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Egyptâ€™s family courts: route to empowerment?

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An Egyptian film of 1975 epitomises the experiences of women in the country's law-courts at that time: protracted, costly, painful, and with no expectation of justice at the end of the process. Duria, the female protagonist of *Uridu Halan* (*I Want a Solution*), struggles in vain to obtain court-ordered divorce from the playboy husband who has abused her for twenty years. The gaps in the legal system and its biases against women enable the husband to exploit the situation to his advantage. After four years of litigation, Duria loses the case because the court has not found "strong" evidence of spousal harm.

Behind the melodrama [1] was the living reality of many thousands of Egyptian women for whom the existing family-law system - regulating matters such as family property, marriage and divorce, alimony, child custody, and paternity disputes - offered no guarantee [2] of their civil rights or human dignity.

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A fuller elaboration of Mulki Al-Sharmani's work in this field is here [4]

The generation since then has seen a wide-ranging effort to reform Egyptian family law. This culminated in the introduction of a new legal framework [5] which came into effect in three tranches of legislation in 2000 and 2004. This was a real advance, but as with any attempt to bring about social change through legal reforms the new system has had complex and multidimensional effects. In this light, I examine here one aspect of the reform package - namely mediation-based family courts - in order to assess how far Egypt's women have travelled in achieving "empowerment through law".

A long campaign

The struggles of Egyptian women in the post-1970s generation to reform family law have owed much to the inspiring example of their predecessors over the past century. This objective has been one of the main goals of Egyptian women's-rights advocates [6] since the "renaissance" of the late 19th century. In the second decade of the 20th century, for example, the Egyptian Feminist Union headed by Huda Shaarawi [7]called for the raising of the minimum age of marriage, restrictions on polygamy, and the introduction of fair divorce laws.

In the 1920s and subsequent decades, reform efforts [8] continued with varying degrees of success until, in the 1970s and 1980s, the hunger for change found expression in the emergence of a collection of diverse groups - including women activists [9], local NGOs, government agencies and officials, prominent lawyers and judges, and intellectuals. But this was not a single "movement": the various groups had different ideas and agendas, which led to different ideas about what kinds of reforms of family law were needed.

Some efforts, for example, targeted the existing, substantive law to amend articles that discriminated against women and/or to introduce provisions that would enhance women's rights; others focused on reforming the procedures for reviewing cases; yet others championed initiatives intended to preserve the cohesion and stability of Egyptian families.

The Egyptian government, moreover, had in this period its own family-law agenda, though it was motivated by multiple (and sometimes conflicting) desires: among them were strengthening state institutions, creating equality and justice for all citizens, making claims to religious and cultural legitimacy, improving the status of Egypt within the international community, and securing the support of international organisations [10]and donors.

These differences and tensions notwithstanding, the reform project eventually resulted in the passage of three new laws: Law 1 of 2000, Law 10 of 2004, and Law 11 of 2004. Law 1 reformed the terms and procedures of personal- status cases, and includes two articles of great significance [11]: guaranteeing women the right to file for no-fault divorce (Article 20) and the right to file for divorce from unregistered marriages (Article 17). Four years later, Law 10 introduced the system of family courts; and Law 11 established the Family Insurance Fund, a mechanism through which female litigants could collect court-ordered alimony and child support.

A policy success?

A look at the mediation-based family-courts system, one important element of these reforms, is one way to measure their effects [12] on the women they were designed to help. The aim of the courts model is to establish an efficient and non-adversarial legal system that is based on mediation. Thus every potential litigant in a family-dispute case is obliged to file for mediation before he or she can bring a case to

court. Mediation offices have been set up in each court, staffed with specialists who are trained in social work, psychology, and law.

Since the agreements reached between disputants in mediation sessions are binding by law, it was expected that compulsory pre-litigation mediation would save a lot of the time and costs spent in court. However, the new system is facing challenges. Three problems are particularly worth mentioning:

The first is the existence of gaps in the legislation that effectively diminish the power of mediation offices. The second is a lack of adequate resources and training offered to those required to operate the system.

Also in **openDemocracy** on women, power and the state:

Andrea Cornwall, "Pathways to women' empowerment [12]" (27 July 2007)

Srilatha Batliwala, "Putting power back into empowerment [12]" (30 July 2007)

These articles open a new collaboration between **openDemocracy** and the research consortium Pathways of Women's Empowerment at the Institute of Development Studies, University of Sussex.We explore ideas, projects and initiatives from around the world - Brazil to Egypt, Sierra Leone to Bangladesh - which aim to understand what enables women to empower themselves and sustain changes in gendered power relations A third obstacle (related to the second) merits greater consideration. This is that some court personnel and litigants reject the very idea of formal mediation. One of the judges and many of the lawyers I interviewed for a research programme [13] thought that formal mediation was an alien concept borrowed from western legal models. They argued that it was inappropriate and offensive for couples to recount intimate details of their lives to mediation specialists; and that formal mediation was unnecessary because existing, local mechanisms of mediation (e.g. relatives and community elders) were routinely available before a couple resorted to court.

Another judge had a different take on this issue: he thought that resistance to mediation inside the legal system was owed to the that that its advocates and their legislative backers had failed to create a sympathetic, transparent environment in which the new system [14] could operate and be understood. He pointed out that there had, for example, been no coherent effort to highlight the compatibility of the new system with mediation-based Islamic laws that regularly govern family disputes and which are valued in Egypt's public culture.

Several mediation specialists I interviewed offered a further insight into the subtleties of the process. They noted that family-based mechanisms of mediation often escalate a conflict between wife and husband since family relatives are emotionally invested in the problem. Indeed, specialists often have to begin by *defusing* the anger and resentment of accompanying relatives before they can

conduct useful mediation sessions with disputants. The argument here is that formal mechanisms of mediation were needed precisely because local, familial, "informal" ones were not working.

The experiences of female litigants themselves, whom I interviewed for my research, reflect the problems with legal mediation. Some women do not make use of the system because their counsels persuade them of its futility and social awkwardness. The lawyers then go through the motions of mediation without the presence of the disputants. Other women show up to the initial sessions but then stop coming since their husbands regularly fail to appear - mainly because the latter are unprepared or unwilling to reach agreements to which they will be held accountable, particularly in alimony cases.

Yet some women are appropriating the new system of mediation for their own advantage - and in creative ways. They use it, for example, at an earlier stage in the marital conflict and as one of several means (family pressure can be another) of negotiating with their husbands for different claims such as adequate spousal maintenance or the right to work. Thus, Egyptian women [15] have "fused" the existing and new systems to maximise the opportunities which society and its legal framework offers to them.

A dynamic process

The lesson of this story is that the relationship between legal reforms and social change is not a simple one. Many factors affect it: flaws in the legislation, difficulties in implementation, the way judges are recruited and trained, the influence of social attitudes and cultural beliefs. All can pose challenges to the effectiveness of a new system.

Those who seek to use legal reform to aid social progress and women's rights need to make sure that new laws are well formulated, just, and well implemented; that social and institutional conditions are favourable; and that the political and cultural environment is supportive. These are large aims in any circumstance, which so far perhaps have been met in only very few cases. But the experience of Egyptian women in their search for legal and social empowerment in the area of family law shows that small victories are possible.

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