

## **Whose shari'a?**

### **Spousal Rights and Marriage Litigation in a South Yemeni Family Court**

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#### ***Abstract***

In the Islamic marriage, the spouses agree on certain duties towards each other while signing the contract. Such duties can be viewed as rights that the parties maintain over each other in family life. While classical Islamic jurisprudence (*fiqh*) sets only general terms for marriage (maintenance and dower in exchange for sexual access), popular understandings on duties in marriage tend to be more variegated. National legislation constitutes the third level where such rights are argued. In the family court, these different angles collide.

Based on my ethnographic field studies in the Southern Yemeni town of Aden, and the material I have collected in the family section of the Aden Divisional Court I will look at how spousal rights are argued during the course of a litigation process. I will ask how does an "Islamic family code" (Personal Status Law 1992 of the Republic of Yemen) that heavily draws on customary norms common in more traditionalist areas of the northern part of the country (the former Yemen Arab Republic) gets translated into legal practice in urban Aden where, among other differences, women's rights is an issue that has gained relevance.

In court deliberations and in disputes at homes, as it is popularly understood, Islamic shari'a is negotiated. The paper discusses the different fields where shari'a is argued and how it is embedded in other discourses (customs, human rights etc.) to shed light on what actually shari'a means in today's Muslim world.

In Islamic legal studies, focus tends to be on historical case studies, while there is great need to study the current legal practice, too. Studying legal practice gives information on how shari'a, the divine law of Muslims, in today's world influences the lives of ordinary Muslims. Ethnographic material for this study has been collected in Aden during 1988-1989 (while capital of the PDRY), 1991, 1992, 1998, 2001, 2005, 2007, 2008 and 2009 (altogether some three years) and archival material in the India Office Records in London.

In this paper, I intend to map out the field of analysis for my research project on Adeni family court practice. In Adeni family courts I am about to study litigant strategies in gaining rights in the divorce process and to see what the sources of such rights are. In a typically legal pluralistic platform that the Adeni divorce litigation represents, several sources of legal or legitimate rights are manifest. The statutory family code, Personal Status Law (law no. 20 of 1992 as amended in 1998 and 1999) gets alongside general understandings of “Islamic law” as understood as *the shari’a* and customary understandings on spousal rights and duties. While the last one in Aden does not represent a code in the sense one can find in other parts of Yemen (*urf* or ‘customary law’) it is a vivid system of understandings on what is right and wrong and what kind of moral expectations individuals in various positions are bound by. In a divorce case in court, all these three sources of rights come to play in the interplay between the judge and the litigants and their respective barristers and witnesses.

The analytical platforms I am going to discuss here include theoretical considerations on studying gendered legal practice, the Adeni family courts as the research field, the sources of rights claims (legal codes and normative systems), and the prevailing religiously sanctioned understandings on marriage and the family life as well as civil society rights discourse that focuses in particular to women’s rights as the dominant gender strategy<sup>1</sup>.

## **Theoretical considerations**

In legal anthropology, two main approaches have emerged in the study of dispute management. One considers cultural concepts as central in interpreting law (‘law as culture’) and the other one emphasizes the political and economic milieu in the process of legal practice (‘law as domination’ or ‘law as social control’). As Sally Falk Moore (2001) has characterised the first one, ‘law as culture’ approach sees law as tradition-driven, where durable customs, ideas, values, habits and practices form a totality with systematic connections<sup>2</sup>. In colonial and post-colonial conceptions on ‘customary law’ in contrast to Western law, this approach has served the purpose of treating colonial subjects and their post-colonial heirs as subservient of ‘tradition’, whatever injustices it might contain.

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<sup>1</sup> According to this understanding that is prevalent among human’s rights and women’s rights NGOs, women’s weak position in society is due to patriarchal social system that favours men’s aspirations in all fields of life.

<sup>2</sup> S. F. Moore Certainties undone: fifty turbulent years of legal anthropology, 1949-1999, *The Journal of the Royal Anthropological Institute* 7 (2001): 96.

‘Law as domination’, in contrast to the previous one, emphasises internal power structures that law encloses. In feminist legal studies, this approach has been further developed to discuss the aspects how law exercises power and resists and disqualifies alternative accounts of social reality<sup>3</sup>. In particular from the point of view of gendered proportion of justice, this approach has focused on law texts, the kind of evidence counted in court as ‘legal’, on unequal power relations between the parties involved and on discourses on all levels of legal practice. In studies that focus on Islamic legal practice, the feminist approach has brought up new insights into the questions of women’s justice in Islam and in particular, on studies of concrete legislation in different countries with elements of *fiqh* in the law. The latter contains studies on litigant strategies, legal techniques applied in court (and outside) and the local and social contexts of particular legal practices. In addition to that, law texts and legal discourse have been scrutinised as sites of constituting gendered subjects<sup>4</sup>.

Feminist law scholars have showed that when discussing matters of justice and rights that women gain in legal practice it is not sufficient to focus on law and the formal conditions prevailing in the legal practice. In this paper I will argue in favour of a multilayered analysis of various discursive contexts that come to play in a court session. These discursive structures are neither void of the prevailing social stratifications nor on the differing ideologies that inform and are informed by cultural formations. I will argue that when mapping the varying contexts where gender is constituted in the process of legal practice, both the ‘law as culture’ and ‘law as social control’ approaches are useful due to the multiplicity of both social (performative) and discursive contexts that are involved. As Hirsch has asserted, to ask how gendered subjects are constructed and performed is to explore multiple enactments of gendered subject positions in different contexts and to assess the possibilities for, and limits of, their transformation<sup>5</sup>. As the question of women’s justice keeps on to be actual in Aden, so does the complex nature of that question prove to persist.

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<sup>3</sup> C. Smart *Feminism and the power of law*, London and New York: Routledge 1989: 4.

<sup>4</sup> I.e. S. Joseph Working the law: A Lebanese working-class case, in *Law and Islam in the Middle East*, ed. D. H. Dwyer, New York et al 1990; S. K. Mohsen Women and criminal justice in Egypt (ibid.); Z. Mir-Hosseini *Marriage on trial, A study of Islamic family law Iran and Morocco compared*, 1993; J. Tucker *In the house of the law: gender and Islamic law in Syria and Palestine, 17th and 18th centuries*, Berkeley, California UP 1997; S. Hirsch *Pronouncing and persevering, Gender and the discourses of disputing in an African Islamic court*, Chicago and London: The University of Chicago Press 1998; A. Moors *Debating Islamic family law, legal texts and social practices*, in *The social history of women and gender in the Middle East*, eds. J. Tucker and M. Merewith, Indiana 2000 and Welchman, Lynn *Women and Muslim Family Laws in Arab States. A Comparative Overview of Textual Development and Advocacy*. Amsterdam: Amsterdam University Press 2008. .

<sup>5</sup> Hirsch 1998:18.

## The Adeni Family Court

The hierarchy of courts in Aden follows the system outlined during the British colonial time (1839-1967)<sup>6</sup>. Every district of the town has its own magistrates' or divisional court. Appeals from these courts go to Court of Appeal, situated in Aden, by way of re-hearing. Following Yemeni unification in 1990, the Supreme Court was moved to Sana'a, the new national capital. A divisional magistrates' court has civil, criminal, juvenile, matrimonial and commercial divisions. Family dispute cases are litigated in closed sessions in family courts, headed by a male or a female judge. The litigants can be represented in absentia by a barrister.

Before Yemeni unification judge training took place in the Law Faculty of Aden University. Women were allowed to judge training, too, and they could work in any court the same way as their male colleagues. After Yemeni unification judge training was moved to Sana'a, where female candidates were until 2009 not allowed. After a change in education law, women can now join judge training but they are allowed to work only in family or juvenile courts. The remaining less than ten women in whole Yemen who today work as judges either head family courts in Aden and the near-by provincial capital Zingibar or work in commercial or juvenile courts. The highest position is with a female judge who chairs the Aden Appeals' Court's civil section.

In spring of 2009, I was following the work of the Aden Appeals' Court by attending some of its meetings. The court works under a three-judge bench that re-hears the cases on the basis of the documents coming from the Magistrates' Courts and a brief hearing of the litigants and their respective barristers. The court is chaired by a female judge who was trained in Aden University among one of the first judges graduating during the People's Democratic Republic of Yemen<sup>7</sup>. She chairs the sessions and consults the cases before each hearing with a male and a female co-judge. The latter is slightly younger and likewise trained in Aden University while the male judge is sent by the Ministry of Justice from the northern Yemeni town of Ta'izz and has a traditional qadi training.

In average, the court discusses each month five talāq cases, three khul' cases, about four cases of faskh and some eight nafaqa cases. Rest of the cases involve inheritance and property disputes and they are plenty. During a normal working week, the court gathers from Saturday to Tuesday every morning around 10 o'clock and finishes the work after the midday prayer call. Sometimes an extraordinary afternoon session can be arranged if there are too many cases to handle within the morning sessions.

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<sup>6</sup> I have discussed the British colonial court system as an Anglo-Muhammadan legal system in Dahlgren 2004.

<sup>7</sup> Before the unity, legal training in Aden University focused on state law rather than on Islamic jurisprudence or classical qadi training. After the unity, new curricula arrived from Sana'a that follows the North Yemeni legal training system. Most of the teachers in the Aden Law Faculty were trained under the PDRY.

The court room is small and has no seats for litigants or their barristers. As the tempo of discussing the cases is fast few litigants have the chance to have their say. The chief judge holds the order in the room and makes the questioning and in the final session announces the court's decision. Other people present in the small court room are the court scribe who makes notes of all deliberations, a secretary who keeps the filing cabinet in order and an elderly woman who prepares the tea and serves also water and cold drinks. The usher is a soldier who stands by the door and calls in the plaintiffs and their barristers and keeps control of who can enter the room in between the cases, too.

In my earlier unpublished material from three of the Magistrate's family courts in Aden<sup>8</sup>, I have cases where different readings on spousal rights come up in litigation process. Often it is the husband who claims rights neither the wife nor the judge acknowledges as legitimate although with quite different rationalisations. While the judge relies on the statutory law, the wife may dispute the husband's rights claims either as misinterpretation of actual facts or as unacceptable from a customary perspective. These cases were litigated under three different judges (two female and one male judge) both during the previous law (Law no. 1 of 1974 in connection of the family) and the present one (Personal Status Law of 1992, as amended). After the change of law into less woman-friendly it would be easy to presume that the spirit of that law would fade away, but this has not been the case as I could observe. While law is as it is the judge still retains considerable power in his/her court. Still, since the early 1990s, the society has changed rapidly. With disintegration of the earlier state-citizen social contract and re-emergence of patron-client relationships also courts have become places where a litigant can attempt to buy justice with money. With a weak state and dominance of 'traditional' forms of social control such as the patriarchal family and tribal system in all levels of society, the manoeuvring space of progressive jurists has narrowed accordingly.

In the coming year or two, I intend to visit all the five Magistrates' courts' family divisions in Aden, situated in Seera district (for Crater and Khormaksar), Tawahi (for Tawahi and Ma<sup>ç</sup>alla), Burayqa (Little Aden), al-Mansoura and Shaykh <sup>ç</sup>Uthman. Each district has its peculiarities reflecting the social and ethnic background of the settled and migrated population and some customs that are particular to the area. With the judges I will discuss the work of the court and select cases that are of interest to be followed. I will also continue cooperation with barristers and talk with litigants and their relatives and witnesses.

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<sup>8</sup> Collected during the years of 1988-1989, 1991, 1992, 1998, 2001, 2005, 2007, 2008 and 2009 (altogether only some three years of anthropological field work).

## The sources of rights claims: legal codes

The two Yemeni states were among the first in Arabian Peninsula to issue a statutory family code. People's Democratic Republic of Yemen or South Yemen was first with its Law no. 1 of 1974 in Connection to the Family and Arab Republic of Yemen or North Yemen followed suit in 1978 (law no. 3 of 1978). The Southern law has been characterised as one of the most progressive Muslim family codes alongside the Tunisian code of 1956 while the Northern law can be described as representing a conservative reading of fiqh with strong elements of customary practice. The latter was drafted by shafi'i and hadawi (zaidi) jurists. After the two Yemens unified in 1990 a joint personal status law (Personal Status Code, law no. 20 of 1992, amended in 1998 and 1999) came to force, drafted by Northern legal experts and enacted by a presidential decree without much parliamentary discussion.

In looking at how spousal rights and duties are inscribed in these law codes, the 1974 Southern law differs from the two other in not making a gender difference on marital duties: *“Marriage is a contract between a man and a woman who are equal in rights and duties, and is based on mutual understanding and respect (...) (§ 2). Furthermore “Expenses in respect of marriage and the conjugal home requirements shall be borne by both husband and wife according to their means” (§ 17) and “Both husband and wife share their joint life expenses after marriage, but where either of them is unable to do so the other spouse shall be liable for maintenance and for shouldering the burdens of the married life.” (§ 20). Similar provisions on maintenance of children and elderly parents are in §§ 22 and 24. Accordingly, failure to provide maintenance is a legitimate cause for judicial separation for both spouses (§ 29c). A valid marriage contract requires both parties' consent and must be witnessed by two persons irrespective of their sex. Men have conditional right to take a co-wife in case of the first wife's sickness or barrenness and with her consent, subject to a written permission to a divisional court<sup>9</sup>. The code does not make any provisions on family life and spousal duties thereof.*

The North Yemeni code from 1978 is more detailed in terms of spousal rights and duties. A man's rights in marriage are described in chapter 3, § 27 and include the right to require from the wife her obedience (tā'ā). He can also expect her present in his house and that she “carries out his wishes and fulfils her work in the house of matrimony”. Article 27.2 orders her to *“make herself available for legitimate intercourse without the presence of any person”*. Furthermore, the wife is bound never to leave the house without his permission. The husband cannot, however, stop her if she has a “legitimate excuse” or if “custom dictates” or if there is “nothing to bring dishonour or disregard to her duties toward him”. These are in connection to

her taking care of her assets or performing her duty. The only example the provision gives is in regard to the wife taking care of her elderly parents, and this only if there is no one else to serve them<sup>10</sup>.

The legal notion of nushūz (disobedience, runaway) is mentioned in § 38. A wife shall be considered a runaway if she no longer obeys her husband. The legitimate terms of avoiding such status include the husband's failure to pay the prompt dower (mahr mu<sup>c</sup>ajjal), that he did not provide her with a bayt shari'a or legitimate dwelling, that "she does not feel security for herself and for her assets with him" and if he refuses to provide maintenance to her or if he has no visible means of support. The wife can expect from her husband that he provides the legitimate housing, pays her expenses and clothes and allows justice between her and his other wives in regard to expenses and housing if they are gathered in one house.

Article 40 provides further clarification on family life, based clearly on customary practices "*It is required that the legitimate dwelling should be independent [and be a place] where the wife finds security for herself and her assets, taking into consideration the social standing of the husband, the dwelling of his peers, city customs, and the protection of the wife. The husband may live in one house with his wife and her children whether they are born to her or to another wife even if they are adult. His parents and the women prohibited to him may also live with him if their housing is his duty, unless this causes the wife any stress if such a condition was not provided for the contract.*"

In this law, the marriage relationship is described in terms of a contract that has different legal consequences for men and women. Interestingly the law is quite explicit in promulgating on different practical circumstances where the law should be applied, all this relating on custom. The Yemeni Personal Status Code (1992), the family law that came to force in both parts of the new country two years after unity, describes men's and women's duties in marriage in line of the Northern code. The § 40 of 1992 law is merely a copy of the § 27 of the 1978 Northern code and the legal notion of tā<sup>c</sup>a is present here, too. These provisions of the law remain controversial in the South, in particular "*that she should allow him to have lawful sexual intercourse with her without any other person present*" (§ 40.2)<sup>11</sup>; and "*that she should undertake her [household] work in the matrimonial home in the manner of her peers*" (§ 40.3); and "*that she should not leave the matrimonial home without his permission*" (§ 40.4).

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<sup>9</sup> People's Democratic Republic of Yemen, Family Law, Law no. 1 of 1974 in connection with the family. Official English translation given by the Information Department of Ministry of Information. Aden: 14<sup>th</sup> October Corporation.

<sup>10</sup> Yemen Arab Republic, law no. 3 (Family Code), 8 January 1978. Summarized by Y.Hakim 1985, Yemen Arab Republic: A Country Law Study Prepared for the Department of the Navy, Office of the Judge Advocate General, Washington D.C., Library of Congress, pp. 33-39, as reprinted in 14 Ann. Rev. Population L. 1987, pp. 425-429.

<sup>11</sup> The condition "without a presence of any person" was later dropped.

## Religious authorities on family life

Port town Aden has traditionally been more tolerant place with openness to different life styles than some more closed areas in highland Yemen. Before the British came and some time after the conquest a father could marry off his daughter at any age, but a girl who did not have parents had to be fourteen before she could be given away. Upon separation, the mother lost her children, as the father hold the custody rights of both female and male children. No limit was set to daf'a (payments upon contracting a marriage) and mahr, and if the woman had no male guardian she could participate in deciding on the amounts. Orphan children were set under the protection of a chief or *qadi*, girls until they married and boys until they reached manhood.<sup>12</sup> Inheritance rules followed classical *shari'a*, but local custom seems to have influenced the marriage practice. The situation was complicated at that period due to the existence of slavery, in that some people were under the property of another person who thus became a party in any legal deal<sup>13</sup>.

An influential law manual called *A Treatise on The Muhammadan Law, entitled "The Overflowing River of the Science of Inheritance and Patrimony"*, together with an exposition of *"The Rights of Women, and the Laws of Matrimony"* was originally published in 1886 (printed in Syria), to be later reprinted in 1899 in Beirut and in 1959 in Cairo. This is a commentary of classical fiqh rulings and local custom on inheritance and matrimony issues, written by a respected member of a prominent Adeni family and the local <sup>u</sup>lama, Shaykh Abd ul-Qādir bin Muḥammad al-Makkiyy, known as al-Mekkawi. The book is written in the classical manner of questions and answers and has a parallel English text alongside the Arabic one. In the chapter on conjugal duties, the <sup>u</sup>lim replies separately on wife's and husband's duties. Still, both have the same duty of engaging in conventional (bilma<sup>u</sup>rūf) intimate relationship with the spouse. The wife's duties include also to surrender herself to him (taslīm nafshā lahu), to remain in his house (mulāzamat al-maskin; in English translation "to keep his house, which could be understood to mean household up keeping duties), and obedience (.tā<sup>u</sup>a) to all his orders that are mubāḥ.

The husband's duties alongside intimate relations are to provide her with maintenance (nafaqa), lodging and other necessities, and in case he has more than one wife, to treat them equitably. In particular it is mentioned that he should treat the wives equally in division of his night residence. The matter is then explained with the Quranic verse, If you fear that you

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<sup>12</sup> Kour 1981: 86-87.

<sup>13</sup> Ibid.

cannot act impartially, then marry only one. Furthermore, the Shaykh advises that the obligation for making equal division between the wives is only for company and intimacy (wa min al-ma<sup>ʿ</sup>lūm inna wagūb al-qism innamā huwa lil-suḥba wal-mu'ānasa). The obligation to spend equal number of nights with each spouse is then treated in three and half page length with all the possible conditions arising, including any of the wives' health situation, menstruation, travelling etc.<sup>14</sup> When talking with people about the institution of polygamy, sleeping arrangements turned out to be also here the biggest concern in regard to equal treatment.

During the 20<sup>th</sup> century, two prominent religious figures personified the dominant religious discourses, namely Shaykh Muhammad bin Sālim al-Bayhānī and Shaykh ʿAli Ahmad Bahāmīsh. Both were graduates of al-Azhar but shared different views on what 'constitutes' Islam. Bayhānī was a Wahhabi preacher, imām of al-Asqalānī mosque in the old town of Crater and always in problems with the British. Bahāmīsh was a preacher of tolerant Islam who had an understanding of *dhikr*, veneration for saints and other popular expressions of faith. For him, women's tendency to practice *zār* was, however, clearly outside Islam. He was also occasionally a trustee of the British and acted as the qadi of Aden, which in practical terms meant the position of the *madhūn* or marriage registrar. In the late 1950s, the British finally replied to popular demand to allow the qadi some judicial role and nominated him for a short period as the first and only member of the *ʿulama* in the colonial judiciary with limited powers in matrimonial and inheritance cases.

Bayhānī's main book *Ustādh al-mar'a* [The teacher of the woman] (Aden 1950) drew both positive and negative reactions. The book discusses among other issues religious duties, life-cycle rituals, customary practices related to women's health and child bearing, superstitions and idolatry, the 'problem' of lesbianism among Adeni women, and female circumcision (*khitān*), which he recommended and claimed even to be obligatory for the Shafi'is<sup>15</sup>. Some Adeni women were reported to have reacted to his teachings by asking, "What has that old blind go to do with telling us how to behave?"<sup>16</sup> Bayhānī was a student of Ahmad al-Abbadi, a prominent figure of religious learning in the mainland district of Shaykh ʿUthmān. The latter was a devout opponent of the practice of visiting tombs and veneration of local saints<sup>17</sup>.

It is noteworthy that Bayhānī's ideas today influence the Wahhabis, who are a small group of men running some of the most popular mosques in Aden. Still today, women tend to be critical to Bayhānī's conservatism. In contrast to al-Bayhānī, Bahāmīsh spoke in

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<sup>14</sup> Al-Mekkawi 1959 [1886]: 157-166.

<sup>15</sup> Al-Bayhānī 1950. On *khitān* see p. 80. Also Muheirez 1985: 209 and Serjeant 1962 discuss Bayhānī's book.

<sup>16</sup> Serjeant 1962: 194ff.

favour of variety in religious practices and gave religious sanction to the cosmopolitan way of life that the British base brought to Aden.<sup>18</sup> In some marriage dispute cases, he tried to protect women whose interests he felt were threatened. These two authorities with relative conservative views became in the late colonial period contrasted in modernist platforms that newspapers, books and various clubs represented, where demands for reforms in marriage, and rights for women and their liberation from ‘backwardness’ (*takhalluf*) were raised.

As part of his religious mission, Bayhānī was an advocate of women’s education, but only in moderate terms, and debated publicly against Bahāmīsh, who together with some mosque imams attacked his thoughts. The subjects discussed by these two religious camps included the questions of whether women should give up *purdah*,<sup>19</sup> whether dancing, singing and films should be allowed, how much education women should acquire, if any, as well as the issue of saint veneration and many other topics<sup>20</sup>. During 1948-1950 Bahāmīsh published a religious and social newspaper *al-Dhikrī*, which presented the views of members of the ‘ulama centred round the Islamic Welfare Society (*al-jamī‘iyya al-khaiyyriyya al-islamiyya*). Bayhānī and his teacher al-Abbadi represented in this debate the ‘reforming’ (*islah*) Islam, whereas Bahāmīsh and many of the mosque imams stood for an Islam that was tolerant towards local customs and practices.

The legacy of these two important figures carries over to the 21<sup>st</sup> century. During the PDRY era, the kind of Islam that was personified in al-Bayhānī was left no room to function and some years after independence the blind Shaykh was forced to leave Aden. During that era, the rulers favoured a tolerant Islam that refrained from politics, in line with the colonial period and which was personified in Bahāmīsh. Following Yemeni unification in 1990 the state control of religion lapsed, and Wahhabism could flourish again. A school and a mosque with Bayhānī’s name were erected, the latter allegedly with Saudi money. While the Bahāmīsh type of Islam has tended to rely on classical Shafi’i manuals with some eclectic manner, the new self-nominated qadis who act as mosque imams<sup>21</sup> apply the Qur’an and *sunna* and make their own interpretations.

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<sup>17</sup> Serjeant 1981 [1957].

<sup>18</sup> There were naturally limits to Bahāmīsh’s tolerance, he participated among other issues in petitions against prostitution.

<sup>19</sup> The term comes from British India and was colloquially pronounced *burdah*, seclusion.

<sup>20</sup> Muheirez 1985: 209.

<sup>21</sup> While during the colonial time, Aden had only two qadis, one in Aden proper and another in Shaykh ‘Uthmān, after independence a third qadi was nominated in Tawahi following popular demand. After unification, some 30 to

Bayhānī was concerned about the dearness of marriage to young men and made a suggestion in a public meeting in the 1950s to cut the dower to a nominal sum of 50 dinars. According to him, women's and their families' greed prevent young men to get married. This proposal, made by a famous Islamic scholar in the name of Islam tally with the measures of the leftist government after independence to cut excessive dowers in the new law. In the 1974 Family Law the *mahr* was limited to a symbolic amount of 100 Yemeni dinars, paid either in prompt (*mahr mu'ajjal* or *mahr muqaddam*) or deferred (*mahr mu'ajjal*). According to Adeni marriage records, this amount (100 dinars) was during the early 1970s the sum that professional men with a good salary such as physicians, teachers or state employees could easily afford to pay for a virgin bride. The amounts paid to a *thayyiba* (non-virgin) were considerable lower, such as 7 dinars 50 fils, the prompt dower a 55-year old mechanic paid to a widowed woman aged 45 in September 1970.

During the PDRY era, the Adeni <sup>ʿ</sup>ulama had a limited role but still some say in the drafting of the 1974 Family Code. After Yemeni unification Aden lost its position as the national capital and its <sup>ʿ</sup>ulama no longer played a role in drafting the post-unification personal status law. By the time of unification, the field of religious interpretation became much more variegated. New mosques have been erected and some of them were taken over by Salafī and Wahhabi imams. Also religious book shops that sell audio cassettes and booklets have spread round the town. Some of them disseminated the message also through loud speakers attached outside the shop. A new big mosque in the district of Khormaksar has a Wahhabi preacher as the imam. His Friday sermons in particular have irritated some of the female population around the mosque. This is a rather wealthy area with colonial era villas, some educational institutes and the Information Ministry branch. Men to the Friday sermon come, however, from all around the town. The sermons have attacked women's participation in society and promoted house-bound roles to women, a woman's rights activist who lives nearby has reported to me.

A leading member of the biggest 'Islamic' party, the Islah, Shaykh <sup>ʿ</sup>Abd ul-Majīd al-Zindānī, is a controversial character in whole Yemen not only due to his role of financing a chain of Islamic schools round the country or that he is in US list of global terrorists but thanks to his role in advocating all kinds of peculiar ideas in the name of Islam. Some years ago he issued a fatwa on what he called the *zawg al-friend* (sic!) or 'friend marriage', also known as the 'tourist marriage' proclaiming it legitimate. This refers to a practice in the Northern town of Ibb where during the summer months, "tourists" start to arrive from Gulf countries in search for

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35 qadis function locally, causing confusion for authorities who try to keep marriage registration in order. The Bohra and Ith'nāsir sects have had their unofficial qadis during the whole of this period. These marriages need to be re-certified by a Sunni qadi.

extra-marital relationships. The Shaykh's idea in suggesting this to be a legal Sunni institution was to make these relationships and offspring there off legitimate. In Aden both the practice of Ibb men giving their young daughters to the Gulf men for temporal pleasure and Zindānī's legitimation of the practice are understood merely as prostitution. When talking about this practice among people in the court house some claimed that the practice exists in Aden, too. I will need to make further studies on this issue.

A remarkably different understanding on women's rights in Islam is advocated by Muḥammad Saīf Abdallah Khālid al-Adaniyy, who is a graduate of a religious institute in Saudi Arabia where he spent his youth. He was born in 1952 in a village in the Northern governorate of Ibb, and he is the father of 11 children. His book *ashara 'awā'iq imām ḥuqūq al-nisā' fīl-islām* (Ten obstacles in front of women's rights in Islam) was published in 2004 by a Ta'izz-based human rights organisation Women's Forum for Research and Training, headed by a young Ta'izz born woman Su'ād al-Qaḍṣīyy. As the people and cultural openness in this former North Yemeni town are similar to Aden, the book has been received with enthusiasm among Adeni women who seek for religious rationalisations to women's rights. The ten obstacles that he discusses are among others the influence of popular customs in Islam, weak hadīth that have contributed to negative understandings on women's rights, the role of classical jurists in formulating the rights negatively to women, and the contradiction in tafsīr of women's half share and her full capacity as a Muslim. About marriage issues he discusses the questions of women's right to contract a marriage without her guardian's consent and the issue of *jabr* or compulsion in marriage in the light of different Sunni schools advocating women rights in these questions<sup>22</sup>.

### **Civil society discourses on women's rights**

The above points of view have been presented explicitly within the framework of Islam. These have been contrasted by voices that come up from the NGO field, in particular from human's rights and women's organisations. Still, it would be wrong to label the latter as "secular" as they also discuss the issue of rights in the framework of society at large where Islam forms a strong part of. By the time of unification, non-governmental associations started to spring up throughout Yemen. This process followed similar developments in other Arab countries in bringing forward one person NGOs and thus splitting the field of women's and human rights initiatives. While during the PDRY the official women's organisation, the General Union of Yemeni Women had a strong role in influencing legislation after the unity the Yemeni Women's Union, that unites the former Southern and Northern women's organisations has

become strongly marginalised. In the early 1990s, a National Women's Committee was established by the government to promote state policies in regard to women. Still, even that organisation has in actual fact a marginal role in influencing the legislation.

The National Women's Committee has presented its demands in regard to the Personal Status Code among others in the document Status of Woman in Yemen (1996). This document is prepared by a group of women's rights activists from both North and South. Still the tone of criticism towards the 1992 code is mild to say the least. The document summarises the 1992 code by stating "In fact, the present law of personal status has considered the rights and obligations of the wife and the husband as well as the rights of the child from an Islamic perspective."<sup>23</sup> The problems pointed out in the document have to do with polygamy, the wife's and her children's accommodation after divorce and guardianship thereof. On polygamy, the problem raised has to do with who will follow that the conditions stated in the law are followed such as an eligible need for a second wife, the husband's financial capacity, and the first and second wife's awareness of the husband's intention to take a co-wife. According to the 1974 law, a divorced wife with her children had the right to stay in the marital home even in case the husband, too, stays there. This sometimes caused accusations of zina but among women the provision was highly valued as it prevented the wife landing in the street after divorce. The document states that such cases should be referred to the court so that a tenable solution can be found on her accommodation after a no-fault divorce. The document further demands that interference of a judge or male or female social researchers must be engaged in order to find rules and regulations to these concerns. All in all, the law needs a statute interpreting many of the provisions of the law, the document concludes.<sup>24</sup>

A single case where women's activism has actually stopped for women negative amendment in the PSL was in 2000-2001 when a draft law was secretly prepared in the parliament, initiated by the Islah party, to introduce provisions on bayt tā<sup>c</sup>a. The formulation of this legal principle included provisions on husband's right to send the police to bring back a renegade wife to the marital home. Women's activists who participated in appealing against this provision labelled it as violence against women, a popular slogan that all human rights and women's organisations since the 1990s had been campaigning on. A group of activists appealed to Yemeni president <sup>c</sup>Ali Abdullah Šālīḥ and informed some of the foreign donor countries' embassies that caused the president to decide not to sign the amendment and thus bayt tā<sup>c</sup>a in this form was dropped<sup>25</sup>.

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<sup>22</sup> al-<sup>c</sup>Adaniyy 2004.

<sup>23</sup> Republic of Yemen, Women National Committee 1996: 19.

<sup>24</sup> Ibid. 17-19.

<sup>25</sup> The legal notion of tā<sup>c</sup>a is still in the PSL in the section of wife's duties to her husband (§ 27).

In spring 2009, the parliament started debating on marital age. In the current law after the 1999 amendments there is no provision for minimum age for marriage. Due to negative image abroad that the case of Nugūm, a 8-year old girl from the Northern town of Hajja who successfully got a divorce from a 30 years old husband she was forced to marry by her father raised the parliament is trying to pay lip service to foreign donors<sup>26</sup>. The plan is to increase the minimum age to 17 for both men and women. The issue has divided the Islah party with more pragmatist members of the parliament favouring the amendment and others opposing, basing their rationalizations on that a minimum age would contradict the shari'a.

## Conclusions

In this paper, my intention has been to map the fields where rights discussions in Aden have been carried out during the course of recent history. In a study on legal practice these fields, however, form only the normative side. What happens in actual practice where various normative ideas are contested and made to live is a matter that requires concrete ethnographic field study. Still such a study would not be successful unless the structural premises where the normative systems are constituted is made explicit.

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<sup>26</sup> For the first time in Yemen: A 8-year-old girl asks for divorce in court, Yemen Times 10.4.2008, available on <http://www.yementimes.com/article.shtml?i=1145&p=front&a=2> (visited 10.9.2009).

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