



Women's Rights in Arabic Countries: between Human Rights and Sharia's Law

Samia Locate

► To cite this version:

Samia Locate. Women's Rights in Arabic Countries: between Human Rights and Sharia's Law. Alizés : Revue angliciste de La Réunion, 2013, Women's Right, Human Rights, 38, pp.98-114. hal-02340348

HAL Id: hal-02340348

<https://hal.univ-reunion.fr/hal-02340348>

Submitted on 30 Oct 2019

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Women's Rights in Arabic Countries: between Human Rights and Shari'a's Law

INTRODUCTION

The topic of this paper is an introduction to the international women's rights on the one side and the Shari'a⁶⁷ regarding women on the other side, in Arabic countries and Muslim majority States. In fact most of the Arabic countries, not all of them are governed by Shari'a's law, which is the law dictated by the Quran, of course this law is not applicable to non-Muslim citizens living there, and this is why those Arabic countries must also include in their government the international human rights in order to be part of the United Nation Organisation (UNO), and to be recognized and protected internationally in case of worldly insecurity.

HUMANS' RIGHTS AND WOMEN'S RIGHTS

The area of human rights is a "limited exception" to the general absence and impact of women from and in the substance and process of international law, claimed Charlesworth & Chinkin (16). The term human rights refers herein to the human rights norms established in the international system following the Universal Declaration of Human Rights of 1948 (UDHR). The discourse on "women's rights" is one of several ongoing discourses and debates provoked by a consideration of women, gender, and human rights, and indicates the relatively recent concentration on the specific subject of women's rights by "traditional" human rights institutions and organizations. Another one is the debate on the universality of rights versus cultural relativity, and closely related to this is the discourse of "Islamic human rights," the compatibility of the "status of woman in Islam" with the requirements of international human rights standards. This in turn involves both State practice, in terms of the determinations made by Muslim majority States as to the requirements and applications of Islamic law on matters to do with the status and position of women, and the debates in Muslim communities (domestically, regionally, and internationally) as to these requirements. Issues of "voice", of "authority", and of representation figure prominently in these debates, in connection with the discourses of postcolonialism and feminism.

⁶⁷ The Shari'a is a divinely ordained system of law in the Quran. It covers the totality of the Muslim way of living, including gender relations and rights. (A. Coulson (1997): "Shari'a" in *The Encyclopaedia of Islam*, 325-26).

Commentators credit the efforts of women's non-governmental organizations (NGOs) in securing provisions in the United Nations Charter (1945) prohibiting discrimination on the grounds of sex and providing for equal rights for men and women, in advance of the UDHR. Similar efforts secured the establishment of the United Nations Commission on the Status of Women (CSW) in 1946. The CSW has always had a majority of women delegates, and maintains close links with the women's NGO movement.

According to Lynn Wetchman (265-66), a formal call for the "mainstreaming" of women's rights in the United Nations system was made at the Second World Conference on Human Rights in Vienna in 1993. In the final document of the conference, States agreed that the human rights of women were "an inalienable, integral and indivisible part of human rights." For Sullivan (152), the most striking result at Vienna was that "the conference crystallized a political consensus that various forms of violence against women should be examined within the context of human rights standards and in conjunction with gender discrimination". Links between women's rights and human rights organizations were strengthened, and the 1990s also saw increasing attention paid to abuses of women's rights by the "traditional" international human rights NGOs. This period also saw a preference for the term "gender" over the use of "women". In 1994, the United Nations Commission on Human Rights appointed the First Special Rapporteur on Violence against women, in this action mandating the first gender-specific brief for a Special Rapporteur. In 2000, the Human Rights Committee issued in its General Comment 28 analysis of the gender-specific implications of the ICCPR, article by article. This particular effort at mainstreaming gender perspective came nearly two decades after a specialized convention on women's rights came into force, its origins lying in the CSW. Most recently, some observers and activists have questioned the effectiveness of the "mainstreaming" approach. The International Women's Year Conference in Mexico City decided on an international Decade for women (1976-1985), and formally called for the drafting of a convention. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also referred to as the Women's Convention, was adopted by the General Assembly in 1979 and opened for signature; it entered into force in 1981.

WOMEN'S RIGHTS IN ARABIC COUNTRIES

According to Charlesworth & Chinkin (217), the approach of the Women's Convention "acknowledges that, for women, protection of civil and

political rights is meaningless without attention to the economic, social and cultural context in which they operate.” This meant tackling the “private sphere” and the conduct of non-State actors. Among its provisions, the Women’s Convention requires States being parties to take appropriate measures to modify laws, customs, and practices that constitute discrimination against women, and to ensure equality of rights for women and men in a range of matters relating to marriage and the family. These areas are central to the debates on cultural relativity and on women’s rights in Islam. Although Muslim majority States were involved from the inception of work on the women’s convention at the CSW, the General Assembly debates were long and intense, and several involved issues presented as in conflict with the requirements of Islamic law or, more precisely, the Shari’a.

A number of Muslim majority States abstained on specific articles and five abstained on the final vote for the convention. Today most Muslim majority States are parties. As on 3 June 2003, the convention had 174 States parties; of the 57 members of the Organization of Islamic Conference (OIC), 49 are parties to CEDAW, with 6 of the exceptions also being members of the league of Arab States. The Women’s Convention has drawn an unusual number of reservations from States parties across the world, prompting commentators to question the actual commitment of the world community of States to the implementation of women’s rights (Cook, 644). According to Connors (352), however “the most notorious reservations to the Women’s Convention have been made by countries who apply, to a greater or lesser extent, the Islamic Shari’a.” The controversial nature of reservations entered by certain Muslim majority States arises from their generality, purporting to subject commitments under the entire convention to the principles or norms of Shari’a law or applying a reservation to the general undertaking (in article 2) to take legislative action to eliminate discrimination. Substantive articles of the convention frequently reserved by Muslim majority States parties are article 15, which provides for equality of women with men before the law, including in legal capacity and at all stages of court procedure, and in “the law relating to the movement of persons and the freedom to choose their residence and domicile” and article 16 requiring States to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. A number of States have also made reservations to article 9 regarding equal rights to nationality and to the nationality of children. In the 1980s, following the entering into force of the Women’s Convention, objections were filed by co-parties to the convention to certain reservations including the broadtexts submitted by Egypt and Bangladesh, and

the committee on the Elimination of All Forms of Discrimination against Women (responsible for monitoring implementation of the women's convention) proposed in its General Recommendation, in the context of its general concern at the number and type of reservations entered to the convention, that the United Nations should "promote or undertake studies on the status of women under Islamic laws and customs and in particular on the status and equality of women in the family[...] taking into consideration the principle of *El Ijtihad*⁶⁸ in Islam." Debates on these issues at the United Nations were heated; Connors reports allegations of "cultural imperialism and religious intolerance" and warnings against "using the Convention as a pretext for doctrinaire attacks on Islam" and the General Assembly subsequently agreed that no further action be taken on the CEDAW suggestion (362). Objections continue to be filed to similar reservations entered by certain Muslim majority parties who have become parties to the convention in more recent years, such as Saudi Arabia, The Maldives, and Mauritania, and the committee continues to seek information from States on progress towards the withdrawal of reservations. Such debates raise the substantive question of the compatibility of such reservations with the Women's Convention, on the one hand, and the compatibility of the convention with Islamic law on the other. Also arising is the substance and interpretation of "Islamic law," or "the Islamic Shari'a," as presented by State representatives at the United Nations and in their domestic legal systems. In terms of process, they also illustrate the politicized nature of debates when "Islamic law" and "international women's rights" are posed as conflicting norms of competing authority. The risk that certain interventions may be perceived or presented as "attacks on Islam" poses particular challenges to advocates of women's human rights, both domestically and internationally. More recently, the General Assembly has seen similarly heated interventions and a lack of consensus in debates on draft resolutions on the subject of eliminating crimes against women committed in the name of honour; in 2000, the majority of the 25 abstentions to the resolution on this subject were from Muslim majority States, with delegates objecting to the apparent singling out of a particular "culture" and the perceived association of "honour killings" with Islam. Muslim majority States articulate concern at the exploitation of the human rights discourse for political ends. The 1997 OIC summit, while recalling the objectives of the UDHR, called on members "to

⁶⁸ *Ijtihad* : In Arabic it is an Islamic legal term that means "independent reasoning" or "the utmost effort an individual can put forth in an activity." As one of the four sources of Sunni law, it is recognized as the decision-making process in Islamic law (*sharia*) through personal effort (*ijihad*) which is completely independent of any school (*madhhab*) of jurisprudence (*fiqh*). From it the Muslim is informed of the nature of an action if it is lawful or unlawful. (www.wikipedia.org/ retrieved the 2nd.feb.2014)

continue to actively coordinate and cooperate among themselves in the field of human rights in order to strengthen Islamic solidarity to confront any initiative leading to the exploitation of human rights as a means of exerting political pressure against any Member State.” While Muslim majority States under criticism for their human rights record in international forums have political interest in seeking to divert and undermine such criticism, it is the case that in the Muslim world more generally there is a perception of selectivity in the application of human rights discourse and principles by powerful “Western” States. According to Mayer (313), “to Muslims, this suggests that the West is biased against Islam and more inclined to charge Muslims than others with rights violations, while at the same time the West minimizes or disregards the sufferings of Muslims deprived of their rights”. The question of Palestine is among grievances contributing to this perception. More broadly, Moosa (205) sets “the abuse of human rights discourse” in the context of the “hegemony of market capitalism and the globalization of Western political culture”, observing that “it has become a political weapon in the hands of powerful nations in order to subdue emerging nations and those communities contesting the monopoly of global political power.” He combines this with a criticism of the response of some “Islamic nations” to describe “a monumental, unrelentingly bleak account of the status of human rights in the international discourse”. These issues have been heightened in the aftermath of the attacks in the United States of 11 September 2001.

INTERNATIONAL WOMEN’S HUMAN RIGHTS AND THE CULTURAL RELATIVITY

As well as being implicated in these dynamics in Muslim communities, the international women’s human rights discourse is a central feature in the debate on cultural relativity versus universality of rights. Charlesworth and Chinkin (*ibid.* 222) observe that “it is striking that ‘culture’ is much more frequently invoked in the context of women rights than in any other area, central to the debate is the equality paradigm, which underpins the women’s human rights norms. The universality/cultural relativity debate was a contentious issue at the 1993 Vienna World Conference on Human Rights, and likewise at the Fourth World Conference in Beijing in 1995. At the latter, the term “gender” also became an issue, with certain Muslim majority States joining the Holy See and others to oppose any inference of sexual orientation in its usage.

HUMAN RIGHTS AND WOMEN'S RIGHTS IN ISLAM

In response to the equality norm, Muslim majority States have argued for “equitable” or “equivalent” rights for men and women. Illustrative of this is the approach of the Cairo Declaration of Human Rights in Islam, adopted in 1990 by OIC member States to serve “as general guidance for Member States in the field of human rights.” The declaration states that “woman is equal to man in dignity, and has her own rights to enjoy as well as duties to perform” while making the husband “responsible for the maintenance and welfare of the family”. This approach points to the gendered text and practice of laws and norms presented by governments, and by the dominant and traditional discourses in Islamic jurisprudence, as an integral part of Islamic culture and indeed religion, particularly although not only in the “private sphere” of marriage and the family. Many Muslim critics, while stressing that numerous areas of traditional Islamic law are entirely consistent with international human rights norms, including certain rights of women, argue against the particularity of “Islamic human rights schemes,” and against laws and practices justified by reference to Islam that constitute discrimination under international human rights standards.

The debate on “human rights in Islam” includes what Moosa (204) has described as a “vibrant debate taking place in almost all Muslim societies about the status of women”. An important focus is the presentation in state or societal practice of what Islam requires or mandates regarding women’s rights, and different understanding of these requirements formulated by a broad spectrum of critics. These understandings range from “islamist” positions eschewing international human rights norms as a framework in holding that the shari’a gives women all their rights if implemented in full under a Muslim authority, to “secularist” positions that states should leave matters of religion to individuals in their private faith practices. Among the different approaches, some scholars and activists call for a new approach to the text and principles of the sources of Islamic law, a reformulation or reconstruction of Islamic jurisprudence expanding the existing common ground with human rights norms. Among the more recent discourses is “feminist *ijtihad*”; al-Hibri (5), for example, criticizes the culturally inspired “social and political assumptions” in traditional, historically-conditioned Islamic jurisprudence as giving rise to a “then common model of State and family relationships which are the best described today as authoritarian/patriarchal.”

A number of the Muslim scholars applying themselves to the source texts in this way are based in the West. Challenging the dominant discourses

in this regard, whether through textual approaches or through advocacy and activism aimed at State policy, remains a controversial undertaking in different Muslim societies and States. Challenges to advocates of women's human rights include the conflation of "cultural" or "national" with a particular "authoritative" articulation of Islamic norms in the rise of identity politics. States' political interests may be served by the invocation of Islam over contested areas of law and policy, while "Islamist" groups may attack the discourse of women's rights to undermine the credentials of existing regimes. Advocates of international women's human rights may be accused of alienation, a lack of cultural authenticity, and of seeking to undermine the unity and stability of the Muslim family, and by extension Muslim society, through the importation of Western ideas associated with moral laxity. Opponents of the discourse of gender equality situate it, along with the discourses of Western feminism, within the larger context of colonial and neocolonial agendas, cultural imperialism, and hostility to Islam.

Within the rights movement, there is criticism of a Western influence over the agenda of the human rights movement in general and the women's human rights movement in particular, seeking, for example, greater prioritization of socioeconomic rights and the disproportionate effect of structural adjustment policies and the economics of the global market on women in the South. Generally, there is a consensus on the need to increase internal resonance with human rights norms and discourse, as well as to focus on national and international State law and policy, in order to increase the prospects for the implementation of the range of women's human rights in Islamic cultures.

PALESTINE

The Palestinian authority (PA) was established in 1994 with limited authority over the Palestinian population living in the Israeli Occupied Territory, which includes the West Bank, East Jerusalem, and the Gaza strip. The areas under limited PA rule are not contiguous but are separated by 102 Israeli checkpoints in the West Bank and 21 in Gaza. Checkpoints, curtailing Palestinian freedom of movement, and lack of security in a situation close to war, have devastated the Palestinian economy. According to the Palestinian Central Bureau of Statistics (PCBS), at the beginning of 2002, 66.5 percent of Palestinian households were living below the poverty line. The situation now is graver still. Palestinians are generally prevented from traveling between towns, and restrictions on movement have had a serious effect on Palestini-

ans women's access to health care facilities, employment locations, and educational institutions. Continued political unrest and ongoing armed conflict, combined with restrictions on freedom of movement, the inability of most PA courts to enforce decisions, and a slow process of new legislation, make it extremely difficult for Palestinian women to advocate for women's rights in the face of continuing violence and poverty. As a result, Palestinian women suffer from insufficient legal protections and inconsistent enforcement of laws.

According to Suheir Azzouni (219-225), all discussions about Palestine's constitution, its laws, and their impact on women must be viewed through the limitations imposed by the Israeli occupation. The occupation dictates the ways in which the Palestinian Authority conducts its affairs and how Palestinians go about their daily lives. It also greatly impacts Palestinians' personal security. From the beginning of the second Intifada,⁶⁹ the uprising started in September 2000, until May 2003, 2484 Palestinians were killed, among whom 152 women. The status of women inside the family and in Palestinian society is determined in part by recent Palestinian legislation and in part by laws inherited from the Jordanian and Egyptian laws in effect in the West Bank and Gaza before the 1967 Israeli occupation. While there have been many positive changes for women under laws adopted by the Palestinian Authority, gender-based discriminatory practices enshrined in the Jordanian and Egyptian laws still apply to situations not covered by new legislation. Personal status law for Palestinians is based on religious law. For Muslim Palestinians, personal status law is derived from Shari'a, while the varied ecclesiastical courts rule on personal status issues for Christians. Civil courts do not adjudicate on such matter.

NON-DISCRIMINATION AND ACCESS TO JUSTICE IN PALESTINE

The third draft constitution (The Basic Law) of Palestine, which appeared in the Official Gazette in March 2003, views Palestinians as equal before the law. Article 9 of the constitution states that Palestinians will not be subject to "any discrimination on the basis of race, sex, color, religion, political convictions or disability." The draft also states that the principles of Islamic Shari'a

⁶⁹ Intifada is an Arabic word which literally means "shaking off", though it is popularly translated into English as "uprising", "resistance", or "rebellion". Intifada is often used as a term for popular resistance to oppression. The first intifada was a Palestinian uprising against Israeli occupation which lasted from December 1987 to 1993, the second intifada was a period of intensified Israeli-Palestinian violence, which began in Late September 2000 and ended around 2005 (www.wikipedia.org/ retrieved the 7th. Dec. 2013).

are a major source of legislation. Article 32 of the draft constitution states that any violation of personal liberties or the privacy of the person or other general civil rights that are protected by the constitution or the law will be considered a crime. A presidential decree in 1993 established the Palestinian Independent Commission for Citizens Rights (PICCR), with a mandate to ensure respect for citizens' rights in Palestine. Although the draft constitution states that the rights and liberties of all citizens shall be protected and that citizens, men and women, will be treated equally without discrimination, many laws do not make gender discrimination as they refer to citizen, employee, or person, refer to both males and females, and some even contain provisions that clearly render discrimination illegal.

According to Suheir Azzouni (*ibid.*), the Palestinian women's movement has actively engaged in dialogues with the Palestinian Legislative Council to secure a woman's right to extend citizenship to her husband and their children. However, citizenship rights remain covered by the laws and regulations valid before 1967 in the Palestinian territories; the Jordanian nationality code n6 of 1945 and its amendments are applied in the West Bank, and the Egyptian code is applied in Gaza. Both codes deny the right of women to pass their nationality to their husbands or children. Additionally, a woman is not entitled to maintain her nationality if she marries a non-Palestinian unless she submits a written application to the Minister of Interior within one year following her marriage. In practice, however, women married to non-Palestinians are not always asked by the Ministry of Interior to give up their Palestinian nationality.

Palestinians living in Jerusalem under Israeli rule hold Jerusalem identity cards. These cards serve as residence permits and enable Palestinians to live, travel, work, and attend school. Many of the women, and some men, holding Jerusalem identity cards and married to Palestinians from the West Bank and Gaza cannot obtain Jerusalem identity cards for their spouses, and their spouses are not allowed to live in Jerusalem. Children also find it difficult to live or attend school in Jerusalem if only their mother and not their father holds a Jerusalem identity card. Under Islamic law (the Jordanian and Egyptian laws that were in effect before the 1967 occupation), a Muslim woman has the right to keep her maiden name after marrying if she wishes. In the PA and Israeli Occupied Territories, however, there are neither legal stipulations that entitle a woman to maintain her maiden name after marriage nor stipulations that oblige her to adopt her husband's name. In practice, Palestinian women's family names are automatically changed at marriage because the Palestinian passport, like the Israeli identity card, automatically

changes women's family names to those of their husbands. The names of Palestinian women holding Jerusalem identity cards are also automatically changed to their husbands' family names. Women are discriminated against in laws governing marriage, divorce, custody of children, inheritance, and violence against women. Palestinian men and women do not have equal access to justice, and women are particularly discriminated against in the penal code, which is derived from Jordanian and Egyptian law. The law enforcement structure is male-dominated and sometimes biased against women. Women are marginally represented among judges and police forces, which may make women hesitate to turn to courts or law enforcement for help. Access to justice has proved a challenge for both men and women throughout the second Intifada (2,000 to present). The existing political situation, in addition to Israeli incursions and the inability of the Palestinian Authority to enforce the law properly, has rendered the judiciary and law enforcement mechanisms weaker than ever. It has also strengthened the use of tribal and customary law.

The judiciary system in Palestine is composed of a hierarchy of courts. Women are not recognized as full persons before the courts as witnesses or in matters related to marriage, divorce, and custody of children. The Women's Center for Legal Advice and Counseling (WCLAC) report for 2000 states that the Palestinian judiciary exhibits views of women as "inferior" and that women generally are "looked down upon and treated with scorn". It also reports that a "divorced woman is treated as though she has been 'indicted' for failing to try sustain the marriage." Women suffer disproportionately from law enforcement that is weakened by the fact that Palestinians fall under four different legal systems: Israeli, Jordanian, Egyptian, and Palestinian; and there are no legal agreements between the various authorities. For example, a father with an Israeli passport or a Jerusalem identity card can kidnap his child and go to the Israeli area, where the Palestinian Authority cannot enforce child custody laws. The same holds true for alimony cases in which husbands living inside Israel can escape their legal obligations to their former wives. A number of Palestinian women have been murdered by family members for "tarnishing the name and the honor of the family," although statistics are difficult to obtain because police often report these crimes, or "honour killings," as suicides or other causes of death. It is estimated that there are about 20 documented cases of honor crimes in Palestine annually. The WCLAC in Jerusalem states in its report on the situation of Palestinian women in 2001 that 38 cases of femicide were documented between 1996 and 1999, 12 of which occurred in the West Bank and 26 in Gaza; the mur-

ders were all committed by close male relatives so as to benefit from a lessened sentence should they commit a “crime of honor” and murder a female relative for a perceived misuse of her sexuality. At the same time, there are many stories of Palestinian police providing shelter for women after they have received a death threat. Despite the fact that the Jordanian penal code was amended in Jordan in 2001 to give equal treatment to men and women, the older version still applies in the West Bank. For adultery cases in the West Bank, the code states that “[h]e who surprises his wife, or one of his (female) Mahrams⁷⁰ committing adultery with somebody, and kills, wounds, or injures one or both of them, shall be exempt from liability.” It is also stipulates that: “He who surprises his wife, or one of his female ascendants or descendants or sisters with another in an unlawful bed, and he kills or wounds or injures one or both of them, shall be liable to a lesser penalty.

Palestinian men and women are subjected to arbitrary arrest, detention, and exile by the Israeli Occupying Authorities. There have been numerous cases of “administrative detention,” in which the Israeli Authorities keep Palestinians in jail for periods of six months, subject to multiple six-month renewals without trial. PICCR reports that on December 31, 2003, the Israelis held 6206 Palestinians in their prisons and detention centers. Among the detainees were 275 children and 77 women. Palestinian women prisoners held in Israeli jails are vulnerable to harsh and humiliating treatments, and in some cases, female prisoners are denied contact with their families. The Palestinian government has not ratified the United Nations Convention on the Elimination of All forms of Discrimination against Women (CEDAW), because Palestine is not an independent country and as such cannot be signatory to international treaties and conventions. Palestinian women’s organizations and official bodies, such as the prominent women’s coalition, Palestinian Women’s Affairs Technical Committee, have been very active in ensuring that women’s issues are addressed in the new Palestinian entity. They have worked together to win the reversal of a few regulations and to ensure that newly drafted laws discussed by the Palestinian Legislative Council Labor Law are now mostly gender-sensitive. However, while women’s organizations were more visible and outspoken in the relatively peaceful period that followed the Oslo Accord, they have been less visible and vocal during

⁷⁰ *Mahram*: In Islamic Shari’a legal terminology, a *Mahram* is an unmarried kin with whom sexual intercourse would be considered incestuous, a punishable taboo. Current usage of the term covers a wide range of people and mostly deals with the dress code practice of *hijab*. (www.wikipedia.org/ retrieved the 7th. Dec. 2013)

the second Intifada for a number of reasons, including the need to focus on day to day issues involved in life under occupation.

AUTONOMY, SECURITY, AND FREEDOM OF THE PERSON IN PALESTINE

The third draft constitution (the Basic Law) guarantees freedom of religion and religious practice as well as freedom of thought. Christians and Muslims live peacefully together in Palestine, with few problems of discrimination on the basis of religion. There are examples of Christian-Muslim marriages, although such marriages are easier when they take place between Christian women and Muslim men, as these women are able to remain Christians. Muslim women cannot marry Christian men unless the men convert to Islam. Women in Palestine do not enjoy complete freedom of movement. The Jordanian passport regulations that applied in the West Bank following the Oslo Accord of 1993 required women to secure the written permission of their “guardian” in order to obtain passports. This regulation was reversed when the Women’s Affairs Technical Committee held a five month advocacy campaign in 1996. The campaign resulted in women gaining the right to obtain passports without the consent of their guardians after the age of 18. However, while women who are aware of the change in this regulation can demand that this right be respected, officers at the Ministry of Interior continue routinely to require women to obtain written consent.

Changing political, economic, and social conditions also affect the mobility of women. The newly erected separation wall and the 123 checkpoints in the West Bank and Gaza prevent free mobility of all Palestinians. Israeli checkpoints have prevented women from reaching hospitals and health care centers in time to give birth and also hinder free access to education and employment, especially in areas where secondary schools are scarce and where jobs require moving from one village or city to another. Existing family law provisions also restrict women’s freedom of movement. Though rarely invoked, a provision of Egyptian and Jordanian family laws termed the “house of obedience” forces women to return to their husband’s house and prevents them from leaving the country if their husband obtains a court order. In accordance with the local interpretation of Islamic Shari’a, women can have many rights within marriage if they are specified in their marriage contract. Prevailing customs, however, discourage many women from spelling out these rights. Men are reluctant to marry a woman who has the right to divorce, and families discourage women from adding conditions that may drive the bridegrooms away.

There is no known practice of slavery among women in Palestine, and there are no laws that address slavery. Additionally, no laws or provisions specifically protect women against torture and cruel, inhuman, or degrading punishment. Violence against women is extensively reported by local women's institutions and seems to increase in times of political and economic turmoil in the territory. Currently no laws or provisions in the territory specifically protect women against domestic violence, however, violence is punishable, whether it is perpetrated against males or females, and women can use such provisions to access the judicial system and law enforcement. There is currently only one shelter in Nablus and a second under construction in the Bethlehem area.

TUNISIA

In Tunisia, the Personal Status Code introduced in 1956 adopted the principal of equality between men and women, and guaranteed it by constitutional and legislative texts, claims Lilia Labidi (277). In fact, polygamy was outlawed, the eligible marriage age for girls was raised to 17 and her consent was required, and guardianship was given to the mother in case of the father's death. Adoption was made legal. In 1968, the same penalties were instituted for the adulterous man as for the adulterous woman. In 1981, the right to live in the family residence was given to the woman in case of divorce as was custody of children. Starting in 1993, the amendments introduced imposed upon both spouses the obligation of treating one another with kindness and mutual aid in running the household and caring for the children. The woman's duty to obey the husband was abolished. The mother shares in managing the affairs of her children and the married girl who is still a legal minor has the right to control her own life and wealth. A fund to guarantee the payment of food support for the divorced woman and her children was established and a woman married to a non-Tunisian may transmit her nationality to the children, with the consent of the father. In cases of conjugal violence, the situation of matrimony is considered to be an aggravating circumstance, leading to more severe penalties; violence against a spouse for acts such as adultery are now treated simply as crimes, with so-called attenuating circumstances no longer considered. Since 1996, maintenance payments are awarded to the mother who has custody of the children, orphan's payments continue up to the age of 25 if the youth remains in education, and the possibility of both spouses to contract an individual loan to buy a residence is

introduced. In the workplace, non-discrimination between the sexes is mandated.

Now that women have gained new rights and protective mechanisms, varying greatly according to the country, several general problems remain throughout the region. The first involves maintaining the effort to gain further advances. Secondly, the awareness women have of their rights needs to be extended and the implementation of these rights improved, a problem that is particularly acute among rural women and other underprivileged sectors. Thirdly, in the absence of a democratic political culture (both on the level of formal politics as well as within women's movements themselves), women's movements are at risk of being weakened without having accomplished the deconstruction of dominant representations: on the one hand, dependence on foreign funds and discourse raises a number of problems; on the other, they are in danger of being instrumentalized by their States that may be looking for legitimacy from hegemonic forces abroad as a way to shore up their own internal authority.

CONCLUSION

To conclude, it is important to mention that the situation of women's rights is different from Palestine and Tunisia and in other Arabic countries such as in Yemen and the Arab Gulf States; in fact, in these countries, the current general status of women's human rights conditions is broadly characterized by international and local human rights, non-governmental organizations (NGOs) as being abysmal. Progressive changes toward achieving equality for women have been slow. Despite the existence of regional commonalities, reasons for this gloomy status are numerous and vary from country to country. One principal reason, however, relates to the weak status of civil movement for women's rights. Civil activism pertaining to women's human rights is widely conditioned by the political framework within which civil society operates in the region. Existing NGOs representing women's issues are either influenced or controlled by the ruling regimes, a factor that renders them suspect of being government showcases to foreign human rights monitors. Consequently basic human rights enjoyed by women in the region, such as the right to work and to education, are attained not through a history of civil activism but by government sanctions. This reality of inhibited civil activism subjects gender-related human rights to ideological dispositions as well as political positions of the ruling regimes *vis-à-vis* internal conservative and religious pressure elements the State may face. Historically, and in the

face of thriving political Islamist groups, the autocratic States of the region often appear, paradoxically, as the protectors of women's rights, albeit in limited ways, against the excessive demands of internal politico-religious movements in connection with women's rights.

Commonly in the societies of the region, claimed Huda A. Sfi (269-270), gender related human rights are intrinsically conditioned by larger normative legal rights granted or suspended by the Shari'a, a divinely ordained system of law that covers the totality of the Muslim way of living, including gender relations and rights. Consequently, actual rights and triumphant dialogues on women's status within society tend to be those rights and dialogues consistent with interpretations of the Shari'a. Norms from external systems of women's human rights, such as the universal rights proposed by the United Nations and international conventions, are incorporated when and if they can be rationalized within the internal Shari'a norms. Such incorporation, however, cannot override the power of the Shari'a law, which the constitution assigns as the supreme basis of all civil rights, including those regulating marriage contracts and inheritance. Consequently the rights stipulated under the Shari'a override the constitutionally proclaimed rights prescribed by the Shari'a.

Despite the Shari'a evident supremacy, there are other sources that prescribe gender relations, status, and rights. Centuries old patriarchal customary laws and contemporary socioeconomic factors often coalesce and provide the rationale under which gender inequalities and the violations of women's human rights are perpetuated in this region.

Samia Locate⁷¹

⁷¹ Samia LOCATE is a doctor in Arabic language and civilisation. She did a Master Degree in translation from Arabic into French at the University of Sorbonne (Paris) and then, in 2008, a Ph.D at the University of Leeds (England). She is the author of *Makkan and Madinan Revelations*, a Comparative Study (Munich: Lincom Europa Munich, 2009). Presently, she is teaching English at the Regional University for trade and craft industry (URMA) and is in charge of teaching Arabic language and civilisation at La Maison des Langues of the Université de La Réunion.

RECOMMENDATIONS FOR PALESTINE

- 1) The future Palestinian nationality law should grant women the right to pass their nationality to their husbands and children without any discrimination and allow women the option of maintaining their maiden names on their passports.
- 2) The Palestinian Authority should ensure that divorced women receive alimony.
- 3) The Palestinian Authority should punish all perpetrators of « honour crimes ».
- 4) The Palestinian Authority should appoint more women in the judiciary and provide court and police officials with compulsory training in women's rights.

RECOMMENDATIONS FOR TUNISIA

- 1) The government and women's NGOs should initiate a national public awareness campaign to inform the public of women's rights under amended domestic violence laws, as well as new protections against all forms of violence under the country's penal code.
- 2) The government should criminalize all forms of violence against women, including rape, and provide gender-sensitive training to its police and court officers to ensure that victims receive State services.
- 3) The government should facilitate the efforts of women's rights groups to establish documentation centers in police stations to record incidences of gender-based violence.

REFERENCES

- AN-NA'IM, Abdullahi. "Human Rights in the Muslim World. Socio-political Conditions and Scriptural Imperatives", in *Harvard Human Rights Journal* 3 (1990), 13-52.
- AZZOUNI, Suheir. *Women's Rights in the Middle East and North Africa, Citizenship and Justice*, N. Sameena & Tomppert Leigh (ed.), New York: Rowman & Littlefield publishers, 2006, 220-309.
- BADERIN, M. "Establishing areas of common ground between Islamic law and international human rights," in *International Journal of Human Rights* 5: 2 (2001), 72-113.
- CHARLESWORTH, Hillar & CHINKIN, Christine. *The Boundaries of International Law. A Feminist Analysis*, Manchester: University Press, 2000.
- CONNORS, Jane. "Non-governmental organizations and the human rights of women at the United Nations", in P. Willets (ed.), *'The Conscience of the World'. The Influence of Non-Governmental Organizations in the United Nations System*, London: Willets, 1996, 147-80.

- , "The Women's Convention in the Muslim world", in M. Yamani (ed.), *Feminism and Islam. Legal and literary perspectives*, Reading (UK): Yamani, 1996, 351-71.
- COOK, Rebecca. "Reservations to the Convention on the Elimination of All Forms of Discrimination against women", in *Virginia Journal of International Law* 30 (1990), 643-716.
- FRASER, Arvonne. "Becoming Human. The Origins and Development of Women's Human Rights", in *Human Rights Quarterly* 21 (1999), 853-906.
- GALAGHER, Anne. "Ending the Marginalization. Strategies for Incorporating Women into the United Nations Human Rights System," in *Human Rights Quarterly* 19 (1997), 283-333.
- ISLAM, al-Hibri. "Law and Custom. Redefining Muslim Women's Rights", *American University Journal of International Law and Policy* 12:1 (1997), 1-44.
- LABIDI, Lilia. "Women's rights in Tunisia" in *Encyclopedia of Women and Islamic Cultures*, vol.2 *Family, Law and Politics*, Brill: Leiden-Boston, 2005: 277.
- LOCATE, Samia. "Makkan and Madinan Revelations, a Comparative Study". Published by Lincom.Europa GmbH, Muenchen: 2009, 264pages. A catalogue record for this publication is available from Die Deutsche Bibliothek (<http://www.ddb.de>).
- MAYER, Ann, E. "Universal versus Islamic Human Rights. A Clash of Cultures or a Clash with a Construct?" in *Michigan Journal of International Law* 15 (1994), 307-404.
- MOOSA, Ebrahim. "The Dilemma of Islamic Rights Schemes", in *Journal of Law and Religion* 15 : ½ (2000-1), 185-215.
- OTTO, Dianne. "Holding up Half the Sky, but for whose Benefit? A Critical Analysis of the Fourth World Conference on Women", in *Australia Feminist Law Journal* 7 (1996), 7-28.
- SFIF, Huda. "Women's rights in Yemen and the Arab Gulf," in *Encyclopedia of Women and Islamic cultures*, vol.2 *Family, Law and Politics*, Brill: Leiden-Boston, 2005: 269-270.
- SULLIVAN, D. J. "Women's Human Rights and the 1993 World Conference on Human Rights", in *American Journal of International Law* 88:1 (1994), 152-67.
- WETCHMAN, Lynn. "Human's Rights" in *Encyclopedia of Women and Islamic Cultures*, vol.2 *Family, Law and Politics*, Brill: Leiden-Boston, 2005: 265-68.