

**ISLAM, LAND & PROPERTY
RESEARCH SERIES**

**PAPER 5: MUSLIM WOMEN
AND PROPERTY**



UN-HABITAT

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Paper 5: Muslim Women and Property

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INTRODUCTION TO THE ISLAM, LAND & PROPERTY RESEARCH SERIES

UN-HABITAT's (United Nations Human Settlements Programme) global mandate and activities promoting access to land and protecting security of tenure are derived from a range of international human rights and development standards. While land, property and housing rights are generally cross-cultural and asserted within every socio-economic and political system, it is recognised that practice regarding their regulation and protection may take different forms. The Land and Tenure Section, Shelter Branch of UN-HABITAT has carried out systematic research into distinctive land, housing and property issues and approaches in various regions of the world including Africa, Latin America and the Balkans. It uses a 'best practices' approach to develop affordable, pro-poor and flexible tenure types and land tools, particularly for women. These tools are incorporated into UN-HABITAT's global campaigns and programmes as well as made available to governments, civil society and all stakeholders for their advocacy work and for implementation of relevant laws and policies.

During its work in a range of countries from Afghanistan to Indonesia, UN-HABITAT has been increasingly aware of the importance of Islamic land tenure conceptions and land rights. Over 20 percent of the world's population is Muslim but there has been little research on the complex and distinctive forms of land tenure and land rights. Too often global reviews of land tenure are undertaken without taking Islamic laws relating to land sufficiently into account. The Land and Tenure Section of UN-HABITAT therefore commissioned two experts Mr. M. Siraj Sait and Dr. Hilary Lim from University of East London, United Kingdom to carry out a year long in depth study of the Islamic and other dimensions of land and property rights in the Muslim world.

The objective of this research was to produce a body of material, through eight position papers, accompanied by a database, with proposed strategies which could enhance the knowledge and augment the capacity of UN-HABITAT and its partners to work more effectively in Muslim contexts. However, these papers have been written for a general audience without any assumption of knowledge regarding Islam, law or property rights and are therefore offer basic information as well as an opportunity to revisit first principles.

The general findings of the research are that there are distinctive Islamic conceptions of land and property rights which are varied in practice throughout the Muslim world. Though Islamic law and human rights are often an important factor in the conceptualisation and application, they intersect with State, customary and international norms in various ways. In doing so, they potentially offer opportunities for the development of 'authentic' Islamic land tools which can support the campaign for the realization of fuller land rights for various sections of Muslim societies, including women. However, in order to facilitate that role, the various stakeholders must constructively review the normative and methodological Islamic frameworks and their relationship with other systems of formal and informal land tenure.

Paper I on *Islamic Land theories and Their Application* contextualises and introduces Islamic property and land concepts as part of a sophisticated and alternate land framework running alongside international regimes. The Islamic property rights framework conceives of land as a sacred trust but promotes individual ownership with a

re-distributive ethos. The paper argues that engagement with Islamic dimensions of land may potentially support land rights initiatives in Muslim societies and has implications for programmes relating to land administration, land registration, urban planning and environmental sustainability. Position Paper II on *Islamic Land Tenure and Reforms* explores how land tenure concepts, categorisations and arrangements within the Islamic world are multi-faceted, generally distinctive and certainly varied. This paper explores the socio-historical context and development of Islamic land tenure regimes leading to the 'web of tenure' in contemporary Muslim societies. An appreciation of the historical context of land tenure in Muslim societies and the range of land tenure forms contributes towards development of authentic and innovative strategies for enhancing access to land and land rights.

Position Paper III on *Islamic Law, Land and Methodologies* finds Islamic law (*Shari'a*) an important factor influencing land rights and tenure systems in Muslim societies. Islamic law can be seen as an evolving, responsive and assimilating sphere of competing ideologies and interests, though it is a site of struggle between conservatives and liberals. An appreciation of the distinctive features and sources of Islamic law, its methodologies and diversity in application and its dispute resolution mechanisms would contribute towards strategies aimed at enhancing security of tenure. Position Paper IV *Islamic Human Rights and Land* sets out to examine the relationship between international human rights and Islamic conceptions of human rights in theory and practice. It argues that, with respect to land rights, the difference between these two sets of rights appears minimal and a sensitive and careful recognition of Islamic religious and political sensitivities can help deliver international human rights more effectively in Muslim societies, without offending Islamic principles.

Position Paper V *Muslim Women's Rights to Property* explores the nature and scope of women's rights to property and land under Islamic law (*Shari'a*) through a socio-historical background to women's property rights, an appraisal of modern legal reforms and the avenues for enhancing their security of tenure. It argues that despite assumptions to the contrary, there are potential empowering strategies for women through Islamic law which can enhance women's access to land and enforcement of their other property rights. Position Paper VI *Islamic Inheritance Laws and Systems* considers how Muslim societies generally derived their inheritance rules from religious sources for the division of an individual's property upon death, some of which are controversial. Yet, it argues that the application of these formal inheritance rules pertaining to designated shares must be understood in a broader socio-cultural and economic context and within wider inheritance systems of practice.

Position Paper VII *Islamic Endowments (Waqf) and Indigenous Philanthropy* outlines how the endowment (*waqf* plural *awqaf*) is a key Islamic institution, which has incorporated within its legal sphere vast areas of land within the Muslim world, connected firmly with the religious precept of charity. Modern reforms in several Muslim countries have abolished, nationalised or highly regulated endowments but the endowment (*waqf*) remains influential and there are clear signs of its reinvigoration. The paper evaluates the role for the Islamic endowment (*waqf*) in strategies to improve security of tenure based on its legal foundations, history and socio-economic impacts. Position Paper VIII *Islamic Credit and Microfinance* considers the increasing demand from within Islamic communities that financial services be compliant with Islamic law (*Shari'a*). This paper explores the Islamic context which stimulates such alternative

credit systems, the key distinguishing features of the Islamic banking models, the development of Islamic microfinance models and the practical challenges to these innovations. It considers how Islamic finance, banking principles and credit, particularly housing microfinance, can contribute to security of tenure and in transforming the lives of the poor.

The findings of this study were discussed at a two day workshop on 'Land tenure and Land law tools in the Middle East and North Africa' in Cairo, Egypt on December 17 2005. This preparatory meeting for World Urban Forum (WUF III) 2006 was part of a meeting hosted by the Government of Egypt and organised by United Nations Economic and Social Commission for Western Asia (ESCWA), UN-HABITAT, and the League of Arab States. This research was also presented at the Expert Group Meeting (EGM) at Bangkok, Thailand on 'Secure Land Tenure: New legal frameworks and tools in Asia and Pacific' December 7-9 2005 organised by UN-HABITAT, United Nations Economic and Social Commission for Asia and Pacific (UNESCAP), International Federation of Surveyors (FIG) and World Bank.

Through this preliminary study, UN-HABITAT and its partners seek to discuss and develop appropriate strategies through identification and development of innovative and pro-poor land tools in their particular context.

Paper 5: Muslim Women and Property

[History] ... shows, no doubt, that [Muslim] women were property holders, a fact which has been pointed out for various Islamic societies and should be reiterated here ... that this certainty was not the case in many other civilisations, including many Western societies. The question is whether it also disproves the view of the subservient role of women in traditional Islamic society....

(Baer 1983:9)

OVERVIEW

It is commonly assumed that Muslim women are frustrated in their pursuit of property rights because those rights are limited under the Islamic legal system, they lack agency in the face of oppressive family and social structures and have an absence of conviction in their articulation of gender rights. This paper explores these issues through an analysis of the legal status of women with regard to property under Islamic law (*Shari'a*), the socio-historical background to women's property rights, an appraisal of modern legal reforms and the avenues for enhancing their security of tenure. Exploring the nature and scope of women's rights to property and land ownership will enhance women's access to land and enforcement of their other property rights.

Scope of this Position Paper: This position paper reviews the stereotypes regarding Muslim women in Section 1. Section 2 outlines the property rights of women under Islamic Law and narrates the social history of Muslim women's property rights in Section 3. Section 4 examines women's property rights in relation to custom and family. Section 5 evaluates the impact of modern legal reforms on women's property rights. Section 6 offers five strategies for empowerment through gender empowerment

- * *Recognise the potential for Islamic reasoning (ijtihad)*
- * *Realise the "compensatory property regime"*
- * *Promote human rights advocacy*
- * *Expand public space for women*
- * *Ensure women's access to courts and other dispute resolution mechanisms*

5.1 DEBUNKING STEREOTYPES REGARDING MUSLIM WOMEN

5.2.1 Common assumptions regarding Muslim women

Challenging the stereotyped images of Muslim women as passive victims would seem to be a prerequisite for developing meaningful strategies for women's access to land. Muslim women in general have found room to articulate their differing, often dissenting, standpoints while pragmatically embracing selected Western strategies. Caught between the extremes of Western cultural imperialism and the intractable conservative absolutism, Muslim women generally work to neutralise both kinds of prejudices and misconceptions while resetting their priorities and tactics to contend with a varied religious, socio-cultural and political context.

5.2.2 Religion as a contested zone

Difficulties for Muslim women may arise where conservative readings of *Shari'a* are intertwined with gender discriminating customary norms, which are presented as God's immutable word. A dilemma for most Western commentators- atheist, agnostic or secular - has been how to deal with what is commonly perceived to be a bundle of anachronistic religious patriarchal beliefs and practices. However, such a dismissive approach not only alienates believing women but also misses a wide range of practices that have positive implications for women's lives. Women may also choose to work within the Islamic framework while at the same time seek egalitarian Islamic objectives through personal reasoning (*ijtihad*) which is an acknowledged Islamic interpretative process.

5.2.3 Addressing gender rights through international human rights law

One of the ways to evaluate land, property and housing rights of Muslim women is through International human rights law standards. However, as elaborated in the accompanying paper on Islamic human rights, the relationship between universal and Islam human rights is complex. This is particularly accentuated by the number of Muslim countries have entered reservations (opt out clauses) to the 1979 Convention on Elimination of Discrimination Against Women (CEDAW). However, even within the international human rights framework, gender rights are not always prioritised and the mere existence of paper rights does not guarantee their practice.

5.2 WOMEN'S RIGHT TO PROPERTY UNDER ISLAMIC LAW

All the key Islamic legal materials generally support women's right to acquire, hold, use, administer and dispose of property.

5.2.3 *Qur'an* and women's property rights

A Muslim woman possesses independent legal, economic and spiritual identity, and independence. The *Qur'an* notes that women "shall be legally entitled to their share" (*Qur'an* 4:7) and that "to men is allotted what they earn, and to women what they earn"

(*Qur'an* 4:32). Only if women choose to transfer their property can men regard it as lawfully theirs (*Qur'an* 4:4). The Islamic laws supporting property rights of women are drawn from a variety of fields such as family law (marriage/dower, inheritance, and guardianship), property law (gifts, endowments/trusts (*awaqf*), sale and hire) and economic law (right to work, income) as well as public law.

5.2.4 Unequal shares in inheritance and the "compensation" argument

Muslim women's lesser rights in inheritance, under the Islamic compulsory succession rules, have for long been regarded as a marker of the inferior status of women under Islamic law. Commentators who support the view that women's property rights in the Islamic framework should be approached holistically, point to the *Qur'anic* stipulation that "men spend out of their property for the support of women". The argument continues to the effect that women have no concomitant financial obligations. Further, Muslims often argue there are other avenues for obtaining property, such as gifts, dower, maintenance in marriage and as beneficiaries under a trust/endowment (*waqf*) which could be part of a gender property rights compensatory scheme. There is no Islamic prohibition on women obtaining equal property rights as men, only in relation to inheritance.

5.2.5 Inheritance rules as part of a wider system of property transmission

Muslim woman's access to property is best understood through the dynamics of custom, family, kinship and the construction of property itself. Conservative interpretations of Islamic law and customary/traditional structures/practices often combine to diminish or altogether extinguish women's rights to property. A prime example is the recourse to or the customary practice of renunciation (*tanazul*) of even the reduced female inheritance share in favour of a male member of the family, such as a brother or son. The compulsory rules on inheritance shares should be seen as part of a wider flexible Islamic system for the transmission of property across the generations and within the family.

5.2.6 Renunciation of rights to property and power relations in the family

In itself neither an inheritance claim nor renunciation of an inheritance share should be assumed to be either empowering or an act of submission. Voluntary renunciation of inheritance rights on the part of a woman may not be evidence of submission, but may serve to underline a woman's claims upon her brothers' social and family responsibilities. The decision to surrender an inheritance share may well depend on a wide variety of factors and have to be addressed as such. There is evidence that women in an urban setting are more likely to be able to claim rights according to the letter of the law, in contrast to women in a rural context who may find that customary norms prevail.

5.3 SOCIAL HISTORY OF WOMEN'S PROPERTY RIGHTS

Historical accounts of women's treatment under the law as equal with men, together with examples of women controlling and managing property, provide powerful evidence that mechanisms exist within the Islamic legal framework to enhance the position of women in contemporary societies.

5.3.1 The status of women in early Islamic history

In early Islamic history, Muslim women played a variety of public roles and certainly exercised property rights. The Prophet in his farewell sermon spoke of property rights for both men and women, and his wives held their own separate property. The first convert to Islam (*Khadija*), its first martyr (*Sumayya*), the first to grant refuge to the Prophet at *Madinah* when he fled from persecution at *Makkah* (*Umm Sa'id*), the keeper of the keys to the Holy *Ka'aba*, the custodian of the first copy of the *Qur'an* (*Hafsa*), the manager of the first hospital (*Rafidah Aslamiyya*), one of the *Imams* appointed to lead the prayers of both men and women (*Umm Waraqa*) and a superintendent at the market at *Madinah* (*Samra' bint Nuhayak al-Asadiya*) were all women.

5.3.2 Women as owners and managers of property in the Ottoman period

Recent findings on the ownership and management of property by Muslim women in Ottoman records show that the period was not as rigidly patriarchal, as commonly assumed, with respect to women's property rights. New histories have emerged from studies of Ottoman records covering different regions and time periods, particularly with respect to the family trust/endowment (*waqf*), which point to significant property rights of Muslim women. For example, in 16th Century Istanbul one-third of all founders of trusts (*awqaf*) were women.

5.3.3 Enforcement of women's rights by courts

Ottoman records show that women's rights were implemented at all levels of the Islamic legal system. They show that "no one, including the husbands or even fathers, could make use of women's property without their consent, and women appealed to the courts when anyone tampered with their assets. The judges consistently upheld women's property rights". Commentators find that "*Qadis* and courts treated women the same way as they treated men when it came to all types of transactions. A woman's word in the court did not need corroboration any more than a man's" (Sonbol 2003:73).

5.3.4 Limits on women's rights to property, particularly land

We must equally be cautious about the documentary evidence that women undoubtedly did inherit, manage and own property, since women's trusts (*awqaf*) were in the main fewer and smaller than those of men and did not usually comprise of the most important asset, namely land. It is not merely ownership but management and control of land which is critical.

5.3.5 Effects of colonialism on women's rights to property and legal status

When Ottoman trade was extended with Europe the status of elite and middle class Muslim women declined and their access to courts became limited.

5.3.6 History as a springboard for achieving women's legal rights

Some argue that Muslim women had greater rights, access and control over property than they do today, at least in some countries and contexts. It is for this reason that

reiteration of Islamic history in relation to women, which saw considerable property rights and legal status for women, has the potential to empower contemporary women.

5.4 CUSTOM, FAMILY AND WOMEN'S PROPERTY RIGHTS

A woman's right to property is shaped by her social status, place in the lifecycle and dynamics within her household and family.

5.4.1 Negotiating property rights within the family

Property is a matter of implicit and explicit bargaining and negotiation within the family. Women employ a variety of strategies, some of which may seem counter-intuitive but which remain effective. Tucker states that "as part of the economic, social and political landscape, the family evolved in response to variations of its role ... operating differently as an institution of social control in different environments" (Tucker 1993: 205). Thus, the family is a fluid amalgam of different fields of experience for differently situated members with room for a variety of strategies by women, "some of which may appear counter-intuitive but not any less effective".

5.4.2 Women's property rights in marriage - dower

In theory, a woman's access to property and land will come at various stages of life, most notably through her "rights" to dower and maintenance. Dower (*mehr/mahr*) is a payment, whether in cash or as property, which the husband pays (known as prompt dower), or promises to pay (deferred dower) to the wife as a consequence of marriage.

5.4.3 Dower and other gifts

Dower is for the wife's use and may be disposed of as she wishes. One of the ways in which women can empower themselves is through the Islamic right of a reasonable dower, without fear of social consequences.

5.4.4 Women's property rights in marriage

It is not disputed that a wife is legally entitled to sufficient maintenance during the subsistence of her marriage. In practice, a wife could lose her right to maintenance under several circumstances including the controversial justification of lack of obedience to the husband (*nushuq*).

5.4.5 Maintenance after divorce

Controversy surrounds the provision of maintenance in relation to the position of the divorced wife. Other than a right to specified dower, conservative jurists hold that the divorced wife has no financial rights against her former husband, even in a case of his arbitrary and unilateral divorce of his wife (*talaq*), since the marriage contract is dissolved.

5.5 IMPACT OF MODERN LEGAL REFORMS

In the 20th century a variety of legal reforms in Islamic societies impacted on women, their property rights and access to land, although rarely was the enhancement of women's rights a particular objective.

5.5.1 Limited benefits for women from land redistribution

Modernist land reforms initiated across the Middle East did not achieve much by way of redistribution, and certainly bypassed most women. Writing in the context of Egyptian land reforms, Hatem (1998:88) noted that the main beneficiaries were rural middle class men and to a lesser extent some rural working class men. Women who gained access to land were few and largely confined to widows as guardians of young sons, although not divorced women in a similar position who were moved to protest about the law's application in 1952.

5.5.2 Women's rights under Personal Status and Family Codes

The process of codifying, harmonising or modernising personal codes – as family law reforms were otherwise called - was triggered by colonial influences but carried forward by postcolonial Muslim States. If these reforms did little to enhance women's rights it is scarcely surprising, for this was not their purpose.

5.5.3 Reform in relation to the status of women

There are several features in the Maghreb reforms that are noteworthy, for instance the Tunisian Code holds that a wife should also contribute to the family's maintenance where she has the means to do so. The new *Moudawana* in Morocco completely excludes from its provisions the concept of a woman's obedience (*ta'a*) or disobedience (*nushuq*) towards her husband, joint decision making between the marriage partners is envisaged and the Code conceives of joint ownership of property within marriage.

5.5.4 Evaluating family law reforms

The experience of modern family law reforms, whether substantive or procedural, in the Muslim world cannot be generalised. While some jurisdictions offer positive case studies, others indicate that reforms have had the effect of creating new institutions and practices which deny previous freedoms, while emphasizing earlier discriminations.

5.6 STRATEGIES FOR EMPOWERMENT THROUGH GENDER RIGHTS

5.6.1 Recognise the potential of Islamic reasoning (*ijtihad*)

Since Islam is the dominant validating force in Muslim societies, the potential of Islamic gender empowerment needs to be explored. Whether it is the faithful with reverence, the agnostic with respect or the secular out of pragmatism, women are striving to transform the structures of gender oppression into processes of liberation through *Ijtihad* or independent reasoning within the Islamic framework (see Wadud 1999, Barlas 2002,

Hasan 1982). There is nothing to suggest that maleness is a criterion for becoming a person who practises independent reasoning (*Mujtahid*). A new genre of women who practise Islamic reasoning (*Mujtahidat*) has emerged, from among theorists, lawyers, students, academicians and activists has emerged (Webb 2000). The women concerned have taken on virtually every contested area of gender rights.

Certain aspects of the Islamic property regime such as the compulsory inheritance rules may be considered not to be subject to independent reasoning (*ijtihad*) due to explicit *Qur'anic* rules (Amawi 1996:155). However, other Islamic doctrines which impact on the Muslim woman's ability to make choices and access land are being clarified. These include the right to work, travel alone, vote and stand for public office, be appointed as judges, to attend prayers in mosques, custody, dower and maintenance, reproductive choices, or the practice of polygamy, temporary marriage (*mut'a*), divorce (*talaq*), the concepts of male guardianship (*qiwama*), obedience (*ta'a*) and rebellion (*nushuq*), domestic violence and the prerogative of the guardian (*wali*). Here the methodology is to weed out suspect gender deprecating customary norms projected as Islamic truisms with reference to the gender empowering *Qur'anic* stipulations.

5.6.2 Realise the “compensatory property regime”

Under the integrated Islamic approach to women's property rights, her reduced inheritance rights are expected to be compensated by other means of wealth generation. These methods include a woman's equal access to purchase through earnings, endowments and gifts and special supplements such as savings, (from lack of financial obligations within the family), dower and maintenance. In practice, the system fails to deliver equitable access to land for several reasons.

First, there is no mechanism to ensure that the woman is compensated for her inheritance loss in other ways, as there are different players at various stages of the woman's life. The legal ideology may be holistic, but choices are often made in a vacuum, in the sense that they are made on the basis of current demands or needs, rather than with a 'life course' perspective.

Second, while inheritance shares are often land rights, the others such as dower, maintenance and beneficial interests under an endowment/trust (*waqf*), the latter now largely abolished, are at best limited to usufruct (use rights) rights or wealth. Property tends to flow away from women, as opposed to towards them. In any event under social or familial pressure women may give up that inheritance right to land, or 'exchange' it for cash or other property, which may or may not actually be paid.

Third, customary norms through family and kinship structures seem to have trumped Islamic principles by making earnings and savings difficult, the dower and maintenance rights nominal, conditional or non-enforceable and inheritance rights often merely theoretical. However, Islamic principles and early practice demonstrate that it does not have to be this way and that a reappraisal of Islamic law could empower Muslim women and enhance security of tenure.

5.6.3 Promote human rights advocacy

Muslim countries are increasingly ratifying international human rights treaties thereby acknowledging their legal obligations towards respecting basic rights for women. Beyond treaties, it is not contested that basic human rights arising out of the 1948 Universal Declaration of Human Rights have become the yardstick for the legitimacy of every government and the demand in all societies. Most constitutions and national laws do formally accept them. With respect to land rights, there are equally a plethora of international standards. Rather than negotiate with States or devise programmes and projects on the basis of States' willingness to accept, expectations regarding advancement of land tenure rights must be articulated as enforceable and justiciable rights (see accompanying position paper on human rights and development).

Commentators have shown that there is no irreconcilable difference in human rights expectations between international human rights norms and Islamic principles (Ali 1999; Khaliq 1995). However, States often offer conservative and patriarchal interpretations of religion as justifications for their failure to uphold rights. One of the approaches several Muslim governments have adopted are reservations (opt out clauses) in their ratification of the 1979 Convention for the Elimination of Discrimination of Women (CEDAW) which sets out a series of gender rights. Mayer (1999) among others, argues that evolving political contingencies and not Islamic beliefs determine most Muslim states' CEDAW reservations. These so-called Islamic reservations would have to be confronted to distinguish the levels of religious imperatives, socio-cultural practices or "folk religion" and contrived patriarchal policies. Promoting human rights advocacy within local communities would empower women to assert their Islamic and international human rights.

5.6.4 Expand public space for women

A number of international interventions as well as state programs are deferential towards existing socio-cultural gender deprecating norms. The root of the differential treatment towards women arises out of their exclusion from public spaces where they can be a part of the decisions which affect them, their families and communities. Despite the democratic deficit in several Muslim countries, there is now an increasing role for civil society in asserting an indigenous framework of gender rights. Just as anti-poverty and microfinance programmes recognise the potential for women to be part of their own solutions and empowerment, enhancing the opportunities for the participation of women.

Women theorists, lawyers, students, academicians and activists – and ordinary women – have taken on virtually every contested area of gender rights, be it the right to work, vote, drive, travel alone, attend prayers in mosques, custody and maintenance, reproductive choices. They have campaigned against the practice of polygamy, temporary marriage (*mut'a*), unilateral summary divorce (triple *talaq*), honour killings (*ar-raqid*), female genital mutilation, restrictive behavioural codes based on the concepts of obedience (*ta'a*) and rebellion (*nushuq*), domestic violence and the prerogative of the guardian (*wali*). The results of this engagement in the public sphere have not merely made women more visible but impacted on society. But this is only the beginning and more needs to be done.

In working toward an effective woman sensitive consensus (*ijma*), which validates independent reasoning (*ijtihad*), the problem for Muslim women has been not merely the exclusion from public space but equally the limited opportunities for interaction among women themselves. Politicised religion drives a wedge right across women, estranging the 'true believers' from the rest and creating divided loyalties (Jeffrey 1999:226-28). Maligned by the State and religious forces as disruptive surrogates acting against Islam, the State and the vital interests of Muslim women, women activists are always at risk of losing the support of the majority of Muslim women. Networks such as the Malaysian based Sisters in Islam and Women Living Under Muslim Laws (WLUML), or dedicated gender rights journals such as the Iranian venture *Zanan*, the Lebanese *Al-Raida* or the Cypriot *Shahrazad* show how women can effectively debate issues that concern them. However, the mobilisation of women at the grassroots level can provide opportunities for greater gender sensitive consciousness.

5.6.5 Ensure women's access to courts

Substantive rights require enforcement through women's access to courts. Women in general have restricted access to formal law generating mediums - legislation, judicial redress, religious advisory options (*fatwa* plural *fatawa*) - that are all at the command of a patriarchal religious State apparatus. Though given the opportunity many Muslim women do access the legal system, whether customary, *Shari'a* or State courts (Bowen: 2003) the need to strengthen and gender sensitise Islamic legal institutions, as with other non-Islamic ones, is obvious.

There is a current promotion of family courts within several Muslim countries, designed to be less legalistic and encouraging a mediation approach, able to draw upon the input of psychologists and other social experts. In Morocco, for instance, the Ministry of Justice has promised that properly funded family courts will accompany the new *Moudawana*. Family courts have also made a recent appearance in Egypt, to provide a one-stop shop for family disputes. No doubt they may avoid some of the delays with are endemic in the Egyptian legal system, providing faster but the question is whether they can deliver more equitable decisions. A recent Human Rights Watch (2004) report doubts whether, without substantive change on a grand scale, such courts can make any real difference in terms of enhancing women's rights.

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