



Fall 9-1-2007

Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform'

Zainah Anwar

Jana S. Rumminger

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>



Part of the [Comparative and Foreign Law Commons](#), [Family Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Zainah Anwar and Jana S. Rumminger, *Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform'*, 64 Wash. & Lee L. Rev. 1529 (2007).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss4/12>

This Article is brought to you for free and open access by the Washington and Lee Law Review at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform¹

Zainah Anwar*
Jana S. Rumming**

Abstract

One of the subtle but most pervasive areas of discrimination against women in the Muslim world today is the inequality that occurs within the context of the family. Throughout Muslim countries and contexts, Muslim women are speaking out about such discrimination and are fighting for reform of family laws to promote justice and equality within the family. This Article outlines key discriminatory provisions within Malaysia's Islamic Family Law (Federal Territories) Act of 1984 and the efforts being made by Muslim women in Malaysia to advocate for comprehensive reform of Malaysian Muslim family laws. This effort includes developing an understanding of why and how reform of Muslim family laws is possible using new progressive scholarship on justice, equality, and the construction of gender in Islam; coping with challenges to law reform that arise generally and within the Muslim context; and exploring strategies that have been used by women's groups in other Muslim countries to push for reform. Based on these lessons, activists in Malaysia have developed a draft model family law grounded in the Islamic principles of equality and justice

1. This Article is based on a presentation by Zainah Anwar at the Symposium on Gender-Relevant Legislative Change in Muslim and Non-Muslim Countries at Washington and Lee University School of Law, March 30–31, 2007, co-sponsored by the Frances Lewis Law Center at Washington and Lee University and the Islamic Legal Studies Program at Harvard Law School. Because of limited space, this Article merely provides an overview of current events related to reform of Muslim family laws in Malaysia and elsewhere; it is not comprehensive.

* Executive Director, Sisters in Islam, Malaysia. M.A., Fletcher School of Law and Diplomacy, Tufts University; M.S. (Journalism), Boston University; Diploma (Mass Communications), MARA Institute of Technology, Malaysia.

** J.D., Northeastern University; M.S. (Law, Policy and Society), Northeastern University; A.B., Princeton University.

and have prepared a guide to the proposed provisions, with justifications for reform based on a holistic framework that emphasizes four elements: religious principles, domestic laws and policies, international human rights law, and sociological trends and data that present the lived realities of women in Malaysian families. In addition, women's organizations have commenced a national public education campaign to build support across a broad constituency of women's rights and human rights groups and at the grassroots level to build and sustain the momentum for reform.

Table of Contents

I. Introduction	1530
II. Discrimination Against Women in Malaysia's Muslim Family Laws	1532
III. Challenges to Law Reform as a Means of Change	1536
IV. Support for Reform from Scholarship and Activism	1540
V. Strategies for Reform.....	1545
VI. Conclusion: Reform is Necessary and Possible	1549

I. Introduction

With the increasing visibility of Islam in the international arena, a great deal of attention has been devoted to the rights of women within Muslim contexts. The American and European media are flooded with stories of women who are denied the right to vote or the ability to drive, forced to wear the *hijab*,² or severely and cruelly punished for adultery.³ In fact, one of the most contested sites of discrimination against women is far more subtle and pervasive: the injustice and inequality that occurs within the context of the family, relating to such issues as age of marriage, capacity to enter marriage, finances, divorce, custody, and guardianship.

2. See Joan Smith, *The Lethal Misogyny at the Heart of Extremism*, EVENING STANDARD (London), July 3, 2007, at 12 (noting that Muslim women are forced to wear the *hijab* and can be punished cruelly if they do not).

3. See Frida Ghitis, *Women Must Be Freed from Koranic Brutalities*, L.A. TIMES, Aug. 21, 2002, at 13 (describing how in many Muslim countries women are treated as second-class citizens, denied "the right to vote or drive," and can be stoned to death for adultery).

Discrimination and injustice within the family is critically important because of the centrality of the family to women's lives and the ways in which male control over wives, mothers, sisters, and daughters can trickle over into all aspects of society.⁴

Throughout Muslim countries and contexts, Muslim women are speaking out about injustices and discrimination, and they are fighting specifically for equality and justice within the family. This Article outlines the efforts being made by Muslim women in Malaysia to advocate for comprehensive reform of the current Malaysian Muslim family laws. This effort includes developing an understanding of why and how reform of Muslim family laws⁵ is possible,⁶ exploring strategies used by women's groups in other countries to push for reform,⁷ and outlining justifications for reform based on a holistic framework that emphasizes four elements: religious principles, domestic laws and policies, international human rights law, and sociological trends and data that present the lived realities of women.⁸

4. For example, a labor law that is changed to provide for women's inclusion in the employment market will prove ineffective if women must obey their husbands' or fathers' wishes as to whether they can work or not and if and when they can leave the house.

5. This Article will use the plural "Muslim family laws" to denote the multiplicity of human-crafted family laws across countries and contexts, and the singular "Muslim family law" to indicate a particular body of law related to the family. Kecia Ali states:

There is not now, nor has there ever been, a single, unitary Islamic law. Though Muslims agree that the *Shari'ah*—God's law for humanity—is complete, infallible, and universal, it cannot be known directly but only through the work of human interpreters. Historically, these interpreters have been the jurists. Their attempts to understand, develop, and implement *Shari'ah* are human, imperfect, and shaped by the constraints of their specific historical contexts.

Kecia Ali, *Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law*, in *PROGRESSIVE MUSLIMS: ON JUSTICE, GENDER AND PLURALISM* 163, 167 (Omid Safi ed., 2003). Modern family laws across Muslim societies are not monolithic, but rather merge the classical human endeavors to interpret the sacred *shari'ah* with local customs, colonial legal codes, historical and political influences, and, in many cases, a codification process conducted by a state. *WOMEN LIVING UNDER MUSLIM LAWS, KNOWING OUR RIGHTS: WOMEN, FAMILY, LAWS AND CUSTOMS IN THE MUSLIM WORLD* 28 (3d ed. 2006) [hereinafter *KNOWING OUR RIGHTS*].

6. See *infra* Part II, V (providing an overview of discrimination in Malaysia's Muslim family laws and how other Muslim countries have tried to address similar discrimination in using family law reform).

7. See *infra* Part V (exploring strategies that have been used by women's groups in Muslim countries to push for reform).

8. See *id.* (discussing the initiative of activists in Malaysia to develop a draft model family law grounded in the Islamic principles of equality and justice).

This Article is divided into six parts. Following this introduction, Part II provides an overview of Muslim family laws in Malaysia and an example of discriminatory provisions in the codified law. Part III presents key challenges to the call for reform by women's rights groups in Malaysia and in the Muslim world more broadly. Part IV discusses critical support for reform of Muslim family laws that is increasingly being provided by scholars and activists, and Part V outlines some strategies that women's groups in Malaysia, following examples from other parts of the world, are using to advocate for reform. Part VI concludes the piece by arguing that reform is necessary and possible, and Muslim women's groups can and are leading the way in the push for reform.

II. *Discrimination Against Women in Malaysia's Muslim Family Laws*

Malaysia's population is multi-religious, with recent estimates indicating that 60.4% of the population is Muslim, 19.2% Buddhist, 9.1% Christian, 6.3% Hindu, 2.6% Confucian, Tao, and other religions customary in China, and 2.4% other or no religion.⁹ Malaysia has a dual court system, with *shari'ah*- and *fiqh*-based¹⁰ laws that apply only to Muslims and include matters specified in the State List of the federal Constitution such as matrimonial law, charitable endowments, bequests, inheritance, and offenses that are not governed by federal law (these include matrimonial offenses, *khalwat* (close proximity), and offenses against the precepts of Islam).¹¹ The power to legislate these matters lies with each state legislature and state sultan, with the federal Parliament legislating such matters for the federal territories of Kuala Lumpur,

9. DEP'T OF STATISTICS, MALAY., POPULATION DISTRIBUTION AND BASIC DEMOGRAPHIC CHARACTERISTICS REPORT POPULATION HOUSING CENSUS 2000 (Nov. 6, 2001), <http://www.statistics.gov.my/english/census/pressdemo.htm> (last visited Oct. 26, 2007) (on file with the Washington and Lee Law Review).

10. See Ziba Mir-Hosseini, *The Construction of Gender in Islamic Legal Thought: Strategies for Reform*, in ISLAMIC FAMILY LAW AND JUSTICE FOR MUSLIM WOMEN 95, 95 (Nik Noriani Nik Badli Shah ed., 2003) (noting the key distinction between *shari'ah* ("the way"), the infallible and unchangeable law revealed to the Prophet Muhammad, and *fiqh* ("understanding"), jurisprudence that is the product of human interpretation and understanding of the *shari'ah*). Because modern laws are based on *fiqh*, or human interpretation, they are not sacred and immutable, but can be changed to better reflect the goals of the *shari'ah*. *Id.*; see also Ali, *supra* note 5, at 167 (same).

11. MALAY. FED. CONST., 9th sched., list II; see also MALAY. FED. CONST. art. 74(2) (empowering the state to make laws with respect to matters set out in the State List (List II of the Ninth Schedule) or the Concurrent List (List III of the Ninth Schedule)).

Labuan, and Putrajaya.¹² Because there are thirteen states and one federal jurisdiction, there are fourteen different sets of Muslim laws in Malaysia.¹³

Since the early 1980s, there have been various attempts to codify and unify the Muslim family laws across the states. The Islamic Family Law (Federal Territories) Act of 1984 (Act 303) was to serve as a model for each state to follow and was considered internationally to be among the most progressive codified Muslim family laws in terms of rights and protections for women.¹⁴ Since 1984, however, there have been a series of amendments to this Act¹⁵ that have effectively rescinded many of the positive provisions for women set forth in the original codification.¹⁶

The current Islamic Family Law Act contains a large number of provisions that explicitly or implicitly discriminate against Muslim women.¹⁷ These include:

12. See MALAY. FED. CONST. art. 73 (delineating the power of the federation and states to legislate).

13. *Id.* art. 1 (naming the thirteen states and federation).

14. See NIK NORIANI NIK BADLI SHAH, CODIFICATIONS OF MUSLIM FAMILY LAWS IN MALAYSIA 1 (2006), available at [http://www.sistersinislam.org.my/BM/IFL%20articles/Nik's%20paper%20\(2\).doc](http://www.sistersinislam.org.my/BM/IFL%20articles/Nik's%20paper%20(2).doc) (stating that the Islamic Family Act was to serve as a model for other states and that the Act "was seen as a progressive law, regarded as one of the best Muslim Family Laws in the world"). For example, the Act expanded a woman's right to seek divorce. *Id.*; see also MOHAMMAD HASHIM KAMALI, ISLAMIC LAW IN MALAYSIA: ISSUES AND DEVELOPMENTS 12, 64–65, 86 (2000) (discussing the Act's progressive outlook in regard to divorce and polygamy).

15. See, e.g., Islamic Family Law (Federal Territories) (Amendment) Act of 1994, A902 (Malay.) (amending the Islamic Family Law (Federal Territories) Act of 1984 to, *inter alia*, loosen the restrictions on polygamy and allow for unilateral divorce by the husband outside of the courts); Islamic Family Law (Federal Territories) (Amendment) Act of 2006, A1261 (Malay.) (amending the Islamic Family Law (Federal Territories) Act of 1984 to, *inter alia*, further relax the restrictions on polygamy and provide a husband with the power to prevent his wife from disposing of her own property); but see *Women's Groups Laud Sensitive Handling of Bill*, STAR (Malay.), Feb. 16, 2006, available at <http://www.awam.org.my/resources/news/16022006a.htm> (last visited Oct. 26, 2007) (noting that although the 2005 amendments were passed by Parliament in 2005 and assented to by the King in January 2006, the government decided not to gazette the Act until comprehensive research was done on potential discrimination against women because of an outcry from women's groups) (on file with the Washington and Lee Law Review); Memorandum from the Joint Action Group for Gender Equal. to Ahli Dewan Negara (Dec. 8, 2005), <http://www.sistersinislam.org.my/memo/08122005.htm> (last visited Oct. 26, 2007) (discussing women's groups' responses to the Islamic Family Law (Federal Territories) (Amendment) Bill of 2005) (on file with the Washington and Lee Law Review).

16. See KAMALI, *supra* note 14, at 67–68, 87–89 (stating the effects of the 1994 amendments).

17. Note that secular family laws in Malaysia, including the Law Reform (Marriage and Divorce) Act of 1976 (Act 164) and the Guardianship of Infants Act of 1961 (Act 351), have

- The minimum age of marriage is lower for women than men.¹⁸
- A woman, regardless of her age, can only marry with her guardian's consent, whereas a man does not need to get the consent of a guardian.¹⁹
- A Muslim man can marry a non-Muslim woman but a Muslim woman cannot marry a non-Muslim man.²⁰
- A man may marry multiple wives (up to four), but a woman can only have a monogamous marriage.²¹
- A woman is supposed to obey her husband. Her failure to comply with the "lawful" wishes of her husband constitutes "*nusyuz*" and means she can lose her right to maintenance.²²

been extensively reformed to provide for equality between men and women who are not Muslim. This means that Muslim women in Malaysia face discrimination in relation to men, but also in relation to non-Muslim women. See KAMALI, *supra* note 14, at 117–27 (stating that reforms to the Guardianship of Infants Act of 1961 (Act 351) provide for equality between men and non-Muslim women, but do not provide the same equality to Muslim women in Malaysia).

18. See Islamic Family Law (Federal Territories) Act of 1984 § 8, Malay. Act 303.8 (2007) (specifying that eighteen is the minimum age for men and sixteen is the minimum age for women to marry).

19. *Id.* § 13.

20. *Id.* § 10 ("No man shall marry a non-Muslim except a *Kitabiyah*."); but see *id.* § 2 (defining *Kitabiyah* as a woman that can prove that her ancestors are descended from the Prophet Jacob, a Christian woman that can prove that her ancestors were Christian before the time of the Prophet Muhammad, or a Jewish woman that can prove that her ancestors were Jews before the time of the Prophet Jesus). Thus, in practical terms, it is nearly impossible for even a Muslim man to marry a non-Muslim woman.

21. *Id.* §§ 14(1), 23; but see WOMEN'S AID ORGANIZATION, MONOGAMY, MY CHOICE, <http://www.wao.org.my/news/20030103monogamy.htm> (last visited Oct. 26, 2007) (discussing the Coalition on Women's Rights in Islam's campaign, in which women are not demanding the right to have four husbands, but are demanding that a Muslim man should be allowed to have only one wife) (on file with the Washington and Lee Law Review).

22. Islamic Family Law (Federal Territories) Act of 1984 § 59. The Act states:

(2) [A] wife shall not be entitled to maintenance when she is *nusyuz*, or unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, *inter alia*—(a) when she withholds her association with her husband; (b) when she leaves her husband's home against his will; or (c) when she refuses to move with him to another home or place, without any valid reason according to *Hukum Syarak*. (3) As soon as the wife repents and obeys the lawful wishes and commands of her husband, she ceases to be *nusyuz*.

Id.

- A man can divorce his wife at will, outside of the court system,²³ but a woman must go to court and obtain a judicial divorce on one of a number of very specific grounds that require extensive evidence.²⁴
- Custody and guardianship of children are determined separately. The mother has a right to physical custody of her children only up to the age seven for a son or nine for a daughter, after which custody "devolves upon" the father.²⁵ The law specifies that a woman (not a man) can lose custody on several grounds, including "immorality."²⁶ A woman is not entitled to guardianship of her children: The law states that "the father shall be the first and primary natural guardian of the person and property of his minor child" and upon his death guardianship devolves to one of several male Muslims.²⁷ This means that even when the woman has custody of the children, the father as the lawful guardian maintains control over matters where the consent of the guardian is required (e.g., permission to obtain a passport, register or change schools, or undergo surgery; decisions regarding ownership; and disposal of the children's property).²⁸ There is no provision in the existing law for the father's loss of guardianship in the case of irresponsibility regarding the children's maintenance.

23. See *id.* §§ 47(4), 48(6), 49(2), 50(2), 50A(2), 54(2), 55A(3)(c) (requiring the court to record all divorces and send a certified copy of the divorce record to the appropriate registrar and to the chief registrar for registration). Nevertheless, a man may pronounce *talaq* outside of court in the absence of the wife and then have it recorded by the court and sent to the registrar up to seven days later. *Id.* § 55.

24. See *id.* §§ 47, 49, 50, 52 (detailing divorce by *talaq* (unilateral divorce by the man), *khul'* or *cera'i tebus talaq* (divorce upon payment by the wife of a certain amount and agreement to give up certain rights), *ta'liq* (stipulation), and *fasakh* (cause)).

25. *Id.* § 84(1)–(2). A mother may apply to the court to extend these limits to the age of nine for a son and eleven for a daughter. *Id.* § 84(1). After "the child has reached the age of discernment (*mumaiyiz*), he or she shall have the choice of living with either of the parents," but the father (and not the mother) is still the parent granted the right to custody. *Id.* § 84(2).

26. *Id.* § 83(b).

27. *Id.* § 88.

28. See KAMALI, *supra* note 14, at 117–27 (explaining the efforts of women's groups, including Sisters in Islam, to ensure Muslim women benefit equally from the reform of the Guardianship of Infants Act of 2000 that allowed equal guardianship between non-Muslim men and women). In response to the criticism, a cabinet directive was issued in September 2000 to enable all mothers, including Muslim mothers, to sign official documents on matters related to their children. See U.N. Comm. on the Elimination of Discrimination Against Women, *Combined Initial and Second Periodic Reports of States Parties: Malaysia*, ¶ 73(v) U.N. Doc. CEDAW/C/MYS/1-2 18, (Apr. 12, 2004), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/309/80/PDF/N0430980.pdf>. However, the Islamic family statutes have not been amended to formally recognize equality between men and women in terms of guardianship.

Similar discriminatory provisions in personal laws are common in Muslim countries throughout the world. In response to such discriminatory provisions, women's groups in many Muslim countries are calling for reform of Muslim family laws.²⁹ In Malaysia, Sisters in Islam, a nongovernmental organization comprised of Muslim women committed to promoting the rights of women within the framework of Islam, has submitted multiple memoranda to the government and staged numerous advocacy campaigns since 1996 on Muslim family law reform.³⁰ Sisters in Islam is continually revising and updating its law reform efforts to incorporate new and progressive scholarship on Islamic legal theory, Muslim laws, and Muslim society and to capture and build on successful strategies from other countries.

III. Challenges to Law Reform as a Means of Change

Women's groups in Malaysia and around the world face a number of challenges in their struggles to push for the reform of discriminatory family laws. Some of these struggles are manifested in structural discrimination within the laws themselves, while others relate to shifting socio-political elements in the Muslim world and beyond. In the post-colonial era of the twentieth century, a number of Muslim countries like Malaysia moved toward the codification of Muslim personal law through statutory enactment.³¹ Such codification, however, was generally based on the

29. See, e.g., RABEA NACIRI, *Foreword* to AIT ZAI NADIA ET AL., ONE HUNDRED STEPS, ONE HUNDRED PROVISIONS FOR AN EGALITARIAN CODIFICATION OF FAMILY AND PERSONAL STATUS LAWS IN THE MAGHREB 5–6 (Women Living Under Muslim Laws trans. 2003), available at <http://www.wluml.org/english/pubs/pdf/misc/100-steps.pdf> [hereinafter ONE HUNDRED PROVISIONS] (describing a network of organizations called Collectif 95 Maghreb Egalité that has been advocating for reform of personal laws in Morocco, Algeria, and Tunisia since the early 1990s); see generally KNOWING OUR RIGHTS, *supra* note 5 (compiling information on family laws and law reform movements from approximately twenty countries). Women Living Under Muslim Laws (WLURL), an international solidarity network founded in 1984, conducted a Women and Law in the Muslim World program from 1991 to 2001 that focused in large part on family laws in Muslim contexts throughout the world and resulted in research publications and networking on family law reform. *Id.* at 15–18. Nongovernmental organizations in the Philippines, Turkey, Egypt, Malaysia, and other countries are also advocating reform of family law. *Id.* at 36–58.

30. See, e.g., Sisters in Islam, Administration of Justice, <http://www.sistersinislam.org.my/advocacy-memo.htm> (last visited Oct. 26, 2007) (containing electronic copies of advocacy memoranda) (on file with the Washington and Lee Law Review).

31. See generally Law & Religion Program of Emory Univ., Islamic Family Law, <http://www.law.emory.edu/ifl/> (last visited Oct. 26, 2007) (containing information on legal history and relevant legislation, as of 2002) (on file with the Washington and Lee Law Review).

classical *fiqh* conception of the marriage contract developed by Muslim jurists in the ninth and tenth centuries in a socio-historical context in which gender inequality and the subjugation of women were taken for granted.³² Therefore, modern Muslim family laws are grounded in assumptions that are centuries old and have little bearing on today's realities. For decades now, Muslim personal status codes have been amended to mitigate some of the grievances women have against these provisions. For example, in various Muslim countries, polygamy has been increasingly regulated by the courts,³³ types of divorce or grounds for divorce initiated by women have been expanded,³⁴ statutes have been enacted or amended to allow additional conditions to be written into the marriage contract to protect women's interests,³⁵ and the concept of "best interests of the child" has been introduced to enable a woman to retain custody even though she has remarried or her children have reached the age limit for maternal custody.³⁶

But the reform of Muslim family laws in different countries has been primarily ad hoc, following the Islamic selection (*takhayyur*) and combination (*talfiq*) methods to reform individual provisions³⁷ instead of

For examples of statutory enactments codifying Muslim personal laws, see *id.* (including the Moroccan Code of Personal Status of 1957–1958, the Tunisian Code of Personal Status of 1956, the Pakistani Muslim Family Law Ordinance of 1961, the Singapore Administration of Muslim Law Act of 1966, and the Malaysian Islamic Family Law (Federal Territories) Act of 1984).

32. See *infra* Part V (discussing recent scholarship that analyzes the classical *fiqh* conceptions of gender and marriage that form the basis of modern laws); LEILA AHMED, WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE 67, 79–101 (1992) (discussing the historical context in which classical *fiqh* doctrine on marriage and family relationships was developed); but see Bouazza Ben Bouazza, *Injustice Lingers in Tunisia for Women*, ASSOCIATED PRESS NEWSWIREs, Aug. 23, 2006, available at http://www.boston.com/news/world/europe/articles/2006/08/23/injustice_lingers_in_tunisia_for_women/ (discussing the 1956 Code of Personal Status that abolished polygamy completely, gave women the right to divorce their husbands, and prohibited brides from marrying before the age of seventeen). This is one prominent exception to the more common codification based on classical concepts of marriage. As the law reached its fifty-year anniversary in 2006, however, women's rights organizations and activists stressed that change is still necessary in Tunisia to bring about full equality and justice for women, especially in terms of the inheritance law. *Id.*

33. See KAMALI, *supra* note 14, at 62–63 (discussing the role of courts in regulating polygamy).

34. See KNOWING OUR RIGHTS, *supra* note 5, at 243–47 (providing an overview of the dissolution of marriage and the expansion of women's rights to divorce in Muslim countries).

35. See *id.* at 167–78 (providing an overview of the concept of negotiated rights in marriage contracts and examples of countries where this is allowed).

36. *Id.* at 337–47.

37. See WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH 210 (1999) ("Acknowledging that the doctrine of a single school no longer

addressing the medieval assumptions about gender relations that underpin the modern laws. In countries such as Morocco,³⁸ Algeria,³⁹ Tunisia,⁴⁰ and Turkey,⁴¹ law reform in recent years has begun to address these underlying assumptions and biases. In other countries, however, lawmakers are considering replacing secular colonial codes with codified Muslim laws, which threatens to entrench the inequality of women because these laws will be based on patriarchal classical interpretations of the *shari'ah*.⁴² In a few other countries, such as Iran and Malaysia, women's rights within the family have actually regressed because of the rise of political Islam and reinstatement of classical *fiqh* rules.⁴³

Law reform can be a challenging and frustrating process regardless of the issue, and many advocates believe that it is often easier to stop a law from being adopted than to make changes to laws once they are in place. Within the context of Muslim family law, efforts at reform pose particular challenges because the push for a legal regime that recognizes equality between men and women is often regarded as un-Islamic. Even when

served the purposes of the reformers, recourse was made to a device according to which law could be formulated by an amalgamated selection (*takhayyur*) from several traditional doctrines held by a variety of schools. . . ."); *id.* ("Moreover, the reformers resorted to the so-called *talfiq* according to which part of a doctrine of one school is combined with part from another.").

38. See KNOWING OUR RIGHTS, *supra* note 5, at 3 (noting that, in 2004, after an extensive law reform effort by women's groups and support from King Mohammed VI, Morocco adopted an "entirely new" personal status code, the "Moudawana," which changes "the basic understanding of the relationship between the spouses and between parents and children").

39. See *id.* at 2 (discussing the amendments to the 1984 Code de la Famille that were made by presidential ordinance in February 2005, following recommendations from a commission appointed to review the family laws and a campaign by women's organizations entitled "20 ans Barakat!" ("20 Years is Enough!")).

40. See Tunisia Online, Women and Civil Rights, <http://www.tunisiaonline.com/women/> (last visited Oct. 26, 2007) (stating that the already progressive Tunisian Code of Personal Status was amended in 1993 to further provide for the rights of women within the family, including the elimination of the requirement that a woman obey her husband) (on file with the Washington and Lee Law Review).

41. See WOMEN FOR WOMEN'S HUMAN RIGHTS—NEW WAYS, TURKISH CIVIL AND PENAL CODE REFORMS FROM A GENDER PERSPECTIVE: THE SUCCESS OF TWO NATIONWIDE CAMPAIGNS 3–17 (2005), available at <http://www.wwhr.org/files/CivilandPenalCodeReforms.pdf> (providing an overview of law reform of the Turkish Civil Code in 2001 and the Penal Code in 2004 that redefines the family as an entity that is "based on equality between spouses" and eliminates "vague patriarchal constructs such as chastity, morality, shame, public customs, or decency").

42. See, e.g., KNOWING OUR RIGHTS, *supra* note 5, at 52 (noting that in Senegal conservative forces are advocating the codification of Muslim personal law).

43. See *id.* at 46 (noting that in Iran, a fairly progressive 1967 Family Protection Act was repealed in 1979 after the Revolution); *supra* notes 15–16 and accompanying text (stating that in Malaysia, the progressive 1984 Islamic Family Law Act has been amended several times to make polygamy easier and allow unilateral divorce outside of courts, among other things).

groups like Sisters in Islam engage with the religious texts and locate arguments for change within Islamic legal theory and practice (alongside a framework of human rights and constitutional principles) to prove that the changes demanded are not against the teachings of Islam, they are still denounced and often vilified as speaking against Islam, "Islamic law," and God's teachings.⁴⁴

Some key challenges to law reform within the Muslim context include:

- There is a belief in many mainstream Muslim societies that the Muslim family law is God's law and is, therefore, infallible and unchangeable, rendering any effort at reform to be regarded as un-Islamic.
- Many people believe that men and women do not have equal rights in Islam generally, such that demands for equal age of marriage and equal rights to divorce, guardianship and inheritance are portrayed as against God's law.
- Individuals and communities often express a traditional belief that only the *ulama* (Muslim religious scholars or jurists) have the authority to speak on Islam. Since *ulama* are not at the forefront of reform, civil society groups and lay intellectuals assume leadership in reform movements, but their credentials and authority to engage with Islam publicly are questioned and undermined. Thus, women's groups in Muslim societies face difficulties advocating for reform when they do not have the support of government or those perceived to have religious authority.
- Many Muslims are afraid to speak out on Islamic issues in public, especially if their views are contrary to orthodoxy. They fear controversy or being labeled as anti-Islam and accused of questioning the word of God by the extremists. This fear extends

44. See Muda Mohd Noor, *Haramkan Sisters in Islam, kata Pemuda PAS WP [Ban Sisters in Islam, Says Federal Territories PAS Youth]* (Apr. 15, 2005), <http://www.malaysiakini.com/news/35378> (last visited Oct. 26, 2007) (remarking that when Sisters in Islam was involved in a movement against "moral policing," citing the Qur'anic principle of privacy, the youth wing of an opposition party in Malaysia held a protest against Sisters in Islam and called for the organization to be banned) (on file with the Washington and Lee Law Review); Farish A. Noor, *Political Religion's Hate Machine*, (Apr. 23, 2005), <http://www.malaysiakini.com/columns/35576> (last visited Oct. 26, 2007) ("The declaration that was issued by the Federal Territory chapter of PAS Youth wing contained a number of sweeping accusations, including the somewhat inflated claim that Sisters in Islam was actively seeking to undermine Islam and to help Muslims leave their religion.") (on file with the Washington and Lee Law Review).

to progressive scholars who have the knowledge and credibility to speak out, but choose to remain silent for fear of jeopardizing their jobs and livelihoods, invoking community hostility, and/or facing threats to their safety.

- The conflict between constitutional guarantees of equality and nondiscrimination and constitutional provisions that recognize religious and customary laws poses a special challenge in many countries where such laws continue to discriminate against women in the name of religion and recognition of cultural diversity.⁴⁵ Groups like Sisters in Islam believe that there is no actual conflict between principles of equality and nondiscrimination and the teachings of Islam, and that such interpretations must be challenged.

IV. Support for Reform from Scholarship and Activism

A number of developments in the past fifteen to twenty years have provided support for women's groups that are pushing for reform of Muslim laws. These developments include new progressive scholarship that supports the concept of equality and justice within Islam, studies on the construction of gender and family relationships in Islamic legal theory, and successful efforts at reform of Muslim laws in various countries. First, a range of new progressive scholarship recognizing equality and justice within Islam has enabled women's groups to explore the possibilities for the reform of family laws within a faith-based framework and to challenge the perpetuation of gender discrimination in the name of religion by traditionalist and fundamentalist *ulama* and activists.⁴⁶

45. Compare MALAY. FED. CONST. art. 8(1) (providing equality before the law), and *id.* art. 8(2) (prohibiting discrimination on the basis of gender, among other grounds), with *id.* art. 8(2) (creating an exception for situations "expressly authorised by this Constitution," which generally relate to matters involving Islam), and *id.* art. 8(5) (stating that "[t]his Article does not invalidate or prohibit—(a) any provision regulating personal law").

46. For examples of some of the pivotal scholarship that has assisted women's groups in their work for reform, see generally KHALED ABOU EL FADL, *SPEAKING IN GOD'S NAME: ISLAMIC LAW, AUTHORITY AND WOMEN* (2001); AHMED, *supra* note 32; ABDULLAH AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW* (1990); ASMA BARLAS, "BELIEVING WOMEN" IN ISLAM: UNREADING PATRIARCHAL INTERPRETATION OF THE QUR'AN (2002); ASGHAR ALI ENGINEER, *THE QUR'AN, WOMEN AND MODERN SOCIETY* (1999); FARID ESACK, *QUR'AN, LIBERATION & PLURALISM: AN ISLAMIC PERSPECTIVE OF INTERRELIGIOUS SOLIDARITY AGAINST OPPRESSION* (1997); MOHAMMAD HASHIM KAMALI, *FREEDOM OF EXPRESSION IN ISLAM* (1997); ZIBA MIR-HOSSEINI, *ISLAM AND GENDER: THE RELIGIOUS DEBATE IN CONTEMPORARY IRAN* (1999); FATHI OSMAN, *CONCEPTS OF THE QURAN: A TOPICAL READING* (2d ed. 1999); FATHI OSMAN, *MUSLIM WOMEN IN THE FAMILY AND SOCIETY* (1996); ABDOLKARIM SOROUSHI, *REASON, FREEDOM & DEMOCRACY IN ISLAM*

Themes in the new scholarship include the recognition of equality between men and women in Islam, the imperative of *ijtihad* (independent reasoning to arrive at a legal principle) in modern times, the dynamics between what is universal for all times and what is particular to seventh century Arabia, the socio-historical context of revelation, and the need to differentiate between what is revelation and what is human understanding of the word of God.⁴⁷ This new scholarship has also brought to public attention the gender discriminatory assumptions and frameworks that informed the work of mainstream classical Muslim jurists and the ways in which other early scholars and voices were marginalized or silenced because of their progressive views on women, rights, and freedom.⁴⁸ The conceptual frameworks developed within and through this research have enabled more and more Muslim women activists to realize the validity and possibility of working within the Islamic framework, and that they can indeed find liberation from within Islam.

Research by scholars and activists has also drawn attention to the more progressive trends within Muslim societies during the early periods of Islam, as well as the diversity and range of rights, protections, and remedies within the existing family laws of different Muslim countries.⁴⁹ This legal diversity

(Mahmoud Sadri & Ahmad Sadri eds. & trans., 2000); BARBARA STOWASSER, *WOMEN IN THE QUR'AN, TRADITIONS AND INTERPRETATION* (1994); AMINA WADUD, *QUR'AN AND WOMAN: REREADING THE SACRED TEXT FROM A WOMAN'S PERSPECTIVE* (1999).

47. See generally AHMED, *supra* note 32 (providing perspective on gender in Islam from the pre-Islamic to modern times); BARLAS, *supra* note 46 (same); ABOU EL FADL, *supra* note 46 (dissecting the concept of authority within Islamic law through history and hermeneutics); WADUD, *supra* note 46 (arguing that the Qur'an provides for equality between men and women).

48. See, e.g., AHMED, *supra* note 32, at 79–101 (discussing the context in which early jurists worked and its influence on their views); EL FADL, *supra* note 46, at 9–86 (examining "the notion of the authoritative in Islamic law," especially with regard to legal issues relating to women); Bouthaina Shaaban, *The Muted Voices of Women Interpreters*, in FAITH AND FREEDOM WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD 61, 61–73 (Mahnaz Afkhami ed., 1995) (naming important women in the history of Islam and discussing the early twentieth century scholarship on textual interpreters by Nazira Zin al-Din); Kecia Ali, *Money, Sex, and Power: The Contractual Nature of Marriage in Islamic Jurisprudence of the Formative Period* (2002) (unpublished Ph.D. dissertation, Duke University) [hereinafter Ali Dissertation] (exploring the contractual nature of marriage in the jurisprudence of Muslim jurists in approximately 775–925 CE) (on file with the Washington and Lee Law Review).

49. See, e.g., KNOWING OUR RIGHTS, *supra* note 5 (presenting the range of legal provisions from approximately twenty-five countries on issues such as Marriage Requisites, Child Marriage, Marriage Contracts, Types of Marriage, Maintenance, Status of Children, and Dissolution of Marriage); COLLECTIF 95 MAGHREB-EGALITÉ, *GUIDE TO EQUALITY IN THE FAMILY IN THE MAGHREB* (Women's Learning P'ship for Rights, Dev. and Peace ed. & trans., 2005) (2003) (using hadith and classical *fiqh* interpretations to advocate for reform of family laws); Law & Religion Program of Emory Univ., *supra* note 31 (comparing family laws from different countries); Siti Musdah Mulia, *Toward Just Marital Law: Empowering Indonesian Women*, at

enables women's groups to show that, in the name of Islam, Tunisia has banned polygamy,⁵⁰ Malaysian courts have allowed a homemaker wife to claim a share of matrimonial assets upon divorce,⁵¹ and Morocco has set the minimum age of marriage at eighteen for both men and women.⁵² If these practices occur in the name of Islam in some countries, they can be replicated in other countries as well. When Islam is used as a source of public law and policy, activists can use the progressive scholarship and the diversity of laws and practices in Muslim countries to open the public discourse and challenge the dominant orthodoxy by providing alternative opinions and breaking the monopoly and authority that traditional religious figures have over religious matters. In countries governed by a constitutional democratic framework, public law must be opened to public debate, even if the law is made in the name of religion.

Second, new research on the classical juristic texts that critically analyzes the construction of gender in Islamic legal theory has also provided activists with more specific arguments to justify comprehensive reform of discriminatory Muslim family laws within the framework of justice and equality. The writings of two academics in particular, Ziba Mir-Hosseini and Kecia Ali, have been pivotal in enabling women's activists to critique the classical juristic framework of marriage in Islam that still serves as a foundation for modern laws even though it is irrelevant and inappropriate in the twenty-first century.⁵³

4–5, 9–21, available at http://www.cisro.it/attachment.php?f=Muliah_ENG_36253.pdf (last visited Feb. 6, 2008) (providing examples of family law reform in the history of Islam and current efforts at reform in a number of countries) (on file with the Washington and Lee Law Review).

50. TUNISIA CODE STATUT PERSONNEL 1956 [Personal Status Code of 1956] art. 18, available at <http://jurisitetunisie.com/tunisie/codes/csp/Csp1020.htm> ("La polygamie est interdite." ("Polygamy is prohibited.")).

51. Rokiah bte. Haji Abdul Jalil v. Mohamed Idris bin Shamsudin, [1989] 3 M.L.J. ix, xv (Malay. Fed. Terr. App. Comm.) (awarding the housewife one-third of the matrimonial home and other assets that had been acquired by the husband's money, based on the wife's indirect contribution to their acquisition by looking after the house and the family); see also IFL Act of 1984 § 58(4) (requiring the court to consider "the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or caring for the family" in dividing assets acquired during the marriage by the sole efforts of one party to the marriage).

52. FAMILY CODE art. 19 (Morocco), translated in Global Rights, *The Moroccan Family Code (Moudawana) of February 5, 2004* (2005), http://www.globalrights.org/site/DocServer/Moudawana-English_Translation.pdf?docID=3106 (stating that men and women acquire the capacity to marry when they have completed eighteen gregorian years) (on file with the Washington and Lee Law Review).

53. See generally KECIA ALI, *SEXUAL ETHICS & ISLAM: FEMINIST REFLECTIONS ON QUR'AN, HADITH AND JURISPRUDENCE* (2006); Ali, *supra* note 5; Mir-Hosseini, *supra* note 10; Mir-Hosseini, *Islam and Gender Justice*, in VOICES OF ISLAM: VOICES OF CHANGE 85 (2007) [hereinafter *Islam and Gender Justice*]; Ali Dissertation, *supra* note 48.

Mir-Hosseini's and Ali's contributions have helped reveal that the classical framework for marriage was influenced by the logic of a contract of sale.⁵⁴ The classical jurists conceived of marriage in terms of commerce and ownership, with jurists making frequent analogies between marriage and the institution of slavery, husbands and masters, and wives and slaves.⁵⁵ At the core of the marriage contract are the wife's submission, defined as unhampered sexual availability that is regarded as a man's right and a woman's duty.⁵⁶ In exchange for the dower, which was "analogous to sale price," the husband gained a type of ownership over his wife, in the form of sexual access.⁵⁷ The wife had to be sexually available to him at all times, such that he had total control over her, including her movement to and from the house.⁵⁸ In return, he was required to provide maintenance to the extent that jurists in the Maliki, Hanafi, and Shafi'i traditions even stated that she had no duty to cook or perform housework.⁵⁹ To terminate the relationship, the husband could

54. See Ali Dissertation, *supra* note 48, at 121–50, 462 (analyzing the classical Maliki, Shafi'i, and Hanafi conception of dower as compensation in the marriage transaction for the husband's control over the wife's sexual organs and stating, "[i]n jurisprudential texts of the formative period, most . . . analogies and parallels make a positive correlation between marriage and sale"); Mir-Hosseini, *supra* note 10, at 97–101 (highlighting classical analogies between the marriage contract and a contract of sale); *Islam and Gender Justice*, *supra* note 53, at 88–90 (same).

55. See Ali, *supra* note 53, at xxv ("The basic understanding of marriage as a relationship of ownership or control is predicated on an analogy to slavery at a fundamental level . . ."); *Islam and Gender Justice*, *supra* note 53, at 88 ("[C]lassical jurists often used the analogy of the contract of sale and alluded to parallels between the status of wives and female slaves . . .").

56. See Ali, *supra* note 5, at 169–71 (discussing the interdependence of rights and duties for husbands and wives, with the "wife's most important marital duty [being] sexual availability, in exchange for which she was to be supported by her husband"); Mir-Hosseini, *supra* note 10, at 99 (noting how marriage consists of mutual rights and obligations including *tamkin*, sexual submission which is "a man's right and thus a woman's duty," and *nafaqa*, shelter, food, and clothing which is "a woman's right and a man's duty").

57. See Ali, *supra* note 5, at 169 ("[T]he jurists shared a view of marriage that considered it to transfer to the husband, in exchange for the payment of dower, a type of ownership (*milk*) over his wife, and more particularly over her sexual organ (*farj, bud'*)"); Ali, *supra* note 53, at 4 (stating that under Islamic jurisprudence, "dower constitutes compensation paid by the husband for exclusive legitimate sexual access to his wife"); Mir-Hosseini, *supra* note 10, at 98 (quoting Shaykh Khalil, a prominent Maliki jurist, in his comparison of dower and sale price).

58. See Ali, *supra* note 5, at 170 ("A man could restrict his wife's movements in order to keep her available to himself, including forbidding her to go to the mosque or to visit her parents."); *Islam and Gender Justice*, *supra* note 53, at 90 (noting that the husband's right to unhampered sexual access gives him the power to control his wife's movement).

59. See Ali, *supra* note 5, at 170 ("The wife's obligation to be available to her husband was set apart from other types of domestic duties. Maliki, Hanafi, and Shafi'i jurists emphatically denied any wifely duty to perform housework.").

unilaterally release (*talaq*) the wife from his control, but the wife required his consent to obtain her release.⁶⁰

This construction of gender roles produced a legal logic and framework demanding women's obedience to the husband that still persists in Muslim family laws in many countries today. Under these laws, a wife's disobedience justifies loss of maintenance by the husband and can be grounds for polygamy, divorce, or domestic violence.⁶¹ Given the realities and complexities of men and women's lives today, such a conception of marriage, which still governs the personal status of many Muslims, is no longer sustainable. Instead, there is a "need for a new jurisprudence starting from new assumptions, ones that do not liken wives to slaves or marriage to purchase."⁶² The Qur'an provides a wealth of guiding principles to develop a new jurisprudence on marriage based on the principles of equality and justice. Several Qur'anic verses about equality of men and women before the eyes of God⁶³ and the diversity of juristic opinions and contemporary laws and practices within Muslim societies can provide a comprehensive Islamic framework for a reform effort rooted in the principles of justice and equality.

Third, the success of the law reform movement in Morocco has provided groups like Sisters in Islam the impetus to move from using the traditional approach to reform through piecemeal amendments of the most discriminatory provisions, to working for a comprehensive reform within a framework of justice, equality, and non-discrimination.⁶⁴ The successes of women's groups in secular

60. See Ali, *supra* note 5, at 169 ("[This ownership] also gave the husband the unilateral right to terminate the marital relationship at any time . . . [T]his was analogous to the master's freedom to manumit a slave at any time."); *Islam and Gender Justice*, *supra* note 53, at 90 (discussing termination of the marriage contract).

61. See *id.* (discussing the concept of *nushuz*); *Islam and Gender Justice*, *supra* note 53, at 100 (describing how a wife can lose maintenance from her husband if she does not fulfill her marital duties); KNOWING OUR RIGHTS, *supra* note 5, at 153–66, 217–27 (providing examples of the link between obedience and maintenance in modern family laws). The Malaysian Islamic Family Law (Federal Territories) Act of 1984 not only allows for loss of maintenance when a wife is *nusyuz* (§ 59), but also provides a penalty for "[a]ny woman who willfully disobeys any order lawfully given by her husband according to Hukum Syarak" (§ 129). See *supra* note 22 and accompanying text (citing the Islamic Family Law (Federal Territories) Act of 1984 § 59).

62. Ali Dissertation, *supra* note 48, at 477.

63. Examples of such Qur'anic verses include Sūrah Al-Tawbah 9:71 (emphasizing the relationship of mutual protection between men and women); Sūrah Al-Baqarah 2:187 (describing men and women as being each other's garment); Sūrah Al-Rūm 30:21 (discussing mutual love, mercy, and tranquility).

64. See *infra* Part V (remarking on Sisters in Islam's "multi-pronged strategy to push for comprehensive reform of [Malaysia's] family law").

and traditional settings such as Turkey and Fiji also offer lessons for Muslim groups pushing for comprehensive reform of Muslim personal status codes.⁶⁵

V. Strategies for Reform

Any successful law reform initiative must necessarily adopt multiple strategies. Some of the key strategies that women's groups in Muslim countries and contexts should adopt in family law reform efforts include:

- Claiming the right and creating the space to speak on Islam publicly. It is essential that women's voices are considered legitimate and that women assert their demands so that they can be heard in the law making process. Examples of women's groups speaking publicly on Islam and Muslim laws are: Sisters in Islam in Malaysia;⁶⁶ Rahima: Centre for Training & Information on Islam and Women's Rights Issues in Indonesia;⁶⁷ BAOBAB for Women's Human Rights in Nigeria;⁶⁸ Muslim Women's Research & Action Forum in Sri Lanka;⁶⁹ the One Million Signatures Campaign Demanding Changes to Discriminatory Laws in Iran;⁷⁰ and regional and international

65. See *infra* notes 73–74 and accompanying text (discussing reforms in Fiji and Turkey that have served as examples for Muslim law reform efforts).

66. See Sisters in Islam, Mission, <http://www.sistersinislam.org.my/mission.htm> (last visited Oct. 26, 2007) (articulating the history and mission of Sisters in Islam to "promote an awareness of the true principles of Islam") (on file with the Washington and Lee Law Review).

67. See Rahima, Rahima's Profile, http://www.rahima.or.id/English/rahima_profile.htm (last visited Oct. 26, 2007) (providing an overview of Rahima, including its goal of "motiv[at]ing and encourag[ing] Islamic discourses, in order to strengthen the position of women within Islamic society") (on file with the Washington and Lee Law Review).

68. See BAOBAB for Women's Human Rights, Herstory, <http://www.baobabwomen.org/history.htm> (last visited Oct. 26, 2007) (explaining BAOBAB's history and its mission to "promote women's human rights principally via improving knowledge, exercise and development of rights under religious laws, customary laws and statutory laws") (on file with the Washington and Lee Law Review).

69. See Chulani Kodikara, *Engaging with Muslim Personal Law in Sri Lanka: The Experience of MWRAF*, LINES MAG., Aug. 2003, available at http://www.lines-magazine.org/Art_Aug03/Chulani.htm (last visited Oct. 26, 2007) (outlining the history of the Muslim Women's Research and Action Forum and how it became involved in working for Muslim women's rights) (on file with the Washington and Lee Law Review).

70. See About "One Million Signatures Demanding Changes to Discriminatory Laws," <http://www.wechange.info/english/spip.php?article18> (last visited Oct. 26, 2007) (explaining the campaign and noting that its "demands are in no way contradictory to the foundations of Islam") (on file with the Washington and Lee Law Review).

networks such as Collectif 95 Maghreb Egalité⁷¹ and Women Living Under Muslim Laws.⁷²

- Using a model draft law as a basis for negotiation. Women's groups can initiate the law reform effort with their own model draft law or model provisions as the starting point for negotiation. This is the practice that was followed in the law reform efforts in Fiji⁷³ and Turkey,⁷⁴ and which has been used as a starting point for law reform in other countries.⁷⁵ In Morocco, Algeria, and Tunisia, Collectif 95 Maghreb Egalité, a network of women's organizations, generated 100 provisions that should be incorporated into codified laws to ensure equality in the family.⁷⁶
- Expanding the justifications for reform beyond traditional religious arguments or traditional secular human rights arguments. Collectif 95 in Algeria, Morocco, and Tunisia advocated for

71. See generally ONE HUNDRED PROVISIONS, *supra* note 29.

72. See Women Living Under Muslim Laws, About WLUML, <http://www.wluml.org/english/about.shtml> (last visited Oct. 26, 2007) (describing WLUML as "an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam") (on file with the Washington and Lee Law Review).

73. See P. Imrana Jalal, *A Woman's Quest for Equality*, FIJI TIMES, Nov. 25, 2003, available at http://www.rrrt.org/page.asp?active_page_id=142 (last visited Oct. 26, 2007) (outlining the advocacy process for family law reform in Fiji, including the author's role as Family Law Reform Commissioner and the completion of a 400 page report with detailed drafting instructions for a new law) (on file with the Washington and Lee Law Review).

74. See WOMEN FOR WOMEN'S HUMAN RIGHTS—NEW WAYS, *supra* note 41, at 9–15 (discussing campaign to reform the Turkish Penal Code from a gender perspective, in part by drafting new articles to be adopted word-for-word).

75. For example, a group in the Philippines drafted a model bill as the first step in a law reform effort. See Isabelita Solamo-Antonio, *The Shari'a Courts in the Philippines: Women, Men and Muslim Personal Laws*, 27 DOSSIER, Dec. 2005 (English ed.), at 9, 11, available at <http://www.wluml.org/english/pubs/pdf/dossier27/doss27-e.pdf> (describing the process of researching and drafting new provisions for a Revised Code of Muslim Personal Laws). See generally PILIPINA LEGAL RESOURCES CTR., INC., THE PROPOSED "REVISED CODE OF MUSLIM PERSONAL LAWS" (2000) (providing a comparison between the current Code of Muslim Personal Laws and the NGO's proposed Revised Code of Muslim Personal Laws). In October 2004, a Task Force set up by Indonesia's Department of Religious Affairs produced an alternative draft to the country's Compilation of Islamic Laws (*Kompilasi Hukum Islam*) that embraces gender equality. See Sukino Harisumarto, *Indonesia Draft Sharia Law Triggers Controversy*, UNITED PRESS INT'L, Oct. 23, 2004, available at http://www.upi.com/International_Intelligence/Analysis/2004/10/22/indonesia_draft_sharia_law_triggers_controversy/3985/ (last visited Oct. 26, 2007) (explaining the draft and the controversy around its introduction) (on file with the Washington and Lee Law Review).

76. See ONE HUNDRED PROVISIONS, *supra* note 29, at 5–6 (describing the efforts of Collectif 95 Maghreb Egalité to reform personal laws in Morocco, Algeria, and Tunisia).

equality in the personal status laws of those countries using four levels of arguments at both the legal and cultural levels: religious/doctrinal, sociological, domestic laws and policies, and universal human rights.⁷⁷ Collectif 95's *Guide to Equality in the Family in the Maghreb* applied this framework to the proposed 100 provisions for equality in key areas of personal status codes.⁷⁸

- Alliance-building and awareness-raising to build a public constituency that will support law reform. Any attempt at law reform must include a campaign strategy to build public support and raise awareness of the necessity for such reform. In Indonesia, a model family law recognizing equality between husband and wife was launched by the Indonesian Ministry of Religious Affairs, but was met with such hostility from members of Parliament, traditional religious scholars, and Islamist groups that it was withdrawn from public consideration.⁷⁹ Officials at the Ministry later admitted that they had not done enough groundwork to garner public support for the draft.⁸⁰ In contrast, the Moroccan and Turkish women's movements succeeded in spite of hostility from traditionalists and political Islamists, at least in part because of its success in alliance building and public education campaigns.⁸¹

Sisters in Islam, after examining these lessons and successes from other countries, has adopted a multi-pronged strategy to push for comprehensive reform of family law in Malaysia. The organization first drafted a model family law bill based on Islamic principles of equality and justice that can be

77. See *id.* at 5–8 (emphasizing the relevance of doctrinal, sociological, domestic law and policy, and universal human rights as justification for reform of Muslim family law).

78. See COLLECTIF 95 MAGHREB-ÉGALITÉ, *supra* note 49, at 9–11 (applying arguments for reform "based on four sources: legal, juridical (*fiqhi*), sociological and universal human rights").

79. See Alpha Amirrachman, *Siti Musdah Mulia Stands Up for Her Convictions*, JAKARTA POST, Mar. 23, 2007, at 24 (noting that strong disagreements against amendment of the Indonesian law impeded reform); Sukino Harisumarto, *supra* note 75 (same); Muningsari Sri Saraswati, *Govt Initiates "Revolution" in Islamic Law*, JAKARTA POST, Oct. 5, 2004, at 2 (same).

80. This is based on discussions between the authors and Dr. Siti Musdah Mulia, chair of the Task Force established by the Ministry of Religious Affairs that produced the Counter Legal Draft, March 2006. See also Sisters in Islam, International Consultation on "Trends in Family Law Reform in Muslim Countries": Summary of Proceedings 62–63 (Mar. 18–20, 2006) (unpublished manuscript, on file with the Washington and Lee Law Review) [hereinafter Summary of Proceedings] (recording a discussion of strategies Indonesian activists might use when the Counter Legal Draft is introduced again).

81. See Summary of Proceedings, *supra* note 80, at 16–19, 34–35, 49–51, and 56–63 (providing presentations and discussions initiated by Amina Lemrini El Ouahabi and Liz Ercevik Amado).

the basis of negotiation with the authorities and used for public education to build support and awareness. Some of the key reforms that Sisters in Islam is proposing include:

- An equal minimum age of marriage (eighteen years) for men and women;
- Abolition of the requirement that the (male) guardian must consent to the marriage of a woman;
- A standard form marriage contract in which all marriages contracted are monogamous and polygamy is prohibited. Polygamy would be allowed only in exceptional circumstances and would be governed by a special and separate marriage contract with the agreement of all of the parties;
- An equal right to divorce and divorce only by judicial decree;
- An equal division of matrimonial assets, instead of the present standard practice of awarding only one-third of the assets to the wife; and
- An equal right to custody and guardianship of children.

Following the Maghreb model, Sisters in Islam is preparing a guide to support the provisions in this model bill using a holistic framework of arguments from religious, social, domestic law and policy, and international human rights perspectives, as well as examples of positive practices from other Muslim countries relating to each provision.⁸² The arguments for reform, especially those from the religious perspective, and the display of the diversity of legal provisions on any given area of the law demonstrate that there are many interpretive possibilities within Islam that can inform the process of law making in Muslim countries.

In addition to the model bill and guide, Sisters in Islam has begun a national public education campaign to build support across a broad constituency of women and human rights groups and at the grassroots level to sustain the momentum for reform.

82. *See generally* Sisters in Islam, *Guide to Equality in the Family: A Just and Equitable Muslim Family Law For Malaysia* (Dec. 2006) (unpublished manuscript, on file with the Washington and Lee Law Review).

VI. Conclusion: Reform is Necessary and Possible

Women's groups around the world believe that equality, justice, and fairness are universal and eternal principles enjoined by not only international human rights standards and constitutional principles, but by the Qur'an itself. If justice and equality are core objectives of Islam, shouldn't these principles regulate the relationship between and the rights of a husband and wife?

Throughout the Muslim world, there is movement at multiple levels and in multiple contexts for Muslim family law reform. Increasingly, organizations and networks are highlighting de jure and de facto discrimination throughout codified personal laws and calling for reform. New scholarship on Islam generally and gender and Muslim personal law in particular, coupled with powerful examples of advocacy campaigns, has provided women's organizations with new tools and strategies for their own national campaigns.

Women's organizations are arguing that comprehensive reform of Muslim family laws within a framework of justice and equality is necessary and possible. It is necessary because current formulations of Muslim family law around the world are unjust, and women's lives are affected by these injustices on a daily basis. It is possible because equality and justice are core Islamic principles and reform is and always has been part of the Muslim legal tradition.

