Feminist Interlegalities and Gender Justice in Sudan: The Debate on CEDAW and Islam

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Abstract

The fundamental argument put forward by Islamists, who have ruled Sudan since 1989, for not signing the convention is based on cultural relativism; different cultures provide indigenous and local solutions to their women's problems. Islam is the solution, not Western feminism. But the Islamists' failure to ratify CEDAW should not be regarded as a complete rejection of Western feminism, however defined. Through a review of the debate on CEDAW and Islam, this article explores the entanglements of 'Islamic' and 'Western' normative legal orders. It argues that although Islamist feminists' discourse deems Western tenets of feminism and gender equality to be unessential to Islamic societies and falsely universalising in its premises, it simultaneously draws upon them in order to demonstrate their 'alternative' feminism. By analysing a range of Islamist women's positions, it becomes apparent that on the one hand they reject CEDAW and gender equality, and on the other promote issues which empower women in the Sudanese state and society. But there are important points of criticism for Islamic solutions in a multi-religious and class-divided Sudanese society. Sudanese Islamist women's claims on behalf of Islamic solutions for Sudanese women can paradoxically be critiqued for being as universalising in its premises as so-called Western feminism.

Keywords: Islamism, Islam, feminism, women's rights, interlegality, gender justice, CEDAW

A. Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations in 1979 and is the most comprehensive

international agreement on the basic human rights of women. 185 countries have ratified CEDAW. Sudan, together with Iran, Somalia, Nauru, Palau, Tonga and the US, is among a small minority of countries that have not yet ratified the convention. The fundamental argument put forward by Islamists, who have ruled Sudan since 1989, for not signing the convention is based on cultural relativism, championed by postmodernists, namely that different cultures provide indigenous answers to their social problems which should be judged in the context of their own environment. Islam is the solution, not Western feminism. The Islamists' failure to ratify CEDAW should not be regarded as a complete rejection of Western feminism, however defined. Through a review of the debate on CEDAW and Islam, this article explores the entanglements of 'Islamic' and 'Western' normative legal orders or rather, interpretations of these legal orders. It argues that although Islamist feminists' discourse deems Western tenets of feminism and gender equality to be unessential to Islamic societies and falsely universalising in its premises, it simultaneously draws upon them in order to demonstrate their 'alternative' feminism. By analysing a range of Islamist women's positions, it becomes apparent that on the one hand they reject CEDAW and gender equality, and on the other promote issues which empower women in the Sudanese state and society. But there are important points of criticism. A reasonable concern is that elite-driven Islamist feminists reinforce the importance of an authentic reading of Islamic *texts* rather than putting the socioeconomic *contexts* of the grassroots as a starting point for discussing how to improve women's situation in Sudan. Sudanese Islamist women's claims on behalf of Islamic solutions for Sudanese women can paradoxically be critiqued for being as universalising in its premises as so-called Western feminism.

This article will concentrate on the views of Islamist feminist activists who were interviewed for this study during fieldwork in Khartoum state in 2006, 2007, 2008 and 2009. During the recent elections in April 2010, Islamist women won 85 out of 88 seats in the national parliament. The Islamists feminists belong to state-supported organisations and political parties: the Sudan Women's General Union (SWGU), the International Muslim Women's Union (IMWU), the National Congress Party (the ruling Islamist political party) and the Popular Congress Party (the Islamist party in opposition).[2] I employ the concept Islamist feminists and not Islamic feminism in this article in order to differentiate between two

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[2] A minimalist definition of Islamism, then, can be said to be a Shariafication or Islamisation of the state and society. Islamists are thus engaged in a common political project; the Islamisation of state and society. Knut Vikør. *Between God and the Sultan: A History of Islamic Law* (London: Hurst, 2005)

competing interpretations of women's rights within the *shari'a* (Islamic law) in contemporary Sudan. Islamic feminists are indeed present within the opposition in Sudan and they advocate for gender equality in both the private and public spheres of law and the ratification of CEDAW.[3] Gender equality is understood in this article as women's equality before the law. The concept Islamic feminism figures widely in the academic literature and the definition offered is that gender equality is advocated within the framework of Islam. Islamist feminists, on the other hand, postulate a view which reinforces inequality between men and women within family law while simultaneously promoting equality in public law. CEDAW is deemed alien to Islam and a threat to the patriarchy underpinning Muslim families. Despite the fact that they reject CEDAW and gender equality, they promote feminist issues within the framework of Islam which empower women in the Sudanese state and society.

Firstly, the article elaborates on feminism as a concept. Secondly, the article explores Islamist feminist views on gender justice in the private and public spheres of Islamic law. Thirdly, the article analyses Islamists' arguments against ratifying CEDAW. Finally, the article critically discusses the validity of Islamist feminists' claims for local and authentic Islamic solutions for Sudanese women.

B. Feminism as a Contested Concept

Feminism is a historically contested concept with diverse and often contradicting definitions. I understand feminism in this article as "de facto feminist praxis".[4] In this perspective, "the meaning of feminism has changed over time and from places and is often disputed".[5] If feminists are defined by praxis, then feminism is and has always been contested. If feminist politics is shaped by its specific historical, political and cultural context, then it should be possible to identify Islamist feminism as one feminism among many in the same way that liberal, socialist, Marxist, radical and postmodern feminism are part of the feminist tradition. Islamist feminism is thus regarded as part of the evolving philosophy of feminism and the

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[3] For an overview of Islamic feminism see Margot Badran. 'Toward Islamic Feminisms: A Look at the Middle East'. In A .Afsaruddin (ed.) *Hermeneutics and Honor: Negotiating Female "Public" Space in Islamic/ate Societies*. (Cambridge, Massachusetts: Harvard University Press. 1999). Examples of renowned Islamic feminists globally are Amina Wadud, Leila Ahmed, Ziba Mir-Hosseini, Fatima Mernissi, Azizah Y. Al-Hibri, Ali Shaheen Sardar, Asma Barlas and Riffat Hassan. For more on Islamic feminism in Sudan, see Balghis al-Badri. 'Moslem Feminism in Sudan: A Critical Review' (paper presented at a conference on Islamic feminism, Barcelona, Spain, in November 2006).

[4] Patricia Misciagno. *Rethinking Feminist Identification: The Case of De Facto Feminism* (Westport: Praeger, 1997), p. 70-71.

[5] Leila J. Rupp and Verta Taylor. 'Forging Feminist Identity in an International Movement: A Collective Identity Approach to Feminism' (1999) 24 *Signs*, pp 363-386, p. 364.

social movement of women. 'Feminist', then, refers to a consciousness that women are unjustly treated simply because they are women. This consciousness may but need not be galvanised into action to seek to eradicate patriarchy altogether. My use of 'feminist' is deliberately broad in order to be inclusive rather than exclusive, because

> the way people view feminism is a function of their histories, agendas, and politics. It is important to contextualize feminism in time, place, class and groupings defined by ethnicity and creed. However, it is also illuminating to open the analytical lens to view feminism through a wide angle, consciously blurring internal distinctions across various divides such as those of class and ethnicity to see the wider culture of feminism. Definitions of feminism are ratified by concrete experiences and change in any given place or time. [6]

Mobilising around (women's) rights claims can be radically deployed as a tool of what Chela Sandoval calls "oppositional consciousness", that is, to "read the current situation of power" and to choose and adapt "the ideological form best suited to push against its configurations".[7] Sandoval acknowledges that there are limits to the rights tactic in that rights presume a desire for inclusion or assimilation within present traditions and values of the social order; radical societal transformation is not the goal. Islamist feminism might not involve the eradication of patriarchy, but it is an ongoing bargaining process with the Islamic state in which women are active participants. Women actively accommodate, resist, redefine, subvert and reinterpret patriarchal gender codes. The "patriarchal bargaining"[8] takes place at three levels: against patriarchal men who have historically monopolised the right to interpret Islam; against a patriarchal state which has codified Islam; and against 'the West', which has deemed Islam and feminism misogynous.

C. Islamist Feminism: Equality in the Public Sphere and Inequality in the Private Sphere

The Islamists came to power through a coup d'etat in 1989. Hasan al-Turabi, an internationally renowned Islamist who had already in 1973 started to advocate for women's

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[6] Margot Badran. *Femininity, Islam and Nation: Gender and the Making of Modern Egypt* (Princeton, N.J.: Princeton University Press, 1995), p. 20.
[7] Chela Sandoval. "US Third World Feminism: The Theory and Method of Oppositional Consciousness in the Postmodern World" (1991) 10 *Genders* ,pp. 1-24, p. 15.
[8] Taking the cue from Deniz Kandiyoti's concept patriarchal bargaining. Deniz Kandiyoti 'Bargaining with Patriarchy' (1988) 2:3 *Gender and Society*, pp. 274-290.

rights in Islam, was the engineer of the coup d'etat.[9] In 1973 Turabi published a small book with the title "Women between the Teaching of Religion and the Customs of Society",[10] in which he demands changes in the interpretation of women's rights in Islamic jurisprudence (*fiqh*). This pamphlet set the framework for the Islamist discourse on women's rights in Sudan. The basic assumption among the Islamists in Sudan is that many judicial rules have been adopted to qualify the *shari'a* to suit cherished customs and traditions and that historically men have read liberally and broadened the scope of rules granting authority to men, while reading literally and strictly those imposing limitations on women. They maintain that this discriminatory approach towards interpretation is widespread, that men tendentiously opt for an understanding that suits their prejudices and that subsequently the basic rights of women have been forsaken. Ihsan Ghabshawi, former minister of health, states that "the *fuqaha* (Islamic clergy) were all men and they interpreted the *shari'a* in their own favour".[11] The "blame" is placed on Muslim males, who owing to their weak commitment to religion tend to treat women oppressively and seek to exploit them. This has created a Muslim society in which the basic rights of women have been forsaken and the fundamentals of justice in the structure of Muslim society as enshrined in the *shari'a* have been completely overlooked.[12] They attribute the deviation from the Islamic ideal to pre-Islamic Arab values and prejudices, referring to *jahiliya* (ignorance). The lack of women's rights thus does not lie with the religion itself, but with deviation from the Islamic ideal in the actual history of Muslim societies. One Islamist feminist states that "the situation of women is not due to Islam, but tradition. Women suffer from the misunderstanding of Islam. The ideal is not practised, you see. Islam came with good rights for women, but we cannot enjoy our rights".[13]

Islamist women struggle primarily for women's rights within the public sphere and not within the private sphere that is the family law or personal status law.[14] This differentiates Islamist

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[9] Hasan al-Turabi. *Al-Mara bayna ta'alim al-din wa taqlid al-mujtama'* (Women between the Teachings of Religion and the Customs of Society) (Jeddah: Al-Dar al-Su'udiyya li al-Nashr wa al-Tawzi, 1973). [Translation mine].

[10] *Ibid.*

[11] Interview with Ihsan Ghabshawi, former secretary-general of the International General Women's Union and former health minister, 21 January 2008 in Khartoum.

[12] Interview with Dr. Aisha Rabshawi, member of the International General Women's Union and professor at the Islamic University in Omdurman, 19 January 2008 in Khartoum.

[13] *Ibid.*

[14] Habermas' model presupposes a separation of social interaction between a private and a public sphere. In modern societies the public sphere came to signify the realm of politics, where matters of state were dealt with, in contrast to the private sphere of the family. We are here dealing with categories of Greek origin. In the fully

women from Islamic feminists in Sudan and elsewhere, who aim to eradicate patriarchy or inequality within both the public and private spheres of law. The Islamist feminists postulate a view of Islam which reinforces patriarchy within the family, emphasising that "the family is the natural and fundamental unit in society".[15] The ruling Islamist party aims "to wipe out negative phenomenon that accompanies family disintegration".[16] Most Islamist women interviewed for this study are active seekers of gender justice or equity, but they consider equality within the family neither necessary nor desirable. Suad al-Fatih, who is Member of Parliament for the ruling Islamist National Congress Party (NCP), claims that "there is no equality in Islam in the Western sense, but equity. There is balance. The person nearer to Allah is worth more in Islam, that might be the man or the woman". For al-Fatih, *taqwa* matters more than equality in rights. *Taqwa* is the Islamic concept of 'God-consciousness' or 'righteousness'. She goes on to say: "A good Muslim should not fear anything but Allah. This is the essence of Islam […] I build my whole life on Islam. If I die of hunger, this is my destiny. All the life of a believer is good".[17] Islamist feminists differentiate clearly between fighting for gender equality and gender equity and the ultimate motivation underlying some of their stances is on behalf of *taqwa*.[18]

Islamist feminists support the Islamic family law which was codified by the Islamic state in 1991. The family law stipulates that a man can divorce his wives outside court by uttering the divorce sentence; it allows the man to take up to four wives; a woman needs a *wali* (male guardian) to get married; it is the man's responsibility to maintain his family financially (*nafaqa*).[19] According to Sudan al-Fatih the family law provides women with advantages. It

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developed Greek city-state the sphere of the *polis*, which was common to free citizens, was strictly separated from the *oikos*. Jürgen Habermas. *The Structural Transformation of the Public Sphere; An Inquiry into a Category of Bourgeois Society*. Translated by Thomas Burger. (Cambridge, Massachusetts: The MIT Press, 1993), p. 3.

[15] Interview with Farida Ibrahim, the President's advisor for legal affairs, 24 January 2008 in Khartoum.

[16] The National Congress Party. 'The National Dialogue Conference on the Political System' (Khartoum, 6 August-21 October 1990), p. 23.

[17] Interview with Suad al-Fatih, vice-president of the National Congress Party and advisor to the President, 31 January 2008 in Khartoum.

[18] This conforms well with Deeb's study of pious shi'i women in Lebanon. Lara Deeb. *An Enchanted Modern: Gender and Public Piety in Shi'i Lebanon* (Princeton and Oxford: Princeton University Press, 2006).

[19] The core elements of the Muslim Family Law of 1991 (*Qanun al-'Ahwal al-Shakhsiyya lil-Muslimin*) are the following. The age of consent for marriage is puberty. According to the Law, both parties have to consent to marriage. However, the woman needs a guardian (*wali*) to validate the marriage. The bridegroom is obliged to give the bride a dowry. The Law explicitly states that the dowry is considered the property of the wife (Articles 27-28). The man is the breadwinner of the family (Article 51). A man can deny his wife the right to work outside the home, even in cases where he himself fails in his financial obligation (Articles 91 to Article 95). A man is also allowed to marry up to four wives, although he has to treat all his wives justly (Article 51(d)). A husband can divorce (*talaq*) his wife outside the court for no reason whatsoever. The divorce will come into force when

does not represent discrimination in her opinion. She claims: "A man is *qiwama*, the man serves the woman. Islam spoils women; a woman's rights in Islam are the man's duty". *Qiwama,* she explains, can be translated as guardianship or patriarchy.[20] However, guardianship is the most common translation in the literature.

However, this does not mean that Islamist women are against equality with regard to work, education and political affairs. Sudanese women serve as judges, ambassadors, ministers, members of parliaments and professors, and a woman ran as a candidate for the presidency for the first time in Sudanese history in the elections in April 2010. The Islamists have opened new avenues for women, which conforms well to findings from Morocco that claim that Islamism has carved out greater space for women.[21] Raga Hassan Khalifa, the president of the Islamist-backed organisation the Sudan Women's General Union, explains that "*qiwama* within the family does not mean that all men are responsible for all women also in the public sphere". Raga Hassan Khalifa goes on to give an example: "The janitor of this building (speaking about the building of Sudan Women's General Union) is financially responsible for his wife and his family, but here I am the responsible one, I am the person on top and he has to do whatever I decide that he should do". Within the public sphere, Islamist women demand full equality for women before the law. But they simultaneously maintain *qiwama* within the family and stress the importance of *nafaqa* (maintenance). The Islamists do not view this as a

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he utters the divorce sentence "I divorce you". The husband has the right to take the wife back if he revokes the divorce sentence within the *idda*. *Idda* is a waiting period of three months after the divorce. The wife can only obtain a divorce in court (*tatliq*: a divorce granted by a judge) on certain conditions stipulated by the Law. They are: (1) if the husband fails to fulfil his financial obligation to support her (*nafaqa*); (2) if her husband has more than one wife and she can prove that her husband does not treat all his wives justly; (3) if the husband has a defect she did not know about before marriage; (4) if the husband suffers from an incurable mental illness; (5) if the husband is impotent; (6) if he behaves cruelly; (7) if he is abroad for more than one year; and (8) if the husband is sentenced to prison for more than two years. The wife can also obtain a divorce if a judge declares her to be disobedient (*nushuz*) to her husband (Articles 151-203). The wife is entitled to financial maintenance (*nafaqa*) up to six months after the divorce. The husband is the financial provider for the children even when they are under the custody of the mother. The father is financially responsible for his daughters until marriage and for his sons until they provide for themselves. The mother has custody (*hadana*) of her daughters until they are 9 years old and of her sons until they are 7 years old. After this, the principle "the best interests of the child" (*maslaha al-tifl*) applies in some cases. But if the woman remarries, the father will automatically get custody of the children. The inheritance laws are in accordance with the classical *shari'a*. A woman inherits half the amount of property that her brother(s) inherits. The reasoning behind the inheritance law is that the husband is the breadwinner of the family. So a woman's inheritance is then considered her own property, while a man's inheritance will be used to fulfil his financial obligations (*nafaqa*) within the family. *Qanun al-'Ahwal al-Shakhsiyya lil-Muslimin* (The Muslim Personal Status Law). (Khartoum, 1991).
[20] Interview with Suad al-Fatih, *supra* note 17.
[21] See Laurel Rapp. 'The Challenges and Opportunities Moroccan Islamist Movements pose to Women's Political Participation' (Paper presented at "Political Islam and Democracy", Center for the study of Islam and democracy, 14 May 2008).

contradiction, rather as an advantage. Abu Qashawa, who was a member of the main decision-making body within the ruling party, explains:

> Similar rights refer to equality and degree of advantage refers to discrimination. These two concepts are purposely mentioned in this Quranic text (*surat al-bakarah* verse 228) so that the Muslim should not get confused or assume a contradiction between the two concepts and their connotation on gender relations […] the degree of advantage should be understood within the thesis of *qiwama,* which obliges men to support and sustain the household financially, but this does not necessarily imply that *qiwama* entails sexual inequality.[22]

Critics and opponents of the Islamist regime in Sudan would often refer to the paradox that a woman has the right to become the president of Sudan in accordance with the constitution (2005), but in accordance with the Muslim family law (1991) her husband is (financially) responsible for her. But Islamist women (and men) do not see a contradiction between *qiwama* within the family and a woman president. Hasan al-Turabi states that

> A woman can be the leader of a country if she is the best of all the candidates and the one most capable of meeting the challenges facing the country. The country may be in social, economic, or military difficulties [….] Depending on the difficulties, I vote for this person or that, according to the current needs.[23]

Abu Qashawa explains how Islamist women reinterpret Islam to further the political rights of women. She says: "we try to find a link between the time of Prophet Muhammad and the role given to women then and today's society. We work hard to make the decision-makers realize that it is important for women to participate in politics. It is part of the religion." She claims further that a woman "can be head of state. Some refer to a *hadith* saying that a woman cannot have the top position. But I do not find any definite saying in the *Qur'an.*"[24] The *hadith* she is referring to stipulates that "those who entrust their affairs to a woman will never know prosperity". The *hadith* appears in the Sahih of al Bukhari, which is one of six major *hadith* collections in Sunni Islam. According to Fatima Mernissi, "this *hadith* is the sledgehammer

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[22] Suad Abu Qashawa in Nagwa Mohamed Ali Al-Bashir. *Islamist Women's Politics and Gender Activism: A Case Study from Sudan* (Vienna: unpublished PhD in social science, 2003),p. 210-211.

[23] Interview with Hasan al-Turabi, Islamist thinker and leader of the Popular National Congress, 20 February 2008 in Khartoum, Sudan.

[24] Interview with Suad Abu Qashawa, representative in the main decision-making organ of the National Congress Party (*maktab al-qiyadi*) and former member of parliament and professor at the University of Khartoum, 29 January 2008 in Khartoum, Sudan.

argument used by those who want to exclude women from politics" and further that "this *hadith* is so important that it is practically impossible to discuss the question of women's political rights without referring to it, debating it, and taking a position on it".[25]

D. In Search of an Alternative Feminism: CEDAW Rejected as Western Universalism Alien to Islam

Interviews with many of the Islamist women activists revealed rejection and even contempt for the concept of feminism, which they interpret not only as the eradication of patriarchy in both the private and public spheres of law, but also as a movement to free women from all social constraints and obligations to the family and community, leading to sexual chaos (*fitna*), moral corruption, excessive individualism and secularism (understood as an a-religious or anti-religious doctrine). Their understanding of Western feminism, which is a historically contested concept with diverse and often competing definitions, is as a monolithic static entity which is backward and ignorant. Suad al-Fatih spoke of Western feminists as ignorant because they deem Islam to be misogynous in respect of women's empowerment.[26] Wisal al-Mahdi, a lawyer and Hasan al-Turabi's wife, asserts that "Islam gave women their natural rights, but we do not want feminism. Feminism is distorted, Islam is natural. We are content with Islam".[27] Western feminism is presented as distorted and alien to the Islamist image of Islam and gender arrangements. This image is an important underpinning of the establishment of an Islamic state in Sudan. Building on Benedict Anderson's imagined communities, the Islamic state in Sudan can be regarded as an imagined Islamic nation in which Muslim women carry a heavy burden of symbolic representation. They represent authentic Islam.

However, the opposition to Western feminism, whatever Western feminism may be, remains ambivalent, because while they are challenging Western tenets as unessential to Islamic societies, they simultaneously draw upon them in order to demonstrate their 'alternative' feminism. Lara Deeb's ethnographic work on the pious modern Shi'a women in Lebanon illustrates my point. She writes: "While pious Shi'is made an effort to undermine Western standards for defining modern-ness, at the same time they used those same Western standards

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[25] Fatima Mernissi. *The Veil and the Male Elites: A Feminist Interpretation of Women's Rights in Islam* (Reading, Mass.: Addison-Wesley 1991), p. 1, 4.

[26] Interview with Suad al-Fatih, *supra* note 17.

[27] Interview with Wisal al-Mahdi, Hasan al-Turabi's wife and former secretary general of the International Muslim Women's Union, 2 May 2008 in Khartoum.

to claim values as equally modern (…) as the West".[28] Islamist feminists attempt to undermine Western feminism, but at the same time they base their alternative feminism on the claim that it is equal to or better than the Western form. Wisal al-Mahdi speaks of "Western-inspired women who want careers, have fewer children" as an example of what the Islamic ideal is not. "God's intended job for women is the family", not individual interests and gains", she asserts.[29] Abu-Lughod and others make the important point that those who claim to reject feminism are *selectively* rejecting particular aspects or dominant codes of the Western feminist discourse: "Those who claim to reject feminist ideals of Western imports actually practice a form of selective repudiation that depends on significant occlusions".[30] According to Karam, if Western feminism is "rejected, this does not mean that a feminist consciousness and agenda is absent".[31]

The fundamental argument here is based on an assumption of cultural relativism, championed by postmodernists, namely that different cultures provide indigenous answers to their social problems which should be judged in the context of their own environment. Suad al-Fatih declares: "I do not force you to be like me, so you should not force me to be like you."[32] In the words of another Islamist activist, "the third world women do not have a voice, we are not engaged. We have our own issues and our own problems."[33] In their negotiation for both agency and 'relationality' to their larger social, religious, ethnic and national communities, Islamist feminists demonstrate their capacity for action in ways that at times confound the emancipatory vision of feminist politics rooted in liberal notions of the self.[34] Suad Joseph's concept of "relationality" provides a framework for understanding the dual emphasis on the individual and the collective.[35] For Islamist feminists, this is crucial not only to their senses of self but also to their understanding of Muslims as a group in Sudan and globally. The discourse is thus highly individualised and highly collective simultaneously. It is important to note that an important dimension of the Islamist discourse on women is global women's emancipation, but within an Islamic paradigm. Muslim women from 65 countries

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[28] Lara Deeb, *supra* note 18,p. 30.
[29] Interview with Wisal al-Mahdi, *supra* note 27.
[30] Lila Abu-Lughod *Remaking Women: Feminism and Modernity in the Middle East* (Princeton, N.J. : Princeton University Press, 1998).
[31] Azza Karam. *Women, Islamism and the State; Contemporary feminisms in Egypt. (*Basingstoke Palgrave Macmillan, 1997),p. 6.
[32] Interview with Suad al-Fatih, *supra* note 17.
[33] Interview with Maha H. Feraigon, Sudan Women's General Union, 23 April 2008 in Khartoum.
[34] Therese Saliba, Carolyn Allen and Judith A. Howard (eds) *Gender, Politics and Islam* (Chicago: University of Chicago Press, 2002).
[35] Lara Deeb, *supra* note 18, p. 31.

met in Khartoum in 1996 under the auspices of the Islamist government. They decided to organise themselves into the International Muslim Women's Union (IMWU). One of the objectives of the IMWU is to direct and guide "Muslim women and through them all the women of the world to work together to achieve progress in all aspects of life, inspired by Islamic values and teachings"; to educate "Muslim women in the vein of women empowerment to achieve their rights and assume their Islamic role in the society"; and to assist "women to overcome injustices and emancipating them from degrading and other practices incompatible with Islamic values and human dignity".[36] It is a transnational discourse calling for solidarity among women across contexts, providing Islamic solutions to the problems of contemporary Muslim women. The current situation of women is regarded as a consequence of misinterpretation of Islam, not Islam itself. If authentic Islam is restored, then women will achieve gender justice.

The Islamist government's failure to ratify CEDAW should not be regarded as a complete rejection of Western feminism, defined as a movement which campaigns for women's rights and interests. I agree with Abu-Lughod[37] that it is time to move beyond the Islam/West dichotomy that has clouded much analysis of Muslim women and "to fearlessly examine the processes of entanglement". Islamists advocate against the ratification of CEDAW, particularly article 16, and claim that it causes the family to disintegrate. Strong words are used in the debate. In the words of Farida Ibrahim, presidential legal advisor:

> [CEDAW is] against *shari'a* law and it does not represent the government's stance on women's rights. It destroys family values, legalizes abortion and prostitution under the umbrella of family values, gives equality to prostitutes and married women and legalizes lesbianism. It is a disaster for human beings.[38]

The main objection revolves around the family as an institution: "There are texts that are not in accordance with Islam. CEDAW gives the right to homosexuals. This is prohibited in Islam

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[36] International Muslim Women's Union. 'Objectives' www.imwu.org/1.htm, December 15 2009.
[37] Lila Abu-Lughod, *supra* note 30, p. 16.
[38] Farida Ibrahim in *Osrati* (*My Family*, a monthly magazine published in Khartoum). Quoted in International Crisis Group. 'Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda' (Africa Report 112 2006), p. 3 . Her position was confirmed in an interview with the author, *supra* note 15.

because it would abolish the natural family."[39] In other words, the convention, they claim, threatens to lead to family disintegration.

What is characteristic of the Islamists is that they stigmatise sexual independence as Western while simultaneously defending women's education and political rights and embracing the ideals of bourgeois marriage. These "are elements of the turn-of-the-century modernist projects that might well carry the label 'feminist' and whose origins are just as entangled with the West as are the sexual mores singled out in horror".[40] The patriarchal and bourgeois ideal of a family with a male breadwinner is not necessarily Islamist or Islamic. According to Abu Lughod:

> The assertion of the proper role of women as wife and mother, with the assumption of a happy nuclear family […] is now […] couched in an Islamic religious idiom that gives it a pedigree. […] I would argue that this vision of family and women's proper relation to husband and children is profoundly modern and its sources are entwined with the West. [41]

If we move beyond the "symbol" politics of gender in the highly polarised context of an Islamic state facing national and international pressure, the Islamist discourse on women illustrates how "Western" and "Islamic" normative orders are intertwined with each other, constituting each other dialectically rather than being the autonomous or semi-autonomous legalities we sometimes see them as. It might perhaps be described as a situation in which there is "an intersection of different legal orders" creating a context in which diverse legal spaces are "superimposed, interpenetrated, and mixed".[42] This perspective of "interlegality" suggests that the interaction is a continuous and fluid process best described as that between waves or clouds or rivulets rather than between hard, stable entities such as rocks or billiard balls.[43] Islam, or rather (re)imaginations of Islam, mediates these negotiation processes.

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[39] Interview with Hassanat Awad Satti, assistant Professor at the International University of Africa and member of the National Congress Party, 13 January 2008 in Khartoum.

[40] Lila Abu-Lughod, *supra* note 30, p. 243-44.

[41] Abu-Lughod in Karin Willemse. 'On Globalization, Gender and the Nation-State: Muslim Masculinity and the Urban Middle Class Family in Islamist Sudan', in T. Davids and F. Van Driel (eds) *The Gender Question in Globalization: Changing Perspectives and Practices* (Aldershot: Ashgate, 2005), p.161.

[42] Boaventura de Sousa Santos. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (London: Routledge, 1995), p. 473.

[43] William Twining. 'Diffusion and Globalization Discourse' (2006) 47:2 *Harvard International Law Journal* , pp. 507-515.

Islamist feminists, whilst agreeing that women's primary role is mainly as wives and mothers, demonstrate through their activism that their Islamism can be an emancipatory discourse.[44] Although they do not advocate for the eradication of patriarchy, they promote 'feminist' issues which empower women in the Sudanese state and society. This conforms to Anne Sofie Roald's study of the Muslim Brotherhood's reception of CEDAW in Jordan. By analysing various political stands it became apparent that Islamists on the one hand reject CEDAW and gender equality, and on the other promote issues which in the long run might empower women in Jordanian society. There is thus a trend towards female empowerment in the organisation of the Muslim Brotherhood, according to Roald.[45]

E. Universal Islamism: The lack of Habitus among the Grassroots in Sudan

Islamist feminists in Sudan call for solidarity among women in the Islamic world so as to provide Islamic solutions for the problems of contemporary Muslim women. Their main (postmodernist) argument for not ratifying CEDAW is their quest for an alternative to Western feminism, which they claim is universalising in its premises. But do Islamist feminists provide cultural indigenous answers to the problems facing Sudanese women? It is a reasonable concern that elite-driven Islamist feminists reinforce the importance of the religious texts rather than put the socioeconomic conditions of the grassroots on the agenda. Sudan is a multi-religious country stricken by war, poverty and displacement. The Islamists' claim to authenticity and cultural indigenousness is legitimate within what they perceive as a Western hegemonic world order, but their discourse could be critiqued for a lack of substance in their own local communities. The Islamist feminist discourse is situated within an educated urban middle and upper class in Sudan.[46]

Due to poverty and high unemployment, *nafaqa* (maintenance) cases are the most frequent family court cases in Sudan. *Nafaqa* is the Islamic principle that enforces the man's financial responsibility to provide for his family. It is the Sudanese women who bring the cases to court because their husbands fail to provide financially for them. *Nafaqa* is in a way the essence of al-*qiwama* within the Muslim family law. Maha Freigoun at the central Sudan Islamist Women's General Union says:

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[44] Azza Karam, *supra* note 31, p.243.
[45] Anne Sofie Roald. 'Islamists in Jordan: Promoters of or Obstacles to Female Empowerment and Gender Equality?' (2009) 4:1 *Religion and Human Rights: An International Journal,* pp. 41-63.
[46] Karin Willemse, *supra* note 41.

> For us Muslims, *nafaqa* is by *shari'a* law for the man to pay for his family, take care of his family. Non-Muslims see the *nafaqa* not within the Islamic picture, but in terms of economic dependency. But I'm a working woman earning my own money. But I keep my money for my own, not for any other person. I can do whatever I want with it. My father, my brother and my husband should pay for whatever I need. There is no obligation for a woman.[47]

In September-November 2009, I went to visit a local branch of the Islamist Sudan Women's General Union near an IDP camp in Jebel Aulie. It is about 2 hours' drive from Khartoum. It is nonetheless a journey from an urban centre to a poor periphery where mud houses form the landscape. When I asked the women in Jebel Aulie about this Islamist ideal concerning *nafaqa*, the women at the centre all laughed. They laughed and declared "*ya reet*", which translates into "I wish", because it is an ideal which is removed from their everyday lives. *They* are the ones who provide economically for themselves and their children, they say, and definitely not their husbands. All women must work, because the men do not. Electricity bills arrive in the name of the husband, but are paid with the money the wife has earned. Ideally they wish they could rely on the husband to look after them financially, but the situation is that many women must resort to legal action to get money for the household. Maintenance cases form the majority of family law cases in the local court in Jebal Aulie. I went to visit the court and talked to some of the people there. I was guided to the administrative centre of the court, which was relatively small. Walking into the area, women and men were sitting outside the court on the ground in the shadow waiting their turn. The most frequent cases in this court are criminal, related to murder and violence, and *nafaqa*. In Islamic *shari'a*, *nafaqa* is defined as an obligation of material support for the wife and children. This is a gendered entity in Islamic marriage, as long as the marriage has been consummated. When the marriage is consummated, the husband becomes responsible for providing his wife and children born of the marriage with food, clothing and shelter regardless of the wife's own resources. This obligation is stated in the *Qur'an*; it reads as follows**:** "Men are protectors and maintainers of women because God has given them the one more than the other, and because they support them from their means [their

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[47] Interview with Maha Freigoun, *supra* note 33

money]" (*Qur'an* 4: 34). Failure of the husband to provide the *nafaqa* may result in a jail sentence.[48]

But poverty is widespread in Sudan. UNDP's 2008 Human Development Report ranked the country 147th among 177 countries. According to a 2007 joint World Bank-UNDP mission, about 60-75 per cent of the population in the north and 90 per cent in the south are estimated to be living below the poverty line of less than US $ 1 a day. The hardest hit by poverty are people living in rural areas, in particular women and internally displaced people, who constitute about 12 per cent of the population.[49] Some of the women who come to the centre in Jebel Aulie with their children to go to the kindergarten work in the informal labour market as street vendors because their husbands do not provide for them. In most rural areas, women work in the agricultural sector on the land of their husbands or brothers or fathers.[50] Many of the people in Jebel Aulie are internally displaced people from southern Sudan, but also from Western Sudan and the Darfur region. Not only are many of the women in Jebel Aulie non-Muslims who do not regard Islam as the solution, but the women in the area live in a world that is far from the Islamist ideal of *nafaqa*. Their everyday struggles are important points of criticism of the Islamists' claim to provide culturally indigenous solutions for Sudanese women and on that basis proclaim that Sudan should not ratify CEDAW. The class dimension is evident in the "patriarchy" arguments for *nafaqa,* which is based on Islamic texts rather than reflecting the hardships and socioeconomic position of the great majority of Sudanese women.

F. Conclusion

The debates on women's rights in Islam are not only a product of internal negotiation and renegotiation by Sudanese Muslim women, but also shaped by the external impetus, regionally and internationally, from CEDAW. These debates are interlinked on multiple levels, and the contradictions and negotiations between them take different forms. There are competing interpretations of women's rights within Islamic law which fly "in the face of

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[48] Liv Tønnessen and Hilde Kjøstvedt. *The Politics of Women's Representation in Sudan: Debating Women's Rights in Islam from the Elites to the Grassroots* (Bergen: Chr. Michelsen Institute, 2010).
[49] United Nations Development Programme (UNDP). 'The UN Millennium Development Goals in Sudan' www.sd.undp.org/mdg_sudan.htm ,January 15, 2010.
[50] Balghis al-Badri. 'Sudanese Women Profile: Indicators and Empowerment Strategies' (paper presented Pathways to Wellbeing and Justice: Constructing a Concept of Women's Empowerment, in Cairo, Egypt, September 2006), p. 14.

stubborn image of the passive, oppressed [Muslim] woman".[51] In their attempt to construct an Islamist feminist discourse they reject Western feminisms as unessential to Sudanese society. With claims to cultural authenticity, Islamists therefore deem ratification of CEDAW to be unnecessary and undesirable. Mazair Osman, the leader of the Islamist International Muslim Women's Union, explains the postmodernist argument: "I believe in equity (*insaf*) and not equality. If we are all the same, the world would be boring. We have to respect culture, religion, freedom. Cultural diversity will enrich the world.[52] They critique universalising notions of individualised selves and women's inherent desire for liberation and equality in all spheres of law. However, they simultaneously draw upon Western feminist normative orders in order to demonstrate their 'alternative' feminism.

Although the Islamist feminist discourse is empowering for Sudanese women in many ways, there are important points of criticism. The Islamist feminists' discourse is situated within a multi-religious Sudanese context, meaning that non-Muslim women become subaltern in their efforts to find solutions for injustices against women within the realm of Islam. Critiques of Islamist feminism in research on gendered citizenship, particularly in a multi-religious state like Sudan which has endured several bloody civil wars between the Muslim north and the predominantly non-Muslim south, is that the "other" (non-Muslim women) is absent in the Islamist women's feminism. The codification of Muslim family law in 1991 displays and reflects the priorities of the ruling regime or power holders regarding the distribution of rights and duties within the family among the state's *Muslim* citizens. The family laws of non-Muslim women's rights were not codified and are absent in the Arab-Muslim's gender discourse. This must be understood in light of an Islamic state which has continually attempted to Islamise the non-Muslims by force. Gender has subsequently served as a boundary marker in the discourses on inclusion and exclusion from the *Islamic* state in Sudan. [53]

Through its discussion of *nafaqa*, this article shows that the discursive strategy of Islamist feminists not only demarcates boundaries between Muslim and non-Muslim women, but also

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[51] Miriam Cook. *Women Claim Islam: Creating Islamic Feminism through Literature* (Routledge: New York and London, 2001), p. 155.

[52] Interview with Mazair Osman, secretary general of the International Muslim Women's Union, 21 January 2008.

[53] Liv Tønnessen. 'Gendered Citizenship in Sudan: Competing Debates on Family Laws among Northern and Southern Elites in Khartoum'(2008) 13:4. *The Journal of North African Studies*, pp. 455-469; Karin Willemse, *supra* note 41.

that it excludes the "other" from within its own group, namely grassroots women.[54] The patriarchal ideal underpinning the urban educated Islamist imagining of *nafaqa* as an advantage and not inequality does not reflect the situation of rural, uneducated and poor women in Jebel Aulie who struggle on a daily basis to support their families. A reasonable concern is that elite-driven Islamist feminists reinforce the importance of Islamic texts rather than put the socioeconomic conditions of the grassroots as a starting point for discussing how to improve women's situation in Sudan. Sudanese Islamist women's claims for cultural authenticity and indigenous answers thus seem to lack a grassroots perspective and can paradoxically be as equally universalising in their premises as so-called Western feminisms. The Islamist postmodernist arguments for not ratifying CEDAW are thus weakened.

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[54] Deniz Kandiyoti. *Women, Islam and the State* (Philadelphia: Temple University Press, 1991), p. 8.

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