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# *Reflections on Law, Religion, and Technology: Legal Mobilisation in the Area of Egyptian Paternity Law*

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## I. INTRODUCTION

In 2005, the Egyptian interior designer Hind Elhinnawy filed a court case to establish the paternal lineage of her four-month-old daughter Lina who she alleged resulted from a so-called customary marriage contract between her and the actor Ahmed Fishawy. Fishawy repeatedly denied that marriage had occurred between them and that Lina was his daughter. By filing suit, Elhinnawy did more than shatter a social taboo. She attempted to set an Egyptian legal precedent by requesting that the court order Mr Fishawy to submit to a DNA test to establish whether he was the father of Lina. There was no way under Egyptian law to force him to carry it out. In late January 2006, the first-level court turned down Elhinnawys lawsuit because paternity could not be established without evidence of marriage.[1] But the case did not stop there because Elhinnawy appealed. This case raised a public scandal and generated a heated public debate, echoes that continue to reverberate in Egypt and other parts of the Muslim world today.

The chapter aims to contribute to the growing scholarly literature on implementing Sharia-based family law by addressing legal mobilisation by private citizens and human rights lawyers surrounding a contested and conflictive legal matter, namely the use of DNA to prove paternal lineage. As pointed out by Reza Banakar (2015: 169) in his methodological reflections on the Iranian legal system and culture, theories developed based on studying Western legal systems have both limitations and possibilities. This is the case with the theories on legal mobilisation which were developed in North America and have only more recently spread to other regions.

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[1] Family Court of al-Khalifa, case no 547, 26 January 2006.

Legal mobilisation scholarship has developed as an analytic framework that focuses on how individual claimants and collective actors, such as social movements, engage in the process of novel rights formulation through creative framing (Albiston 2010; Burstein 1991; Galanter 1983; McCann 2008; Merry 1990; Scheingold 1974) as well as legal and political structures that enable or counteract it (Epp 1998), but it leaves many unanswered questions. Among other, existing scholarship has to a small extent explored how legal mobilisation operates under conditions of 'state legal pluralism' (Benda-Beckmann and Turner 2018: 265) as found in many postcolonial settings. According to Ahmed Zaki (2017: 7) several legal systems in postcolonial settings are juristically pluralistic in two main ways: (a) normative sources of law such as Islamic Sharia are codified into civil codes; and (b) several different ethnoreligious codes govern the personal status of different ethnic and religious communities; both within the same legal system. An example in point is Egypt, a country that has developed a hybrid legal system over the past two centuries. Evidence of this internal pluralism of state law lies in how the legal system is largely based on the French civil law model. Meanwhile, the constitution of 2014 declares that the principles of Islamic Sharia are the principal source for legislation. Furthermore, there is a tension between a constitutional provision, which on the one hand enshrines the principle of equality before the law for all citizens regardless of religion and gender, while asserting the state's responsibility to protect the family as the nucleus of society, constituted by 'religion, ethics and patriotism' (Article 10) on the other. In this context, according to which different family laws govern Egyptians depending on religious affiliation, the personal status regime is of crucial significance.

Given that Egyptian paternity law is strongly influenced by Sharia, the chapter also analyses the intersection between law, religion, and science in this field. In so doing, it engages with theoretical reflections by Reza Banakar on the application of Islamic law in another legal system structured in accordance with the French civil law system, namely Iran (Banakar and Ziaee 2019). This takes us beyond discussions in terms of modern/traditionalist or secular/religious dichotomies, which is found in much literature on state legal pluralism. Taking the well-publicised case of *Elhinnawy v Fishawy* and its vantage point, the chapter highlights two functions of legal mobilisation in Muslim personal status law. First, I argue that legal mobilisation has taken the form of a collective organisation by non-governmental organisations (NGOs). The goal is to change the law by preparing and trying particularly suitable cases for the court and using the language and symbols of Islam as innovative strategic framing methods. In examing legal mobilisation and its effects, I combine insights from studies on legal mobilisation with recent theory on legal pluralities (Ahmed Zaki 2017; Sieder and McNeish 2013), where previous tendencies to either celebrate or demonise legal pluralities have given way to a more nuanced analysis that strives to understand them as dynamic social formations embedded in society and the state alike with various effects and consequences. Within this perspective, I highlight how cause lawyers underpin their arguments by drawing upon the pluralism of Islamic normativity and look at how it is presented and whether patterns are discernible in its deployment. Second, this perspective also opens up for questioning how legal mobilisation is enabled and counteracted by a legal-political landscape where multiple institutions contend over who has the right to interpret Islamic Sharia authoritatively. To address

the question raised by the chapter, I analyse judicial mobilisation in conjunction with legal mobilisation by various actors and institutions, ranging from the Mufti of Egypt to al-Azhar, one of the oldest and most influential seats of learning in Sunni-Islam and situated in Cairo. The chapter draws on an analysis of court documents and fatwas and interviews with litigants, lawyers, and judges.

## II. THE ROLE OF RELIGION IN EGYPTIAN PERSONAL STATUS LAW

Today, much of Egyptian family law exists in the form of codes applied by civil courts. In order to understand the significance of this, it is important to have an understanding of how Sharia emerged and developed. Sharia is a highly complex concept, referring to a vast body of historical, social, political, cultural, and religious developments. In scholarly literature, this is frequently referred to as 'Islamic law' or as 'sacred law'. For the purposes of this chapter, it is important to note that Sharia was developed by scholars who, for a long time, were independent of the state and were not government functionaries. A second feature worth highlighting is the fact the law created by the scholars is called *fiqh* ('scholarly understanding') rather than Sharia. Fiqh hence earned the epithet 'jurists' law', marking a distinction from 'God-given law'. In expanding the law, the classical scholars relied on a methodology whereby Sharia was derived from specific sources. The sacred sources were two, namely: the Qurʾan, which embodies the revelations of God to humankind; and the Prophet Muhammad's exemplary practice and utterances, called the Sunna as compiled in hadith collections. The two primary sources, the Qurʾan and the Sunna, were complemented by two other methods of exerting rules: reasoning characterised by analogical deduction; and scholarly consensus (Banakar and Ziaee 2019: 122). An important aspect of scholarly consensus as a source of law was the defence of the doctrines developed by the four surviving schools of Sunni jurisprudence. The Hanafi school eventually won a special position as the official law school of the Ottoman Empire (Vikør 2005). Despite the consolidation of the aforementioned schools, the resulting corpus of legal doctrines was not recorded in a format that can be considered a code but were dispersed among various manuals and commentaries of a particular school, described as 'atomistic' in style (Kamali 2003). Before the era of nation-states and statutory laws, judges in Sharia courts could decide cases by relying on normative pluralism – that is, by drawing from different schools of law or by reference to local custom.

In the twentieth century, Muslim family law underwent a process of codification whereby it was transformed from jurists' law into statutory law. In Egypt, the process of codification extended to the field of family law with the adoption of a series of legislative enactments, starting in the 1920s. Substantive personal status law reforms were issued again in 1985 and 2000. The process involved doctrines from the Islamic doctrinal schools (*madhhab*, pl *madhahib*) being combined and fused into new legal rules. Reforms in the field of Muslim personal status have proceeded gradually and in a piecemeal manner. As further testimony to the hybrid nature of Muslim family law, Article 3 of Law no 1 of 2000 refers judges to the predominant opinion of the Hanafi school where there are silences in the law (Dupret et al 2019). Hence, old versions of

law coexist with modern law codes in a manner which brings into relief the hybrid nature of Muslim family law.

The reforms adopted in Egypt in the domain of paternal filiation have been mainly procedural rather than substantial. Egypt has precluded courts from hearing disputes arising out of marriages where the birth took place six months after the marriage was contracted or one year after the marriage ended through divorce or death. However, the fundamental conditions relating to the establishment of paternity are governed by Hanafi doctrine, which stipulates primary and secondary ways of establishing paternity. The primary method of establishing paternity is through a valid marriage. According to the principle that 'the child is affiliated to the conjugal bed' (*walad li-l-firash*), the husband's paternity of a child born to his wife during their valid marriage (or within the maximum pregnancy period after divorce) is automatically established. In their attempt to ascertain whether a given child was conceived in a marriage ('a conjugal bed'), the period of gestation had to be discussed. Pre-modern Sunni jurists agreed that the minimum period of gestation was six months, but they disagreed over the maximum period, which varied from two years to four years among the different schools.

According to the Ḥanafī school this maximum gestation period was two years (Ibrahim 2019; Shaham 2010; Esposito 2001. In addition to the primary method of establishing paternity through a licit sexual relationship), classical jurists of Islamic law also discussed several other secondary methods. These secondary methods include admission, evidence, and expert examination of the similarity of physical features between a father and a child (*qiyafa*). The latter means tracing the child to their parent by how they look and seeing who they might resemble, which was the same way the Arabs in the past traced a route in the desert, by following the signs (Ibrahim 2019; Shabana 2013). The Hanafis, however, argued against the use of such tracing on the grounds that it amounts to judgment on the basis of conjecture. The tension between biological and legal conceptions of paternity have become particularly urgent in the modern Muslim world with the advent of DNA testing which, in theory, permits the determination of biological paternity with certainty in each case, therefore raising the question of whether Islamic law should simply adopt a biological definition of paternity (Shabana 2013).

The case which will provide the guiding force is *Hind Elhinnawy v Fishawy*. As mentioned, Elhinnawy filed a court case to establish the paternal lineage of her four-month-old daughter Lina who she alleged resulted from a so-called customary marriage contract between her and the actor Ahmed Fishawy. Customary marriages are a form of marriage that is not officially registered with the state. Although there are no exact data on how widespread undocumented marriage is, a considerable amount of scholarship has focused on the diverse motivations and implications of marriages (notably lack of judicial remedy) conducted outside the state system, particularly in Egypt but also in other countries such as Indonesia, Jordan, Morocco, Syria, and UAE (Bedner and Van Huis 2010; Engelcke 2019; Hasso 2010; Sonneveld 2012). It is important to mention that state legislation does not challenge the validity of a marriage contract that has not been registered by a notary. In a sense, this leaves such marriages in a legal limbo, since few rights arise from them – other than paternity – that can be enforced through courts. In public debates, official marriage and customary marriage

are often construed as opposites, the first publicly founding a family and conforming to the official and legal norm, the other secretly and flimsily camouflaging the secret affairs of romantic teenagers or film stars. Elhinnawy became pregnant, and Fishawy tried to convince her to have an abortion. They disagreed on this matter. According to Elhinnawy's version of the events, Fishawy then oscillated between accepting the pregnancy and refusing it until its third month, when he agreed that it should continue. Subsequently, he took the marital contract from her to get the signature of another witness on it. The agreement was that he would return the contract (paper) to her the following day so she could go to the notary to document the marriage, to finish all the required paperwork. After visiting a local preacher, Fishawy reportedly changed his mind, and he neither went with her to the notary nor gave her back the contract. He again started to demand that she have an abortion, and by that time, the pregnancy was in its fourth month. When Elhinnawy insisted on keeping the baby, Fishawy abandoned her, denying the marriage and fatherhood after taking the marital contract.[2] These issues are of considerable importance since children born out of wedlock are generally not entitled to carry their (biological) father's name. They have no right to maintenance, nor do they inherit from their father. Besides the legal issues, being born out of wedlock is a cause of considerable social stigma.

### A. The Role of Technology

As mentioned earlier, Elhinnawy did more than shatter a social taboo. She attempted to set an Egyptian legal precedent by requesting that the court order Mr Fishawy to submit to a DNA test to establish whether he was Lina's father. The discovery of DNA fingerprinting has been hailed as one of the most important achievements of modern biomedical technology (Shabana 2013: 158; Shaham 2010). The case in question represents an opportunity to observe how lawyers and other legal actors mobilise different normative repertoires by drawing on overlapping legal and normative orders, including statutory law, uncodified Islamic law, custom, and human rights, to challenge hegemonic hermeneutical understandings of Islam.

In a chapter co-authored with Keyvan Ziaee, Reza Banakar asks if the application of classical Islam jurisprudence (*fiqh*) in Iran, which is a civil law system, can be understood as a 'clash between two legal cultures' (Banakar and Ziaee 2019: 122). According to the authors, the training of Iranian judges includes understanding and enforcing the law in terms of fiqh, or Islamic jurisprudence, as developed by Shi'a jurists. Iranian lawyers view this as a form of 'qadi-justice,' a Weberian ideal-type of legal decision-making, which 'knows no rational "rules of decision"'. The other legal culture as embodied by lawyers is based on the jurisprudence of modern law schools, and sees the law as a rule-based rational construct for decision-making. In the context of codified law and due process, Iranian judges' application of Islamic jurisprudence introduces an element of legal uncertainty and arbitrariness that many defence

[2] Fatwa no 2821 for 2004 from the Mufti of Egypt.

attorneys find difficult to anticipate and react to. The authors continue to argue that examining the subject in terms of modern/traditionalist or secular/religious dichotomies would overlook two points. First, they point out that the jurisprudence of the Iranian judiciary – however, politicised, illiberal and repressive it may be – contains many innovative ideas challenging a traditional understanding of Sharia. Second, Islamic jurisprudence (*fiqh*) has always contained secular practices and secularisation of the divine since the principle of expediency of the state overrides all religious doctrine (ibid: 122). The same applies in the context of Egypt, where the scholarly literature tends to posit that fiqh, as found in the classical legal manuals, continues to be applied in domains where the statutory codes are silent. This assumption, however, underestimates the fundamental changes brought about by the importation of a civil law model and its influence on the inner dynamics of legal reasoning as well as the social and intellectual diversity in contemporary Muslim societies (Dupret et al 2019). In the following section, I explore the judicial mobilisation of human rights NGOs in the field of personal status law.

## B. The Role of Legal Mobilisation

In recent decades there has been a growing body of research on legal mobilisation by private citizens and different social groups lawyers to challenge the Egyptian state's policies (Agrama 2010; El Fegiery 2016; Ezzat 2021; Lindbekk and Bahgat 2021; Lombardi and Cannon 2016). Moustafa and Ginsburg (2008) pointed out that judicial politics in authoritarian states is often far more complex than commonly assumed. Despite decades of authoritarian rule, Egyptian courts 'enjoy a surprising degree of independence and they provide a vital arena of political contention (Moustafa 2008: 151). According to Tamir Moustafa (ibid: 132), the relative independence of the courts, the visibility of the judicial system, and the attention paid by the media to selected cases and decisions encourage individuals and special interest groups to use the courtrooms for strategic purposes. Such legal mobilisation has become an important strategy for human rights lawyers, not only because of the opportunities afforded but due to the myriad obstacles to mobilising broad social movement. In the 1980s and 1990s, a wave of women's rights NGOs was formed, which was intensified with Egypt's participation in the international conferences despite restrictions on civil society organisations and periodic government crackdowns (Abu-Lughod 2010; Pratt 2020). An example in point is the establishment of the Center for Egyptian Women Legal Assistance (CEWLA) in 1995. The goal of CEWLA and other women's NGOs is to offer Egyptian women legal support and assistance regarding their rights under the Egyptian laws, constitution, and international conventions ratified by Egypt. Yet, to date, little scholarly research has been devoted to the use of Islamic law as part of novel rights-based approaches in the domain of Muslim family law. Instead, the academic literature has tended to focus on the constraining role of state legal pluralities. Meanwhile, as pointed out by Ahmed Zaki (2017), this assumption underestimates the pluralism and fluidity in Islamic discourse. In the absence of legislation governing the establishment of paternity, the lawyers in *Elhinnawy v Fishawy* relied on very distinct arguments:

(1) The lawyers framed their defence within the parameters of classical Hanafi doctrine by arguing that Elhinnawy had witnesses to the customary marriage and continued to mention that Sharia is keen to establish paternity. Relying on the predominant Hanafi doctrine, the lawyers argued that it suffices to be established through evidence that the marriage did take place and consummation of it ensued because of contracting it. It is not imperative for witnesses, who testify for the marriage's existence, to have been present at the signing of the contract or to have witnessed it themselves. It suffices that they attest to their knowledge the marriage took place because testimony based on hearsay is permissible in Sharia in this case. Paternity is also established through a corrupt marriage because the rule is that paternity is established whenever possible, even through manipulation, as long as it is done in a manner that defies neither reason nor Sharia, in order to reform a woman's behaviour and protect her and her family's honour and to sustain a child's life and protect their interest.
(2) The lawyers advocated for using DNA evidence for paternity verification by going beyond the bounds of the Ḥanafī school and selecting a variant view found in other law schools, which accepted a type of evidence called *al-qiyafa*; they drew an analogy between this and DNA.
(3) Finally, the lawyers couched the terms of their argument of international conventions signed and ratified by Egypt, in particular the Convention on Rights of the Child, which Egypt ratified in 1993.[3]

Judicial mobilisation constituted one of several parallel processes adopted by Elhinnawy and her lawyers in the campaign to introduce DNA testing in paternity disputes. In addition to the courts, Elhinnawy and her lawyers strategically turned to reform-oriented Islamic legal scholars with interpretations of Islam that worked to their advantage to influence the case. For example, Elhinnawy's father addressed the Mufti of Egypt with an emotional letter after Fishawy had refused to undergo a DNA test while admitting to a sexual relationship with Elhinnawy without the presence of a marriage contract, which made it *zina* (fornication) and a child from zina is not granted paternity. The Mufti of Egypt responded with a fatwa according to which:

> The rule regarding paternal filiation is precaution on the side of proving it. The divine lawmaker desires to prove it by any means possible, such as testimony, admission, tracing (al-qiyafa) and any scientific method available in order to reform a woman's situation and sustain a child.[4]

The Mufti continued by saying that there is no issue with demanding DNA testing when there is a marriage claim, but it is not for unmarried people because zina does not create paternity. While the Mufti of Egypt argued that DNA paternity testing should be used with caution in cases with no proof of marriage, the NGOs also reached out to a minority group of scholars who recognised DNA evidence as a method that can

[3] According to Article 7 of the Convention on Rights of the Child, every child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

[4] Fatwa no 2821 for 2004 from the Mufti of Egypt.

establish filiation for children born out of wedlock. Far from signalling the demise of Islamic law, this minority group of Islamic legal scholars from al-Azhar argued that introducing these novel methods of establishing paternity would support Sharia by protecting progeny, one of the five overarching objectives of Islamic law. Among the Islamic legal scholars who endorsed this minority opinion in the *Elhinnawy v Fishawy* case was 'Abd Allah al-Najjar, an Azhar scholar who also happened to be part of Elhinnawy's team of lawyers. These arguments concerning the admissibility of DNA testing (or lack of such) are increasingly intertwined in international developments in Islamic law (Korbatieh 2020: 15; Shabana 2013). While engaging with transnational discourses, the Egyptian discussions on paternity law are highly localised in that they drew upon indigenous roots. Women's rights NGOs such as CEWLA have published studies (Aboul-Magd 2017) and articles in widely circulated newspapers focusing on the growing problem of illegitimate children in the country, with 14,000 cases of paternal lineage being tried in Egyptian courts. In addition to creative framing, the activists decided to lobby the Egyptian Ministry of Justice and parliamentarians to introduce new legislation to make DNA tests mandatory in cases of paternal filiation (The New Humanitarian 2006) and helped galvanise international pressure on the Egyptian government by participating in shadow reports on the implementation of UN conventions (Marei 2009).

### C. The Role of Courts and Mass Media

In May 2006, Cairo Appeal Court ruled in favour of Elhinnawy. Interestingly and despite the line of alternative discourses developed by cause lawyers and individual Islamic scholars, DNA was not the main theme in the court's reasoning. In the judgment, the court cited the predominant opinion of the Hanafi school, according to which paternity can be established through a corrupt marriage 'because the rule is that paternal filiation is established whenever possible, even through manipulation, as long as it is done in a manner that does defies neither reason nor Sharia, to reform a woman's behavior and protect her and her family's honor and to sustain a child's life and protect their interest'.[5] Thus, the Cairo Appeal court ruling reinforced continuity and stability rather than signifying a departure from prevailing legal norms. It is also noteworthy that, although the judges present their reasoning as falling within the parameters of mainstream Hanafi doctrines, the sources and methodology they use differ considerably from it. While some judges are more erudite than others, court records reveal that family court judges rarely seek guidance in the authoritative collections of classical Islamic scholars. Instead, they generally refer to Hanafi fiqh through the medium of the Court of Cassation and a body of contemporary works of jurisprudence. These works, which are clearly embedded in the civil law tradition, are divided into chapters that follow the sequence of articles in the personal status

[5] Cairo Appeal Court, case no 1389 and no 1605, judicial year 123, 24 May 2006. See also Bentlage (2020) and Alim (2016).

legislation in chronological order. Thus, while judges deploy a vocabulary connected to classical fiqh, the grammar of their legal reasoning is of that of civil law (see also Dupret et al 2019).

In 2008, the principle that 'the child is affiliated to the conjugal bed' was challenged in law no 126 of 2008, which amended some provisions in the 1996 child law. According to Article 4 of the amended child law, the child shall also have the right to establish his legitimate paternal and maternal lineage, using all lawful scientific means to establish such lineage. This innovation was introduced after the UN Committee on the Rights of the Child and local civil society organisations (including CEWLA) criticised Egypt's implementation of 'the best interests of the child principle' concerning children born outside marriage (Committee on the Rights of the Child 2008: 32). Yet, Article 7 of the same law defers to the provisions set forth under the personal status laws. Despite the 2008 amendment to child law, Egyptian family court judges remain resistant to integrating new technologies in their consideration of paternity claims. The following two cases testify to this trend. In 2014, an actress named 'Zeina' lodged a claim to establish paternal filiation for her twin sons, which resulted in a highly publicised case, as she claimed that her twin boys were the sons of famous actor Ahmed Ezz. The case was thrust into the limelight after the 38-year-old actress returned from the United States to Egypt in January 2014 after giving birth to the children, who she claimed were the sons of the Egyptian actor. Her lawyer said the pair wedded in June 2012 through a customary marriage. Throughout, Ezz consistently denied the marriage and declined to undergo DNA tests required by the court. The actor even went on TV to publicly deny that these were his children, all while making hints about the actress's reputation. However, a verdict from the Nasr City Family Court in June 2015 stated it had been proven that the children were Ezz's. The judgment compelled Ezz to recognise his paternal responsibilities, allowing Zeina to issue birth certificates and other official documents for the children (Mada Masr 2016).

Yet another highly publicised case revolved around Amal Abdel Hameed, a young woman whose daughter was conceived through rape in 2018. Abdel Hameed launched court proceedings on two fronts in July 2020: pursuing a criminal case against her child's biological father for kidnapping, physical assault and rape, and a paternity suit in the family court, seeking the issuance of a birth certificate for her daughter with the father's name listed. However, the case was dismissed since Egypt's personal status laws do not mandate paternity registration for children born out of wedlock. Subsequently, Abdel Hameed published a video testimony online in the summer of 2020. Amal and her lawyers drew momentum from a wave of high-publicity social media campaigns around sexual violence in this connection. As the case became widely publicised, Amal gained a fair amount of public sympathy. Following concerted pressure from NGOs, the public prosecution intervened by ordering a DNA test for Abdel Hameed's daughter, which proved the defendant to be the biological father. Thus, the campaign demonstrates the ways in which NGOs utilise the dual nature of the Egyptian legal system to bring mandatory DNA testing in through the back door, so to speak. According to an interviewed lawyer, this strategy was rooted in a belief that the public prosecutor was more likely than a family court judge to decide in line with

'the spirit of the law'.[6] Yet, the DNA match was not enough for Abdel Hameed to secure a birth certificate for her daughter bearing the biological father's name (Mada Masr 2021). In response to Abdel-Hameed's court battle, women's rights lawyers from CEWLA also organised a workshop in March 2021 where they invoked the notion of *qiyafa* as the modern-day equivalent of DNA, as well Egypt's constitutional commitments to the International Convention on Rights of the Child.[7] Together with a coalition of other women's rights organisations, CEWLA has also produced a legal guide outlining its collective position on the required changes in personal status law. A feature of the law proposal prepared by the NGOs was an article on filiation where female victims of rape were given the right to establish paternity for their children by using modern scientific methods. That said, there seemed to be a general understanding among women's rights lawyers interviewed for this chapter that their influence on policy outcomes is limited by a range of factors, including the degree of distance between women's rights and the ruling political elites.[8] While the institutionalisation of NGOs since the 1980s has been challenging, the relationship between civil society organisations and the state has been further complicated in recent years. Nicola Pratt (2020) has pointed out that human rights NGOs are increasingly the target of criticism and government crackdowns for receiving foreign funding and being critics of the regime's human rights record.

### D. The Outcome

While it is difficult to assess the long-term implications of these ongoing struggles, there are at least three dimensions present here that pertain to the central arguments of this chapter. First, we can discern a continuing and dynamic process of creating what counts as Islamic law, some embryonic and novel, and some influenced by past legalities. In the process of legal mobilisation, different notions were invoked, contested, produced, and fused as part of novel rights-based approaches. For example, we see that the human rights lawyers and Islamic legal scholars merged the classical Islamic concept of *qiyafa* with modern scientific evidence, including DNA. Second, it is theoretically interesting that while court proceedings are a laborious process, strategic litigation may have effects that go beyond purely the decision (see Höland 2011), by providing an opportunity to study, promote and support victims of the conservative laws, and develop tactics to confront them by influencing the legal-political agenda. Thanks to the dramatic content of the court cases lodged by Hind Elhinnawy, Zeina, and Amal Abdel-Hameed, the court generated considerable media attention and limited adoption of DNA testing as a method of proving paternity among judges and Islamic legal scholars. According to human rights lawyers interviewed for this research, when a man refuses to submit to a DNA test, the judge sometimes uses this as evidence against men who deny paternity. Similarly, I found

[6] Interview by Lindbekk with lawyer, 2 October 2021.
[7] Workshop convened by CEWLA, 31 March 2021.
[8] Interview by author with two human rights lawyers in Cairo, 1 August 2019, and 15 August 2019.

that some judges viewed a husband's unwillingness to undergo a DNA test as a sign of his bad faith and unwillingness 'to acquit himself in front of the child, society, and God' (Lindbekk forthcoming). However, while refusal to undergo a DNA test can be used as supporting evidence together with other evidence such as a marital contract, I have yet to see a case where DNA was used as the only form of proof to establish paternity. Along the same lines, some interviewed family court judges complained of the difficulties posed by lengthy judicial processes and challenges posed by marriages that were entered into without documentation (or documentation inaccessible to the woman) and in the absence of witnesses or other forms of evidence, and which were therefore non-justiciable. In the words of one judge:

> In a case, the husband disputed that the child was his, while the wife alleged that it was his. We had a length debate within the judicial panel about what to do. I was in favour of using DNA and ordered the male defendant do to this. However, because it was expensive for him to do and he lived in a remote area, we could not obligate him. The Ḥanafī technology is 1000 years old – their views were valid 1000 years ago. But today we have different technology which is more suitable. I can't believe we are still doing this.[9]

Thus, whenever there is a potential conflict between existing Sharia principles and the implications of a DNA test, contemporary family court judges continue to opt for continuity with classical Hanafi doctrine at the substantive level. As convincingly argued by Shaham (2010) in his study on the development of expert witnessing in Islamic law, this desire for family stability was to be mobilised by contemporary jurists who strongly oppose DNA testing in paternity disputes which they fear would open a Pandora's box. I would like to add to this the concern with the welfare of the mother and child mentioned above.

Third, in addition to the agency of private citizens and collective actors such as NGOs, the case sheds light on the contours of legal and political structures that support or contain the challenges of individual claimants and social interest groups through legal mobilisation. The state's relationship with organised religion through the personal status regime and the strength and autonomy of civil society organisations each pose different constraints and opportunities. Instead of viewing the state and state law as an internally consistent entity, I considered heterogeneity by looking at multiple state institutions tasked with defining Islam. This was thrown into relief in February 2021 when Egypt's House of Representatives referred a new personal status bill to the Constitutional and Legislative Affairs Committee for review. Interestingly, the cabinet version of the bill in many ways duplicated a previously submitted law draft by al-Azhar. Several women's rights organisations issued statements denouncing the amendment, and complained that they had been completely excluded from the amendment drafting process. Among other provisions, the NGOs were critical of how the personal status law continues to privilege the paternal instinct and their keenness to assign paternity of a child to their father while women face obstacles in establishing the paternity of children born outside of a recognised or provable marital relationship (Ali 2021). Whereas al-Azhar and the Egyptian cabinet have offered

[9] Interview with family court judge, 20 August 2019.

institutional support of the status quo with regard to paternity law, the Mufti of Egypt has also issued a fatwa where he reiterated his support for DNA testing as an effective scientific method in paternity disputes by using the same arguments as in the 2004 fatwa.[10] This suggests that the role of DNA testing remains a subject of internal debate within the judiciary and among Islamic legal scholars, and other state institutions tasked with defining Islam. It remains to be seen whether the Egyptian parliament will pursue bold departures from classical Islamic thought and previous political compromises. After more than 100 hundred years of Muslim personal status reform, what continues to single out personal status law reform is that it remains central to the pursuit of Islamic legal identity. Which interpretations of Sharia will be made to apply in Egyptian family law in the future is likely to depend on the dynamics of Egyptian politics, where a variety of actors and institutions claim the interpretive authority as regards Islamic Sharia.

## III. SUMMARY AND CONCLUSION

This chapter addressed legal mobilisation in Muslim personal status law by individual women and NGOs. I argued that private citizens and human rights lawyers engaged in several innovative strategic framing methods regarding paternal lineage. Taking the case of *Elhinnawi v Fishawy* as its vantage point, the chapter addressed the contestation surrounding DNA as a method of proving paternal lineage as an area where past legalities intersect with novel rights-based approaches through a process of hybridisation. I argued that private citizens and their lawyers grounded their novel legal claims in the plural nature of Egypt's legal system, where multiple legal orders co-exist and intermingle within the bounds of the nation-state. At no time was DNA considered contrary to the principles of Islamic Sharia, which is the principal source of Egyptian legislation. Instead, DNA intended to complement the sharia in cases in which the predominant Hanafi doctrine made it difficult to establish paternity for children. In parallel, the human rights lawyers approached reform-oriented Islamic legal scholars, such as the Mufti of Egypt and members of al-Azhar. Second, I highlighted how legal mobilisation has had important effects beyond the decisional outcome of courts by building momentum for a legal-political agenda of change and encouraging activists to lobby for more radical change. While the courts were shown to be highly unreliable agents of change, rights-based litigation proved to be an important resource beyond the decisional outcome. Channelled by the media, the court case in question came to the attention of legal scholars and members of the public alike. It also gave impulses to legislative change in terms of an amendment to the child law, an amendment that has not been implemented because of institutional and ideational challenges. Third, in addition to the agency of private citizens and collective actors such as human rights NGOs, the case shed light on the contours of legal and political structures that support or contain citizen challenges through legal mobilisation in a context where there is internal pluralism of state law.

[10] Fatwa no 6996 from 2015 by the Mufti of Egypt.

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