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Enfranchised Minors: Women as People in the Middle East after the 2011 Arab Uprisings

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Abstract: The civic status of female citizens in the Middle East and North Africa (MENA) region is conceptualized as “enfranchised minorhood” which reflects the confined position of adult women as legal minors under the trusteeship of male kin in family law, criminal law, and nationality law. During and in the aftermath of the Uprisings that erupted throughout MENA in 2011, female lawyers in Morocco, Lebanon, and Kuwait allied with women’s groups and pressured for reforms in patriarchal state laws. By 2015, reforms were manifest in criminal law; incremental in family law; and absent in nationality law. Theoretical conclusions based on comparative analysis of societal pressures in three states indicate that long historical trajectories are imperative for substantiating the expansion of female citizenship following the 2011 Uprisings. Additionally, the civic status of women in the MENA region is being strengthened under authoritarian monarchical rule in Kuwait and Morocco. A third finding is that pressures for reform have more visible reverberations in legal spheres with a clerical imprint such as family law and criminal law, while strengthened pressures in a secular legal sphere such as nationality law have been opposed more forcefully five years after the Uprisings.

Keywords: family law; nationality law; penal code; female lawyers; female citizenship; Morocco; Lebanon; Kuwait

“There is no consensus about the many issues involved in this area we call ‘family law’. Even an issue as whether divorce should be freely allowed continues to generate some, though muted, discussion.” [1].

—Martha A. Fineman

1. Introduction

I experienced the 2011 Uprisings throughout the Arab world—what came to be termed the “Arab Spring”—in self-imposed isolation trying to finalize my Ph.D. thesis at the library of the American University of Beirut (AUB). The birth of three children in the 1990s had interrupted my academic career. No revolution whatsoever was going to stop me now. Over the past two years I had carefully prepared for my four-month sabbatical (January–April 2011) away from teaching and home. Now was the time to write about rather than exercise citizenship [2].

Back then, millions around me—geographically speaking—rallied for political change proclaiming the famous slogan across the region: “The people want the fall of the regime.”¹ Quite perplexed, I was unable to give in to the courageous and refreshing celebration of this significant critical juncture [3] in

¹ The Arabic transliteration is “ash-sha’b yurid isqat an-nitham.” The Arabic word “nitham” may be translated into both “regime” or “political order.”

the modern history of the Middle East and North Africa (hereafter MENA).² Instead, I kept remorsefully asking myself: “Do women *really* count as people in Arab politics?” [4]. Evidently, from the material I was working on—an analysis and a comparison of family law reform and divorce in four Arab states between 1950 and 2010—female citizens in most contemporary Arab states do not count as people [5]. How could they, when the vast majority of the female *demos*³—the state’s enfranchised people—were under the guardianship of male kin before, in, and after marriage [6]? Women in MENA were, as I saw it, enfranchised minors: they had the right to vote, but did not have a voice of their own in terms of autonomous civic personhood.

The principle of male guardianship (*wilaya* in Arabic) in contemporary MENA states is, in general, embedded in several parts of state law, most importantly in family law⁴ where males are custodians of female kin in matters related to marriage, divorce, and child custody [7]; in social security laws where the position of head of household premises a male bread-winner while women and mothers are implicitly perceived as dependent household members [8,9]; in criminal law where domestic and sexualized violence within the family is either not categorized as a criminal act, or not defined as a penalized atrocity [10]; and in nationality laws of Levantine and Gulf states where nationality is transferred through paternal descent [11].

To the extent that female citizens in 15 out of the 18 MENA states compared here lack autonomous juridical personhood in one fundamental legal area, that of unconditional divorce, in my view, the majority of female citizens in MENA were de jure enfranchised legal minors in 2011. For, frankly speaking, how could you topple down “the authorities” when you are unable to topple down the authority at home—your husband?

As of 2016, the condition I label “enfranchised minorhood” is the most prominent characteristic that premises the legal status of the majority of women in MENA. Reiterating Fineman’s above-mentioned quote, I suggest that judicial access to unconditional divorce be seen as a central parameter that provides a prism through which women’s legal status and social position in MENA societies can be seen through. Divorce is here understood as a woman’s capacity to initiate and achieve a dissolution of a marital relationship independently of the husband’s acquiescence [12].

Importantly, whereas my point of departure in previous works focused on a woman’s capacity to initiate and obtain divorce, the analysis in this article circles around societal pressures by female lawyers to change patriarchal state laws where the civic personhood of women is contingent on, or mediated by, male kin. As such, it is the contained and contracted civic personhood of female citizens, here seen analytically as “enfranchised minors” because a female citizen has voting rights, i.e., political rights, without having civic rights to her own personhood, hence women’s incomplete citizenship in most MENA states.

Seen from a comparative perspective, state policies vary with reference to female citizens’ capacity to initiate and obtain divorce. The politics of divorce in each MENA state is therefore a significant parameter for exploring variations in the forces and structures that maintain a woman’s limited and mediated legal personhood. However, there are multiple other legal fields and state policies,

² My analysis covers 18 of the 22 members of The Arab League (excluding thus the four non-Arab speaking states of Comoros, Djibouti, Somalia, and Mauritania). A regional subdivision in MENA comprises of a western part, often referred to as *Maghreb* (“maghrib” is “west” in Arabic), that includes the North African states of Morocco, Algeria, Tunisia, Libya, and Egypt; an eastern part referred to as *Mashreq* (“mashriq” is “east” in Arabic) that includes Jordan, Syria, Lebanon, Palestine, and Iraq; and the Gulf region usually referred to as the *Khalij* (“khalij” means “gulf” in Arabic), which includes Yemen along with the six oil-rich member states of the Gulf Co-Operation Council (GCC) Saudi Arabia, Kuwait, Oman, Qatar, the United Arab Emirates (UAE), and Bahrain.

³ “*Demos*” is a Greek word that denotes generally the word for “people,” and more specifically in contemporary states, those who are categorized by decision-makers as holders of sovereign power and supreme authority “to engage in legislative and juridical functions.” [6]. For more on analytical, methodological approaches, and political dilemmas regarding the delineation of the *demos* in a polity, see ([2], pp. 39–61).

⁴ Family law is also known as “personal status law” (*qanun al-ahwal ash-shakhsyya*) in the Middle East. I use the two terms interchangeably. Importantly, personal status laws in MENA include will and inheritance, whereas civil and common law regimes would classify those as falling within estate law, or trusts and estates.

in addition to the politics of divorce, that contain female citizens' civic personhood. The main analysis in this article revolves around the variety of legal issues addressed by female lawyers in contemporary polities. Whereas divorce as a judicial issue remains a significant parameter of a female citizen's autonomy, I here expand my focus by looking at other legal aspects that impact a woman's legal personhood within three state laws: family law, criminal law, and nationality law.

The civic status of women in MENA states today can be compared to women's civic status in most Western liberal states when women got political rights. In a study of 28 European states, Rodríguez-Ruiz and Rubio-Marín note that, "[w]ith the main exception of Nordic countries, women gained suffrage rights before qualifying as independent individuals, through the recognition of equal rights with men in the private sphere." [13]. As such, the status of enfranchised minorhood has historical and transnational parallels.

Importantly, whereas a *de jure* legal right to divorce is significant for the expansion of female citizenship and for contracting women's status as enfranchised minors, strengthened legal rights in divorce are not necessarily accompanied by *de facto* strengthened civil rights for women in other legal spheres in MENA. However, there is evidence that legal capacity in divorce is essential for the expansion of other civil rights for women. In other words, divorce is a necessary but not sufficient condition for expanded female civic rights in MENA. The point I make below is that societal pressures for reforms in family law, as well as counterpressures against family law reform, and the legal fallouts of the tensions that arise have a spill-over effect on wider legal areas, including criminal law, penal codes, nationality law, and social security laws.

At the time of writing (September 2016), three North African states—Tunisia, Egypt, and Morocco—provide what feminist legal theorists label as basic *de jure* civil rights for their female citizens, if and when a woman's access to divorce is applied as a primal compass for enfranchised personhood at par with political enfranchisement, i.e., the right to vote and stand for election. My approach towards understanding expanded female citizenship in MENA is thus one that perceives reforms in the legal foundation of patriarchal state laws as structural for the democratization of MENA polities.

The emphasis on female legal autonomy applied here necessitates a clarification of the distinction made between the terms "civic" and "civil": "civic" denotes a person's status and reflects legalistic aspects of personhood as defined in the state's legislation such as personal status laws, while "civil" implies a set of material and immaterial rights which a person is entitled to by a particular civic status.

In this article, the civic disenfranchisement of female citizens in MENA, i.e., their confined and contracted status as legal minors under the trusteeship of males, is my point of departure for theorizing around female citizenship. Female citizenship implies here the set of civil, economic, and political rights as defined by the Constitution, the state's family law, nationality law, criminal law, and labor and social security laws. These laws regulate the civic legal capacity and civil autonomy of a female citizen in the polity and thereby structure the relationship between her and the state. Legal autonomy in the form of personhood is paramount. Civic legal autonomy refers here to the ownership of one's personhood or what political theorist Carole Pateman describes as "a very special kind of property, the property that individuals are held to own in their persons" [14].

What are the characteristics of enfranchised minorhood that permeate the legal status of women in the vast majority of states in MENA? Given different shades of patriarchal state laws, which claims were raised by women during and after the 2011 Arab Uprisings in demand for reforms that strengthen female autonomous legal personhood? These are main questions around which my discussion on pressures for legal change in the Middle East revolves.

The analysis starts with a historical overview of the imprint of religious law on state law in MENA followed by a typology over female citizenship, regime type, and women's civil rights in the region. The impact of transnational pressures for change since the late 1970s are pointed out in the second section, followed by an overview over issues and cases related to female civil rights addressed by more than 30 female lawyers and legal academicians interviewed during fieldwork in Morocco, Kuwait, and Lebanon throughout 2015. Some of these lawyers' views on reforms of family law, nationality law, and

criminal law are presented. I then point out segments in *Boundaries* that sharpened my observations on the contemporary legal position of women in MENA. Notwithstanding its three-decade long history, I found Robin L. West's article—which I had not read before the Summer of 2016—particularly fresh [15]. A critique of what she saw as the disengagement of feminist legal theorists in women's daily lives and pains in the late 1980s, West's analysis resonated instantaneously with my empirical findings on the engagement of some female lawyers in addressing domestic violence through legal mobilization in the aftermath of the 2011 Uprisings [16]. In conclusion, I suggest that pressures for expanded female citizenship in the Arab world is a caravan on the move where all states are proceeding towards more consolidated civil rights for women. MENA states are, however, not necessarily following a liberal formula, i.e. a path where reforms in patriarchal state laws are free from clerical tenets in authoritative religious texts such as Islamic jurisprudence (*shar'ia*) or Christian church laws. Moreover, expanded female citizenship is occurring under the auspices of authoritarian rule and militarized governance in the post-2011 era.

2. Imprint of Religious Law on State Law in MENA: A Historical Overview

In all MENA states, religious law was embedded in the state's legal structure after independence in ways that institutionalized religious law as part of the legal system in contemporary Arab states. In general, "religious law" refers to sacred texts, tenets, and provisions that apply as sources for social norms and rules of conduct both in spiritual and mundane matters. The imprint of religious law on state law in contemporary MENA states is multifaceted, and related to three main factors: (i) codification of religious law as state law; (ii) the institutionalization of the court system; and (iii) the ensuing partial secularization of the state's legal system and ensuing politicization of family law following the parallel existence of civil laws and religious laws in the state's legal corpus of laws [17].

Before the establishment of national states, the regulation and implementation of family law rulings in the existing court systems was largely under the auspices and legal authority of religious scholars and judges [18]. After independence, the authorities of each state created national legal systems with norms and rules that invariably catered for and reflected the religious, ethnic, and political characteristics of each individual state. While all parts of each state's legal system were based on Western legal standards of rationality and positive law—and thereby secularized—family law remains, to date, the only legal arena that is not secularized. In the majority of Arab states, religious law exists therefore as part of the state's legal system mainly through family law [19].

The formation of family law in each Arab state differs significantly when it comes to the way in which norms and rules were codified as state law. Codification varied according to which actors were regarded as legitimate participators; which persons were appointed by political rulers as members of codification committees; the array of sacral texts used as points of reference, and the selection of jurisprudence schools in applying and interpreting religious tenets into state law.

The codification of the 1953 personal status law in multi-religious Syria serves as an example: The 1953 Syrian family law is influenced by Islamic *shari'a* rulings and applies to all Syrian citizens. However, the Druze, Jewish, and Christian denominations have their own family laws that grant them autonomy in matters related to marriage and divorce through Articles 307 and 308. In all other matters, such as inheritance, guardianship, kinship, and adoption, the Syrian family law applies [20]. The law was prepared by a government commission which included Muslim religious scholars, civil lawyers, and political representatives who codified the Syrian family law on the basis of five sources: (1) the 1917 Ottoman family law; (2) the unofficial code prepared by the Egyptian jurist Qadri Pasha; (3) various Egyptian laws enacted between 1920 and 1946; (4) a treatise on personal status law drafted by the Damascene judge Ali al-Tantawi, based on his choices among different law schools according to principles most suitable to changing conditions; and (5) the choice of the committee members of various Islamic jurisprudence regulations in accordance with the Hanafi school ([21]; [22], p. 561).

The legal foundations of family law laid during the 1950s have, in general, remained unchanged for around five decades. During that period, women in MENA have lived under comparable family

law regimes. Within all religious denominations, similar cultural justifications and clerical arguments gave prominence to patriarchal family ideals: state laws privileged male citizens over female citizens, solidifying gendered and group-based citizenship.

Seen from a historical perspective, the period stretching between 1950 and 2000 saw the decolonization from foreign rule and national independence of different states in the MENA region. Throughout that five-decade period, female citizens in Tunisia were the only women in the region who were able to get a divorce without the husband's approval following the codification of the Tunisian family law in 1956 [23].

3. Societal and Transnational Pressures for Change in Family Law 1950–2010

In the late 1990s, transnational pressures for change in legal conditions related to female citizenship and family law coupled with “the rise of the global equality regime” [24,25] created new terms for forming and applying domestic policy. All MENA states have over the past two decades been exposed to similar exogenous forces of change, most forcefully pressures for economic and financial globalization, adjustment to international markets, political liberalization through media and international agencies, and—particularly significant for women in the region—the UN Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) adopted in 1979 (hereafter the Woman's Convention) [26].

Although most MENA states have ratified the Woman's Convention, reservations have crippled the enforcement of the convention. Reservations relate to gender equality in nationality laws (Article 9), regulation of marriage and divorce (Article 16), freedom of movement, and of residence and domicile (Article 15), and Article 29 concerning arbitration between states in the event of dispute. These grave shortcomings notwithstanding, the impact of the Woman's Convention cannot be measured only in terms of reform in state law, although legislative change is an objective. The Woman's Convention has served well as a legal platform and program of action which has given, and still lends, strength to calls for change that have been part and parcel of women's emancipation in the region since colonial times [27]. It impacts the mindset and actions of reformers who seek to strengthen the legal autonomy of women in the region. As such, the Woman's Convention has, for nearly four decades, been a significant legal-political driving force for change, as well as a formidable inspiration at the individual and group level for women activists of various ideological and religious shades.⁵

By the end of the 20th century, the re-codification of family law had become a contested political field of dissent between opponents and proponents of reform in different states in the region [28]. Women's groups and human rights groups throughout the region pressured for change. When Law No. 1 passed through parliament in January 2000, Egypt was the second Arab state that had opened up for no-fault divorce, popularly known as *khul'*-divorce [29]. A few years later Morocco introduced a no-fault divorce in 2004 when the personal status code, known as the *Mudawwana*, was reformed in parliament [30,31].

The status and rights of women within family law constitute central points—many observers argue, the focal points—of dissent in debates regarding the changing or maintaining of gendered segments of family laws in Arab states. Haddad and Stowasser indicate that it is “primarily in the areas of family law and gender relations that the struggles on how or even whether to maintain the validity of Islamic law have been paramount.” [32]. Likewise, Vikør points out that family law is “the

⁵ In interviews and conversations with more than fifty women activists, a majority of them lawyers and legal academicians, in Kuwait, Morocco, and Lebanon during 2015, women aged 25 years to over 70 years, referred to CEDAW as an important inspiration for their work with women's rights in their country. Particularly interesting were the recollection of two prominent members of the Muslim Brotherhood in Kuwait—Suad al-Jarallah (interviewed 16 March 2015) and Khawla al-Atiqi (interviewed 25 March 2015)—who pointed out that their participation at the Fourth World Conference on Women in Beijing in 1995 changed their way of thinking and how they strategized around the organization of Kuwaiti women in public education (al-Atiqi), and charity work (al-Jarallah).

most controversial area in relation to ‘modern,’ Western norms, in particular on issues of the position of women and gender.” [33].

At the heart of debates concerning family law lie segments that are seen as particularly gendered in ways that—feminists and human rights activists argue—impede women’s equal citizenship rights as compared to male citizens. Proponents for reform of family law question the legitimacy of parts of codified religious laws that serve as the state’s authoritative family law. They maintain that the codification of religious laws as state law bolsters and perpetuates patriarchal forms of dominance where male citizens are privileged socially, economically, and psychologically, compared to female citizens. Opponents of reform, such as religious scholars and members of conservative Islamist groupings, support status quo through maintaining clerical orthodoxy and patriarchal norms embedded in family law. They question the political regime’s judicial and legislative authority in promulgating religious laws that pertain to personal status and family affairs. They are also skeptical of what is seen as an undesirable secularization of social norms and values under the auspices of the state apparatus in ways that diminish the Islamic or Christian tenets and social norms within family law [34,35].

3.1. *A Typology of Female Citizenship 1920–2010*

Table 1 distinguishes between two fundamentally different sets of female civil rights: group-based civil rights reflect notions of citizens as members of kinship structures organized along patriarchal lines, often privileging male citizens over females; while individually based civil rights are grounded in a citizen’s direct membership in the state where she (or he) has autonomous rights guaranteed by state authorities regardless of religious or ethnic group affiliation. Individually based female citizenship is basically in line with gender equality dimensions embodied in the Woman’s Convention.

Five years after the 2011 Uprisings, the vast majority of the around 350 million female citizens live their lives under different shades of male guardianship regimes. By “male guardianship regimes” I mean the structuring and embedding, enactment, and enforcement of group-based civil rights that premise male over adult female citizens—hence women’s enfranchised minorhood. Through the exercise of state power by ruling authorities, and sanctioned by state laws—in particular family law, criminal law, and nationality law—female citizens experience various degrees of contracted, and male-mediated, legal status, which results in constrained and contained female citizenship.

The table reflects that, in the past fifty years, substantial reforms regarding women’s legal capacity have occurred mainly in North African states. In Tunisia, Egypt, and Morocco, for instance, state authorities and legislatures have endorsed policies where female citizens have acquired wider civil rights. In these relatively homogenous states, parliament has been more able to legislate reforms because of unitary court systems. By contrast, multireligious states such as Lebanon and Syria have dual court systems where religious groups with varied degrees of autonomy limit reforms through parliament. In Egypt and Morocco, unitary courts curbed clerical judicial authority over family law in the 1950s and weakened the resilience of conservative religious authorities. In these states, renewed transnational pressures for reform on gender equality after 1990 yielded strengthened female civil rights. In Syria and Lebanon, dual courts safeguard the judicial autonomy of clerics and enable them to resist pressures for family law reform more forcefully. In these states, little changed because the interests of political and religious authorities converge in ways that bolster group-based citizenship and constrain the civil rights of female citizens ([5], pp. 301–3).

Table 1 reflects also that, by 2010, there were differences between Arab states where female citizens had de jure civic status on an individual basis. Tunisia and Morocco stand out as the only Arab states where reforms in family law grant women minimum equal civil rights with men. In all other Arab states, women’s civic status and ensuing civil rights continue to be mediated through group-based citizenship ([2], pp. 96–106).

Table 1. Typology of female citizenship by type of political regime and form of civil rights in MENA 1920–2010.⁶

	Type of Political Regime		
	Hereditary Monarchy	One-Party Dominated Regime	Semi-Democratic
Individually based civil rights	Morocco (2004)	Tunisia (1956) South Yemen (1974–1990)	Turkey (1926)
Group-based civil rights	Jordan (1951)	Egypt (1920/1938)	Lebanon (1951/1962)
	Morocco (1957–2003)	Syria (1953)	Palestine (<i>draft law</i> 2005)
	Kuwait (1984)	Iraq (1959/ <i>Resolution</i> 2003)	Israel (1992)
	Qatar (2006)	Libya (1972)	Iraq post-2003?
	Oman (1997)	Algeria (1984)	
	UAE (2005)	Sudan (1991)	
	Bahrain (2009)	Yemen (1992) Iran (1967/ <i>draft</i> 2007)	

3.2. A Note on the Impact of War and War-Making on Female Citizenship after 2011

An important factor that not only maintains, but aggravates, the tenacity of the principle of male guardianship over female citizens of the MENA region is the long-term effect of war and war-making in Iraq since 2003, and Syria, Libya, and Yemen since 2011 [37,38]. The legal precariousness of women's legal status in war represents formidable challenges for research on women's legal autonomy and conditions for female citizenship in the region for three main reasons: first, citizenship has to be territorially bounded for it to have a substantial meaning in as far as the principle of national sovereignty reigns in international politics; secondly, internal migration and exodus out of the state following violent upheavals creates chaotic, multiple, complex, and overlapping administrative registration regimes. Receiving states, i.e., states where war migrants and refugees seek for abode, tend to maintain already existing registered data through documentation requirements that maintain the potency of patriarchal practices [39]. Thirdly, war and war-making reiterate and project conceptions of womanhood and manhood in ways that tend to emphasize masculinized and feminized ideals of manhood and womanhood [40].

⁶ States marked in red are the six states I compare by applying a pairwise most similar approach in my ongoing research. States marked in blue denote three non-Arab states included in order to juxtapose diverse patterns of membership in the state more clearly. The legal academician Welchman provides most of the information on dates of codification and recodification. See ([7], pp. 116–19). The date of codification of family law in each state is rendered in brackets with these clarifications: For Bahrain, the codification date encompasses the Sunni community while the family law of the Shi'a community remains uncoded; in Lebanon, each of the 18 officially acknowledged religious denominations has independent jurisdiction in family law. The dates rendered here indicates that a common institutional judicial framework for Christian denominations was established in 1951 and a similar setup was established for Muslim denominations in 1962; for Egypt, regulations for the personal status of Muslims were formed in 1920 and a family law for Copts was formed in 1938; for Yemen, under the rule of the revolutionary government in South Yemen (1967–1990) women obtained an independent and equal civil status with men in marriage and divorce through Law of the Family (Law no. 1, 1974). The law was abolished upon the unification of North and South Yemen in 1990 and the introduction of Law no. 20 regarding Personal Status in 1992; for Iraq, Resolution 137 was passed in 2003 by the now dissolved Governing Council, and aimed at abrogating the existing unified code of 1959. Resolution 137 has, however, not been enacted, although Article 41 of the Constitution contemplates a new personal status law that is more in keeping with the rules of traditional authorities compared to pre-2003 conditions; for Iran, the Family Protection Law of 1967 was suspended with the Iranian revolution in 1979 and replaced with a conglomerate of transitional Islamized laws and fatwas that are deemed "Islamic" by the Judicial Supreme Council. Controversial deliberations remain around a draft law presented in 2007; for Palestine, a draft text on Palestinian code for personal status was presented in 2005 which is viewed by women's activists as limiting the civil rights of women; for Israel, 1992 denotes the year when the Basic Law of Human Dignity and Freedom was legislated [36]. More than forty years after Tunisia, Egypt (in 2000 through parliament) was the first Arab state to introduce a no-fault divorce *khul'* law where women were able to divorce their husbands on the condition that they give up economic rights. In Jordan, the executive introduced a similar Temporary law in 2001 (which was not approved twice by the Lower House), while Algeria introduced an amendment in 2005 enabling a woman to divorce without the consent of her husband.

In destabilized societies, the culture of war becomes a constitutive element, according to Heydemann. In his study on the impact of war on social change in MENA, he points out that “war making generates conflicts regarding not only the nature of citizenship and political authority, but also, and perhaps more fundamentally, regarding the definition of society as well” [41]. As such, extraordinarily high levels of violence have reframed the fundamentals upon which social relations are organized in post-2011 war ravaged spaces. Social relations are not only militarized, they are also shored up by extremist religious ideologies where stereotypical and hyper-masculinist portrayals of gender roles are central elements. These are played out by Islamic State (IS) fighters who, since 2014, endorse extremist practices such as beheading of hostages, rape, and the enslavement of women as instruments of war. At the same time, battle-trained Kurdish revolutionary women in military gear are fighting IS intruders at frontlines. Such opposed gender ideologies are part and parcel of warfare, argues the Danish social anthropologist Connie Carøe Christiansen. According to her, opposed gender ideologies go beyond the struggle for land and sovereignty, and reflect how men’s and women’s bodies are invested in symbols, and transformed into extremist portrayals of women and men in armed conflicts [42,43].

That said, it is far from true that all Arab states are breaking up. Governing authorities in some Arab states, such as in Tunisia, Morocco, Jordan, Lebanon, and the oil-rich Gulf states, have strengthened their rule, and are consolidating authoritarian governance in new ways. Contemporary Arab regimes continue thus to build their legitimacy on the principle of state sovereignty amidst post-2011 violent turmoil where authoritarian rule is being transformed [44–46]. In some Arab states, rulers are shaping new forms of authoritarianism, while the ruled—including female citizens and the women’s movement—are engaging in ways that seek to expand women’s legal capacity under authoritarianism [47]. Post-2011 MENA indicates that plenty of authoritarian polities remain to be studied [48]. Particularly interesting for our case regarding reforms that expand female citizens’ legal capacity and judicial autonomy are polities that are navigating to strategize in ways that shore up their rule. Monarchies, more than republics, have been remarkably responsive to, and active in, promoting women-friendly policies to maintain their rule in face of large conservative forces that are well funded and are able to win significantly in parliamentary elections [49,50].

In the following analysis, three states—Morocco, Lebanon, and Kuwait—are chosen to display the variety of political contexts within which the women’s movement operates in MENA. More specifically, it is the reflections, practices, and experiences of more than 30 interviewed female lawyers who work with women’s civil rights that are sought presented. Of these lawyers, roughly a third identified themselves as part of the women’s movement broadly conceived in their country.

4. Female Lawyers in Morocco, Lebanon and Kuwait

The three states of Morocco, Lebanon, and Kuwait were chosen mainly because of autonomous women’s associations which have existed in them for more than five decades. Two states—Morocco and Kuwait—are hereditary constitutional monarchies, while Lebanon is a multireligious republic. Morocco is a relatively large state with around 34 million inhabitants, while Lebanon and Kuwait are small states with around five and 3.5 million inhabitants, respectively. All three can be labeled as “semi-democratic,” though each state has its own characteristics.

Morocco, Lebanon, and Kuwait: Social and Economic Characteristics

Seen from a geo-political perspective, each state represents a sub-region in MENA, allowing thus for comparative analysis of similarities and differences with regard to experiences by female lawyers: Morocco is an example of a state in the North African *Maghreb* region, Lebanon is a Levantine state in the *Mashreq*, while Kuwait is a case of Gulf monarchy in the *Khalij*. Perhaps economic indicators reflect the sharpest difference between the three states. In terms of GDP/capita, Kuwait boasts roughly around 82,000 USD; Lebanon around 16,000 USD; and Morocco 7000 USD. As such, Kuwait is among the richest states in the world, while Lebanon and Morocco are middle- and low-income states, respectively [51]. Economic differences are in part reflected in educational achievements at the state

level where the percentage of literacy rates among female citizens aged 15–24 years is around 99% for Kuwait and Lebanon, and 74% for women in Morocco ([51], pp. 242–45).

Other significant differences between the three states relate to the degree of ethnic and sectarian divisions among the population. Morocco is a fairly homogenous Muslim majority society where the Arab-Amazigh (previously known as “Berber”) constitutes an ethnic division. In Lebanon, 18 religious denominations have given rise to invariably politicized sectarian divisions. Religious denominations have autonomy in forming and regulating personal status laws. This condition has resulted in an institutional setting where 15 religious courts manage matters related to family law.

In Kuwait, a tribal-urban social cleavage remains socially and politically potent, although citizens are urbanized. The majority of Kuwaitis are Sunni Muslims, while roughly 30% are Shi’a Muslims. Sectarianism has sharpened over the past decade following strengthened orthodoxy and the rise of Salafist Islam, but Kuwaiti rulers and the cosmopolitan merchant class ensure the perpetuation of basic civil rights for all citizens.

The citizen-noncitizen divide is a significant social division in Kuwait and Lebanon and represents a major characteristic factor that differentiates between the homogeneously Muslim-majority state of Morocco in the *Maghreb*, and Lebanon as a multi-religious state in the *Mashreq* on the one hand, and the globalized oil-rich Gulf state inhabited by a majority of noncitizen, mostly labor migrant population in the *Khalij*. Kuwaiti citizens comprise around 35% of the total number of inhabitants, while noncitizens—including Palestine and Syria refugees—comprise roughly 20% of the population in Lebanon. Demographic considerations in Kuwait and Lebanon are partly reflected in the politicization of reforms pertaining nationality laws. Legislative change that establish maternal *jus sanguinis* in current patriarchal nationality laws which would allow mothers to confer nationality to their children are contested. Contestation against reform in nationality law is partly reflected in the perspectives of female lawyers as pointed out further below [52]. By contrast, the Moroccan nationality law was reformed in 2007, removing almost all conditions that restrained Moroccan mothers from conferring Moroccan nationality to their children if married to noncitizens. Legislation occurred in parliament and was pressured for by the large migrant community in Europe [53].

Compared to other MENA states, Kuwait, Lebanon, and to a lesser degree Morocco, have multiple independent media outlets, and less constrained avenues for freedom of expression [54]. In terms of freedom indicators, Morocco, Lebanon, and Kuwait are the only three Arab states indexed as “partly free” by Freedom House [55]. In all three states, political order was maintained after 2011, along with autocratic features of the state apparatus which have become more evident, but nevertheless restrained, over the past six years.

5. Female Lawyers in Morocco, Lebanon, and Kuwait

The 2011 Uprisings rejuvenated calls for change in gendered state laws, and women in Arab states demonstrated their claims to citizenship [56]. Female lawyers were in the forefront. They led campaigns that pressed for strengthened female civil rights within state laws and acted as advisors to women’s and human rights’ groups.

Importantly, the number of female lawyers is on the rise in all three states, a factor partly related with the level of education in each state. In the past two decades, female lawyers have come to constitute roughly a third of the total number of practicing lawyers in (percentages in brackets) Kuwait (30), Lebanon (29), and Morocco (22). Similar figures were achieved over a period of around a hundred years in Norway (31), Denmark (28), Sweden (22), and Germany (32) [57,58].

Rising numbers of female lawyers is not necessarily correlated with reforms that strengthen women’s civil rights. Yet the main argument here is that the marked increase in the number of professional women who are directly involved in women’s legal issues has given leverage to demands for strengthening women’s rights in the three states since the turn of the millennium.

How do female lawyers relate to legal disparities between men’s and women’s civil rights in their daily juridical practice? How did they seek change in patriarchal state laws over the past five

years?⁷ The answers to these questions shed light on the role of female lawyers as potential agents of reform. Ten female lawyers were interviewed in each state during two weeks' fieldwork in Kuwait (March 2015), in Morocco (October–November 2015), and in Lebanon (December 2015).⁸

What kind of cases do female lawyers raise on behalf of litigants in the three states, and how did they perceive pressures to reforms in family law, nationality law, and criminal law during and in the aftermath of the 2011 Uprisings?

In Morocco, Lebanon, and Kuwait, female lawyers allied with women's groups and raised new claims to old calls for reforms in family law, criminal law, and nationality law. They sought to abolish segments in the penal code that protect male violators; legislate new laws on domestic violence; equalize parental rights between mothers and fathers within family law; and endorse a female citizen's right to confer citizenship to her children in nationality law.

Three findings based on interviews with the female lawyers are as follows: First, 20 of the 30 female lawyers interviewed question male prerogatives in state laws. Second, in alliance with activists, female lawyers raised old demands in new ways, such as strategically targeting specific segments of state laws, and by using media in raising people's knowledge on legal issues. Third, by 2015, reforms were manifest in criminal law, incremental in family law, and absent in nationality law.

Moreover, female lawyers have addressed male privileges in state laws by engaging in legal mobilization whereby activists and lawyers have been involved in social struggles, court litigation, and political processes with the purpose of "naming, blaming, and claiming" changes in the status quo ([16], p. 21). In Morocco, Lebanon, and Kuwait, female lawyers named specific segments in the penal code and in nationality law as ripe for change; blamed patriarchal readings of social norms and religious tenets in family law for disadvantaging women; and claimed legal reforms that equalize men's and women's civil rights in state laws.

Interviews with 10 female lawyers (a total of 30) in each state during 2015 substantiate five observations: (i) roughly half (14) engage in voluntary associations that address women's or children's rights; (ii) two-thirds (20) question male prerogatives in state laws; (iii) 13 mentioned that legislation or amendments that protect women and children are needed in criminal or penal codes; (iv) in Kuwait and Lebanon, female lawyers are less prone to address patriarchal nationality laws, and more likely to object to social security and welfare laws that premise males as heads of households after 2011; and (v) laws that affect women's and children's rights are connected in ways that merit more attention. In all three states, female lawyers pointed out that family law and nationality law overlap in cases

⁷ Fieldwork in the three states were conducted as part of the project *New Middle East (NewME): Emerging Political and Ideological Trends (2011–2015)* while I was a researcher at the Centre for Islamic and Middle East Studies, University of Oslo.

⁸ Ten female lawyers were interviewed in each state during two weeks' fieldwork in Kuwait (March 2015), in Morocco (October–November 2015), and in Lebanon (December 2015). The author wishes to thank female lawyers and legal academicians for generously sharing their time and views on the subject of women's civil rights in *Morocco*: Latifa el-Hassani (26 October 2015), Houria al-Hams (4 November 2015), Najat Fihri (27 October 2015), Lamia Kharraz (2 November 2015), Bushra al-Girnavi (2 November 2015), Fouzia Lahlou (29 October 2015), Mariama al-Riba'i (30 October 2015), *Khadija Rouggany (3 November 2015), Prof. Malika Benradi (5 November 2015), Somaia Belhaddad (4 November 2015), and Asma' Rziqat (23 October 2015); in *Lebanon*, Marie-Rose Zalzal (1 December 2015), *Laila Awada (4 December 2015), Prof. Amal Abdallah (11 December 2015), *Fadia Ghanem (9 December 2015), Nayla Geagea (4 December 2015), Nermine Siba'i (4 December 2015), Prof. Marguerite Helou (10 December 2015), Hanadi Chbeir el-Ass'ad (11 December 2015), Roula Abou Chabke (8 December 2015), *Iqbal Doughan (7 December 2015), Prof. Laila 'Azouri (10 December 2015), Prof. Leila Saadé (27 April 2016); and in *Kuwait*, lawyer and Prof. Badria al-Awadi (22 April 2012, 22 March 2015, and 24 April 2016), Nawf al-Rimah (17 March 2015), Prof. *Fatima al-Hewail (12 March 2015), *Areej Hamada (15 March 2015), Zahra Bin Haidar (17 March 2015), Nour Bin Haidar (17 March 2015), Shaikha al-Julaibi (15 April 2012, 23 March 2015), *Soad al-Shamaly (15 March 2015), Hagar al-Hagiri (9 March 2015), *Athra' al-Rifa'i (18 April 2012, 23 March 2015), and *Nivine Ma'rifi (16 March 2015). Participants or presenters of TV programs on legal issues on a regular basis are marked with (*). In Kuwait and Morocco, I applied a "go to court" strategy, enquiring at random whether female lawyers were willing to be interviewed. Those who responded positively were interviewed at the lawyer's private office, or at the Lawyers' Bar Association. In Lebanon, family law is adjudicated in different religious courts, and I could not randomly secure variation. I therefore interviewed female legal academicians and female lawyers who raise cases in five religious courts—the Shi'a, Sunni, Maronite Catholic, Greek Catholic (Melchite), and Greek Orthodox. In Kuwait, I did not use a questionnaire: interviews and conversations were non-structured. In Morocco and Lebanon, a questionnaire allowed open-ended answers.

related to child registration and access to nationality or public services, and that criminal law and family law are entangled in cases of divorce, housing, and child custody.

Table 2 renders a rough and general overview of the type of legal cases mentioned by the 30 female lawyers interviewed.

Table 2. Overview of type of issues related to women’s rights mentioned by the 30 female lawyers interviewed.

	Morocco	Lebanon	Kuwait
Underage marriage	6	3	not mentioned
Documentation/registration of marriage/proving paternity	all	all	2
Divorce/annulment of marriage/violence/harm	all	all	all
Violence against women and children/legislation on domestic violence	3	6	4
Registration of children where both parents are citizens/nationality/access to public welfare *	7	2	not mentioned
Nationality where mother is married to noncitizen	not mentioned/irrelevant	6	8
Housing	2	3	7
Child custody (<i>hadana</i>)/guardianship (<i>wilaya</i>)/adoption	all	all	all
Maintenance: divorced women’s capability of extracting financial rights	all	5	6
Inheritance **	7	1	2
Electronic crime	not mentioned	not mentioned	1
Corruption	not mentioned	2	1

Notes: * In Morocco and Lebanon, the registration of a child is a precondition for nationality, which again premises access to residence, education, and health services. Mothers, parents, and children face legal infringements of different kinds due to registration and administrative regimes; ** In Morocco, the issue of inheritance was hotly debated in the press during my fieldwork after the National Human Rights Council of Morocco (CNDH) released a report on 20 October 2015, which stated that “unequal inheritance legislation contributes to increasing women’s vulnerability to poverty.” The CNDH was criticized for allegedly suggesting equal inheritance between men and women as a means to address women’s poverty. Opponents argued that this would breach shari’a inheritance laws that grant a woman half of a man’s share [59]. Five of 10 female Moroccan lawyers interviewed mentioned that they did not support equal inheritance rights between men and women.

In general, maternal *jus sanguinis*—a mother’s right to transfer her nationality to her children—comes into play only in exceptional cases: when a child is a foundling, born out of wedlock, and when the father is of unknown nationality or stateless. In practice, however—and roughly until 2005—even with these specified legal conditions, women in most MENA states did not have an autonomous legal capacity to confer their nationality to their children for several reasons: (i) birth registration requires women to have ID-cards they are not able, or incapable of obtaining; (ii) regulations to register unknown fathers are exacerbated administratively through additional, and not always, explicitly stated requirements; (iii) peril that a girl/woman be judicially prosecuted by state officials or kin for breaching the criminal code following sexual acts deemed as illicit by law; and (iv) moral norms that ostracize women socially and discourage them from publicly registering a child whose father is unwilling or oblivious in acknowledging fatherhood.

Three main trends—three Rs—with reference to female lawyers’ legal mobilization and pressures to reform patriarchal state laws can be substantiated based on Table 2: First, female lawyers are *re-reading* male privileges in family law. Second, they are *rebellious* against violence, pressuring for amendments in the penal code, and for legislation of new laws on domestic violence. Third, they meet *resistance* against change by state authorities and politicians in nationality law. As such, “re-reading,” “rebellion,” and “resistance” are characteristics of female lawyers’ legal mobilization with reference to pressures for reform in patriarchal state laws in the past five years.

5.1. Re-Readings in Family Law after 2011

Family law is a domain in which female lawyers across the world tend to specialize. All 30 lawyers interviewed have addressed matters related to family law. Five said they no longer take such cases because of “too much headache, and little money,” as one put it. Female lawyers in each state re-read male privileges in family law after 2011 in different ways.

5.1.1. Morocco: Substantiating the 2004 Mudawwana Reform

Hailed as the most comprehensive legal reform of women’s civil rights in the Arab world since Tunisia passed its 1956 family law, the Moroccan family law reform in 2004—the mudawwana—heralded a new dawn for expanding female citizenship based on interpretations of Islamic religious texts, and inferences drawn from human rights conventions such as the Woman’s Convention, and the 1989 UN Convention on the Rights of the Child (CRC). The Moroccan legal reform has inspired women’s groups all over MENA, including Kuwait and Lebanon, in addressing family law reform.

A decade after the family law was reformed, female lawyers in Morocco are in general content with it. Najat Fihri explained: “Most importantly, the mudawwana changed the mentality. There is another way of thinking about the status of a woman. The man now calculates much more. He is obliged to treat the woman in another way, take into consideration that the mudawwana has given women rights.”

Despite an overall content, six lawyers say that serious challenges remain in implementing the law, particularly in relation to underage marriage; documentation of marriage and registration of children; and in divorced women’s capability of extracting financial rights. Some remark that divorce has gone viral. Mariama al-Rabi’i pointed out: “The increase in divorce cases is alarming. The judge is obliged to try to reconcile the couple. This process creates so much more work for us...the children are victims. We have young women who leave their children in hospitals, single mothers afraid of scandal. The mudawwana has not succeeded in protecting children.”

Al-Rabi’i referred to obstacles that face children born to single mothers whose registration is exacerbated by administrative measures that shore up the principle of paternity as the main legitimizing principle for child registration in the Civil Status Booklet ([59], see points 49 and 50). This point illustrates that although state laws articulate equality between women and men, administrative regimes support sexual norms that condition fatherhood as the principle for legitimizing a Moroccan child’s civil rights.

Three lawyers questioned rollbacks following rulings after 2011 by judges who deny women maintenance (nafaqa) because they initiated divorce. “Is this a masculine reading of religious doctrine?” asked Latifa el-Hassani, read from the Qur’an, and added: “My reading [of the religious text] supports another understanding...I do not fight for the woman. I fight for her rights.” After finishing her law degree in civil law in 1989, el-Hassani took courses in Islamic finance and Islamic jurisprudence (shari’a) in Malaysia and Indonesia in 2008 and 2011. “The mudawwana is extracted from the shari’a, therefore I have to understand the shari’a. By studying it, I can serve my nation with my knowledge,” she stated.

Picking up on the same line of argument, but from a secular-oriented perspective, fellow lawyer Khadija Rouggany has been active in women’s associations since 1993. She clarified: “There has always been opposition against the mudawwana, and this opposition continues. There are still lots of points that rest on inequality: differences between men and women in how marital relationship ends, in children’s custody, in inheritance, in guardianship over children—these are based and continue to be based on inequality.” Nevertheless, Rouggany emphasized that the 2004 reform introduced changes which are “in themselves a form of resistance,” adding that “there is a widespread masculine mentality in the field where people work in implementing the law—judges, female lawyers, male lawyers, experts—they all share a common masculine mentality in an opposition towards achieving the mudawwana reforms.”

In short, el-Hassani and Rouggany agree on the principle of safeguarding women's rights, from two different points of entry—one based on religious interpretations of a clerical text that supports women's financial rights, the other based on a critique of masculine mentalities which obstruct the implementation of the 2004 reforms in practice.

5.1.2. Lebanon and Family Law: Facing Clerical Authorities from within

After the millennium, efforts at addressing Lebanese women's position within family law started in 2006, and were renewed between 2010 and 2011. The Family Rights Network [shabakat huquq al-usra], consisting of different women's associations, including the Working Women League in Lebanon (WWL), and the Democratic Women's League, was established with female lawyers comprising around one-fourth of its individual members. "After reading all fifteen laws on personal status we agreed that child custody (hadana) was the one issue that concerned women most, and that it constituted an act of violence," said lawyer and leader of the WWL Iqbal Dougan. She emphasized the interlinking of family law and violence which "need not be physical. Barring women from seeing, or being with, their children represents mental forms of violence." Women within the Sunni community started pressuring their religious leaders from within, approaching both politicians and clerics. In 2011, the age of children under the custody of a divorced mother was raised from seven years for boys and nine years for girls, up to twelve years for both. "After that, we distributed responsibilities: women lawyers from each sect are making similar demands to raise the age of custody and other issues such as maintenance," explained Dougan.

Lawyer Nayla Geagea recently finalized an expert report on women's rights within family law in Lebanon after nearly three years' research [60]. "When you see the reforms done in other Arab states, Lebanon is the worst. We are catching up with Egypt and Morocco," she said, adding, "We are now in a phase where we are concretizing issues raised in the study. For instance, introduce standardized marital contracts where Muslims women's rights are safeguarded. Similar contracts for Christian communities is more difficult. Marriage is regarded as a sacrament and therefore a religious matter." Nonetheless, Marie-Rose Zalzal noted that Christian communities are moving towards the equalization of rights between mothers and fathers in the family: "Recent changes towards equalization [musharaka] in marriage have occurred. Domestic violence or marital rape may be reason to annul marriage."

Hanadi Chbeir el-As'ad is a member of the family committee at the Lebanese Bar Association. She intended to work on standardizing marital contracts among Muslim communities: "Women can put any conditions they want in the marital contract: that the husband does not marry another woman, that she retains the right to divorce, or condition that children stay with her in case of divorce," she said.

Lebanese female lawyers believe in changing status quo laws through four main avenues: administrative measures, awareness-raising, formalizing religious tenets to safeguard women's civil rights, and bottom-up pressures by women from within the religious communities. To wrap up on Lebanon: the plurality of religious laws makes pressures for reform more difficult, because change has to be addressed separately. Internal pressures started in 2011 in the Sunni community, and they had a spill-over effect to other groups where female lawyers and allies from within each sect started pressuring for change from within.

5.1.3. Kuwait and Family Law: Mediatized Awareness-Raising

"In Kuwait, Sunni women are not able to marry who they want if the father does not agree, and Shi'a women are not able to get a divorce when they want if the husband disagrees," Nivine Ma'rafi pointed out when I met her in court in the morning. She represented a Shi'a woman seeking divorce. "The husband objects. We have been in a negotiation phase for two years. She is afraid of losing custody over her nine-year-old daughter, and is willing to trade her financial rights in order to obtain divorce," al-Rifa'i explained. Later that night, she presented a weekly TV program called Magazine on Scope TV, a private, Internet-based station, where women's civil rights within family law were

dealt with. Two women and two men—all were lawyers—discussed various aspects of the Kuwaiti family law.

Synergy effects between female lawyers and a supportive media is particularly noticeable in Kuwait and Lebanon: 9 of the 30 female lawyers interviewed (Morocco 1, Lebanon 3, and Kuwait 5) engaged in TV programs on legal issues, whereof five had their “debut” after 2011.

Kuwaiti media and networking activities have become significant sites of struggle for addressing women’s issues, including family law, at an extraordinarily rapid rate since Kuwaiti women received political rights in 2005, and after Kuwaiti media was liberalized in 2006. Kuwaiti women are raising claims, judging from women’s propensity to articulate their own demands, and in making use of the abundant number of technological facilities and media platforms. Matters that only a decade ago were regarded as sensitive, such as the interpretation of religious tenets in family law, divorce, and domestic violence, are discussed in public in new ways [61].

The medialization of family law issues is shored up by Kuwait’s oldest women’s association, the Women’s Cultural and Social Society (established in 1963), which joined forces with the United Nations Development Programme (UNDP) in creating the Wracati project [“my paper” in Arabic] in 2012. Lawyer Athra’ al-Rifa’i is involved in the project: “Divorce procedures are still difficult, but divorce has become considerably easier to obtain after 2003. The law ensures Kuwaiti women dignity in terms of basic economic rights,” she informed us. Prominent lawyer and former dean at the Faculty of Law at Kuwait University (1979–1982), professor Badria al-Awadhi is a pioneer in advocating Kuwaiti women’s rights. She pointed out that although the religious tide has grown stronger in recent years, Kuwaitis do not support fundamental religious leanings, but tend to prefer middle solutions: “Kuwaiti men, in general and particularly tribalists, do not accept the principle of equality. However, Kuwaiti women have become more educated. They are able to demand their rights. The Kuwaiti family law is not perfect. However, judges and the courts attend to women’s problems seriously.” Lawyers perceive the legislation of Law 12 on 22 March 2015, which establishes family courts, as an important institutional reform for strengthening judicial rulings in family law, and by extension preserving women’s and children’s civil rights.

Importantly, Kuwait is an affluent society, and this is reflected in the state’s generous welfare schemes. A new law on housing was legislated in 2011, in order to placate demands that have been pending in parliament since 1993. Seven of 10 Kuwaiti lawyers interviewed mentioned housing as an important part of women’s claims in cases of divorce and child custody. Conflicts regarding housing reflect the economic centrality of public housing and rent-free loans in Kuwaiti society, which are part of social welfare offered to citizens. Housing is, in principle, given to a couple when they marry. In reality, the marital home often becomes a male-controlled asset, because state laws privilege the male as head of household. Soad al-Shamaly pointed out: “The housing law has lots of holes for women, not for men. The Kuwaiti woman received housing rights in 2011, but regrettably she gets access to housing on certain conditions: she cannot inherit from her father or brother, and the loan she gets is half that of a male.”

In Kuwait, the articulation of family law after 2011 is characterized by a more open, explicit, and mediatized public sphere, where alternative views and interpretation of family law tenets are articulated more broadly than they were a decade ago. Women’s enfranchisement in 2005 has been a driver for raising women-related issues higher up on the political agenda, not only by women but also by Islamist politicians who opposed women’s enfranchisement in 2005 [62]. The establishment of family courts reflects political will in carrying out institutional reforms that are envisaged to safeguard women’s civil rights in family law cases.

To sum up on family law in the three states: As of 2015, reforms in family law are incremental, and characterized by a plurality of small changes; in Morocco, female lawyers struggle to substantiate women’s civil rights after the 2004 *mudawwana* reform; in Lebanon, they ally with women’s associations in pressuring for reforms in confessional groups; and in Kuwait, mediatized awareness-raising

on women's rights within family law has grown stronger, on a par with a decade of women's political enfranchisement.

5.2. Rebellion against Violence: Women's Rights in Penal and Criminal Laws

The transformation of body politics from a low politics to a high politics arena has been particularly stunning throughout and in the aftermath of the 2011 Arab Uprisings. Political sociologist Deniz Kandiyoti commented eloquently on the rise of body politics in 2013: "What is at stake is no longer just women and their bodies but the body politic itself." [63].

Before 2011, penal codes covered mainly violence in the public sphere. None of the three states had definitions for what constitutes "domestic violence," nor was familial violence seen in legal terms as a criminal act. The 2011 Uprisings yielded concerted collective efforts at articulating more forcefully the phenomenon of violence as a woman-centered political and legal issue. Two specific incidents led to turmoil on a massive scale: first, in Morocco, the suicide of 16-year-old Amina Filali in 2012, after her rapist married her, thereby evading prosecution according to Article 475 of the penal code; and second, in Lebanon, when 31-year-old Roula Yaacoub's husband was suspected, but found judicially not guilty, of beating her to death in July 2013. Rebellion against laws that did not address gendered violence was considerably reinforced after these two incidents.

5.2.1. Lebanon

In Lebanon, *Law on the protection of women and other members of the family from familial violence*—known as the "Protection law" or Law 293—passed through parliament in April 2014. Kafa, an association established in 2005 that addresses all forms of violence against women, spearheaded an intensive lobbying period. Five Lebanese lawyers interviewed said the law was a success and pioneering, because judges have been quick in implementing it, and because it now positions women's claims more adequately in court.

The legislation of Law 293 is a political breakthrough and a good example of women's legal mobilization in alliance with female lawyers after 2011. Lebanese lawyer Marie-Rose Zalzal has pushed for more than a decade on legislating a law on domestic violence. She commented on the period between 2012 and 2014 when pressures grew stronger:

The President was a failure, Parliament was a failure, the government was a failure—civil society, and Kafa in particular, was the leader. There was so much pressure on the government. Every word they said against the [draft] law, or against the women, became blown up on posters everywhere. There was very strong media pressure. Each MP was forced to be accountable for what he said. Legislating the law became an electoral matter, and I think that was very important, because the nominated MP who did not adopt this law would not be elected, not only by women, but also by all those who work with human rights. Therefore this law did not only put on social pressure, but also political pressure.

Zalzal's account of the legal mobilization process reflects how law and politics were intertwined when it came to pressuring for the legislation of the Protection Law in Lebanon in 2014.

5.2.2. Morocco

In Morocco, Amina Filali's suicide in 2012 spurred two changes: by January 2014, Article 475 of the penal code was revoked, and a law against violence was drafted. The latter has been pending with the government since 2013, while its legislation is being pressured by lawyers and human rights groups [64].

The 10 Moroccan lawyers interviewed point out poverty, illiteracy, ignorance, and underage marriage as some of the main causes of gendered violence. Some lawyers, like Houria al-Hams and Lamia Kharraz, pointed out that Morocco's level of socio-economic development is reflected at the

individual level, and that illiteracy among women in rural areas constitutes a formidable challenge to strengthening women's civil rights despite 2004 reform.

To put underage marriage, violence, and socio-economic development in a larger socio-economic context: the death of Amina Filali caused uproar because she was one of an estimated number of 60,000–800,000 girls aged under 15 who are employed as low-paid domestic workers ([65]; see point 51 in [59]). The phenomenon of child domestic work in Morocco is, to an extent, related to low literacy rates among women in Morocco, which is at around 41%. On this point, Morocco differs when compared to Kuwait and Lebanon, where literacy rates among women are 96% and 92% respectively. Importantly, labor force participation among female citizens in all three states lies at around 26%, while GDP (PPP per capita) differs widely: Morocco is a low-income country with 7040 USD, Lebanon is a middle-income country with 16,794 USD, while Kuwait is a high-income country with 79,395 USD ([66], pp. 30, 38, 274). These socio-economic factors give substance to important features of violence, where illiteracy is related to impoverish and illiterate Moroccan girls. By contrast, paid domestic workers in Lebanon and Kuwait are predominantly migrant female non-citizens. In short, domestic violence in Morocco has a double national face: it involves both domestic familial violence, and class-based violence related to poverty and the employment of rural girls.

5.2.3. Kuwait

No legal reform has occurred in state law in Kuwait with reference to violence against women since 2011. The issue has been, however, addressed at the judicial and ministerial levels.

In 2011, the Ministry of Interior promoted law graduate and criminal investigator Hagar al-Hagiri as the leader of the criminal investigating office in the district of Sharq. Two years later, in May 2014, al-Hagiri was one of the first twenty-two women chosen by the Ministry of Justice to enter training courses in order to become public prosecutor. In due course, she may become a judge—a position which no woman has held to date in Kuwait. “It is important for women to enter the field of investigation,” she said. “Female plaintiffs find it difficult to tell things to male investigators, such as about being beaten. The Interior Ministry supports the expansion of women's role as investigators because they see the positive impact of women's presence in sensitive cases” [67].

In March 2015, the Ministry of Justice and the Ministry of Religious Endowments sponsored the issue of violence against women and promoted it as a health-related concern. Lawyer Shaikha al-Julaibi held a lecture on the issue, urged for legislating a law on domestic violence, gathering statistics, and establishing shelter homes [68].

Another lawyer, Areej Hamada, raised a case in the Court of Cassation on behalf of a woman victim of electronic crime (hereafter, e-crime). The woman's name and pictures of her were distributed through social media without her consent, along with allegations of a condescending sexual nature. At the time of the interview, the case had been pending in court since 2013. In parallel with litigating “online bullying,” as she put it, Hamada pressured the government in public debates to legislate a law on e-crime: “It is a violent act against women's freedoms. We need means to address new types of crime. The accused can easily be released because the law has so many holes,” she said. In June 2015, the Kuwaiti parliament passed an e-crime law that came into effect in January 2016.⁹ It targeted what lawmakers saw as acts that promote terrorism, money laundering, and human trafficking through the Internet and social media. Hamada insisted that the e-crime law should also be seen as a necessary legal tool to protect women from gendered online harassment: “without legislation, we have no instruments to prosecute violators. This is also important for protecting children. Incest, for example. I have a case where I cannot do anything because there is no law,” she complained.

⁹ *Kuwait Times*, 4 June 2015 and 23 November 2015.

Hamada's argument illustrates that—notwithstanding the e-crime law, which targeted terrorism acts, mainly—institutional reforms with reference to violence signal top-down concern, without being supported by legislative reforms in criminal or penal laws in Kuwait.

The legislation of the e-crime law in 2016 in Kuwait reflects two other points related to the double-edged sword which women's issues fall into in Kuwait and the MENA monarchies, including Morocco. The politics of monarchical liberalization through women-friendly policies encompass balancing the interests of autocratic hereditary rule by holding two reins. First, by stretching out a soothing hand to conservative constituencies while filtering away orthodox leanings, including non-violent and legitimate criticism, thereby harnessing authoritarian rule. Second, by lending an ear, perhaps even two after 2011, to liberal and civic-oriented secular and religious groups who support semi-democratic political systems as long as they are rules-based ([44], pp. 173–88).

5.3. Resistance against Maternal *Jus Sanguinis* in Nationality Laws

Whereas women in Morocco gained a conditional right to confer nationality to their children in 2007, paternal nationality laws remain intact in Lebanon and Kuwait. There, women groups were among the first to be mobilized during the first phases of the Uprisings in March 2011. Women demanded reforms in patriarchal nationality laws, where nationality is conferred through paternal *jus sanguinis*—that is, through the blood of male kin. Article 1 of the Lebanese nationality law formed in 1925 states that “[e]very person born to a Lebanese father is Lebanese” [69], while Article 2 of the 1959 Kuwaiti nationality law states that “[a]ny person born in, or outside, Kuwait whose father is [a] Kuwaiti national shall be a Kuwaiti national himself.” [70].

In both states, legal mobilization generated resistance among decision-makers against change. The two states share contestations regarding the definition of who constitutes a citizen, the creation of statelessness as legal status (reflected in the *Bidun* in Kuwait, and the *maktumin* and *qayd ad-dars* persons in Lebanon), the politicization of census figures, the inclusion or exclusion of long-term residents based on religious or tribal affiliation, and the influx of war refugees and migrants into Lebanon and Kuwait since the 1940s, and Syrian refugees after 2011. Female citizens' demands for equal nationality, therefore, play into deeply political issues that Lebanon and Kuwait have grappled with since their establishment as territorial states in 1920 and 1922, respectively.

Few of the female lawyers interviewed had experience with nationality law cases. “I tell clients that it is like throwing your money out of the window,” said Lebanese lawyer Iqbal Dougan. She pointed out a significant political difference between litigating cases of nationality law and other types of legal cases. In nationality cases, a litigant has to raise a case against a powerful opponent: the state. Lawyers agree that reforming the nationality law is difficult. In both states, administrative measures in 2010 and 2011 reduced some of the socio-economic pressure on female citizens' families, such as lenient residency terms and access to public education [71]. Nevertheless, demands for reform in the nationality law grew stronger throughout 2011 in both states, because administrative measures do not safeguard the children of female citizens after they reach 18 years of age, and they remain noncitizens in their country of residence.

5.3.1. Kuwait and Pressures for Change in Nationality Laws after 2011

Whereas women's claims to abolish paternal nationality rights are similar in both states, protests were peaceful in Lebanon, while they escalated rapidly into violent confrontations in Kuwait [72]. Stateless *Bidun*, who number between 5%–10% of the 2.2 million inhabitants, and who are affiliated to Kuwaitis through tribal alliances and intermarriage, marched for the first time in demand of nationality [73]. Kuwaitis, including members of parliament and well-known politicians, were imprisoned on several occasions between 2011 and 2015. By September 2014, Kuwaiti authorities had stripped nationality from 33 Kuwaiti protestors [74].

Despite the tense political context, Kuwaiti women mobilized. In 2011, the association Kuwaiti Women with No Limits was established, and two years later, Fatima al-Hewail, a professor in law at

Kuwait University, joined as a volunteer legal advisor. “Not all politicians are supportive of women. The law is made and administered by males. Additionally, the Minister of Interior has discretionary power. We have to address this point much more seriously than we have done up to now. We have to differentiate between discretionary power and state sovereignty, when raising nationality cases in court,” she pointed out.

Lawyer Soad al-Shamaly had another opinion: “The nationality law is a sovereign law. It is difficult to raise anything that has to do with the nationality law in parliament. It is related to sovereignty according to what the leader of the state sees fit. I do not believe it will be changed at all,” she said. Referring to Kuwait’s generous welfare rights, lawyer Areej Hamada pointed out: “Kuwaiti nationality has many privileges not all nationalities have.”

Lawyer and professor of law, Badria al-Awadhi, suggested: “We could introduce Saudi Arabia’s “points system,” and grant children nationality according to criteria such as birth, affiliation with citizen kin, education, and residency.”

A powerful signal was sent to legislators and rulers when Kuwait’s leading women’s associations marked International Women’s day on 8 March 2015, which marked Kuwaiti women’s decade of political enfranchisement. Ten women’s groups and civil society organizations rallied under a banner with the text “Solidarity in support of the rights of children of a Kuwaiti female citizen married to a non-Kuwaiti.”¹⁰ The issue of mixed marriages between Kuwaiti women and non-Kuwaiti males, and the legal, social, and economic rights of children born in these mixed marriages, will most likely be among the most politicized issues with regard to strengthening female citizenship in Kuwait in the future.

5.3.2. Lebanon and Pressures for Change in Nationality Laws after 2011

In a symbolic move in December 2011, Lebanese women donated blood and insisted that it be analyzed to prove that it is as Lebanese as the blood of male citizens [75]. As of March 2011, the Collective for Research & Training on Development—*Action* (CRTD-A) (established in 2001) was a driving force behind pressures to amend the principle of paternity in nationality laws through demonstrations, sit-ins, and public debates.

Protests were peaceful, but forceful enough to pressure the government in March 2012 to establish a governmental nationality committee to address women’s demands. However, the patriarchal character of sectarianism among Lebanon’s 18 religious groups was demonstrated when six out of seven ministers signed a memorandum in the all-male cross-religious governmental committee in January 2013, where they rejected women’s claims for equal nationality rights with men. Two years later, in November 2015, parliament bolstered the right to nationality only to the male offspring of emigrants whose ancestors migrated from Lebanon between 1880 and 1920 [76,77].

Opposition against changing the nationality law comes also from female lawyers, such as Fadia Ghanem, a member of the woman’s committee at the Lebanese Bar Association. She shares political views with opponents of reform in nationality law: “I am against the Lebanese woman getting the right to give her nationality to somebody. Many people leave [Lebanon] and don’t come back. Also, by culture, [Christians] do not have many children...Muslims are the opposite. ‘Three children? It is shameful!’ Five, six, so that we can call it a family. Here, the demographic difference appears.” By preserving the current nationality law, she seeks to maintain “an equilibrium in demographic diversification,” as she put it.

Lawyer Iqbal Dougan, who volunteers as legal advisor to the CRTD-A’s nationality campaign, challenges what she calls the “demographic myth” that haunts citizenry configurations in Lebanon: “They insist on masculinist thinking and reject giving the Lebanese woman nationality rights to her children. It is seen as a right only for those who have a Lebanese fathers or grandfathers. So, the issue

¹⁰ *Al-Ra’iy*, 10 March 2015.

is not one of demography. The case is patriarchal because if you want to add a particular group you should give [nationality] for the woman and the man.”

The Lebanese women’s movement did not succeed in pushing for changing patriarchal nationality laws after pressures for reform were renewed in 2011. Ironically, the failure of legal mobilization can also be read as a success story in exposing how the Lebanese political system is characterized less by religious sectarianism than by operating as a patriarchal oligarchy. The show of force by the all-male ministers was not one of sectarian religious divisions. What was exhibited over the period of five years of pressures and counter-pressures for addressing the issue of maternal *jus sanguinis* in the Lebanese nationality law was the opposite: the overlapping of politico-ideological perceptions that Lebanon is a state that valorizes the blood of its sons more than the blood of its daughters. Ministers belonging to different religious sects agreed to disregard women’s claims for nationality rights equal to men, thereby maintaining the privileges of males in conferring membership in the Lebanese state.

According to scholar on law and society Michael McCann, legal mobilization generates both transformative legacies and backlash. This is “only to be expected” according to him, because retrenchment is part of rights-based struggles: “[h]ow law matters depends on the complex, often changing dynamics of the context in which struggles occur.” ([16], p. 35). As such, pressures for reforms in nationality laws evidently touched upon policy areas that are related to institutionalized power relations more than to legal mobilization, involving pressures for change in family law and criminal law.

Five observations can be made to sum up on the thirty female lawyers interviewed as potential agents of reform in patriarchal state laws in Morocco, Lebanon, and Kuwait: (i) half of them engaged in voluntary associations that address women’s or children’s rights; (ii) two-thirds (20) questioned male prerogatives in different segments of state laws, most noticeably in family law; (iii) roughly a third (13) saw the importance of legislating laws on domestic violence; (iv) in Kuwait and Lebanon, with few exceptions, the majority of female lawyers express difficulties in addressing patriarchal nationality laws directly. While they acknowledged women’s inequality in nationality law, they perceived nationality law as a domain of state sovereignty. In Kuwait and Lebanon, female lawyers were more likely to point out problems relating to material issues than in Morocco, such as social security laws that privilege the position of male heads of household, access to public housing (in Kuwait), and corruption related to economic deals and access to political positions; and (v) in all three states, female lawyers pointed out that laws involving women’s and children’s rights are connected in complex ways: family law and nationality law overlap in cases related to child registration and access to nationality or public services, while criminal law and family law are entangled in cases of divorce, housing, and child custody.

6. Reading *Boundaries* in 2016

A political science scholar on female citizenship with no particular training in law, I enter the field of feminist legal theory through a back door. However, the intersection of state law, politics, gender, and citizens’ modes of membership in religious groups has sharpened my eye towards the politicized nature of law, women, and state policies that discriminate between male and female citizens.

I read Fineman and Thomadsen’s *At the boundaries of law* in retrospect in 2016 with one question in mind: which parts substantiate observations I have made over the past decade on conditions that shape female citizenship in MENA?

I found Robin L. West’s article particularly fresh notwithstanding its three-decade long history [15]. West’s analysis resonated instantaneously with my empirical findings following interviews with female lawyers and legal academicians in 2015 on the importance of attending to domestic violence and the entanglement of violence-related issues in family law and criminal law.

In her article, West bangs the drum straight away on the first page with references to sexual assault and pain experienced by women. Sexual abuse of women in public spaces during and in the aftermath of the 2011 Uprisings substantiate West’s point that many men, as well as female legal scholars are oblivious to conditions which women find “painful, frightening, stunting, torturous and pervasive—including domestic violence in the home, sexual assault on the street, and sexual

harassment in the workplace and school” ([15], p. 114). She strikes a chord straight away because body politics is by far the single most devastating issue addressed by female citizens in the aftermath of the 2011 Uprisings.

In Egypt, for instance, the gang rape of women in public space, the detainment of women protestors who experienced ‘virginity tests’, and the court trials some of these women raised against the police force during the initial phases of the revolts bear witness to the physical brunt of female political mobilization. Sherine Hafez argues that while women were encouraged to participate in public during the early phases of the revolts prior to the toppling of President Husni Mubarak on 25 January 2011, women’s bodies grew less welcome in Tahrir Square, where protests occurred, as the revolts progressed. She discusses three cases where women’s bodies became targets as well as symbols of revolt: one of Samira Ibrahim who was detained and forced to undergo a ‘virginity test’ while in custody, the second of ‘the woman with the blue bra’ who was beaten on the street by several policemen and filmed while she was unconscious, and the third of twenty-year old Aliaa al-Mahdy who posted a naked picture of herself engaging in nude activism in protest of masculinist honor norms. Hafez argues that harassment, brutal assault, beatings, and deliberately humiliating acts against women’s bodies became sites of contestation over cultural norms and political control in masculine public spaces during and in the aftermath of the Uprisings ([78], p. 83).

Transnational pressures for embedding women’s rights as human rights in domestic laws are particularly visible in the rise of body politics as an arena for re-articulating sexuality norms and freedom of movement in public spaces throughout the MENA region. Indeed, the most observable and tangible legal reforms pertaining to female citizenship after 2011 occurred in the field of body politics and legislation regarding sexual harassment and domestic violence, as pointed out in the previous section.

7. Conclusions

Six years after the Uprisings, the impact of the 2011 Uprisings on female citizenship in MENA is multifaceted. Most importantly, the Uprisings represent a catalyst where strengthened female citizenship is to a large extent dependent on legal conditions and country-specific historical experiences that existed before 2011.

The struggle for expanding women’s civil rights is a political conflict concerning female legal autonomy and civic personhood. This struggle is not specific to women in MENA. It is a universal, historical, and a transnational experience—a gender battle that is specifically tied to a woman’s ownership of herself.

The concept of “women’s rights” remains contested and analytically challenging in post-2011 MENA. The notion of citizenship as a container of rights for women is problematized by the civic status of a female citizen that—along with her position and agency within the kinship structure, the household, the market, and the state—is mediated and confined to varying degrees through her relationship to male kin [79,80].

As of 2017, there is no such thing as an autonomous legal personhood for adult enfranchised female citizens in the majority of the 22 member states of The Arab League. However, there certainly is for male adult citizens. Two states—Tunisia and Morocco—stand out as exceptions because of family laws codified in 1956 and 1957, and reformed in 1993 and 2004, respectively, enabling female and male citizens to stand on fairly equal legal grounds when it comes to personal status, notably if inheritance issues are left out.

Legal mobilization with the purpose of reforming patriarchal state laws does not in itself empower or disempower women. Yet women’s engagement with law generates arenas for pressure that would otherwise not have existed. Female lawyers participated in legal mobilization in three ways between 2011 and 2015: through litigation of issues related to women in court; by allying themselves with women’s groups in strategically targeting reform in specific segments of law in penal codes and in

family laws; and in raising awareness through the media about legal issues in general, and women's rights in particular.

The most visible feature in probing into female lawyers and pressures exerted on state laws is that these pressures are, predominantly, made by women lawyers who have allied themselves with other women. Sisters are doing it themselves, indeed. While reforms have occurred in family law and criminal law in the past five years, resistance has most clearly been observed in pressures to change nationality laws. Importantly, female and male citizens share an interest in maintaining certain paternal rights in some fields of law, such as nationality, but not in others, such as social security systems, protection against violence, and family law. Opposition against patriarchal state laws is thus contingent on policy area.

In Morocco, Lebanon, and Kuwait, the combination of relative political stability compared to neighboring states, autonomous women's groups, supportive and multiple media outlets, and less constrained avenues for freedom of expression compared to other MENA states, strengthened the leverage of female lawyers and their allies as potential agents of reform after 2011. In the two hereditary regimes particularly—Morocco and Kuwait—there was political will among rulers to strengthen female citizenship after the Uprisings. In Morocco, Article 19 in a new constitution in July 2011 enshrined the principle of equality between men and women. In Kuwait, new administrative regulations attended to the socio-economic plight of Kuwaiti women married to noncitizens and their children. These changes can be seen as part of the state's response towards religious extremism and clerical orthodoxy. As monarchical hereditary polities, authorities in Kuwait and Morocco seek to exert influence on modernization through the feminization of politics after 2011. By contrast, the patriarchal character of sectarianism sharpened considerably in Lebanon as reflected in parliamentary support in November 2015 in favor of strengthening patrilineal descent as condition to obtain Lebanese nationality.

Enfranchised minorhood remains a basic characteristic of female citizenship in the majority of states in MENA. Patriarchal state laws in Morocco, Lebanon, and Kuwait were shaken selectively between 2011 and 2015: vibrations hit some states where political order was retained, and change occurred within particular legal domains such as violence against women, and family law, but not in nationality law. Patriarchal state laws were shaken, but not stirred.

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