants and as many times as she wants", otherwise her husband may take her back after she repudiates herself. This option given to the wife does not deprive her husband of the right to repudiate her of his own will.

If this condition is not included in the marriage contract and her husband refuses to repudiate her even in return of a financial compensation, the wife will only be able to end her marriage through judicial divorce before the courts. The procedure will take years instead of a few minutes and the wife will have to prove she has suffered harm.

### **3. What Is a Customary ('Urfi) Marriage?**

A customary ('urfi) marriage is a marriage which is not celebrated by a state representative and is not registered. If it is concluded by the two future spouses in front of 2 witnesses and respects the general conditions for a marriage (eg. minimum age, dower, etc.), it will produce certain legal effects.

Egyptian law does not forbid customary marriages but grants them a status inferior to that of registered marriages: no claim concerning a marriage will be heard by the courts when it is denied, unless it is supported by an official marriage document. A customary marriage is not considered illegal but in case the marriage is denied, the courts will be prohibited from hearing any dispute regarding such a marriage. In other words it deprives the wife from claiming the right to alimony, maintenance or succession: if she goes to courts and pretends that her husband has to pay her alimonies, he will deny the existence of a marriage contract between them and her legal action will be considered inadmissible.

### **4. Are Children Born in a Customary Marriage Legitimate?**

Parentage can be established if the father recognizes his child. If he does not, the mother can bring a case to family courts to have paternity established. Paternity dispute and filing for divorce are the only grounds on which courts are allowed to rule (since 2000) on customary marriages in case of denegation by one of the parties.

The mother can prove, by any means of proof, the existence of intimate relations with the alleged father. A customary marriage contract will be considered as a proof, but will most likely need to be substantiated by other elements (ex. testimonies).

### **5. Is it possible to terminate a 'Urfi Marriage?**

If both spouses agree to terminate a 'urfi marriage, the husband repudiates his wife and the originals of the marriage contracts are torn. To be in a safer position, the wife can ask her former husband to sign a paper in the presence of 2 witnesses, acknowledging that he repudiated her.

If the original of the marriage contract remains with the husband who refuses to repudiate

his wife and to destroy the contract, the wife is still considered married and cannot remarry. However, since 2000, she can petition for a judicial dissolution of her marriage on the same grounds as those recognised for registered marriages. She can use any written document to prove the existence of the marriage, which will then serve as the basis for her subsequent request for divorce. Divorce by khul' however, is not allowed in that case. The divorced wife will not be able to require any financial right for herself. However, the father will have to provide alimony to his children if paternity has been established.

## **B. EFFECTS OF THE MARRIAGE**

### **1. What are the Financial Obligations of the Husband Towards his Wife?**

The husband has a maintenance obligation toward his wife for the entire duration of marriage, even if the wife has personal resources and even if she is of different religion. He must provide her with food, clothing, housing, medical expenses and other expenses that are required by the law. A court order for maintenance shall be executed on the husband's property if he refuses to comply. Maintenance is a debt from the moment the husband fails to provide, and not from the day of the ruling of the judge condemning the husband to pay. The amount of the maintenance is established according to the husband's wealth and must be assessed according to the circumstances of the husband when it was due and not at the time of the ruling imposing it. In principle, the wife does not need to contribute to family expenses although in practice, for economic reasons, many women do.

In case of disagreement on the amount of the maintenance or if the husband does not provide it, the wife will be allowed to go to courts to request its forced payment or to file a divorce action for non-compliance by the husband of his duty of maintenance.

### **2. Does the Wife have to Obey her Husband? What Will Happen in Case She Does Not?**

The wife has to obey her husband. She loses her right to maintenance if she leaves the marital home and refuses to return to it after her husband has required her to do so via a bailiff's notification. However, she can object to this summon before the court of first instance within thirty days from the date of the notification by indicating the grounds on which she justifies her disobedience. The court must try to reconcile the two spouses. In case of failure, the wife can initiate a divorce procedure. If the wife does not object to the obedience ordinance within the time-limit, she forfeits her right to maintenance.

Maintenance is not due to the wife who leaves the marital home without her husband's permission. However, she does not lose her right to alimony if she leaves the domicile in the cases that are permitted by the legislature on the grounds of custom or necessity. For example, she has the right to go out for a lawful job, provided that she does not misuse this right; meaning it does not conflict with the family's interest, and her husband has not asked her to abstain from going out to work. If it is established that her going out to work does not go against family interest, the husband's asking her not to work is irrelevant. This is also the case if the husband knew and accepted at the time of contracting the marriage that his wife holds a job.

### 3. Do Husbands Have the Right to Beat their Wives?

Battery is a criminal offense and the wife beaten by her husband can file a criminal case against him. The husband may be condemned to spend from 24 hours to 3 years in jail for assault and battery and to pay his beaten wife damages. Violence is also a ground for divorce and the wife will be able to file a divorce action for harm. Few women, however, file such action because of the social stigma attached to them.

Violence is very difficult to prove. In order to prove that her husband caused her harm, the abused wife needs to go to the police station to file a police report and to a public hospital that will establish a medical certificate. It may however not be easy to get a police station report on those grounds and some police officers may accuse the wife of trying to get her husband in trouble. Some women may try to drag their husband in the street so that neighbours will be able to witness the beating. Most cases of violence, however, are unreported because women are reluctant to seek assistance outside their family.

### 4. Is Polygamy Allowed? Shall the First Wife(ves) be Informed? What Will Happen in Case the Husband Fails to Inform Her (Them)?

The Muslim husband can marry up to 4 wives simultaneously. The ma'dhun shall inform the previous wife of the new marriage of her husband. She will be able to fill a judicial action for divorce if she can prove that her husband's subsequent marriage caused her material or mental harm that made continuing with matrimonial life impossible. Therefore, harm is not assumed but it is up to the judge's discretionary powers to appreciate the evidence and decide whether or not harm occurred in this instance. If the new wife did not know that her husband was already married, she too can petition for divorce.

If the first wife was not informed of the new marriage of her husband, that latter can be condemned to jail and/or a penalty, and the ma'dhun can be condemned to a financial penalty

and may lose his job. The new marriage, however, remains valid.

### **5. What are the Financial Obligations of the Father towards his Children?**

The father has a personal obligation to provide his minor children with maintenance if they have no personal resources. Maintenance is due by the father until the boy reaches the age of 15 and until the girl marries or is able to earn an income sufficient for her expenses. The term can also be extended if the boy is incapable of earning due to a physical or mental handicap or is a student. Since 1985, maintenance is due retroactively from the day the father refused to provide for his child and not as was the case previously from the date of the ruling condemning him to pay. Maintenance must be provided according to the father's means and the child's needs. However, if the child has personal resources, he must cover his own needs.

## **C. DISSOLUTION OF THE MARRIAGE**

### **1. On What Grounds is Divorce (taliq) Allowed?**

Divorce is allowed in Egyptian law on the following grounds:

- absence of the husband for more than one year without a valid reason;
- condemnation of the husband to jail for more than 3 years. The wife shall however wait for a year after the imprisonment of her husband to introduce her action;
- husband afflicted with serious or incurable defect or mental disorder. It must be impossible for the wife to continue life with her husband without suffering from harm. The husband must have suffered from this disease before the marriage and without the knowledge of his wife. If the disease appeared after the marriage and the wife implicitly or explicitly accepted it after having knowledge of the disease, then she cannot file for divorce on these grounds.
- failure by the husband to provide maintenance;
- harm, on the condition that it be such as the continuation of matrimonial life be impossible between two persons of their social standing . The judge will appreciate the prejudice discretionally;
- polygamous remarriage of the husband. The wife must prove that the new marriage of her husband caused her a moral or material harm that makes the continuation of matrimonial life between two persons of their social standing difficult. She can petition for divorce within a year after she was informed of the new marriage of her husband, except if she agreed explicitly or implicitly. Here again, the judge enjoys discretionary power of appreciation.

## **2. Is Divorce by Mutual Consent Allowed?**

The spouses can agree to dissolve their marriage. In that case, the wife will give up all or part of her financial rights and may even offer a financial compensation to her husband. The two spouses will go to the ma'dhun with two witnesses. The husband will declare that he repudiates his wife with her consent. The marriage will be immediately and definitely terminated. This kind of divorce is called « mubara'a » or « talaq 'ala-l-ibra' ». It is not really a divorce by mutual consent but an assented or requested repudiation.

The wife will keep her right to custody over her children and the father will have to pay them alimony.

## **3. Who Will Get Custody over the Children in Case of Dissolution of the Marriage?**

Children (boys and girls) will be under the legal custody of the mother until they reach the age of 15. Custody can be extended after this age if the judge considers it is in the interest of the children.

The law does not make a difference between Muslim and Christian mothers. Some recent court rulings, however, deprived the Christian mother of the custody of her Muslim children after the age of 7, stating that after that age of "religious maturity" children should be raised according to the principles of Muslim religion and that a Christian mother would not be able to give them such a religious upbringing.

## **4. What are the Financial Rights of a Divorced Wife?**

After the dissolution of the marriage, the divorced wife shall introduce a separate legal action before the courts to collect her alimony and that of her children. She is entitled to maintenance (nafaqa al-'idda) during her 'idda (waiting period) for a period between three months and a year after the divorce and to compensation (mut'a) if the marriage has been consummated and if the divorce occurred without her agreement and was not due to any cause on her part. The amount of the compensation should not be less than two years of maintenance and is evaluated according to the husband's financial means, the circumstances of the divorce and the length of the marriage. The judge will decide whether the woman is entitled to compensation and will fix the amount according to the circumstances of each case.

Fathers also have to support their minor children after divorce as they did during marriage, except if they have their own resources.

In practice, many divorced women face difficulties in getting payment of their alimonies by their former husbands.

## **6. Who Keeps the Marital Home in Case of Dissolution of the Marriage?**

The mother who has been granted custody over her minor children can stay in the rented matrimonial domicile with her children for the duration of the custody or until she remarries. The husband cannot stay in the marital home unless he offers another independent and decent housing before the end of the waiting-period ('idda). If the marital home is not rented, the husband is entitled to live in it independently, on the condition that he provides his former wife and their children an alternative appropriate accommodation. At the end of the legal period of custody (15 years for both girls and boys) the father has the right to return to the domicile house even if the judge has extended the period of custody.

## **8. Do Fathers Have the Right to Visit their Children after the Dissolution of their Marriage?**

In case of divorce, fathers have the right to see their children three hours a week. In case of lack of agreement between the father and the mother, the judge determines a public place (garden, park, club, etc.) where the right of visitation will take place. The father does not have the right to house his children without the agreement of the mother.

## **9. What is Khul'?**

Khul' is the procedure whereby a woman can divorce her husband without cause, whether or not her husband agrees, by returning the dower given to her by her husband at the time of the marriage and forfeiting her own financial rights (but not the rights of her children). She does not have to prove that she suffered a harm, she just needs to declare to the judge that she detests life with her husband and that continuation of married life between them is impossible and that she fears that she will transgress against the 'limits of God' due to this detestation. The judge cannot refuse to grant her divorce, on the condition that she gives up her financial rights. Khul' takes the form of irrevocable divorce. The ruling is not subject to appeal or cassation. This kind of dissolution of the marriage takes less time to obtain than a judicial divorce but its financial consequences are heavier to bear for the wife.

## **10. What are the Financial Rights the Wife shall Give up in Case of Khul'?**

In exchange of her release, the wife must forfeit all her financial rights and give back the dower (bride-price) she received at the time of the wedding. She has to give up both alimony (nafaqa al-'idda) and compensation (mut'a) and must renounce the delayed portion of the dower. However, she does not forfeit her non-financial rights, i.e. right to children's custody. Khul' also does not affect the right of the children to receive alimony from their father.

### **11. Can Spouses Married 'Urfi get Divorced by Khul'?**

No, spouses married following a customary marriage cannot get divorced by khul' because this kind of divorce relies on a compensation for the husband in return for the dissolution of the marriage: the renunciation by the wife of all her financial rights. Yet, by definition, women married 'urfi do not get any financial right in case of divorce, so they cannot give them up in exchange of the dissolution of their marriage.

### **12. Can Husbands Repudiate their Wives Unilaterally?**

The Muslim husband can repudiate his wife. He just needs to go to the ma'dhun with 2 witnesses and declare that his wife is repudiated. He does not need to give any explanation for his decision. His wife does not need to be present. Repudiation must be registered by the ma'dhun within thirty days following the declaration and he shall inform the wife that she has been repudiated. The repudiation takes effect from the date of its occurrence, though in terms of inheritance and other financial rights it becomes effective only from the date of the notification to the wife. Criminal sanctions are provided in case of non-observance of these procedures. Repudiation is null and void if performed in a state of inebriation or under duress; it cannot be conditional and its wording shall not be ambiguous.

### **13. Is Repudiation Irrevocable?**

Repudiation is not irrevocable. The husband can decide to take his spouse back during the 3 months following the repudiation ('idda period). During this time, the spouses continue to live together and the husband can decide to end the separation with or without the agreement of his wife, explicitly or implicitly, by resuming marital relations and common life. If he uses this possibility he does not need to conclude a new marriage contract or to pay a new dower. Marital relations are considered as only suspended but not broken after the repudiation of the wife by her husband.

At the end of the 'idda period, the marital bond is definitely broken and repudiation becomes irrevocable. If the husband wishes to marry his former wife again, he has to conclude a new marriage contract and pay a new dower.

To be considered irrevocable, triple repudiation must be done in three separate pronouncements, not in one sitting

If the repudiation takes place before the ma'dhun in the presence of the wife and with her consent, the dissolution takes place immediately and is irrevocable. This kind of repudiation

is called « mubara'a » or « talaq 'ala-l-ibra' ». It is an assented or requested dissolution of the marriage.

#### 14. Should Repudiation Take Place Three Times?

No, one time is enough for the marriage to be dissolved. If the wife is repudiated three times (on three different occasions), the dissolution becomes irrevocable and the husband will not be able to marry his former wife again unless she gets married to another man, consummates the marriage and divorces him.

#### 15. Can the Mother be Deprived of her Legal Custody over her Children?

The divorced (or widowed) mother who gets married again loses custody over her children. Custody will be given to her mother or to the mother of her former husband. The mother can also lose custody, on the request of the father, if the judge considers that the interest of the child requires such a decision (e.g. she abuses them, neglects them, etc.).

She will also lose custody over her children when they reach the age of 15, unless the judge decides that it is in the best interest of the child to stay with her. According to Law No. 4 of 2005, the judge allows the children upon their reaching age 15 to make a choice regarding which parent they wish to be their custodian.

# III. NON-MUSLIMS COMMUNITIES

## 1. How Many Non-Muslim Communities Are Recognized in Egypt?

Fourteen religious groups have been recognized. They can be classified in three communities, comprising different denominations or rites:

- the Orthodox community, which includes four denominations (Coptic, Greek, Armenian and Syrian)
- the Catholic community, which includes seven denominations (Coptic, Greek, Armenian, Syrian, Maronite, Chaldean, Latin)
- the Protestant community. All Protestants are considered as belonging to the same community.

As to Jews, two communities have been recognized: Qaraitic and Rabinic.

The Coptic Orthodox community is the largest one but no official figure exists as to the total percentage of non-Muslims in Egypt (around 10 percent?) and as to the percentage of each religious group among them.

## 2. What Law Governs Family Laws for non-Muslims?

Personal status law in Egypt is governed by the principle of plurality and personality of laws, on the basis of religious belonging. Non-Muslims have maintained their own religious legislation in matters of marriage and divorce and enjoy independence in legislating their own laws in this field. Non-Muslim communities that are not recognized officially are governed by family law for Muslims, which is considered as the general law, the basic legislation in Egypt. If one of the litigants is Muslim, the personal status law for Muslims also applies to the marriage and to its effects.

Specific confessional laws can apply, by exception, in some particular circumstances: non-Muslims couples that share the same recognised community and denomination will be governed by the personal status law of the denomination to which they both belong. For instance, two Copts Orthodox will be submitted to the Coptic Orthodox personal status law. The same applies with two Latin Catholics for instance. However, if the two spouses do not belong to the same community or denomination, they will be governed by the general law in Egypt, which is the personal status law for Muslims. Therefore, that latter will apply for instance to a marriage between a Copt Orthodox and an Armenian Catholic, or even between two Orthodox (one Coptic and one Greek).

### **3. What Institutions are Responsible for Enacting Family Laws for Non-Muslims?**

Unlike personal status laws for Muslims, which are laws adopted by the Parliament (or decree laws adopted by the President of the Republic), non-Muslim personal status laws are adopted by the religious authorities of the different denominations. For instance, the law that applies to Copts Orthodox is a regulation that was adopted in 1938 by the religious council for Copts Orthodox and that was amended for the last time in 2008. The law that applies to Greeks Orthodox was adopted in 1937 and the Anglican Church regulations were adopted in 1902. These councils of church dignitaries are independent from the government but they are considered by the courts as administrative bodies and their decisions are administrative regulations subject to the review of the State Council and of the Supreme Constitutional Court.

### **4. On What Grounds Can Non-Muslims Get Divorced?**

Each personal status law for non-Muslims provides its own grounds for divorce. Until 2008, the 1938 Coptic Orthodox personal status regulations listed nine grounds for divorce, which had to be established in court. Coptic Orthodox believers could get divorced before the secular courts in the following cases : if one of the spouses was proven to have committed adultery; had abandoned Christianity; had disappeared for five consecutive years without any sign of life; had been condemned to forced labor or imprisonment for more than 7 years; had been suffering from mental disability or incurable disease for more than 3 years or if the husband had been impotent for more than 3 years; if one of the spouses had endangered the other's life; for misconduct; for bad treatment or violation of the marital duties that had led to aversion and separation for more than 3 years and, finally, if one of the spouses had taken robes.

The Pope Chenouda, Pope of the Orthodox Church, has never recognized divorce pronounced under the 1938 regulations and only considered adultery and change of religion as valid reasons for divorce. The Coptic Orthodox Church considered couples divorced on other grounds as still married, preventing them from entering into a new marital relation. This was the source of huge problems for those couples. The regulations were amended in 2008 and now only provide for possibility of divorce in case of adultery and change of religion. The meaning of adultery, however, has been widened and covers proven and suspected extra-marital relations. *Flagrante delicto* is not required anymore; adultery can be substantiated by any act that indicates extra-marital relation.

The Anglican Church, too, only recognizes adultery and change of religion as grounds for divorce. The Catholic Churches do not recognize divorce and only accept judicial separation.

## **5. What Institutions Are Responsible for Marrying and Divorcing Christians?**

Marriages between Christians are celebrated by the priests of their church. They should therefore be considered as religious marriages.

Personal status courts were unified in 1956 and since then all personal status cases involving Muslims and non-Muslims alike are handled by the Egyptian secular courts. The family courts that were established in 2004 to decide on all personal status cases apply the Egyptian general personal status law (personal status law for Muslims) as well as the specific personal status laws for non-Muslims who belong to the same community and denomination.

## **6. Is Repudiation (talaq) Allowed to Christians?**

All non-Muslim personal status laws forbid unilateral breaking of the marriage. If the 2 non-Muslim spouses belong to a different community or denomination, however, Muslim personal status law will apply to the dissolution of their marriage. In that case, the Court of Cassation has decided that the non-Muslim husband could divorce his non-Muslim wife unilaterally, even if Christian laws do not accept unilateral rupture of the divorce.

However, repudiation will not take place before the public servant in charge of registering repudiations. The non-Muslim husband will have to go to the court to have his repudiation registered and the dissolution of the marriage will not take place before it is judicially recognized.

## **7 Is polygamy allowed to Christians?**

All personal status laws for Christians forbid polygamy. Even when personal status law for Muslims applies to Christians - in case they do not belong to the same community or denomination - the non-Muslim husband cannot be polygamous. The Court of Cassation ruled in an important decision in 1979 that the principle of unicity of the marriage and of prohibition of polygamy was a fundamental principle of Christianity, which had always been respected by all Christians all over the centuries, in spite of the divisions that took place within that religion. According to that Court, the general rule according to which the Christian husband to whom personal status law for Muslims applies should enjoy the same rights as the Muslim husband should be set aside if it hurts a principle related to the essence of the Christian faith and whose violation by a Christian would be considered as a desertion of his religion.

## **8. Is Khul' Allowed to Christians?**

When Muslim law applies to a non-Muslim marriage, Egyptian courts have decided that the wife has the right to divorce her husband by khul'.

### **9. Can Christians Marry non-Christians?**

According to the Islamic sharf'a, a Muslim woman cannot marry a non-Muslim man. However, a Muslim man can marry a Christian or a Jewish woman.

The 1938 Coptic Orthodox personal status regulations forbid marriages where the two spouses are not Orthodox. The Coptic Orthodox Church will therefore refuse to celebrate a marriage between a Copt Orthodox and a Muslim or even a Catholic or an Anglican. The Greek Catholic personal status law forbids any marriage between a Christian and a non-Christian. The 1949 Apostolic Letter applicable to Catholics forbids marriages between a baptized and a non-baptized. The draft unified personal status law for non-Muslims forbids marriages between a Christian and a non-Christian.

### **10. Does the Christian Wife Have to Obey her Husband?**

According to the 1938 Coptic Orthodox regulations, the wife has to obey her husband, to live with him anywhere, keep his money, serve him, look after his children and run his home. The husband must house his wife with him, feed and clothe her, but the wife loses her right to maintenance if she leaves the marital home without a valid reason.

### **11. Who Gets Custody over the Children in Case of Divorce?**

Following a decision of the Supreme Constitutional Court, the age at which child custody shifts from the mother to the father for divorced families should be unified between Muslim and Non-muslims. Since the Muslim mother can now be granted custody over her children (boys and girls alike) until they reach 15 years, the same provision will apply to the non-Muslim mother.

The 1938 Coptic Orthodox personal status regulations as well as the 1902 Anglican personal status regulations require that custody over the children be given to Christian guardians only. For Copts Catholic, custody must be given to the Catholic parent and children must be raised in the catholic religion.

According to the 1938 Coptic Orthodox regulations, the spouse responsible for the divorce cannot get custody over the children. The divorced Copt Orthodox mother who gets remarried to a person whose marriage with her children is not prohibited is deprived of the custody over the children.

### **12. Why is Personal Status Law for Christians not Unified?**

Historically, non-Muslims ("dhimmis") have enjoyed a certain measure of judicial and legislative autonomy in their personal status and religious affairs. They also had their own courts in charge

of ruling on personal status cases between believers of the same faith. When the judicial system was unified in 1956, the religious councils lost their judicial competence, but each recognized religious community was allowed to keep its own personal status law. This may be considered either as a sign of respect of freedom of belief or as an encroachment on citizenship rights and national unity according to which all Egyptian citizens should be subject to the same laws.

A draft unified personal status law for all Christian communities (Orthodox, Catholic and Protestant) was prepared in 1978 and submitted to the Ministry of Justice in 1980 but it was never adopted by the Egyptian parliament. A revised version was prepared in 1998, but it was frozen too.

Some personal status matters, however, have already been unified by the legislature between Muslims and non-Muslims. This is the case, for instance, with successions, testamentary bequests, guardianship of property, disappearances, absence, legal capacity or procedure. Rulings of the Supreme Constitutional Court have also contributed to the unification of personal status law, for instance in the field of custody.

# B I B L I O G R A P H Y

## ( In English )

ABAZA, Mona, "Perceptions of 'Urfi Marriage in the Egyptian Press", ISIM Newsletter, 7, March 2001, pp. 20-21.

ABU-OUDEH, Lama. "Modernizing Muslim Family Law: The Case of Egypt", Oxford U Comparative L Forum 3, 2004, at ouclf.iuscomp.org.

ABU-OUDEH, Lama, "Egyptian Feminism: Trapped in the Identity Debate", Yale Journal of Law and Feminism, Volume 16, 2004, pp. 145 and ss.

AL-SHARMANI, Mulki, Recent Reforms in Personal Status Laws and Women's Empowerment. Family Courts in Egypt, AUC Social Research Center, 2008 (?). (on line: <http://www.pathwaysofempowerment.org/Familycourts.pdf>)

BADRAN, Margot, *Feminists, Islam and Nation: Gender and the Making of Modern Egypt*, Princeton, Princeton University Press, 1995 (in particular chapter 7 "Recasting the Family").

BADRAN, Margot, "Competing Agenda: Feminists, Islam and the State in 19th and 20th century Egypt", in Kandiyoti D. (ed.), *Women, Islam and the State*, Macmillan Press, 1991, pp. 201-236.

BARON, Beth, "The Making and Breaking of Marital Bonds in Modern Egypt", in N. Keddie and B. Baron, *Women in Middle Eastern History. Shifting Boundaries in Sex and Gender*, Yale University Press, New Haven and London, 1991, pp. 275-291.

BERGER, Maurits, "Conflicts Law and Public Policy in Egyptian Family Law: Islamic Law Through the Backdoor", *American Journal of Comparative Law*, Vol. 50, no 3, 2002, pp. 555-594.

BERGER, Maurits, "Public Policy and Islamic Law: the Modern Dhimmi in Contemporary Egyptian Family Law", *Islamic Law and Society*, 8, 1, 2001, pp. 88-136.

BERNARD-MAUGIRON, Nathalie and B. DUPRET, "Breaking-off the Family: Divorce in Egyptian Law and Practice", *Hawwa*, Brill, 2008, pp. 52-74.

BERNARD-MAUGIRON Nathalie, "The Judicial Construction of the Facts and the Law. The Egyptian Supreme Constitutional Court and the Constitutionality of the Law on the Khul", in B. Dupret et al (ed.), *Narratives of Truth in Islamic Law*, CEDEJ-I.B. Tauris, Cairo-London, 2007.

BERNARD-MAUGIRON, Nathalie and B. DUPRET, "From Jihan to Suzanne: Twenty Years of Personal Status in Egypt", *Recht van de Islam*, 19, Leiden, 2002, pp. 1-19.

- CHEMAIS, A., "Divorced From Justice: Women's Unequal Access to Divorce in Egypt", Human Rights Watch Report, December 2004, vol. 16, 2004.
- EL ALAMI, Dawoud, "Law No. 100 of 1985 Amending Certain Provisions of Egypt's Personal Status Laws" *Islamic Law and Society* 1(1), 1994, pp. 116-136
- EL-ALAMI, Dawoud, "Remedy or Device? The System of Khul' and the Effects of its Incorporation into Egyptian Personal Status Law", *Yearbook of Islamic and Middle Eastern Law*, 6, 2001, pp. 134-139.
- EL-ALAMI, Dawoud, *The Marriage Contract in Islamic Law* London/Dordrecht/Boston, Graham & Trotman, 1992.
- EL-KHOLY, Heba, "A Tale of Two Contracts: Towards a Situated Understanding of "Women Interests" in Egypt", in C. Nelson, and S. Rouse, *Situating Globalization. Views from Egypt*, Bielefeld, Verlag, 2000, pp. 301 and ss
- FAWZY, Essam, "Muslim Personal Status Law in Egypt: the Current Situation and Possibilities of Reform through Internal Initiative" in L. Welchman (ed.), *Women's Rights and Islamic Family Law: Perspectives on Reform*, London, Zed Books, 2004.
- GUENENA, Nemat and WASSEF Nadia, *Unfulfilled Promises. Women's Rights in Egypt*, Population Council, 1999.
- HASAN Aznan, "Granting Khul' for a Non-Muslim Couple in Egyptian Personal Status Law: Generosity or Laxity?", *Arab Law Quarterly*, 2003, 18, pp. 81-89.
- HATEM, Mervat, "The Enduring Alliance of Nationalism and Patriarchy in Muslim Personal Status Laws: the Case of Modern Egypt" *Feminist Issues*, 6, 1-2, 1986, pp. 19-43.
- HEFNER, Robert, "Rewriting Divorce in Egypt: Reclaiming Islam, Legal Activism and Coalition Politics", in R. Hefner (ed.), *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, Princeton, Princeton University Press, 2005.
- HOODFAR, Homa, "In the Absence of Legal Equity: Mahr and Marriage Negotiation in Egyptian Low Income Communities", *Arab Studies Journal*, vol. 6 and 7, Fall 1998/Spring 1999, pp. 98-111.
- HOPKINS (N.) et al., "The New Arab Family", *Cairo Papers in Social Sciences*, American University in Cairo Press, 24, 2001.
- MASHHOUR, Amira, "Islamic Law and Gender Equality – Could There be a Common Ground: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt", *Human Rights Quarterly*, 27, 2005, pp. 562-596.

- NAJJAR, Fauzi M., "Egypt's Laws of Personal Status" *Arab Studies Quarterly* 10(3), 1988, pp. 319-344
- NASIR, Jamal J., *The Islamic Law of Personal Status*, 3d edit., The Hague/London/New-York, Kluwer Law International, 2002
- NASSAR, Negla, "Legal Plurality. Reflection on the Status of Women in Egypt", in B. Dupret et al (dir.), *Legal Pluralism in the Arab World*, Kluwer Law International, The Hague-London-Boston, 1999, pp. 191-204.
- SONNEVELD, Nadia, *The Khul Law of 2000 : the Public Debate*, Doctorate Dissertation Manuscript, ISIM, Leiden, the Netherlands, 2007.
- SINGERMAN, Diane, "Rewriting Divorce in Egypt: Reclaiming Islam, Legal Activism and Coalition Politics", in *Remaking Muslim Politics: Pluralism, Contestation,, Democratization*, ed. Robert Hefner, Princeton, Princeton University Press, 2005, pp. 161-188.
- WELCHMAN, Lynn, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*, Amsterdam, Amsterdam University Press, 2007.
- WELCHMAN, Lynn, *Women's Rights and Islamic Family Law: Perspectives on Reform*, London-New York, Zed Books, 2004.
- WELCHMAN, Lynn, "Egypt: New Deal on Divorce", *International Survey of Family Law*, 2004, pp. 123-142.

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