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**WOMEN IN PERSONAL STATUS LAWS:
IRAQ, JORDAN, LEBANON, PALESTINE, SYRIA**

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Introduction

The objective of this paper is to explain the legal system as it pertains to women's rights in the Middle East. We will limit our study to inequalities in marriage, inheritance, and nationality in Iraq, Jordan, Lebanon, Palestine, and Syria, which have in common a traditional and patriarchal system in which family law is based on interpretations of Sharia (Islamic religious) law. Sources of information are legal texts, government reports, reviews, and interviews.

A religious state, as opposed to a secular state, establishes religion as a pertinent differentiating factor. Family Law, which is of interest to us here, thus falls into categories: a Muslim and a non-Muslim will not depend on the same legal regimes. Obviously, beyond being different, these legal regimes are never egalitarian. This inequality, which is not only legal but also political and social, is also the case for women. In these countries with a majority Muslim population, the laws and norms that apply to men and women are distinct, and unequal. In light of this inequality, discrimination against women will be at the heart of our report.

At stake in this study is an understanding of the complex processes that make up the foundation of the legal system. Is there a link between the text of the Qur'an and unequal laws? It is usually thought that the Qu'ran sets down laws that determine moral standards. It is certainly important to go into depth in the analysis in order to understand how customs tend to justify themselves. Customs often justify themselves by invoking the sacred text as a foundation when they could alternatively be seen as mere interpretations by a patriarchal system trying to remain in force.² Is it possible to conceive Islamic laws that, through an enlightened interpretation, could be accommodating to non discriminatory laws? One may also ask whether certain laws and norms established for specific purposes and in a specific context a thousand years ago retain their relevance in changed social, political, and economic circumstances.

The Qu'ran being the recognized source of current law, it is advisable to first look into the text itself to see what could justify the inequalities present in the law. Tensions between Islamic Law and Human Rights focus on three points: marriage, inheritance, and nationality. We now propose to shed light on these specific notions to understand how they are embodied in the personal status laws peculiar to each country under review. It will thus be necessary to identify these notions and understand them before calling them into question.

¹ Intern, SHS/HRS/GED, summer 2004. This paper was supervised and edited by Valentine Moghadam. This paper reflects the views of the author and not of UNESCO.

² <http://www.wluml.org/french/pubs/rtf/dossiers/dossier11-12-13/D11-12-13-14-por-fond.rtf>

WLUML File June 11-12-13th, 1996 "Why Fundamentalism? Iranian Women's Support for Islam" Haleh Afshar.

I. Brief Description of Three Areas of Friction

Marriage

a. Religious-based Marriage

In principle, the fact of entering into an Islamic marriage in a Muslim country, no matter where, goes hand in hand with the application of Islamic law, and all of the consequences that it implies in the event of marital dissolution. It should be pointed out that women neither lose their identity nor their assets in marriage.

In the Qu'ran, marriage is in fact a flexible arrangement, made through mutual consent, and according to which women are expected to be "obedient"³, but in return, they can expect men to provide for them the life style to which they were accustomed prior to the marriage. The marriage itself is negotiated on the basis of a contract which binds the two parties: so that the marriage might be consecrated, the contract includes the payment of a dower or Mahr.⁴ In marriage men are not only expected to financially support their wives, but also to treat them affectionately.⁵ Beyond this, men must also accept to pay an additional fee to mothers who agree to breastfeed their children.⁶

As an institution, marriage is glorified and celibacy is generally perceived as undesirable. In fact, marriage is a sign of the bounty of Allah:

"And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect" (Sura 30/21).

Regardless of these divergent concepts and aspects concerning mutual obligation, marriage is not necessarily perceived as a singular and irrevocable event, or as an unchangeable institution. Men, like women, have the right to choose different partners at different moments in their lives. Divorce is easy for men, and possible for women who had the foresight to include the right to divorce in the marriage contract. If this is not the case, women are allowed by the Qu'ran to negotiate.⁷ Still, the Qu'ran advises believers to seek, as much as possible,

³ There are many controversies, among Muslim scholars, on the meaning of obedience and on the question whether it is a requirement of good manners rather than submission.

⁴ **Sura 4 / 24.** "Also (prohibited are) women already married, except those whom your right hands possess: Thus hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property,- desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise."

⁵ **Sura 4/34.** "Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For God is Most High, great (above you all)."

⁶ **Sura 2/233.** "The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on the m. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear God and know that God sees well what ye do."

⁷ **Sura 4/128.** "If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practise self-restraint, God is well-acquainted with all that ye do."

reconciliation within marriage.⁸ Muslim scholars have long held that Islam does not hinder married women, or force them to stay at home and that, by giving them separate rights to property, it renders them economically independent from their husbands, and therefore completely capable of facing life's adversities. Still, the obligation to obey their husbands remains for married women as well as the fact that a husband is authorized to beat or reprimand a disobedient wife:

"The good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them" (Sura 4/34).

What about religious Christian marriages in the Middle East, notably in Lebanon, with the largest Christian Arab population in the Middle East? Article 2 of the April 3, 1951 Lebanese law on Personal Status expressly stipulates that "denominational jurisdictions have authority (concerning matters of): marriage contract, its conditions and marital obligations as well as the validity or non-validity of the marriage....." In what follows, we make an in-depth study of this point.

b. Mixed Marriage⁹

Does the Qur'an allow a Muslim to marry a non-Muslim?

Most Islamic laws stipulate that the marriage between a Muslim man and a non-Muslim woman is void. This reflects what we have noted during this study of family law in five distinct Arab countries. First of all, one has to understand fully the question at hand. To do this one must remember that *to be Muslim, is not necessarily to be of Middle Eastern or African origin*. Islam is a universal religion, and a European can be Muslim, and just as Muslim as somebody born in a Muslim family in an Arab country. The question centres on the marriage, or *el nikah*,¹⁰ of a Muslim man with a woman who does not renounce her non Muslim religion or vice versa. In this case does Islam allow for this type of marriage?

In that which concerns the union of a Muslim man with an atheist, agnostic or polytheist (*mushrika*), it is not possible according to Islam. The Qur'an says: "And do not marry the idolatresses until they believe"¹¹ On the other hand, a verse in the Qur'an makes marriage possible between a Muslim man and a Jewish or Christian woman: "And the chaste from among the believing women and the chaste from among those who have been given the Book before you (are lawful for you); when you have given them their dowries, taking (them) in

⁸ **Sura 4/35**. "If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, God will cause their reconciliation: For God hath full knowledge, and is acquainted with all things."

⁹ <http://www.maison-islam.com/article.php?sid=99&mode=thread>

Extract of a work by Al-Qardhāwī, *Fatāwa mu' āsira* (volume 1, pp. 462-476)

¹⁰ The term "*El nikāh*" has a connotation of inequality between man and woman, because the man is the one who is supposed to have had links to the woman

"*el rajol yankah el mara' ; el mara' tounkih wa là tankih*" "The man marries the woman; the woman is married, she does not marry"

¹¹ **Sura 2/221**. "And do not marry the idolatresses until they believe, and certainly a believing maid is better than an idolatress woman, even though she should please you; and do not give (believing women) in marriage to idolaters until they believe, and certainly a believing servant is better than an idolater, even though he should please you; these invite to the fire, and Allah invites to the garden and to forgiveness by His will, and makes clear His communications to men, that they may be mindful."

marriage, not fornicating nor taking them for paramours in secret” (Sura5/5). This textual reference makes marriage between a Muslim man and a Jewish or Christian woman permissible. Yet this permission is contingent on the four following conditions:

- The future wife must truly believe in God and must really be Jewish or Christian. This is because there are men and women who although they have a Christian name due to cultural or family tradition, are in fact atheists or agnostics.
- As stressed in the following verse, the future wife must be virtuous: “*the chaste from among those who have been given the Book before you*”. The verse does not allow marriage with a woman who has immoral habits.
- The future wife must not be from a people who are at war with the Muslims. As Ibn Abbas says, if she is from a people at war with the Muslims (*harbî*), marriage is impossible.
- Lastly, there must not be the certainty or even a strong suspicion of something bad that would result from such a marriage of a Muslim man with a woman belonging to the People of the Book.

Sharing the same beliefs, values, being able to participate in the same sacred rites and having the same references are certainly factors that bring about equilibrium in a marriage. Still this view is somewhat simplified and in any event should not be subjected to religion or politics. Normally, marriage between a Muslim man and an atheist, agnostic or polytheist woman is not allowed by Islam. Only a marriage with a woman from the People of the Book is allowed according to four conditions.

A second question should be asked. Why does religion not allow Muslim women to marry non-Muslim men, while under certain circumstances Muslim men can marry non-Muslim women? The difference between the marriage of a Muslim man with a Jewish or Christian woman and the marriage of a Muslim woman with a non-Muslim man can be understood by way of understanding the logic of patrilineality.¹²

In the case of a Jewish or Christian woman marrying a Muslim man, the head of household recognises her faith in Moses and Jesus who are considered to be authentic messengers of God. On the other hand, Muslim sources do not allow the marriage of a Muslim woman to a Jewish or Christian man because she could find herself in a situation in which the head of household would not recognize her faith and Mohammed’s message as an authentic message of God. That is why what is possible in one direction is impossible in the other. We can only note that here marriage is part of a patriarchal social structure. This implies the application of a system of patrilineal filiation in which the individual inherits the cultural identity of his father and cannot transmit it to his children unless he is a man. In such a system, belonging and rights are transmitted only by men. Patrilocal culture also manifests itself; the married couple often lives with or near the husband’s family. This encourages the affirmation that in this world it is the man who is of importance, notably for that which concerns family heritage, inheritance, and assets.

In a 1980 publication, a law professor at the University of Alexandria and the Arab University of Beirut, advocated the death penalty for non-Muslim men who marry Muslim women. For it

¹² As was explained by Dr Moghadam.

is the most effective manner of making sure that “*the infidel (kafir) doesn’t even dare contemplate this heinous act, which sullies the honour of Islam and the Muslim people*”¹³

In Lebanon, the various religious laws maintain the isolation of each faith by establishing a barrier to mixed marriage. However for Samia Cha’ar, professor at the Faculty of Law of the Lebanese University, “equality cannot be achieved without a unified civil law on personal status”. The stranglehold of these archaic legislations must be broken. We must align ourselves with International Law”.¹⁴ It is useful to specify that there are no non-religious marriages in the Middle East, which constitutes another obstacle to the acceptance of mixed marriages in this region.

c. Civil Marriage: Is civil marriage valid from the point of view of the Shari’a?

Legally speaking, there is no per se interdiction but rather a legal vacuum concerning civil marriage. The consequence of this absence of legislation is the non existence of civil marriage in practice. This implicit interdiction is held up by religious institutions that seek to maintain the political and social power that is afforded to them through the institution of religious marriage as the only possible form of marriage.

d. Temporary marriage

The Shi’ite Muslim Law comprises a form of marriage called « *sawag al-Mutah* », literally “pleasure marriage” often translated as a “temporary marriage” which can vary from one hour to several years. Such a marriage allows for the avoidance of sexual relations outside of marriage which Muslim law does not allow.

B. Inheritance

The issue of inheritance or succession consists of all property, movable and immovable, all rights and obligations left by a person at his/her death.

The laws dictating the sharing of inheritance in Muslim society are taken from the Holy Qur’an. These laws can be a point of controversy because of gender-based inequalities. These laws can resort to including the brothers and sisters of the father (uncles and aunts) in the sharing of inheritance when the deceased has not left behind a son! Again, the logic of patrilineality explains the practice.

This question has become a classic one: is not the fact that Islam gives a boy double a girl’s share of the inheritance proof that women do not enjoy the same rights as men in Islam? Conversely, is the fact that in Islam, men (husband or father), have the duty of providing for the family a legitimate justification?

The verses of the Qur’an dealing with inheritance are:

Qur’an, Sura 4, Al Nissa’ (Women)

11. God (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the

¹³ Badran, Badran Abu-al’Aynayn: Al-ilaqat al igtima’iyyah bayn al muslimin wa ghayr al muslimin, (Social Relations between Muslims and non-Muslims), Dar al-nahdah al’arabiyyah, Beyrouth, 1980, p.88.

¹⁴ (Article published in the 19 November, 1999 issue of the newspaper [Libération](http://www.fidh.org/lettres/130-2.htm) <http://www.fidh.org/lettres/130-2.htm> The Dictatorship of Religious Marriage.)

mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God; and God is All-knowing, All-wise.

12. In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by God; and God is All-knowing, Most Forbearing.

13. Those are limits set by God: those who obey God and His Prophet will be admitted to Gardens with rivers flowing beneath, to abide therein (for ever) and that will be the supreme achievement.

176. They ask thee for a legal decision. Say: God directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, Her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth God make clear to you (His law), lest ye err. And God hath knowledge of all things.

Are there situations where men and women inherit an equal share? Professor Sheikh Muhammad Sa`îd Ramadân Al-Bûtî¹⁵ has explained the following:

This traditional debate about female inheritance, which has been going on for a long time, was sparked off by the following decree: “to the male, a portion equal to that of two females”. This rule is in fact a fragment of the following verse of the Qur’an: “God (thus) directs you as regards your Children’s (Inheritance): to the male, a portion equal to that of two females” This verse establishes a law exclusively concerning the inheritance of the children. For the other heirs, men and women, there are specific laws. Generally, the share of these heirs does not depend on sex. In some cases, the share of the woman may even be superior to that of the man. Below are some situations where the share of the woman is equal or even superior to that of the man.

Firstly, if the deceased leaves children, a father and a mother, then the father and the mother take both a sixth of the inheritance, without difference of sex between them regardless of the

¹⁵ <http://www.islamophile.org/spip/article499.html> article 2004

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rule “to the male, a portion equal to that of two females”. These two shares are explicitly mentioned in the Qu’ran: “For parents, a sixth share of the inheritance to each”.

Secondly, if the deceased leaves two uterine brothers and sisters and if they are not excluded by a first order heir, then the brother and the sister each take a sixth of the inheritance, without difference of sex between both regardless of the rule “to the male, a portion equal to that of two females”. These two shares are explicitly mentioned in the Qu’ran: “descendants, but has left a brother or a sister, each one of the two gets a sixth”

Thirdly, if the deceased leaves more than two uterine brothers and more than two sisters, then the brothers get a third of the inheritance and the sisters also get a third of the inheritance, without difference of sex between both groups, and regardless of the rule “to the male, a portion equal to that of two females”.

Fourthly, if the deceased leaves a husband and a daughter, then the girl gets half of the inheritance and the husband gets only a quarter. The woman, in that case, inherits twice as much as the man.

Fifthly, if the deceased leaves a wife, two girls and a brother, then the wife takes an eighth of the inheritance, both girls share two thirds between themselves and the rest goes to their uncle who is the brother of the deceased. So each girl inherits more than her uncle.

It is therefore obvious that the rule “to the male, a portion equal to that of two females” is not, as many people claim, a permanent rule which applies every time a man and a woman share an inheritance, says Professor Sheikh Muhammad Sa`îd Ramadân Al-Bûţî.

Succession in case of difference of religion

There is no rule in The Qu’ran that would preclude succession between Muslims and non-Muslims. The verse of the Qu’ran “God will put no means within the reach of the unfaithful to take him(it) on the believers” (4:141), often misquoted as forbidding succession between Muslims and non-Muslims, says nothing about succession. As for what Muhammad said on the question, it should be interpreted in a historical perspective.

According to Islamic law, the law of succession is based on the ties of solidarity (*wilayah*) between the deceased and the heir.

Most Personal Status Codes have made no creative effort in this field. They always forbid succession in case of difference of religion.

Equality in succession

It is true that men and women receive unequal treatment in certain succession rules of the Qu’ran. These same rules have been included in the Unified Arab Code of Personal Status Project. Various arguments have been put forward to justify this attitude of the Qu’ran towards women. Is it contrary to the Qu’ran for a man to give up his privileges and treat his wife and sister on an equal footing?

While there is some justice in the Islamic standards, this justice must be replaced in a traditional context where the men work and women stay at home. Today, with more access to the labour market for women as well and their empowerment within the family, Islamic

standards concerning the inheritance are no longer relevant and can no longer be considered just.

A comparison with other legal systems

In countries such as Cyprus, France, Turkey and the United States, different civil rules apply. Cypriot law, for example, states that marriage cannot be dissolved before a period of three years after the date of celebration “except in case of adultery or of very grave fault”. This is not the case in France where divorce can be obtained at any time.

What rules do then apply to the assets? According to French law, joint ownership applies automatically, “unless the couple explicitly decided otherwise”. The same rule applies in Cyprus where the couple must make a written provision for the separation of property before the marriage is celebrated. In most parts of the United States, too, the law provides that marital property, including the marital home, is divided equally between the divorcing couple, unless a legal contract drawn up between the two stipulates otherwise.¹⁶

C. Nationality

In most Arab countries, women do not lose their nationality by marrying a foreigner. However, with a few exceptions, they cannot pass on their nationality to their husbands and children. In most of these countries, the only case in which a mother can pass on her nationality to her children is when they are illegitimate or born of a stateless father. In the patriarchal social order, religion, identity, and residence are passed on by the father. Thus in the Middle East, citizenship and nationality are passed on by the father. One must keep in mind that at the beginning of Islamic history, its laws were progressive compared with those of other cultures. But today women who work and raise children do not have the same rights as men. It is for this reason that many women seek equal citizenship rights, an issue which has been the subject of many conferences and publications. Some studies have pointed out that contemporary nationality laws are the product of modern legal interventions during the colonial period, rather than laws that emanate from the Sharia.¹⁷ It should be noted that Western women lacked nationality rights until the 1930s. It was only towards the second half of the twentieth century that Western countries reformed their laws to enable women, married to non-nationals, to pass on their nationality to their children and their husbands.¹⁸

Having outlined the key notions, we now turn to the case-study countries, namely Iraq, Jordan, Lebanon, Palestine and Syria. We shall then see how the norms relating to the aforementioned issues are implemented.

II. Country Analyses

A. Iraq

After 35 years of dictatorship, wars, nationalist conflicts, religious expansionism, sanctions, and economic recession, what is the life of women like? At this writing [October 2004] a so-called democratic regime with liberal laws has been in place in Iraq. Apart from the

¹⁶ As explained by Dr Moghadam.

¹⁷ See the report by Nadia Hijab of an expert meeting organized by UNDP which was held in Casablanca in July 2002. <http://www.pogar.org/publications/gender/nadia/summaryf.pdf>

¹⁸ As explained by Dr Moghadam.

difficulties of war and occupation that Iraqi women face, how are they faring in the emerging legal systems?

“No to Islamic law (Shari'a) in Iraq, yes to a secular state”.¹⁹ This is the slogan contained in the declaration of the Organization for Women's Freedom in Iraq (created June 2003) on the Interim Governing Council's attempt to adopt Islamic Shari'a through Resolution 137. This marks the will to establish a secular state with an egalitarian law in Iraq, against the will of the Governing Council, which announced the abolition of the Iraqi family law and its replacement by the Islamic Shari'a. Should the future status of women in the “New Iraq” be a cause for concern?

In 1970, Iraq adopted a temporary Constitution that has since been modified several times. The most recent temporary Constitution dates back to 1990. It proclaims Islam to be the state religion (art. 4) and guarantees freedom of religion (art. 25), and prohibits all kind of racial, religious or linguistic discrimination (art 19). As for the 1958 Code, it made polygamy extremely difficult, granted child custody to the mother in case of divorce, prohibited repudiation and marriage under the age of 16. It must be pointed out that about 95 % of Iraqis are Muslim and that approximately 60 % adhere to the Shi'ite rite, and the others (40 %) to the Sunni rite.

*November 15th, 2003 Agreement between the Coalition and the Interim Governing Council:*²⁰

* On November 15th, 2003, the President of the Interim Governing Council announced the conclusion of a **5-point agreement** on the political future of Iraq, concluded the same day with the American Administrator Paul Bremer acting in the name of the Coalition (see November issue).

* The main steps and political institutions planned are:

- A “**Transitional Administrative Law**” (constitution) will be drafted by the Interim Governing Council and promulgated by P. Bremer giving (and imposing) a political and constitutional framework to Iraq until a permanent constitution is issued. In principle, it should be completed before February 28th, 2004.

- A **Transitional Assembly** will be elected by the end of May, 2004 by caucuses in each of Iraq's 18 governorates. This assembly will elect a **transitional government** by the end of June, 2004, at which date (precisely on June 30th) the Coalition, while maintaining forces on the ground, will officially transfer sovereignty to these new institutions. (The current government is composed of 6 women out of 25 Ministers).

- The new government will prepare the election of a **constitutional Convention**, to be elected by the Iraqi people by direct and universal suffrage, and which will write a **Constitution**

- Finally, a **new government** will be set up based on this Constitution by December 31, 2005.

¹⁹ http://sisyphe.org/article.php3?id_article=882

²⁰ <http://perso.wanadoo.fr/ouvertsurlemonde/Irak%20Avenir%20politique.htm>

The Transitional Administrative Law was based on the following principles:

- Respect for human rights and basic liberties among which religious freedom and equality between all citizens
- Total separation between the three powers (executive, legislative and judiciary)
- Introduction of certain degree of decentralization in provinces, taking into account the situation in Kurdistan
- Supremacy of the civil power over the armed forces and the security forces
- Establishment of a pluralistic, liberal and democratic system respectful of the Muslim identity of the majority of the Iraqi people, while guaranteeing the rights of the other religions.

The issue of reference to Islam in the future constitution:

Promulgation of the transitional law faced disagreements over questions such as the place of Islam in the legislation, federalism (demanded by the Kurds), and the role of women. Some Shiite leaders wanted Islamic law to become the law of the land, enshrined as such in any future constitution.

On February 16th, 2004, Paul Bremer, Iraq's Administrator declared that he "*would veto any move to make Islamic law the principal source of the Iraqi constitution (in Iraq) as some members of the Iraqi Governing Council*". He clarified that in a draft of the transitional law, which must be approved by February 28th and be in force for 18 months until the direct elections of the next executive, it is written that "Islam is the official religion of the Iraqi State and one of the sources of the law". "This is not the same as saying it is the main source of the law", he added. Questioned on what he would do if the draft made Islam the "main" source of the law, he answered: "*In that case I shall use my right of veto. Our position is clear: there will be no transitional law if I do not sign it*".

The following day, the Shi'ite religious authority reacted strongly. Sheik Abdel Mahdi al-Karbalai, representing Grand Ayatollah Ali Sistani, the main religious reference of Iraqi Shi'ites, in the holy city of Kerbala (South) declared to AFP that "*Islam is the source of the law, and it is normal in a country where the majority are Muslim*". "*The Iraqi people are the only one who can oppose their veto to any legislation and nobody has the right to interfere in the Constitution*", he added. "Today power belongs to the people and that means we do not have to adhere to concepts imported from the outside, from thousands of kilometres away", declared from his part sheik Sadreddine al-Koubbanji, a leader of the Supreme Council for Islamic Revolution in Iraq (SCIRI), a powerful political movement representing the Shi'ites, and whose leader, Abdelaziz al-Hakim was a member of the Governing Council. "What Bremer said yesterday in Kerbala, is that Islam has to be a source of inspiration for the transitional law but not the only one; which is consistent with the agreement of November 15th signed by the Governing Council and the Coalition", said Dan Senor, Mr Bremer's spokesman. An Iraqi constitutionalist participating in the discussions of the Governing Council on the transitional law, told the AFP that the Council was divided between a "**fundamentalist faction**", comprised of both Sunnis and Shi'ites, which wants Shari'a to be the main source of Iraqi legislation, and a "**secular faction**" which wants it to be "one of the sources".

Many Iraqi intellectual women support the fact that Islam should be *one* of the sources of the law but not the sole one.²¹

The issue of the status of women

The question of the status of women divides the members of the Iraqi Council just as much as the role of Islam as main source or not of the law. Shi'ite members of the executive left the discussions at the end of February to protest against a decision to go back on the abrogation of the Law of Personal Status of 1959, which was favourable to women. The abrogation had been decided at the end of December by the Council, under the presidency of the Shi'ite Abdel Aziz Hakim, leader of the Supreme Council for Islamic revolution in Iraq (SCIRI). Fifteen members voted in favour of the restoring of the code of 1959, while five voted against and five were absent, according to Mrs Raja al-Khouzai, Shi'ite member of the council who had asked for this question to be put on the agenda. Bill 137, voted on December 29th by the Council, contains articles preventing the social development and progress of women.²²

Because of the transitional period in Iraq it is not possible to identify explicit rules concerning women's rights in the specific areas of marriage, succession and nationality. In these periods, there is characteristically no legislation in force and future laws are under negotiation. Since no personal status law has yet been adopted, we will have to wait for the return of stability.

We can however mention the Iraqi law of 1959 which was modified several times:

Art. 40 - Each spouse may seek divorce in the following cases:

- 1) If one of the two spouses causes harm to the other or to their children making it impossible to continue their married life. Alcohol or drug addiction is considered harm, provided it is proved by a report of a specialized official medical commission. The same applies to games of chance at the conjugal house.
- 2) If the other spouse commits adultery. The practice of sodomy in all its forms is considered adultery.
- 3) If the marriage contract was concluded without the agreement of a judge before one of the spouses reached the age of 18.
- 4) If the marriage was concluded outside the court, and was forced and consummated.
- 5) If the husband takes a second wife without permission from the court.

Art. 41 - 1) Both spouses may seek divorce on grounds of discord and strife, before or after consummation of marriage.

2) The court must make an inquiry to determine the causes of discord. If it deems it necessary, the court can then appoint two arbitrators, one acting for the wife's family, and the other for the husband's family - if possible - to try to reconcile them. Otherwise, the court leaves the choice of the arbitrators to the spouses. If they cannot reach an agreement, the court decides the issue.

3) The two arbitrators must strive for reconciliation. If they fail, they inform the court by naming the party responsible. If they do not agree, the court appoints a third arbitrator.

4) a) If the court is convinced that there is continued discord between the spouses and fails to reconcile them, and if the husband refuses to repudiate his wife, the court separates them.

²¹ Communication from Dr Moghadam, after she met with an Iraqi delegation in Helsinki in September 2004.

²² <http://perso.wanadoo.fr/ouvertsurlemonde/Iraq%20Avenir%20politique.htm> Rapport « Avenir politique de l'Iraq », 2004.

b) If divorce occurs after consummation, the remaining part of the dowry ceases to be due if the wife is responsible, whether she is the plaintiff or the defendant. If she had already received the entire dowry, she has the obligation to give back at most half of it. If the responsibility is attributable to both, what remains of the dowry is shared between them in proportion to their respective responsibility.

c) If divorce occurs before consummation and the responsibility is attributable to the wife, she must return the received dowry.

Art. 42 - If in accordance with article 40 the petition for divorce was rejected for lack of proof and the decision of the rejection is considered *res judicata*, and a second petition is introduced for the same reason, the court must proceed to arbitration according to art. 41.

Some Iraqi intellectuals demand the restoration of the personal status Code of 1959 even though it contains restrictions to women's rights.²³

B. Jordan

The Family Law in force is the Personal Status Law of 1976.

a. Marriage

Marriage Age, Custody and Consent: male: 18; female: 16.

The marital guardian must be a Muslim and sane male relative of the future bride.

Art. 19: the bride can request in the marriage contract that her husband does not force her to leave the country and that he does not marry a second wife. She may also request a special clause to obtain the right to divorce.

Polygamy Art. 40: a man who has more than one wife must treat all co-wives equitably and provide them with separate dwellings.

Divorce Art. 87: the husband can mandate another person to repudiate his wife. Under certain conditions (art. 113-116, 120, 123, 125, 126, 127, 131, 132), the wife has the right to seek divorce if she can prove that she has suffered damage or ill-treatment, the decision remaining with the judge.

Art. 134: in case of divorce without legitimate cause, the judge grants compensation to the wife, not exceeding the equivalent of one year's maintenance.

Child Custody Art. 154: the husband is the legal guardian of the children; the wife is only entitled to custody.

Art. 37: the wife owes obedience and cohabitation to her husband. She has the obligation to follow him wherever he decides to go provided he ensures her safety. If she refuses, she loses her right to financial support (*nafaqa*).

Art. 39: the husband must maintain his wife and treat her well; the wife owes obedience to her husband.

Art. 68: If the wife works outside the home without the consent of her husband, she loses her right to *nafaqa*.

Act N 34: the father is the head of the family. In the event of death or of loss of nationality, while his wife (wives) and children are nationals, the first wife or the elder son becomes head of the family.

²³ Communication from Dr Moghadam, after she met with an Iraqi delegation in Helsinki in September 2004.

Following are some articles of the Jordanian Personal Status Code promulgated by law 61 of 1976.

Art. 132 - Either spouse may petition for divorce on the grounds of discord and strife causing such harm as to make cohabitation impossible.

a) If the wife petitions for divorce and shows evidence of harm, the judge must try to reconcile the spouses. If he fails, he enjoins the husband to reconcile with his wife and adjourns the trial for at least one month. If the spouses fail to reconcile, the case is submitted to the arbitration of two arbitrators.

b) If the husband petitions for divorce and shows evidence of harm and discord, the judge must try to reconcile the spouses. If he fails, he postpones the trial for at least one month to permit reconciliation. If after this period reconciliation is not achieved and the husband maintains his action, the judge submits the case to two arbitrators.

c) Both arbitrators must be fair and capable of achieving reconciliation, and chosen from, when possible, one among the wife's relatives, and the other one among the husband's relatives. Otherwise, the judge appoints two fair, experienced men, and who are capable of achieving reconciliation as arbitrators.

d) Both arbitrators will have to seek the causes of discord and strife between the spouses, with them, with their neighbours or with every person whom they consider useful in their investigations. They must make a signed report on their inquiries. If they see a possibility of reconciling the spouses in an acceptable way, they decide on it.

e) If both arbitrators fail to reconcile and the wrongs are on the wife's side, they grant the divorce in exchange for a payment in compensation of an amount that cannot be less than the dowry. If the wrongs are on the husband's side, they decree irrevocable divorce; the wife can demand all her conjugal rights as if the husband had repudiated her.

f) If it seems to both arbitrators that the wrongs are shared, they grant the divorce in exchange for a division of the dower in proportion to the wrongs of each side. If the situation is not clear and both arbitrators are unable to determine the wrongs on each side, they decide the separation and fix the allowance to be paid by each of the spouses.

g) If the petition for divorce was made by the wife and she is condemned to pay compensation, she must make the payment before the decision of separation by both arbitrators is taken, unless the husband accepts a postponement. In that case, the arbitrators grant the divorce in exchange for replacement compensation. The judge is bound to make his final decision in accordance with it. If the petition for divorce is made by the husband and both arbitrators decide the payment of compensation by the wife, the judge must decide on separation and compensation according to the decision of both arbitrators.

h) If both arbitrators disagree, the judge appoints two other arbitrators or a third arbitrator holding a casting vote. In that case, the decision is made by majority vote.

i) Both arbitrators must submit a report to the judge stating the conclusion they reached. The judge decides in accordance with this report if it respects the standards set out in this article.

Inheritance. Jordan's law of succession is modelled on Islamic law, as discussed in Part I.

Nationality. The Jordanian Nationality Law of 1954 was modelled on British nationality laws. It was amended in 1987. The grounds for granting nationality include anyone born to a father holding Jordanian nationality; anyone born in the Hashemite Kingdom of Jordan to a mother holding Jordanian nationality and to a father whose citizenship is unknown, or who is

stateless, or whose paternity has not been legally established; and anyone born in the Hashemite Kingdom of Jordan to unknown parents.

The Law also stipulates that a Jordanian man can grant Jordanian nationality to his non-Jordanian wife provided that she has resided in the country for a period of three years if she was an Arab national or five years if she is of non-Arab nationality. A Jordanian woman marrying a non-Jordanian cannot pass her nationality to her “foreign” husband. However, these restrictions can be waived if the non-Jordanian husband fulfils specific conditions, including investment in the country, residence for at least four years with the intention of permanent residence, and legal employment that does not compete with Jordanians. Similarly, the foreign husband of a Jordanian woman who wishes to acquire a residency permit must possess a permit for work that does not compete with Jordanians for the same employment, have a viable source of income, invest in the country; and have academic or professional qualifications unmatched in the country.

A Jordanian woman marrying a non-Jordanian (but with established foreign nationality) can neither pass her nationality to her children nor grant them residency permits, whereas the children of a Jordanian man married to a non-Jordanian wife automatically acquire his nationality as well as residency. Since the Nationality Law is based on blood ties and not on land, the children of a Jordanian male are Jordanians wherever they are born, and a minor (below the age of 18) whose Jordanian father acquires a foreign citizenship can retain his/her Jordanian citizenship.

Consequently, the children of a Jordanian woman married to a non-Jordanian with established foreign nationality do not enjoy many rights, including enrolment in the school system, social entitlements, or political rights. Indeed, they are not even registered in their Jordanian mother’s passport, which is stamped “Children are not included due to the different nationality of the father”.

Activists, including the Jordanian National Committee for Women, have called for an amendment to Article 13 of the Nationality Law so as to give the Council of Ministers the right to grant Jordanian nationality to the children of Jordanian mothers married to non-Jordanian foreign nationals. (Let us note that in 2002 there has been a reform in this area – see Box.)

Jordan signed CEDAW in 1980 and ratified it in 1992, but, like Egypt, its reservations included one to Article 9 paragraph 2. A later memorandum submitted by the Ministry of Foreign Affairs affirming its reservations explained that the article conflicted with the provisions of the Shari’a. Abla Amawi argues that there is no contradiction between the CEDAW article and Shari’a because Shari’a does not address the issue of nationality, but that of *nassab*, which establishes linkages of a child to their father and not to the mother.

In fact, the Government’s apprehension appears unjustified since Article 38 of the Jordanian Civil Code states “every person shall have a name and a surname and his surname shall be attached to the names of his children”. Therefore, paternal linkages based on blood ties to the father would not be denied if the mother passes her citizenship to her child who holds the surname of the father.

The passport regulations discriminate against women. They stipulate that a Jordanian woman cannot obtain a separate passport without her husband’s written permission. Nor can children

below the age of 16 and the husband's permission is required to enter them in their mother's passport.

The Passport Law also discriminates against women by stipulating that a Jordanian wife cannot obtain a separate passport without her husband's written permission. Neither can children under the age of 16. If those children are to be included in their mother's passport, the husband's permission is also required. Article 4 (a) of the Passport Law grants a woman the right to leave the country provided that she has a valid passport (Jordan also expressed reservations to CEDAW Article 15 paragraph 4, with regard to freedom of movement and choice of residence and domicile). By contrast, a female child can obtain the passport without the consent of her guardian upon reaching 18 years of age. However, once she gets married, she has to obtain her husband's permission. A woman can by-pass the need for her husband's permission by securing the agreement of the Passport Department Director, who can grant her a passport for a one-year period. This possibility however, is limited in practice to Jordanian mothers who were abandoned by their non-Jordanian husbands. The yearly provisional renewal makes it difficult for the children to move and travel, and increases the mother's burdens in terms of time and expenses required for renewal.

Women Status Act N 6/1954: a Jordanian woman may retain her Jordanian nationality in the event of her marriage to a non-Jordanian.

Women and Marriage: since the amendment of the civil code in 1996 and of the procedure for obtaining a passport, a Jordanian woman married to a foreigner may obtain an independent "family book" in which the husband's nationality must be entered. But the children can only be entered in the father's register.

Women and Children The child of a Jordanian man is Jordanian.

Reform: As regards the transfer of nationality by the mother, the law on nationality was amended, so that a Jordanian woman who marries a non-Jordanian may transfer Jordanian nationality to her children (2002).

C. Lebanon

There are 17 official religions in Lebanon.²⁴ Every community has its own family law and its own religious courts which adjudicate cases. The civil registry is kept by the religious communities. The civil jurisdictions are organized by the provisions of the Code of civil procedure while the community jurisdictions fall under the laws of the different religious communities recognized by the Lebanese State. [This is perhaps an extreme case of legal pluralism.](#)

Article 9 of the Lebanese Constitution of 1926²⁵ guarantees total freedom of religion to the various religious communities and grants them the right to have specific personal status laws. The Constitution thus recognizes the 17 religious communities of Lebanon as well as their right for them to organize their jurisdictions and to establish their own personal status legislation.

²⁴ Maronite, Greek-Catholic, Armenian-Catholic, Syriac-Catholic, Latin Catholic, Chaldean-Catholic, Greek-Orthodox, Armenian-Orthodox, Syriac-monophysite, Assyrian, Protestant, Coptic-Orthodox, Chaldean-Orthodox, Sunni, Shiite, Druze, Alawite.

²⁵ <http://www.conseil-constitutionnel.gov.lb/fr/constitution.htm>

The denominational nature of the Lebanese polity is twofold: personal status denominationalism and political denominationalism. The first implies that all matters of personal status or family: marriage, affiliation and, to a certain extent, succession fall under laws established by the different communities by delegation from the State. Accordingly, cases pertaining to these areas are adjudicated by religious courts. The second implies that political and administrative positions are divided between the various communities.

As a general rule the Lebanese civil courts are capable of hearing disputes which have arisen from a marriage contract concluded abroad between two Lebanese or between a Lebanese individual and a foreigner under the civil procedures of the country concerned. The provisions of the laws concerning the capabilities of the Shari'a and Druze courts are applicable if both spouses are Muslims and at least one of them holds Lebanese nationality.²⁶ There is legislation applicable to all Lebanese, legislation applicable to Muslims, and legislation applicable to non-Muslims

a- Legislation applicable to all Lebanese

- Decree 8837 of 15 January 1932 fixing the duties and functions of the census agents and commissions;
- Law of 7 December 1951 modified by the law of 11 March 1954 and that of 18 December;
- 1956 regulating the registration of the acts of civil status;
- Ottoman Majallah.

b- Legislation applicable to Muslims

The Druze community Personal Status Law was promulgated on 28 February 1948, which established the Hanafi rite, also known as Quadri-Pacha Code. This was followed by the important provisions relative to the foundation of Law, which are contained in the law of 16 July 1962 relating to Sharia courts. Those are the only modern texts currently in force.

Sunni and Shi'ites Communities

- Law of 16 July 1962 concurring in the project of organization of the Sharia, with Sunni et Ja'afari Shii jurisdictions.
- Ottoman Family Code of 25 October 1917

c- Legislation applicable to non-Muslims

Government Texts

- Law of 23 June 1959 on succession rights of non-Muslims.
- Law of 2 April 1951 relative to the competence of denominational jurisdictions of non-Muslim communities.

²⁶ Article 79 of the Lebanese Constitution

Community Texts

Catholic Community

- 1) Personal Status Law in Catholic Communities
- 2) Motu Proprio "Crebrae Allatae" of 22nd February 1949 on marriage discipline in the Eastern Church
- 3) The Latin Canon Code: canons included in the bill on marriage in the Latin Community
- 4) Mixed marriages: Instruction "Matrimonii Sacramentum" of the Congregation for the Doctrine of the Faith of 18th March 1966
- 5) Mixed marriages between Catholics and non-Catholic baptised Easterners : Decree of the Congregation for the Eastern Church of 28th February 1967
- 6) Powers and privileges granted to Bishops: Motu Proprio "Pastorale munus" of 30th November 1963
- 7) Dispenses reserved for the Sovereign Pontiff: Motu Proprio "De episcoporum muneribus" of 15th June 1966
- 8) Ministry of the Deacons: dogmatic constitution on Church promulgated on November 21st 1964 at the Ecumenical Council, Vatican II

- Personal Status Law of the Greek Orthodox Community
- Personal Status Law of the Armenian Orthodox Community
- Personal Status Law of the Syrian Orthodox Community
- Personal Status Law of the Evangelic Community of Lebanon
- Personal Status Law of the Israelite Community

This multiplicity of laws can create jurisdictional disputes between community courts.²⁷

Religious marriage

If the wedding took place in Lebanon, the marriage falls under the family law of the community in which the marriage was concluded. In all Eastern Catholic communities, marriage is governed, in matters such as contract, obligations, validity, annulment, and dissolution of marital links, by the law on the sacrament of marriage of the Eastern Catholic Church, enforced since February 22nd, 1949 by apostolic decision and scheduled to the law of April 2nd, 1951.

Civil marriage

Civil marriage such as exists in Europe and North America, does not exist in Lebanon. This means that if the wedding took place in France, Lebanese judges have to apply French law in matters concerning the marriage. In Lebanon, civil marriage no longer has any value once a religious wedding has taken place because it is the one that has legal value in Lebanon, contrary to what happens in France where the church wedding has no legal value. Today, couples that want to escape this religious diktat carry out a civil marriage abroad. Upon their return, their marriage is recognized. But if the Lebanese legislator recognizes such marriages for non-Muslims, the same is not so for Muslims.

On November 17th, 2000 the Lebanese civil society launched a large national campaign to demand the amendment of the Personal Status Code, in particular for the authorization of civil marriage, still forbidden in Lebanon.²⁸

²⁷ Appendix "Jurisdictional disputes between community courts".

²⁸ <http://www.fidh.org/lettres/130-2.htm>

It is advisable to clarify not only the law governing this type of contract, but also the legal consequences. Whilst Lebanese law authorizes and recognizes civil marriage abroad, certain situations escape the rules of the Lebanese common law and fall again under religious jurisdiction, notably in cases of dispute or of succession.

This legal “loophole” stems from article 25 of Decree 60 L.R. (Laws and regulations) of 1936, made under the French mandate, which allows citizens to have a civil marriage outside Lebanon. This law provides for the creation of a common law community. Consequently, all those who do not belong to a community, or who wish to leave the community in which they were born, can adhere to what Mr Ibrahim Traboulsi, a lawyer and assistant professor at the law and political sciences faculty of Saint Joseph University and La Sagesse University, called a “non-community community” or “civil law community”. This community can organize and administer its personal status within the limits of civil legislation. Every year, hundreds of couples, sometimes both belonging to the same community or to different communities, travel abroad to have a civil marriage, “a free choice which is an implicit refusal of the application of community law, the only one applicable in Lebanon, to their personal status”, explains Professor Traboulsi. Civil marriage is recognized by the Lebanese State and Lebanese courts are competent in dealing with this matter. They must settle disputes in accordance with the law in the country where the marriage took place. This means that magistrates must be acquainted with the foreign legal systems that they have to apply and their particular characteristics.

People have been talking about civil marriage for a very long time in Lebanon. During the discussion on the law of April 2nd, 1951, in which the powers of the ecclesiastical authorities were defined, several representatives were in favour of an optional civil personal status law. There has also been the strike of the Beirut association of lawyers, against the privileges granted to the religious authorities concerning personal status. Finally, there were Mr. Raymond Eddé's propositions concerning the institution of civil marriage in Lebanon. However, no bill was presented. The Beirut association of lawyers manifested several times its desire for a civil law of personal status. In the 1970s, the Democratic Party, which included Émile Bitar, Joseph Moghaizel, Auguste Bakhos, Bassem el-Jisr, drafted a bill on an optional personal status law in Lebanon. It was presented to Parliament by representative Bakhos, but the project was not debated. In a reform document (1975-1976), the National Movement, headed by Kamal Joumblatt, proposed an optional personal status law in order to strengthen ties between the Lebanese. This movement made no secret of its secular views. In July 1997, the representatives of the Syrian national Party introduced a bill on optional personal status before the Lebanese Parliament. A bill worked out by a group of jurists commissioned by former president Elias Hrawi was forwarded to the Cabinet for discussion. This project was published in the press on 6/2/98. It was the first time that a bill on this subject was adopted and presented by the head of State. This project was inspired by different civil codes: French, Belgian, Swiss, Turkish and Tunisian. It is a “Lebanese style” personal status code, which takes into account the aspirations of the people and respects the traditions beyond community

Walid Slaiby, coordinator of the campaign launched by the national Forum for the civil personal status in Lebanon. “The national Forum for the civil personal status in Lebanon was created in April, 1998 by the Movement for human rights after the defeat of a bill on optional civil marriage. It includes associations, private individuals, judges, lawyers, artists and political parties. The objective is the adoption of a civil personal status code which would permit among others civil marriage. The adoption of a civil code would thus create an authentic and deep coexistence: through mixed families. In the long run, I think that it will be even a relative guarantee against the possibility of civil war. Current laws cause sufferings. That is why we consider that a law capable of guaranteeing respect for equality is needed”.

memberships. It is a complete code dealing with all the issues of the personal status of the Lebanese people, from engagement to succession.

Legal effects

A civil marriage abroad produces all the legal effects which are linked to it, such as civil status registration, legitimacy of the children of this marriage and right to succession (that is that the children born from this marriage have the right to inherit). However, and this is the first source of complication, in all communities the religious (and not civil) law applies to the modalities of this inheritance. Mixed couples who often try to avoid the community matrimonial regime by opting for civil marriage cannot escape it in matters of succession. However, mixed marriages between Christians and Muslims raise the most problems, since religious difference precludes inheritance between the spouses. For Christians, the *succession law of 1959* applies and inheritance falls under the law of the community of the deceased. Another problem, and a major one, arises in marriages between Muslims. Although Islamic law formally recognizes the validity of civil marriage, it does not recognize its legal effects. “Benefits” expected from civil marriage are then neutralized by Islamic law, on the basis of *article 79 of the code of civil procedure which gives primacy to the Shari’a*. What advantage would then result from a civil marriage between Muslims? Practically none.

Necessity of mutual consent

The situation is quite different for mixed couples who choose a civil marriage. There again, there are considerable exceptions. As a general principle, Lebanese law does not favour a community law over another. Thus, in order to prevent one religious law from prevailing over another, jurisdictional disputes are decided by the Court of Appeal –a civil court – which works according to neutral rules. The will of both spouses is respected. However, a problem arises in the case of a double celebration; that is when the couple chooses to have a religious wedding before or after the civil marriage. The vast majority of people tend to believe that the religious marriage prevails in all cases, even if one of the spouses invokes the civil family status. The situation can only be resolved by the agreement of both spouses to refer to the civil contract.

Mixed Marriage

The various religious laws keep the religious communities apart and restrict mixed marriages. However, these marriages exist in Lebanon and they obey certain rules. They must be celebrated before the religious authority of the future husband’s community, unless both parties agree to choose that of the future wife. This agreement is made in writing, signed by both parties, and it implies that they will abide by the laws of the aforementioned community.

Nationality

In Lebanon, the nationality law was based on the French Law. Decree no. 15 of 19 January 1925 was amended by the Law issued in 11 January 1960. According to this law, a person is considered Lebanese if born to a Lebanese father; if born in the Greater Lebanon territory and able to prove that [he] is not naturalized as a foreign subject; or if born in the Greater Lebanon to unknown or stateless parents. A Lebanese mother can grant her children the Lebanese nationality if they were born illegitimately. If a mother has minor children and is naturalized as a Lebanese after the death of her husband, she can pass Lebanese nationality on to her children. In this case, Lebanese law gives the foreign woman more advantages than a Lebanese woman, who cannot extend her nationality to her children from a foreign husband

after his death. In some instances, Lebanese mothers have been obliged to claim that their legitimate children are illegitimate in order to entitle them to their nationality. The 1960 law also provided that a Lebanese woman married to a foreigner shall not lose her nationality once married and will not be obliged to take the nationality of her husband. A Lebanese woman can regain her Lebanese nationality if she proves that she was a Lebanese national before marriage to a foreigner (and that her marriage is dissolved). This provision does not apply to her children. They have to keep the nationality of their father. Lebanon has also ratified CEDAW, and like Egypt and Jordan has entered reservations to Article 9 paragraph 2. Lebanese women have worked hard, although as yet without success, to remove discrimination in Lebanese nationality law.

Lebanese Women Campaign to Change Nationality Law

The Lebanese Association for Human Rights in collaboration with other women's groups began with the more modest demand that a Lebanese woman should be able to give her children her nationality in the event her foreign-born husband dies, thereby equalizing the status of Lebanese women with the status of foreign women who become naturalized Lebanese. They based their case on the principle of equality, the well-being of the children and respect for family unity. The activists studied legal impediments, drafted an amendment, and launched the campaign. They presented their demands in a memorandum to the Minister of Justice in June and again in October 1992. Meanwhile, the Lebanese Association asked all women's organizations to collect cases of discrimination against Lebanese women and their children related to their nationality status. In March 1993 a ministerial committee was established to study the Lebanese Nationality Law, and women's groups submitted their own study to this committee, detailing cases of discrimination against Lebanese women.

In January 1995, the Lebanese Association organized a general debate on the subject for academics, activists, members of parliament and lawyers. The participants decided that the amendment should include not only widowed but also divorced women and signed their names to a petition that they submitted to the authorities. That same month, a delegation representing different institutions met with the new Minister of Justice and demanded that the amendment be endorsed. In February 1995, the Parliamentary Committee for Justice and Administration endorsed a draft law allowing a widowed mother to grant her Lebanese nationality to her children. The activists also presented another memorandum to the speaker of Parliament. That month, the Minister of Justice prepared a draft law in which he included a condition that a Lebanese widow had to prove continuous residence in Lebanon with her children at least for 5 years in order to grant them her nationality. The Lebanese Association for Human Rights strongly objected to this condition. Another meeting in December 1995 brought together the parliamentary committee, the Ministry of Justice, the Ministry of Interior, and women activists were present and defended their case. A parliamentary sub-committee was formed to study the subject – and it is still “studying” the subject.

Assessment:

Women and Marriage A foreign woman has the right to obtain the nationality of her Lebanese husband, but a Lebanese woman cannot confer her nationality on her foreign-born husband.

Women and Children Decree N 15/1925: A Lebanese woman cannot pass her nationality on to her child, except in the event of his foreign father's death or if the child is illegitimate

Lebanon is one of the countries whose personal status law falls under religious legislation. Article 9 of the Constitution has sanctioned the religious division of the Lebanese in recognized communities, forming legal entities, each having its laws and its courts in matters of personal status. Communities enjoy legislative and jurisdictional autonomy. We will have to wait for better days when civil courts will be the only competent courts to rule in all disputes whatever their nature. “The adoption of a civil code will create an authentic and deep coexistence, a non-segregationist civil space in a country where all institutions still depend on the religious institutions.”²⁹

Inheritance

Article 214 of the personal status law of the Catholic communities empowers the ecclesiastical courts to rule on the validity of the claims to succession.

Do men and women have an equal share of inheritance under Islamic law? The answer is no.

The succession of non-Muslims is governed by the law of June 23rd, 1959.

Article 8: A foreign national can inherit from a Lebanese, on condition that the laws of his or her country are reciprocal.

Article 14: the heirs are divided into three orders:

- Children and their descendants ;
- Father, mother and ascendants ;
- Brothers and sisters and their descendants.

Article 15: Children and descendants succeed, without distinction of sex, to their father, mother and ascendants. If all the descendants are of the first degree, the succession is divided equally among them.

D. The Palestinian Nation

The Palestinian Nation today. A nation is defined as a large human community possessing historical, linguistic, cultural and economic unity. As such, the existence of the Palestinian nation is indisputable. However, this nation is not internationally recognized as a country.³⁰ Palestine must therefore be considered in its specific context.

Palestine is the Homeland of the Palestinians. The Palestinians are divided into groups: refugees (Lebanon, Syria, Jordan, and Egypt), the Palestinians of the occupied territories and the Palestinians who have Israeli nationality (one million). Palestine is the “Mother”, the Homeland, and the Home, of these three groups. “Falestine, hia watan el falesténiin”, as stated by Dr Mohammad Yakoub of the Palestinian delegation to UNESCO. At the same time, “Palestine cannot be considered as a country. When we speak of Palestine, we can only speak of a tendency, a probability.”³¹

²⁹ Walid Slaiby, coordinator of the campaign for a civil personal status law in Lebanon, launched by the National Forum.

³⁰ In international law, the recognition by the international community prevails and validates the actual existence of a State.

³¹ Dr Mohammad Yakoub, sociologist and senior officer of the Palestinian delegation – UNESCO, August, 2004.

Until 1917, Palestine was an Ottoman province. Then, it was under military occupation by the British until 1924, at which date the British were supposed to make preparations for its independence. A law for Palestine was thus written by the British, and a British civil administration was appointed.³² This Palestinian State was then ruled according to the “Law of the State of Palestine” (notably, Law 25 of 1925).

We shall not go into the details of the ongoing events in the territory, but it should be mentioned that Palestine has always been governed by different laws emanating from various sources, all applicable in their own way. Indeed, after the period of the British mandate came the Jordanians, the Egyptians and finally Israel. Palestine therefore inherited laws from different sources (British, Jordanian, Egyptian, Israeli and Palestinian). None of the countries respected Palestinian laws; each used laws serving its own interests. Israel occupied the West Bank and Gaza in 1967, triggering three decades of turmoil.

After the Madrid discussions and the Oslo agreement of the early 1990s, the Palestinian territories were considered not a State but an “Authority”. Like the nation, the Authority has fought for recognition. In a state of war, this territory has not been able to guarantee fundamental rights and freedoms or life itself. Under these conditions, the enforcement of laws, or at least a satisfactory enforcement of laws, which is an element of Statehood, has not been possible.

The “Basic Law” of Palestine is modeled on Anglo-Saxon standards, and is thus based on jurisprudence. The Anglo-Saxon inheritance prevails in the legal domain. An adaptation of Egyptian and Jordanian laws has also been made in Palestine; however the movement of codification in Palestine quickly came to an end. There was indeed a project to work out a Code for Palestine, but up to this day nothing has been done. The Commission which worked on this codification split between the “seculars” on one side, and those who support the Shari’a and the application of Islamic law on the other.

The Palestinian nation is comprised of several religious communities; Druzes and Bahai’is form almost invisible minorities; the Greek-Orthodox, the Catholics (Latin), and the Protestants, also form minority communities in Palestine. Indeed, these religions represent together 10 % of the Palestinian population. The Sunni Muslims are the biggest community in Palestine (90 % of the population).

While Palestine is not recognized as a State by the international system, it has a legislative assembly, a Parliament, with rules of procedure. The Palestinian fundamental law establishes general rules with freedoms and rights and sets the limits between the different powers. It is not a Code.

Marriage

Laws in force: **Gaza:** Egyptian Personal Status Law. **West Bank:** Jordanian Personal Status Law. CSP Law n° 25 de 1925 amended by law n° 25 of 1929 and law n° 100 of 1985. (This law is not really applied).

Legal Age of Marriage: male: 18; female: 16.

Divorce The husband has the right to divorce when he wants and is under no obligation to justify his petition. The wife can petition for divorce under certain very restrictive conditions.

³² Note the similarity with the current situation in Iraq, as discussed earlier in this paper.

In all cases, she must show evidence of the harm she suffered and the judge ultimately decides.

Art. 20 of personal status law 1 of 2000: the couple can agree on the *khul* '. Otherwise, the wife can obtain a divorce before the courts, on condition that she forgoes all her financial rights and that she returns the dowry.

Child Custody. Boys can stay under the custody of their mother until the age of 10 and girls until 12 (the judge can extend the custody until the age of 15 for a boy or until marriage for a girl). The divorced mother loses her right of custody if she remarries.

Civil marriage. Civil marriage is not performed in Palestine even though it is recognized if done elsewhere.

Inheritance. Palestinian succession law is in accordance with Islamic law as in Part I of this paper.

Nationality. Nationality Laws in the Occupied Palestinian Territories have gone through many different permutations reflecting the realities of the Palestinian people. At different times, laws dating from the Ottoman period, the British mandate, the Jordanian and Egyptian administrations, the Israeli occupation have been applied to the Palestinians that remained in their country, while the laws of Lebanon, Syria, and Iraq have applied to Palestinian refugees and exiles.

With the start of the Oslo peace process between Israel and the Palestine Liberation Organization (PLO) in 1993, an independent Palestinian legislation began to be passed, though this was still subject to Israeli control. As a result of the current political and legal realities, responsibilities and powers are effectively shared between the occupying power and representatives of the Palestinian people. One example of this "shared responsibility" relates to residence. According to the Interim Agreement, a joint Israeli-Palestinian committee would address the re-issuance of identity cards of those who had lost their identity cards. Additionally, while the Palestinian National Authority (PNA) had the power to grant permanent residency status in its areas to spouses and children "to promote and upgrade family reunification, 'it may not do so without Israel's prior approval" (Mar'i 1997). Israel has also retained important powers in regard to the issuance or extension by the PNA of visit permits. Such permits may not be issued by the PNA unless they are cleared by Israel.

According to the Oslo Accords, the Palestinian National Authority had the right to issue Palestinian passports for Palestinian residents in the West Bank and Gaza as well as some Palestinian returnees (these were individually vetted by Israel).

The interim agreements allowed for a one-off return of PLO political and military cadres as necessary for the formation of the Palestinian Authority and its police force. The right of residence was extended to approximately 80,000 PLO political, bureaucratic and military cadres. The only mechanism open for other exiles to return was through the traditional Israeli-controlled system of application for family re-unification. This system based on "humanitarian" grounds and a case-by-case approach rather than individual or collective "rights" has been in place by Israel since the early 1950s.

The overwhelming majority of family reunification applications are rejected. In the early 1990s the system became slightly more generous -- it put a standard ceiling of 2,000 cases or 6,000 individuals per year. Once the multilateral refugee negotiations over persons displaced

by the 1967 war began, however, the regular family reunification system was frozen. In family re-unification cases it has long been the actual policy that women married to men without Palestinian identity cards ("foreign spouses") had virtually no chance of being considered. For the population resident in the West Bank and Gaza, Palestinian passports were issued, which were individually vetted by Israel. Palestinians living in East Jerusalem, which was illegally annexed by Israel in 1967, were issued Israeli ID cards that extended some rights but denied others. They are entitled to vote for the Jerusalem municipal council, to health insurance and have access only to a limited number of social entitlements, but they have to pay the full Israeli taxes. They have an Israeli travel document valid for 9 months or a year. The status of Jerusalemite Palestinians is increasingly threatened by Israeli restrictions. Taking into consideration the fact that Israel controls Palestinian borders, this makes it the supreme authority to decide who has the right to "reside" in his or her Palestinian homeland, who has the right to visit, and for how long. This effectively restricts the return of the Palestinians in general and Palestinian refugees in particular to their homeland. In sum, it is Israel that ultimately has the power to issue ID cards and to decide who is or is not a citizen of Palestine. In 1994, Presidential Decree No 1 stated that the Palestinian Authority would reactivate all legislation prior to 5 June 1967, which meant the Jordanian Nationality Law would be activated in the West Bank and the Palestinian Nationality Law of 1925 would apply in Gaza.

Accordingly, the Deputy Minister of Interior issued rulings concerning Palestinian passports stipulating that a woman had to get the consent of her husband in order to obtain a passport. The Palestinian women's movement was prepared, having issued a "women's document" earlier in 1994 to list all women's demands once the Palestinian authority was established. The document included granting women their rights to acquire, preserve or change their nationality, as well as to give citizenship to their husbands and children. Thus, the activists immediately mounted a campaign against the new decree.

Women and Marriage. A woman cannot pass her nationality on to her husband or to her children.

*Palestinian Women Campaign against Passport Decree*³³
In 1994, when activists learned of the Interior Ministry Decree requiring the husband's consent for women to get a passport, they began a well-orchestrated campaign. First, a letter of protest was written to the deputy minister. A media campaign was launched at the same time in cooperation with many official and non-official journalists, and many articles appeared in local newspapers written by men and women. A message was sent to President Arafat asking for the abolition of all measures discriminating against women with regard to their passports. Two women's delegations also met him in person to persuade him to take women's demands into consideration. Women's marches and demonstrations were organized with men to question the bases for the new Palestinian State and to ask for equality for women. The activists documented many cases of divorced, widowed, and single women to show the humiliation they felt when they are asked to get the consent of their male "guardian" in order to get their passports. During this campaign many meetings were organized with the Deputy Minister. Women leaders argued: "Why didn't you ask us to get the consent of our male guardians when our

³³ Excerpt from the report "Women are Citizens Too" by Nadia Hijab - Regional Office for Arab States – United Nations Development Programme. <http://www.pogar.org/publications/gender/nadia/summaryf.pdf>

political leadership wanted us to carry messages from one country to another?" The deputy minister explained he was applying a Jordanian and not a Palestinian law and that he could not change the law until the new Palestinian law was issued. Activists pointed out that a draft Election Law was issued to organize the first legislative Palestinian elections without applying Jordanian laws. The Deputy Minister was persuaded by these arguments, and promised to issue a decree to change the ruling. Women's committees followed up until they received assurances in writing about the changes in the procedure to get new passports for women. In a letter dated 2 March 1996 and signed by the Director General of Passports and Nationality after the decree by the Deputy Minister of Interior, it was stated that a wife does not need the consent of her husband to apply for her own passport, and a female adult (18 and above) does not need, irrespective of her social status, the consent of her guardian to obtain a Palestinian passport. The women's committees strictly monitored the application of the decree in all the Palestinian directorates to be sure that it was being applied across the board. A celebration was organized for the Deputy Minister and he was praised in many articles in the women's newspaper 'Sawt al Nissa'. Meanwhile, the women's movement is aware that more vigilance is still needed to ensure that the decree becomes law.

E. Syria

Marriage. Syrian Personal Status Law; law n° 59 de 1953 modified by law 34 of 1975).

Legal Age of Marriage: male: 18, female: 16

Guardianship and Consent:

Art. 21: Matrimonial Guardianship is mandatory for women only.

Art. 18.2: The judge may decide to marry a boy at the age of 15 and a girl at the age of 13.

Art. 48.2: Muslim women are not allowed to marry non-Muslims, but Muslim men are allowed to marry non Muslims.

Polygamy Art. 17: polygamy is permitted (4 wives).

Divorce Art. 91: gives the right of repudiation to the husband (one-sided and unconditional).

Art. 105-115: the wife can petition for divorce, under very restrictive conditions.

Child custody Art. 74: the wife owes obedience to her husband in return for maintenance.

Art. 73 and 74: the wife forfeits her maintenance rights if she works outside the home without her husband's consent

Art. 88 1) In cases of repudiation or divorce by mutual consent, the judge must postpone the case for a month to allow for reconciliation.

2) If, after the expiration of this period, the husband stands by the repudiation or if they both stand by their divorce petition, the judge summons the parties, hears their dispute and tries to resolve it and to maintain the married life by resorting to people among the spouses' relatives or to people capable of resolving the dispute.

3) If these attempts fail, the judge authorizes the registering of the repudiation or of the divorce by mutual consent effective from the date of the ruling.

4) The file is closed after three months if neither of the spouses has taken action during this period.

Art. 112 - 1) If one of the spouses claims to have suffered such harm from the other as to make cohabitation impossible, he or she can petition for divorce.

2) If the damage is established, and the judge fails in his attempt at conciliation, he grants the divorce which constitutes an irrevocable divorce.

3) If the damage is not established, the judge adjourns the trial for at least one month, to allow for reconciliation. If reconciliation did not take place and the plaintiff insists on his claim, the judge appoints two arbitrators chosen among the relatives of the couple or among people capable of reconciling them. They take the oath to implement their mission honestly and fairly.

Art. 113 - 1) The arbitrators must inquire on the causes of the dispute between the spouses, and subsequently bring them together in a meeting presided by the judge and to be attended only by the spouses and the persons summoned by the arbitrators.

2) Failure to attend by one of the spouses has no effect on the arbitration.

Art. 114 - 1) Both arbitrators must strive for reconciliation; if they fail, and if the husband is entirely or largely responsible for the wrongs, the arbitrators declare an irrevocable divorce.

2) If the wrongs are attributable entirely or largely to the wife or to both spouses, the arbitrators grant the divorce against repayment of the dowry by the wife, in all or in part, proportionately to the wrongs.

3) The arbitrators can grant divorce without wrongs against the husband's relief of part of the wife's rights if she accepts it and if it is proved to both arbitrators that a serious discord which is impossible to resolve between the spouses.

4) If the two arbitrators disagree, the judge appoints other arbitrators, or appoints a third arbitrator holding a casting vote and who is bound to take an oath.

Art. 115 - The arbitrators must make a report to the judge. The report does not have to be circumstantiated but the judge is bound to make a decision in accordance with it or to reject it and, in that case, appoint two other arbitrators for the last time.

Inheritance. In Syria inheritance is governed by classical Islamic law.

Nationality. Nationality Law (Law No 276 of 1969). A woman married to a foreigner retains her nationality. A woman cannot pass her nationality on to her husband. Art. 3 of the Nationality Law: only Syrian fathers can pass their nationality on to their children

Conclusions and Recommendations

In an era of globalization in which isolation becomes more and more unthinkable, discourses on human rights and those emanating from women's movements increasingly go beyond boundaries. At a time of ever increasing trade and global interaction, falling back on communitarian values that ignore the demands of International Law has become less and less tenable. Although gaining ground in terms of legitimacy, international organizations that are standard-setters or that advocate international norms continue to face hesitation or resistance on the part of many countries. Many Islamic laws and norms, be they concerning women or families, have been in place from the time of Islam's creation up until the twentieth century. We have seen that others are more "modern" creations, or distortions (e.g., discriminatory nationality laws). There are now voices in the Muslim world arguing that at the beginning of the twenty-first century, many of the laws and norms are not tenable. This is because of the profound social changes in technology; of political systems that are vastly different from those in early Islamic history; of contemporary economic realities; and of the emergence of internationally recognized fundamental guidelines for human rights. Family laws in the

Muslim world therefore should adapt themselves to the new social realities and aspirations. In particular, reform is needed in those areas of law concerning guardianship of adult women, inheritance, marriage (mixed and civil), and nationality.

We have seen that in the countries surveyed, none is capable of guaranteeing an egalitarian status to women within the framework of their current laws. The family laws of the case-study countries, whatever form they may take, are at odds on some points with the international conventions guaranteeing women's rights.

We have shed light on the intrinsic link between the disparities contained in the personal status codes and the texts of the Qu'ran in which they are rooted. However, we should be cautious of links that are too obvious or proclaimed too readily. While the laws in force are indeed influenced by the sacred text, one may well propose that they constitute an *a posteriori* justification for a patriarchal system trying to maintain itself through the oppression of women. It is easier to justify domination by divine will than by the will for power. In support of this caution we could note the inequalities in the personal status codes of the Lebanese Christian communities. These texts, though not inspired by the Qu'ran, are part of the same system of discrimination against women. Furthermore, each personal status code that draws its inspiration from the Qu'ran translates differently the religious precepts into law. This shows that interpretation is necessary and that behind divine will human will is always hiding. A contradiction must be noted; if the family is so important in Muslim culture, why is it so easy for a man to divorce (repudiation)? **If justice is the objective, why are the rights of non-Muslims inferior?** Reform is therefore required in this religion, which by supporting patriarchy, fosters discrimination against women's rights as citizens.

However, peaceful coexistence between Islamic law and human rights is entirely possible and would greatly improve the situation. An enlightened interpretation by **women and men** of goodwill would allow the sharing of universal values while respecting the diversity of faiths.

It should be noted that the case-study countries, without exception, have already signed the international conventions on women's rights. However each ratification was accompanied by reservations that aimed to guarantee the primacy of the Qu'ran over any recommendation would be contrary to it. These reservations are not, however, a sign of failure for international law. The ratification of the conventions denotes a positive will to go forward towards more egalitarian values even if a period of adjustment seems necessary.