LEGAL REFORM AS A WAY TO WOMEN'S RIGHTS: THE CASE OF PERSONAL STATUS LAW IN YEMEN

Douaa Hussein [a]
[a] Department of Law, The American University in Cairo, AUC Avenue, New Cairo, Egypt.
[a] Corresponding author : h.douaa@gmail.com

 ISSN 1923-6654
ISSN 1923-6662 (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html

***Abstract*:** In this paper, the researcher argues that the legal reform of the Personal Status Law is not sufficient to ensure gender equality within the Yemeni context where the religious and cultural value systems of rights remain untouched. Narrow and conservative interpretation of sharia forms the main conceptualization of the rights in the current law. The tribal value system and conceptualization of rights and its practices on the ground has affected the equitable marital rights. The researcher further claims that the current law which is premised mainly on sharia, consolidates the concept of "Wrong Rights", obstructing women's efforts to ensure equality in the Personal Status Law.

In this respect, there are several conclusions that can be drawn. First, there are three drivers for the conceptualization of rights that affect the formulation of Personal Status Law namely, guardianship (Sharia), sisterhood (constitution), and the weak and dependent (tribal customary norms). The three of them articulate and reflect the narrow interpretation of Sharia and patriarchal policies advanced by the state and the community. Thus the current Personal Status Law consolidates a number of wrong rights which paradoxically, constitute the basic human rights such as the denial of the freedom of choice and full consent, the freedom of movement and the right to terminate the marital relationship. In addition, the right to inheritance is the wrong right for women in practice.

Thus, the realization of gender justice in the area of Personal Status Law and the effective application of the law need a multi-dimensional approach namely an enlightened interpretation of Sharia, adopting the principle of reciprocity and the consequences-based approach. Societal reform suggests a four-pronged approach. One deals with the gender sensitive institutional reform while the second addresses education and the third adopts an Islamic feminist approach. The fourth is geared towards demolishing the dual legal systems.

Keywords: legal reform; women's rights; Yemen

INTRODUCTION

Inspired by Tunisia and Egypt's 2011 revolutions for equality and social justice, the Yemeni people now strive to change their reality. The protests are a response to the absence of the rule of law that allow for unjust practices to take place. The lack of the principle of equal opportunities and systemic discrimination not only against women but also against minority groups such as servants or *akhdam* and refugees are two cases in point. Hence, the state operates as the institutionalized machinery for oppression. It is a protest against the failing of the State to protect, promote, respect and fulfill human rights.

In its sixth report in 2007 on Yemen, the Committee on Convention of Elimination of all Forms of Discrimination Against Women (CEDAW) suggested a number of recommendations most of which are legislative ones such as amendments to the Yemeni Constitution, Penal Code and Personal Status Law

[1]. Although those recommendations regularly appear in CEDAW reports, women's de facto status remains unchanged especially in the area of personal status. Women's situation continues to deteriorate reflecting a systemic discrimination and violation of human rights [2]. This raises questions about Yemeni women's rights and their status within the new context of Yemen. Will the legal reform be an appropriate strategy to bring gender justice? What kinds of rights should women obtain? More specifically tackled in this research, what is the situation of women's rights within the Yemeni Personal Status Law that applies Sharia Law? These questions should be considered while the Yemeni people create their future within the framework of equality and social justice.

These questions are salient for three reasons. First, which women's rights are to be embedded in the Yemeni Personal Status Law is controversial. Second, the fact that Yemen has a dual legal system: A state legal system parallel to customary tribal law puts women's rights within the family and the status of human rights at stake. Third, Yemen's commitment to CEDAW to which it did not make a reservation except one regarding Article 29 maximizes the debate about the particularity of women's rights versus the universality of human rights.

In this paper, the researcher argues that the legal reform of the Personal Status Law is not sufficient to ensure gender equality within the Yemeni context where the cultural, religious, dual legal system and political discourses are more dominant and the rule of law is missing [3]. The researcher claims that most of the feminists and human rights activists agree that law has neither succeeded in addressing the different conceptualizations of rights across cultures nor is it able to provide an answer for the sameness and difference questions raised by feminists. They hold that law is a product of state policy and patriarchy. More specifically, the researcher hold that the different conceptualization of rights in Yemen has affected the formulation, development and application of the Personal Status Law on the ground, consolidated by the political agenda of the current government.

The author explores the effect of the current Personal Status Law on the realization of women's rights since the Unification of the North and the South of Yemen in 1990 within the context of feminists' and human rights perspectives. The researcher uses a combination of methods to make these claims. First, she employs the hermeneutical approach in exploring the cultural and legal context in Yemen and on views of feminists and human rights activists about the use of law. It focuses on specific debatable issues related to the question of women's rights. Second, she conducts semi-structured interviews with women, men and human rights Activists to explore their views on the application of the Personal Status Law in Yemen versus women's rights and the projection for the future. The researcher had originally planned to conduct focus groups discussions with community members late February 2011 but the protest and the increasing violence in Yemen hindered me from travelling to the field.

It was a challenge to use Yemen as a case study in the midst of the protests and increasing violence, affecting the security situation. It hindered the researcher from meeting people in person. However, the researcher opted to contribute to the voices of change in Yemen despite the fact that she has Egyptian nationality. The voices come from the people and not from above, which makes the hope of creating a rights-oriented state possible and attainable. As for the difficulties, it was not easy to reach people by e-mail or telephone within the tumultuous atmosphere in Yemen.

Chapter one describes the cultural and legal contexts of Yemen, starting with the current 2011 events, then moving back to just before of the Unification period of North and South Yemen in 1990. Chapter two assesses the use of law from the point of view of feminists, human rights activists and others who fall under the umbrella of Islamic feminism. Chapter three presents the findings of the research and analyzes the current law and practices from the feminists and human rights perspectives. Chapter four provides a framework for a societal and institutional reform. The researcher concludes the paper with a personal proposal to expand the context of women's rights within the framework of Personal Status Law, and extend to other Arab countries.

YEMEN'S CULTURAL AND LEGAL CONTEXT: RICH YET COMPLICATED CONTEXT

Yemen is passing now through a critical moment in which Yemeni people are determinant to bring a change, drawing a new political context. Nobody is certain about what the protest will bring but what is certain is that no way back to prior the protests. There is a much hope that the change at the political level will bring a change at the socio-economic and cultural level and above all the consolidation of the principle of the rule of law.

This chapter sets the cultural and legal context of Yemen started shortly before the Unification. It also sheds light on the conceptualization of rights within law and customs and the legal system. In spite of the high level of conservatism, gender justice can be realized, premising on the value system of equality experienced and advanced by the Southern legal

system and the societal voices aspiring for freedom and justice.

The cultural and legal context in Yemen has been shaped by the political events after the unification of North and South Yemen in 1990, reflecting tension between two ideologies and two legal systems and struggle over resources.

The Republic of Yemen is born out of two Yemens [4]. The Yemen Arab Republic in the North was established in 1962 after the end of the *Zaidi* Imamate and the People's Democratic Republic of Yemen (PDRY) in the South was created after the fall of the British occupation and their independence in 1967 [5]. This new Yemen amalgamated embarked on two political ideologies into one system[6].

Southern Yemen has been driven by the socialist ideology of inclusion, social justice and governmental protection, formulated by the PDRY and, established in 1967 ending the anti-colonial struggle against the British occupation [7]. The PDRY provided the most progressive and egalitarian social, political and legal system in the Arab world [8]. On the other end of the Unified Yemen stands the North incorporated in the Yemen Arab Republic (YAR) [9]. The YAR was characterized by conflict for almost a decade between the republicans supported by the Nasserites on the one side and royalists backed by Saudi Arabia [10]. After the Unification in 1990, a civil war erupted between the South and the North [11].

The civil war has marked a shift in the political and legal system of the new Yemen [12]. The victory of President Salih in the civil war who has ruled the North since 1978 and remains to date, was possible because of the support of the *Islah* Islamist party and the *Hashid* tribal confederation of the North, one of the largest two tribes in Yemen. The Yemeni civil war in 1994 widened the gap between the North and the South. Little effort to narrow the rift and bring actual unity between the people of the two pasts of Yemen has been made[13. The different power structures in the North have dominated the political field and shaped the cultural and legal context of the new Yemen. The Islamist Party is considered conservative while the *Hashid* represents the domination of customary law. Thus, both fundamentalist thinking and customary norms have shaped Yemeni politics, the Constitution, and laws and produced legislation on family and women's rights which reflect the original Northern Personal Status Law [14].

To date, Yemeni women- whether in the North or the South- are subject to continuous forms of violence and discrimination, including domestic abuse, deprivation of the right to education and basic health care, early and/or forced marriage correlating with the tradition of female genital mutilation (FGM) [15]. Discrimination extends also to the constraining of the freedom of movement, exclusion from decision-making positions and processes and denial of inheritance[16]. Women and girls among Yemeni Jews, *akhdam*, and African refugees are the most marginalized group [17].

To address this, Yemen created the National Women's Committee (NWC) in 1996 as a quasi-governmental machinery concerned with women [18]. The NWC integrated CEDAW as a core component in the 2003 to 2005 and the updated 2006 to 2015 strategies [19]. The human rights machinery was upgraded to the ministerial level in 2003 and a female Minister was appointed.[20]. Women have the right to file complaints in the judicial system and the state according to Articles 51 and 153 of the Constitution [21]. Complaints can be filed at the Complaints and Grievance Department at the Presidential Office, Complaints and Grievance General Department at the Ministry of Human Rights and two other similar complaints mechanisms at the Ministry of Interior and the Ministry of Justice[22].

Most of the legal reform initiatives were advanced by Yemen's vibrant civil society and media that criticize the government [23]. The Non-governmental organizations (NGOs) and women's activists have been dynamically calling for gender equality, nurturing awareness of gender-based violence, and lobbying for legal reform in Yemeni laws, especially family laws, which are explicitly discriminate against women [24].

Yemen ranks 140 out of 182 countries in the UN Development Programme's 2009 Human Development Index[25]. The country is unable to fulfill its health and educational obligations because of inadequate resources and its poor economic situation that have been affected by the drop in oil prices [26]. Yemen's rating with regard to non-discrimination and access to justice is 1.9 in 2009 with no progress from 2004 [27]. Regarding the autonomy, security and freedom of the person, the situation in Yemen has declined from rating 2.0 in 2004 to 1.9 in 2009 [28]. In the area of economic rights and equal opportunities, there is a slight improvement from 1.8 in 2004 to 1.9 in 2009 [29]. In the field of political rights and civic voice, Yemen's rating is better [30]. It reached 2.1 in 2004 but declined to 2.0 in 2009 [31]. In the area of social and cultural rights, it has the same rating as the political and civic rights [32].

YEMEN'S CULTURAL CONTEXT: TRIBAL LAW AND SHARIA LAW SHAPE CULTURE

Yemen is a tribal country dominated by two main tribal groups; the *Hashid* and *Bakil*, out of which other smaller tribes have emerged and are based mostly in the Eastern and Northern parts of the country [33]. More than 70% of the populations live in rural and tribal areas. The structure of the tribes is patriarchal and hierarchal in nature. The tribes are headed by male figures. There are five levels to a tribe [34]. First, there is the *sheikh* who is the leader of the tribe, and is an inherited position [35]. The *shiekh* is followed by *Sayadah* or Judges who are knowledgeable of *Sharia* law and have the capability to resolve conflicts [36]. At the third level is the category of the peasants while the vocational workers fall under the fourth category [37]. In the fifth level lies the servants/slaves and the Jews [38].

The tribal structure is correlated by a value system that reflects their conceptualization of rights and duties. In this respect, there are several interrelated concepts that dominate, regulate and drive the justice mechanism in the tribal community of Yemen and mainly those emerging from the tribal conceptualization of justice. It is the concepts of honor, protection of the weak including women and collective honor (rights) [39]. The international principle of naming and shaming is also applied in the tribal context reflected in social isolation and punishment.

Within the tribal context, rights are very much attached to the value of honor which is socially given [40]. Once a tribesman maintains his honor, he is eligible to rights [41]. Honor has two levels: the level of *Sharaf* is a relatively public matter and not specific and *Ayb* is what damages *Sharaf* and very specific [42]. Beating a woman is considered extremely shameful within the tribal context [43]. Women enjoy freedom of movement within the tribal area as they help in agriculture and other works [44].

Islam is the main political and cultural idiom of grassroots that extends to the secular public sphere, surpassing the private religious sphere [45]. During the 1990's, like in many parts of Muslim countries, women started to reconstruct their identity from within Islam [46]. While the South represented such separation of the political and the religious idioms, despite the fact the religion was mentioned in the Constitution as the religion of the State, Islam remained in the private sphere [47]. Contrarily, in the North Islam is the jargon which people employ in both the public and private spheres [48]. The North maintains that although women have been engaged in and become members of different political parties, they do not held assigned positions at the decision-making level. However, female leadership has taken charge of women's organizations [49].

YEMEN'S LEGAL CONTEXT: THE FORMAL AND INFORMAL FORA OF JUSTICE

Yemen has a dual legal system: statutory law and customary law [50]. Sharia Law is the main source of all legislations as being stipulated in Article 3 of the Constitution. Consequently, all courts are Sharia courts [51].

The constitution of the new state was approved in the 1991 referendum, emphasizing equality between men and women in all spheres. The amended 1994 constitution stands in contrast to the clear language used in the Unification Constitution of 1991, which stipulated that "all citizens are equal before the law. They are equal in public rights and duties. There shall be no discrimination between them based on sex, color, ethnic origin, language, occupation, social status, or religion." [52] The new constitution, drafted after the end of the civil war, was greatly influenced by conservative political elements. President Salih's victory in the war depended, in part, on the support of the Islamist *Islah* Party and the *Hashid* tribal confederation. Both of these factions were hostile toward women's rights, and consequently removed any reference to discrimination based on gender.

In spite of this gender discrimination, the Republic of Yemen espouses to support human rights [53]. Article 6 of the Constitution affirms its adherence to the UN Charter and Universal Declaration of Human Rights. The principle of equality is enshrined in Articles 7(a) and 24 focusing on equal opportunities in economic, social and cultural rights [54]. Article 25 is geared towards consolidating justice, freedom and equality for the Yemeni Society while Articles 29, 41, 42, 53, 54, 55, and 62 promote the right to work, education, health, social security and political participation for everyone [55]. While Article 40 affirms that every citizen has rights and duties [56], the constitution holds that such equality must fall within the principles of Islam. Additionally, Article 31 of the Constitution holds that women are sisters of men, reflecting how legislators interpret Sharia law and incorporate it in the Personal Status Law conveying the concept of the male guardianship over women and their subordination to men [57].

The Yemeni Constitution stipulates that Sharia law is the source of "all legislations," denying the dichotomy of the private and public binary in principle [58]. Thus, all gender issues are tackled within the framework of Sharia law. The Constitution's drafting Committee was comprised of men representing the new Yemen with its different political interests including the Yemen *Islah* Party

[59]. The drafting of the personal status was the responsibility of men of the Constitutional Committee and the Sharia Committee of the Unified Parliament [60].
When Unification took place, the two Yemens kept their laws representative pending the development of a unified law. This has negatively affected the marital relations of both men and women in the South as well as in the North [61]. Northern men went to the South to eat fish, drink alcohol and pursue unveiled women who are regarded as prostitutes while men of the South went to the North to be able to marry other women [62]. This led Southern women's beginning to feel that their privileges under the Socialist Family Law were increasingly absent [63].

The new Unified Yemen came to reflect and consolidate patriarchal norms reflected in the domination of men in all of the high decision-making positions. Both the Constitutional committee and the Sharia committee are dominated by men. When the General's People's Congress, headed by President Salih asked late lawyer and human rights activist Dr. Raoufa Hassan to form a committee represented by men and women from the south and north to discuss the new Personal Status Law after the Unification in a trial to find a mid way that allow them to have " a law that a society would accept without having women lose the gains they had won through the Family Law of the South," the Congress disregarded their discussion on the law and enacted the one approved by the Constitutional and Sharia Committees [65]. Socialist lawyers Muhammed el – Makhlafi and Rashida al-Nusayri described the new draft family law as representing a medieval era [66].

On the other hand, Yemeni procedural law is premised mainly upon *fiqh* rules of procedure and evidence and oral testimony which require having two sets of witnesses to ensure the integrity of evidence [67]. This privilege has helped women to win most of the cases.

According to Yemen's application of *Sharia* law, a woman is not considered to be a full person before the court. Article 45 of the Evidence Law No. 21 of 1992, holds "that a woman's testimony is not accepted in cases of adultery and retribution or in cases where punishment is a possible penalty."[68]

CUSTOMARY LAW/TRIBAL LAW

Customary law is prevalent in Yemen in tribal areas which are inhabited by 70% of the population. This is the case since the Ottoman ruling from1872 to 1918 during which the Turks and the Imam could not challenge the power and prestige of the *Sheikh* [69]. Customary law is recognized by the government and integrated into law. It has even more enforcement tools than that of the statutory law because of the social pressure and collective responsibility enrooted in the culture of these groups. Customary or tribal law is not based on punishment but rather on compensation.

Customary law is being implemented in two ways namely mediation or *sulh* and arbitration or *tahkim* [70]. Customary law's main objective is to maintain the collective honor of the tribe and to avoid shame or *ayb [71]*. Any violation of the custom even by one person is considered a shame for the whole tribal group. Material reparation is a core punishment tool in this system. It includes, inter alia, payment of cash, commodities such as cattle or weapons and gold. Women are never used as compensation in dispute settlement [72].
When implementing customary law, mediation is the first step before resorting to arbitration. It is a kind of community-based product. It does not necessarily comply with *Sharia* law or that of the statutory law. Arbitration is regulated by Yemeni Law according to the Presidential decree on Arbitration Law 22/1992 as amended by Law 32/1994 [73]. Arbitrators are assigned by disputed parties who are of tribal origin or military leaders who are known for their knowledge of legal procedures and capacity to enforce their judgment [74]. Arbitration is considered primary court judgment and after registration at the competent court is subject to enforcement or appeal [75].

Customary law incorporated in the arbitration method has even more enforcement force than that of statutory law. Enforcement varies from having personal guarantors and delivering warranties to ensure compliance, passing through honoring the decision, meaning agreeing on the decision either verbal or in writing, to the social pressure that amounts to banning the violator from one's tribe which implies his social death [76]
There are a set of disputes that do not fall under customary law such as Quranic crimes or *Hudud*, the annulment of marriage, public order and other matters that could be subject to mediation [77]. Litigants in tribal or rural areas do not usually resort to courts because it is deemed shameful to resort to the official court especially for women or simply because there is no court nearby. According to state law, one can choose between arbitration and court adjucation. Women do not have direct access to tribal justice because she delegates one of the male family members to act in her place [78].

Tribal customary law is premised upon what is called the "Rules of the Seventies" and their sub-rules. These reflect the main customary principles that regulate relations such as customary law acting as the role of statutory law in the absence of state authority

or in its presence and that customary law is binding and should be respected by everyone [79]. Application of customary law is not permitted for any violation of the state security system [80].

YEMEN'S INTERNATIONAL LEGAL COMMITMENT TOWARDS HUMAN RIGHTS AND WOMEN

Most of Yemen's ratification of UN treaties came before the Unification. For instance, Yemen ratified the 1966 UN Conventions on Economic, Social and Cultural Rights and that of the Civil and Political Rights in 1987 [81] while ratified the Convention against all Forms of Racial Discrimination in 1972 [82]. Meanwhile, Yemen ratified the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC) [83] in the same year; 1991.

Yemen signed the Convention of the Elimination of all Forms of Discrimination against Women in 1984 but has yet to sign the Optional Protocol [84]. Yemen did not make any reservations which this has to do with the complicated history of unified Yemen [85]. The country that signed CEDAW was South Yemen, at the time called the People's Democratic Republic of Yemen (PDRY). The PDRY was the only communist state in the Arab region. Part of the ideology of the ruling party, the Socialist Party, advocated women's emancipation along the lines of Marxist Leninist Ideology. Thus, it does not come as a surprise that the country signed the convention in May 1984. The Government of the People's Democratic Republic of Yemen (South Yemen), which signed the Convention in 1984, made one reservation, and declared that it does not consider itself bound by article 29, paragraph 1, relating to the settlement of disputes which may arise concerning the application or interpretation of the Convention [86].

On the other hand, North Yemen, called at the time the Yemen Arab Republic, did not sign the CEDAW. When the two states unified in 1990 the new Yemen Republic inherited the treaty, but CEDAW has not yet been fully implemented and incorporated into the country's legislative and institutional framework.

No progress has been reported on the implementation of CEDAW. Women's access to identity and travel documents continues to depend on the permission of male guardians, and the Personal Status Law remains discriminatory in its unequal treatment of husband and wife in their family relations. The highly publicized case of a child divorce in 2008 led to the proposal law that would set the age of marriage at 17, but it is unclear whether Islamist and conservative members of parliament will allow the measure to take effect [87].

In conclusion, the interrelationship between political, statutory and customary laws and culture is quite explicit in Yemen. The tribal legacy has imposed its normative system on politics and law. Yemen has dual legal system which reflects the inability of the state power to impose the rule of law and a system of justice. The Yemeni constitution which has been amended several times maintains the culture and mixes it up with religion to consolidate the patriarchal norms notwithstanding human rights standards. The conceptualization of rights is crucial within the Yemeni context and has affected the implementation of law.

Yemen does have potential women and human rights institutionalization machineries but the fact that they are affiliated to the government leaves ambitious which strategy or policy Yemen adopts. Very recently, female judges have been appointed to decide on personal status issues which may help in bringing justice [88]. Yemen has a vibrant civil society organizations including women and non-governmental human rights organizations. However, there is only one woman in parliament while the male members include illiterates. According to the conditions stipulated by Article 63 of the Constitution, members should know how to write and read only, allowing for non-qualified candidates to run for and be elected in parliamentarian elections. This parliamentarian criterion has affected the performance of the parliament especially when some illiterate members are invited to discuss a new proposed law [89]. What makes the situation worse is when the case entails discussing women's issues [90].

The fact that Yemen has not signed CEDAW's Optional Protocol denies individual women and organizations the opportunity to file a complaint about violations of rights according to Article 2 of the Optional Protocol, concerning the Communication Procedure [91]. Meanwhile, Yemen's abstention from signing the Protocol does not allow the Committee on Elimination of Discrimination against women to conduct inquiries into grave or systematic violations of women's rights according to Article 18 of the Protocol concerning the Inquiry Procedure [92] .

Women's active participation in the election is seen as an indicator of the realization of women's rights and democracy. Yet what is actually happening is that men support and mobilize women to vote in men's elections [93]. In the election of 1993, women came to vote in large numbers. But in 1997 only twenty-one ran as candidates, less than half of the number of the previous election. In both elections it was women from the south who were elected [94].

Both feminism and the human rights movement were not categorized as such in Yemen despite the fact there are women associations and unions besides the establishment of the Ministry of Human Rights and other rights-oriented NGOs. But all of them have tended to bring change from above through law as a way to realize of gender justice. However, feminists and human rights advocates the West and even other Islamic affiliations contest this approach as will be demonstrated in the next chapter.

LAW AS A VEHICLE FOR EQUALITY AND THE ATTAINMENT OF RIGHTS

Feminists Nadita Ghandi and Nadita Shah, when considering the feminism movement, have been compelled to ask the following question: "Why is it that every campaign in the movement has demanded legal reform despite its severe criticism of the legal system, the hopelessness of achieving legal redress, and the endless squabbles with law makers and implementers?" [95]. Nevidita Menon responds to this by saying that the reason behind resorting to law is that feminists think that law can impose their values until it becomes hegemonic in the society [96]. Law is expected to bring social transformation and recognition from above [97]. She holds that while this process takes place, the state and law are subverting the principles of democracy which entails engaging people in expressing their free will. On the contrary, values are imposed on them by the power of law disregarding their free will [98]. Meanwhile, the feminism has movement started to believe that "more legislation often means only increasing state control."[99] Feminists of the Third Wave such as Carol Smart and Nevideta Menon view legal reform as being part of a wider strategy to attain women's rights [100].

This chapter provides an overview of the debate on whether law is universal or particular and revisits the relationship between law and justice and rights. The chapter ends with the debate on law, patriarchy and state policy. Calls for women's rights have varied around the world and over time. Western feminists have focused their efforts on gaining the right to vote and obtaining female suffrage while in the Middle East women's movements have emerged and flourished at times of national liberation and development of personal status laws within a unitary framework of citizens' rights.

Feminism's three old schools vary slightly among themselves [101]. For liberal feminists, law has a crucial role in changing the stereotypical linkages between biology and gender roles [102]. The liberal puts considerable focus on creating new roles for women regarding constitutional and civil rights [103] . The cultural theorists dedicate their focus to addressing the undervaluing of the feminine role [104]. They view law as a vehicle to change the symbolic and practical value granted by the society [105]. The dominance school of feminism or what is called also radical feminism represents the most extremists of the three schools and is very much attached to law as a core vehicle to contest the conditions of subordination with a set of reservations relating to the male dominance of all law related fields and regimes [106].

The new feminist school presents a contrasting position towards the use of law. The intersectional theory posits that while law seems a good strategy to challenge the "images of compliances and docility," rights-claims are best used to expose injustice and redress the disadvantaged. The intersectional school does regard law's fixing the social order [107]. Meanwhile, the sex-positive feminists see legal reform as reinforcing rather than challenging sources of injustice [108]. Post structural and post-modern theory take the extremist position of the new feminism school arguing that legal reform is redeploying the existing binaries of sex and gender [109]. Post-structuralists suggest parodying rather than directly changing existing categories while post modernists go for the analytical deconstruction rather than political mobilization aimed at achieving legal change [110]. Thus, on the level of theory, there is a shift in the strategies suggested by different schools of feminism based on their experiences. This shift reflects exactly what Gayle Binion points at when discussing the differences between feminists and human rights activists orientation. Binion sees that feminists' starting point is the actual and real human experience which is the main source of theorizing while human rights activists are law oriented [111].

In this respect, human rights activists agree that their movement has gone a great distance in protecting individual rights and raising the standard by which governments are assessed [112]. Nevertheless, there are still severe violations of human rights which are not viewed by their states as such. For this reason, David Kennedy has wondered if human rights movement is part of the problem [113]. Kennedy provides a long set of variables that answer this question in the affirmative. At the top of these variables is that human rights is narrow in the sense that it addresses violations that are committed by governments on individuals or groups disregarding private harms [114]. Thus, human rights remedies cover only public ones. Second, the strong attachment of the movement to legalization of human rights makes reaching the formulation of law an ultimate goal of the movement in itself [115]. This means, for instance, that voting can substitute for engagement in the political processes. This applies also to legal reform even if achieved but producing little or no effect on the ground. Third, a wide range

of laws do not explicitly condone violations but leaves the door open to more harms for victims [116]. Most importantly is the fact that law is not alert enough to sociological and political contexts to which law is addressing [117].

Such rationale does not differ much in essence from those raised by most of the feminists in contesting the power of law. After a long history of legal struggle and temporary success or even illusionary success, feminists who have been involved in campaigns for law reform have realized they are losing their gains and that they should reassess the role of law in bringing social change [118]. On the other hand, feminism is passing by substantial development, shifting from merely analyzing some forms of women's oppressions into theorizing systems of oppression initiated by the state that use law to consolidate their control [119].

Such debate brings to the surface the fact that international human rights law has incorporated universal principles of equality, human rights and non-discrimination in its conventions. Nevertheless, there is no guarantee that these conventions will be respected or enforced. CEDAW, which is one of the major milestones for women's rights, has the most reservations by Muslim countries, compared to other conventions, putting equality and non-discrimination at stake. The reservations have hindered the enforcement of CEDAW as a legally binding bill of rights for women affecting the realization of human rights in these countries. CEDAW did not have the option of individual petition and inquiry procedure until 1999 when the Optional Protocol was passed and entered into force in 2000 [120]. At the same time, the reservations challenge the notion of the universality of human rights as most of the reservations are cultural and religion-based. [121] These reservations are not compatible with the law of treaties in the sense that they undermine the object and purpose of the Convention according to Article 18 of the Law of Treaties [122]. Besides, there is no satisfactory mechanism to challenge reservations adequately, implying that the United Nation is embracing cultural relativism with regards to women's rights [123]. The case of CEDAW raises a question on the role of law in the attainment of women's rights, bringing the debate on universality of human rights to the surface together with feminist concerns on sameness and difference in developing law.

Additionally, the debate on universality and cultural relativism raises a question about the power of law in the attainment of rights among feminists and human rights activists. The debate has even broadened the scope of discussion about the capacity of law to include the relationship between law and justice, rights, patriarchy and the state. The main argument here revolves around that whether law offers an exact, certain and fixed framework and even universal binding system, the meaning of justice and rights emerge out of the context in which it resides at one hand while patriarchy and state policy affect the formulation and implementation of law.

LAW: UNIVERSAL/ PARTICULAR VERSUS "ONCE AND FOR ALL" AMBIVALENCE

Article 1.3 of the Charter of the United Nations, imposes on all the members of the United Nations the obligation to cooperate in promoting and encouraging respect for human rights [124]. Some human rights are claimed to have attained the level of *jus cogens* -- i.e. peremptory norms of international law. The Charter was followed by other human rights conventions and CEDAW which provide a binding uniform legal doctrine, reflecting a universal legal context. The question of universality versus particularity is interrelated with the rights and justice conception within the course of formulating law.

A "ONCE AND FOR ALL "LAW VERSUS RIGHTS

At the time that international human rights law provides a universal context for rights, the new school of feminists shares the position that law tends to be uniform, exact and fixed in its meaning. Feminists such as Menon, Mohanty, Davis, Sunder and Fraser provide new readings contesting the concept of "old" universalism advocated by human rights activists. They contend that rights are formed through moral values shaped in a specific place and at a specific time. Menon proposes that rights emerge out of specific sets of shared norms of justice and equality [125]. She suggests that the realization of justice in the universal meaning of the term is impossible [126]. She argues also that to resort to law to convey rights is problematic because law assumes that justice can be "attained only once and for all and thus creates an identity that will be difficult to contest or change" [127].

To reconcile this conflict between rights and law, Joel Feinberg distinguishes between "conventional" morality and true "morality [128]. He considers "conventional" those rights emerging from a group culture and varying from one group to another while true moralities reflect the objective and universal principles of morality. He argues that law cannot encompass all kinds of moral values [129]. He gives the example of the right to rebel against a tyrannical government that if stipulated by law would produce misguided violence [130}. Note, however, that Article 1 of the 1966 ICCPR and ICESCR Covenants provides for the right to rise against tyranny for the realization of self-determination [131].

The conventional morality or rights that are recognized by a specific group may fall under what

Fraser calls "the wrong right." [132] For instance, the right to abortion/ to have control over one's bodies is applicable and is a recognized right in some countries but it is unrecognized in Muslim countries and is even prohibited by law/ in sharia law.

The problem of adapting such classification of rights in terms of particular and universal is that some rights may attain greater values while others are marginalized and silenced. However, Mohanty recognizes the tension and proposes that in knowing the differences and particularities, we better see the connections and commonalities [133]. The challenge is how particularities allow us to theorize universal concerns more fully. Anges Heller sees rights as the articulation of universal values [134]. She holds that a right becomes universal if the opposite can not be viewed as such [135]. She gives the right to life and freedom as examples on the level of universal values [136]. But again as in the abortion debate, the question of universality becomes more complicated. Women are free to choose to be a mother or not, disregarding the right of the fetus to life [137].

Nancy Fraser claims that the new democracy recognizes the position i.e. particularity of everyone from which he/she speaks [138]. Hence, she contends that the old understanding of universalism which denies particularity is no longer valid in this context of democracy which entails treating the question of difference as a matter of recognition as well as a matter of redistribution [139]. Davis, on the other hand, advances the notion of "traversal politics" to emphasize the possibility of dialogue among women across nations, ethnic and religious boundaries to explore themselves and see the commonality[140] .

"ONCE AND FOR ALL" VERSUS SAMENESS AND DIFFERENCE

The principle of equality before law which indicates that both men and women must be equal to ensure justice, poses a legal dilemma for feminists. For liberal feminists who stand for the sameness approach, they see that the court's jurisdiction should not take into account the context of women [141]. Women should be treated as neutral persons [142]. By adopting this approach they recognize masculinity as the norm; this position is contested by other feminists from within the movement [143]. They believe that neutrality marginalizes women and underestimates their experience. Meanwhile, difference justifies discrimination [144]. Thus, feminists propose a new approach to equality; namely, substantive equality; this means to look at the impact of law on both genders [145]. This model is responsive to the context in which law operates as it uses the sameness or corrective approach when and where it is needed [146].

Two remarks should be highlighted in this respect. First, although international human rights law addresses human beings as neutral legal persons, the international community has started to recognize the difference between women's experience and that of men. Accordingly, they developed CEDAW which set a fixed binding framework for the rights system for women in all contexts. Countries contested through reservations claiming that specific rights are wrong rights according to their culture and religion. Meanwhile, differences among women and across cultures are still prevalent and systems are reproducing inequality against women. Second, at the national level, Muslim countries like Yemen adopt both the sameness and the difference approach in the development of their Constitution and laws. For instance, the Constitution deals with men and women as neutral persons and is equal with regard to rights and duties according to Article 40 [147]. In the same Constitution, legislators differentiate between men and women in Article 31 when they state that women are sisters to men [148].

Meanwhile, most of the reservations to CEDAW are religious in nature to which most Muslim States stick to while developing their national laws. The result is that States produce religious laws by which they can "protect and preserve cultural stasis and hierarchy against the challenges to cultural and religious authority emerging on the ground."[149] Sunder describes this process as "the New Sovereignty."[150]

The integration of Sharia law into non-sharia law, for instance, is subject to different schools of interpretation and analogy, and is not equivalent to the nature of law which tends to be fixed and exact in its meaning. Accordingly, it fixes identity and allows no room for freedom. Sunder contends that while human rights abuses are not accepted by international law, they are tolerated in the name of religion and its attendant culture, consolidating the international recognition of cultural relativism[151]. She argues that law protects and preserves cultural norms and even obstructs social change and imposes identity, providing no room for the individual to contest cultural or religion from within [152]. Further, Sunder claims that this formula is the traditional binary namely rights and religion which women have to choose between; either to quit or ask for asylum elsewhere or "pray[ ]that one's culture becomes 'extinct'"[153]. Taking the universal rights enshrined in international human rights law "the right to religion" and "the right to culture" further, to their communities, women are rejecting law's deference to the renewable views of their religion and ask for an individual right to establish one's identity. Women must challenge the doctrinaire and cultural norms in

their communities and open a new venue for women's struggle. This venue allows for Islamic feminism to flourish, calling for equality from within religion.

In this respect, Margot Badran's argument that Islamic feminism is secular and secular feminism is Islamic is very relevant and reflects the universality of women's rights despite their claimed particularity, based on Islam being formulated as *Deen wa Dunya*, meaning "religion and the world."[154]. Amat el-Aleem al-Soswa, a Yemeni feminist and the first female Minister of Human Rights emphasizes this notion by raising the slogan that women's rights are human rights are Islamic rights," denying the split between secularism and Islamism [155].

While Abdullah An-naim recognizes the difficulty in applying universal values to cultural norms because each culture has its own context, he establishes that there are two forces that drive human behavior namely: the will to live and the will to be free which overlap and exceed each other [156]. The two forces drive every culture and tradition.

An-naim proposes a methodology to ensure equality by applying the principle of reciprocity while these two sets of human rights are being fulfilled [157]. The principle of reciprocity, as illustrated by An-naim is "a common normative principle shared by the major cultural traditions", meaning that" one should treat other people as he or she wishes to be treated by them" [158]. In this, An-Naim agrees with Derrida's notion of justice as quoted by Menon that "the very condition of justice is that one must address oneself to the other in the language of the other." [159]

However, An-Naim points out that the challenge of using reciprocity is the tendency of cultural and religious tradition to exclude certain groups within this tradition from application of this principle [160]. In the context of Muslim countries, the exclusion extends to non-Muslims and women. For instance with regard to gender justice in *Sharia* law and despite the fact that Personal Status Law has been subject to legal reform in most of Muslim countries, there are three debatable areas of discrimination against women in *Sharia* namely, the right to polygamy for men, the men's unilateral right to divorce and inheritance. An-naim provides a way out of this situation. First, religious scholars should apply an enlightened interpretation of the Quran and *Sunna* [161]. Second. They have to refer them to the context from which they emerge. Thus, if put in the right context with enlightened interpretation would universalize Islam in the mind [162].

An-naim's approach is one option for developing law that addresses both particularities and commonalities without falling into the trap of "once and for all" along with fixing meaning and identity. This unsettled debate on universality and particularity of rights conceptualized and determined by norms and morals of each community raises the question of "who". Who determines the meaning that makes it recognizable at the level of the community and at the level of law? Here comes the role of the state with its different power structures shaping patriarchy that dominates the lives of women especially in Muslim countries.

LAW AS CONSOLIDATING THE POWER OF STATE AND PATRIARCHY

When international human rights law identified states as the main entity responsible for respecting, promoting, protecting and fulfilling human rights, the state came as the emancipatory tool for the individual. This has equated states with freedom and as Kennedy points out "this encourages autochthonous political tendencies and alienates the citizen from both his and her own experiences as a person from the possibility of alternative communal forms." [163] Despite this concern, feminists appealed earlier to the state in the nineteenth century to attain the right to suffrage, for protective labor legislation, temperance, birth control and marriage law reform, and have continued to do so in the twentieth century [164].

Thus, there seems to be an agreement between feminists and human rights activists about the role of the state in protecting and enacting principles of equality and non-discrimination. In a sense, such appeals to the state convey dependence and agreement to abide by the protector's rules.

Does this mean that human beings who are supposed to be the subjects of constitutions and politics of the state have lost their free will, meaning the freedom to choose, which is the essence of democracy?

Nevidita Menon responds by saying that "we are both free and unfree simultaneously."[165] Constitutions, for instance, assume a freely choosing subject and autonomous and promising agent which are, in this case, the state and the law. For feminists, however, this subject is still to be made and the agent is affected by existing structures of power shaped by ideological, cultural and economic practices. Hence, the subjects are not really exercising their free will. What is produced by the agents is the "manufactured consent" that does not necessarily express the presumed free will [166].

Quoting Foucault's assessment of the state's power structure, the "[T]he juridical system… is utterly incongruent with the new methods of power whose operation is not ensured by right but by technique, not by law but by normalization, not by punishment but by control., methods that are employed on all levels and in forms that go beyond the state and its

apparatus." [167]. Menon asserts that while law and the state develop rules to presumably protect people's rights, they establish power with other structures and thus reproduce other forms of inequality [168]. In this respect, Brown lists the forms of states involvement in regulating rights. The state sets the terms of economic survival. The state controls and regulates the sexual and reproductive development of women and through its monopoly on political authority, the state plays the role of catalyst of women's political practices [169].

The masculine nature of the state is very much explicit in male dominance which takes different forms such as their access to women as unpaid servants, reproducers, cheap labor and male monopoly of intellectual, political cultural and economic power [170]. Brown believes that the state, is not one entity or unit but is a multifaceted group of power relations and structures, making the possibility to demarcate difficult [171]. Each of these powers works separately and interweaves with other powers at different stages, producing different effects on the lives of its subjects. Women's subordination is the most tangible effect of state control, which pushes Brown to question whether this relationship with the state produces only "active political subjects" or "regulated, subordinated and disciplined state subjects" [172.

The answer to this question comes in the favor of the latter. In Brown's view, the state with its policies, in late and post modernity, has ceased to be primarily a domain of masculinity powers; the state masculinity maintains and becomes more strong affecting women's lives [173]. Brown does not agree with Foucault's thesis that the role of the state is declining. She sees that the post modern state, within the context of globalization, is no longer able to be committed to its mission because it is no longer the sole agent in sorting social problems out [174]. Within such a legacy and with contemporary state power and its masculinity, Brown sees that feminism should be aware of and cautious in "surrendering" control over the arrangement of issues like poverty and welfare policies [175].

In this respect, Menon proposes a new strategy for feminism namely "radical politics" meaning "long term struggles to reclaim meaning at the level of common sense, work within communities to challenge local structures of power, the building up of alternative structures in opposition to the family and other hegemonising institutions." [176] Meanwhile, women should be involved in the state's other powers as well as at all decision-making levels [177]. In doing so women would be able to intervene in the public sphere represented by the states' different power structures.

In rethinking the public sphere, domination by the masculine power and its relation to the state and economy together with assessing the gender status, Nancy Fraser has supported the claims made by other feminists [178]]. Fraser offers an exceptionally cogent overview of Habermas' concept of public sphere, which constrains progressive social movements and current democratic policies [179].

According to Habermas, the idea of a public sphere is that of "a body of 'private persons' assembled to discuss matters of 'public concern' or 'common interest'[180]. These publics act as a catalyst between the society and the state and entail availability and accessibility of information about state's activities as well as a legal mechanism that regulates free speech, free press, and free assembly, and the parliamentary institutions of representative government[181]. Meanwhile, the public excludes deliberating the private interests [182]. This formula of the public sphere of the bourgeois theory is not adequate when applied to the current democratic state as it excludes women who dominate the private sphere and thus produce inequality [183]. Meanwhile, Badran sees that equality is supported and called for only when women's active support is needed in times of liberation and national independence or elections[184]-.

Menon proposes that law during bourgeois democratic revolutions, was a tool to fight injustice and attain equality but nowadays democratic articulation is more complicated and transforms law from being a justice tool into a domain to disable the ethical vision of feminism [185]. Thus, law can be viewed only, by the current feminism wave, as part of wider strategy and not the state's main instrument [186].

Such "manufactured consent" actually reflects the state's masculine dominance in favor of their male constituents. Although Wendy Brown analyzes the state masculine modalities within the context of the United States, her analysis mirrors the states' structure and role especially with regard to women in the Middle East who still appeal for the state's protection.

In conclusion, rights vary from one culture to another and even within the same culture; one can recognize how much the rights system provides a different conceptualization. Thus when we put the changing variable of sharia into a fixed frame which is law, rights turn out to be fixed as well and cannot respond to the needs or particularities of the "other". Law is not able to positively tolerate differences. Consequently, forms of inequalities will be reproduced. The same applies to legal systems that apply *Sharia* law which varies according to different schools of interpretations. Thus, by integrating

Sharia law into statutory law, principles and interpretation become fixed, unchanging and divine and cannot accommodate basic human rights. Consequently, basic principles of democracy are subverted.

At the time that the state makes claims for democracy which entails consolidating principles of equality and human rights, state practices unveil their conflict which in the end reproduces inequality. Thus, by having male-dominated state and controlling policies over women, patriarchy has moved from the family sphere which was considered private to the public sphere which is the domain of state politics.

This chapter has shown that law fails to address the different conceptualization of rights across cultures and provides an answer to the sameness and difference questions raised by feminists while demonstrating that laws are a product of state policy and patriarchy. There is a need for a new approach to law that consolidates equality, accommodates differences and particularities, provided that this approach is hegemonic in the communities and across cultures. An-naim's approach is one option.

Rights and state policy are two characteristics of the Personal Status Law in Yemen. Despite the fact that feminism in Yemen is not an explicit framework, the Western and non-Western feminists and human rights activists provide an explanation for the formulation and application of the Personal Status Law in Yemen as is shown in the coming chapter.

PERSONAL STATUS LAW: THE ONGOING/NEVER-ENDING DEBATE

This paper argues that the legal reform of the Personal Status Law is not sufficient to attain women's rights within the context of Yemen where culture and religion play a crucial role in directing the relationship between people and the law.

In this chapter the author argues that the different conceptualizations of rights in Yemen have affected the formulation, development and application of the Personal Status Law on the ground, consolidated by the political agenda of the current government. The findings that the researcher presents here are based on the semi-structured interviews and available literature. The interviews addressed three areas. First, the researcher tried to trace the conceptualization of rights within the framework of law and customs. The second category focused on the application of law on the ground. Third, the researcher proposed a societal reform parallel to the legal reform. In this chapter I will address the first two areas while the third one will be addressed in the following chapter.

The new Unified Yemen is neither a post-colonial secular state nor an Islamic republic as classified by Margot Badran [187]. The Unified Yemen offers a new political and legal formula, producing a tension between international human rights standards which stand for equality and only equality with no exception under any justification except in cases of war or security emergency and the particularity of the Yemeni context which allows for inequality justified by the cultural tribal context and Sharia law. It is the state responsibility to create circumstances to ensure that women's rights are being fulfilled within the framework of gender equality and reflected what CEDAW calls for in Article 4 [188].

In spite of the principle of gender equality has been diminished in the Yemeni Constitution through consolidating the stereotypical roles of women in the home disregarding men's equal participation with women at home and women's right to an equal role in public life [189].

Equality was incorporated in the Personal Status Law of the South prior to Unification. In it, marriage was defined according to law 1/1974 as "a consensual union between partners who had equal responsibilities: husband and wife share the costs of getting married and maintaining the household if possible."[190] The definition consolidated the principles of free choice, equal roles and participation which has vanished from the unified Personal Status Law for the past twenty years despite the continuous calls for reform and the amendments that the law was subject to.

The Personal Status Law has passed through several stages of drafting, discussions and amendments. The first draft was presented in mid 1991. It was actually the law of the YAR and introduced as a draft for the law of the Unified Yemen. In July 1991 a new draft was prepared by the Yemeni Women's Union headed at the time by a Yemeni Socialist Party leader (YSP) integrating the South perspective into the law. But the new law 20 for the year 1992 was issued without discussion and disregarded the criticism presented by different groups of the South [191].

The 20/1992 law was amended in 1994 to fix its ambiguous language of law and to abolish all the compromised articles that were adopted to please the South [192]. Later in 1998, a third amendment took place with law 27. The new amended law of 27/1998 removed the conditions regarding polygamy found in 1992 law, cancelled the right to compensation after an arbitrary divorce but validated it upon the accomplishment of *tallaq mutlaq* while restrictions on recovering maintenance arrears were not touched. After one year, the parliament amended the law by issuing law 24/1999 by which the minimum age of marriage was abolished [193].

In drafting the new Personal Status Law, there was friction between the Northern liberals and

conservatives while the South did little to keep the equality principles of the previous PDRY law [194]. For the Northern women the situation did not change that much but the Southern, women lost state protection [195].

Recognizing the differences between the contexts of both the South and the North which in turn has its effect on women's roles and status, the drafting of the Personal Status Law unified all women from all geographical areas from the General Congress Party to the *Islah* Party to the independents and across generations when they lobbied for studying the new draft [196]. The conservative Personal Status Law that had been intended to control women produced the opposite effect and politicized them [197]. Their unleashed anger empowered them and dissolved barriers between them. This reflects Mohanty's claims that women from different cultures may find a common ground for solidarity and universal cause to unify them [198]. Even in 2011 events taking place in Yemen, women are unified asking for social justice [199].

Margot Badran reached the same conclusion when exploring women's situation in Yemen. She realized that while Yemeni women, after the Unification, represent multiple identities, affiliations and allegiances which might divide them, women are united by the experiences of their gender and stand at the forefront during the unification processes. This included substantive efforts during the 1997 elections and simultaneous efforts to amend the Personal Status Law [200]. For the first time men welcomed women's participation as voters for men more than candidates [201].

The division that the Yemeni male politicians wanted to create between equality in political rights which is denied in the context of Personal Status Law was confronted by a unified position on the part of women contending the principle of equality as a democratic principle is indivisible.

THE "SUBVERTED" LAW

Carol Smart distinguishes between "law as legislation and the effect of law or the law in practice"[202]. This distinction relates to the notion of the "uneven development of law," denying the unity of law [303]. On the contrary, Smart contends that this notion perceives law as a multi-dimensional operating tool [204]. Law can act as both a means of liberation and oppression at the same time and allows for a change at one moment while jeopardizing change at other times [205]. Smart's analysis of the use of law applies to what has been going on in Yemen for more than twenty years now.

The government amended the Personal Status Law several times in an attempt to realize equal status between both men and women without changing the cultural norms that are dominated by patriarchal practices. The development of law became uneven in two ways. The first relates to the nature of rights that are enshrined in the Personal Status Law which shows that the legislators are somehow unsure about what the right "right" is and what the wrong "right" is and are more responsive to the religious voices and customs than to voices of equality and reciprocity. The second is concerned with the uneven application of law with regard to poor and rich women and with regard to women in the rural and urban areas.

Moreover, "Law can also have the effect of freezing the gains of a movement in a particular point of a time"[206] Law 20/1990 and its amendments froze the gains that Southern women realized before the Unification and have not been regained up to the moment of this research. On the contrary, all amendments continue to revolve around the same concepts and practices and reproduce a set of inequality clauses.

Referring to Margot Badran's comments on the Yemeni Personal Status Law, she states that "in this law, equality was subverted in principle and practice"[207] Anna Wurth, on the other hand, recognized the uneven application of the law especially outside cities where most of the Yemeni people and tribes live [208]. The authority of law was also uncertain where most of the tribal areas are being regulated by tribal law and mediation [209].

Meanwhile, interviewees shared the same views. "Yemeni laws sanction rather than protect women from gender-based discrimination. This is due to a combination of patriarchal culture that treats women as inferior beings and a conservative narrow interpretation of Islamic laws that emphasizes male guardianship over women", said one of the Human Rights Activists interviewed [210]. Moreover, the Personal Status Law demonstrates state control and protection where it serves men and defends their rights while it is not as such where the interests of women conflict [211]. This is well reflected in both the Constitution and Personal Status Law.

THE RIGHT'S CONCEPTUALIZATION DERIVES FROM LAW

Three interrelated concepts drive the formulation of the Personal Status Law in Yemen. First is the concept of guardianship over women, derived from *Sharia* Law. The second is the notion that women are sisters of men which is enshrined in the Constitution. The third is related to the notion of dependence and weakness which is attached to the tribal conceptualization of honor and who is eligible for rights. The three concepts reflect the patriarchal norms that regulate the lives of women in Yemen. Interestingly in the course of this research, people

interviewed were not able to provide a meaning for the word "rights". It seems that they did not think about the meaning of rights before. Cultural and societal practices have produced norms but not rights. There are two sets of semi-structured questions for interviews. One is designed for women and human rights activists, organizations and lawyers while the other is geared to non-specialized men and women. Five interviewees were specialized while the other represents people work in research centers.

MALE GUARDIANSHIP OF WOMEN

Guardianship as a principle is reflected in the Personal Status Law in different articles. Article 40 specifies that a wife must obey her husband and cannot leave the home without his permission. If she disobeys him or goes out without his agreement, he is entitled to make her return to the matrimonial home. Article 12 to 16 states that a man can have up to four wives if he is fair to them all, can support them all, and informs his wife or wives that he plans to marry again (12). By contrast, for a woman to marry at all, she must obtain the permission of her guardian, who would normally be her father or another male relative (16). If the male guardian does not consent, the woman may apply to a court for permission but this may be denied. The guardian can file for the termination of a marriage if the woman has married without his permission, even if this is against her wishes. The requirement for women to obtain the permission of a guardian to marry clearly restricts women's rights guaranteed by international law, including the rights to freely choose a spouse, to marry and to equality before the law.

On the other hand, women are subject to the principle of *Qwama* or guardianship which is referred to by An-naim who adopts Ustadh Mahmoud Mohamed Taha's evolutionary principle with regard to the male guardianship over women or Q*uama* [212]. Male guardianship over women is a fundamental concept that derives Muslim communities and shapes their culture and allows patriarchy as a concept to be mainstreamed [213]. According to *Ustadh* Taha, the *Quama* has been rationalized by Quranic verse 4:34 out of the context where women were dependent on men for economic security [214]. Such dependence, Taha contests, no longer exists as women have become partners in the economic field [215]. Thus, male guardianship should be terminated and both men and women should be equal before the law [216].

Ustadh Taha goes a step further in his "evolutionary principle" in the interpretation of *quama*. He elaborates saying that male guardianship is a combined rule that entitles the husband to be the guardian over his wife and the Muslim over the non-Muslim. That is why Muslim men are allowed to marry non-Muslim women while women cannot. Islamic rule prohibits marriage between Muslim women and non-Muslim men which is discriminatory against women. If the principle of *Quama* is repudiated by the husband over his wife, then there is no justification for applying the principle on the marriage of Muslim woman with a male non-Muslim [218]. One related underlying presumption that drives from both kinds of *Quama* is that women are more susceptible to influence their husband than vice versa [219]. This means that Muslim women could be easily drawn away from Islam. Such an underlying presumption is part of wider notions and culture that assume that women lack integrity and good judgment.

SISTERHOOD AS ENSHRINED IN THE YEMENI CONSTITUTION

Article 31 of the Constitute states that women are sisters of men, have the rights and duties ensured by the Sharia' and stipulated in the law [220]. After the Unification, the 1991 Constitution broadened the constitutional rights enjoyed by women but the amendment of the Constitution in 1994 omitted reference to gender. A new Article was added stipulating that "women are sisters of men," thus affirming the subordination of women to men and consolidating the patriarchal approach to women's issues [221].

A Freedom House Report notes that "In the cultural context, being sisters of men indicates a status where women are protected by their brothers, but are weaker and lesser in worth. Consequently, laws such as the Personal Status Law Family Law, the penal code, the Citizenship Law, the Evidence Law, and the Labor Law systematically discriminate against women" [222]. One of the most striking views on the law application versus customs and tribal law was one that was affirmed by one of the interviewees who stated that "what we have now is not law but customs that have been articulated in the language of law."

The National Women's Committee(NWC) has proposed an amendment to Article 31 of the Constitution [224]. The proposed article reads as "women are the sisters of men, and thus they shall have the rights and duties provided ensured by the *Sharia'* and stipulated in the law. The state institutions and the community shall support women, particularly in the representative bodies to ensure their contribution in community building and development"[225]. The proposed amendment does not change the underlying concept of the Article. But it consolidates the second class of women within the community and originally emerged from the tribes' conceptualization of rights and who is eligible for

those rights. This brings to the surface the concept of Q*uama* that was referred to earlier as we see the mix between culture and religion. What is astonishing here is that the amendment is being proposed by the instrument of state feminism which implies that the state plays a crucial role in shaping the agenda for women.

The Yemeni Shadow Report to CEDAW in 2006 mentioned that" tribal cultural system in the community is the major reason responsible for marginalizing women and for discrimination and violence against women" [226].

WOMEN AS DEPENDENT AND WEAK

As we mentioned earlier in chapter one that a core determinant in the rights concept within the tribal context which occupies and dominates most of the Yemeni communities is related to honor and is an attached to features of the male leaders of the tribe. Since women are attached to men and fall under the category of the weak similar to the servants or *Akhdam* and minorities, they do not have independent honor that make them right bearers.

WOMEN'S "WRONG" RIGHTS ACCORDING TO LAW AND PRACTICES

According to the above conceptualization that categorizes women as falling under the guardianship of men or sisters of men or dependent, the Yemeni Personal Status Law has denied women specific rights in law and in practice.

DENIAL OF FREEDOM OF CHOICE AND FULL CONSENT

According to CEDAW Article 16 (1)(a)(b) both men and women have the same rights to enter into marriage [227], the same right to freely choose a spouse and to enter into marriage with free and full consent [228]. According to the Personal Status Law, legislators continue to circumvent the idea of consent, allowing for gaps in and violation of this crucial principle. Article 10 of the law states that any contracted marriage by force is deemed to be void and in Article 23, the law requires the consent of the bride [229]. However, the legislator does not require the presence of the bride during the conclusion of the marriage contract, allowing for cases where the male guardian concludes the marriage contracts of minors and even adults without informing them [230]. In this respect, Article 15 of the law [231] does not explicitly state the minimum age of marriage but legalizes early marriage if there is an interest [232]. Literature and interviews affirmed that there are a lot of cases, especially in rural areas where the bride is not involved in marriage decision-making marriage and even in poor areas there are still what they call "exchange marriages" to which two families resort to, to avoid the expenses of dowry [233]. In this type of marriage which is in declining but still exists, the two families agree to marry one of their daughters to the other family in place of the dowry [234]. By doing so, law denies the freedom to choose and the freedom of will that are enshrined in the universal treaties [235].

FREEDOM OF MOVEMENT IS NOT THE RIGHT "RIGHT" FOR WOMEN

Article 40(4) of the Personal Status Law, under the Obedience Articles, urges women not to leave the marital house without permission from her male guardian or for a reason legalized by religion such as taking care of her parents or for a reason justified by custom [236]. In one sentence the legislator consolidates all types of control over women namely male guardianship to Sharia and to customs, reflecting how law is being affected by what exactly and how responsive the law is to the political patriarchal agenda and not equality.

THE RIGHT TO TERMINATE THE MARITAL RELATIONSHIP IS NOT A RIGHT FOR WOMEN

According to Article 16 (c) of CEDAW, men and women should have the same rights during marriage and at its dissolution [237]. The right to terminate the marital relationship is a conditional right for women according to Yemeni law. Article 59 of the Personal Status Law stipulates that a man may divorce his wife at will, without providing a reason, yet a women seeking a divorce must resort to a court if she wishes to obtain one and can only do so on very limited grounds and solid proof. On applying the *Khula*, which is supposed to support women's will to terminate the marriage contract in exchange for her financial rights, the legislator allows it on condition of the husband's approval. Again, the legislator is responsive to the patriarchal norms dominant in Yemen and not even to *Sharia* law. At the level of tribal law, divorce is one of the core issues that is now allowed to be solved by arbitration. Nevertheless, the tribal groups violate the law and resort to settling divorce cases themselves as reported by a lawyer and human rights activists interviewed [50].

RIGHT TO INHERITANCE IS THE WRONG RIGHT FOR WOMEN IN PRACTICe

No Yemeni laws prohibit women from owning or having full and independent use of their land and property, and women technically have full and independent use of their income and assets. However, patriarchal tribal customs, widespread illiteracy, and women's ignorance of their economic rights have prevented them from exercising these rights in practice. Instead, they often hand over the

administration of their property and income to their male relatives. Women have limited inheritance rights, which are further undermined by ribal customs.

Article 23 of the 1994 Constitution provides that "the right of inheritance is guaranteed in accordance with Islamic tenets Shari'a" [240]. Sharia holds that brothers or male relatives are entitled twice as much as women [241]. In practice, even this little share "is often withheld from women by male relatives, particularly in rural areas" [242]. In an effort to keep property within a family, some women are forced to marry relatives [243].

LEGAL RIGHTS IN PRACTICE

In a trial to explore the level of awareness of people interviewed about the personal Status law, only lawyers and human rights activists were able to provide input about the law. Other people from different specializations who are mainly female academics are not able to list any rights/articles stipulated by this law.

Meanwhile, one general comment was raised by one of the lawyers and human rights activists that despite the Unification, one can still see the difference between the South and North in the application of the Personal Status Law in terms of the number of applicants, the nature of disputes and even the architecture of courts [244]. She elaborates that in the South, the number of cases are lesser than that of the North and the nature of disputes are not that complicated as in the North. Despite the fact that tribal law is being regulated by the government, lots of decisions are still being handled by extralegal regulations such as mediation and arbitration especially in disobedience cases. A CEDAW report affirmed that most of the marriage conflicts are being handled by mediation as it is deemed shameful to resort to the official court [245].

On the other hand, if a woman obtained a court ruling in her favor, the decision is often deemed to be symbolic since it is not supported by the State's enforcement system [246]. One of the interviewees mentioned that enforcement is being subverted by resorting to bribes on the part of the husband to hinder the implementation of the court ruling.

In most cases, people resort to arbitration because it is more advantageous to the women and her family. Because of the social pressure that characterizing the tribal context, women and their families are usually getting material compensation for any harm that occurred to women.

Another study on court practices with regard to divorce or *faskh* has shown that most of the cases that ruled in the favor of women, (the plaintiff) are because of the desert and lack of financial support [247]. It shows also that mainly women of lower class resorted to court for this kind of marital problems. In the same vein, domestic violence cases represent 5% of the cases while *Karaheya* or hatred cases constitutes only 2% of the cases. The study unveiled that it is the women of the upper classes that mostly file cases of this nature [248]. Decisions of the same cases differ from women of the lower classes to those of the upper class [249]. Judges consider a wife's refusal to live with their husband as sufficient grounds for divorce notwithstanding the claimed domestic violence that amounts to a criminal offense. The same alleged violence would be dismissed because the judge is not convinced that the evidence would amount to an assault under criminal law. Wurth shows in her analysis that there is a bias against women of lower classes and that court cases pursued mostly by poor women.

Women face difficulties accessing justice because police stations and courts—which are always crowded with men—are commonly considered to be inappropriate places for "respected women" [250]. Moreover, the lack of female judges, prosecutors, and lawyers discourage women from turning to the courts. Given the social discrimination experienced by women, they hesitate to approach male legal consultants, particularly for issues such as abuse or rape. Instead, women often rely on male relatives to go to court in their place, or turn to them to solve their problem rather than taking the matter to the judiciary.

In conclusion, this chapter supports what has been advanced by Sunder about religion and its attendant culture that formulate the new sovereignty [251]. It is this new sovereignty that states use to control and dominate the societal and political spheres The London-Based NGO Women Living Under Muslim Laws, as quoted by Sally Baden in Bridge Report, has affirmed the tendency to unify and fix Muslim laws is an misconception:

It is often presumed that there is one homogenous Muslim World. Interaction and discussion between women from different Muslim societies have shown us that while similarities exist, the notion of uniform Muslim world is a misconception imposed on us. We have been erroneously led to believe that the only possible way of "being" is the one currently live in each of our contexts. Depriving us of even dreaming of a different reality is one of the most debilitating forms of oppression we suffer. Our different realities range from being strictly closeted, isolated and voiceless within four walls, subjected to flogging and condemned to death for presumed adultery (which is considered to be a crime against the State), and forcibly given into marriage as a child, to situations where women have a far greater degree of freedom of movement and interaction, the right to work, to

participate in public affairs and also exercise a far greater control over their own lives [252]

This illustrative note highlights the earlier tension of universality and particularity especially within the context of Muslim countries. It sheds lights on Sunder's claim that women look forward to realize their equality within religion but not the strict narrow version of religion. It depends on what kind of approach that is used, provided it is hegemonic. Solid and fixed frames would not allow people to look for options that help realize their human rights. In the context of Yemen which is uncertain now, one cannot project the future but it is a golden opportunity to consider several options to ensure equality within this already complicated context. The coming chapter is a trial to articulate a set of options in this regard.

SOCIETAL AND INSTITUTIONAL REFORM

Article 1 of the Universal Declaration of Human Rights (UDHR) states that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" [253].

Dignity precedes the entitlement of rights despite the vagueness and controversy of the term. It implies that each human being must be respected in the first place and that this is a universal requirement [254]. The Declaration addresses men and women though the language of this Article is masculine. It holds: "They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" [255]

Likewise, Article 1 of the CEDAW's defines discrimination as

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field [256].

Referencing this definition, Yemeni women have experienced all forms of discrimination under the Personal Status Law. For instance, they experience "distinction" from men in the nature of rights they enjoy; they are "excluded" from the process of choosing and approving their spouses, and they are "restricted" in their freedom of movement.

CEDAW reports and national and shadow reports, allocates substantive space to discussion discrimination against women in legislation and existing laws without hinting at addressing the root causes of such discrimination. The only references are found in the discussions on the enforcement of law, on culture or domestic violence.

In the previous chapter we discussed the conceptualization of rights shaped by the amalgamation of religion and culture. We saw them as the cause for the current discriminatory practices against women. These are used by the State to consolidate patriarchy and exert control over an important segment of the community namely women. When I first planned this research, I had hoped to come up with a definite proposal for the equality and realization of human rights for women through the Personal Status Law. However, given the current events, no one is certain about the outcome especially that violence is escalating and the scope of conflict is widening, along with strong voices for secession of the North and the South or even establishing a confederation system. I am proposing here the most commonly discussed options for institutional and societal reform in Yemen. In this chapter I claim that there can be no effective legal reform without an actual societal and institutional reform.

NATURE OF THE CHANGE AND APPROACH

Given the current context and building on the discussion in the previous chapters concerning conceptualization of rights as articulated in the Personal Status Law and its application on the ground, an important question rises as to what: What kind of changes Yemen needs?

In this respect and within the framework of the concepts of gender justice that Dixon referred to in her Article "*Feminist Disagreement..(Comparatively) Recast,"* that Yemen can be assessed [257]. What happened after the Unification in Yemen can be described as disruptive in nature, meaning that both government and tribal groups have made inappropriate linkages between biology and gender, which affects gender justice in the community [258]. This could be seen in the conceptualization that shapes the Constitution, the laws and all the other exclusionary factors that have been pointed out in the previous chapters[259] . Meanwhile, Yemenis have tried to use an ameliorative approach, i.e. making some incremental improvements to bring about gender justice through the establishment of the NWC and the Ministry of Human Rights and other modest legal reforms to the Personal Status Law to narrow the gap between women and men. Nevertheless, this has not produced the expected gender justice [260]. What is really needed is the third approach towards gender justice in the area of personal status affairs namely, the transformative approach. Bringing gender justice in the area of personal status issues needs a more transformative understanding of rights ideology, gender roles in the family spheres, women status and the apparatus that handle all family issues.

This mirrors Menon's proposal for feminists to adopt "radical politics" to go through a long process of changing the dominant culture and to create other hegemonic structures at the local level that will be in charge of addressing the inequality reproduced by the State's power structure [261]. In this respect, what late Raoufa Hassan aspired to was to have a law recognized by the society [262]. The word "recognized" here, however, is vague and challenging but assumes that all rights should be hegemonic beforehand, i.e. they should be fully acknowledged and respected in the society before stipulated and protected by law. Thus, this entails changing the conceptualization of the system of rights, and the Islamic and cultural equation. The transformative approach starts with the rights conceptualization and its operationalization on the ground.

In this respect, CEDAW's preamble stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women."[263]. States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" [264]. In order to overcome the unevenness of the law, the other dimensions of law need to be addressed. These includes the institutional and educational dimension along with widening the scope of *ijtihad* or interpretation of Sharia to involve women.

However, before proceeding to these other dimensions of law, namely the institutional and societal reform proposal, it is important to look at the proposed legal reform that is needed as one of the strategies and approaches for gender justice as suggested by the interviewees. One of the interviewees holds that the government should reform both the Constitution and the Personal Status Law to bring it into compliance with CEDAW; this includes amendments to Articles 12, 15, 16, 40, and 58 [265]. The parliament should approve the draft law setting the minimum age of marriage at 17, and the government should take appropriate measures to ensure that the law is properly implemented. The interviewee's position thus is very hopeful and optimistic towards the power of the law to bring about a change. Two approaches to settle the Conflict between Rights and Religion/Culture

Principle of reciprocity referred to earlier and suggested by An-naim is one option to consolidate the principle of equality and the respect for the "other" [266] The other potential approach to adopt is "consequences-based approach" referred by Elham Manae to prove the universality of human dignity [267]. This approach is based on the universality of human rights and requires the consideration of how one's actions affect another. Thus, it is the consequences of the action not the intention that matters [268]. Two levels of consequences can be identified, namely, the consequences on the individual and the consequences on the society at large [269]. She gives the example of female genital mutilation (FGM) through which a girl experiences personal harm [270]. On the societal level, the society will have to carry the health and economic burdens [271].

SOCIETAL REFORM USING A FOUR PRONGED APPROACH

INSTITUTIONAL REFORM

The Second Yemeni Shadow report records that 33 percent female representation in the parliament marking the presence of only one woman in the election of 2003 reduced from 66% in the 1997 election where two women were elected as was the case took place in 1993 [272]. The same report stated that there are 32 female judges are on record in the judicial system from the legacy of the progressive South compared to 1200 male judges [273]. The report elaborated that those female judges are either "reassigned in other jobs or left unemployed" [274]

Despite the fact that the Yemeni Constitution guarantees equal political rights for both men and women according to Article 24 regarding equal political opportunities, Article 41 regarding equal rights and duties and Article 3 of the Election Law No. 13 of 2001 [275], which supports equal participation, women's representation is still low as potential members but it is reasonable as voters. This sounds similar to Margot Badran's contention as to how both law and society encourage women to be voters (mostly to serve the interests of men) but not as candidates [276].

CEDAW reports and interviews recommend the establishment of the quota system as a positive discriminatory procedure according to Article 4 of CEDAW which urges state parties to take "temporary special measures to accelerate de facto equality between men and women. [277]. In its 2007 Report, the CEDAW Committee stated that the quota is a must and the only choice now. This is largely because the women in Yemen have experienced accumulated negative behaviors and practices that need "decades of awareness activities and evolution in the society value system" to be corrected [278].

On the other hand, interviewees expressed their concern about the qualifications of members elected to the parliament since most of them are illiterate.

Those representatives are supposed to study and decide on laws. Unfortunately, this process is being carried out according to Article 63 (2) which states that "A candidate for the House of Representatives must meet the following conditions: (a) Must be a Yemeni; (b) Must be at least 25 years old; (c) Must be able to read and write (literate); (d) Must be of good character and conduct, fulfill his religious duties and have no court convictions against him for committing crimes that contradict the rules of honour and honesty, unless he was pardoned /reprieved" [279]

The criteria "to fulfill his religious duties" is something that cannot be proved or measured. Accordingly, interviewees expressed the need to change this article to require at least a university degree instead.

Both the Second Shadow Report to CEDAW and almost all interviewees (except one)asserted that it is quite difficult to resort to the judiciary since both the police and courts are not regarded as an appropriate place for respectful women and, where, men are also faced with harassment and abuse. Additionally, courts are not conveniently located and, while the freedom of movement is restricted for women, they do not have physical access to them. One of the lawyers interviewed from the South mentioned that the court's location and the resort to courts by the people differ between the South and the North. Southern courts reflect the progressive nature of the systems and people there while the North is still traditional in nature [280].

In this respect, one of the milestones at the institutional level in Yemen is that they have established a Ministry for Human Rights, led at the beginning by Amet al Alim Ben Sousa, the first female Minister and the one who coined the slogan that women's rights are human rights are Islamic rights [281]. It delivers the message that there is no contradiction between Sharia and human rights. This machinery for institutionalization of human rights should have been playing a more vital role as a moderator and a catalyst with the State's other justice (including the police), institutions. Similarly it should have served better as a go-between for the women's institutions on the one hand and trying to reconcile the conceptualization of human rights, especially at the tribal level and religious groups and committees level on the other. The Ministry along with the civil society organizations could educate officials in both the police and judiciary on human rights.

EDUCATIONAL REFORM

In the UN's introduction to CEDAW, the interrelationship between Article 5 concerning culture and Article 10 (c) concerning education [282]. It refers to the revision of textbooks, school programs and teaching methods with a view to eliminating stereotyped concepts in the field of education. The 2007 CEDAW Report stated that there are two million children outside schools out of which 1,360, 790 are females according to statistics of the Ministry of Education and UNICEF Report in 2005 [283]. The same report pointed out that despite the fact that in 2005, the curriculum of basic and secondary education levels were reviewed from a gender perspective, the stereotyping gender roles and misconception about cultural norms are still there as the teachers are part of the community and should become gender sensitive as well. One of the interviewees referred to the crucial factors that affect and consolidate the prevailing culture. The interviewee elaborated that after unification, one of the fundamentalists contributed to the development of the curriculum by inserting eight hours of conservative and gender biased educational material [284].

ADOPTING ISLAMIC FEMINISM AND OPENING THE *IJTIHAD*

Referring to Badran's claim that "secular feminism is Islamic and Islamic feminism is secular" [285] discussed earlier in this thesis, it is relevant here to present the suggestion of opening the venue to *Ijtihad* not only before men but also women as part of the societal reform in the projected "new" Yemen. Badran argues that Islamic feminism provides a broader scope and more tools than those of secular feminists which have failed to address the Muslim personal status codes or family law [286]. Badran contends that Islamic feminism as adopted by Islamic modernists extends Islamic discourse by emphasizing the unqualified equality among all human beings [287].

In this respect, interpretation of Islamic verses and Sharia is one of the issues that were continually raised during interviews. All intervieews except one agree that societal reform needs to take the Islamic context of Yemen into account and hence they support opening the *Ijtihad* or interpretation of Islamic doctrine to look for equality and engage women in this process. However, one of the interviewees contested this approach because it would lead to discrimination in one sole form or another and encouraged the transformative approach in the sense, i.e. not to use *Sharia* law as reference for the Personal Status Law.

Shada Nasser stressed the importance of women to be well grounded in Islamic law in order to help shape the Personal Status Law while her colleague Nabila el Mufti predicts that women will become specialists in Islamic jurisprudence and, in the future, will help formulate codes responsive to women's needs [288].

This position from a segment of women's activists is one that puts the hope in the inter-solidarity of women based on their biological gender and ignores possible divisions emanating from ethnic, class, social, economic, educational or other divisions. It expects that every female thinks in a female-friendly way that will advance the rights of all other females, which is not necessarily correct.

DEMOLISH THE DUAL LEGAL SYSTEMS

The previous chapters reviewed different forms of dual legal systems that produced two formal and informal justice systems. The fact, that people resort to and rely more on mediation and arbitration within the tribal context, weaken the formal legal system and thus the legal autonomy and protection of rights are at risk. Women are the most affected segment by the dual legal system.

The Freedom House Report contends that the court system is the weakest link in the three branches of the government. On one hand it is subject to interference from the executive authority and lack of enforcement authority for the court ruling:

In practice, the legal system remains highly informal, with personal connections and networks frequently trumping the dictates of the law. The government's record on respecting and enforcing property rights is weak, however, particularly in parts of the country where tribal forces are stronger and government authority is limited [289].

Unifying the legal system is one of the recommendations of all people interviewed. They tend to think that unifying the value system of justice should be considered within the framework of the current protests and the revolution in progress.

In Conclusion, Arab countries are passing through a critical moment in their history. They are calling for transformative change at all levels. In Yemen, the people are determined to bring about substantive change. Several amendments of Personal Status Law which come from above and mainly address the elite class did not bring the projected equality between men and women. This chapter suggested a four pronged approach which addresses the institutional and societal levels of reform. There is a need to work at all levels at the same time to capture the momentum of change taking place in Yemen today.

CONCLUSION

One of the concerns that Kennedy raises about human rights is that human rights promise more than they can deliver that they deliver a catalogue list for ready-made justice [290]. One implication of this listing is that human beings lose their motivation for new emancipatory movements [291]. He contends that "justice has to be made, experienced, articulated, performed each time anew", while rights conflicts with each other and they are vague [292. The challenge is how to create a rights value system that is hegemonic in the society and protects the will to live and the will to be free of those two driving forces that An-Naim referred to [293].

The revolutionary protests throughout the Arab region are creating their own justice schemes within the framework of the two forces. In Yemen, the protests may seem to be falling under political and civic rights but actually there is a call for equality and equal opportunities, for social justice and freedoms. The hope to bring about radical change is much stronger in the current protests than in the past though it is to be complicated by the current structure of Yemen because it comes within the context of Arab claims for justice and freedom.

The researcher has argued that the legal reform of the Personal Status Law is not sufficient to ensure gender equality within the Yemeni context where the cultural, the religious, the dual legal system and the political discourses dominate and the rule of law is missing. The cultural and legal context of Yemen is a very rich and complicated context with competing ideologies and powers. The tribal legacy has produced a customary normative system for politics and law resulting in a dual legal system which reflects the weakness of the state power to create a unified justice scheme. This has affected the formulation of law and obstructed women's efforts to ensure equality in the Personal Status Law.

Considering the above, the author established a theoretical framework for the discussion targeting the relationship between law and rights and law and the state through the lens of feminists and human rights activists from different affiliations. In this respect, there are several conclusions that can be drawn. First, we should recognize particularity. There are fundamental or "conventional" rights that should be fulfilled and such particularity should not allow the mainstreaming of the notion of "wrong" rights. Second, law cannot be separated from state politics though it enjoys autonomy as it reflects the context from which it rises. Taking this framework further to the case of the Personal Status Law in Yemen, the researcher ends that the law's application is "uneven' in its effect on the different beneficiaries. The dual legal system creates two justice schemes whereby one is weaker than the other, enforcement is lacking and women are left to mediation and arbitration to settle their disputes. On the other hand, there are three drivers for the conceptualization of rights that affect the formulation of Personal Status Law namely, guardianship (Sharia), sisterhood (constitution), and the weak and dependent (tribal customary norms). The three of them articulate and reflect the patriarchal policies advanced by the state

and the community. Thus, the realization of gender justice in the area of Personal Status Law and the effective application of the law need a multi-dimensional approach. Societal reform suggests a four-pronged approach. One deals with the institutional reform while the second addresses education and the third adopts an Islamic feminist approach. The fourth is geared towards demolishing the dual legal systems.

The literature selected is from a combination of feminists and, human rights activists from secular and Islamic backgrounds. while I found plenty of resources on Islam and the application of Sharia it was harder to find sources focused on feminism and human rights perspectives.

Throughout the search for a rights formula for the Yemeni women within the framework of Personal Status Law, the researcher found herself drawn to the context of the tribal groups with their own value systems that in most of the cases seem to be of a chivalrous nature. From the perspective of human rights and feminists, they are subjective in their judgment, discriminatory against vulnerable groups and do not include the rule of law. The journey left the author of this research with a challenge, namely, to change this value system. She finds herself stuck with Sharia law and how the interpretation process is supposed to take place. How does Muslim jurisprudence view the concept of rights? What are the sources of rights according to Sharia law? There is an entire field to explore to see the commonalities and differences between rights according to Sharia and rights as we know them according to the Universal Declaration of Human Rights and other instruments under international human rights law. Through her experience and through this research, the author found out that what is religious is also deemed to be cultural and vice versa, and people fall in this trap of defending cultural norms as core religious principles. The researcher feels motivated to resolve this conflict. Accordingly, she feels compelled towards further action.

BRINGING A CHANGE

The next step is geared towards action and operationalization of the findings and societal reform on the ground with an expansion to all Arab Muslim countries. The researcher's future project is the establishment of an organization that focuses on tribal groups in Arab countries including Upper Egypt. The guiding principles of the organization are: freedom of choice, equal opportunities, and the principle of reciprocity. The guiding strategies/approaches will include, but are not limited to, integration strategies: using special temporary measures to ensure equality and avoid exclusionary factors. A participatory approach, rights based approach, gender mainstreaming, building on assets and partnership, using mobilized resources (we appreciate nature as well) and Cultural sensitivity. The target groups will include all segments in the community with focus on men and women and marginalized groups (including people with special needs). While the organization will target Arab communities, the organization will focus on tribal areas, in Upper Egypt and rural areas. The organization will launch a set of programs using holistic approach such as capacity building, legal aid, advocacy campaigns, initiatives and pilot projects that consolidate equal opportunities and support including availability and quality of services, accessibility to knowledge and services.

The future organization will be involved with partnership with Islamic feminism organizations such as Women living under Muslim Laws [294] and Musawah [295]. The organization will provide research and studies especially in the area of women's universal human rights within Islamic law and tribal groups along with consultation missions for other related organizations in the Arab region..

ACKNOWLEDGEMENTS

The research "Legal Reform as a Way to Women's Rights: The Case of Personal Status Law in Yemen" becomes possible because of the vibrant Yemeni voices who call for radical change in Yemen. These voices have inspired and encouraged me to continue the study despite all obstacles to go to Yemen during the increasing protests and violence erupted since February 2011 to date.

The author is actually dedicating the findings of this research to those women from Taiz, Aden and Sanaa, who joined the protests on equal foot with men in 2011 events, unifying their different identities as Southern and Northern and as urban and rural under the Unified Yemen, to ask for equality, social justice and freedom for all people.

REFERENCES

[1] The Committee on the Elimination of Discrimination against Women (2008). *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms Against Women, Sixth Periodic Report of States parties, Yemen.* Retrieved from http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/278/33/PDF/N0727833.pdf?OpenElement

[2] Wurth, Anne (2003). Stalled Reform: Family Law in Post Unification Yemen, *Islamic Law and Society, 10*, 13-19, Retrieved from http://www.jstor.org/stable/3399218

[3] In the fall of 2009 and while enrolled in the course of Women and Gender Studies within the

framework of the master degree, I stood in front of my colleagues and Professor Martina Reiker, presented a brief on my paper titled "Towards Re constructing the Feminism Identity in Egypt: *al khula* Law as a Case Study", arguing that law and legal reform is an effective strategy to attain women's rights. Professor Martina Reiker started to argue that there are other means by which women can get their rights other than the tool of law. I insisted on my claim arguing that all the achievements that women have realized in Egypt were through legal reform which established social recognition for women's rights in specific fields. I forgot for a moment that my experience in the field with marginalized groups of men and women in rural and urban proved the opposite. My field experience in rural and Upper Egypt areas through a recent gender study in Fayoum Governorate in Egypt showed that the position of both men and women interviewed (educated and non-educated) towards raising the age of marriage to 18, asserted that it is better to return the age of marriage to 16. To escape accountability within the new law, they go around the law by issuing a temporary (unofficial) marriage document to prove the marriage until the girl reaches the age of 18 to get the official marriage contract. This is only one example of circumventing the rule of law and respecting cultural norms instead.

[4] Badran, Margot (1998). Unifying Women: Feminists Pasts and Presents in Yemen, *Gender and History*, *10*, 500. DOI: 10.1111/1468-0424.00115
[5] *Id.*
[6] *Id.*
[7] *Id*
[8] *Id*., at 501.
[9] *Id*., at 500.
[10] *Id*., at 502.
[11] *Id.*
[12] *Id.*
[13] Molyneux, Maxine (1995). Women's rights and Political Contingency: The Case of Yemen, 1990-1994, *Middle East Journal*, *49*,. 418, Retrieved from http://www.jstor.org/stable/4328832
[14]. Kelly, Sanja, Breslin, Julia (2010). Women's Rights in the Middle East and North Africa: Progress Amid Resistance, Country reports, Yemen by Elham Manae,, *New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield:* 531, retrieved from http://freedomhouse.org/uploads/specialreports/womensrights/2010/womensrights2010.pdf
[15] *Id.*
[16] *Id.*
[17] Committee of CEDAW, s*upra* note 1, at 3.
[18] *Id.*.
[19] Amnesty International (2003), *Yemen ,the Rule of Law Sidelined in the Name of Security, Retrieved from* http://www.amnesty.org/en/library/info/MDE31/006/2003.
[20] YEMEN CONSTIT., art. 51,53.
[21] Committee of CEDAW, s*upra* note 1, at 6.
[22] Kelly and Breslin,. *supra* note 15.
[23] *Id.*.
[24] *Id.*.
[25] *Id.*
[26] *Id.*.
[27] *Id*.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Yemen, Constitution (1994), Retrieved from http://www.al-bab.com/yemen/gov/con94.htm
[33] Ali Ahmed Abu Ghanem, Fadl (1985). *EL Benya al Qabalya Fi Al Yemen Bayna al Astimare Wa Al Taghyeer*, The Arab Writer Publishing House. See also Corstange, Daniel (2008). Tribes and the Rule of Law in Yemen, Retrieved from http://www.bsos.umd.edu/gvpt/corstange/doc/corstange-tribes.pdf
[34] *id* at 194
[35] *Id.*
[36] *Id*
[37] *Id.*
[38] *Id.*
[39] Dresch, Paul (1989). *Tribes, Government and History in Yemen*, Clarendon Press, Oxford University Press.
[40] *Id.*
[41] *Id.*, at 40,41
[42] M.,E., Associate Professor/Zürich University (2011), e-mail correspondence.
[43] .M., E, Associate Professor/Zürich University (2011), skype interview
[44] Badran, *supra* note 5, at 499.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] According to Freedom House Report in 2010, Yemen's judicial system has three levels of courts: first instance, appeals, and the Supreme Court. The higher courts are divided into specialized sections: civil, criminal, commercial, and personal status. See supra note 14.
[50] YEMEN. CONSTIT., art.3.
[51] YEMEN CONSTIT., art 27.
[52] YEMEN CONST., art 6.

[53] *Id*., at art.7,24.
[54] *Id*., at art.25,29, 41, 42, 53, 54, 55, 62.
[55] *Id.*, at 40.
[56] *Id*,.at31.
[57] *Id*.,at 3.
[58] Badran, *supra* note 5 at 504.
[59] *Id*.
[60] Wurth, *supra* note 2 at 16
[61] S. N. (April 2011). Lawyer and Human Rights Activist, Telephone Interview
[62] *Id*.
[63] Badran, *supra* note 5 at 504.[1]
[64] *Id* .
[65] Wurth, *supra* note 2 at 17.
[66] *Id* at 23.
[67] Sanja Kelly and Julia Breslin, *supra* note 15 at 4.
[68] Abu Ghanem, *supra* note 31 at 260.
[69] Dresch, *supra* note 36.
[70] *Id*.
[71] *Id*..
[72] Anna Wurth, *supra* note 2 at footnote 7.
[73] *Id*.
[74] *Id*.
[75] Dresch, *supra* note 36.
[76] *Id*
[77] *Id*.
[78] Abu Ghanem, *supra* note 31 at 253-4.
[79] *Id*.
[80] The optional protocols are not ratified
[81] *Human Rights in Yemen*. (n.d). Retrieved from http://www.europarl.europa.eu/meetdocs/2004_2009/documents/nt/613/613967/613967en.pdf
[82] The optional protocols are not ratified
[83] .W., A, Social Development Specialist (April 2011), Telephone Interview.
[84] Human Rights Situation in Yemen, *supra* note 82.
[85] Sanja Kelly and Julia Breslin, *supra* note 13
[86] Sanja Kelly and Julia Breslin, *supra* note 13.
[87] .W, A., Social Development Specialist (April 2011), telephone interview..
[88] *Id*.
[89] *Id*.
[90] *Id* at art. 18.
[91] Badran, *supra* note 5 at 506.

[92] 19. G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), *entered into force* Dec. 22, 2000, art. 2.
[93] *Id* at art. 18.
[94] Badran, *supra* note 5 at 506.
[95] Id.
[96] Ghandi, Nadita SHAH, Nadita (1992). *Theory and Practice in the Contemporary women's Movement in India*, New Delhi, Kali for Women.
[97] Menon, Nivedita (2004). *Recovering Subversion: Feminist Politics Beyond The Law*, Chicago, University of Illinois Press.
[98] *Id*.
[99] *Id.*
[100] *Id*, at 207
[101] Dixon, Rosalind (2008)., Feminist Disagreement (Comparatively) Recast, *Harvard Journal of Law. and Gender*, *31*, 280-86. Retrieved from http://www.law.harvard.edu/students/orgs/jlg/vol312/277-322.pdf
[102] *Id*.
[103] *Id*, at 281.
[104] *Id*.
[105] *Id*.
[106] *Id.*, at 282.
[107] *Id*,, at 283.
[108] *Id*
[109] *Id.*, at 284.
[110] *Id*.

[111] .Binion, Gayle (1995). Human Rights: A Feminist Perspectives, *Human Rights Quarterly, 17 (3)*, 510-512. DOI: 10.1353/hrq.1995.0022
[112] Kennedy, David (2002). The International Human Rights Movements: Part of the Problem, *Harvard Human Rights Journal*., *15*, 102-125. Retrieved from http://www.law.harvard.edu/students/orgs/hrj/iss15/kennedy.shtml
[113] *Id*.
[114] *Id*, at 109.
[115] *Id*, at 110.
[116] *Id*.
[117] *Id*
[118] Smart, Carol (1986). Feminism and law: Some Problems of Analysis and Strategy, *Intentional Journal. of the Sociology of Law*, *14*, 110-121.
[119] Id at 110
[120] G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), *entered into force* Dec. 22, 2000.
[121] Oloka-Onyango ,Joseph , Tamale, Sylvia (1995)**. "**The Personal is Political," or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism, *Human Rights Quartley, 17(4)* , 15-17. DOI: 10.1353/hrq.1995.0037
[122] Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1980) at art. 18
[123] Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945.
[124] Oloka-Onvango, Tamale, *Supra* note 110.

[125] Menon, *supra* note 81 at 28.
[126] *Id.*.
[127] *Id at 27*
[128] Feinberg, Joel (1992). In Defence of Moral Rights, *Oxford Journal. of Legal Studies*, 12(2) , 151-162. doi: 10.1093/ojls/12.2.149
[129] *Id.*
[130] *Id*.
[131] Article 1 (1) reads as "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" while Article 1(3) reads as "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations
[132] FRASER, NANACY (1990). *Unruly Practices, Power, Discourse and Gender in Contemporary Social Theory*, UK, Polity Press.
[133] Mohanty, C., T. (2003), *Feminism Without Borders, Decolonizing Theory, Practicing Solidarity*, Durham and London , Duke University Press..
[134] Heller, Anges, (1990). Rights, Modernity, democracy', in Deconstruction and the Possibility of Justice, *Cardozo Law. Review*. *11*, 1384
[135] *Id.*
[136] Menon, *supra* note 81 at 40.
[137] Three Waves of Feminism, From Suffragettes to Grrls, http://www.sagepub.com/upm-data/6236_Chapter_1_Krolokke_2nd_Rev_Final_Pdf.pdf
[138] *Id.*
[139] [1] *Id.*
[140] Menon, supra note 81 at 55
[141] *Id.*, at 81.
[142] *Id.*, at 81.
[143] *Id.*, at 81.
[144] *Id.*, at 81 at 56.
[145] *Id*
[146] YEMEN. CONSTIT., art. 40.
[147] *Id.*
[148] Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J.1409, 1401-1411 (2003).
[149] *Id.*
[150] *Id*., at 1401.
[151] *Id.*, at 1402.
[152] *Id*
[153] Badran, Margot (2005). Between Secular and Islamic Feminism/S Reflection on the Middle East and Beyond, *Law Journal. of Middle East Women's Studies, 12*, 12-22 .
[154] Id at 22.
[155] Sunder, Madhavi (2003). Piercing the Veil, *Yale Law .Journal, 112*,1401-1411
[156] An-Naim, Abdullah (1990). *Towards and Islamic reformation, Civil Liberties Human Rights and International Law*, Cairo, American University in Cairo in arrangement with Syracause University Press.
[157] *Id*.
[158] *Id* at 162.
[159] Menon, *Supra* note 81 at 26.
[160] An-naim, *supra* note 141 at 163.
[161] *Id.*
[162] *Id.*
[163] Kennedy, *supra* note 110 at 113.
[164] Brown ,Wendy (1992). Finding the Man in the State, *Feminist Studies* , *18(1),*7-34. Retrieved from http://www.jstor.org/stable/3178212
[165] Id.
[166] *Id*, at 205.
[167] *Id*.
[168] *Id*, at 29.
[169] Brown, *supra* note 149 at 15.
[170] *Id*.,at 12.
[171] *Id*.,at 11,16.
[172] *Id.*, at 149 .
[173] *Id.*, 149 at 29.
[174] *Id.*, at 30.
[175] Menon, *supra* note 81 t 216.
[176] *Id.*
[177] Fraser, Nancy (1990), Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy, *Social Text, 25(26).* Retrieved from http://www.jstor.org/stable/466240
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id., at.* 63.
[182] *Id.*
[183] Badran, supra note 5 at 506.
[184] *Id.*,at 206.
[185] *Id.*
[186] Badran, *supra* note 5 at 499.
[187] CEDAW Article 4 (1) "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved".

[188] Article 36 of 1974 Constitution reads as: the State shall ensure equal rights for men and women in all fields of life, the political, the economical and social , and shall provide the necessary condition for the realization of that equality'
[189] Wurth, *supra* note 2at 15.
[190] *Id*, at 18.
[191] *Id.*at 25.
[192] *Id.*, at 26.
[193] Badran, *supra* note 5 at 504.
[194] Wurth, *supra* note 176 at 21.
[195] Badran *supra* note 5 at 504.
[196] *Id.*
[197] Mohanty, *supra* note 119.

[198] See also Maxine, Molyneux, (1995). *Women's Rights and Political Contingency: The Case of* Yemen, 1990-1994, 10(3) Middle East Journal, 418-431
[199] Badran, *supra* note 5
[200] *Id*.
[201] Smart, *supra* note at 117.
[202] *Id.*
[203] *Id.*
[204] *Id*.
[205] Oloka- Onyahgo and Tamale, *supra* note 119 at 721.
[206] Badran, *supra* note 5at 505.
[207] Wurth *supra* note 2 at 16.
[208] *Id*.
[209] M, E., Associate Professor/Zürich University (2011). Telephone interview
[210] Wurth, *supra* note at 21.
[211] An-naim *supra* note 141 at 180.
[212] *Id*.
[213] *Id.*
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] *Id.*
[218] *Id.*
[219] YEMEN CONSTIT, art.31.
[220] Maxine Molyneux, *Women's Rights and Political Contingency: The Case of Yemen 1990-94*, 49 Middle East Journal. 418-431 (1995).
[221] Kelly and Breslin, *supra* note 15 at 3.
[222] A, S., Professor of Law, Aden University (April 2011). Telephone Interview
[223] National Women Committee, *Seventh National Report*, 6 *available at* http://www.yemen-women.org/reports/The%207th%20report%20of%20CEDAW.pdf
[224] Id.
[225] Sisters Forum, *Second Shadow Report*, http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/SAFHRYemen41.pdf (last visited July3, 2011).
[226] . G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981. art 16(a).
[227] *Id* at 16(b).
[228] YEMEN, PERSONAL STATUS LAW, art.10, 23.
[229] Telephone Interview with A. W., Social Development Specialist (April 2011).
[230] YEMEN, PERSONAL STATUS LAW, art.15
[231] Many reports like that of the Freedom House and Amnesty International referred to the case of the eight-years Nojoud, who was married to a 32-years-old man against her will despite the fact that she rejected this marriage repeatedly. But she was forced to this marriage. Under severe sexual abuse for two years the child went to the court alone asking for divorce.
[232] YEMEN, PERSONAL STATUS LAW, art.10, 23
[233] *Id.*,. at art. 15.
[234] *Id*.
[235] *Id*.
[236] Committee of CEDAW, *supra* note 1.
[237] YEMEN, PERSONAL STATUS LAW, art.59.
[238] S. N., Lawyer and Human Rights Activist (April 2011). Telephone Interview.
[239] YEMEN CONSTIT., art. 23.
[240] Kelly and Breslin, *supra* note 13.
[241] [1] *Id.*
[242] [1]*Id.*
[243] S. N., Lawyer and Human Rights Activist (April 2011). Telephone Interview
[244] Committee of CEDAW, *supra* note 1.
[245] Many reports like that of the Freedom House and Amnesty International referred to the case of the eight-years Nojoud, who was married to a 32-years-old man against her will despite the fact that she rejected this marriage repeatedly. But she was forced to this marriage. Under severe sexual abuse for two years the child went to the court alone asking for divorce.
[246] *Id*.
[247] *Id*.
[248] *Id*.
[249] National Women Committee. *Supra* note 224.
[250] Sunder, *supra* note 138.
[251] Sally Baden , *the Position of Women in Islamic countries: possibilities, constrains and strategies for Change*, Bridge Development-gender, (1992).

[252] G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
[253] Elham Manae, *Human Dignity and Islam, a Consequence Based Approach*,500 (2010).
[254] G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
[255] G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.
[256] Dixon, *supra* note at 308.
[257] *Id.*.
[258] *Id*, at 310.
[259] *Id.*
[260] Menon, *supra* note 81.
[261] Badran, *supra* note 5.
[262] G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.
[263] Id.
[264] Interviews with five specialists in the area of law and human rights.
[265] An-naim, *supra* note 141 at 175.
[266] *Id.*.
[267] *Id*, at 518.
[268] *Id.*
[269] *Id.*
[270] Sisters Forum, *supra* note 214.
[271] *Id.*
[272] *Id.*
[273] YEMEN CONSTIT art.24,41.
[274] YEMEN ELECTORAL LAW No. 13 of 2001, art.3.
[275] G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.
[276] Committee of CEDAW *supra* note 1 at 18,19.
[277] YEMEN CONSTIT., art 63.
[278] S. N., Lawyer and Human Rights Activist (April 2011). Telephone Interview.
[279] Badran *supra* note 152.
[280] Division for the Advancement of Women, Department of Economic and Social Affairs, CEDAW http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm
[281] Committee of CEDAW, *supra* note 1 at
[282] *Id.*
[283] E. M., Associate Professor/Zürich University (April 2011). Skype interview.
[284] Badran, *supra* note 154 at 12.
[285] *Id* at 13. Badran explained the difference between secular feminism and Islamic feminism. Secular feminism "draws on and is constituted by multiple discourses including secular nationalist, Islamic modernist, humanitarian/human rights and democratic. Islamic feminism is expressed in a single or paramount religiously grounded discourse taking the Qur'an as its central text."
[286] *Id* at 14.
[287] Badran , *supra* note 5.
[288] Kelly and Breslin, *supra* note 15.
[289] Kennedy, *supra* note 110 at 116
[290] *Id*..
[291] *Id.*
[292] An-naim, *supra* note 141.
[293] "Women Living Under Muslim Laws is an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam", *Retrieved from http*://www.wluml.org/node/5408.
[294] "Musawah" is a global movement for equality and justice in the Muslim family, calling for equality, non-discrimination, justice and dignity as the basis of all human relations; full and equal citizenship for every individual; and marriage and family relations based on principles of equality and justice, with men and women sharing equal rights and responsibilities" *available at* http://www.musawah.org/.