



Women's Rights in Muslim Communities: A Resource Guide for Human Rights Educators

May 2009

equitas

Centre international
d'éducation aux droits humains
International Centre for
Human Rights Education



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Preface

Women's Rights in Muslim Communities: A Resource Guide for Human Rights Educators is a joint research publication by the Directorate General of Human Rights (DG-HAM) of the Indonesian Ministry of Law and Human Rights (MOLAHR) and Equitas – International Centre for Human Rights Education.

DG-HAM and Equitas have been collaborating on a multi-year project entitled *Strengthening Human Rights Protection* in Indonesia. The project contributes towards the Government of Indonesia's National Plan of Action for Human Rights (RANHAM 2004-2009). RANHAM is being realized primarily by a National RANHAM Committee and over 400 Provincial and Local RANHAM Committees. Apart from staff from DG-HAM, the Committees contain a diversity of stakeholders from other parts of society, in particular other Government Ministries, universities, and civil society organizations.

The DG-HAM / Equitas project has been developed in order to strengthen the capacity of the Ministry of Law and Human Rights staff and their partners to undertake effective human rights education (HRE). In particular, the project's activities are aimed at strengthening one of RANHAM's pillars (apart from harmonization), namely that of "dissemination and education on human rights." The project's activities have centered on training in HRE for three distinct, yet interconnected groups: 1) members of the National RANHAM Committee, 2) members of the Nanggroe Aceh Darussalam (NAD) Provincial RANHAM Committee, and 3) members of the National Team of HRE Trainers (with members from the previous two groups).

To address the challenges faced by trainers in conducting human rights education (HRE) activities in communities implementing Shari'a-nuanced *perda* (short for *peraturan daerah*, local legislations influenced by syariah), a new project component has been added. This component aims to provide DG-HAM and the RANHAM Committees with additional tools and skills that will strengthen their ability to undertake effective HRE activities and ensure sustainable results. Its focus on local legislation brings an additional RANHAM component to the project, that of harmonizing national and local laws and regulations in accordance with international human rights standards.

The researchers of this publication hope to contribute to the tools and reference materials available for human rights educators in general, but especially those working in Muslim communities. The issues addressed in this publication focus specifically on women's rights.

Methodology

This research publication aims to facilitate a dialogue between two legal traditions: human rights law and Islamic law. In particular, it draws attention to the realization of women's rights in Muslim communities.

For each of these legal traditions, the founding arguments for rights are examined with an analysis of how these rights have been realized, implemented, contested, or violated in the lives of women. The next step is to bring these two legal traditions into direct dialogue through a discussion on Islam and human rights.

Chapter 1 establishes the human rights paradigm that the research rests in: women's rights are human rights and that rights are indivisible. Against this background, the chapter presents an outline of the UN human rights instruments relevant to women's rights.

Chapter 2 begins with some demographic information on the Muslim world and continues with a history of the treatment of Islamic law in the West. The chapter concludes by establishing woman-centered reform as the paradigm for this research publication on Islamic law.

Chapters 3 to 6 address substantive rights issues. The specific topics are listed below:

- Chapter 3: Women's Political Leadership Rights in International Human Rights Law
- Chapter 4: Women's Reproductive Rights in International Human Rights Law
- Chapter 5: Women's Rights in Marriage: Consent, Child Marriage and Finance
- Chapter 6: Women's Rights to Freedom of Movement and Choice of Dress in International Human Rights Law

Chapters 3 to 5 are divided into three sections: human rights law, Islamic law, and the intersection of Islam and human rights.

The sections on human rights law and Islamic law present the basic relevant texts on which these legal traditions rely. There is an analysis of how women's rights have been realized, implemented, contested, or violated by States parties or in local communities. Throughout the publication, there are text boxes with practical examples to illustrate arguments.

The two legal traditions are placed into direct dialogue through a section on Islam and human rights at the end of Chapters 3 to 5.

Chapter 6 addresses veiling and women's mobility, which have only recently entered into the framework of international human rights law. Consequently, the legal conceptualization of these issues as human rights is still nascent.

This research is meant to be accessible to human rights educators, in response to your needs. We welcome feedback on how to improve, develop or to further tailor this research to ensure that the dialogue between human rights law and Islamic law is fruitful and enduring.

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Chapter 1: Women's Rights Are Human Rights

1.1 Introduction

UN actions for the advancement of women began with the signing of the UN's founding Charter. In its Preamble, the members of the UN declared their faith "in fundamental human rights, in the dignity and worth of the human person, in **the equal rights of men and women** and of nations large and small...." and Article 55 required Member States to promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Since then, a number of international instruments on women's rights have been adopted by the UN. Among these treaties are:

- The Convention on the Political Rights of Women (1952)¹
- The Convention on the Nationality of Married Women (1957)
- The Convention on Recovery Abroad of Maintenance (1956)
- The Convention on the Consent to Marriage (1962)
- The Convention on the Elimination of all forms of Discrimination Against Women (1979) (CEDAW)

1.2 CEDAW

CEDAW is considered the cornerstone of women's rights. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. According to the Convention, discrimination against women is "... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This includes discrimination that exists formally in the laws (**de jure** discrimination) as well as discrimination that originates from practices and customs (**de facto**). CEDAW is the only human rights treaty which targets culture and tradition as influential forces shaping gender roles and family relations.

The Convention came into force on 3 September 1981, and has so far been accepted by 139 UN Member States. Unfortunately a number of states have made general reservations upon ratification which are contrary to the Vienna Convention on treaty provisions, since they contradict the objective and the purpose of such a convention. One example of a **widely drawn reservation** is the following: contradiction between substance and Shari'a. Therefore the CEDAW committee reminds states parties that have made such reservations² that they should withdraw them.

CEDAW is the result of women's activism through the regional, interregional, international and transnational women's rights networking during the 1970s and 1980s. This activism nourished and was facilitated by different UN initiatives, and more specifically the work of the Commission on the Status of Women (CSW) such as the Vienna and the Beijing conferences.³ In 1993, the World Conference on Human Rights in Vienna reaffirmed that women's rights are also human rights and declared their rights inalienable, integral and indivisible⁴. It also put forward the concept of Gender mainstreaming⁵, stating that "equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity".

Another outcome of the Conference was the appointment of a **Special Rapporteur on Violence Against Women**⁶. The Rapporteur seeks and receives information on violence against women, its causes and consequences, and recommends means and ways to eliminate them. Until 2006, the Rapporteur informed the UN Commission on Human Rights and since then, has reported to the Human Rights Council⁷.

The Fourth World Conference on Women was held in Beijing in September 1995. During this conference, the countries of the world reviewed women's advancement in light of these guidelines and adopted a Platform for Action, addressing the challenges and demands of the next century.

1.3 Monitoring Mechanism for CEDAW

The implementation of CEDAW is monitored by the CEDAW Committee which convenes once a year, reviews the reports of States parties on measures they have taken to comply with CEDAW's obligations⁸ and evaluates the progress made. Like the other five human rights treaties, CEDAW does not set out in detail how it will deal with the reports by the States regarding the status of implementation of its provisions on their territory.

The main feature of the procedure for consideration is a "**constructive dialogue**". The CEDAW Committee engages in a constructive dialogue with each delegation from the State party whose report it is considering⁹. This dialogue consists of a discussion between the delegation of the State party and the Committee, in which "the head of the delegation is invited to introduce the report in an opening statement and [...] replies to the lists of issues¹⁰ that are prepared in advance by the Committee members and to specific questions raised on specific aspects of the report of particular concern.¹¹ This procedure is not adversarial and its aim is to assist the State party in implementing the treaty as fully and effectively as possible. The notion of constructive dialogue reflects that treaty bodies are not judicial bodies, but are created to monitor the implementation of the treaties and provide encouragement and advice to States parties."¹²

During its sessions, the Committee addresses its concerns and recommendations to the State party in the form of **concluding observations**. It can suggest specific measures as well as make general recommendations to the States parties on

eliminating discrimination against women through its **concluding recommendations**¹³.

The Committee may also:

- Invite UN specialized agencies to submit reports for consideration and may receive information from non-governmental organizations.
- Invite representatives of NGOs to make oral or written statements and provide information or documentation to the Committee or its pre-sessional working group.¹⁴
- Welcome “written information from national and international NGOs at both their pre-session working groups, during the drafting of the list of issues, and the full Committee session at which the State party report will be considered”¹⁵
- Devote specific meetings during its pre-sessional working groups to NGOs, to enable them to brief members orally on the situation in States parties whose reports are under consideration¹⁶.

In order to help with the interpretation of its provisions, the CEDAW committee has adopted “the practice of elaborating their views on the content of the obligations assumed by States parties in the form of “**general recommendations**”¹⁷. They “constitute detailed and comprehensive commentaries on specific provisions of the treaties and on the relationship between the articles of the Convention [...] and specific themes / issues.”¹⁸ These are usually preceded by “wide consultations with specialized agencies, NGOs, academics and other human rights treaty bodies”¹⁹.

Finally, in accordance with the Optional Protocol to the Convention, the Committee is mandated to receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee, and to initiate inquiries into situations of grave or systematic violations of women’s rights. These procedures are optional and are only available where the State concerned has accepted them.

1.4 Indivisibility, Interrelatedness and Interdependence of Women’s Rights

The recognition that human rights are **indivisible, interrelated, and interdependent** is a fundamental principle of human rights protection. The historic separation of civil and political rights and social and economic rights into the two International Covenants²⁰ cannot be understood to represent a sharp analytical distinction between the two categories of rights.²¹ The interdependence of all human rights is recognized in the third paragraph of the preamble of the ICCPR: ...

“The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights...”

The Human Rights Committee (HRC) itself has argued the State has to address the material conditions and associated inequality that render such rights otherwise meaningless for some members of society. Moreover, the HRC has stated that the right to equal protection of the law in Article 26 of the ICCPR places affirmative obligations on states to deal with those social and economic inequalities between men and women that render formally equal treatment by the state problematic.

This interdependence is especially true where women are concerned. Indeed in their real lives, the distinction between civil and political rights and economic, social and cultural rights is an artificial one. For women in particular, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. Women who are economically and socially unequal, and who are disproportionately poor, do not enjoy liberty, security of the person, freedom from violence, sexual and personal autonomy, privacy, or full social and political citizenship. Thus, achievement of women's civil and political rights is very much dependant upon their equal enjoyment of economic and social well-being and liberty.

1.5 Context of Women's Rights

In the Bangkok Governmental Declaration²² endorsed at the 1993 Asian regional preparatory meeting for the Vienna World Conference on Human Rights, Asian governments agreed that human rights " are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds". This declaration also clearly articulated "the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and the eradication of all forms of discrimination and of gender-based violence against women".

It is important to stress that this declaration does not promote **relativism versus universalism**. Nor does it postulate the existence of "Asian values" vs "Western values". Furthermore it has to be said that asserting commonly shared "Asian values" or "Western values" is intrinsically flawed since it does not recognize the immense diversity of Asia or the occidental world in their social-political practices and ethnic-cultural identities of their people (for instance, what one means by community). Usually these terms are used by governments with a **political agenda** that includes the notion of respect of a nation's right to self-determination. This often presupposes that foreign states or multinational agencies should not interfere with the situation of human rights as they are applied in a given country. The origin of an idea in one culture should not entail its unsuitability for another culture, nor should shared cultural assumptions be mandatory to share values. On the contrary, **intercultural dialogue** about human rights has shown that is possible for people from different origins and beliefs to participate in a conversation on human rights, since they share minimal values (such as that genocide and slavery are wrong), and as long as they are willing to open their cultural assumptions to reflection and re-examination.

In the same vein, it is important to pay attention to the dynamics and the overlapping of issues and contexts of women's rights in order to deal with the perception that UN human rights instruments are imperialist and using their power to universalise and secularise rights, while at the same time avoid falling into cultural relativism. This focus enables us to highlight the fact that each person who is the target of a human rights treaty is not an autonomous, organic entity separate from everything surrounding him or her, but rather a self that is located – located in a family, a community, a nation, an ethnic group, etc²³.

For instance, in her book on translating international human rights law on gender violence into local justice, the American anthropologist Sally Engel asserts that “various actors in the localisation process contribute to ‘translating’ international human rights ‘down’ into local systems and ‘translating’ actors’ local stories ‘up’ by telling these stories ‘using global rights language’ to achieve their objectives”²⁴. In order to do so, one way can be to acknowledge the fact that cultures and religions are often at the centre of the lives of the people on the ground. Understanding culture and religion as factors that contextualise human rights, as a complement to these rights rather than as competing norms, can be a way to initiate fruitful dialogue. Furthermore, this approach enables us to put the emphasis on the lessons learned from attempts to put them into practice at the local level, making sure that the human rights framework is put into context in order to offer a relevant response to the needs and problems of local people.

Amongst the obstacles to women's enjoyment of their rights is the conduct of non-state actors. For instance, the impact of “politics of authenticity” or the “politics of identity” conveyed by groups of non-state actors has been denounced, as it often targets women by emphasizing their role as guarantors of “the future,” the source of children (soldiers and standard-bearers) and preservers of family. The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief²⁵ specifically states that nothing in it “shall be construed as restricting or derogating from any rights” defined in the Universal Declaration and the International Covenants, thereby denouncing intolerance and related violence against women based on religion or belief. In 1993, the action program of the World Conference on Human Rights (Vienna) stressed the importance of working towards “the eradication [...] of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism”²⁶.

A number of international instruments require states to ensure that private behaviour, whether by individuals or groups does not infringe upon the enjoyment of human rights. They specify that no one can engage in an activity aimed at the destruction of any of the recognized rights and freedoms²⁷ and the responsibility to promote and observe such rights²⁸. More specifically regarding women, the **UN Declaration on the Elimination of Violence against Women** : Article 4 (c) requires states to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. ” The **Convention on the Elimination of All Forms of Discrimination Against Women**: Article 2 (1)

stipulates that States Parties “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”

¹ Convention on the Political Rights of Women, 193 U.N.T.S. 135, entered into force July 7, 1954.

² See Vienna Declaration A/CONF.157/23 para 39 “States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law”. For example, see “Saudi Arabia CEDAW/C/SAU/CO/2 2008

³ The UN International Women’s Year (1975) and Decade for Women (1975–85) and subsequent UN-sponsored conferences in the 1980s and 1990s – the Nairobi Conference (1985), the International Conference on Population and Development in Cairo (1994), the International Conference on Human Rights, and especially the Women’s Tribunal in Vienna (1994), the World Summit for Social Development in Copenhagen (1995) and the Fourth World Conference on Women in Beijing (1995).

⁴ Vienna Declaration para 18. “The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community”.

⁵ Vienna Declaration para 37. “The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms....”

⁶ United Nations Commission on Human Rights in resolution [1994/45](#), adopted on 4 March 1994, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences. The mandate was extended by the Commission on Human Rights in 2003, at its 59th session in resolution [2003/45](#) . In the same resolution the Commission on Human Rights

⁷ General Assembly resolution 60/251 of 15 March 2006

⁸ The Committee is composed of 23 experts, who are elected by those countries that have ratified the Convention. Members of the Committee, who are persons "of high moral standing and competence in the field covered by the Convention", serve for a term of four years and may be re-elected. Though nominated by their Governments, the experts serve in their individual capacities and not as delegates or representatives of their countries of origin.

⁹ Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process", HRI/MC/2008/4 5 June 2008 para 17 “However, all treaty bodies have adopted broadly the same approach, the main features of which are the “constructive dialogue” in which all committees engage with a delegation from the State party whose report they are considering, and the adoption of “concluding observations/comments”, acknowledging progress made and indicating to the State party where further action is required”

¹⁰ Ibid Para 45 “[...] The CEDAW list of issues focuses on data and information that require updating since the report was submitted or supplementary information, as well as a number of standard questions that relate, in particular, to the ratification of the Optional Protocol to the Convention and acceptance of the amendment of article 20, para. 1.” And 51 “The primary role of the list of issues in CEDAW, CESCR, CERD, CRC and CMW is to elicit additional or updating information. The list also provides the State party’s delegation with advance notice of the issues with which the committee is likely to be concerned

¹¹ Ibid Para 59

¹² *The United Nations Human Rights Treaty System*, Human Rights Fact Sheets No. 30, p. 31.

¹³ Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process", HRI/MC/2008/4 5 June 2008

¹⁴ Ibid Para 107

¹⁵ Ibid Para 108

¹⁶ Ibid Para 110

¹⁷ See article 21 CEDAW

¹⁸ Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process", HRI/MC/2008/4 5 June 2008 Para 102

¹⁹ See the procedure adopted by CEDAW in 1997 (A/52/38/Rev.1, para. 480).

²⁰ Preamble, *International Covenant on Civil and Political Rights*, GA Res. 2200A (XXI), 21 U.N. GOAR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976;

Preamble, *International Covenant on Economic, Social and Cultural Rights*, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46;

²¹ Craig Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion

of the International Covenants on Human Rights" (1989) Osgoode Hall L J. 769; Craig Scott, "Reaching

Beyond (Without Abandoning) the Category of 'Economic, Social, and Cultural Rights'" (1999) 12 Hum. Rts. Q. 633

²² The Ministers and representatives of Asian States, meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human rights,

²³ Conor Gearty, *Can Human Rights Survive?*, The Hamlyn Lectures 2005 (Cambridge: Cambridge

University Press, 2006), p.141

²⁴ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) p 211

²⁵ General Assembly resolution 36/55 of 25 November 1981

²⁶ See Vienna Declaration para 38.

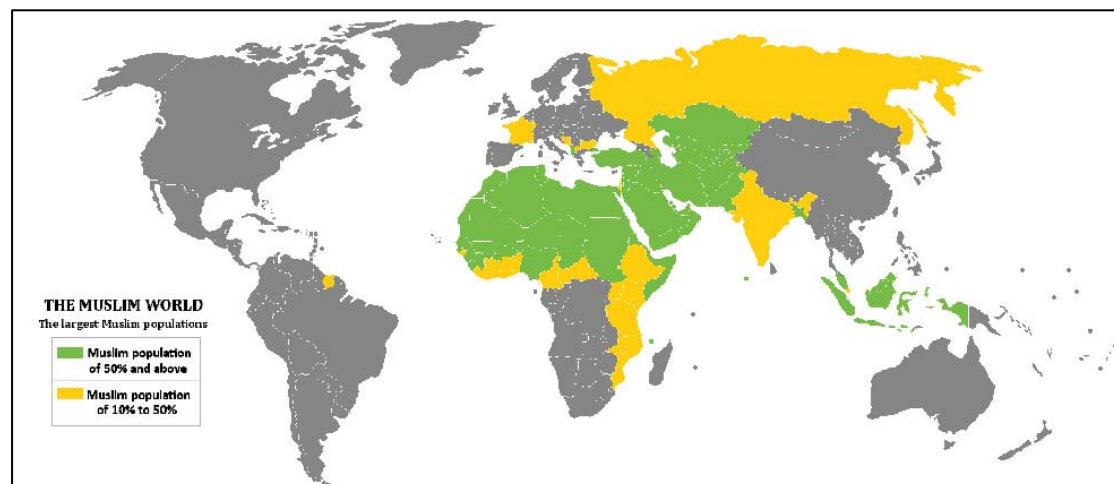
²⁷ See Universal Declaration of Human Rights : Article 30 states that nothing in the Declaration "may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms" set out in the UDHR and the two International Covenants on Human Rights : Article 5 (1) states that nothing "in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity aimed at the destruction of any of the rights and freedoms recognized" or "at their limitation to a greater extent than is provided for."

²⁸ See preambular paragraph of both Covenants, States Parties "[Realize] that the individual , having duties to other individuals and the community to which he [sic] belongs, is under a responsibility to strive for the promotion and observance of the rights" recognized in the Covenants.

Chapter 2: An Introduction to Islamic Law and Contemporary Muslim Communities

2.1 The Muslim World

Islam is a monotheistic faith that revolves around the declaration that “there is no deity except God and Muhammad is the messenger of God.” Approximately one-fifth of the world’s 6 billion people are Muslim. Most live in Muslim-majority states, of which there are at least 57. Perhaps because Islam originated in the Arabian Peninsula, there exists a popular belief that most Muslims are of Arab descent. On the contrary, only 15% of Muslims are Arabs; the largest Muslim population exists in Indonesia, followed by Pakistan, India, Bangladesh, Turkey, Egypt and Nigeria. Muslim populations span the globe, and are found in minority- and majority-Muslim communities. The practice of Islam in these communities varies from region to region.



2.2 Foundations of Islamic Law

The authoritative centre of Islamic law that resides in the Qur’an and Shari’a has been defined as “a normative conceptual ideal of the just and good life that is embedded and at items hidden in the text” (Abou El Fadl 2001, 13). These texts are the Qur’an and the Hadith. The task of the legal scholar is to engage the text and, in so doing, to unearth this ideal from the text and make it plain so that Muslims may follow it in their daily lives.

There are four elements upon which Islamic law is based. The first two are the textual sources of the law, i.e. the Qur’an and Hadith. The other two are non-textual sources, and these refer to the process through which the law is derived. These processes are called analogous reasoning (qiyas) and scholarly consensus (ijma).

The Qur'an is the word of God revealed. It was revealed to the Prophet Muhammad (peace be upon Him) over a period of 22 years. Revelation occurred in various stages, at various times and often in response to the realities of the community of believers that gathered around the Prophet.

The Hadith refers to a collection of narratives that recorded the sayings, actions and silences of the Prophet. They formed the second source of textual guidance in the derivation of Islamic law.

2.3 Overview of the Schools of Law

While the majority of Muslims follow the Sunni school of thought, a sizable number of Muslims also adhere to the Shi'a school of thought. The central difference between these two schools of thought is the issue of leadership. Whereas Sunni thought adheres to a notion of elected leadership, Shi'a thought prefers a notion of leadership that is divinely selected.

Amongst the Sunnis there are four schools of law: Hanafi, Maliki, Shafi'i, and Hanbali. Amongst the Shi'a the schools of law include the Jafaris (also known as the Ithna, Ash'aris), the Isma'ilis and the Zaydis.

Each school is named after the scholar to whom it traces its legal methodology.

Founder and Location of Islamic Schools of Law

School	Founder (died)	Where this school is found today
Sunni Schools of Law		
Hanafi	Abu Hanifa (d. 150/767)	Indian subcontinent, Syria, Jordan, Palestine, Turkey, the Balkans
Maliki	Malik (d.179 /795)	West Africa, Algeria, Tunis, Morocco, Mauritania, Libya, Kuwait, Bahrain, Dubai and Abu Dhabi
Shafi'i	Al-Shafi'i (d.204/820)	Egypt, Sudan, Ethiopia, Somali and North Yemen, Indonesia, Malaysia, Philippines
Hanbali	Ahmad ibn Hanbal (d. 241/855),	Saudi Arabia, Qatar, North East of Oman and the rest of the Arab Emirates
Shi'a Schools of Law		
Ithna Asahari/Jafari	Jafar al-Sadiq (d. 148/765)	Iran, Azerbaijan, Lebanon, Bahrain
Zaydi	Zayd ibn Ali(d.122/740)	Yemen
Isma'ili	Qadi al-Nu'man (d.363/974)	As minority communities mainly in Central and South Asia, Africa and the Middle East

The differences between the schools vary and are limited to legal methodologies. Characteristically, the Hanafi school is thought to rely more on legal reasoning, the

Shafi'i school is thought to rely more on Hadith, and the Maliki school more particularly on the Hadith that originated in Medina.

2.4 Islamic Law in Western Scholarship

The study of Islamic law in the West traces its origins to early colonial efforts, as colonizing powers sought more effective means for controlling newly annexed populations. Two common themes emerged in this early study of Islamic law. The first was to characterise Islamic law as a legal system with limited jurisprudential sophistication, and as a system that reached its zenith in the 8th century. This system had met an inevitable demise. This led to the second theme, which spoke of the demise or decline of Islamic law as a result of stagnation, ossification and a lazy reliance on imitation and a blind following of previous scholars. This portrayal of Islamic law as a dying, non-adaptive, outdated and untenable system of law led Orientalist scholars to the conclusion that Islamic law was prone to extinction, and that its demise was imminent.

The persistence of Islamic law in modern and post-modern times prompted a re-evaluation of these predictions. In response, contemporary scholars re-examined the history of Islamic law and came to understand it as a system of law that was indeed different from those of western legal systems. However, they concluded that Islamic law was by no means any less rich, complex, nuanced or sophisticated in its legal philosophy. Nor had it remained in an ossified, stagnant state. It had innate mechanisms that allowed for change and the evolution of legal thinking.

The colonial era in the Muslim world had irreparably damaged the traditional system of Islamic law, in spite of its internal vibrancy and dynamism. Most significant was the destruction and eventual demise of most, though not all, institutional frameworks that contributed to the production of legal scholars and legal scholarship. Colonisation brought colonial legislation into Muslim communities. Colonial laws replaced local laws in most areas of public life. The single area of law that retained some semblance of its traditional self was the practice of family law.

An anomalous situation was created. Muslim family law took on a new form in the colonial context, its traditional practitioners lost their institutional and systemic supports and its new practitioners had minimal training in classical law. What eventually survived as Muslim personal status law was an amalgamation of classical law with provisions imported from the laws of colonial powers. Being the only aspect of Islamic law to 'survive' the colonial period, Muslim personal status laws also became a rallying point for Muslim identity and cultural legitimacy. While other areas of law had been open and susceptible to change, family laws or what had come to be known as personal status laws were much less responsive to the changing realities of Muslim communities.

This legacy of colonial conquest and the triumph of modernity over traditionalism inform contemporary debates on Islamic law and human rights to a significant degree. The Muslim response has ranged from outright rejection of western-inspired human rights norms through to open-ended systemic reform aimed at bringing Islamic law in line with international human rights norms and standards. Contemporary reform efforts differ according to context. In Muslim majority countries,

the focus rests on making national legislative frameworks align with international human rights commitments.

2.5 The Muslim World Islamic feminist legal reform

Muslim feminist legal reform has developed significantly over the past 20 years. Prior to the advent of feminist reform, twentieth-century discussions on Muslim women in Islamic law were most often cast in an apologetic mode. Scholars such as Abdur Rahman Doi (1989), Jamal Badawi (1999) and Murtaza Mutahhari (1981) were intent on revealing Islam's progressive stance on women's spiritual status, property rights and contractual rights vis-à-vis Christianity. They showed that whereas Christian thought found women responsible for the fall of humanity, Islamic thought held both Adam and Eve responsible for disobeying God's commands. While Christian marriage meant that women lost their legal capacity to hold property, Muslim women remained fully responsible for their property upon marriage. While celebrating the progressive nature of Islamic law, this scholarship also shared a view of gender relations which advocated complementary social roles for men and women. They defined the ideal gender structure of Islam as a system of gender-complementarity. These scholars maintained that divinely ordained roles for women and men were ideally suited to realising the fullness of a properly Muslim life. A characteristic feature of this early scholarship on women and Islamic law was its unified silence on the patriarchal structures of authority upon which the law was based.

Representatives of more recent trends in feminist legal reform include Azizah al-Hibri (2001), Ziba Mir Hosseini (2003), Nayereh Tohidi (2003) and Kecia Ali (2006). Their scholarship replaces previous solutions offered by earlier analyses of issues facing Muslim women. This scholarship is increasingly nuanced and complex, and may be described as Muslim feminist legal scholarship. There are at least three discernible streams of thought in Muslim feminist legal reform. Aziza al-Hibri's thinking represents a framework that reinterprets the law, while Nayerah Tohidi's scholarship represents a framework for *structural* reform. Tohidi's approach is arguably more comprehensive. Other scholars such as Kecia Ali and Ziba Mir Hosseini work within a framework of *conceptual* reform. Ali argues for increased and expanded conceptual paradigms aimed at restoring the philosophical and ethical complexities of the struggles faced by women in Islamic law (2006, 154). Ziba Mir Hosseini suggests a thorough reworking and reappraisal of the theoretical and conceptual apparatus that determines Islamic law. Collectively, these scholars aim to bridge the gap between Muslim women's legal aspirations and their legal realities.

In order for feminist scholarship to affect women's lives and experiences, it must not only question the law's conclusions but also the methods and means of legal inquiry. In addition to the various avenues of reform offered by these scholars, they also offer a challenge to traditional sources of authority in Islamic law. By challenging the authority of those who claim the right to determine the law, Muslim feminist scholars have also changed the nature of discussions on reform. Their work allows for more complex questioning of the issues faced by women, as well as the possible solutions in applying Islamic law.

Characteristic of this new scholarship is the argument for gender equality. These arguments represent the fruits earlier feminist scholarship produced by historians such as Fatima Mernissi and Leila Ahmed. Both scholars have written incisive critiques of the patriarchal nature of classical Muslim societies, while arguing for the egalitarian message of Islam. Their work has been complemented by writings of Qur'an scholars such as Riffat Hassan (1994), Amina Wadud (1999) and Asma Barlas (2004). Approaching the Qur'an as a gender-affirmative text, they have produced fresh, insightful and gender-aware commentaries on the text of the Qur'an. Collectively, these scholars have developed a substantive body of work upon which to build further gender-sensitive legal reforms.

The approach to legal reform represented by Kecia Ali and Ziba Mir-Hosseini appears to be the farthest-ranging reform paradigm. Their critiques question the underlying concept of marriage within Muslim family law. Ali argues that the analytical framework of patriarchal legal thought is unsuitable for achieving gender justice. For instance, she suggests that "(l)ong-lasting and far-reaching reform of divorce requires more fundamentally a reform of the basic structure of Muslim marriage itself" (2006, 36). Ali's reform targets the fundamental assumptions that form the bases of family structure as it pertains to Islamic law. Her suggestions are transformative, expansive and hold the potential for far-reaching paradigmatic reform. They represent a potentially useful platform for continuing the dialogue between human rights law and Islamic law.

Bibliography

Abou El Fadl, Khaled. *Speaking in God's Name : Islamic Law, Authority and Women*. Oxford: Oneworld, 2001.

Abu-Lughod, Lila. "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others." *American Anthropologist* 104, no. 3 (2002): 783-90.

Ahmed, Leila. *Women and Gender in Islam: Historical Roots of a Modern Debate*: Yale University Press, 1993.

al-Hibri, Azizah Yahia. "Muslim Women's Rights in the Global Village: Challenges and Opportunities." *Journal of Law and Religion* XV, no. 1&2 (2001-2002).

Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld, 2006.

Badawi, Jamal A. *Gender Equity in Islam*. Indiana: American Trust Publications, 1999. Reprint, 2.

Barlas, Asma. *"Believing Women" In Islam : Unreading Patriarchal Interpretations of the Qur'*An*. Karachi: SAMA, 2004.

Doi, Abdul Rahman. *Women in Shari'ah (Islamic Law)*. UK: Taha Publishers Ltd., 1989.

Hallaq, Wael. "Can the *Shari'a* Be Restored?" In *Islamic Law and the Challenges of Modernity*, edited by Barbara Freyer Stowasser Yvonne Yazbeck Haddad: Rowman Altamira, 2004.

———. "What Is *Shari'a*?" In *Yearbook of Islamic and Middle Eastern Law (2005-2006)*, edited by Martin Lau Eugene Cotran, Victor Kattan, 151-80. Leiden: Brill Academic Publishers, 2007.

Hassan, Riffat. *Riffat Hassan: Selected Articles*. Grabels: Women Living Under Muslim Laws, 1994.

Mernissi, Fatima. *The Veil and the Male Elite : A Feminist Interpretation of Women's Rights in Islam*, Harem Politique. English. Reading, Mass. :: Addison-Wesley Pub. Co., 1991.

Mir-Hosseini, Ziba. "The Construction of Gender in Islamic Legal Thought and Strategies for Reform." *Brill* 1, no. 1 (2003).

Mutahhari, Murtazá. *The Rights of Women in Islam*. 1st ed. Tehran, Iran: World Organization for Islamic Services, 1981.

Schacht, Joseph. *An Introduction to Islamic Law*. Oxford [Oxfordshire] ; New York: Clarendon Press, 1982.

Seedat, Fatima. "Feminist Perspective on Islamic Legal Thought." McGill University, 2005 *Unpublished Paper*.

Sonbol, Amira El-Azhary. "The Genesis of Family Law: How *Shari'Ah*, Custom and Colonial Laws Influenced the Development of Personal Status Codes." In *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar. Kuala Lumpur: Musawah, 2009.

Tohidi, Nayereh. "Women's Rights in the Muslim World: The Universal-Particular." *HAWWA* 1, no. 2 (2003).

Wadud, Amina. *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. New York ; Oxford :: Oxford University Press, 1999.

Zubaida, Sami. *Law and Power in the Islamic World*. New York: I.B. Tauris 2994.

Chapter 3: Women’s Political Leadership Rights in International Human Rights Instruments

Political rights are associated with citizenship. One element is the right to “to take part in the conduct of public affairs, directly or through freely chosen representatives” (ICCPR Article 25), that is, to vote or to be eligible for election to all publicly elected bodies.¹ The conduct of public affairs has been construed broadly and includes “the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”² The participation of citizens in the processes of public affairs can be through freely chosen representatives, or through the exercise of “influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”³ Indeed the Human Rights Committee has adopted a general recommendation that “[t]he right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25.”⁴ Regarding the right to vote, the same general recommendation specifies that in order to be effectively exercised, barriers such as illiteracy, poverty and impediments from freedom of movements should be removed.⁵

Women have faced difficulties in accessing gendered citizenship rights, even though the first UN instrument recognizing political rights was enforced in 1954⁶-- more than ten years before the ICCPR. The Convention on the Political Rights of Women states that implementing the principle of equal rights for men and women as specified in the United Nations Charter as well as the Universal Declaration of Human Rights, means granting men and women equality in the enjoyment and exercise of political rights.

The CEDAW places special importance on women’s participation in public life in their countries. Its preamble reiterates that:

“[...] discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels [...] are] priority objectives of the international community”).⁷

In 1995, the Beijing Declaration and Platform for Action specified that “women's equal participation in political life plays a pivotal role in the general process of the

advancement of women. Women's equal participation in decision-making is not only a demand for simple justice or democracy, but can also be seen as a necessary condition for women's interests to be taken into account. Without the active participation of women and the incorporation of women's perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved.”⁸

Article 7 of CEDAW explains that States shall take measures to eliminate discrimination against women in both the political and the public life of the country insisting on their equal right to:

- (a) Vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) Participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) Participate in non-governmental organizations and associations concerned with the public and political life of the country.

In agreement with HRC's General Recommendation on Article 25 of the ICCPR, CEDAW's General Recommendation 23 states that: “The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.”

Furthermore, CEDAW's Article 8 states that women shall have the same opportunity as men “to represent their Governments at the international level and to participate in the work of international organizations.”

One of the major barriers faced by women in effectively exercising their political rights is the “clear distinction between the private (associated with reproduction and the raising of children) and the public sphere.”⁹ The role of cultural traditions and religious beliefs in confining women to the private spheres of activity and excluding them from active participation in public life is duly noted and it is suggested, for instance, that they should be relieved of domestic tasks in order to be able to fully participate in public life. As a result, it is important to address the “the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children.”¹⁰ Moreover, it has been noted that in many nations, traditions and social and cultural stereotypes discourage or impede women from exercising their right to vote and to participate in public life.¹¹ For example, the Beijing Declaration and Platform for Action noted that the “socialization and negative stereotyping of women and men, including stereotyping through the media, reinforces the tendency for political decision-making to remain the domain of men.”¹²

In a number of its reports, the CEDAW Committee has noted that “[t]he persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society are reflected in women’s educational choices, their situation in the labour market and their low level of participation in political and public life.”¹³

While de jure (formal) equality can be achieved through the amendments of laws and policies in order for them to treat men and women with neutrality, de facto (substantive) equality is more difficult to achieve. Indeed, de facto inequality relates to the effects of laws, policies and practices on the experiences of women. In order to redress such inequality,¹⁴ the use of temporary measures may be necessary and can include “measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination.”

The use of temporary special measures in order to give full effect to Articles 7 and 8 is suggested by Article 4.¹⁵ To illustrate: such temporary measures were recommended for Saudi Arabia in order to “accelerate the increase in the participation and representation of women in the Shura and other elected and appointed bodies in all areas and at all levels of public and political life.”¹⁶

According to CEDAW General Recommendation 23, “Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures have been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies.”¹⁷

Other measures have been recommended by the CEDAW Committee in order to address blatantly stereotypical attitudes about roles and responsibilities of women and men. This includes hidden patterns that perpetuate direct and indirect discrimination against women and girls in all areas of their lives. The aim is to promote changes in attitudes and perceptions of both women and men with regard to their respective roles in the household, with the family, at work and in society as whole in order to recognize women’s dignity. They include:

1. Training teaching staff on gender equality issues and revising school textbooks and curricula to eliminate gender-role stereotypes;
2. Disseminating information on the Convention through all levels of the education system, including through human rights education and gender-awareness training, in order to change existing stereotypical views and attitudes about women’s and men’s roles;¹⁸
3. Awareness-raising and education campaigns targeting women and men, girls and boys, and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in family and in society;¹⁹

4. Awareness-raising campaigns targeting both women and men, encouraging the media to project positive images of women, promoting women's and men's equal status and responsibilities in private and public spheres,²⁰
5. Encouraging men to undertake their fair share of domestic responsibilities so that women can devote time to public and political life,²¹ echoing the recommendation of the Beijing Declaration and Platform for Action that "The upbringing of children requires shared responsibility of parents, women and men and society as a whole. Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in society."²²

Women's political leadership rights in Muslim communities

Traditionally, mainstream Muslim scholarship limited leadership roles to men, effectively denying women's access to public leadership. The large majority of classical legal scholars determine that in order to take up a position of leadership one must:

- (a) Be a free male;
- (b) Have full capacity for moral answerability (*taklif*);
- (c) Be [morally] upright and;
- (d) Possess knowledge of the rulings of Sacred Law. (Misri 1994, 625)

Minority opinions include those of Ibn Hazm (d.456/1054) who found it acceptable for a woman to hold every office apart from that of the head of state. Abu Hanifa (d.148/765) permits a woman to hold public office and also to be a judge in matters in which her testimony is admissible. Imam Ibn Jarir Al-Tabari (d. 310/923) not only supports the unrestricted appointment of women to judgeships, he also permits women's appointments as heads of state (ibn Hajr 1980). A similar view is reported from Imam Malik Ibn Anas (d.179/795) but is adopted by only a minority of Maliki jurists. (Sanusi 2001)

There is unanimity amongst Muslim legal scholars that women may be considered and indeed have been amongst the most eminent of minds in traditional Islamic sciences. They have contributed most significantly to Hadith sciences. Accordingly, scholars place the *fatwa* (legal opinion) of women scholars on a level with those of men (Fadel 1997, 190). Similarly, women's Hadith narrations are also on a level with men's narrations. It is anomalous that even though scholars may allow a woman to be a mufti and place women's *fatwa* on a level with men's *fatwa*, they deny women the right to be judges.²³ Contemporary scholar Mohammad Fadel argues that this is because classical scholars also drew a distinction between women's private and public activities, and judging was considered a public activity.

This points to the second reason why some scholars deny women's access to leadership: the position of leadership may require women to associate freely with men in public and outside of their families, a situation which the majority of scholars find unacceptable. Public space is thought to be male space. Therefore as the public

aspect of women's legal activities changes, so too does the permission associated with it (Fadel 1997, 194). We may conclude from this opinion that women are excluded from leadership positions because they are thought to have less experience in public life or because the scholars would rather not encourage women's public participation.

The third premise upon which scholars deny women leadership positions is the association of leadership, particularly state leadership, with military leadership. This entails leading armies into battle and leading the community in prayer. Scholars reason that women cannot be allowed to engage in either of these activities. In response, contemporary scholar Mustapha Hashim Kamali finds the analogy of women's positions as judges to women's position as state rulers is problematic. Consequently, he supports the position of Ibn Jarir al-Tabari (d.310/923) who also regarded the analogy as an irregular or 'discrepant analogy' (*qiyas ma' al-fariq*). For Kamali, "the principal task of a judge is to comprehend and implement the *Shari'ah*, and men and women stand on the same footing in this regard." (2008, 208)

While there are a variety of reasons that scholars use to restrict women's access to leadership, there are a corresponding variety of opinions on when and how women can be leaders. Ibn Salah, Abu Hanifa and Ibn Hazm have all argued that masculinity is not an essential requirement for appointment to a judicial position. Abu Hanifa uses the fact that women may act as witnesses in certain legal cases to argue that women may be judges in areas of law where their testimony is accepted. In his opinion "the authority of a judge is not valid unless the judge possesses the qualifications necessary for a witness." Thus, he argues, since the law allows women to act as witnesses in certain areas of law it is also appropriate for women to act as judges, at least in those areas of law. Ibn Hazm uses the example of the Caliph of Islam, Umar bin Khattab (d.34/644) who appointed a woman known as Shifa bint Abdullah to a position of authority as Inspector of the Market. Further, there are the opinions of Ibn Jarir al-Tabari and Hasan al-Basri (d. 110/728), both of whom agree that being male is not a requirement for being a judge. They argued that since women may be jurists, i.e. muftis who issue legal rulings that require meticulous thought and analysis, they may also be judges. (Muhammad et al 2007, 167)

Much of the resistance to women's leadership rests in the way scholars interpret the following verse of the Qur'an:

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. (Sura4: Ayat34)

Scholars such as Ibn Kathir (774/1373) believe that this verse implies "that men are leaders of women, those who make judgments on behalf of women, who warn them and correct them when they stray. Almighty God bestowed upon men the potential for leadership, such as bravery, strength, completeness and reason. Women need protection and the spiritual and physical bravery of men. The concept of leadership in this case does not mean using one's authority as one pleases. It is leadership meaning love, protection, guidance, education and humane authority"(Ibn Kathir). This characterization of men as brave and women as needing protection does not

lend itself to imagining women in positions of leadership. It portrays women as followers who need male guidance and male reason.

In contrast, scholars such as Shaykh Mohammad Shaltut argue that at a fundamental level this authority does not imply leadership over women. Rather, it refers to men's responsibility *for* women (n.d., 159-268). Men are given the responsibility to support women family members and men have a legally recognized obligation to provide the women of their immediate and extended families with the basic needs of life, i.e. food, shelter and clothing.²⁴

Other scholars argue that the verse implies a hierarchy of the genders, wherein men have authority *over* women. From this perspective, scholars give men the authority to manage the lives, decisions and choices of women in their immediate and extended families. Therefore, daughters may not marry without the permission of their fathers, but sons may do so, and wives are subject to the authority of their husbands. The argument also applies to preventing women from holding public leadership positions.

Scholars also justify the view that women should not be leaders using a Hadith that cautions against the dangers of women's leadership:

"When news reached the prophet (S.A.W.) that the Persians had appointed Chosroe's daughter as their ruler, he said: "A nation which placed its affairs in the hands of a woman shall never prosper!"(Bukhari, Volume 5, Book 59, Number 709)

This Hadith was narrated by Abu Bakrah, a companion of the Prophet who recalled this narration during the Battle of the Camel (26AH/656CE), where the Prophet's widow Aisha led a group of her supporters into battle. The Battle was between rival Muslim groups aspiring for leadership of the early Muslim community. Aisha lost the battle to Ali, the Prophet's son-in-law and first cousin.

Modern scholars have interpreted this Hadith differently (Sanusi 2001). They have questioned the motives of the narrator, his intention and the meaning of the narration. Fatima Mernissi (1991) questions the reliability of the narrator, Nufay'b. Ma'ruq Abu Bakrah. First, she points out that Abu Bakrah was once punished by the Caliph Umar for giving false testimony. Abu Bakrah was undecided as to which side of the Battle to join and after Aisha lost the battle he opportunistically 'remembered' a Hadith spoken 25 years earlier to win favour with the winning side. (1991, 49-53) According to Justice Aftab Hussain (1987), Abu Bakrah could not have intended his words or the Prophet's words to imply a command against the leadership of women. Even though Abu Bakrah recalled this Hadith during the Battle of the Camel, he never left Aisha nor did he advise anyone else to do so. He was a companion of Aisha. He followed her into battle and fought among her troops. He also returned with her to Medina after her defeat. Heba Rauf Ezzat does not question the authenticity of the Hadith. Instead, she insists that the Hadith be read in the very specific context in which it originated; as a prophecy relating to the Kingdom of Persia and with no legal implications beyond that (Ezzat).

Finally, scholars dismiss it on the grounds that it is not a strong Hadith. In the science of Hadith, this Hadith is labelled as 'gharib' which implies that the narrative is quite weak. The series of narrators begins only with *Abu Bakra*. The nature of the narrative is such that other companions should have also reported it from the Prophet (sws), but we do not find any (Saleem 2005, 17). Given the difference of opinion on the Hadith of Abu Bakrah, Lamid Sanusi takes the view that "some scholars relied on this Hadith to disenfranchise (deprive women of the vote) women from leadership. [But] There has never been unanimity on this matter among scholars, past and present." (Sanusi 2001)

In modern times, women's aspirations for leadership have been more easily recognized at the local level. In Indonesia in 1957 the Nahdlatul Ulama (NU)²⁵ "issued a fatwa that allowed women to become members of legislative bodies and in 1960 it allowed women to hold the position of village head (*kepala desa*)" (Harder 2006, 81). At least three women reached the position of the Board of the NU during the 1950s and the 1960s.

The NU fatwa finds that the "participation of women in the world of politics, including by becoming (*sic*) members of the legislature, is permitted on the basis of a real and urgent common good (*maslahat*)." It also applies a list of conditions, including one that states a woman's participation in political leadership should not "disturb her household duties." In 1999, 'Aisyiyah²⁶ also concluded that "there is no objection for a woman to become leader, from the level of the household to the level of head of country, as long as she possesses the capacities to complete her task in a faithful way, using her knowledge, while at the same time not ignoring her main duty, that is as a housewife" (Harder 2006, 80). The approach taken by both NU and 'Aisyiyah characterises the challenges women face when aspiring for leadership. Both these statements maintain popular perceptions about men's and women's roles, and makes women primarily responsible for child-care and household duties.

Scholars such as Heba Raouf Ezzat take a similar, though slightly nuanced view. She draws a connection between women and social responsibility. According to Ezzat, Muslim women, like Muslim men, have a responsibility to ensure that justice and fairness prevail in society. She comes to this conclusion upon reading the following Qur'anic verses:

The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise. (Surah9: Ayat71)

You are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah. (Surah3: Ayat110)

She concludes that leadership can only be the "full occupation of a minority of people and among them some women are definitely eligible." Women who can balance family and social responsibilities have "a responsibility to participate on these political levels in a Muslim society."

In contrast, Amina Wadud points out that though the Qur'an draws an explicit connection between females and bearing children, this reference "is restricted to the biological function of the mother" and does not extend to a psychological condition or to cultural perceptions of 'mothering'." Child care is "never described as [an] essential created characteristic of the female" (22). Using her argument, similar arguments can be made for household duties.

In 1952, Al- Azhar University²⁷ published a statement that "Islamic Shari'a prohibits women to hold the position of public leaders, which include executive positions (decision maker: *al-sultan al-mulzimah*) in public affairs (*al-jama'ah*). This includes holding positions in a legislature (law making), the judiciary (i.e. presiding in courts), and executive positions in the field of the constitution" (Muhammad et al 2007, 166). Yusuf Qaradawi²⁸ recently commented that the statement reflected the conditions of the time in which it was made. Accordingly, he says "if the sheikhs who made the fatwa were alive today and observed the social changes and circumstances that have taken place since then, and the need for new *ijtihad* (independent reasoning), they might change their view." (SIS 2009, 18)

Women's political leadership rights in, and the framework of, Islam and human rights

There are clear differences between the Universal Declaration of Human Rights and Islamic law's approaches to women's rights. The differences require that we build bridges between the two sets of laws to engage in constructive dialogue that will help protect and enhance political rights of Muslim women.

Islamic law's approach and treatment of women's rights is often justified on the basis of protection of women, their security and their dignity. Therefore there are religious, cultural, social and economic rationales behind Islamic law, its interpretations and its implementation. These interpretations of Islamic law are perceived as discriminatory in regard to international and regional human rights instruments. If we look at women's political rights, we understand better how Islamic law and universal human rights seemingly conflict.

Men and women are considered equal in relation to Allah: they are both Believers and have duties and responsibilities toward Allah, as well as rights resulting from the fulfillment of these duties. There is a principle of equality as a starting point, as illustrated by Article 1 (a) of the Cairo Declaration:

Article 1

(a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

Despite this principle of equality in nature, duties and responsibilities are not distributed equally in Islam. As outlined in the previous section, the difference in treatment results from interpretations regarding women's position within society: according to mainstream interpretations of Islamic law, men and women are considered to be different since they were created to perform different duties on Earth and within society. Women are often seen as the basis of the family: they hold the family together and bring up good Believers. Therefore, men and women are equal in regard to their Creator and their creation but not in respect to one another and within society. The outcome is that traditional leadership is often given to men, whether it is the leadership of the community, the tribe, the clan or the family. Muslims sometimes perceive women's participation in political affairs as a risk to family. Others cannot help noticing the changes and impact it had on women themselves in the West (Kauser, 1997).

Tenants of the universal human rights approach consider this a case of discrimination and speak of a violation of the principle of equality. The philosophy within the Universal Declaration of Human Rights is, that men and women are born equal and remain equal throughout life. Consequently, there is no reason to expel women from the public sphere and from public affairs (Hassan, 1982 – Riffat Hassan, Pakistani-American theologian, 1943-). This idea of women being equal to men within the public political sphere is not unknown to Islam, but gives rise to debate. Islamic history is full of women playing a political role (Mernissi, 1997 – Moroccan sociologist, 1940). This has nourished the debate on whether a woman can be a head of state, which is opposed by contradictory Islamic legal sources.

To transcend these debates, some scholars have taken a reconciliatory approach. Some suggest that we should adopt a complementary vision of men and women in Islam (Bawadi, 2008): men and women are equal but different. The principle of equality should not be affected by existing differences between men and women. Others like Amina Wadud (American Islamic studies Professor, 1952-) turn to Islam to demonstrate that political rights exist and therefore there is no conflict between the Universal Declaration of Human Rights, the CEDAW and Islam (Wadud, 1999). She also promotes a new reading of the Qur'an that would improve all women's rights, including political rights. Her attempt at a female re-reading of the Qur'an is supported by others (Barlas, 2002 – Pakistani American academic specialising in international politics, Islam and Qur'anic hermeneutics, and women and gender 1950-; Mir Hosseini, 2007) who see this as an attempt to promote new interpretations and as a basis to avoid a conflict of values with the West. There is therefore a first level of Muslim women's empowerment, and a second level that includes an international dialogue on women's rights. All these attempts to reconcile Islamic law with human rights aim to enhance the implementation of women's rights in Islamic countries and participation of women in political affairs.

The Iranian legal anthropologist Ziba Mir Hosseini suggests that Islamic law's interpretations should be changed to reconcile Islamic law with provisions of CEDAW (Mir Hosseini, 2007). In particular, she focuses on the cases of Iran and Morocco: she demonstrates how liberal interpretations of the Qur'an and the Hadiths allow more space for reform. This reform impacts the general legal framework, and allows

for in-depth changes. As a consequence advocates of Islamic law and advocates of human rights law can begin negotiating the issues that separate them, while standing on firm common ground. Before the dialogue between cultures can occur, Islam has to be modified: Muslims should first look at Islamic law, culture and history to demonstrate that Islamic legal sources encourage women's participation in public affairs. Mehrangiz Kar adds that negotiations should be focused on the principle of equality, since most of the issues deal with discrimination against women in the public sphere (Kar, 2007). Like Fatima Mernissi, both authors insist on the need to look at Islam to find historical precedent wherein women were leaders of the community. Asma Barlas works on developing a framework to develop gender equality. She agrees with Mir Hosseini in the sense that Islamic law needs to be reformed from inside by insiders who are sensitive to modern realities (Barlas, 2002). Therefore she argues that there should be "liberatory readings" of the Qur'an. There will then be an internal dialogue during which women have a role to play in asserting their rights, and in particular political rights. There should therefore be an internal dialogue about women's role within society. When Muslims work on reforming interpretations of Islamic law, they usually refer to the two existing systems that seem to be in conflict: Islam and the West. They draw from both sources and develop a hybrid discourse that merges liberalism with Islamic ideals (Osanloo, 2009). Therefore, there is a dialogue in practice.

Once interpretations of Islam are reformed, it becomes possible for Muslim countries to engage in dialogue with other countries about what universal human rights are. The former president of Iran, Muhammad Khatami, insists on this internal process of change and on the dialogue of civilizations that can then occur between States (Khatami, 2000). His idea is that once countries have agreed internally on the components of human rights, a dialogue can take place at the international level on what human rights are for the international community.

References

- al-Masri, Ahmad Ibn Naqib *Reliance of the Traveller. Umdat Al-Salik Wa 'Uddat Al-Nasik: A Classical Manual of Islamic Sacred Law*. Translated by Nuh Ha Mim Keller. Evanston, Illinois: Sunna Books, 1994.
- Ali, Abdullah Yusuf. *The Holy Qur-An : Text, Translation & Commentary*. Lahore :: Shaikh Muhammad Ashraf.
- Bukhari, Muhammad ibn Ismail (d.870). *The Translation of the Meanings of Sahih Bukhari: Arabic-English*. Translated by Muhammad Muhsin Khan. Al-Medina al-Munawara :: Islamic University, 1973.
- Esposito, John L. *The Oxford Dictionary of Islam*. New York: Oxford University Press, 2003.
- Ezzat, Heba Raouf. "Women and the Interpretation of Islamic Sources." http://www.crescentlife.com/thisthat/feminist%20muslims/women_and_interpretation_of_islamic_sources.htm.
- Hussain, Justice Aftab. *Status of Women in Islam*: Law Publications, 1987.
- Ibn Hajar al-Asqalani, Ahmad ibn Ali (d.1449). *Fath Al-Bari Bi-Sharh Sahih Al-Bukhari*. Beirut: Dar al-Marifah, 1980.
- Ibn Kathir, Ismil ibn Umar (d.1373). *Tafsir Al-Quran Al-Azim*. Beirut: Dar al-Fikr, 1994.

- Kauser, Zeenat, *Political Participation of Women: Contemporary Perspectives of Gender Feminists and Islamic Revivalists*. Malaysia: A.S. Noorden, 1997.
- Mernissi, Fatima. *The Veil and the Male Elite : A Feminist Interpretation of Women's Rights in Islam*, Harem Politique. English. Reading, Mass. :: Addison-Wesley Pub. Co., 1991.
- Saleem, Shehzad. "Islam and Women: Misconceptions and Misperceptions." *Renaissance: A Monthly Islamic Journal*, 2005.
- Sanusi, Lamido Sanusi. "Women and Political Leadership in Muslim Thought: A Critique " (2001),
http://www.nigerdeltacongress.com/warticles/women_and_political_leadershi_p_i.htm.
- Shaltut, M. *Al-Islam 'Aqida Wa Shari'a*. Cairo: Dar al-Shuruq, no date.
- Sisters in Islam. *Women as Judges*. Edited by Sisters in Islam. Kuala Lumpur: Sisters in Islam, 2009.
- van Doorn Harder, Pieterella. *Women Shaping Islam: Reading the Qur'an in Indonesian*. Champaign, Illinois: University of Illinois Press, 2006.
- Wadud, Amina. *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. New York ; Oxford :: Oxford University Press, 1999.

International Human Rights Instruments

Convention on the Political Rights of Women, 193 U.N.T.S. 135, entered into force July 7, 1954

Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993 A/CONF.157/23

Beijing Declaration and Platform for Action, Fourth World Conference on Women (15 September 1995) Para 181.

CEDAW General Recommendation 23 (Sixteenth session, 1997): Women in Public Life, A/52/38/Rev.1 Part II (1997) See for instance Madagascar CEDAW/C/MDG/CO/5 (CEDAW, 2008) para 23; Norway Paragraph(s) 412 A/58/38(SUPP) (CEDAW, 2003) ; Philippines Paragraph(s) 17 Egypt Paragraph(s) 340 A/56/38(SUPP) (CEDAW, 2001) CEDAW/C/LBN/CO/3 (CEDAW, 2008) Lebanon para 24.

1 Paragraph(s) 26 CEDAW/C/SAU/CO/2 (CEDAW, 2008)

Paragraph(s) 16 CEDAW/C/MYS/CO/2 (CEDAW, 2006) Malaysia; see also Serbia "implement comprehensive measures to initiate change in widely accepted attitudes and practices subordinating women and stereotypical roles applied to both sexes; such measures should include awareness-raising and educational campaigns addressing women and men, girls and boys, religious and community leaders, parents, teachers and official" Serbia Paragraph(s) 20 CEDAW/C/SCG/CO/1 (CEDAW, 2007)

¹ They also consist of the right to have access to public service in his / her country, on general terms of equality. (Article 25 c ICCPR) Finally concerning the right to have access to public service, it is worth noting that affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

² ICCPR General Comment 25 (Fifty-seventh session, 1996): Article 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, A/51/40 vol. I (1996) 98 at para 5

³ Ibid, para 8

⁴ Ibid para 26.

⁵ Ibid, para 12

⁶ Convention on the Political Rights of Women, 193 U.N.T.S. 135, *entered into force* July 7, 1954. Article 25 as interpreted by the General recommendation 23 “protects the rights of “every citizen”. [...] No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of [...] sex [...]”).

⁷ Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993 A/CONF.157/23 para 18. See also para 4.

⁸ BEIJING DECLARATION AND PLATFORM FOR ACTION FOURTH WORLD CONFERENCE ON WOMEN (15 September 1995) Para 181.

⁹ CEDAW General Recommendation 23 (Sixteenth session, 1997): Women in Public Life, A/52/38/Rev.1 Part II (1997) 61 at para 8

¹⁰ Ibid paras 10 & 11.

¹¹ Ibid para 20(c). See also for example Madagascar CEDAW/C/MDG/CO/5 (CEDAW, 2008) para 23; Norway Paragraph(s) 412 A/58/38(SUPP) (CEDAW, 2003) ; Philippines Paragraph(s) 17 azerbaijan Paragraph(s) 16

¹² Para 183.

¹³ CEDAW/C/LBN/CO/3 (CEDAW, 2008) Lebanon para 24. See also CEDAW/C/MYS/CO/2 (CEDAW, 2006) Malaysia para 15

¹⁴ ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at para 7.

¹⁵ See for instance Turkmenistan Paragraph(s) 27 CEDAW/C/TKM/CO/2 (CEDAW, 2006); Uganda Paragraph(s) 138 ter A/57/38(SUPP) (CEDAW, 2002); yemen Paragraph(s) 403 ter A/57/38(SUPP) (CEDAW, 2002); Algeria Paragraph(s) 156 A/60/38(SUPP) (CEDAW, 2005); Bangladesh Paragraph(s) 256 bis A/59/38(SUPP) (CEDAW, 2004); jordan Paragraph(s) 183 A/55/38(SUPP) (CEDAW, 2000) ;

¹⁶ Paragraph(s) 26 CEDAW/C/SAU/CO/2 (CEDAW, 2008)

¹⁷ Ibid para. 15. See also Paragraph(s) 29 CEDAW/C/MMR/CO/3 (CEDAW, 2008) Myanmar

¹⁸ Surinam Paragraph(s) 18 CEDAW/C/SUR/CO/3 (CEDAW, 2007), see also Azerbaijan Paragraph(s) 16 CEDAW/C/AZE/CO/3 (CEDAW, 2007)

¹⁹ Paragraph(s) 16 CEDAW/C/MYS/CO/2 (CEDAW, 2006) Malaysia; see also serbia “implement comprehensive measures to initiate change in widely accepted attitudes and practices subordinating women and stereotypical roles applied to both sexes; such measures should include awareness-raising and educational campaigns addressing women and men, girls and boys, religious and community leaders, parents, teachers and official” Serbia Paragraph(s) 20 CEDAW/C/SCG/CO/1 (CEDAW, 2007)

²⁰ Paragraph(s) 18 CEDAW/C/MDV/CO/3 (CEDAW, 2007) Maldives, see also for instance Paragraph(s) 98 bis A/55/38(SUPP) (CEDAW, 2000) Moldova

²¹ cap verde Paragraph(s) 24 CEDAW/C/CPV/CO/6 (CEDAW, 2006)

22 Para 23

²³ Islamic law distinguishes between juristconsults (muftis) and judges (qadis). The mufti does not sit in a court of law adjudicating cases. A qadi does. A mufti’s function is to interpret the law, and in so doing the mufti contributes to development of the law. The qadi sits in a court and adjudicates cases that are brought before him according to the positive law that he is charged with implementing. His responsibility amounts to adjudication toward application of the law. The mufti’s function is a private function practiced anywhere even from the privacy of home. The qadi’s function is a public one practiced only in a court of law and is necessarily a public function.

24 The order in which men become responsible for women in their families follows the rules of inheritance where inheritance is passed down a long line of relatives until the wealth of the deceased is exhausted.

²⁵ The largest Islamic community organisation in Indonesia

²⁶ Auxiliary of the Indonesian Muhammadiyah movement, named after the Prophet Muhammad 's wife Aishah and concerned with women's affairs. Founded in 1914 and originally named Sapa Tresno (those who love), the association's objective was to spread Islam among women. The Aisyiyah has built numerous women's mosques, kindergartens, and schools (Esposito 2003,12).

²⁷ Al-Azhar is the oldest continually operational university in the Muslim world established in 360/970. Today it stands at the center of traditional Islam. “It is prized as the champion of Sunni Islam and the Arabic language”(Esposito 2003,32).

²⁸ Sheikh Yusuf Qaradawi is a leading legal scholar and presently Dean of Shari'ah and Islamic Studies, University of Qatar.

Chapter 4: Women's Reproductive Rights in International Human Rights

There is no specific provision in the international human rights treaties that addresses abortion, and international bodies engaged in interpreting and enforcing human rights law have been reluctant to address the matter of abortion directly. Nonetheless, abortion has been given some recognition in the context of a woman's right to life and to health, and the right not to be submitted to degrading treatment.

The right to life is protected in most of the principal human rights instruments. It is recognized in Article 3 of the Universal Declaration of Human Rights, as well as Article 6 of the International Covenant on Civil and Political Rights. While protection of this right is usually construed to mean no one "shall be arbitrarily deprived of his life" (see art 6.1, ICCPR), the right to life should not be interpreted narrowly.¹ It has been interpreted by the Human Rights Committee as governments' obligations to adopt "positive measures" aimed at preserving life,² and more specifically, in its General Comment 28, "to ensure that they do not have to undertake life-threatening clandestine abortions."³

It has become standard practice for the Human Rights committees to forge links between high maternal mortality figures and illegal or underground abortion in order to pressure states to change their laws. For instance, in 2004 the Committee on Economic, Social and Cultural Rights urged Malta "to review its legislation on abortion and consider exceptions to the general prohibition of abortion for cases of therapeutic abortion and when the pregnancy is the result of rape or incest."⁴ The Committee on Civil and Political Rights has urged Chile to "amend abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk."⁵ It also noted that criminalization of abortion is incompatible with Articles 3, 6 and 7 of the ICCPR.⁶

The right to health is recognized in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights, which requires states to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Article 12(1) of CEDAW requires governments to "take all appropriate measures to eliminate discrimination against women in the field of health care"

Where unsafe abortions do not result in death, they can have devastating effects on women's health. The health effects of unsafe abortion were addressed at two United Nations conferences: Cairo in 1994 (the International Conference on Population and Development)⁷ and Beijing in 1995 (Fourth World Conference on Women).

The 1994 Cairo Programme of Action noted that "[i]n no case should abortion be promoted as a method of family planning," and called upon governments to consider the consequences of unsafe abortion on women's health.⁸ It also stated:

“All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services. Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling . . . In circumstances where abortion is not against the law, such abortion should be safe.”⁹

The following year, the 1995 Beijing Declaration and Platform for Action urged governments to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions."¹⁰ In addition, the Platform for Action urged governments "to understand and better address the determinants and consequences of unsafe abortion"¹¹ in a paragraph addressing research on women's health.

Implicit in these developments is an acknowledgement that the rights to life and health require governments to protect women from the harmful effects of unsafe abortion. Despite the correlation between restrictive abortion laws and widespread resorting to unsafe procedures, the international community remains reluctant to put any significant pressure upon countries to modify highly restrictive abortion laws.

In numerous instances, the ICCPR Committee has noted its concern for “the high mortality rate of women resulting from clandestine abortions”¹² which is an infringement upon the right to life¹³ as well as an infringement upon women’s right to health.¹⁴ In 2000 the CEDAW committee requested Jordan to “initiate legislative action to permit safe abortion for victims of rape and incest”¹⁵ and in 2007 called on Pakistan to “review the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion, providing them with access to quality services for the management of complications arising from unsafe abortion and reducing maternal mortality rates.”¹⁶ In 2005 it also demanded that Lebanon “decriminalize abortion where there are mitigating circumstances”¹⁷ and recommended that “a national consultation with civil society groups, including women’s groups [be held in order] to address the issue of abortion, which is illegal under the current law and is a cause of women’s high mortality rates.”¹⁸ In the case of Slovakia, the CEDAW Committee went further and criticized the state for protecting the right of health care workers to object to performing abortions as a matter of conscience.

The right not to be subjected to inhumane treatment is recognized by Article 7 of the Covenant on Civil and Political Rights. According to the Human Rights Committee, “in order to assess compliance with Article 7 of the Covenant, as well as with Article 24, which mandates special protection for children, the Committee [...] needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape.”¹⁹ This was acknowledged by the Human Rights Committee in its 1996 evaluation of the report of the Peruvian government to the

Committee. In reference to Peru's restrictive abortion law, the Committee noted that it was *inter alia* incompatible with Article 7²⁰.

More broadly, the issue of abortion can be linked to the Right to Equality and Freedom from Discrimination. Freedom from discrimination in the enjoyment of protected human rights is ensured in Article 2 of the Universal Declaration, Article 3 of the Civil and Political Rights Covenant and Article 3 of the Economic, Social and Cultural Rights Covenant.

Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

In order to qualify as a form of discrimination against women under the above definition, restrictions on abortion would have to have either the "effect" or the "purpose" of preventing a woman from exercising any of her human rights or fundamental freedoms on the basis of equality with men. In that sense, the absence of measures taken by a government to ensure access to therapeutic abortion services can be characterized as compromising women's right to life and health. In this respect, CEDAW's General Recommendation 24 states that "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures"²¹ constitute a barrier to appropriate health care for women, therefore compromising the right to non-discrimination in the area of health. Indeed, the health consequences of unsafe abortion are suffered only by women, as are the physical effects of carrying an unwanted pregnancy to term.

Finally, a woman's right to terminate a pregnancy emanates from her right to make decisions regarding her own body and reproductive capacity. This right can find support in provisions regarding protection of the right to privacy, the right to decide freely and responsibly the number of children to have, the timing of each pregnancy and the right to physical integrity.

Freedom from interference in one's privacy and family life is protected by Article 12 of the Universal Declaration and Article 17 of the Civil and Political Rights Covenant. Decisions one makes about one's body and in particular one's reproductive capacity, lie squarely in the domain of private decision-making. The European Commission of Human Rights has twice acknowledged that "governments could legitimately intervene in private matters to protect foetal life" while noting that restrictive abortion legislation infringed upon privacy.²²

The right to determine the number of children to have and the timing of each pregnancy was stated at several UN conferences including the Cairo one in 1994, and the Beijing declaration and platform for action in 1995.²³ Article 16(e) of the Convention on the Elimination of All Forms of Discrimination Against Women provides that women and men shall have equal opportunity to exercise the right "to

decide freely and responsibly on the number and spacing of their children.” However this right could be infringed upon if, for example, a woman who had become pregnant through an act of non-consensual sex were forced to bear a child, when a woman lives in a setting where there is no family planning available, or when contraception has failed.

Women’s Reproductive Rights in Muslim Communities

Islamic law has always debated the possibilities of abortion. Scholars have used the Qur’anic detail regarding the development of the foetus during the first four months of pregnancy to build intricate arguments on the status of abortions. The debate in Islamic law hinges upon a scholar’s view of the legal status of the foetus. The majority agree that once the foetus has a soul, then abortion becomes increasingly forbidden to the point that it is not permitted unless it will save the life of the mother. (Hibri 1993, 4-5)

The legal debate on abortion rests on two verses of the Qur’an.

He creates you in the wombs of your mothers in stages, one after another, in three veils of darkness. Such is Allah, your Lord and Cherisher (Sura39: Ayat6).

We created the human being from a quintessence of clay, then we placed him as semen in a firm receptacle, then we formed the semen into a blood-like clot, then we formed the clot into a lump of flesh, then we made out of that lump, bones, and clothed the bones with flesh, then we developed out of it another creation, So Blessed is Allah the Best Creator (Sura 23: Ayat12-13).

The following Hadith “provides a more detailed time frame for understanding the pace of foetal development” (Sheikh 2003, 4):

“[A] human being is put together in the womb of the mother in forty days, and then he becomes a clot of thick blood for a similar period, and then a piece of flesh for a similar period. ... Then the soul is breathed into him.” (Bukhari Volume 4, Book 54, Number 430)

The verses above and this Hadith “describe a sequential process” (Sheikh 2003, 4) of foetal development. From the point of conception it develops to resemble a ‘clot of blood’, next it resembles a ‘piece of flesh’ and finally, when ‘the soul is breathed into,’ the foetus becomes a human being.

There is difference amongst scholars as to when ensoulment occurs. This difference creates a large window of time during which abortion is considered more or less acceptable. Amongst the Sunni schools of law, the majority Hanafi view and the Maliki view represent the two opposite ends of a spectrum of what is thought to be permissible. The majority Hanafi view is that abortion is permissible up to 120 days of gestation, which is when ensoulment is thought to occur (Madkur 1969, 301-302; Omran 1992, 191; al-Bar 1985,42). At the opposite end of the spectrum is the Maliki view that abortion is not permitted from the moment the fertilised egg adheres to the uterus. The majority of Shafi’is permit abortion before the 120-day period

(Mahdhkur). However, there is also a minority Shafi'i view, that of the famous scholar al-Ghazali who considers abortion a *jinayah* (crime) (Hibri 1993, 4). The Hanbali school permits abortion before 40 days' gestation (by taking medicine) "while Ja'faris and Malikis prohibit [abortion] at any time" (Hibri 1993, 4-5).

The former Sheikh al-Azhar,²⁴ Sheikh Jad al-Haqq summarised the various opinions of the schools of law on the permissibility of abortion within the first 120 days as follows:²⁵

Permissibility of Abortion Prior to 120 days of Gestation

Type of Permission	School of Law
Unconditional permission without justification or foetal defect	Zaydis Some Hanafis Some Shafi'is
Unconditional permission without justification or foetal defect but only up to 40 days	Hanbalis - using oral medications
Conditional permission for an acceptable justification. Without a valid reason, it is disapproved (makruh) but not forbidden (haram).	Majority Hanafis Majority Shafi'is
Abortion is strongly disapproved (makruh).	Some Malikis
Abortion is unconditionally prohibited (haram)	Majority Maliki view Zahiris Ibadiyyas, Imamiyyas

Scholars are unanimous that abortion after 120 days is "a criminal offense." This does not preclude abortion when "the mother's life (is) in danger, where the pregnancy is harming an already suckling child, or where the foetus is expected to be deformed." (Sheikh 2003, 4)

When scholars object to abortion unequivocally, they sometimes do so considering the purpose for which abortion is used. The majority of those who argue strictly against termination of a pregnancy do so using the following Qur'anic verse:

"Kill not your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin."(Sura 17: Ayat 31)

However, there is also an argument that the verse cited above refers particularly to the pre-Islamic custom of female infanticide, based on the preference for male births. Riffat Hassan argues that the verse refers to children who have been born, and not to unborn foetuses (Hassan). Scholars such as Hibri take the position that when a woman is faced with a hardship which may be resolved through an abortion "and if after deliberation she truly finds the reasoning of a permissive group (like the majority Hanafi view) convincing, then she should not be discouraged and should feel free to take advantage of the license under her preferred view"(5).

In spite of the rich and ongoing debates on abortion in Islamic law, most Muslim majority countries have taken a uniform anti-abortion stance. This stance reflects more correctly the stance of the Roman Catholic Church than it does the stance of classical or contemporary Muslim legal scholarship. French colonial law continues to influence abortion policy in Algeria, Iran, Lebanon, Mauritania, Morocco, Syria and

Tunisia, while British legal codes are still in operation in Qatar and many Gulf states. In Libya, legislation is based on Italian law. (Hessini 2007, 78)

Legal Scholars Respond to the Hardships Faced by Muslim Women

Women's rights advocates argue that when faced with severe hardships, women frequently take a "more pragmatic and less moralistic" approach to abortion. Rather than rely on the religious authorities to provide them with grounds for abortion, they rely instead on "God's compassion" (Hessini 2007, 52–54). When confronting an unintentional pregnancy, "women of all reproductive ages resort to abortion" and contrary to popular belief "over 50% of women seeking abortion are married or live in stable unions and already have several children" (Shah 2004, 9). Women may use abortion to limit family size or space births, sometimes in the event of contraceptive failure or because of the lack of access to modern contraceptives. (Shah 2004, 9)

In response to crisis situations, changes in social norms and to ease the hardships many women face, some contemporary scholars have invoked a wide range of opinions on abortion before 120 days. The 19th century scholar Abd al-Hayy Al-Laknawi permitted abortion in the case of an unintended pregnancy outside of marriage. Ebrahim Moosa speculates that this may have been because "the future prospects of an unwed mother would be radically reduced in [Laknawi's] society" (Shaikh 2003, 4). In the aftermath of the Serbian-Bosnian conflict, Bosnian women raped by the Serbian army were issued a fatwa allowing them to abort. They were urged to complete the abortion before the 120th day. A similar fatwa was issued when women were raped by militias in Algeria in 1998. (Aramesh 2006, 32)

In 1998, Sheikh Nasr Farid Wasil of Egypt stated that "an impaired foetus may always be aborted if seventeen weeks of pregnancy have not yet elapsed (i.e. no more than 120 days)" (Al- Wasli, 1998 cited in Rispler 2003, 86). The Judicial Committee of Islamic Council of South Africa has commented favourably on the "the legality of terminating pregnancy based on the "impairment of the mental capacity or the integrity of the woman as well as the ability and willingness of the woman to accept the responsibility of parenthood" (Sheikh 2003, 4). In 2005, the Majlis-e Shura-e Islami ratified the Therapeutic Abortion Act 21 which authorized 'therapeutic abortion' (Hedayat 2006, 654). This provision allows for women to abort a foetus "following an explicit diagnosis of a fetal or maternal disease which may endanger the mother's health or cause her to endure an "unbearable burden". Examples of such disease include "severe foetal malformations or retardation, or life-threatening maternal diseases." (Aramesh 2006, 32)

In January 2006 the Majelis Ulama of Indonesia expanded the basis on which an abortion may be performed. They confirmed "that women who have been raped and fallen pregnant are permitted to have an abortion up to the fortieth day of the pregnancy but not after." The law imposes a strict regulation of abortion allowing it only in the event that the mother's life is in danger, the unborn child is deformed, or in cases of incest and rape. In spite of this it is estimated that at least two million abortions occurred in Indonesia in 2000 (Sedgh and Ball 2008, 1).

Abortion has always been an issue of legitimate debate in Islamic law. Differences of opinion have always existed. This difference of opinion is an essential aspect of Islamic law and one of its merits. It prevents the law from stagnating and allows it to respond to the needs of the most vulnerable. It maintains the spirit of the hadith wherein the Prophet affirms that difference of opinion is manifestation of God's mercy.

Women's Reproductive Rights in the Framework of Islam and Human Rights

The issue of abortion is a difficult one around the world and not only in Muslim communities. Some European countries have only recently initiated important movements to change the law allowing women to abort. At present countries like Italy and Spain are in blatant violation of universal human rights standards since their laws are in conflict with the right to life and the right to health of women. Abortion is also an issue within Islamic law and each school or trend has a different opinion. In that context, the limits set to abortion are found not only in many laws of Muslim countries but also in Western laws around the world. The main problem with prohibiting or limiting abortion is that it affects women's right to health and right to security. The outcome of such legislation is that women often use unsafe methods which lead to health issues and a high rate of maternal mortality. This goes in the opposite direction of Article 2 of the Cairo Declaration on Human Rights, as well as Article 18 (a).

Article 2:

- (a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah-prescribed reason.
- (b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.
- (c) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah.
- (d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

Article 18:

- (a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

The key is for women to have an access to safe abortion thanks to new interpretations of Islam (Hessini, 2007). This should be channelled through a local dialogue between activists, advocates, community leaders, clerics and government officials, as well as health professionals. An understanding of various Muslim beliefs and traditions of the topic is necessary before opening a dialogue. These are some of the conditions needed to increase women's rights in the field of sexuality and regarding abortion in particular.

Hessini believes that to encourage this dialogue, social and economic factors should be considered. A dialogue on the issue of abortion is possible since a majority of religious leaders consider that abortion is acceptable if a woman's life is in danger. This argument can be strengthened by adding that a woman who is a mother and whose life is endangered by the pregnancy should have the right to abort, since she needs to look after her family. Therefore, the economic, social and cultural arguments that at first sight are rejected by Westerners as being part of cultural relativism can actually become common ground for negotiation: the aim is the well-being of women and the respect of women's rights. Economic, social and cultural arguments can therefore be used to demonstrate why a right such as abortion is needed in Muslim laws, and that it reinforces the societal structure rather than threatens it. This is what Leila Hessini calls the power of economic inequality (Hessini, 2004, 46). Another argument is women's self-development: a young married woman who is in school or attending university will see her life radically changed if she carries her pregnancy to term. She may be weakened and unable to provide for her family if the husband dies, disappears or cannot work. It is crucial for women to be empowered to take care of themselves and their families, and to contribute to their communities. Allowing abortion advances a "poverty prevention" approach. Consequently, it is key to prevent unsafe abortions and unwanted pregnancy by raising awareness about contraception and by changing the law to make it more compatible with universal standards. Campaigns for abortion law reform taking place throughout the Islamic world are good illustrations of dialogue among organizations and governments that rely on Islamic law and universal human rights law, reconciling them along the way,.

Another way to reconcile universal human rights standards and Islamic law and traditions is to look at the process of internal reform of Islamic law (An Na'im, 1990 b). Masdar Mas'udi argues that it is important to redefine the words used in the Quran (Mas'udi, 2002). In that sense, he agrees with Asma Barlas who speaks of the need to have a dialogue framed in an Islamic idiom (Barlas, 2009). Hessini also speaks about the power of discourse: it is crucial to change the discourse and language surrounding abortion (Hessini, 2004). The Qur'an can be read in a manner that is responsive to society's needs and expectations. A single passage might have several meanings. Mas'udi applies this theory to women and reproductive health. With his new reading of the Qur'an, he suggests the existence of the right to health and the right to security as well as the right to social welfare, the right to earn an individual income and the right to make decision for oneself regarding pregnancy and abortion. The acceptance of such rights should however be mediated by society. Rashida Abdullah explains that all actors within civil society need to play a role at that level and engage in a dialogue (Abdullah, 2003). She suggests an internal dialogue on reproductive issues as a strategy to enhance women's rights in the Muslim world. According to Leila Hessini, legal reforms and changing views within Muslim societies are keys to ensuring safe abortions: she speaks of shifting the power dynamic, which means that people should be empowered to claim their rights (Hessini, 2004). This local dialogue is again crucial since there can be no cross-cultural dialogue at an international level if that initial step has not been taken (An Na'im, 2004).

There is no conflict of values between Muslim communities and communities that use human rights frameworks. Rather, there are peoples within cultures who have different agendas and ideals. This does not mean that all venues for dialogue between Islam and human rights are closed, even on sensitive issues such as abortion. Thinking that no dialogue is possible assumes that Islam is not responsive to the realities of human life, but in effect women's rights play a significant role in Muslim discourse. Women's health and security is being taken into account by all actors, including those advocating for abortion. What remains to be done is a move to reform interpretations of Islamic law in order to strengthen the rights described by Mas'udi. This technique of new readings of the Qur'an and new interpretations is advocated throughout the Muslim world by scholars like Abdullahi An Na'im (1990a).

References

- al-Bar, Muhammad *Mushkilat Al-Ijhadh*. Jeddah: Al-Dar al-Saudiyah lil-Nashr wa al-Tawzi, 1985.
- al-Hibri, Aziza. "Family Planning and Islamic Jurisprudence." In *International Conference on Population and Development at the United Nations: The Religious Consultation on Population, Reproductive Health & Ethics*, 1993.
- An-Na'im Abdullahi, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press, 1990 a
- __, "Problems of Universal Cultural Legitimacy for Human Rights," in Abdullahi An-Na'im and F. M. Deng, editors, *Human Rights in Africa: Cross-Cultural Perspectives*. Washington, D.C., USA: The Brookings Institution, 1990 b: 331-67.
- Barlas, Asma, "Islamic Reform and Gender Equality: Fiqh, Feminism, or CEDAW?", Conference on Gender Equality and Women's Empowerment in Muslim Societies, 11-12 March 2009, Jakarta, Indonesia
- Bukhari, Muhammad ibn Ismail (d.870). *The Translation of the Meanings of Sahih Bukhari: Arabic-English*. Translated by Muhammad Muhsin Khan. Al-Medina al-Munawara :: Islamic University, 1973.
- Hassan, Riffat. "Members, One of Another: Gender Equality and Justice in Islam." <http://www.religiousconsultation.org/hassan.htm#contents>.
- Hedayat, K M, P Shooshtarizadeh, and M Raza. "Therapeutic Abortion in Islam: Contemporary Views of Muslim Shiite Scholars and Effect of Recent Iranian Legislation." *J Med Ethics* 32, no. 11 (2006): 652-57.
- Hessini, L. "Abortion and Islam: Policies and Practices." *Reproductive Health Matters* 15, no. 29 (2007): 75-84.
- Hessini, Leila and Braam, Tamara, "The Power Dynamics Perpetuating Unsafe Abortion in Africa: A Feminist Perspective," *African Journal of Reproductive Health* 8:1 (April 2004):43-51
- Mas'udi, Masdar, *Islam and the Reproductive Health of Women*, Kuala Lumpur: Sisters in Islam, 2002.
- Shah, Iqbal and Ahman, Elisabeth. "Age Patterns of Unsafe Abortion in Developing Country Regions." *Reproductive Health Matters* 12, no. 24, Supplement 1 (2004): 9-17.
- Shaikh, Sa'diyya. "Family Planning, Contraception and Abortion in Islam: Undertaking Khilafah: Moral Agency, Justice and Compassion." In *Sacred Choices: The Case for Contraception and Abortion in World Religions*, edited by D. Maguire. Oxford: Oxford University Press, 2003.

¹ ICCPR General Comment 6 (Sixteenth session, 1982): Article 6: The Right to Life, A/37/40 (1982) 93 at paras. 1

² Ibid para 5.

³ General Comment No. 28: Equality of rights between men and women (article 3) : . 29/03/2000. CCPR/C/21/Rev.1/Add.10: “States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions”

⁴ consideration of reports submitted by States Parties under Articles 16 and 17 of the Covenant : concluding observations of the Committee on Economic, Social and Cultural Rights : Malta E/C.12/1/Add.101 14 December 2004

⁵ Paragraph(s) 8 CCPR/C/CHL/CO/5 (HRC, 2007);

⁶ Peru, Paragraph(s) 20 CCPR/CO/70/PER (HRC, 2000)

⁷ Program of Action of the International Conference on Population and Development, Cairo, Egypt, 5-13 September 1994, in Report of the International Conference on Population and Development, para. 8.25, U.N.Doc.A/CONF.171/13/Rev.1 (1995)

⁸ Ibid

⁹ Ibid

¹⁰ The Beijing Declaration and The Platform for Action, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, para. 106K, U.N. Doc.DPI/1766/Wom (1996).

¹¹ Ibid para 109

¹² Colombia, ICCPR, A/52/40 vol. I (1997) 44 at paras. 287 ; see also El Salvador Paragraph(s) 25 E/C.12/SLV/CO/2 (CESCR, 2007)

¹³ Ibid para 300. see also United Republic of Tanzania, ICCPR, A/53/40 vol. I (1998) 57 at para. 399

¹⁴ See Paragraph(s) 29 poland E/C.12/1/ADD.82 (CESCR, 2002), see also, morocco Paragraph(s) 29 CCPR/CO/82/MAR (HRC, 2004)

¹⁵ Jordan paragraph(s) 181 A/55/38(SUPP) (CEDAW, 2000)

¹⁶ Pakistan paragraph(s) 40 CEDAW/C/PAK/CO/3 (CEDAW, 2007)

¹⁷ Lebanon paragraph(s) 112 bis A/60/38(SUPP) (CEDAW, 2005)

¹⁸ Ibid para 288

¹⁹ General recommendation 28

²⁰ Concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortions are the main cause of maternal mortality. These provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant ; see also Morocco Paragraph(s) 29 CCPR/CO/82/MAR (HRC, 2004)

²¹ Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 24 Women and Health, para. 14, 02/02/99.

²² Bruggemann and Scheuten v. Federal Republic of Germany (Application No. 6959/75), European Commission of Human Rights, July 12, 1977, 3 EHRR 244 (1981) and Paton v. United Kingdom (Application No. 8416/78) European Commission of Human Rights, May 13, 1980, para. 27, 3 EHRR 408 (1981).

²³ See the Beijing Declaration and The Platform for Action, Fourth world Conference on Women, Beijing, China, 4-15 September 1995, U.N. Doc.DPI/1766/Wom (1996).para 95 and para 96 “ The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”

²⁴ The most Senior Scholar of the Al-Azhar University in Cairo

²⁵ Adapted from Shaikh (2003)

Chapter 5: Women's Rights in Marriage: Consent, Child Marriage and Finance

The focus of this chapter is on marriage and women's rights upon entering marriage. The chapter is divided into three sections.

- The first section addresses issue of consent;
- The second section looks at child marriage, and
- The third section focuses on women's access to finance during and after marriage.

SECTION ONE: CONSENT

International human rights law combines the issues of consent and the age of the individual getting married. In Muslim marriage, consent pertains to both the guardians' consent and the consent of the individual getting married. These different approaches to consent in marriage require innovative analysis aimed at:

- a. Protecting a woman's right to marry with full and free consent, regardless of the consent of her guardian and
- b. Protecting a young girl from being married off while she is still a child.

1. A Woman's right to marry with full and free consent (regardless of the consent of a guardian): International human rights instruments

The Universal Declaration of Human Rights (1948) Article 16(2) states that "Marriage shall be entered into only with the free and full consent of the intending spouses." In its Resolution 843 (IX) of 17 December 1954, the General Assembly of the United Nations declared that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962/64),¹ Article 1(1) states that "No marriage shall be legally entered into without the **full and free consent** of both parties, such consent to be **expressed by them in person** after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law."

The International Covenant on Civil and Political Rights, Article 23(3) states that "No marriage shall be entered into without the free and full consent of the intending spouses."

In **General Comment 28**, the ICCPR Committee specified that "States have an obligation to protect the enjoyment of the right the right to enter into marriage only with their free and full consent" and listed a number of factors that may prevent women from being able to make the decision to marry freely, and therefore should be

addressed by States. These factors are: “age, lack of capacity to give themselves their consent, and social attitudes that might force women victims of rape to marry for fear of marginalization.”² Regarding the second factor, refer to the situation of some States in which a guardian, generally male, is the one who consents to the marriage, thereby preventing a woman from exercising her free choice.³

Applying these principles, the ICCPR Committee denounced customary laws and some practices in Sudan that enable a woman’s consent to marriage to be mediated by a guardian. The Committee requested these restrictions to be repealed, as they hindered a woman’s free choice of spouse and were incompatible⁴ with Articles 3, 16, 23 and 26 of the Covenant.

The **International Covenant on Cultural and Social Rights**, Article 10(1) states that “Marriage must be entered into with the free consent of the intending spouses.”

The **Convention on the Elimination of Discrimination Against Women (CEDAW)**, Article 16(1)(b) states that “States Parties shall [...]ensure, on a basis of equality of men and women, the same right freely to choose a spouse and to enter into a marriage only with their free and full consent.”

In 1994, **CEDAW General Recommendation 21**, the Committee insisted upon making a link between freedom of consent and underage marriage. Interpreting article 16(1), the CEDAW Committee stated that while in most countries their constitutions and norms are in accordance with CEDAW provisions on marriage, “custom, tradition and failure to enforce these laws in reality contravene the Convention.”⁵ The Committee insists on the fact that “[a] woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being” and that “Subject to reasonable restrictions based for example on woman’s youth or consanguinity [a blood relation] with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law.”⁶

2. A Woman’s right to marry with full and free consent in Muslim communities, regardless of the consent of a guardian

Scholars are of the opinion that a minor girl does not have the right to consent to marriage and therefore the guardian’s consent is all that is necessary for the valid marriage of an underage girl. Prepubescent girls who have never been married before do not have the right to determine if they wish to marry. That is the exclusive right of their guardians.

As for adult women, most scholars agree that a woman’s consent is essential to a marriage. In Islamic law, a woman is deemed an adult at the onset of puberty. The majority of scholars consider a marriage without an adult woman’s consent to be invalid. Scholars rely on the following Qur’anic and Hadith sources for this point of view.

*O ye who believe! Ye are forbidden to inherit women against their will.
(Surat4 :Ayah019 YUSUFALI)*

Narrated Abu Huraira: The Prophet said, "A virgin should not be married till she is asked for her consent; and the matron should not be married till she is asked whether she agrees to marry or not." It was asked, "O Allah's Apostle! How will she (the virgin) express her consent?" He said, "By keeping silent." (Bukhari Volume 9, Book 86, Number 98)

Narrated Khansa bint Khidam Al-Ansariya: Her father gave her in marriage when she was a thayyib (a woman who had been previously married) and she disliked that marriage. So she went to Allah's Apostle and he declared that marriage invalid. (Volume 7, Book 62, Number 69)

Ibn Abbas reported that a girl came to the Messenger of Allah, and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice (between accepting the marriage or invalidating it) (Ahmad, Hadith no. 2469). Another version of the report states that "the girl said: 'Actually, I accept this marriage, but I wanted to let women know that parents have no right to force a husband on them.'" (Sunan Ibn-Majah)

A woman's consent is determined in different ways and scholars differentiate amongst women according to their previous marital status. Adult women who have never been married must be asked for their consent. They may give their consent in various ways – directly or indirectly. The Hanafi school insists that an adult woman who has never been married must give her consent verbally and explicitly if her guardian is anyone other than her father, brother or uncle. The Hanafi school also agrees that an adult woman who has never been married cannot be forced into a marriage against her will. The school also argues that should such a woman be contracted into marriage without her knowledge, she will have the right to consent to or denounce the marriage once she is aware of it. (Marghinani 2000, Book II Ch II).

Women who have been married before must be asked for their consent and they may give their consent either verbally or otherwise. The Hanafi school requires her verbal and explicit consent. The Shafi'i school also requires that a child who has been married before must be asked for her consent and cannot be forced into a marriage by any one. (Marghinani 2000, Book II Ch II)

The requirement for adults to consent to a marriage is well established in Islamic law. While most Muslim communities ensure that men give open and direct consent, they rely on less direct means for women to express consent. Scholars make the differentiation on an assumption that women may be too shy to give explicit verbal consent to marriage arranged for them by their guardians. The danger arises when a woman chooses to remain silent as a way of showing her disapproval. In this instance her silence will wrongly be construed as consent. When social norms place a premium on 'demure' behaviour, women may be subtly coerced into accepting marriages to which they do not consent.

The Maliki school permits only a father to force his adult daughter into a marriage that she does not want but that he believes to be in her interest, whether or not she had been previously married. (Marghinani 2000, Book II, Ch II)

In addition to the right to consent to marriage, women must not be forced into marriage. When young girls are married off by their guardians, even though it may be

argued that they have given their consent, they cannot be said to have given informed consent.

SECTION TWO: CHILD MARRIAGE

1. A Girl's right to protection from being married off when she is still a minor: International human rights instruments

This protection is based on two principles: 1) the fact that a girl child cannot give informed consent since she lacks the maturity; 2) the fact that a minimum legal age for marriage should be established. Early marriage can result in denial of a girl's right to education and to health, and can have an impact on her ability to become autonomous.

1.1 Lack of informed consent by a child due to immaturity

The issue of a woman giving informed consent is a uniform thread that runs throughout the legal discussions on consent and in particular in discussions on underage marriage. Rights advocates argue that young girls and boys do not have the mental maturity to give their consent to marriage. Further, they argue, young people are frequently dependent upon adult family members and consequently subject to significant familial and social pressures that further limit their ability to choose. This eliminates the possibility of their consent being free from fear or harm.

Child marriage is considered a violation of human rights and the link between underage marriage and consent has been made in a number of human rights instruments. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962/64)⁷ insists on the need of the full and free consent of the future spouse to marriage and even if it does not set an age, in its subsequent Recommendation thereon (resolution 2018 (XX) of 1965^{8,9}), it sets the legal marriageable age of children at 15 years of age, or under 15 in certain circumstances.

The International Covenant on Civil and Political Rights, Article 23(3) states that "No marriage shall be entered into without the free and full consent of the intending spouses."

Two General comments shed light on the interpretation of the article: General Comment 19 (1990)¹⁰ and General Comment 28.¹¹

In General Comment 19,¹² the ICCPR committee insists on the necessity of a free and full consent of the intending spouses and noted that "Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent."

In General Comment 28, the ICCPR Committee specified that "States have an obligation to protect the enjoyment of the right the right to enter into marriage only

with their free and full consent” and listed a number of factors that may prevent women from being able to make the decision to marry freely and therefore should be addressed by States. These factors are: “age, lack of capacity to give their consent by themselves, and social attitudes that might force women victims of rape to marry for fear of marginalization.”¹³ Regarding the first factor, the Committee insisted on the “requirement of minimum age in order to consent to marriage fulfil the objective of ensuring “women's capacity to make an informed and uncoerced decision.”¹⁴

This link between age and freedom to consent had also been made in Article 2 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.¹⁵

In 1999, the ICCPR Committee required Chile to raise the legal minimum age of marriage noting that “marriage at such a young age [age 12 for girls] would generally mean that the persons involved do not have the mental maturity to ensure that the marriage is entered into with free and full consent, as required under Article 23, paragraph 3, of the Covenant.”¹⁶

1.2 Setting a specific minimum marriage age

Child marriage is a violation of human rights and is prohibited by a number of international human rights instruments which encourage specific criteria for a minimum age for marriage.

The General Assembly resolution 2018, entitled “Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages”¹⁷ fills a gap left by the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962/64)¹⁸, that is, the legal marriageable age of children. In its Principle II, it set this legal marriageable age of children at 15 years old, or younger under certain conditions¹⁹.

CEDAW General Recommendation 21 went further and set the age of 18 years old as the minimum age for marriage for both men and women²⁰.

The **Convention on the Elimination of Discrimination Against Women (CEDAW)**, Article 16 (2) provides that “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

1.3 The impact of underage marriage on girls’ enjoyments of their rights

The marriage of girls and boys at a very young age impacts on their health, education and future employment prospects. Human right instruments have addressed these various issues in the contexts of a child’s health, education, the threat of domestic violence and dangers of unregistered marriages.

Young girls who are married to much older men are easily forced into having sexual intercourse against their will. This has severe negative health consequences, as the

girl is often not psychologically, physically or sexually mature for sexual intercourse. Child brides are also likely to become pregnant at an early age; there is a strong correlation between a mother's age and maternal mortality and morbidity. Nigerian NGOs documented a high incidence of vesico-vaginal fistulas in young girls whose bodies are unprepared for childbirth.²¹ In addition to pregnancy-related complications, young married girls are also at high risk of contracting HIV/AIDS.

The International Covenant on Civil and Political Rights states in Article 24 that "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." While the ICCPR General Comment 17 on Article 24²² does not address this issue, the ICCPR Committee has required Chile to amend its law so that the minimum age for marriage for girls and boys is raised in order to comply with "its duty under Article 24, paragraph 1, to offer protection to minors."²³

The CEDAW Committee recommended setting a minimum age of 18 years for marriage, the underlying justification being that underage marriage infringes upon girls' and women's enjoyment of their right to health (Article 12 CEDAW, article 24 CRC –"Enjoyment of the highest attainable standard of health"), to education (CEDAW Article 10, CRC Article 28), to employment (CEDAW Article 11) and that in general it causes harm to girls. According to the Committee "when minors, particularly girls, marry and have children, their health can be adversely affected" and their education is impeded. As a result their economic autonomy is restricted "[since their] access to employment [is consequently reduced]."²⁴

The CRC does not set a minimum age for marriage. However it clearly states in Article 24.3 that "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

In 2003, General Comment 3²⁵ characterized "early and / or forced marriage" as "harmful traditional practices" that violate female child "rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education and information." This characterization parallels the work of CEDAW committee which characterized such marriages as harmful traditional practices in Sierra Leone.²⁶

Child brides usually have lower levels of education than girls who get married at an older age. Education is therefore seen as a way to prevent child marriages. Once a girl is married, her lack of autonomy prevents her from making personal decisions about her life. Early marriages, combined with related low levels of education, high levels of violence and abuse, severe health risks and harmful power dynamics, result in increased vulnerability to poverty for girls and young women.

In 2008, the CEDAW Committee cited Yemen's amendment of its 1992 Personal Status Law No. 20 with the 1999 Law No. 24, which legalized the marriage of a girl child below the age of 15, with the consent of their guardian.²⁷ The Committee saw this law as a serious violation of the State Party's obligations under the Convention,

specifying that such a marriage “amounts to violence against [girls], creates a serious health risk for those girls and also prevents them from completing their education.”

In 2008 the CEDAW Committee also noted the direct impact of early marriage on education as young married girls dropped out of school and were denied an “education [that] is a key to the advancement of women,” as “the low level of education of women and girls remains one of the most serious obstacles to their full enjoyment of their human rights.”²⁸ Educational opportunities have been suggested by the CEDAW Committee in order to discourage early marriages.²⁹

In 1996, the Special Rapporteur on Violence Against Women, Ms. Radhika Coomaraswamy, characterized early childhood marriage as gender violence.³⁰ Girls and women who are married younger, especially those married as children, are more likely to experience domestic violence and to believe that a man is allowed to beat his wife. In addition, child brides are least likely to take action against this abuse. Domestic violence seriously endangers the physical and mental health of women and girls and can even put their lives at risk.

In order to ensure that rights are maintained, the CEDAW Committee urged the States to “require the registration of all marriages whether contracted civilly or according to custom or religious law”³¹ in Recommendation 19. The ICCPR requires marriage registration in order to monitor compliance with minimum age standards. In Yemen, for instance, the CEDAW Committee urged “the State Party to enforce the requirement to register all marriages in order to monitor their legality and the strict prohibition of early marriages as well as to prosecute the perpetrators violating such provisions.” It also recommended the development of “awareness-raising campaigns, with the support of civil society organizations and religious authorities, on the negative effects of early marriage on the well-being, health and education of girls.”³²

1.4 Discrimination in marriage age for boys and girls

The International Covenant on Economic Social and Cultural Rights, Article 10(1) states that “Marriage must be entered into with the free consent of the intending spouses.” ICESCR General Comment 16³³ mentions that “implementing Article 3, in relation to Article 10, requires States Parties [...] to ensure that men and women have an equal right to choose if, whom and when to marry - in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion.”

The International Covenant on Civil and Political Rights (ICCPR) Committee noted its concern when legislation set out vague criteria for marriageable age such as “onset of puberty”³⁴ as well as the fact that the minimum legal age of marriage for girls can be reduced by religious courts.³⁵ It criticized France for establishing a different minimum marriage age for girls (15) and boys (18), requiring “the minimum marriage age for girls to be raised”³⁶ which was done in 2006 through a law preventing domestic violence.³⁷

Gender inequality is both a cause as well as a consequence of child marriage. The CEDAW Committee’s 1994 General Recommendation 21 also demanded that legal

provisions specifying different marriage ages for men and women be abolished. The Committee considered that these provisions incorrectly assumed “women have a different rate of intellectual development than men, or that their stage of physical and intellectual development at the time of marriage is immaterial.”³⁸ Following the Vienna Declaration and Programme of Action of 1993,³⁹ the Committee insisted that not only should existing laws and regulations be repealed, but also that customs and practices be removed. This is in accordance with Article 2 (f) of CEDAW that urges States “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” and Article 5, which calls on States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices. It also calls on States Parties to modify customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women as reiterated in the Beijing Declaration and the Platform for Action.

In 1992, General Recommendation 19⁴⁰ emphasized “that discrimination under the Convention is not restricted to action by or on behalf of Governments” but also includes action of any person, organization or enterprise. It also stated that “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

2 In Muslim communities: A Girl's right to protection from being married off when she is still a child

Child marriage is an historical practice which continues today as a custom. Supporters frequently cite tradition and custom over religious texts to justify the practice. There are no Qur'anic sources encouraging child marriage; however, legal texts have addressed the practice of child marriage.

Classical law does not recognize a child's right to choose and therefore gives the child's guardians the authority to contract a marriage for a child as a matter of securing the child's interests. The law also establishes guidelines as to who may contract a child's marriage. This provision applies to boys and girls. The Maliki school only allows a father to contract a child's marriage. The Shafi'i school allows only the father and grandfather to do this, but prevents an underage child who has been previously married from being given in marriage again by the father or grandfather.

While scholars recommend that marriage should only be consummated when children reach puberty, there is no prescription against marriage taking place prior to that. Minor children “may be married while still under the age of puberty and without their consent.” (Kostoryano 1990, 161)

When referring to the marriage of children before puberty, scholars frequently refer to the legal provision ‘khiyar al-bulugh’ i.e. the option of puberty. This is the legal right of a minor child who reaches puberty to end a marriage contracted for her prior to

puberty. However, Hanafi and Maliki scholars restrict this right when the person who contracted the marriage for her was her father or grandfather (Poulter 1990, 151). The reality is that the option of puberty is frequently overlooked and young girls are seldom permitted to end marriages to which they have not consented. In a recently publicised Yemeni case however, a young girl approached the courts to terminate a marriage contracted for her by her father. The courts refused to end her marriage but upheld her right to terminate her marriage once she reached puberty.⁴¹

In keeping with international trends, Muslim communities are increasingly using the education opportunities now available to young girls as a way to delay marriage until a later age (Knowing Our Rights 2007, 129; Cammack et al 2008, 305-6). In spite of this trend, a number of media reports have recently highlighted cases of underage marriage in Yemen⁴² and Saudi Arabia.⁴³ In both instances, national efforts are underway to establish a minimum age for marriage.

Families have varied reasons to justify early marriages for their daughters. Girls are sometimes seen as economic burdens that can best be relieved through marriage (ICRW 2007, 5). Activists working against underage marriage have found that “child marriage is most common in the world’s poorest countries and among the poorest households. Girls living in poor households are almost twice as likely as girls from wealthier homes to marry before 18” (ICRW 2007, 5). Families also fear that young girls may not be able to find marriage partners as they grow older, so families encourage early marriage.

Further, research indicates that in areas where extremist religious-political groups dominate, these groups fuel a sense of fear around the sexuality of young girls (WLUML 2007, 129). They advocate marriage as a means of controlling a young girl’s sexuality.

Some communities have a practice of arranging early engagements amongst boys and girls, but delaying the actual marriage and consummation until later. This permits young girls and boys to pursue educational and work ambitions, and it avoids early pregnancies that endanger the health of young girls. It prevents young girls from becoming young widows and it ensures that when babies are born, they are born to mature adult mothers. It can be shown that early marriage is detrimental to the mental and physical development of an underage bride. Some scholars have argued that a Muslim government is at liberty to limit practices, such as child marriage, if there is evidence that such practices bring more harm than good. Given the potential health risks for young girls exposed to early pregnancies or the danger that young girls may be traded into the child-sex industry, there appears to be sufficient cause for Muslim states to prohibit child marriage and to institute severe penalties for violators.

In Indonesia, the Marriage law has failed to prevent underage marriage (Cammack et al 2008, 308) in spite of the legal stipulations on the minimum age for marriage. Women’s organisations, such as Aisiyah, focus attention on education programs which promote ideas such as marriage by mutual consent, a reduced age differential between spouses and the involvement of the mother in decisions regarding the

marriage of her child. They base their recommendations on the idea that men and women ought to be equal partners in marriage.

3 A Girl's right to protection from being married off when she is still a child, in the context of Islam and human rights

Islamic law influences the determination of the age for marriage in many Islamic countries. The age of maturity agreed upon by the majority of scholars is the onset of puberty. In general this is 12 for boys and 9 for girls (Alami and Hinchcliffe, 1996, 6-8). The best interests of the child play a vital role in this approach to determining the legal age for marriage. Indeed, Islam sees marriage as an institution and protection against social risks, relying on the case of Aisha who married the Prophet at the age of nine (Alami and Hinchcliffe, 1996).

As far as the age of legal maturity for marriage is concerned, Article 1 of the 1989 Convention on the Rights of the Child says that "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Classical Islamic law sets the age of puberty as the age of majority (Rehman, 2007), a standard that is found in Sub-Saharan countries, Morocco and Saudi Arabia. In a way, Islamic law is not in open contradiction with international law. Muslim countries are free to establish majority below the age of 18. The problem is that the age of puberty is a vague concept upon which to establish a norm for entering into marriage. The fact that most Muslim countries like Ivory Coast or Indonesia do not set a specific age opens the doors to abuses: there is a huge difference between marrying a 9-year-old girl and a 17-year-old girl. The argument for justifying child marriages is economic and social: a married girl is a decent girl who will not associate with boys in an inappropriate way, and she will also be protected from poverty, which concurs with Article 4 of the Cairo Declaration (regarding the notion of the right to honour).

As a means of advocacy, awareness should be raised regarding the consequences of early marriage. These programs already exist around the world and can be used as models to combine tradition, law and respect for women's rights. Some programs include:

- BRAC, Adolescent Development Programme (ADP), Bangladesh (2000 – ongoing): The ADP seeks to improve the quality of life of vulnerable adolescents, and to reduce child marriage by building community awareness on children's rights, advocacy against child marriage and HIV/AIDS, involvement of parents and the community in girls' participation in society. It operates through life skills activities, non-formal education, community awareness and income-generation projects.
- Population Council, Adolescent Health and Information Projects, Federation of Muslim Women Associations of Nigeria - addresses Child Marriage in Northern Nigeria (2005-2009): By collaborating with religious, female and community leaders, the intervention raises awareness and promotes dialogue on child marriage through existing community forums and radio spots.
- Population Council, Creating Opportunities for Mayan Adolescent Girls, Guatemala (2004-ongoing): This project supports schooling for girls and increasing livelihood skills. Girls meet weekly for life skills, financial literacy, functional literacy, sports and possibly microfinance activities, all aimed at delaying marriage.

UNICEF cites the problems of early marriage as the denial of childhood, the denial of education, the onset of health problems and abuses. The strategies adopted by UNICEF rely on a dialogue with local representatives, education and the promotion of legal change through the media. UNICEF relies heavily on Muslim scholars and experts who provide new interpretations of Islamic law and rethink the context of the marriage between Aisha and the Prophet.

Most rules in Islamic law are the outcome of the will to protect women and their dignity. These cultural or socio-economic explanations are sometimes misunderstood in the West. Rather than judging the motives behind child marriages and other issues, we can also approach the matter differently, i.e. through negotiation. The key is to turn the poverty and honour argument on its head, to demonstrate that respecting universal human rights standards will actually bring more security to Muslim women than do the current laws. This approach allows for more respect for Islamic law and the cultural environment, while enforcing universal human rights (An Na'im, 1990, p. 331). There are several possible paths for advocating change in the interests of Muslim girls and women. Channels of communication should be maintained to allow for change within the Islamic world, which support changes encouraged and fulfilled by Muslims themselves. Changes can occur through actions such as law reform, or through innovative legal arguments that prioritise women's interests. Women's interests should be defined as their future within the society and the community, as well as their interests in a context where economic uncertainties are evident and where women's well-being is crucial to the cohesion of the society as a whole. To reach this aim, there should be a constant dialogue with national authorities, local organizations and community leaders (An Na'im 2004; Baderin 2007). A dialogue approach will demonstrate that human rights are not Western

concepts with limited applicability, but that human rights also take into account local differences. (Pollis & Schwab, 1979; Bielefeldt, 2000)

The first argument that will inevitably spark a dialogue is the health and well-being of Muslim women. The case of abortion and the age of marriage are good illustrations. A child married before the age of majority as suggested in the CRC will have fewer chances to attend schools or universities, or to receive vocational training, which will make her vulnerable. If the husband dies, divorces her or he leaves, the wife will have no other recourse than to beg or perhaps enter the sex trade. The prevention of these outcomes is said to be the very purpose of early marriage. This exposure to poverty could be greatly reduced if the child has a chance to attend school, learn a trade and become self-reliant. In addition, it will diminish health risks since a married child's health is at great risk if pregnancy occurs. Therefore, part of the dialogue can rest on the genuine interest in girls' lives and be premised upon clear and evident economic and social concerns (An Na'im, 1990a). Indeed, the right to health and women's well-being is stated in the Preamble, Article 2 and Article 20 for the right to health and security, and Article 5 for the welfare of the family in the Cairo Declaration on Human Rights.

The Qur'an is silent about the legal age for marriage. There is therefore room for interpretation; each country and school of thinking adopts its own legal age, although puberty remains the guideline for many. Since most Western countries set the age of majority and the age of marriage at 18, they approach under-age marriage as being forced marriage, which is in contradiction with universal human rights. To avoid a conflict, there needs to be a dialogue. This dialogue is possible when there are local negotiations within countries. These local dialogues must include all civil society actors (An Na'im,

2004). There are many Muslim contexts where these dialogues are already in progress and where alternative understandings of Islamic law are in development.

A case in Yemen provides us with an excellent illustration: Nojoud was married when she was 8 years old. She grew tired of being beaten by her husband. She couldn't attend school anymore and had to do chores at home instead of playing with her dolls. She decided to go to a judge and ask for a divorce. The judge, surprised by her request, listened to her and granted her the right to ask for a divorce, which she subsequently received.

The case of Nojoud is very encouraging because it shows how the legal system can reform the laws or the jurisprudence by taking into account the reality and the context of the world, while benefiting from an external model which is the Universal Declaration of Human Rights. This can lead to a critical rethinking of the Shari'a (Bielefeldt, 2000, p. 108), a process during which Shari'a is revised to include gradual reforms without challenging the core of traditional Shari'a (An Na'im, 1990b). The theory of the new hermeneutic of the Shari'a suggests that Islamic law should be interpreted in light of the current context and should therefore integrate universal human rights to a certain extent. When Islamic identity is threatened, solutions should be found within the Islamic legal corpus (An Na'im, 1992). This dynamic

approach allows for a dialogue between the two sets of laws. It is very useful in the field of women's rights and it has already worked in many countries like Morocco and Iran. (Shah, 2006)

The case of Arian Golshani is an example of successful amendments to Iranian Islamic law. Under Islamic law, the husband got custody of the children after a divorce, and so the court awarded custody of Arian to her father. This happened even though he was a drug addict with a criminal record and despite the fact that Arian's mother, Nahid Najidpoor, had documented his physical abuse of Arian. Arian died of ill-treatment. It created an upheaval within Iranian civil society and soon the Majles had to amend the law on child custody to take the best interests of child into account. It is crucial to take cultural, religious as well as socio-economic approaches into account during the reform process (Baderin, 2007, p. 3). At the same time, international law should also be more attentive to Muslim voices in order to promote a constructive dialogue. (Bielenfelt, 1995)

Age of Marriage in Selected Asian Countries

ASIA	Marriage Age for Females	Marriage Age for Males
Bangladesh	18	21
Brunei	none	none
India	18	21
Indonesia	16	19
Malaysia	16	18
Maldives	15	15
Pakistan	16	18
Philippines	puberty (12-15)	15
Singapore	16	16
Sri Lanka	18 (12 minimum for Muslims)	18

Source: <http://www.learningpartnership.org/en/node/174> accessed 30 March 2009

SECTION THREE: WOMEN'S ACCESS TO FINANCE DURING AND AFTER MARRIAGE

1. *Women's access to finance during and after marriage: International human rights instruments*

1.1 Overview

The notion of marriage as an equal economic partnership between spouses has been developed in the past 50 years or so as a tool to protect and empower women. This notion especially applies to women who do not work outside their homes, who are the primary caregivers and who have primary responsibility for household

management and children's education. This allocation of tasks to women results in years of reduced or non-participation in the labour force and consequently, in women's diminished earning capacity. The resulting disparities are increasingly evident if a marriage breaks down.

In order to address these economic discrepancies and to promote economic empowerment of married and divorced women, two complementary legal measures have been developed: equitable / equal division of family property, and spousal support for women.

The law protects a woman's legal capacity during marriage so that she may manage her wealth autonomously and participate in the administration of properties owned jointly with her spouse. This ensures that a woman is not financially disadvantaged after a marriage breaks down.

The law also allows for compensatory spousal support. This derives from the principle of equal participation of both spouses in household duties and requires that unequal participation be financially compensated. Indeed it has been argued that when the wife takes care of / performs all the household functions and child care duties, this frees up her husband to pursue his career while she lives with the disadvantage of reduced ability to become self-sufficient. As a consequence, she should be compensated for this.

It is important to note the principle of equal participation in household duties, taking into consideration financial and non-financial contributions to the family, makes each spouse an equal partner in an economic partnership. Upon dissolution of such a partnership due to marriage breakdown, the interests of both partners have to be protected.

1.2 Legal capacity – equal rights and responsibilities during marriage

In acknowledging women's dignity⁴⁴ and autonomy as human beings, human rights conventions and other instruments such as General Recommendations have put emphasis on the fact that women shall not lose their legal capacity to act when they get married, and shall have rights and responsibilities equal to those of their husbands during marriage and after a marriage breaks down.

In Article 16, the ICCPR sets the foundation for a married woman's legal capacity to act, and states that "Everyone shall have the right to recognition everywhere as a person before the law."⁴⁵ Indeed, according to the interpretation given by General Comment 28 "This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status."⁴⁶

The CEDAW provisions agree. They are as follows:

- Article 15(1): States Parties shall accord to women equality with men before the law;

- Article 15(2): States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals;
- Article 16 1: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (c) The same rights and responsibilities during marriage and at its dissolution
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

According to the interpretation given by General Recommendation 21 on equality in marriage and family relations, CEDAW Article 16 obliges States “to give women equal rights to enter into and conclude contracts, to own, manage, enjoy and dispose of property.”⁴⁷

This is very important, since a woman’s inability to control the disposition of property or the income derived from it during the marriage has some impact after the marriage, when the issue of division of property is at stake.⁴⁸

Furthermore, in accordance with Article 2(f) that stipulates that States shall undertake “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” States have to ensure that practices or customs do not impede women’s enjoyment of their right to an equal share of the family assets.⁴⁹

In its 1994 General Recommendation No. 21 on equality in marriage and family relations, the CEDAW Committee demonstrated that it was well aware of the impact of religious and customary norms which had “wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage.” It noted that “Such limitations often result in the husband being accorded the status of head of household and primary decision maker and therefore contravene the provisions of the Convention.”⁵⁰

This has led the CEDAW Committee to severely criticize the customary concept of male guardianship over women in Saudi Arabia. In its concluding comments, the Committee noted that although male guardianship over women was not legally prescribed, it seemed to be widely accepted and contributed to “the prevalence of a patriarchal ideology with stereotypes and the persistence of deep-rooted cultural norms, customs and traditions that discriminate against women and constitute

serious obstacles to their enjoyment of their human rights.” Indeed according to the Committee, male guardianship severely limited women’s exercise of their rights under the Convention, in particular with regard to their legal capacity and in relation to issues of “[...] property ownership and decision-making in the family, and the choice of residency, education and employment.”⁵¹

1.3 Equal rights and responsibilities

The equal rights and responsibilities of spouses during and after marriage are also stated in Article 23(4) ICCPR. ICCPR General Comment 28 underlines that “[t]o fulfil their obligations under Article 23, paragraph 4, States Parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to [...] the ownership or administration of property, whether common property or property in the sole ownership of either spouse.” Furthermore the ICCPR Committee added that “[e]quality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.”⁵² The subsequent application of this principle has led the ICCPR Committee to affirm in its concluding comments that the implementation of this right by States requires them to abandon the principle that “men are the head of the household.”⁵³

ICESCR General Comment 16⁵⁴ mentions that in order to implement Article 3 regarding equal right of men and women to the enjoyment of all economic, social and cultural rights set in relation to Article 10, it “requires States Parties [...] to ensure that women have equal rights to marital property.” The fact the ICESCR Committee refers here to Article 10 that focuses on the family’s responsibility to take care of and educate dependent children, and mentions that States have to recognize the widest protection and assistance to families for that purpose, implicitly shows that the Committee recognizes that women maintain the family after a marriage breakdown. This assumption is also made by the CEDAW Committee in its General Recommendation 21, when it states that “[i]n most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family.”⁵⁵

In order to address economic disadvantages faced by women after their divorce, a fair distribution of resources is required. The fact that women are usually primarily responsible for child care during and after marriage has economic consequences when they retain custody of their children after divorce. The diminished earning capacity with which an ex-wife enters the labour force after years of reduced or non-participation can be very difficult to overcome.

1.4 End of Marriage: division of family property and spousal supports

As mentioned in the introduction, these two measures are complementary. Unfortunately, gender stereotypes in some countries have shaped legislation to compensate men by giving them a greater share in the division of the family property at the end of the marriage. This is done on the premise that he was the head of the household, the sole supporter of his wife and children, and not recognizing the non-

financial contributions of his wife. These stereotypes and their legal impact have been criticised.

In its General Recommendation 21, the CEDAW Committee critique pointed out that “Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage [...] is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.”⁵⁶

1.5 Spousal support after divorce

The need to take non-financial contributions to the household into consideration is set forth by CEDAW General Recommendation 21 which states that “In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.”⁵⁷

The CEDAW Committee is sensitive to the issue of poverty / economic situation regarding women who divorce especially when they have children. For instance in 2000, the Committee encouraged “the Government [of Cuba] to monitor carefully the implementation of divorce by consent, and in particular any negative impact this option might have for women with regard to issues such as alimony payments [and...] distribution of property.”⁵⁸ In 2008, it required Luxembourg to “amend [...] the system of alimony to make it more equitable for women, [and to] reform [...] the system as to compensate for the disparities that the break-up of marriage often creates.”⁵⁹

In order to counteract the inequality of responsibilities and rights in the family, the Committee has recommended that States use “Recommendation 23 concerning women in public life and promote changes in the attitudes and perceptions of both women and men with regard to their respective roles in the household, the family.”⁶⁰

The issue of forfeiting the right to spousal support as well as specific moral conditions attached to it is also of concern for the CEDAW Committee. In its concluding comments regarding Egypt, it recommended a revision of Law No. 1 (enacted in the year 2000), in order to eliminate this financial discrimination against women since “women who seek divorce by unilateral termination of their marriage contract under Law No. 1 of 2000 (khul) must in all cases forego their rights to financial provision, including dowry.”⁶¹ In 2006, the CEDAW Committee showed its concern regarding the persistence of discriminatory provisions in Mali that deny women equal rights with men in issues related to family relations such as “termination of maintenance support

awarded to an ex-wife on grounds of immoral behaviour; in the event of divorce, restitution to the husband of benefits given to his wife.”⁶² A similar concern was raised about legislation in Uruguay, noting that its Civil Code continued “to contain provisions that discriminate[d] against women with regard to family and marriage, in particular those establishing [...] the withholding of alimony from women who lead a ‘disorderly’ life.”⁶³

2. Women’s access to financial resources during and after marriage in Muslim communities

2.1 Legal capacity

Islamic law recognizes women as legal agents with full legal capacity to manage property. Upon marriage there is no compulsion for a wife to combine her assets with her husband’s. She remains in full legal control of her personal assets unless she chooses to do otherwise. She may inherit, trade, earn and circulate or dispose of her wealth as she chooses and at no time is she subject to the legal oversight of her husband. She remains at all times a full, competent adult with unrestricted legal capacity to manage her property.

Further, even though a woman may have her own assets and may be working, Islamic law makes provisions for her maintenance within marriage and after the dissolution of marriage. Within marriage, husbands have an exclusive obligation to support their wives and children. At the termination of a marriage, a husband’s responsibilities to a former wife change. He is no longer responsible for her financial support, but remains fully and exclusively responsible for supporting his children.

When a woman works outside the home, her earnings are considered her exclusive property and her husband has no rights over her earnings. She is under no obligation to spend her earnings in maintaining herself, her children, her home or her husband.

2.2 Financial arrangements during marriage

Muslim marriage functions as a contract. The contract includes the payment of a dowry (*mahr* or *sadaaq*) from the future husband to the future wife. The mahr is determined differently according to various Muslim communities. Ideally, the mahr is the exclusive property of the wife.

Through the marriage contract, a husband becomes legally bound to maintain his wife and children. A wife is not similarly bound. Scholars are unanimous that Muslim men have a duty to support their wives with the basic necessities of life for the duration of the marriage. However, scholars differ as to what this maintenance entails. All scholars include food, clothing and housing, and the majority also include medical treatment and education. The obligation stems primarily from the first part of Sura4:Verse34:

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. ... (Sura4:ayah34 YUSUFALI)

Scholars differ as to the standards of maintenance that a wife may expect. They take the following Qur'anic verse as their point of departure:

*Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him.
After a difficulty, Allah will soon grant relief. (Sura.ayah7 YUSUFALI)*

Their opinions make reference to the living standards of individual spouses before they married. Scholars of the Hanafi school are of the opinion that if both the husband and wife are of similar financial circumstances, then the wife must be maintained in a manner to which she is accustomed, be that rich or poor. Where there are discrepancies between the wealth of the husband and the wife, then Ibn Abidin is of the opinion that "the wife will receive maintenance that is of an average quality." (1979, 3/574-575)

Some scholars argue that a husband who does not support his wife, and whose wife pays for her own support, may become indebted to his wife. Should the husband fail to provide nafaqa (maintenance), it may accrue as a debt against him and in favour of his wife, should a judge determine this to be so. (Ibn Abidin, 3/594) Scholars are also of the opinion that a women's right to nafaqa corresponds with making herself available to her husband sexually. For this they refer to the second part of S4V34 that says:

*... Therefore the righteous women are devoutly obedient ...
(Sura4:ayat34 YUSUFALI)*

2.3 Financial equality in marriage

Debates on the equality of men and women in Muslim marriage focus on a husband's obligation to support his wife. This is reciprocal with a wife's obligation to make herself sexually available to her husband and a husband's exclusive responsibility for financial support for his wife and family.

Linking support with sexual availability or obedience: Classical law linked the male's obligation to provide support with the female obligation to be sexually available or obedient. Rights advocates argue against this reciprocal exchange of male financial support for female obedience. Advocates argue that linking a woman's right to support with her obedience to her husband, regardless of how obedience is defined, results in "her right to maintenance becom[ing] a conditional right (as opposed to an inherent right of a married woman)." Linking financial support with sexual access allows husbands to deprive their wives of support as a means of exerting sexual

control over them (WLUML 2007, 219). In situations where custom and tradition discourage women from working, women become completely reliant on their male relatives, particularly husbands, for financial support. Linking this support to obedience makes women vulnerable to be deprived of their basic needs for food and shelter. In Indonesia, a wife who is not sexually available to her husband as he requires, or who leaves home frequently without his permission may be denied support during her marriage. (Munti 2003, 45)

Amongst the assortment of national legislative frameworks that link a wife's support during her marriage with her obedience to her husband, the legal frameworks that make such a strong and direct link are considered the least favourable for women. Amongst countries with such prescriptions are Malaysia, Nigeria, Sudan, Yemen, Iran, Egypt and Indonesia.

Countries that do not link support with obedience include Fiji, Turkey, Uzbekistan and the Gambia. The legislation that offers the most options where this is concerned would be legislation that:

- Does not link a wife's right to receive support to her 'obedience;'
- Recognizes a wife's right to past support;
- Recognizes a wife's right to file an application for recovering support while she is living with her husband;
- Provides for effective enforcement mechanisms;
- Recognizes the absence of support as grounds for divorce (WLUML 2007, 222).

A husband's exclusive responsibility for financial support for his wife and family: Islamic law makes a husband exclusively responsible for maintenance of his wife and children. Even when wives earn wages, they are under no obligation to spend of their earnings on their personal maintenance or on their children's maintenance. It may be argued that this provision discriminates against men. However, women's groups such as the newly-launched Musawah have argued that "it constitutes substantive equality to require men to bear greater responsibilities in making financial contributions to the family." They argue that given the systemic disparities women face at work and the educational and career opportunities they sacrifice during childbearing and child-rearing, it is not unacceptable for men to continue to bear the responsibility of family support.⁶⁴ Nonetheless, the exclusive obligation of the husband to support his family leaves many men with a sense of control over the working lives of their wives. Given that women are not under any Islamic obligation to provide nafaqa for their children or husbands, men find it acceptable to restrict a woman's right to work. In reality, however, their proscriptions do not inhibit them from defaulting on the maintenance of their families. The struggle to make husbands unconditionally responsible for supporting their families relies on effective state legislation.

2.4 Financial arrangements after dissolution of a marriage

When a woman's marriage ends, be it through death or divorce, Islamic law requires that she must delay a new marriage for a prescribed period of time known as 'idda. Following a death, the period is four menstrual cycles or four months and 10 days. Following a divorce, it is 3 menstrual cycles or three months. A divorced woman is entitled to maintenance from her former husband for the duration of this period.

The relevant Qur'anic verses are:

*Let the women live (in 'idda) in the same style as you live, according to your means: Do not annoy them, so as to restrict them. And if they are [pregnant], then spend (your substance) on them until they deliver their burden, and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. (Surat65: Ayat6 **YUSUFALI**)*

Thus a wife has a right to maintenance after the end of a marriage for the period of the 'idda and, if she is pregnant, for the duration of her pregnancy. In addition to this, the law also allows for divorced women to be given a 'gift' (mat'a) at the termination of a marriage.

For divorced women Maintenance (should be provided) on a reasonable (scale).

*This is a duty on the righteous. (Sura2: Ayat241 **YUSUFALI**)*

Further, the law allows for widows to inherit from their husband's estate and to be granted maintenance for a year after a husband's death.

*Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; but if they leave (The residence), there is no blame on you for what they do with themselves, provided it is reasonable. And Allah is Exalted in Power, Wise. (Sura2: Ayat240 **YUSUFALI**)*

The majority of traditional scholarship does not require that woman be maintained by their husbands upon the termination of marriage. In traditional communities where women were not responsible or maintaining themselves and therefore did not work outside the home, they returned to their birth families at the time of divorce. The anomaly of the current context is that women are frequently prevented from working, either explicitly or through the expectation that they will be exclusively responsible for child care and household management. Due to the breakdown of the traditional extended family system, divorced women can no longer count on the support of their birth families. Once divorced, they are also denied financial support from their former husbands. As a result, the majority of women retain independent households for themselves and their children. Where social custom dictates that women maintain custody of their children, women subsequently become the sole heads of their households and bear the combined responsibilities of caregiver, educator, nurturer and bread-winner.

In the absence of traditional support networks, women can no longer depend on others for their personal welfare or that of their children. Inevitably, they find that they have to re-enter the workforce. Women emerging from long periods of unemployment will require re-training and reintegration into the workforce, a process that will of necessity take time and incur costs. They will be further disadvantaged in terms of their years of absence from the workforce and consequently their earning capacity will be compromised. These are some arguments that can be made for women to be granted post-divorce support.

In instances where the courts do recognize claims for support, claimants may only access the salary of civil servants to ensure they pay maintenance. In other instances, wives have difficulty confirming the actual income of their errant husbands. As a result, what the court comes to know of a man's income may be minimal in terms of what a man can afford and what he ought to be using to support his family (Munti 2003, 45).

Women have come under greater pressure as poverty and socio-economic disparities grow, and as labour migration and armed conflicts increase. Many more "Muslim women are becoming heads of families." However, because social norms are not changing as rapidly as economic norms, communities and the State "do not recognize their leadership in the family." As a consequence, "these women face obstacles providing for their families [and] are denied access to entitlements" (SIS Home truths 2009, 16). An example is the anomalous Indonesian law on the division of assets at the end of a marriage. The 1974 Marriage Law stipulates that the husband is the head of the household and recognizes the wife solely as a housewife (SIS Home truths 2009, 16). But in the division of assets, emphasis is placed on financial contributions and there is little consideration for non-financial contributions made by of women as housewives (Munti 2003, 45). In stark contrast, Iranian law recognizes women's non-financial contributions by providing "wages for housework."

Women who do not work outside the home and who spend the better part of their lives as mothers, wives, household managers and caregivers will undoubtedly emerge from a divorce with little or no workplace experience or accumulated wealth. In order to ease the financial burden on these women and as a means of recognising the value of their work during their marriage, the Iranian legislature has recognized women's rights to 'wages for housework'.

Justice for housewives: The large numbers of women who leave their marriages with little or no financial resources have caused Muslim communities to re-examine how they may ensure that divorced and widowed women do not face a lifetime of poverty. In 1978 the Shah Bano case in India showed some of the difficulties Muslim women face. An Indian court ruled that a 68-year-old divorced mother of five, who had never worked outside her home, had the right to spousal support. The Muslim community responded in protest, charging that the Indian state had acted contrary to Muslim family law, which did not have such a provision. Consequently, the Indian government passed new legislation to prevent Muslim women from receiving spousal support after divorce. It was not until 2001 that the findings of the Shah Bano case were upheld by the Supreme Court of India (Subramanian 2005). In most cases

where alimony is a recognized right, the financial awards are inadequate (Turkey, Central Asian Republics), and enforcement is difficult. (WLUML 2007, 314)

The payment of mat'a allows a divorced woman to receive maintenance beyond the waiting period. However, some countries restrict or completely eliminate mat'a. Sri Lanka allows only lump sum payments; Nigeria and Pakistan refuse to recognize mata'a at all. Tunisia recognizes the payment of mata'a as a form of compensation which may be paid in monthly instalments or as a single payment. It may also be paid in the form of property. (WLUML 2007, 311)

The propensity for change in Islamic law is evident in the alternative interpretations that have come about in recent years. An example of a positive move with regard to the financial status of divorced women is to be found in Iran which has tried to compensate women who work for many years in their households and who leave their marriages with little or no finance. Using alternative interpretations of Muslim laws and legal texts Iranian legislature amended the divorce law in 1993. The most significant aspect of this amendment was the introduction of wages for housework. The introduction of this new law has made it easier for judges to adjudicate on this right and to respond to the financial needs of women. It has also made women more conscious of their rights in this context. According to Article 1 of the amendment of the Divorce Law, the wife may request payment for work she has performed that has been outside her religious responsibility. If the divorce was at the husband's request and the wife is not at fault, the sum is based on the length of time the couple lived together and the work the wife performed, and the husband's financial situation. In 1995 Parliament made it compulsory for men to pay the wages for housework along with the wife's other rights, such as mahr and nafaqa, before the divorce could be registered. Implementation of the law has been difficult and it is also doubtful it has made a substantial difference in the financial situation of women who are divorced, because so few husbands are able to pay. However, the law has symbolic significance because it recognizes women's economic contribution through their unpaid work.

Hoodfar, H. (ed.) (1996), WLUML Special Dossier: Shifting Boundaries in Marriage and Divorce in Muslim Communities, WLUML, Grabels Taken from WLUML 2007, 165-166

References

- Bukhari, Muhammad ibn Ismail (d.870). *The Translation of the Meanings of Sahih Bukhari: Arabic-English*. Translated by Muhammad Muhsin Khan. Al-Medina al-Munawwara :: Islamic University, 1973.
- Cammack, Mark; Young, Lawrence A.; Heaton, Tim. "Legislating Social Change in Islamic Society: Indonesia's Marriage Law." In *Indonesia, Law and Society*, edited by Tomothy Lindsey. Annandale, NSW: The Federation Press, 2008.

- Ibn Abidin, Muhammad Amin ibn Umar, Muhammad ibn Muhammad Amin Ibn Abidin, Muhammad ibn Ali Haskafi, and Muhammad ibn Abd Allah Timirtashi. *Hashiyat Radd Al-Muhtar*, Radd Al-Muhtar. Beirut: Dar al-Fikr, 1979.
- Kastoryano, Riva. "Muslim Migrants in France and Germany." In *Islamic Family Law*, edited by Chibli Mallat and Jane Frances Connors. London: Graham and Trotman, 1990.
- Marghinani, Ali ibn Abi Bakr, Hafiz Ashur Hafiz, and Muhammad Muhammad Tamir. *Al-Hidayah : Sharh Bidayat Al-Mubtadi*. al-Qahirah, Misr :: Dar al-Salam, 2000.
- . *Al-Hidayah: Sharh Bidayat Al-Mubtadi*. al-Qahirah, Misr: Dar al-Salam, 2000.
- Marghinani, Ali ibn Abi Bakr, and Imran Ahsan Khan Nyazee. *Al-Hidayah = the Guidance : A Translation of Al-Hidayah Fi Sharh Bidayat Al-Mubtadi, a Classical Manual of Hanafi Law*, Guidance. Bristol, England :: Amal Press, 2006.
- Munti, Ratna Batara. "Financial Provision: Indonesia." In *Islamic Family Law and Justice for Muslim Women*, edited by Nik Norani Nik Balishah. Kuala Lumpur: Sisters in Islam, 2003.
- Poulter, Sebastian. "The Claim to a Separate Islamic System." In *Islamic Family Law*, edited by Chibli Mallat, Jane Frances Connors and London University of. London ; Boston :: Graham & Trotman, 1990.
- Sisters in Islam. *Home Truths*. Kuala Lumpur: Sisters in Islam, 2009.
- Subramanian, Narendra. "Legal Change and Gender Inequality: Changes in Muslim Family Law in India" Paper presented at the annual meeting of the American Sociological Association, Marriott Hotel, Loews Philadelphia Hotel, Philadelphia, PA, Aug 12, 2005
<http://www.allacademic.com/meta/p19019_index.html>
- WLUML. *Knowing Our Rights*. 2nd ed. London: Women Living Under Muslim Laws, 2009.

¹ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Opened for signature and ratification by General Assembly resolution 1763 A (XVII) of 7 November 1962 entry into force 9 December 1964.

² Para 24.

³ Para 24.

⁴ Sudan, ICCPR, A/53/40 vol. I (1998) 22 at para. 122.

⁵ General comment 21 para 15.

⁶ Ibid para 16.

⁷ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Opened for signature and ratification by General Assembly resolution 1763 A (XVII) of 7 November 1962 entry into force 9 December 1964.

⁸ No age was set in Article 2 of the Convention. Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages General Assembly resolution 2018 (XX) of 1 November 1965 - Principle II Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

⁹ See Principle I (a) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person,

¹⁰ ICCPR General Comment 19 (Thirty-ninth session, 1990): Article 23: Protection of the Family, the Right to Marriage and Equality of the Spouses, A/45/40 vol. I (1990) 175 at paras. 4 and 6

¹¹ General recommendation 28 ICCPR 3

¹² See para 4

¹³ Para 24.

¹⁴ Para 23

¹⁵ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, *entered into force* April 30, 1957- **Article 2** “suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages”

¹⁶ Chile, ICCPR, A/54/40 vol. I (1999) 44 at paras. 212, 213, and 217.

Paragraph 217

¹⁷ No age was set in Article 2 of the Convention. Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages General Assembly resolution 2018 (XX) of 1 November 1965 - Principle II Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

¹⁸ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Opened for signature and ratification by General Assembly resolution 1763 A (XVII) of 7 November 1962 entry into force 9 December 1964.

¹⁹ See Principle II : « Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.”

²⁰ See General comment 21 para 36.

²¹ The condition occurs when a woman’s birth passage ruptures. Patients are mainly young women who are considered to have brought shame on their families due to the health complications that follow. They may lose their husband's support, especially if the condition long standing. In a society that places a high value on childbearing they have little hope for a healthy future. (Murphy 1981)

²² ICCPR General Comment 17 (Thirty-fifth session, 1989): Article 24: Rights of the Child, A/44/40 (1989) 173

²³ Chile, ICCPR, A/54/40 vol. I (1999) 44 at para. 217. See also Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at paras. 77(18)

Paragraph 217

²⁴ Ibid para 36 & 37.

²⁵ CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2004) 89 at paras. 1-42.

²⁶ [Paragraph\(s\) 36 CEDAW/C/SLE/CO/5 \(CEDAW, 2007\)](#)

²⁷ Yemen CEDAW/C/YEM/CO/6 2008 379

²⁸ CEDAW/C/TZA/CO para 129

²⁹ See for instance, Philippines regarding Muslim girls [Paragraph\(s\) 30 CEDAW/C/PHI/CO/6 \(CEDAW, 2006\)](#).

³⁰ *Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission, alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms*: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85

³¹ CEDAW General Recommendation 19 (Eleventh session, 1992): Violence Against Women, A/47/38 (1992) 5 at para para 39.

³² Yemen CEDAW/C/YEM/CO/6 2008 para 380.

³³ ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at para. 27

³⁴ Cyprus, ICCPR, A/49/40 vol. I (1994) 53 at para. 324

³⁵ Israel, ICCPR, A/53/40 vol. I (1998) 45 at paras. 325.

³⁶ France, ICCPR, A/52/40 vol. I (1997) 62 at para. 412.

³⁷ Loi n°2006-399 du 4 avril 2006 renforçant la prévention et la répression des violences au sein du couple ou commises contre les mineurs.

³⁸ Para 38

³⁹ A/CONF.157/24 (Part I), chap. III. See para 49 “The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.”

⁴⁰ CEDAW General Recommendation 19 (Eleventh session, 1992): Violence Against Women, A/47/38 (1992) 5 at para 9.

⁴¹ See New York Times 29 June 2008 :

<http://www.nytimes.com/2008/06/29/world/middleeast/29marriage.html>

⁴² See New York Times 29 June 2008 :

<http://www.nytimes.com/2008/06/29/world/middleeast/29marriage.html>

⁴³ <http://www.globalpost.com/dispatch/saudi-arabia/090416/child-marriage-case-showcases-deep-splits-saudi-society>

⁴⁴ Article 1 Universal declaration of Human rights

⁴⁵ Mali, ICCPR, A/58/40 vol. I (2003) 47 at para. 81(10).

⁴⁶ General Comment 28 para 19

⁴⁷ General Recommendation 21 para 25, 26,

⁴⁸ General Recommendation 21 on the interpretation of Article 16 h31. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman's ability to control disposition of the property or the income derived from it.

⁴⁹ General Recommendation 21 para : 30. There are countries that do not acknowledge that right of women to own an equal share of the property with the husband during a marriage [...] when that marriage [...]. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal precedent or custom.

⁵⁰ Para 17 General Recommendation 21 on the interpretation of 16(1) c

⁵¹ Paragraph(s) 15 CEDAW/C/SAU/CO/2 (CEDAW, 2008)

⁵² Ibid para 28

⁵³ See for example : Mali CEDAW/C/MLI/CO/ para 11; Report of the Committee on the Elimination of Discrimination against Women Twenty-fourth session (15 January-2 February 2001)re Egypt para 56

⁵⁴ ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at para. 27

⁵⁵ Para 28/

⁵⁶ Para 25

⁵⁷ Para 32

⁵⁸ Report of the Committee on the Elimination of Discrimination Against Women, 22nd session (17 Jan.-4 Feb. 2000) [and] 23rd session (12-30 June 2000) Cuba 268 A/55/38(supp) (CEDAW, 2000)

⁵⁹ Luxembourg Paragraph(s) 34 CEDAW/C/LUX/CO/5 (CEDAW, 2008)

⁶⁰ See Malta Paragraph(s) 166 A/59/38(SUPP) (CEDAW, 2004)

⁶¹ Paragraph(s) 328-329 A/56/38(SUPP) (CEDAW, 2001) Egypt

⁶² Mali Paragraph(s) 36 CEDAW/C/MLI/CO/5 (CEDAW, 2006)11 concluding comments of the Committee on the Elimination of Discrimination Against Women : Mali

⁶³ : see also Uruguay concluding observations of the Committee on the Elimination of Discrimination Against Women : Uruguay 46.”The Committee is seriously concerned that the Civil Code continues to contain provisions that discriminate against women with regard to family and marriage, in particular those establishing [...]the withholding of alimony from women who lead a “disorderly life”

⁶⁴ http://musawah.org/rk_financial.asp

Chapter 6: Women's Rights to Freedom of Movement and Choice of Dress in International Human Rights Law

International Instruments Regarding Regulation of Clothing to be worn in Public

The issue of clothing relates to a number of provisions in the ICCPR as indicated by General Comment No. 28¹ “States parties should provide information on any specific regulation of clothing to be worn by women in public.” The Committee stresses that such regulations involve a violation of a number of rights guaranteed by the Covenant, such as: Article 26, on non-discrimination; Article 7, if corporal punishment is imposed in order to enforce such a regulation; Article 9, when failure to comply with the regulation is punished by arrest; Article 12, if liberty of movement is subject to such a constraint; Article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; Articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, Article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.

International Instruments Regarding the right of freedom of movement

This right is contained in several international treaties:

Paragraph 1, Article 12 of the ICCPR states, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Paragraph 3 specifies, “The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” This provision has been applied mainly regarding the choice of residence², freedom to leave any country including one’s own³, and the right to enter one’s own country. In addition to this, the Committee has applied the Article regarding women, noting that “Restrictions on the liberty of women under the Personal Status of Muslims Act, 1992 are matters of concern under Articles 3, 9 and 12 of the Covenant. Therefore, all laws, including those dealing with personal status, should be made compatible with the Covenant.”⁴ “The fact that married women cannot leave their house without the authorization of their husbands.... contravenes Articles 3, 12 and 26 of the ICCPR.”⁵

The work of the Committee is in line with the interpretation it gave to Article 12 in its General Comment 27, where it stated that it was a right that needs to be protected “not only from public but also from private interference.” In the case of women, this obligation to protect is particularly pertinent. For example, it is incompatible with Article 12, paragraph 1, that “the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative.”⁶ It has also been interpreted by General Comment 28⁷ as

including “legal provision or any practice which restricts women's right to freedom of movement, for example the exercise of marital powers over the wife or of parental powers over adult daughters; legal or de facto requirements which prevent women from travelling, such as the requirement of consent of a third party to the issuance of a passport or other type of travel documents to an adult woman.”

Article 3. IESCR: This provision has been used by the Committee to underscore the inequality persisting between men and women in relation to the issue of freedom of movement⁸ in law or practice,⁹ and to express grave concern “about the occurrence of flagellation or lashing of women for wearing allegedly indecent dress or for being out in the street after dusk, on the basis of the Public Order Act of 1996, which has seriously limited the freedom of movement and of expression of women.”¹⁰

Article 5(d)(i), of CERD, which prohibits racial discrimination in the enjoyment of “The right to freedom of movement and residence within the border of the State.” The CERD Committee has applied this provision regarding the residence of ethnic minority families.¹¹

Article 15.4 of CEDAW stipulates that “States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.” This right has been interpreted in relation to political rights by the CEDAW Committee in General Recommendation 23, in which it stated that “20(d) Other factors that in some countries inhibit women's involvement in the public or political lives of their communities include restrictions on their freedom of movement...”.

The Special Rapporteur on violence against women, Yakin Erturk, was critical of this interpretation in her 2006 report. Following her mission to Iran, she commented on the causes and consequences of the challenges faced by women. She wrote: “While the official ideological underpinning of the State gender discourse rests on the premise that women in the Islamic Republic have been attributed with honour and due dignity, this very ideology has served to rationalize subordinating women, discriminating against them and subjecting them to violence. Furthermore, it is instrumental in silencing defiance and enforcing compliance.”¹² She concluded that the “parameters of women's status in Islamic Republic of Iran are intimately linked to basic principles underlying formation of the State, which aimed to deliver women from corruption and restore their dignity” and noted that “the ground for [Iranian women's] autonomous self expression is precarious.”¹³ She also recommended “If the Iranian regime is sincere about restoring women's dignity then it must embark on a re-interpretation of its fundamental norms, including Islamic principles in line with the current needs and societal contributions of women as well as with universal human rights standards.”¹⁴

In a number of instances, the CEDAW Committee has criticized “traditional codes of conduct” and their impact on women's rights, including their freedom of movement. In Nigeria's case, the CEDAW Committee commented in 2000 that “Effective measures should be taken to change laws and cultural norms which allow [...] preventing women from travelling without the permission of a male relative.”¹⁵

Jordan's edicts about women travelling alone, as well as choosing one's own place of residence have also been subjects of concern for the Committee.¹⁶

It has also criticized religious norms as well as patriarchal ideology for restricting women's freedom of movement. In 2008, the committee criticized the "highly conservative traditions and a restrictive interpretation of religious norms" that led "Muslim women and girls [...to] endure multiple restrictions and forms of discrimination which have an impact on all aspects of their lives, including severe restrictions on their freedom of movement."¹⁷ Again in 2008, the CEDAW Committee severely criticized Saudi Arabia's "de facto ban of women from driving, which is a limitation of their freedom of movement."¹⁸

The Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, addressed dress codes and "religious symbols" in her 2006 report to the Commission on Human Rights.¹⁹ She referred to several human rights instruments that speak to the exercise of religious freedom as a practice that can include "the wearing of distinctive clothing or head coverings."²⁰ She then deals with the issue of acceptable limitations on the freedom to manifest one's religion or belief, mentioning that these limitations must be prescribed by law and are necessary "in a democratic society - to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".²¹ She analyses the right to freedom of religion and belief from two perspectives: the first perspective is described as a positive perspective and entails preventing individuals from wearing religious symbols in public. The second perspective is a negative perspective which entails coercing individuals to wear religious symbols.

The right to freedom of religion can compete with other human rights such as the "equal right of men and women to the enjoyment of all civil and political rights," "the principle of the right to be protected from discrimination of any kind, including on the basis [...] of religion." Restrictions on wearing the veil can conflict with the right to education (for instance, when pupils are expelled for wearing religious symbols in accordance with their religion or belief).

Where the "obligation to wear religious dress in public," is concerned, Asma Jahangir cited her predecessor Abdelfattah Amor, who stated that "women are among those who suffer most because of severe restrictions on their education and employment, and the obligation to wear what is described as Islamic dress,"²² and denounced the fact that non-compliance with the obligation to wear the veil could be punished by whipping or/and a fine.²³ Women have been arrested in the streets,²⁴ threatened and sometimes killed for failing to wear religious symbols.²⁵ In the end, Asma Jahangir as well as Abdelfattah Amor concluded that while traditions and customs are worthy of respect, "dress should not be the subject of political regulation" and by calling for "flexible and tolerant attitudes in this regard."²⁶

The 2004 French law banning pupils from wearing conspicuous signs of their religion at school was challenged in the European Court of Human Rights. This law targeted wearing the veil, amongst other things. The Court²⁷ held that expulsion of a pupil based on this law did not infringe on religious freedom,²⁸ nor did it contravene the

right to education. According to the Court, such restrictions on a pupil's right to show his or her religious conviction was in line with the secular code in state schools. It also noted that "that in France, as in Turkey or Switzerland, secularism is a constitutional principle, and a founding principle of the Republic, to which the entire population adheres and the protection of which appears to be of prime importance, in particular in schools." In the Court's opinion, "Having regard to the margin of appreciation which must be left to the member States with regard to the establishment of the delicate relations between the Churches and the State, religious freedom thus recognized and restricted by the requirements of secularism appears legitimate in the light of the values underpinning the Convention."

Women's Rights to Freedom of Movement and Choice of Dress, and the Politicisation of Shari'a

Politicisation of the Shari'a refers to a process where political actors highlight extremist versions of Shari'a-based rules to further their political gains. The search for political gain prompts political actors to impose harsh restrictions in areas of public and private life that may not have been subject to legislation in the past. The people most often affected by these impositions are women. State impositions on Muslim women's dress represent the politicisation of women's bodies and cultural roles. Increasingly, women are being targeted as representatives of their faiths and maintainers of social norms. Politicisation of Shari'a is not limited to the Muslim world. Legal restrictions on Muslim women's attire have surfaced in both western and non-western nations, in countries as culturally different as Nigeria and France.

According to some, the French law banning pupils from wearing any visible religious symbols at school limited French girls' religious expression and access to education. However as we saw above, this was not the conclusion of the European Court of Human Rights.

Asma Jahangir, the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, drew the attention of the French Government to the possibility of discrimination which might result from the new law, the risk of increased tension or Islamophobia, and to the chance that the law might harm the principle of cultural and religious diversity itself.²⁹

The Turkish ban on headscarves in state institutions, including universities, is a similar restriction on how women choose to practice their religion, their access to education and to government services. In Germany, the ban on teachers wearing religious symbols is understood as a violation of their right to religious expression. Research has proven that it particularly targets Muslim women's dress choices (HRW 2009). Amnesty International reported that in 2007, Tunisian women wearing headscarves experienced increased harassment. The women who wore headscarves were considered backward and extremist in their politics. "Some women were reportedly ordered to remove their *hijabs* before being allowed into schools, universities or workplaces; others were forced to remove them in the street." (Williams 2008)

Regulation of Muslim women's headscarves in Europe follows three models (Skjeir 2007, 130 in Kilic 2008). A prohibitive approach bans all forms of Muslim head and body covering in public institutions as in France, Turkey, and in some German federal states. A selective approach is applied "only to certain kinds of bodily covering, such as the *niqab* and *burqa*" in countries such as Finland, Sweden and the Netherlands. Finally, a non-restrictive, tolerant approach "allows for of all forms of covering: *hijab*, *jilbab*, *burqa*, and *niqab*," as in Denmark, the United Kingdom, Greece and Austria. (Kilic 2008, 398)

The regulation of Muslim women's dress in secular contexts points to a perceived connection between veiling and fundamentalism. Ironically, extremist Muslim movements have also internalised this connection between veiling and conservative interpretations of Islam. In contrast to secular states that prohibit Muslim women from veiling, states like the former Taliban-run Afghanistan imposed extreme strictures on Muslim women's dress and public mobility. The trend continues today in areas like Aceh where Perda regulations impose legal obligations on Muslim women to veil themselves and to limit their mobility in public spaces.

Northern Nigerian states have also imposed restrictions of women's mobility and public presence similar to those initiated in Indonesia. In Nigeria, the Northern states of Kano and Zamfara recently introduced Shari'a legislation including "the widespread imposition of dress codes on women, attempts to force women to sit at the back of public vehicles, and a midnight curfew" in some parts of the country. The governor of Zamfara state calls his Shari'a politicisation program *Sharianisation*. The program began in 2000 as a politically expedient strategy to bolster the legitimacy of the governor of the Zamfara state. In his wake, "the governors of eleven other states followed suit (Imam 2004, 125). Measures restricting women's movement in public were quickly followed by legislation criminalizing sex outside of marriage... and imposing whipping and stoning as punishments." (Imam 2004, 125) In Zamfara these restrictions are mostly enforced by "extra legal groups of young men vigilantes" at times with open support from the state government (Imam 2002). In a parallel situation, a couple accused of *khalwat* in West Aceh were paraded around the city on foot by hundreds of local residents. (Millalos 2007, 297).

This politicisation of Shari'a is not new. During the 1980s in Algeria, people who would eventually form FIS (the Islamic Salvation Front) "were imposing dress codes on women through the use and threat of violence." Since the party was banned in 1992, "women have been threatened with death and actually killed for not wearing *hijab* (headscarves)" (AWID 2002). This repression, as women's rights activists point out, is "not about religion; it is a political tool for achieving and consolidating power." (Goodwin 2001)

It is ironic that both fundamentalist regimes and secular states seek to control how Muslim women dress. Secular states such as France do it to maintain a notion of French identity and to emphasise the separation of religion from public life. States such as Zamfara state in Nigeria do it to promote a notion of local identity and to illustrate the connection of public life with religion. In both instances women's bodies are circumscribed and inscribed with social and legal norms. In both instances,

Muslim women become the embodiment of public culture and their attire or behaviour is interpreted as a reflection of state ideology. Neither situation considers Muslim women's independent choices. By dictating what Muslim women may or may not wear or where they may or may not go, both extremists and secularists deprive women of the ability to express themselves and their faith as they choose.

Muslim women describe the veil in Muslim societies as best understood when embedded in a holistic context (Guindi 1999, xii). It is a "socially embedded form of dress that communicates and creates many things-from sanctity to social status and power, from community identity to political resistance" (Abu Lughod 200, 673). Women who do not want to, but who have been forced to wear the veil, have resisted through protest and simple refusal (Iran Focus 2004). They argue against forced veiling from the perspectives that "mandatory veiling limits a woman's religious choices and privileges one interpretation of Islamic practices over others." (Warburton 2008, 2) Forced veiling results in gender subordination. Some women believe forced veiling implies that women are dangerous creatures who need to be controlled, that women pose a threat to the social order of Muslim public life and that women must therefore be covered and controlled (Mernissi, 1991). From the perspective of Muslim women who chose to veil, wearing the *hijab* can be an empowering and liberating experience for women (Bullock 2002, 183). They argue that the *hijab* acts as "an empowering tool of resistance to the consumer capitalist culture of contemporary society which has been detrimental to women's self esteem and physical health" (Bullock 2002, 219). They argue for the *hijab* as liberation from the commodification of women's bodies and as a personal expression of faith.

The contention here rests on choice. Where societies consider women as carriers of tradition and repositories of culture, women are unfairly burdened. Their dress is dictated by decree, they are isolated in their homes and their mobility is severely regulated. (AWID 2002)

Women's Rights to Freedom of Movement and Choice of Dress in the Context of Islam and Human Rights

Western countries are adamant in their criticism of the veil worn by Muslim women. To the West, the veil is the focus of all discrimination against women in the Islamic world. The issue is therefore problematic when it comes to encouraging a dialogue on human rights. The key is not to impose Western concepts on Muslim women that would be irrelevant to Muslim women, and the issue of veil sometimes appears to Muslim women as a non-issue. Women have other ways of advocating for their rights while maintaining ties with their beliefs and traditions. Therefore, wearing the veil doesn't prevent a woman from benefiting from rights. There are also Muslims who fear speaking about the case of the veil since they feel they are walking on a tightrope. There are reasons why there has been no meaningful debate so far: it is very difficult for Muslims to discuss the issue for several religious, cultural, political and legal reasons (Mir Hosseini, 2002, 41). There is little space for discussing the veil. Since the West seems to think the veil is a matter of concern, it is crucial to keep channels of communication open to avoid a clash based on ignorance (Said, 2001).

To find common ground for dialogue, one can advocate for reforming interpretations of the Qur'an on the veil. Alternatives to wearing the veil could be provided to make it optional within all Islamic societies (Ghamidi, 2001). Others have a different interpretation of the concept of dignity and honour that is often used by Muslims to justify wearing the veil: modesty should be measured against a societal background, because what is acceptable in one society might not be acceptable in another. Modesty might not always be linked to a dress code. The honour and dignity of woman might lie elsewhere (Syed, 2001). Others use history to argue that covering one's head is a pre-Islamic custom that does not apply to modern society (Ahmed, 1993).

The West has always considered the veil as a form of discrimination (Ahmed, 1993, 149). All attempts to unveil women by force in Egypt or Iran, for example, have failed in the sense that they were counter-productive. In Egypt, prohibiting the veil resulted in restrictions on Egyptian women regarding education and participation in public life (Ahmed, 153). It is therefore crucial to keep these experiences in mind when entering a dialogue within a given society and across cultures (An Na'im, 1990a).

Iranian philosopher Yousefi Eshkevari considers that Muslim people should defend their values while opening up to other values such as human rights (Eshkevari, 2006). He believes that there should be new interpretations of Islamic law to encourage conciliation between Shari'a and other values. An Na'im believes that once civil society and its officials have agreed on a version of human rights, this version should be presented at an international level to begin dialogue among cultures. The idea is to promote a universality of human rights built from the bottom to the top of a society (An Na'im, 2004). The issue of the veil, as difficult and sensitive as it is, provides good ground for local and international dialogue about women and the discrimination they experience.

References

- Abu-Lughod, Lila. "Review: The Veil: Modesty, Privacy, Resistance by Guindi, Fadwa El." *Middle East Journal* 54, no. 4 (2000): 672-74.
- Ahmed, Leyla, [Women and Gender in Islam: Historical Roots of a Modern Debate](#), New Haven: Yale University Press, 1992.
- An-Na'im Abdullahi, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press, 1990
- An-Na'im Abdullahi, 'The Best of Times' and 'the Worst of Times': Human Agency and Human Rights in Islamic Societies," *Muslim World Journal of Human Rights* 1:1 (2004), article 5.
- AWID. "Warning Sign of Fundamentalisms: An Overview." (2008), [http://awid-org.sitepreview.ca/eng/Issues-and-Analysis/Library/Warning-Sign-of-Fundamentalisms-an-Overview/\(language\)/eng-GB](http://awid-org.sitepreview.ca/eng/Issues-and-Analysis/Library/Warning-Sign-of-Fundamentalisms-an-Overview/(language)/eng-GB).
- Bullock, Katherine. *Rethinking Muslim Women and the Veil : Challenging Historical & Modern Stereotypes*. London :: International Institute of Islamic Thought, 2007.
- Eshkevari, Yousefi, Mir-Hosseini, Ziba and Tapper, Richard, *Islam and Democracy in Iran: Eshkevari and the Quest for Reform*, I.B. Tauris, 2006
- Ghamidi, Javed, "[Norms of Gender Interaction](#) (The Social Law of Islam)" [Mizan](#), 2001
- Goodwin, Jan and Neuwirth, Jessica. "The Rifle and the Veil" *New York Times*, Oct.19, 2001.
- Guindi, Fadwa El. *The Veil: Modesty, Privacy, Resistance*. Oxford; New York: Berg Publishers, 1999.
- HRW, Human Rights Watch. "Germany: Headscarf Bans Violate Rights." (2009), <http://www.hrw.org/en/news/2009/02/26/germany-headscarf-bans-violate-rights?print>.
- Imam, Ayesha. "Acceptance Speech - John Humphrey Freedom Award 2002 ", 2002.
- . "Fighting the Political (Ab)Use of Religion in Nigeria: Baobab for Women's Human Rights, Allies and Others." In *Warning Signs of Fundamentalism*. London: WLUML, 2004.
- Iran Focus. "Students Protest Forced Veiling." (2004), http://www.iranfocus.com/en/index.php?option=com_content&task=view&id=551.
- Kilic, Sevgi; Saharso, Sawitri; Sauer, Birgit. "Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity." *Soc Pol* 15, no. 4 (2008): 397-410.
- Mernissi, Fatima. *The Veil and the Male Elite : A Feminist Interpretation of Women's Rights in Islam*, Harem Politique. English. Reading, Mass. :: Addison-Wesley Pub. Co., 1991.
- Milallos, Ma. "Muslim Veil as Politics: Political Autonomy, Women and Syariah Islam in Aceh." *Contemporary Islam* 1, no. 3 (2007): 289-301.
- Said, Edward "The Clash of Ignorance," *The Nation*, October 22, 2001.
- Syed, Ibrahim B., "Women in Islam: *Hijab*," 2001 available at <http://www.islamfortoday.com/syed01.htm>
- Williams, Daniel. "Tunisia Veil Case Threatens 'Odious Rag' Struggle " *Bloomberg.com* (2008).

¹ Equality of rights between men and women (Article 3): 29/03/2000.

CCPR/C/21/Rev.1/Add.10, General Comment No. 28. para 13

² See for instance, Norway, ICCPR, A/49/40 vol. I (1994) 19 at para. 92. Sudan, ICCPR,

A/53/40 vol. I (1998) 22 at paras. 125 and 133.

³ See Sudan para 133

⁴ Libyan Arab Jamahiriya, ICCPR, A/54/40 vol. I (1999) 32 at para. 137.

⁵ Yemen, ICCPR, A/57/40 vol. I (2002) 72 at para. 83(8).

⁶ ICCPR General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000) 128 at para.6.

⁷ General Comment No. 28: Equality of rights between men and women (article 3) : . 29/03/2000. CCPR/C/21/Rev.1/Add.10, para 16.

⁸ Algeria, ICESCR, E/1996/22 (1995) 54 at para. 294.

⁹ Iraq, ICESCR, E/1998/22 (1997) 50 at para. 258

¹⁰ Sudan, ICESCR, E/2001/22 (2000) 57 at para 311

¹¹ Denmark, CERD, A/51/18 (1996) 17 at para. 69, see also Belgium, CERD, A/52/18 (1997) 31 at paras. 222 and 230,

¹² Para 32

¹³ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk : addendum: mission to the Islamic Republic of Iran [Paragraph\(s\) 62 E/CN.4/2006/61/Add.3 \(SR Violence against Women, 2006\)](#)

¹⁴ Para 65

¹⁵ Nigeria, CEDAW, A/53/38/Rev.1 part II (1998) 61 at para. 157

¹⁶ , CEDAW, A/55/38 part I (2000) 16 at paras. 172

¹⁷ [Paragraph\(s\) 42 CEDAW/C/MMR/CO/3 \(CEDAW, 2008\)](#)

¹⁸ Saudi Arabia [Paragraph\(s\) 15 CEDAW/C/SAU/CO/2 \(CEDAW, 2008\)](#)

¹⁹ UN, 9 Jan. 2006 E/CN.4/2006/5

²⁰ See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and Human Rights Committee's General Comment No. 22 on Article 18 of the Covenant, "[t]he observance and practice of religion or belief may include not only ceremonial acts but also such customs as ... the wearing of distinctive clothing or head coverings" (para. 4).

²¹ Para 42.

²² " (E/CN.4/1998/6, para. 60).

²³ (A/51/542/Add.2, para. 51)

²⁴ E/CN.4/2003/66/Add.1, para. 59

²⁵ E/CN.4/1995/91, p. 36

²⁶ E/CN.4/1996/95/Add.2, para. 97

²⁷ Dogru v. France (application no. 27058/05) and Kervanci v. France (no. 31645/04).

²⁸ See para 73 "In the present case the Court considers that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety is not unreasonable. It accepts that the penalty imposed is merely the consequence of the applicant's refusal to comply with the rules applicable on the school premises – of which she had been properly informed – and not of her religious convictions, as she alleged." And para 76 "The Court considers, having regard to the foregoing, that the penalty of expulsion does not appear disproportionate, and notes that the applicant was able to continue her schooling by correspondence classes."

²⁹ Il s'agit de Mme Asma Jahangir. Son rapport d'activité a été transmis aux membres de l'Assemblée générale des Nations Unies par le Secrétaire général, le 16 septembre 2004. A/59/366/.

Bibliography

- Abu-Lughod, Lila. "Review: The Veil: Modesty, Privacy, Resistance by Guindi, Fadwa El." *Middle East Journal* 54, no. 4 (2000): 672-74.
- Ahmed, Leyla, [Women and Gender in Islam: Historical Roots of a Modern Debate](#), New Haven: Yale University Press, 1992.
- Ali, Abdullah Yusuf. *The Holy Qur-An : Text, Translation & Commentary*. Lahore :: Shaikh Muhammad Ashraf.
- al-Bar, Muhammad *Mushkilat Al-Ijhadh*. Jeddah: Al-Dar al-Saudiyah lil-Nashr wa al-Tawzi, 1985.
- al-Hibri, Aziza. "Family Planning and Islamic Jurisprudence." In *International Conference on Population and Development at the United Nations: The Religious Consultation on Population, Reproductive Health & Ethics*, 1993.
- al-Masri, Ahmad Ibn Naqib *Reliance of the Traveller. Umdat Al-Salik Wa 'Uddat Al-Nasik: A Classical Manual of Islamic Sacred Law*. Translated by Nuh Ha Mim Keller. Evanston, Illinois: Sunna Books, 1994.
- An-Na'im Abdullahi, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press, 1990 a
- ___, "Problems of Universal Cultural Legitimacy for Human Rights," in Abdullahi An-Na'im and F. M. Deng, editors, *Human Rights in Africa: Cross-Cultural Perspectives*. Washington, D.C., USA: The Brookings Institution, 1990 b: 331-67.
- ___, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press, 1990 a
- ___, "The Best of Times' and 'the Worst of Times': Human Agency and Human Rights in Islamic Societies," *Muslim World Journal of Human Rights* 1:1 (2004), Article 5.
- AWID. "Warning Sign of Fundamentalisms: An Overview." (2008), [http://awid.org/sitepreview.ca/eng/Issues-and-Analysis/Library/Warning-Sign-of-Fundamentalisms-an-Overview/\(language\)/eng-GB](http://awid.org/sitepreview.ca/eng/Issues-and-Analysis/Library/Warning-Sign-of-Fundamentalisms-an-Overview/(language)/eng-GB).
- Barlas, Asma, "Islamic Reform and Gender Equality: Fiqh, Feminism, or CEDAW?", Conference on Gender Equality and Women's Empowerment in Muslim Societies, 11-12 March 2009, Jakarta, Indonesia
- Bullock, Katherine. *Rethinking Muslim Women and the Veil : Challenging Historical & Modern Stereotypes*. London :: International Institute of Islamic Thought, 2007.
- Bukhari, Muhammad ibn Ismail (d.870). *The Translation of the Meanings of Sahih Bukhari: Arabic-English*. Translated by Muhammad Muhsin Khan. Al-Medina al-Munawara :: Islamic University, 1973.
- Cammack, Mark; Young, Lawrence A.; Heaton, Tim. "Legislating Social Change in Islamic Society: Indonesia's Marriage Law." In *Indonesia, Law and Society*, edited by Tomothy Lindsey. Annandale, NSW: The Federation Press, 2008.
- Eshkevari, Yousefi, Mir-Hosseini, Ziba and Tapper, Richard, *Islam and Democracy in Iran: Eshkevari and the Quest for Reform*, I.B. Tauris, 2006
- Esposito, John L. *The Oxford Dictionary of Islam*. New York: Oxford University Press, 2003.
- Ezzat, Heba Raouf. "Women and the Interpretation of Islamic Sources." http://www.crescentlife.com/thisthat/feminist%20muslims/women_and_interpretation_of_islamic_sources.htm.
- Ghamidi, Javed, "[Norms of Gender Interaction](#) (The Social Law of Islam)" *Mizan*, 2001

- Goodwin, Jan and Neuwirth, Jessica. "The Rifle and the Veil" *New York Times*, Oct.19, 2001.
- Guindi, Fadwa El. *The Veil: Modesty, Privacy, Resistance*. Oxford; New York: Berg Publishers, 1999.
- Hassan, Riffat. "Members, One of Another: Gender Equality and Justice in Islam." <http://www.religiousconsultation.org/hassan.htm#contents>.
- Hedayat, K M, P Shooshtarizadeh, and M Raza. "Therapeutic Abortion in Islam: Contemporary Views of Muslim Shiite Scholars and Effect of Recent Iranian Legislation." *J Med Ethics* 32, no. 11 (2006): 652-57.
- Hessini, L. "Abortion and Islam: Policies and Practices." *Reproductive Health Matters* 15, no. 29 (2007): 75-84.
- Hessini, Leila and Braam, Tamara, "The Power Dynamics Perpetuating Unsafe Abortion in Africa: A Feminist Perspective," *African Journal of Reproductive Health* 8:1 (April 2004):43-51
- Hussain, Justice Aftab. *Status of Women in Islam: Law Publications*, 1987.
- HRW, Human Rights Watch. "Germany: Headscarf Bans Violate Rights." (2009), <http://www.hrw.org/en/news/2009/02/26/germany-headscarf-bans-violate-rights?print>.
- Ibn Abidin, Muhammad Amin ibn Umar, Muhammad ibn Muhammad Amin Ibn Abidin, Muhammad ibn Ali Haskafi, and Muhammad ibn Abd Allah Timirtashi. *Hashiyat Radd Al-Muhtar*, Radd Al-Muhtar. Beirut: Dar al-Fikr, 1979.
- Ibn Hajar al-Asqalani, Ahmad ibn Ali (d.1449). *Fath Al-Bari Bi-Sharh Sahih Al-Bukhari*. Beirut: Dar al-Marifah, 1980.
- Ibn Kathir, Ismil ibn Umar (d.1373). *Tafsir Al-Quran Al-Azim*. Beirut: Dar al-Fikr, 1994.
- Kastoryano, Riva. "Muslim Migrants in France and Germany." In *Islamic Family Law*, edited by Chibli Mallat and Jane Frances Connors. London: Graham and Trotman, 1990.
- Imam, Ayesha. "Acceptance Speech - John Humphrey Freedom Award 2002 ", 2002.
- . "Fighting the Political (Ab)Use of Religion in Nigeria: Baobab for Women's Human Rights, Allies and Others." In *Warning Signs of Fundamentalism*. London: WLUML, 2004.
- Iran Focus. "Students Protest Forced Veiling." (2004), http://www.iranfocus.com/en/index.php?option=com_content&task=view&id=551.
- Kauser, Zeenat, *Political Participation of Women: Contemporary Perspectives of Gender Feminists and Islamic Revivalists*. Malaysia: A.S. Noorden, 1997.
- Kilic, Sevgi; Saharso, Sawitri; Sauer, Birgit. "Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity." *Soc Pol* 15, no. 4 (2008): 397-410.
- Marghinani, Ali ibn Abi Bakr, Hafiz Ashur Hafiz, and Muhammad Muhammad Tamir. *Al-Hidayah : Sharh Bidayat Al-Mubtadi*. al-Qahirah, Misr :: Dar al-Salam, 2000.
- Marghinani, Ali ibn Abi Bakr, and Imran Ahsan Khan Nyazee. *Al-Hidayah = the Guidance : A Translation of Al-Hidayah Fi Sharh Bidayat Al-Mubtadi, a Classical Manual of Hanafi Law*, Guidance. Bristol, England :: Amal Press, 2006.
- Mas'udi, Masdar, *Islam and the Reproductive Health of Women*, Kuala Lumpur: Sisters in Islam, 2002.
- Mernissi, Fatima. *The Veil and the Male Elite : A Feminist Interpretation of Women's Rights in Islam*, Harem Politique. English. Reading, Mass. :: Addison-Wesley Pub. Co., 1991.

- Milallos, Ma. "Muslim Veil as Politics: Political Autonomy, Women and Syariah Islam in Aceh." *Contemporary Islam* 1, no. 3 (2007): 289-301.
- Munti, Ratna Batara. "Financial Provision: Indonesia." In *Islamic Family Law and Justice for Muslim Women*, edited by Nik Norani Nik Balishah. Kuala Lumpur: Sisters in Islam, 2003.
- Poulter, Sebastian. "The Claim to a Separate Islamic System." In *Islamic Family Law*, edited by Chibli Mallat, Jane Frances Connors and London University of. London ; Boston :: Graham & Trotman, 1990.
- Said, Edward "The Clash of Ignorance," *The Nation*, October 22, 2001.
- Saleem, Shehzad. "Islam and Women: Misconceptions and Misperceptions." *Renaissance: A Monthly Islamic Journal*, 2005.
- Sanusi, Lamido Sanusi. "Women and Political Leadership in Muslim Thought: A Critique " (2001),
http://www.nigerdeltacongress.com/warticles/women_and_political_leadership_i.htm.
- Shah, Iqbal and Ahman, Elisabeth. "Age Patterns of Unsafe Abortion in Developing Country Regions." *Reproductive Health Matters* 12, no. 24, Supplement 1 (2004): 9-17.
- Shaikh, Sa'diyya. "Family Planning, Contraception and Abortion in Islam: Undertaking Khilafah: Moral Agency, Justice and Compassion." In *Sacred Choices: The Case for Contraception and Abortion in World Religions*, edited by D. Maguire. Oxford: Oxford University Press, 2003.
- Shaltut, M. *Al-Islam 'Aqida Wa Shari'a*. Cairo: Dar al-Shuruq, no date.
- Sisters in Islam. *Women as Judges*. Edited by Sisters in Islam. Kuala Lumpur: Sisters in Islam, 2009.
- Sisters in Islam. *Home Truths*. Kuala Lumpur: Sisters in Islam, 2009.
- Subramanian, Narendra. "Legal Change and Gender Inequality: Changes in Muslim Family Law in India" *Paper presented at the annual meeting of the American Sociological Association, Marriott Hotel, Loews Philadelphia Hotel, Philadelphia, PA, Aug 12, 2005*
 <http://www.allacademic.com/meta/p19019_index.html>
- Syed, Ibrahim B., "Women in Islam: *Hijab*," 2001 available at
<http://www.islamfortoday.com/syed01.htm>
- van Doorn Harder, Pieterella. *Women Shaping Islam: Reading the Qur'an in Indonesian*. Champaign, Illinois: University of Illinois Press, 2006.
- Wadud, Amina. *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. New York ; Oxford :: Oxford University Press, 1999.
- Williams, Daniel. "Tunisia Veil Case Threatens 'Odious Rag' Struggle " *Bloomberg.com* (2008).
- WLUML. *Knowing Our Rights*. 2nd ed. London: Women Living Under Muslim Laws, 2009.

International Human Rights Instruments

International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 U.N. GOAR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976;

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46

ICCPR General Comment 17 (Thirty-fifth session, 1989): Article 24: Rights of the Child, A/44/40 (1989) ICCPR General Comment 19 (Thirty-ninth session, 1990): Article 23: Protection of the Family, the Right to Marriage and Equality of the Spouses, A/45/40 vol. I (1990) 175

ICCPR General Comment 28 (Sixty-eighth session, 2000): Article 3: Equality of Rights Between Men and Women, A/55/40 vol. I (2000)

ICCPR General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000)

ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116

Convention on the Political Rights of Women, 193 U.N.T.S. 135, *entered into force* July 7, 1954

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Opened for signature and ratification by General Assembly resolution 1763 A (XVII) of 7 November 1962 entry into force 9 December 1964

Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages General Assembly resolution 2018 (XX) of 1 November 1965

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, *entered into force* April 30, 1957

Cedaw

CEDAW General Recommendation 23 (Sixteenth session, 1997): Women in Public Life, A/52/38/Rev.1 Part II (1997)

CEDAW General Recommendation 19 (Eleventh session, 1992): Violence Against Women, A/47/38 (1992) 5

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 General Assembly resolution 36/55 of 25 November 1981

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF RELIGIOUS INTOLERANCE Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir* E/CN.4/2006/5

Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993 A/CONF.157/23

The Beijing Declaration *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex I. and the Platform for Action, *Ibid.*, annex II.

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85

Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process", HRI/MC/2008/4 5 June 2008

Secondary sources

Brems, Eva, *Human Rights: Universality and Diversity*, The Hague, Martinus Nijhoff Publishers, 2001

Conor Gearty, *Can Human Rights Survive?*, The Hamlyn Lectures 2005 (Cambridge: Cambridge University Press, 2006), p.141

Craig Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights" (1989) Osgoode Hall L J. 769;

Craig Scott, "Reaching Beyond (Without Abandoning) the Category of 'Economic, Social, and Cultural Rights'" (1999) 12 Hum. Rts. Q. 633

Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006)

The Human Rights of Women a Reference Guide to Official United Nations Documents. Third Printing, March 1998. Posting on the Internet is supported by Amnesty International-USA Special Initiatives Fund. Available on the web at: [http://www.umn.edu/humanrts/instreet/women/engl-wmn.html\(English\)](http://www.umn.edu/humanrts/instreet/women/engl-wmn.html(English)), Rita Maran, Editor.

Women's Human Rights: An Introduction By Charlotte Bunch* and Samantha Frost** (Published in *Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge*, Routledge, 2000.)
<http://www.cwql.rutgers.edu/globalcenter/whr.html>

Reproductive rights

Boland, Reed, *Promoting Reproductive Rights: A Global Mandate*, New York: Center for Reproductive Law and Policy, 1997.

Coliver, Sandra, ed. (for Article 19, London) *The Right to Know: Human Rights and Access to Reproductive Health Information*. Philadelphia: University of Pennsylvania Press, 1995.

Cook, Rebecca 'Human Rights and Reproductive Self-Determination' *American University Law Review*, Vol. 44, No. 4, April 1995, pp. 975-1016.

Hernandez, Berta E. 'To Bear or Not to Bear: Reproductive Freedom as an

International Human Right' *Brooklyn Journal of International Law*, Vol. 17, No. 2, 1991, pp. 309-358.

Rahman, Anika, Laura Katzive, and Stanley K. Henshaw 'A Global Review of Laws on Induced Abortion, 1985-1997' *International Family Planning Perspectives*, Vol. 24, No. 2, June 1998, pp.56-64.

Political rights

Cherif, Feryal. "Understanding Women's Political Rights and Status" Paper presented *at the annual meeting of the Midwest Political Science Association, Palmer House Hilton, Chicago, Illinois, Apr 15, 2004* <Not Available>. 2009-02-06
http://www.allacademic.com/meta/p83649_index.html