

STALLED REFORM: FAMILY LAW IN POST-UNIFICATION YEMEN*

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Abstract

I examine here the conditions that have impacted on family law reform in unified Yemen. I will argue that during the early 1990s, the political climate of post-unification Yemen was polarized between supporters of the *status quo ante*—advocates of laissez-faire in the North and state intervention in the South. This division rendered any meaningful debate on family law impossible. Drawing on urban court records from the 1980s to the mid-1990s, I will show that courts are frequented mainly by women of modest origins who sue for divorce and maintenance, but who are discriminated against by judicial interpretation. Elite women use the courts only rarely and are comparatively better served by current judicial interpretation; thus, they have little concern for changing provisions on divorce and maintenance. Evaluating debates on women's rights in the late 1990s, I will briefly introduce some governmental and non-governmental initiatives with respect to family law to gauge current possibilities for reform.

Family Law in Pre-Unification Yemen

1. *Yemen Arab Republic*

When family law was codified in the Yemen Arab Republic (YAR, “North Yemen”) in 1978, it incorporated Zaydī legal traditions¹

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¹ The authoritative Zaydī manual is the fourteenth century *Kitāb al-Azhār fī fiqh al-a‘imma al-aṭhār*. Its provisions on family law were criticized by then dissident Zaydī scholars like al-Ḥasan al-Jalāl (d. 1673) and Muḥammad ‘Alī al-Shawkānī (d. 1834), who had moved closer to Shāfi‘ī positions in some fields. Several Zaydī Imams, including the last Imams of the Ḥamid al-Din family, Yaḥyā (d. 1948) and Aḥmad (d. 1962), had their own legal opinions (*ikhtiyārāt*), sometimes deviating from established doctrine. Under Aḥmad, the Cassation Court (*maḥkamat*

without significant borrowing from other schools.² At the same time, the court structure was adapted to accommodate Yemeni judicial traditions, after the failure of attempts to import the Egyptian model without modifications. Egyptian and Sudanese influence remained important in commercial law and courts, but the three-tiered Yemeni court system had scarcely any specialized jurisdictions during the late 1970s. First Instance Courts in the districts had general jurisdiction in civil, penal and family law. Benches of three judges in the provincial capitals considered appeals, and the Supreme Court in Sana'a, which had several specialized chambers, functioned as a Court of Cassation.³

Unlike family law codes in some other Arab republics, Yemeni Family Law 3/1978 did not attempt to act upon social organization or initiate even modest social change.⁴ Despite tremendous social and economic turmoil in Yemen, the republican state did not interfere in family affairs more frequently or in a manner different than it had done in pre-revolutionary times.⁵

According to the 1978 Yemeni Family Law, the marriage of minors is legal, but the law interdicts consummation prior to the onset of puberty. A violation of the law is punishable by a fine or jail term of between one and three years and compensatory damages to the

al-isti'nāf, founded in 1911) issued a number of binding rulings that deviated from school doctrine by adopting Shawkānī's positions (see ARJ, *Majallat al-buhūth* 1980); at the same time, Imam Aḥmad commissioned three judges to codify the current school opinion. After the overthrow of the Imamate in 1962, the Ministry of Justice, barely established, issued seventy-one guidelines for judges, which did not differ substantially from pre-revolutionary provisions ("*Qarārāt wizārat al-'adl*", see al-'Amrānī 1984: 233-44). In this and later republican legislation, reference is made to al-Shawkānī's opinions; sectarian tensions were thus minimized and a post-*madhhab* national legal consensus established (see Haykel 1999: 195). The family law of 1978 resembled some of the rulings of the Cassation Court and the Ministry of Justice guidelines pertinent to marriage and divorce. For further details, see Würth 2000: 39-43, 79 fn. 28, 86-7, 93-5, 98, 101, 104-7.

² On *talfiq* as a tool for legal innovation, if not necessarily reform: see Chehata 1970: 67ff.; for a critical reading of the Middle Eastern modern legislation thus created: see Moors 1999: 153ff., 166.

³ I have outlined the details of judicial reform in Yemen elsewhere, Würth 2000: 36-50.

⁴ An earlier attempt at social engineering in 1976, the placing of a ceiling on the *mahr*, largely failed. Mundy (1995: 134) correctly observes that placing a limit on the *mahr* may ultimately jeopardize the main avenue that women have to acquire property.

⁵ See Messick 1993: 64ff.

wife for the loss of virginity.⁶ Polygyny is subject only to a husband's exercise of equity ('*adl*). A husband's right to repudiate his wife unilaterally (*ṭalāq*) is unrestricted, whereas a woman must sue for divorce (dissolution of marriage: *faskh*)⁷ if her husband fails to uphold his financial obligations or abandons her. A woman may also sue for divorce if she feels "hatred" (*karāhiya*) for her husband, but she must return the *mahr* (dower).⁸ As long as a wife remains "obedient" towards her husband,⁹ she is entitled to maintenance from the date on which the contract was concluded; arrears of maintenance may be (and were) collected retroactively. In general, courts were relevant mainly to the poor, but in the 1970s bodies of customary dispute resolution settled most conflicts pertaining to divorce and post-marital issues.¹⁰

Family law was not on the agenda of the nascent YAR women's movement. The women's movement was composed of a very small number of educated women whose high-status background allowed them to obtain an education and enter the political sphere. Their prime concern was to integrate women in development projects, which, at the time, meant facilitating access to services, especially education, health care and sanitation, and goods, such as cooking gas and water.¹¹ As for the legal status of women, the consensus

⁶ I have seen only one judgment in which this provision was applied: the first instance judgment imposed a sizeable fine of U.S. \$3,750 on a husband and father and ordered the father to reimburse the husband for all wedding expenses. The appeal court overturned the latter part of the ruling, arguing that the father was the injured party to begin with (3/1405, 11.8.1406, 21 April 1986).

⁷ *Faskh* and judicial divorce (*ṭalīq*) differ substantially even though the result, divorce, is the same. In *faskh* cases, the wife dissolves her contract orally in the presence of the judge, who rules on the validity (*ṣiḥḥat*) of *faskh* but does not divorce her in the place of the husband.

⁸ *Faskh* on grounds of *karāhiya* resembles a *khul'* administered judicially against the wish of the husband, as recently enacted in Egypt. The first reference that I have found to *karāhiya* divorce is in a Cassation court judgment of 1371/1952; in support of the ruling, the judges cite a *hadīth* about Thābit b. Qays' wife's "dislike" for her husband (YAR, *Majallat al-buḥūth* 1980: 35). Cf. the Pakistani and Egyptian discussions, Carroll 1996: 97ff.; Arabi 2001: 177 note 25, 182 note 50.

⁹ "Taking care of property or assuming a public function" without the permission of the husband does not constitute disobedience (Article 37.4)—in contradistinction to legislation in other Arab states.

¹⁰ Mundy 1981: 122.

¹¹ On women's agricultural work, universal female illiteracy and high rates of child and maternal mortality in the 1970s, see Carapico 1996: 89; Lackner 1995: 85.

appears to have been that it is “traditions and customs” (*al-‘ādāt wa’l-taqālīd*) that prevent women from participating in society, for example, by favoring boys over girls in education. This development-oriented agenda avoided a conflict between the women’s movement and the male technocratic elite. The latter, in turn, supported women’s activism in general, and Women-In-Development programs in particular, joining in the criticism of “tradition” as the main impediment to development—which was identified with modernity. In the long run, the class background of activists, the corresponding choice of an agenda and the political alliance with the male elite imposed constraints on advances in women’s rights in family law, but secured elite women some influence.

2. *People’s Democratic Republic of Yemen*

The content of the feminist agenda in South Yemen differed in part from the dominant agenda in the North. But the women’s movement in the two states was very similar in social composition (mainly elite women) and strategy (policy of non-confrontation with the male political elite).¹² Improving the material conditions in which women live and their legal status was regarded as part of the anti-colonial and nationalist struggle, waged by the forces who would later form the Yemeni Socialist Party (YSP), the only party in the People’s Democratic Republic of Yemen (PDRY, “South Yemen”). Next to land reform, women’s rights were part and parcel of the YSP’s anti-colonialist and anti-feudalist rhetoric¹³ that was employed until the late 1980s. The state’s commitment to women’s rights was also conditioned by economic necessities. In a sparsely populated country of two million, with some 200,000 citizens working abroad, women were an economic asset whose access to education and entry into the formal labor market were actively encouraged.¹⁴ Accordingly, PDRY legislation was radical: laws relating to land reform and the family attempted to redesign not only family relations but also their generative structures. Law 1/1974 defined marriage as a consensual union between partners who had equal responsibilities: husband and wife share the costs of getting married and maintaining the house-

¹² Lackner 1985: 100.

¹³ Lackner 1985: 100-1, 114-8; Molyneux 1985.

¹⁴ Lackner 1985: 138-40, 158.

hold, if possible. The age of marriage is eighteen for men, sixteen for women. Marriage is valid only if registered and divorce only if pronounced by a court. Polygyny is contingent upon court approval and a first wife's infertility or chronic illness, as confirmed in a medical report. Divorce counseling with a social worker provided by the Women's Union is mandatory and women do not lose custody of their children upon remarriage. Until 1988, a civil law provision allowed a divorced mother with custody to keep the marital home.¹⁵

Reality was far less radical, and application—or rather the social possibilities of application—of the law were uneven, especially outside of the major cities. A three-month marriage bar for men had to be introduced to prevent a man from divorcing his first wife, marrying a second, and taking the first wife back during her waiting period of three months. Furthermore, faced with a chronic housing crisis in Aden, courts often had to rule that the marital home, theoretically to be awarded to the divorced mother, was to be divided between the divorced couple, who were thus forced to continue to live together, separated by a hastily erected wall or curtain. The authority of the law was also uncertain, particularly outside of the city centers, where government measures are generally regarded as a mixed blessing. These factors may explain why, in the aftermath of political unity, male political actors from the South paid only lip service to the preservation of PDRY family legislation, formerly understood as a backbone of socialist ideology.¹⁶

3. *Republic of Yemen*

When the two states united, all legislation in force in the two former states was to remain effective until superseded by a new law. With regard to family law, this produced some absurd results—or at least anecdotes. Highland Northerners reportedly flocked to Aden to eat fish, drink, and look at women who wore no face veils, which caused the men to regard them as prostitutes, much to the disgust of Adenis, who increasingly perceived their new compatriots as barbarians. However, husbands from the South, mainly the educated, benefited as well: some divorced their Southern wives in the territory of the former YAR, or concluded a second union there, where there were

¹⁵ Shamīrī n.d.: 85.

¹⁶ Molyneux 1995: 427, 429.

no restrictions on divorce and polygyny. When they moved back to the South with their second wives, Southern women no doubt felt that unity offered them few benefits.

Even though it was clear that the situation of “one state/two laws (*al-tashṭīr al-qānūnī*)” was temporary, Adeni women feared that unity would abrogate their family law and undermine state feminism in general. In a demonstration in Aden just prior to unification in 1990, women demanded a guarantee from the then speaker of parliament, Yāsīn Nu‘mān (YSP), that the family law of the South would not be a victim of unity.¹⁷ Nu‘mān reportedly pointed out that the Socialists regarded a law controlling the educational establishments run by the *Iṣlāḥ* party as more essential than Southern family law but he promised to support women’s demands in principle.¹⁸ In fact, the YSP press devoted many pages to draft laws that would have unified all educational establishments under a central budget; the press gave no attention, however, to family law.

The reasons for the absence of family law from the political agenda are complex and, for the most part, political, i.e. the extreme polarization of forces loyal to the *status quo ante* following unification.¹⁹ On the few occasions on which family law was discussed, whether in scholarly journals, conferences, or seminars, the friction between supporters of “the” North and those of “the” South became especially apparent.

Discussing Family Law: 1991-1994

In mid-1991, the former YAR law was proposed as the law of unified Yemen. In September 1991, socialist lawyers Muḥammad al-Mikhlāfī and Rashīda al-Nuṣayrī presented a scathing critique of this proposal at the National Conference on Family and Population, held in Aden. The 1978 Northern legislation was “medieval,” and the law in the South “progressive.” They demanded revisions, informed by the PDRY law, that would not ignore “the rights that women have obtained by virtue of this law.”²⁰

¹⁷ *Arab News* 9 March 1990, *Jordan Times* 31 March 1990.

¹⁸ Author’s interview with Fathīya Manqūsh, Aden, 17 November 1993. For similar trade-offs in other Arab States, see Hatem 1995: 190, 200, 202.

¹⁹ For details on the political events and the build-up of the brief war in spring 1994, see Carapico 1998: 170ff.

²⁰ ‘Alī and al-Nuṣayrī 1992: 180-1, 192.

When al-Mikhlāfi presented the same ideas to a seminar on “Women in Yemeni Legislation” in November 1993—this time criticizing the new Personal Status Law of March 1992—the seminar degenerated into a shouting match. A month later, the Islamist weekly *al-Ṣaḥwa* chided al-Mikhlāfi for using the Southern law as his frame of reference.²¹ At another meeting, Southern MP Mūnā Bāsharāḥīl was berated by a fully veiled teenager with the words: “You are a communist and I speak for God.”²² Although the confrontation was particularly harsh between Socialists and Islamists, the lines of conflict were not limited to party allegiances but extended generally to “Southerners” and “Northerners”; accordingly, the opposition between “Southern” and “Northern” and also between “communist” and “*sharīʿa*-abiding” were the only terms in which activists discussed family law, if they did at all. This limited the scope and depth of discussion.

A new draft was presented in July 1991 in the name of the Yemeni Women’s Union, headed at the time by YSP veteran Raḍīya Shamsīr.²³ In an accompanying letter to the Ministry of Legal and Parliamentary Affairs, the Women’s Union declared that the draft did not take into account Southern legislation. Law 20/1992 on Personal Status was eventually issued in Ramadan 1412/March 1992 by decree of the President; it appears never to have been discussed or passed by Parliament.²⁴

²¹ *Al-Ṣaḥwa* 30 December 1993.

²² Carapico 1998: 162.

²³ There is a debate as to whether the draft was actually initiated by the Women’s Union. Sana’a university professor Ra’ūfa Ḥasan claims that she initiated the draft but presented it in the name of the Women’s Union to lend greater institutional weight to the document (*Yemen Times* 21 August 1991). Membership in the Northern union was largely Islamist by the 1980s (Ghames 1989: 153), whereas the Southern union was led by YSP cadres. Upon unification, the unions were merged, under an appointed Southern leadership, which led to disgruntlement among *Islāh* members. Since 1994, the Women’s Union has been dysfunctional and marginalized by the newly founded National Committee for Women (about which more below), to which they lost out in competition for donor attention and funds.

²⁴ For similar reasons in 1979 the Egyptian president Anwar Sadat issued a new family law, by decree, granting more rights to women, particularly after a divorce and with respect to polygamous unions. This resort to legislation by decree in the absence of urgent circumstances (*ḍarūra*) was later found unconstitutional by Egypt’s Constitutional Court, see el-Alami 1994: 117. The right of the Yemeni president to issue decree-laws in urgent circumstances when parliament is in recess was abolished by a constitutional amendment passed in February 2001.

The Ministry of Legal and Parliamentary affairs, responsible for the law's final drafting, adapted some of the Women's Union suggestions that were informed by Southern tradition but in general followed YAR law; the result was that law 20/1992 on Personal Status became an odd amalgam of two different legal traditions, and did not safeguard, let alone promote, women's rights in the family, as the Women's Union might have hoped when presenting the alternative draft.

Family Law Unified: Law 20/1992

The new law mainly followed the Northern tradition: state control over the family was minimal. Thus, marriage and divorce were legally valid and officially recognized without registration.²⁵ In regard to marital rights and obligations (*al-ʿishra al-ḥusna* in Yemeni parlance) and divorce provisions, there was no vestige of the Southern law: A woman's main marital obligation is obedience (*tāʿa*). Divorce (*faskh*) against a husband's wish must be requested in court, on the same limited grounds as had been available under the previous YAR law. Polygyny was restricted, but only on paper: Both wives must be notified that they are going to live in a polygynous union, and the husband must have a "legitimate interest (*maṣlaḥa mashrūʿa*)" in an additional union. This provision was taken verbatim from a draft Arab Personal Status Law authored by the Arab League Ministers of Justice, except that the paragraph mandating court permission for all polygynous marriages was omitted.²⁶ The law did not specify who is responsible for notifying the wives of the incumbent polygynous union, or the legal consequences of non-compliance. Similarly, there are no guidelines specifying who is to determine whether the second union serves a legitimate interest, and how that determination is to be made. Since the entire matter is left to the discretion of the husband, the provision was unenforceable and thus

²⁵ For a detailed discussion of the registration of marriage, see Würth 2000: 91-3. The existence of a marriage is easily established by bringing witnesses to the marriage contract or to the wedding festivities. Theoretically, divorce can be established in the same fashion; due to the complicated nature of how to pronounce a valid *ṭalāq* and *khulʿ*, establishing the occurrence of a divorce and its precise nature is more complicated. I have observed a number of cases in which a *ṭalāq* or *khulʿ* divorce was disputed, but I have not seen one case in which a marriage was disputed.

²⁶ Majlis wuzarāʾ al-ʿadl al-ʿarab (ca. 1986), Article 31.

there was no restriction on polygyny—a fact that somehow eluded women activists at the time.

A similarly selective adaptation of provisions from other legislative texts was followed with respect to maintenance owed to a wife during marriage. Whereas maintenance arrears were fully recoverable under Northern legislation, they were not under Southern law. In the 1992 law, the recovery of marital maintenance arrears was limited to one year prior to raising the claim, as had been suggested by the Women's Union. Only if a wife had obtained a court order could maintenance be awarded retroactively for a longer period of time. This new provision was clearly reflected in the jurisprudence of a first instance court in South Sana'a.²⁷ Whereas prior to 1992, judges had awarded arrears of maintenance for the entire period that the husband had failed to pay, they now applied the new provision and, consequently, the amounts wives received as arrears of maintenance were significantly lower than in pre-1992 court judgments. In many cases, wives used the maintenance card as an out-of-court bargaining chip, promising her husband that she would not claim maintenance arrears if he repudiated her. Thus, application of the 1992 provision by judges affected the negotiating position of women in out-of-court divorce settlements.

The new law introduced post-marital compensation equal to one year's maintenance for the wife if her husband repudiated her without fault of her own and if the divorce would cause her to fall into poverty. Although this provision was again taken from the draft presented by the Women's Union, the Women's Union had stipulated that the compensation would be equal to *three* years of maintenance and would not be tied to social necessity. Furthermore, since the Women's Union draft had recommended that repudiation and all related issues be subjected to court supervision, compensation for unilateral divorce could be awarded at the divorce hearing. In the law of 1992, repudiation was made valid without court supervision or authorization; thus, a woman had to file a separate suit for compensation, proving that the divorce was not her fault and that it harmed her. Until 1995, not a single woman had filed such a suit

²⁷ I attended sessions in this court on a daily basis between 1993 and 1995. The 500 judgments I analyzed are representative of the jurisprudence of this court. Parties and witnesses are usually identified by name, place of birth and residence, and, in the case of men, profession.

for compensation in the South Sana'a primary court. In one case that involved a wife's financial rights after repudiation, a judge awarded post-marital compensation; the ruling was quashed upon appeal since the judge had ruled on compensation without the woman having requested that he do so.

Article 15 fixes the minimum age of marriage at fifteen years for both sexes.²⁸ However, this age limit is part of the chapter on guardianship in marriage (*bāb al-walāya*) and not a condition for the validity of marriage. Furthermore, there is no provision to enforce the age limit, since a marriage does not have to be registered to be valid. Unlike the earlier Northern legislation, which validated the marriage of a minor but not the consummation of that marriage, the new law does not stipulate penalties for violations. Paradoxically, the marriage of a minor is forbidden but it is neither punishable nor void. The *fiqh* remedy available to women who were married off as minors—the dissolution of marriage upon attaining puberty (*faskh al-bulūgh*)—was abolished by the 1992 law. However, Article 349 of Law 20/1992 allows for the application of *sharī'a* in case of *lacunae*; after 1992, Yemeni judges have used this article to grant permission to dissolve a marriage upon attaining puberty.²⁹

At first glance the provisions on polygyny and marriage age appeared to place restrictions on men's rights. In fact, they do not. Rather, the law leaves intact the large measure of discretion available to husbands and fathers. The state refuses to take any responsibility for these aspects of marriage, much to the detriment of women who are left without protection. As for maintenance arrears, the opposite path has been taken. Here, the state interferes, mandating a court issued maintenance order if a woman is to recover maintenance arrears for the full period of time during which her husband failed to pay. To put it bluntly, the 1992 Yemeni legislation imposes state control where it serves men and fails to impose it where it might serve women.

For Northern women the 1992 law did not change much; accordingly most statements by Northern activists condemned the non-application of the law, and—in line with the agenda that had been established in YAR times—blamed “customs and traditions”.³⁰ For

²⁸ According to Article 51 of the Civil Law 19/1992, fifteen is the age of legal majority (*sinn al-rushd*).

²⁹ For details, see Würth 2000: 85-90; for cases see *ibid.* 189-95.

³⁰ NCW 1996, 14f.; Asmā' al-Bāsha in *Yemen Times* 12 September 1994.

Southern women the new law sharpened the loss of state protection experienced in other realms,³¹ and they continued to criticize the law as failing to take into account Southern legislation.

Using Family Law: Court Practice

Court practice sheds light on how law is interpreted and applied; in a setting in which state interference in marriage and divorce is not mandatory, it also sheds light on the social groups who use the courts and are most affected by judicial interpretations of family law. Conversely, the analysis of court practice allows us to draw some conclusions, albeit limited, regarding the relevance of family law reform for different social groups.

Between 1983 and 1995, most litigants and witnesses in the primary court in the south of Sana'a came from the lower classes.³² Thirty percent of all men worked for the military and security, 16 percent were public servants, 18 percent small traders and another 10 percent worked in Sana'a's few factories. Information on female litigants and witnesses is scant, since women's employment and the nature of that employment is not pertinent to most court cases; in 46 percent of all court records that mention women's employment, the court scribe failed to ask or note what kind of work the woman performed.³³ The few remaining records (n=66) show that most female litigants were as poor as their male counterparts.

Three quarters of all litigants in this court were women. They sued mainly for divorce (28 percent) and maintenance (25.7 percent). Reasons for women's divorce claims were typical for the urban poor: lack of financial support (38.1 percent), abandonment (*ghayba*, 25.1 percent) and domestic violence (22.5 percent).³⁴ Men turned

³¹ See Molyneux 1995; 'Abd al-Rahmān 2000.

³² It is tempting to assume that the litigants who frequent this court are representative of society: in many respects cases brought to this court appear to be typical of family relations and conflicts among poorer sections of this quarter. But cases are not representative of Yemeni family relations in general or urban family relations in particular.

³³ In some custody and maintenance disputes, a wife's employment is a legal issue; otherwise court clerks fail to ask female litigants whether or where they work. This demonstrates the extent to which court documents are legally constructed and provide social information only in so far as the court clerk deems necessary for the legal issue at hand, cf. Ze'evi 1998.

³⁴ Personal status law recognizes domestic violence only implicitly as a reason for wife-initiated divorce: the husband is obliged not to harm his wife physically

to court mainly to have their wives returned to the conjugal home (17.6 percent). Only about 20 percent of all claims were adjudicated during the course of the year in which they were raised, many cases were “abandoned” by the plaintiff after registration of the claim, and even more were dropped during the course of the proceedings. Almost half of all rulings were rendered less than three months after the claim had been raised—requests for maintenance and “obedience” tending to be more drawn out than those for divorce.

Yemeni procedural law relies heavily on *fiqh* rules of procedure and evidence, and oral testimony, i.e. witnesses and a second set of witnesses testifying to their integrity, is the most important mode of evidence. This structural advantage may explain why most plaintiffs win their claims: almost 70 percent of all litigants who obtained a ruling from this court won their claim; female plaintiffs won almost 80 percent of the cases. Winning, however, is a relative term: There was, for example, a notable difference between the reason why female litigants requested a divorce and the reason why they were granted one: Almost 60 percent of all *faskh* rulings were issued on grounds of abandonment by the husband, usually a labor migrant, and his lack of financial support; another third was based on the lack of financial support alone. Thus, lack of financial support constitutes the most important reason for divorce rulings in this court, but, contrary to the letter of the law, judges did *not* award any maintenance arrears in these divorce suits.

Lower-class women, the only ones to invoke divorce on grounds of non-support, may thus divorce with comparative ease before this court, but they do so without securing any financial rights. One reason judges gave for their practice was the difficulty that lower-class women have in actually collecting arrears of maintenance, due to the high cost of enforcement mechanisms and, more importantly, to the poverty of their husbands.

Another example that illustrates what “winning” a case actually means relates to divorce on grounds of domestic violence and *karāhiya*:³⁵ On the one hand, women cite domestic violence as a grounds for divorce in almost one-quarter of all divorce suits; on the other hand, less than 5 percent of all judgments were based on domestic

or psychologically. In addition, domestic violence is often understood to cause *karāhiya*.

³⁵ See footnote 8.

violence and less than 2 percent on *karāhiya*. While most of these requests for divorce were raised by lower-class women, most of the actual divorce rulings issued on the grounds of domestic violence and *karāhiya* were cases raised by upper-class women. Clearly, lower-class women have a difficult time winning these divorce claims while upper-class women do not. In fact, judges dismiss most claims based on these two grounds for lack of sufficient evidence: in cases brought by lower-class women, judges scrutinize the reasons for *karāhiya* and argue that only an act of domestic violence that would qualify as assault under criminal law is considered a sufficient grounds for divorce. In cases brought by upper-class women, judges consider a wife's refusal to live with their husband as sufficient grounds for divorce, regardless of whether the alleged domestic violence qualified as a criminal offense. The wife's refusal to live with her husband is sufficient to establish her *karāhiya*. Judges do not keep a woman of "origins" and means in a marriage against her wishes: If such a woman appears in court, judges correctly assume that out-of-court negotiations in which the wife offered to pay her husband in return for a divorce (*khul'*) have failed.

By granting a quick and easy divorce to upper-class women on grounds of domestic violence or *karāhiya*, judges reinforce the current assumption—and practice—that court divorces are for the poor, whereas the wealthy solve marital problems out of court by paying for termination of marriage. This judicial bias is due largely to the social and intellectual formation of judges in this court: most judges are members of the traditional upper class with a family tradition of learning and they treat women of their own class more leniently than they do women of lower classes.

The social background of litigants in one urban court thus indicates that family courts in Yemen are most often frequented by—and are thus relevant to—the urban poor and the uprooted. The analysis of claims versus decisions also shows that lower-class women and upper-class women use the law differently and are treated differently by judges: Lower-class women come to court to have their financial rights enforced or to obtain a divorce for lack of support or domestic violence; whereas judges often do grant a divorce on grounds of lack of support, only rarely do they grant a divorce to a lower-class woman on grounds of domestic violence or *karāhiya*. Upper-class women, on the other hand, come to this court to enforce financial rights only rarely, but they do come to the court to divorce their

husbands for domestic violence and/or *karāhiya*; and they are usually successfully in achieving their goal. They are thus comparatively better served by the current law and its interpretation: they use the law only rarely, since their social standing makes it unlikely that they will be forced into a marriage or kept in an abusive relationship. If they find themselves without effective male protection or unable to buy their way out of a marriage, judges—at least in this court during this period of time—go to great lengths to accommodate them. Without claiming that the small number of upper-class women who appear in court are representative of all upper-class women, it appears that elite women have had little and limited exposure to Yemeni family law and its judicial application during the past decades. As will be shown below, their interests in family law reform are therefore concentrated on choice in marriage, but not on securing effective access to maintenance and divorce.

Amending Family Law: 1996-1999

The 1994 war between the two former states largely eliminated the Yemeni Socialist Party as a military and political actor and deepened the political and social rift between “Northerners” and “Southerners.” The constitution of 1991 was amended to resemble the Northern constitution of 1970,³⁶ and most controversial laws enacted between 1990 and 1994 were likewise amended. In late 1996, two parliamentary committees³⁷ presented a draft amendment to the Personal Status Law; the amendments attempted *inter alia* to correct the loose legal language of Law 20/1992. Furthermore, the committees declared that the law was a “compromise text” (*tashrīʿ tawfiqī*), a euphemism for the request to abolish all articles that had been introduced in deference to the socialist run Women’s Union. Even though there were only very limited public discussions of the draft, these were seemingly sufficient to persuade the Yemeni president

³⁶ Amendments to the 1991 constitution have been discussed since the elections of 1993, for details, Glosemeyer 1995: 18-29.

³⁷ The draft was presented by the committee for “Endowments (*awqāf*) and Justice” and the committee for “Codification of the *Shariʿa*,” the latter headed by late Muḥammad Yaḥyā al-Muṭahhar, author of an important compendium on Yemeni family law. Whereas Botiveau (1996-1997) claims a dominance of the *Iṣlāḥ* in post-1994 legislative developments, in these two committees the presidential party, the General People’s Congress (GPC) had a majority.

to send the draft back to parliament in 1997.³⁸ More than one year later, parliament—dominated by Northern stalwarts—passed the revised amendments as Law 27/1998; this law affected one-third of the 351 articles in the 1992 law. The amendments abolished the unenforceable restrictions on polygamy of the 1992 law, annulled the right to compensation after an arbitrary repudiation, and validated repudiation upon fulfillment of a condition (*ṭalāq mu‘allaq*). The limits on recovering maintenance arrears, which, as noted, work to the disadvantage of women, were not revoked,³⁹ even though the 1996 draft had condemned the provision, characterizing it as an “innovation without proof.”⁴⁰ In April 1999, parliament passed yet another amendment, and, in Law 24/1999, abolished the minimum age of marriage. The new Article 15 validated the marriage of a minor girl, but stipulated that consummation should not take place until the girl attained puberty.⁴¹ Unlike the 1978 YAR law, the 1998 law did not enact any provisions regulating the legal consequences of sexual intercourse with a married girl below the age of puberty.

Debating Women’s Rights: Recent Trends

The amendments sparked criticism by members of the NGO community and legal figures, but, to date, there has been no sustained campaign. Writing in the legal magazine *al-Qiṣṭās*, published by the Civil Society Forum, Aḥmad Sharaf al-Dīn, Professor of Law at Sana‘a University, criticised the Yemeni Personal Status law for lacking precise definitions of the consequences of failing to fulfill marital obligations. He suggested compensation for the first wife upon her husband’s conclusion of a second union without her knowledge or against her wish. He also advocated an increasing use of stipulations in the marriage contract.⁴² Associate Professor of Law

³⁸ Probably fearing the politization of family law, the draft was sent back before the parliamentary elections of 1997, which secured the GPC an absolute majority, see *Yemen Times* 13 January 1997, 20 January 1997, 14 April 1997.

³⁹ I mistakenly claimed the contrary in an earlier publication (Würth 2000: 112), not having had the benefit of the official text.

⁴⁰ Parliament 1996: 27.

⁴¹ “A contract concluded by the marriage guardian for a female minor is valid. It is not permitted to the husband (*al-ma‘qūd bi-hā*) to consummate the marriage with her (*al-dukhūl bi-hā*) and she does not move into his house (*lā tuzaff ilayhi*) until she is able to endure intercourse (*ṣāliḥa li-waṭ‘*) even if this occurs after the age of fifteen.”

⁴² As quoted in “Khuṭūra li’l-warā’ ‘inda al-nisā’,” *Al-Qiṣṭās* 14 (July 1999), 22.

at Aden University, ‘Abd al-Ḥakīm ‘Aṭrūsh, argued for a complete overhaul of the amendments, since they were not in line with the *sharī‘a* or with international conventions. He drew particular attention to the legality of marrying women off as minors, which contradicts the principle of the wife’s consent as a necessary element of a valid marriage, and to the lack of judicial supervision with respect to polygyny.⁴³ Judge Muḥammad Ḥumrān, former president of the South-West Court of Sana‘a, who also supported court permission for a polygynous marriage, called the amendments “hasty and negative,” and predicted that they would fail to remedy the social and economic misery of women whose husbands had multiple wives.⁴⁴ However, the discussions in *al-Qiṣṭās* also indicated that the earlier lines of political friction about personal status reform are still very much in evidence. When questioned by *al-Qiṣṭās*, many Northern judges supported the amendments of 1998 and 1999 because they were in “accordance with *sharī‘a*”, while female lawyers, mostly from the South, deplored that the law was not informed by former Southern legislation.⁴⁵ Similarly, in a March 2002 workshop devoted to techniques of family reform sponsored by the Arabic Sister’s Forum, participants from the North and the South disagreed vehemently over the virtues of the respective legal traditions and whether references to the former PDRY law would be helpful in legal reform.⁴⁶

Particularly among the NGOs—all urban-based, related to the major political parties and often deeply hostile towards each other—these political factors continue to mitigate against a sustained campaign for reform of family law, even though *sharī‘a* and international human rights conventions have become major normative resources and points of reference in most public debates about women’s rights. NGOs used arguments based on the compatibility of *sharī‘a* and international human rights conventions with some success in matters relating to family law. Following the agenda established at the 1995 Beijing Conference, NGOs raised the issue of violence against women, a topic never publicly discussed in the early 1990s; in countless workshops, they trained media and legal professionals to “resist“

⁴³ ‘Abd al-Ḥakīm ‘Aṭrūsh, “Bayna qānūn al-aḥwāl al-shakhṣiyya al-yamani wa’l-sharī‘a wa- ittifaqiyyāt al-dawliyya,” *Al-Qiṣṭās* 41 (January 2002), 13-17.

⁴⁴ As quoted in: Fayṣal al-Ṣafwānī, “Quḍāt wa muḥāmūn yuqayyimūna qānūn al-aḥwāl al-shakhṣiyya,” *Al-Qiṣṭās* 28 (November 2000), 13-14.

⁴⁵ *Ibid.*, pp. 14-17.

⁴⁶ These are my observations of the workshop held in Sana‘a, 14 March 2002.

violence against women and denounced male practices of violence. In late 2001, NGOs blocked the introduction of *bayt al-ṭā'a*, the Egyptian inspired legislation that uses the police to enforce a court order calling on a wife to return to her conjugal home.⁴⁷

On the governmental level, the political tension that characterized relations between “Northerners” and “Southerners” has somewhat declined, judging from the publications of the National Committee for Women (NCW). The NCW, composed largely of GPC women activists from the North and the South, was formed in 1994 to prepare the Government’s report to the U.N. Women’s Conference in Beijing. It was then revamped to co-operate with donors on “women’s projects” and gender issues. In addition, an NCW delegate usually acts as the government’s representative in gender-related international meetings and the Committee is responsible for commenting on and drafting legislation relevant to women.⁴⁸ Accordingly, the NCW reviewed all Yemeni legislation in force as to its compatibility with international conventions, particularly the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). For this purpose, the NCW held several meetings in Sana’a, Ibb, Hadhramawt and Abyan to discuss family law; pre-unification laws were not mentioned as a point of reference during these meetings.⁴⁹ In 2001, when the review was made public, the NCW recommended that nine articles of the law be amended: seven provisions relating to the conclusion of marriage, one to polygamy and one, rather inconsequential provision, relating to divorce for defect (*faskh al-‘ayb*). Interestingly, these recommendations bore little resemblance to the debates in the regional meetings. *Inter alia*, the NCW proposed

⁴⁷ Egyptian-trained advisors to the Parliamentary Committee for Justice and *Awqāf* had suggested to introduce *bayt al-ṭā'a* in the amended Law 28/1992 on Civil Procedure and Execution of Judgments in August 2001. Intensive NGO campaigning started in late 2001, and appealed to the president to instruct parliament to drop these articles from the draft, which he did. I have dealt with the draft law, current jurisprudence and NGO activism in detail elsewhere: Würth (submitted for publication).

⁴⁸ See <http://www.unifem.org.jo/gonverence.htm> (27 January 2001), 2-4; http://www.yemeni-women.org.ye/english/sec2_1_10.htm (18 June 2001); for a similar committee in Jordan, Brand 1998: 140-4.

⁴⁹ Shihāb n.d. In an earlier 1997 document, the NCW had still referred to the Southern legislation of 1974 when discussing Yemeni Personal Status Law, but was quick to declare that family cohesion was the main virtue of the Southern law, not women’s rights, as previously argued: http://www.yemeni-women.org.ye/english/sec3_1_4.htm (25 January 2001).

to fix the minimum marriage age at eighteen for both sexes, thus adapting international standards on legal majority, and argued that child marriage “constitutes a danger for the family and health of the wife.” The medical aspect of the argument reflects concerns with high birthrates and high rates of mortality among mothers and children. The moral aspect reflects the concerns of elite women about the education of young girls, who are hampered by early marriage and child-bearing, and their interests in a “modern” and safe family environment, which requires an educated (house)wife. The NCW also recommended that the consent, identity, and age of a prospective bride should be a condition for the validity of marriage, and they also called for a return to the unenforceable provisions on polygamy of the 1992 law.⁵⁰

Without denying the importance of the areas in which the NCW made their recommendations for family law reform, the choice of these, and not other, issues reflects the concern of upper-class women to emphasize choice in marriage, both at the onset of marriage and when faced with polygyny. As was the case with the Women’s Union in 1991, the NCW failed to suggest procedural safeguards to give teeth to any of the recommended provisions; unlike the Women’s Union, they apparently were influenced not by a different legal tradition, i.e. the PDRY law, but by lack of drafting expertise, on the one hand, and by their own, class-based concerns vis-à-vis family law, on the other.

This is not to deny the achievements of the NCW. In early 2002, the Cabinet discussed the NCW/World Bank catalogue of recommendations for legislative reform. The Cabinet approved changing the law on nationality to permit Yemeni women, divorced from their foreign spouses, to pass on Yemeni citizenship to their children. Married women were also granted the right to register the birth of a child with the authorities, a right formerly reserved to a child’s male relatives.⁵¹ In regard to family law, however, the Cabinet adapted only the one, rather inconsequential, suggestion made by the NCW, relating to both spouses’ right to request the dissolution of marriage on grounds of defect. Whatever the other achievements of the NCW may have been, its role in family law reform was de-

⁵⁰ NCW 2001: 24-28.

⁵¹ See: Interview with ‘Abdallah Ghānim, Minister for Legal and Parliamentary Affairs, *al-Usra* 16 February 2002; *al-Thawra* 25 February 2002.

cidedly limited, and in this, it paralleled the earlier failure of the Yemeni Women's Union described above.

The opportunities for reform of Yemeni family law are thus decidedly mixed. The political friction between Southerners and Northerners remains a factor, and has only partly been mitigated by a human rights discourse that invokes the compatibility of *sharī'a* and international human rights conventions. The urban, middle- and upper-class background of most activists also remains prominent, among NGOs and governmental institutions alike. With the income gap between urban elite activists and the majority of the population increasing at a rapid rate, the sensitivity of NGOs to needs articulated at the grass-root level may become more attenuated. It is doubtful that this problem can be mitigated by the recent shift in development agendas, that is the support for a rights-based approach to health and education instead of Women-in-Development programs. Neither a human rights discourse nor a rights-based approach to development will make up for insensitivity to the manner in which the majority of Yemeni litigants use the law or for activists' lack of legal drafting skills.

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