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# THE MAKING OF EGYPT'S PERSONAL STATUS LAW: AN OPPORTUNITY FOR MEANINGFUL GENDER REFORM OR A CONTESTED FIELD OF POWER STRUGGLE?

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**October 2024**

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## Introduction

Women's issues are inherently intersectional, meaning that all forms of discrimination and oppression women face are interrelated and cannot be considered separately.<sup>1</sup> To speak of women as a single uniform gender group, however, misses the point, as women represent diverse groups of people who are subject to multiple social, economic, and political pressures, including youth, politically marginalized groups, and the poor. Thus, in a sense, the struggle for women's rights becomes a struggle for rights and freedoms and, by and large, a struggle against all forms of oppression and discrimination.

One of the areas of struggle and contention over women's rights in Egypt is the drafting and enactment of a new Personal Status Law that regulates the minutiae of daily family life, such as marriage, divorce, guardianship, custody (*Hadanah*), visitation rights, and inheritance. Many of these issues, though they may seem technical and procedural, are intractable and go to the heart of defining gender roles and responsibilities in the private and public spheres. The details of how and by whom these issues are addressed and debated provide good insight into existing power dynamics and structures. In other words, the struggle over Personal Status Law can be seen as a power struggle over who sets the agenda, shapes the contours of relations between men and women in society, and dictates what and how the family affairs or the private sphere is to function. For years, the competing interests of religious, political, and women's groups have been the defining factor in this struggle. They all vie for authority and influence in shaping the law, but especially in regulating family matters and the role and position of women within the family. Along the lines of conflict, the interests of the various groups are played out in a declared struggle over who stands for the conservative and who for the modern (secular) interpretation of Islamic

jurisprudence. A self-contained struggle, one could say, for as central as it is what is being fought, it is also important with whom and against whom the struggle is being waged, which leads to the regime's positions vacillating between a conservative and a modern policy toward women's rights and advocating a certain direction depending on the interests at stake.

Personal status law is indeed an area of contention and controversy. On the one hand, it represents a borderline area that offers or blocks the possibility of genuine gender reform, as it essentially embodies the conflict between a liberalized and a conservative view of the role of women in the family. On the other hand, it touches on vital financial aspects related to family matters, such as the amount of alimony in the event of divorce, child support or custody, etc. Above all, however, the political process of drafting this law is equally contentious, as it raises the question of how the law comes about and whether it involves those who are the main constituents of the law.<sup>2</sup> In the sense that those whose lives are affected by the law are not necessarily involved in its drafting, this indicates the continuation of the philosophy that has long underpinned Personal Status Law, which regards women as incapable of managing their personal affairs and those of their children, regardless of their age, education, and life experience as El-Sadda suggests.<sup>3</sup> Since taking office in 2014, President Sisi has made it clear that he is committed to promoting women's rights and has expressed his support for women on numerous occasions. Official political discourse, while supportive of the women's advancement agenda, sends confusing signals with the closing off of public space and attacks on rights defenders from across the spectrum, including women and feminist groups.<sup>4</sup> Such confusing signals

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1 Legal scholar Kimberlé Crenshaw coined the term 'intersectionality' in 1989 to describe how systems of oppression overlap to create distinct experiences for people with multiple identity categories including women. Although intersectionality theory is now widespread and all-encompassing, Crenshaw began with Black women, whose oppression cannot be captured exclusively in terms of 'racism' or 'sexism' when viewed as an either/or position (see Crenshaw, 1991).

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2 J. Brown, N., 2022. The Battle Over Family Law in Egypt Shows Only the Personal Can Be Political, And Then Only So Far. *Carnegie Endowment for International Peace*. 12 July. <https://carnegieendowment.org/2022/07/12/battle-over-family-law-in-egypt-shows-only-personal-can-be-political-and-then-only-so-far-pub-87488>.

3 El-Sadda, H. (2021, March 20). My right to guardianship: The beginning and the significance [*al-Wilaya Haqqi: al-Bidaya wa-l-Maghza*]. *Shorouk*. <https://www.shorouknews.com/columns/view.aspx?cdate=20032021&id=59c570f2-4020-4bb7-9e47-9e38a3ded4d7> [In Arabic].

4 See Human Watch Report, 2020. Egypt: Spate of 'Morality' Prosecutions of Women: Arrests, Jail for Violating 'Family Values'. <https://www.hrw.org/news/2020/08/17/egypt-spate-moral>

and the monopolization of the women's agenda by state authorities indeed raise questions about the actual will to promote and support women's issues. While there are significantly more women in government, judiciary, and parliament, this increase in political and decision-making bodies is not necessarily a testament to the role Egyptian women play in drafting a new Personal Status Law.<sup>5</sup>

Against this background, the paper will examine the different positions of the various actors, their motivations, interests, and influences, and traces the law-making process through which the expressions of interest come about and are reflected in the various versions of the law. That is, the focus of this paper is on (a) the dynamics of power, addressing some of the content of the proposed amendments, and (b) the policy or law-making process.

By arguing that the struggle over family law represents a reinforcement of existing gender roles and patriarchal structures that extend beyond the personal into the public sphere, this paper attempts to approach the subject of Personal Status Law from a dual standpoint that reflects, first, its centrality as an object of political contestation (*power as relationship*) and, second, its importance as a process (*power as process*) through which law-making manifests itself both an effect of an ongoing power dynamic and a practice of power in itself.

The paper is divided into four main sections. The first section deals with the main features of the law, the second with the power relations surrounding the law, i.e., the political interests and positions of the various actors and an analytical consideration of these positions based on the various proposals of the law, while the third section takes a closer look at the policy-making process, and the fourth section concludes with observations and recommendations for improvements.

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[ity-prosecutions-women](#).

<sup>5</sup> See CAMPMAS Report, 2021. [https://www.capmas.gov.eg/Admin/News/PressRelease/20223813393\\_333.pdf](https://www.capmas.gov.eg/Admin/News/PressRelease/20223813393_333.pdf)

## What is Personal Status Law, why does it need reform, and what characterizes it?

In general, family law is defined as a set of laws governing relationships between people, in particular marriage, guardianship, custody, mutual rights and obligations, and any dissolution that may result in alimony, custody, inheritance, and wills. All Egyptian citizens are subject to family law from birth and after death. Personal status law is seen by many citizens as the embodiment of the religious, moral, and social orientation of the state. According to Article 10 of the [2014 Constitution](#), the family is “founded on religion, morality, and patriotism. The state protects its cohesion and stability, and the consolidation of its values.” The link between patriotism, morality, and the foundations of society in relation to the family illustrates the connection between the personal and the political and makes it clear why this law is political in both its essence and its formulation. As a result, the law has become a battleground between different political forces, some of which belong to the conservative and reformist forces in society. To some, personal status laws may not sound as critical as other laws that deal with far more sensitive political and military matters, but they are undeniably just as critical, as they regulate the balance of power within the family and thus address and reflect political conflicts within society. In 1934, the Egyptian Court of Cassation defined Personal Status Law as:

The sum total of the physical or family description of a known person that distinguishes him from the others and gives legal effects under the law in his social life, such as being male or female, married, widowed or divorced, a parent or a legitimate child, being of full legal capacity or defective capacity due to minority, imbecility, or insanity, being of absolute or limited legal capacity (Nasir, 1990:30).

One of the characteristics of Personal Status Law in Egypt, as Soliman (2022) notes, historically but also in modern times, is its immutability. Egyptian Personal Status Law can be described as immutable, as it has remained unchanged for more than half a century. Despite repeated calls for change and

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various attempts to put forward proposals that reflect the conflicting interests of various stakeholders and the antagonism between liberal and conservative forces, the law has remained resilient, intact, and immutable.

To look at the historical development of Personal Status Law, one needs to go back to the end of the 19th century. By this time, the French code had already established itself in the Egyptian legal system by then, replacing the traditional or Islamic (*Shari'a*) law at the time. While French (secular) influences have survived in Egyptian civil law to this day, the only branch of law that has remained unchanged is Personal Status Law, in which *Hanafite* jurisprudence was strictly applied.<sup>6</sup> Family or Personal Status Law symbolizes the last bastion of a crumbling Islamic legal system, the reform of which is causing great uncertainty and fear and, above all, threatens to shake the Egyptian legal system in its entirety, as it remains one of the most critical laws to be addressed or amended.<sup>7</sup>

It was not until the beginning of the 20th century that Egypt's personal status laws No. 25/1920 and No. 25/1929 were enacted, which as such represent the first codifications of Personal Status Law in the country's modern history. As elsewhere in the region, codification was motivated by the state's goal of establishing a modern nation. The two laws served primarily to expand the grounds on which a wife could initiate divorce and regulated matters of spousal maintenance during marriage and alimony after divorce.<sup>8</sup> Despite continuing controversy over divorce rights and procedures, polygamy, visitation rights, child custody, and guardianship, it took nearly half a century for a proposal to amend both laws to get off the ground. After years of numerous proposals and re-proposals, in 1979 President Sadat issued Legislative Decree No. 44, also known as

*Jihan's Law*, to amend both texts under the guise of modernizing and empowering women.<sup>9</sup> Among the newly introduced provisions was that the remarriage of the husband without the consent of the first wife is considered harmful and that the first wife is automatically granted a divorce by the judge if she files a petition to that effect within one year of the day on which she learned of the marriage.<sup>10</sup> The provision, which was interpreted as an impermissible restriction on polygamy, had caused, among many other proposed amendments, a fierce dispute between conservative and liberal factions of society.<sup>11</sup> The law was then brought before the Supreme Constitutional Court, which declared it **unconstitutional** because it violated Islamic *Shari'a* law, whose principles are the main source of legislation according to Article 2 of the 1971 Constitution.<sup>12</sup> Less than two months after the repeal of Law 200/1979 in May 1985, the Mubarak government brought another package of amendments through the People's Assembly (Law 100/1985).<sup>13</sup> The new law was neither wholly liberal nor conservative, but it gave in to some demands of the conservatives to maintain the balance between the different factions in society. An example of this is *Article 11B*, which amounted to considering the husband's second marriage ipso facto as the cause of the first wife's injury and was amended to require the wife to prove the injury (*darar*), i.e., she must prove that she suffered material or psychological harm as a result of her husband's marriage to a second wife. The explanatory note states that the 1985 law is not intended to restrict the husband's right to polygamy, but to provide a remedy to the first wife who would be harmed by her husband's remarriage and that as such it complies with Islamic *Shari'a*.<sup>14</sup> Ultimately, however, the request is subject to the judge's discretion. Another disadvantage of PSL Law No. 100 of 1985 is that, unlike its predecessor, it does not grant divorced women possession of the marital home for the duration of their custody of their

6 For more on the transition from Islamic law to French Civil law, see Debs, R.A, Vogel F. E. and Al-Sayyid R., 2010. *Islamic Law and Civil Code: The Law of Property in Egypt*. New York: Columbia University Press.

7 See Najjar, F. M., 1988. Egypt's Laws of Personal Status. *Arab Studies Quarterly*, 10(3), pp. 319-344. Najjar provides a detailed account on the opposition of religious conservative elites to various attempts at family law reform in 20th century Egypt, a resistance presented as a defense of Islam against Western-inspired secularism and feminism, of which there is much evidence in Egypt today.

8 Law No. 25/1920: <https://manshurat.org/node/879> and Law 25/1929: <https://manshurat.org/node/12369>.

9 Law No. 44/1979: <https://manshurat.org/node/12464>.

10 Art. 6 bis 1§2 added to Decree-Law No. 25/1929.

11 Among the provisions that sparked controversy were the liberalization of the conditions under which a wife was entitled to maintenance, as well as her right to divorce if that entitlement lapsed, and the wife's right to an indemnity (*mut'a*) over and above legal maintenance were she repudiated without her consent or without apparent cause on her part.

12 According to Article 2 of the **1971 Egyptian Constitution**, Islam is the religion of the state and Arabic its official language. Principles of Islamic law (*Shari'a*) are the principal source of legislation.

13 See Law 100/1985: <https://manshurat.org/node/12372>

14 See Supreme Constitutional Court 14 August 1994, No. 35/9.

children. Instead, the new law requires husbands to pay for housing costs in such cases. Unfortunately, the application of the law has shown that in most cases the courts have ordered husbands to pay very little money toward housing costs (M. Al-Sharmani, 2007). To limit courts' discretion and avoid lengthy divorce proceedings, Law No. 1 regulating certain conditions and procedures for litigation in personal status matters was enacted in 2000.<sup>15</sup> Although formally a "procedural" law, it contained some substantive provisions, such as *Article (20)* which provided for a *khul'* divorce (divorce initiated by the wife in return for compensating the husband) and another article which allows wives married to *'urfi* to apply for the judicial dissolution of their marriage.<sup>16</sup>

Despite the historical dispute over the various provisions of the law, some of which have already been mentioned, there is a procedural aspect related to the fact that the Personal Status Act is not a uniform code, but contains provisions codified in various laws and ordinances.<sup>17</sup> The fact that the provisions have not been codified in a comprehensive and exhaustive code complicates litigation and makes them even more difficult to amend, as various interests are involved and the provisions are scattered. Hence, the practice has long been to deal with an isolated web of provisions to gain some political advantage, without a coherent and clear strategy that puts women at the center of personal status issues. To create clear laws, speed up access to justice, and eliminate inconsistencies in the administration of justice, it is necessary to unify everything in one code and amend the provisions of existing Personal Status Law.

15 See Law No. 1/2000: <https://manshurat.org/node/27318>

16 See Promotion of Women's Rights Report by the GIZ, 2010. [https://horizon.documentation.ird.fr/exl-doc/pleins\\_textes/div-ers17-07/010048687.pdf](https://horizon.documentation.ird.fr/exl-doc/pleins_textes/div-ers17-07/010048687.pdf).

17 Personal Status Substantive Laws include: Decree-Law No 25 of 1920 regarding Maintenance and Some Questions of Personal Status, as amended; Decree-Law 1\10 25 of 1929 regarding Certain Personal Status Provisions, as amended; Law No 100 of 1985 amending Decree-Laws No 25 of 1920 and 1929; Law No 77 of 1943 on Inheritance; Law No 71 of 1946 concerning Testamentary Bequests; Law No 62 of 1976 amending certain rules concerning maintenance; Law 1\10 4 of 2005 amending Article 20 of Decree-Law No 25 of 1920 (raising the age of custody to 15 for both boys and girls). While Personal Status Procedural Laws include Law No 1 of 2000 organizing Certain Conditions and Procedures of Litigation in Matters of Personal Status, as amended by Law No 91 of 2000; Law No 10/2004 Establishing Family Courts (*qânûn inshâ' mahâkim al-usra*) and Law No 11/2004 establishing a Family Insurance Fund (*qânûn inshâ' sundûq nidhâm ta'mîn al-usra*).

## PSL as a field of political contestation: Conflicting interests at stake

Since the 1980s and to date, many stakeholders and interest groups, including women groups, rights advocates, local non-governmental organizations, government officials, politicians, legislators, and public thinkers have made various efforts to introduce a series of reforms aimed at addressing key gaps and inequalities in the country's existing family laws.<sup>18</sup> Recently, and with a view to the 2016-2020 legislative period, several MEPs have put forward their proposals, some of which have been shelved and others have been criticized. For example, female MP Sohair El-Hadi, whose bill sparked fierce controversy and was criticized by the National Council for Women (NCW) and the National Council for Childhood and Motherhood for granting more visitation rights to the non-custodial parent after a divorce, and MP Abba El-Hawary, who supported a bill proposed by women's groups, on which a hearing was scheduled but then shelved for unknown reasons. Other parliamentarians, including MPs Mohamed Fouad and MP Samir Rashad Abo Taleb, also presented their bills. In parallel, the NCW put forward its own version of the [bill](#) and submitted it to the Cabinet, ignoring calls from MPs to attend hearings and participate in drafts submitted by Parliament.<sup>19</sup> A reading of the NCW draft law shows in some ways that it focuses more on the less controversial provisions, and stays away from those that cause fierce public controversy and conflict with other institutions (e.g. the husband's unilateral and unconditional right to divorce), as in the case of the abolition of the warning of disobedience as a procedural mechanism to prove the wife's disobedience. The bill also reaffirms the

18 M. Al-Sharmani. *Recent reforms in personal status laws and women's empowerment: Family courts in Egypt* (2007). <https://assets.publishing.service.gov.uk/media/57a08bcae-5274a27b2000d65/FamilycourtsFinalPaper.pdf>.

19 El-Sheikh, S., 2019. Fate of Personal Status Law remains pending until controversy between Parliament, NCW ends. *Daily News Egypt*. <https://www.dailynewsegypt.com/2019/02/12/fate-of-personal-status-law-remains-pending-until-controversy-between-parliament-ncw-ends/>. See on Leila., R. 2019. Revising Egypt's personal status laws. *Daily News Egypt*. <https://english.ahram.org.eg/NewsContent/1/64/335494/Egypt/Politics-/Revising-Egypt's-personal-status-laws.aspx>.

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divorced wife's right to post-divorce spousal support (نفقة المتعة) regardless of whether the marriage was consummated or not, as well as the right of those divorced after more than 20 years of marriage to additional maintenance and their right to live alone in the marital home if they do not have custody of the children until the divorced husband finds another suitable home. The third institution to submit its own version is al-Azhar's highest body, the Council of High Scholars, which submitted a [full draft](#) in 2019. This was an unpredictable move that has drawn much attention, opposition, and rejection from policymakers and women's groups alike.<sup>20</sup> For the first time, al-Azhar took a step beyond its traditional mandate of advising on Shari'a matters and assumed more of a legislative role vis-à-vis other legislative and executive institutions. As soon as al-Azhar draft was made available, it was heavily criticized by women's groups and legislators alike. For the former, the draft restores patrimonial structures by giving the *wali* (male guardian) the right to object to a marriage,<sup>21</sup> while for the legislators it is more a matter of jurisdiction, as they feel that al-Azhar is encroaching on their territory and overstepping its authority.<sup>22</sup> The conflict over the law, however, is indicative of the strained relations between al-Azhar, the country's highest Islamic institution, and the state authorities, particularly the presidency, which has repeatedly sought to curtail al-Azhar's power, especially in light of the growing international role and popularity of its Grand Imam, Ahmed al-Tayeb.<sup>23</sup>

20 For a comparative reading of the NCW and al-Azhar draft bills, see [https://www.masrawy.com/news/news\\_egypt/details/2019/11/9/1667626/-/النفقة-والطلاق-مقارنة-لقوانين-الأحوال-الشخصية-للأزهر-و-قومي-المرأة](https://www.masrawy.com/news/news_egypt/details/2019/11/9/1667626/-/النفقة-والطلاق-مقارنة-لقوانين-الأحوال-الشخصية-للأزهر-و-قومي-المرأة)

21 The proposal stipulates, for example, that a marriage is established only by the confirmation and acceptance of the marriage contract by the two parties, and it also stipulates that the man must be 'competent,' without clarifying the notion of competence in this case [Article 16]. However, the *wali* is granted the right to object to the marriage in the case of incompetence and to submit the matter to the relevant judge for decision [Article 6]. On another side, the proposal maintains the marriage age of 18, while it opens the door and allows the *wali* to ask the relevant judge to marry the girl before that age in 'cases of necessity' [Article 15], thus allowing exceptions to child marriage, which is prohibited by law no. 12 of 1996 and its amendments by Law no. 126 of 2008.

22 Article 122 of the Egyptian Constitution regulates the legal framework for proposing bills and assigns this responsibility exclusively to the President of the Republic, the Council of Ministers, and the MPs.

23 Abdel-Zaher. Hassan., 2019. *The Arab Weekly*. Egyptian parliament locks horns with al-Azhar over prerogatives. <https://>

This conflict which flares up again and again, reached a climax in 2017 when MP Mohamed Abu Hamed introduced a [draft bill](#) that would allow the president to remove the Grand Imam of Al-Azhar from office, who under the law cannot be removed from office by the executive authority.<sup>24</sup> Despite all the criticism, al-Azhar's stake in joining the battle over the Personal Status Law is obvious: it wants to emphasize its mandate as the leading religious institution in all matters of Shari'a and its interpretation, as the main source of law enshrined in the 1971 constitution. In many incidents, it has become clear that al-Azhar leadership is not comfortable with religious scriptures being interpreted by politicians, women's groups, the NCW, and apparently the president, as in the case of the regulation of alimony, guardianship, and the most obvious tension that arose over [oral divorce](#). Tensions also run both ways, as at a public event in 2017, President Sisi addressed Tayyeb directly saying, "[You have exhausted me, honorable Imam](#)," in the context of the president's directives to reform national religious discourse to combat extremism.<sup>25</sup> The dispute between President Sisi and Sheikh al-Azhar over oral divorce, behind which lies an unspoken tension between the presidency and the leadership of al-Azhar, is a good example of the conflict over who interprets Sharia and who sets the framework for what is legally and religiously correct and what works for women and society, as Sheikh al-Tayeb put it, who announced in a [2017 speech](#) at TV that any attempt against al-Azhar to annul oral divorce "crosses the line and undermines what is right."

The NCW, on the other hand, has been the main mouthpiece of state-sponsored feminism since its founding in 2000, operating within the framework and confines of the regime that has long viewed the shaping of women's policy as a monopolized affair of the state.<sup>26</sup> The concern expressed by the NCW is

[theArabweekly.com/egyptian-parliament-locks-horns-al-azhar-over-prerogatives](https://theArabweekly.com/egyptian-parliament-locks-horns-al-azhar-over-prerogatives).

24 For more on the conflict between al-Azhar and the government, see Feuer., S., 2020. New Egyptian Legislation Aims to Reduce al-Azhar's Authority. *The Washington Institute for Near East Policy*. <https://www.washingtoninstitute.org/policy-analysis/new-egyptian-legislation-aims-reduce-al-azhars-authority>.

25 Shams El Din. M., 2017. Tensions arise between Al-Azhar and presidency over verbal divorce debate. *Mada Masr*. <https://www.madamasr.com/en/2017/02/07/feature/politics/tensions-arise-between-al-azhar-and-presidency-over-verbal-divorce-debate/>.

26 See Abuzaid. R.W., 2020. Insights from the new personal status law: How are women-related policies made in Egypt? (1 of 2). *Alternative Policy Solutions*. <https://aps.aucegypt.edu/en/arti>

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not far from al-Azhar's main goal of preserving family cohesion and ensuring the best for the child but differs in how this can be achieved. The recognition of women's full agency and legal capacity in matters of marriage and divorce is the contentious area around which the drafts of both institutions revolved. The two institutions have more in common than some might think. Both are conservative in different ways, in the sense that both represent their own version of the role of women as family members but more as public citizens, and both claim to speak on behalf of women. Al-Azhar is primarily concerned with regulating women's issues under Shari'a law, i.e., reciprocal but not identical rights and obligations of men and women within the family, without necessarily addressing the changing and complex dynamics of society and bringing the women's agenda in line with these changes (e.g., a growing number of Egyptian women who provide for their families).<sup>27</sup> The NCW, on the other hand, takes a top-down approach to women's rights, which to a certain extent does not keep pace with the nuances in society, having long distanced itself from the wider feminist movement, not only from the secular feminist movement but also from what has more recently become known as Islamic feminism, and has consequently lost its base in communities.

Not surprisingly, however, all the interlocutors involved in the various proposals used either religiously based discourses to advance their arguments and undermine the positions of their opponents, and/or arguments of women's liberation and feminism to counter the religious discourse. However, it would be inaccurate to characterize this back-and-forth over the law and the wider debates over family law reform as a debate over how best to interpret Sharia provisions on family relationships, or as demands by some women's groups calling for strengthening the position of women. Other **important** questions raised by such proposals are whose views **matter** and who has the power to put the proposals into action, who has the upper hand in terms of the scope and importance of their role in shaping the cultural and social reproduction of

society.

Notwithstanding the demands of key stakeholders (legislators, NCW, al-Azhar, and women's groups), the government, including the ministries of Endowments, Social Solidarity, Education, Higher Education, Interior and Defense, the Administrative Control Authority, the National Security Agency, and the General Intelligence Service, drafted a **bill** and submitted it to parliament in February 2021, which was later withdrawn and shelved after women's rights activists sparked a backlash. While it contains some promising reforms that have long been advocated, such as moving the father's parental custody rights from rank 18 to rank 4 (*Article 89*); reaffirming visitation rights to non-custodial parent (*Article 91*), and ensuring that men are required to inform the first wife of the second marriage and that the wife may ask for divorce on account of the harm/damage (*darar*) caused by the second marriage (*Article 58*); it was also a major blow to the women's movement, as many articles are considered to have set the tone for the women's movement's efforts 100 years ago. This is particularly true of *Article 6B*, which is modeled on the article proposed by al-Azhar and gives a woman's male guardian the right to petition for annulment of the marriage within one year of the marriage contract provided she was not pregnant or had given birth -if the husband is deemed "unfit," without elaborating on what "fit" or "unfit" means and on what criteria the *wali* (which may vary from case to case) decides on a man's fitness, and which also establishes the husband's right to an oral (verbal) divorce (*Article 46*); the grandfather succeeds the father as natural guardian of minors in administrative and financial matters, which means that the mother does not have the right to assume financial guardianship of her children, making it correspondingly difficult for women to make decisions about the children's education or other legal matters (*Article 103*). In response to the leaked draft law, some feminist groups called the law **regressive** and reprehensible and launched a hashtag #الولاية\_حقي, which translates to "**Guardianship is my right**." Under this hashtag, women flooded social media with cases and stories about the restrictions placed on them when it comes to managing affairs and making decisions for their children or themselves in the areas of education, banking, and health without the consent of a male guardian. As an effect of the momentum generated by the hashtag, three women's rights groups - the Centre for Egyptian Women's Legal Assistance, the Women and Memory Forum, and the *Guardianship is My Right* campaign - drafted an alternative bill to the Cabinet's proposed bill, the **Just Family Law**, in

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[cles/668/insights-from-the-new-personal-status-law-how-are-women-related-policies-made-in-egypt-1-of-2#ref\\_1](https://egyptindependent.com/14-percent-of-egyptian-families-depend-on-female-breadwinners-capmas/).

<sup>27</sup> About 3.3 million Egyptian families are financially supported by women as main breadwinners, representing 14 per cent of the total number of families, according to the 2018 Central Agency for Public Mobilization and Statistics (CAPMAS) report. See, <https://egyptindependent.com/14-percent-of-egyptian-families-depend-on-female-breadwinners-capmas/>.

## 7 The Making of Egypt's Personal Status Law: An Opportunity for Meaningful Gender Reform or a Contested Field of Power Struggle?

March 2022. The bill calls for more legal rights and freedoms to manage their own affairs and those of their children.

As far as the women's movement is concerned, the *Just Family Law* is not purely secular, as many would like it to be, but it is tailored to the real needs and demands of women in society, according to lawyer Azza Soliman.<sup>28</sup> It is intended to possibly find a middle ground that is not too secular, but still takes gender equality into account and relies in part on the interpretation of Islamic jurisprudence to have a good chance of being put on the negotiating table. Unlike the concept of reciprocity, which was supported by both al-Azhar and the Cabinet draft and to a lesser extent by the NCW draft, the women's group's draft law is more oriented toward gender equality with greater involvement of the administrative judiciary. Women's groups have been further calling for the division of wealth between spouses, according to the principle of "*toil and endeavor*," the idea that divorced and widowed women who have contributed to their spouses' accumulated wealth are entitled to a fair share of it. The Grand Imam of Al-Azhar has also spoken out *in favor* of this principle, which is enshrined in Islamic jurisprudence and protects women's rights. The women's groups draft bill thus defines marriage not as an arrangement of enjoyment or property, but as a shared responsibility that must be accompanied by agreed-upon values, and prohibits covenants of obedience, oral divorces, unilateral divorces, and revocable divorces.

The above list is not necessarily exhaustive but is an attempt to provide an overview of the most important actors involved in the drafting of the Personal Status Act. However, there are different tendencies and orientations within the individual institutions, making it difficult to draw a uniform picture of the various actors and interest groups, be they administrative officials or politicians, religious actors, and/or legislators. Among the women's groups, for example, some are more in favor of an *egalitarian family* model that does not necessarily have to break with Sharia law - along the lines of *Al-Mudawwana* or the Moroccan model. Others are more in favor of a more secular bill that breaks completely with the prevailing patriarchal family model, and still, others would prefer to leave the law unchanged to avoid further deterioration of the situation. Nevertheless, it

is not entirely wrong to *claim* that both the Islamists and the secular movements and parties continue to see religion as the main point of reference for women's rights to a small extent; they only differ in the interpretation and implementation of the texts.

The stakes of other groups, including groups of fathers and children should not go unnoticed either, who, although not organized in larger associations or groups, are directly campaigning for the enforcement of visitation and accommodation rights, the abolition of the list of (movable) furniture and the transfer of custody to the father in the second place. Other important stakeholders are the younger generations or the so-called Generation Z, who are not organized but can be easily mobilized via social media platforms. If they are well addressed by policymakers, they can make a big difference and push for a more balanced law. International and bilateral donors are also important actors pushing for more secular-oriented reforms, especially since Egypt has repeatedly made and reaffirmed promises of gender equality both within the UN review mechanisms and in its *National Human Rights Strategy* (2021-2026). *In a speech* in September 2021, President Al-Sisi stated that the new PSL must "reflect the culture of society while guaranteeing the rights of both men and women."

Among the other groups with much at stake are the Egyptian Copts.<sup>29</sup> While Article 3 of the 2014 Constitution states: "Christians and Jews who adhere to their respective religious principles with regard to their personal status, religious affairs and the selection of their spiritual leaders," it remains unclear how the *interpretation of Article 3* will affect the adoption of a new Personal Status Law and its application. The role and involvement of the churches and the extent to which they represent the true needs of their Christian communities are not entirely clear in the drafting of the bill. A bill based on citizenship rights, or a religiously based formulation of family law is a central debate that seems to have been decided and concluded in favor of the second.

28 El Mahdawy. H., 2022. Q&A with lawyer Azza Soliman: The campaign for a Just Family Law. *Mada Masr*. <https://www.madamasr.com/en/2022/04/20/feature/politics/qa-with-lawyer-azza-soliman-the-campaign-for-a-just-family-law/>.

29 Muslims and non-Muslims are governed by the same laws in the country except for family laws. However, if a non-Muslim resorts to court, Muslim family laws apply in matters of inheritance.

## PSL as a process: Collaborative, multi-stakeholder approach or top-down approach

Following the outrage over the law, President Sisi promised a balanced bill and called for social dialogue on the draft law. At the same time, he ordered the formation of a ten-member committee to review the law and present a new draft law within four months (subject to extension).<sup>30</sup> The committee was established in June 2022 by a decree issued by Justice Minister Omar Marwan and is composed of eight male and two female judges, representing, among others, the Courts of Cassation and Family Courts.<sup>31</sup> The composition of the committee, whose main task is to come up with a new proposal that overcomes the controversies of the Cabinet draft, is in itself revealing and shows the extent to which men are called upon to legislate for women. It is a male-dominated committee composed exclusively of judicial officials, while representatives of all other stakeholders, including al-Azhar, members of the NCW, and other concerned civil society groups are excluded. According to some media reports, the new draft law drawn up by the committee consists of 355 articles in three laws regulating the substantive and procedural aspects of personal status and guardianship (*wilaya*) of property. Among other things, the bill provides for the divorce to be documented as a marriage and for the assets of each spouse and their respective share of the joint assets created during the marriage to be preserved. The new draft law also provides for the establishment of a family welfare fund and insurance to financially support the family against the high costs and challenges associated with personal status

30 See a televised broadcast of president Sisi citing his responsibility to Egyptian families. <https://www.youtube.com/watch?v=h5XhFwYnu8o>.

31 Gamal El-Din- E., 2022. Minister of Justice orders formation of legal, judicial expert committee to draft balanced personal status law. *Ahram Online*. <https://english.ahram.org.eg/NewsContent/1/64/467444/Egypt/Politics-/Minister-of-Justice-orders-for-formation-of-legal-jud.aspx>. Also see, al-Mayani. H., 2022. details on establishing a committee to redraft the Personal Status Law. *Sky News* <https://www.skynewsarabia.com/varieties/1528510-تفاصيل-تشكيل-لجنة-تعديل-قانون-الأسرة-مصر>

matters; the granting of new powers to judges to deal with urgent cases in support of the family; allowing data on a divorced man's income to be obtained from his employer to calculate maintenance; developing a new system whereby all family disputes are collected and then referred to a single court; shortening time limits for adjudication in family cases.<sup>32</sup> Most of these provisions, though important, are rather procedural in nature and may not be the main points of contention in the draft bill. The role of the *wali* in the annulment of marriages, oral divorce, guardianship, the duty of obedience, and enforcement mechanisms, to name but a few, and above all the language in which the law is drafted, are the most problematic elements, as they exacerbate inequality between men and women and turn marriage into a property regime in which the one who pays gets what he pays for.

Despite the media reports, the entire process of reformulating the law was marked by secrecy, which has now been on ice for over two years. To entrust the committee with this task and at the same time call for a public dialogue is perplexing. Not much is known about the functioning of the Committee or about the conduct of a public (social) dialogue at what stage of the drafting of the bill, before or after it is finalized, and whether stakeholders are consulted in the drafting of the bill. These are all very valid questions that send a clear signal about the lack of clarity about the law and the process of its drafting, which is indeed characteristic of the legislative process in Egypt but is also a common feature of the administration of consensus management and social dialogue in the country.

## Process design: Recommendations and a way forward

Almost 2 years have passed since the committee was set up and not much is yet known about the fate of the bill. While the reformulation of the draft law is shrouded in secrecy, some of the most contentious issues have been discussed in the National Dialogue meetings, particularly the issue of financial

32 A brief look at new draft of Egypt's personal status law. *Egypt Today*. March 2023. <https://www.egypttoday.com/Article/1/123251/A-brief-look-at-new-draft-of-Egypt's-personal-status>

guardianship.<sup>33</sup>

When analyzing policy-making around personal status legislation, several points can be made that can help formulate a series of recommendations and create a roadmap for further action. Firstly, the legislative process is characterized by the dominance of the ruling elites and is exclusive by nature. In other words, reforms to civil status law are largely decided from above and have little influence from below. Secondly, there is ample evidence of fragmentation within and among key interest groups and a lack of consensus on the scope and content of legislative change. While feminists and women's groups were able to achieve modest successes in some cases, in several instances the state opted for compromises to appease religious conservative factions. Third, the state's tight control over civil society has limited the ability of women's organizations to engage with a broader public and advocate for reform. A fourth feature is President Sisi's direct role in setting the agenda and formulating policy, *invoking* his responsibility to the Egyptian family, and thus playing the traditional role of patriarch, protector, and savior. In a way, the case of Egypt confirms the hypothesis of the Slovenian academic and politician Miro Cerar (2009: 23) that in "an authoritarian or totalitarian state, legal policy is subordinate to political policy."

Policy-making in the case of the Personal Status Law in Egypt sheds light on what *some* call "politics without process and process without politics", an interplay between an empty political process that leaves no room for consultative, participatory legislation and a weak process whose genesis, design and parameters are controlled and steered by one party.

The approach taken in the development of the Personal Status Law underlines the need for a multi-stakeholder dialogue to strengthen the links between legislators, policymakers, practitioners, and members of civil society. Advocating for policy effectiveness (i.e., improving the problem in question) is always a challenge and requires a process of constant engagement with practitioners and stakeholders who hold different positions, which we can call "political effectiveness" (achieving consensus among a range of stakeholders about what is politically feasible).<sup>34</sup>

33 See Ahram Online, 2023. Egypt National Dialogue Explores Guardianship and National Identity. <https://english.ahram.org.eg/NewsContent/1/64/501121/Egypt/Politics-/Egypt-National-Dialogue-explores-guardianship-and-.aspx>.

34 Benjamin Cashore, Steven Bernstein, David Humphreys, Ingrid Visseren-Hamakers, Katharine Rietig, Designing stake-

In other words, an effective personal status policy or law that addresses existing inequalities and gaps in existing laws, responds to the real needs of the Egyptian family, and contributes to greater gender equity cannot therefore be achieved without an effective political process that is participatory and inclusive both in its design and in the participation and governance of its outcomes.

To summarize, the legislative (policy-making) process is very slow and, above all, very uncertain, despite the extensive debates and discussions that have also attracted a great deal of public attention and interest. The logic of silos still prevails, the various interest groups talk to themselves and not to others, and the authorities from above proceed with their plans without much regard for what is taking place on the ground. Although the drafting of the Personal Status Law is a contested field of power struggle, it is also a good place to make family policy and a vehicle for meaningful gender reform. A practice that emphasizes *the personal is political*.<sup>35</sup> As [Bernard-Maugiron and Dupret](#) have long emphasized, the development of Personal Status Law in Egypt "was always politicized."

Family law cannot, therefore, be viewed in isolation from the current socio-economic and political situation in the country. It reflects power structures and goes hand in hand with the prevailing patriarchy. Political will is therefore essential, but the active and meaningful engagement of the various stakeholders and interest groups is certainly also important. Following Dalal-Clayton and Bass (2002),<sup>36</sup> a distinction can be made between: full participation (all major sectors of society are involved), restricted participation (only some sectors of society are involved), and very restricted participation (only some selected sectors of society are involved). In the most favorable case, full participation is sought, in contrast to the restrictive to very restrictive form practiced to date, which in no way promises to create better law. To conclude, an effective political process

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holder learning dialogues for effective global governance, *Policy and Society*, Volume 38, Issue 1, March 2019, Pages 118–147, <https://doi.org/10.1080/14494035.2019.1579505>.

35 Lee, T. M. L., 2007. Rethinking the Personal and the Political: Feminist Activism and Civic Engagement. *Democratic Theory*, 22(4), pp. 163-179.

36 Dalal-Clayton, B. and Bass, S. (eds.) (2002) Sustainable development strategies: A resource book. London: OECD, UNDP, Earthscan. [http://www.nssd.net/pdf/resource\\_book/SDStrat-06.pdf](http://www.nssd.net/pdf/resource_book/SDStrat-06.pdf).

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must take into account a number of elements that are of great importance in shaping the process of law-making.

- The process of law-making is as important as the law itself. Even if there is a risk of the process being hijacked by dominant stakeholders, careful design of the participation or collaboration should ensure that the processes are balanced and that all sides of the debate are heard. This means that the various stakeholders who can influence or are affected by the outcomes of legislation must be involved. These include not only government representatives, religious institutions, and legislators, but also civil society organizations, sub-national authorities, academia, and individual citizens. At the national level, it would make less sense to invite individual citizens but to focus on involving more organized interest groups representing individual citizens. At regional, sub-national, or local levels, the constellation of actors may change so that local associations and individual community representatives can play a greater role.
- Given the highly polarized and politicized nature of the PSL law, policymakers should consider that the benefits of collaborative policy-making outweigh the disadvantages of a controlled policy-making process. On the one hand, collaborative policy-making increases the legitimacy of decisions and improves outcomes, enhances public credibility, diffuses conflict, justifies decisions, and limits future implementation challenges by creating ownership. On the other hand, it helps to increase the breadth and depth of information and thus improve the quality of decisions.<sup>37</sup>
- Among all the approaches and proposals of the law, one can recognize a cosmetic approach as opposed to a genuine approach to gender reform. The cosmetic approach, which uses empowerment and gender discourse to gain international support and greater recognition, can be seen as an expression of hegemonic conservative forces, both at the level of policymakers and interest groups and in broader social circles. The path, however, to a more comprehensive reform of gender equality policy is not possible without the full participation of all actors and the operationalization of the debates around the law.
- While the political nature of the law is essentially problematic, it cannot be overlooked or dismissed because it says something about who rules, how they think about women and gender relations, and how they can exploit the imbalance of power and inequality between genders, which essentially reflects patriarchal structures. The question here is how to move from the politicization of law to the level of the operationalization of law and its enforcement.
- The operationalization of family support reform and the reduction of gender inequalities must therefore be seen as departing points that could help policymakers to decide on a particular legal orientation (egalitarian, Sharia'a-based family law, fully secular law, or a hybrid one). However, to break out of the cycle of debate and re-debate about the basis and reference point of gender equality (a secular versus a Sharia'a-based understanding), an operative view that takes into account the "dual-earner" family-based model can serve as an anchor for a good common ground. The asymmetrical shift in gender roles and the double burden of many women must therefore be reflected in the new family constellation and thus regulated fairly by law.<sup>38</sup> One way to do this is to draw the attention of members of the wider community and policymakers to the everyday suffering of women. Several recent television dramas and films have helped to highlight the inadequacies of family law, and have helped to galvanize what have long been considered sacred and sacrosanct legal issues, including the concept of guardianship, such as the television drama *Under Guardianship*, which deals with the problems faced by women and children after the death of the father, when guardianship passes to the grandfather rather than the mother.
- While operationalizing the family reform law on a common and understandable basis of reality is necessary, meaningful progress on women's issues in Egypt requires a feminist examination of religious texts. Any unilateral attempt by the government to push through reforms will

<sup>37</sup> Wesselink, A., J. Paavola, O. Fritsch, and O. Renn (2011) Rationales for public participation in environmental policy and governance: practitioners' perspectives Environment and Planning A 43, p. 2688-2704.

<sup>38</sup> Fahlén, S. (2015). Gender equality within dual-earner and dual-career couples across different policy regimes and norm systems in Europe. Stockholm: Families And Societies Working Paper.

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be rejected by religious institutions and large sections of society. Both women religious scholars and women's groups must be better represented in the policy-making process.

- The family law should not be seen as a subsidy (grant) from the policy or decision maker. Rather, it is an entrenched right based on a set of rights to which all women should be entitled.
- The immutability of the law in the case of Egypt is a matter that must be taken seriously by the legislator. To this end, it must be made clear that it is a law that, once in force, cannot be easily changed in the near future. Therefore, the main points of contention need to be addressed before it takes decades to consider amending it.
- Policy measures to ensure effective law enforcement are as important as the legal provisions and must be given a platform for discussion and dialogue.
- Recourse to comparable and regional best practices can be a good way forward.
- The language in which the law is drafted must be chosen with due care. Empowering language speaks not only to law-makers, but also to the essence of change and reform. Conversely, disempowering language can defeat any progressive or reform-oriented provision.

Finally, the fact that nothing is known about the law since the drafting committee was set up is worrying but gives hope that the law is not yet finalized and that further consultations are still possible.

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## Arab Reform Initiative

The Arab Reform Initiative is an independent Arab think tank working with expert partners in the Middle East and North Africa and beyond to articulate a home-grown agenda for democratic change and social justice. It conducts research and policy analysis and provides a platform for inspirational voices based on the principles of diversity, impartiality, and gender equality.

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