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## **Algerian Women between French Emancipation and Religious Domination on Marriage and Divorce from 1959 Ordinance no. 59-274 to the 1984 *Code de la Famille***

By Teresa Camacho de Abes<sup>1</sup>

### **Abstract**

The impact of the *Code de la famille* on Algerian women has been felt for 27 years and criticism of it is based on its supposed adherence to *Shari'ah*. This is not an adequate assessment of this legal document or its amendments. It is a more complex issue that involves the attempt of society to re-define its identity as Algerian and Islamic after independence. In attempting to establish Algerian women's identity there was a shift from fearless independent combatants who moved among men during the struggle for independence to a space for women as strictly wives and mothers within the context of the home. The analysis is based mainly on the *Code de la famille* as well as the *Qur'an* and it demonstrates that it is not exclusively based in elements of *Shari'ah* but rather a patriarchal framework supplemented by elements that are not truly Islamic.

**Keywords:** *Code de la famille*, Ordinance No. 59-274, Islamic law, Algerian women, Algerian Identity

### **Introduction**

Women were an integral part of the liberation struggle and they were sisters in arms to their Algerian brothers in the National Liberation Front (Front de Libération Nationale - FLN). Had it not been for women such as Djamil Bouhired, and Djamil Bouacha and Zohra Drif who were instrumental in strategic operations as depicted in Pontecorvo's *The Battle of Algiers (La battaglia di Algeri)*, Algerians would not have won their independence. Women were on the front lines of the battle against the French and were more fearless than their FLN colleagues in perpetrating violence. Throughout the process these same women believed that they would also be integral to the new government and that they would have equal rights as Algerians after independence. The 1962 Algerian Constitution guaranteed "the same rights and same duties" (Article 12); "the right to vote" to every citizen at least 19 years of age" (Article 13) as well as obligatory education "offered without other discrimination than that resulting from the aptitude of each individual (Article 18). However, at the same time, Algerians shouted "Algérie musulmane." And this is also reflected in the same constitution in Article 17 which states, "The family, the basic unit of society, is placed under the protection of the state" and also in Article 4 "Islam is the religion of the State..." This shift toward an Islamic identity was in direct response to being forced by the French to accept a Francophile identity that made no provision for Islam but did identify Algerians as distinct from the French. And the dual focus of religion and family signaled a change in

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identity for women especially those who had fought with men and moved among men during the war. In order to be accepted into the new national and Algerian framework women were expected to shift to pre-war patriarchal patterns and roles.

Ten women were elected deputies of the new National Assembly and one of them was Fatima Khemisti. It was Khemisti who drafted a bill to raise the minimum age of marriage for women to 16 and allow women more educational opportunities. (Moghadam 133-134). This bill was a step toward allowing women access to roles as students and professionals. During this time (after the war) there were exorbitantly high marriage and birth rates (Moghadam 135). Between Ben Bella and Boumediène the regularization of equal rights did not materialize for women. And during the presidency of Houari Boumediène there was a policy against any form of birth control unless a woman already had four children.

The underlying project of the government was socialism and growth of the Algerian population as a traditional and family-centered society as outlined in the constitution. As such, on the surface it seemed to be shifting away from Islam, and if that was the intention-the Algerian public may not have been ready to discard Islam or patriarchy from its identity or its mores. It was an arduous journey from a *Shari'ah*-based society (pre-colonization) to the secular French legal code (which defined Algerians as inferior) and then to a constitution and legal code which had an identity crisis as mostly secular with Islam as the state religion and later through the patriarchally defined aspects of the *Code de la Famille*.

Algerian society was attempting to re-define its identity after gaining independence and is still doing so in the contemporary day. It continues the struggle to define itself as a more open and less repressive society within the context of its Maghrebi neighbors as well as within the greater context of the Middle and Near East (MENA). The importance of understanding and following amendments to the *Code de la Famille* allows a nuanced and profound understanding of how to strategize and work with Algerian feminists such as Louisa Hanoune to reach a solution that will be equitable to women in matters of marriage, divorce, child support and alimony after a divorce. However, there must also be room to include Islam as per *Mālikī maddhab* (one of the four schools of Islamic jurisprudence and the one followed in Algeria) in order to accommodate the Islamic portion of Algerian identity.

Algeria as a country is complex and it would follow that so are its politics religion and law. In attempting to establish a framework from where to examine the *Code de la Famille* and its current implications for women (in terms of marriage and divorce) most work consulted takes a decidedly secular, feminist and mostly anti-Islamic stance. According to Jasmine Zine, "...there is no cohesive framework for feminism shared among the variously oriented Muslim women who operate from either secular or religious paradigms." This creates an issue of misreading Algeria in terms of politics, religion, law and also many feminist writers fail to contextualize the impact of the *Code de la Famille* on women in terms of history. And by history I mean a history of French colonization and the impact of policies imposed by the French on Algerians as second-class citizens of Algeria as a French département (administrative division of France) and also the reaction to the proposed eradication and uprooting of aspects of Algerian identity such as language and more importantly for this study – of religion.

A framework by which to examine Algerian women vis-à-vis the *Code de la Famille* must also take into account the legal and political dimensions and their relation to the economy after independence, women, minority and religious movements and their missions to acquire positions of power within the context of Algerian society and government and thus acquire full agency.

“The fetishism of the concept, Islam, in particular, obscures the living reality of the women and men subsumed under it. North African and Middle Eastern societies are more complex and more diverse than is admitted, and cannot be understood in terms of monolithic, unitary concepts. To understand the role of religion in women's lives, we must identify the conditions under which it emerges as a significant factor, as well as those that limit its scope. In addition, we must address the ways in which religious symbols are manipulated by both women and men in everyday life as well as in institutional settings.” (Lazreg 96) It is this aspect which takes center stage on the issue of the *Code de la Famille* because throughout many studies, particularly by feminists, it is termed an Islamic legal construct. This demonstrates a lack of knowledge of Islamic law and a comparative analysis of some of the articles of the *Code de la Famille* and the statutes set forth by *Shari'ah* law will prove that the former is not an Islamic text but simply a law dressed in a patriarchal mantle with a badly interpreted Islamic design.

Additional factors to consider are the history of marriage and divorce in terms of the legal precedent set by the French rulers in 1959, the rights of Algerian citizens set forth in the Algerian Constitution of in its various iterations (1962, 1976 and amendments 1988, 1989, 1996); also the impact of oil wealth; the opening of elections to a multi-party system; the return to the one-party system; defining the Algerian state and identity, women's movements and the Algerian Civil War.

### **Ordonnance No. 59-274 - 1959**

The Ordonnance No. 59-274 was a personal status law that established the following norms for marriage and divorce:

- minimum age of marriage as 15 years for females and 18 for males
- mutual agreement of both parties
- contracting the marriage publicly and officiated by a state official
- dissolution of marriage by either party
- dowry is not a condition to establish the validity of a marriage

With the establishment of the Ordonnance, a *qāḍī* (judge who adheres to *Shari'ah* in issuing legal rulings) was not involved in the divorce process and therefore Islam was extracted from something fundamental to the Islamic family. Under this law, women were able to be awarded damages with interest in a divorce per the decision of a judge and custody of children was given to women.

The law was meant to integrate French legal precedent in the guise of giving Algerian women legal rights and freedom. It was the culmination of the psychological warfare begun in May 1958 through mass demonstrations. During these events "officers secretly orchestrated mass demonstrations during which columns of Algerian women marched into the central Algiers Forum and “spontaneously” unveiled and joined hands with ecstatic European crowds in acts of inter-racial “fraternization.” So successful were

the propaganda impacts in the international media that the generals immediately decided to accelerate the emancipation agenda...and this proved to be a “radical tampering with the religious status quo, and a “powerful attack on the Muslim *statut personnel* ” (personal status). (McMaster 98) The mission to free subjugated women from the shackles of Islamic men was only a superficial success for the French but would prove a lasting legacy after the retreat of the colonizers and well into the era of Algerian independence and even into the present-day.

### **Algerian Oil Wealth**

“A second secular nationalist state, Algeria, achieved independence after a bloody civil war and over 130 years of “White Settler” French colonialism...Algeria does not have a precolonial history of rule by a legitimate and/or deeply rooted state. Without this historical resource, the state and the nation had to be constructed by the National Liberation Front (FLN) in the face of opposition and indifference from communities fragmented by geography, ethnicity, region, language, and (most important) their degree of assimilation into French culture. Resistance to centralized rule has a long history, one that manifested itself in nationalist, millenarian, and populist movements, most recently expressed as Islamic resistance to French colonialism during the independence movement.” (Lubeck 306-307).

“Boumédiène nationalized the oil industry in 1971 which created state revenue to a grand level. This revenue in turn was used to promote and finance heavy industry. Under Boumédiène there was sustained and considerable economic growth. With a solvent economy and steps toward industrialization there was a need for man power in these sectors and women were encouraged to be mothers and homemakers (birth control was opposed except in cases where there were at least four children) in order to grow the population because a large population ensured power according to Boumédiène. According to Moghadam, 97.5 % of Algerian women were not employed in 1979 at the end of the Boumédiène government. However, they were contributing to the development of Algerian society by producing children, raising them and receiving state subsidies to do so. Women’s role in society and their progress cannot be measured strictly by their employment opportunities. Education should also be taken into account and under the policies of Boumédiène more opportunities for women’s education were created.” (Camacho 4)

“Since 1975, the regime has followed the standard script of the petroleum-boom driven rentier state described above—a strategy marked by euphoria, corruption, expansion of education, increasing inequality, neglect of agriculture, a bloated, inefficient public service, massive rural to urban migration, and a poorly conceived, state-centered industrialization strategy favoring heavy industry.” (Lubeck 307) Opportunities for education were

created and progressively more and more women took advantage of these resources and were at the forefront of movements for social change.

After a period of relative stability under Boumédienne, Algeria experienced economic decline due to corruption followed by massive unemployment and a general feeling of anger at government. “Drastic economic decline in both Algeria and Egypt left large numbers of the unemployed to fend for themselves. Political elites began to borrow on world markets but were unable to generate enough income to service the debt and an increased dependence on France.” ( Lubeck 317) It was this environment of less opportunity and less economic stability that gave a space for the growth of Islamist movements such as the Islamic Salvation Front (FIS), women’s movements and the nationalist movement who all sought agency within a young Algeria. These problems were popularly viewed as caused by the National Liberation Front (FLN) and the rampant corruption of the military officials who were basically at the seat and power base of government especially after the death of Boumédienne and the installation of Chadli Bendjedid. The various groups gave people hope for fomenting change and gaining rights either as Islamists, as women or as Berbers within the Algerian state framework.

For Berbers (Amazigh) there are several grievances against the Algerian government and they are vocal about having agency and access as Algerians. However, they seek recognition for their language and their culture, which pre-dates Arab presence in Algeria, within the constitution and as full-fledged Algerians. Berbers have led mass demonstrations in their struggle since the 70s, culminating in the 1980 Berber Spring (Printemps berbère) and subsequently in 1988’s Events of October 5 (Les événements du 5 octobre) and Black Spring (Printemps Noir) in the Kabyle between April 2001-April 2002. The Algerian government officially recognized Tamazight, the Berber language, but did not give it the same status as Arabic or even French. Also, 2005 saw the inauguration of the nation’s first Tamazight television channel and with these important concessions there is still much to be done to achieve equality for Berbers in Algeria.

## **Algerian Identity**

“Algerian culture defies cursory definitions. Caught between clashing civilizations, modern Algerians of diverse origins have made legitimate claims to various parts of their cultural history, whether Arab, Berber, or French. During the struggle for liberation Algerians combated issues of language and identity to fight the French, and since independence in July, 1962, questions of language and culture absorbed Algerian politicians and intellectuals as they assumed the responsibility of rebuilding a riven nation. In the course of reconstruction many learned that a shared understanding of the past became a prerequisite for dealing with the present. While understanding characterized Algerian discourse, it did not imply agreement. As Algerians came to terms with the past, they had to confront the diversity of their experiences.” (Kashani-Sabet 264)

Even with the diversity of experiences in Algeria there was a need to unite the country after independence and this was done largely through the Arabization and

Islamization of the country. Algerians were to be a nation of Arabic-speaking Muslims. “The Arabic and Islamic tradition of the Algerian nation has been preserved through constitutional provisions recognizing its fundamental role in developing Algerian political character and national legislation encoding its existence in Algerian daily life--in courts and in schools, on street signs, and in workplaces. Arabization is seen as a means of national unity and has been used by the national government as a tool for ensuring national sovereignty.” (Chapan Metz)

President Boumédienne used the policy of Arabization to solidify an Algerian identity and Arabic was used in public signage, the educational system, courts and government offices even though “60 percent of the population could not read Arabic.” (Chapan Metz) This was done to leave the French legacy behind and sever all ties to the colonizer though it met with problems and continues to pose a problem for minority communities such as the Berber groups. Among them, the Kabyle have demonstrated and been particularly vocal in their struggle to include their language and culture as part of what can constitute Algerian identity. Kabyles has been involved in trying to gain recognition of Berber identity and rights and key figures in that struggle have been Saïd Sadi, an Algerian (Berber) politician and President and founder in 1989 of the Rassamblement pour la Culture et Democratie (RCD).

There had been dissatisfaction and unrest in the *wilaya* (province) of Tizi Ouzou since 1980 when a conference on ancient Kabyle poetry given by Berber writer Mouloud Mammeri was canceled. This led to demonstrations in the Kabyle region and Algiers the day after on 11 March and continued with unrest in Algiers on 7 April which led to rampant arrests as well as one death and a strike at the University of Tizi Ouzou. This in turn led to a general strike in Kabylie and the UNJA (student union/organization) denounced the demonstrations. Instead of using the opportunity to create a space for dialogue with the Berbers – President Chadi Benjedid gave a speech in which he stated that the country was, “Arab, Muslim and Algerian” wherein “democracy did not mean anarchy.”

In an interview conducted with an Algerian biology teacher now residing in the United States, the university strikes adversely impacted her education by forcing her to take breaks during her university studies during the frequent strikes and later during the Civil War. Rather than completing her undergraduate degree in three years it took her 10 years. (Abes)

These frustrations were also being felt by women who were made aware of the secret negotiations and drafting of a *Code de la Famille* in 1981 and demonstrated against it. Also, these demonstrations were a foreshadowing of the mass demonstrations by people of all strata of society in October of 1988 and more than 500 were killed.

### **Algerian Women’s Movements**

“... (T)here has always been representation of women in state bodies; the numbers of women, however, have always been very limited, and the elected or appointed women were from the ruling party, the FLN. The emergence of a feminist politics critical of both fundamentalism and the state has altered the composition and orientation of the newly elected women. Among them Louisa Hannoune, leader of the Workers Party, Khalida Messaoudi, now of the Rally for Culture and Democracy, and Dalia Taleb of the Socialist

Forces Front.” (Moghadam 144) Dr. Moghadam’s statement that Khalida Messaoudi is currently with the RCD is incorrect since she is not part of the organization. Given that Moghadam’s paper was published in 2001 she should have been aware of Messaoudi’s departure due to strife and problems within RCD and specifically between Messaoudi and RCD president Saïd Sadi. Besides this error there are others in the spelling of *wilaya*, *watan* and also factual ones which belie a lack of knowledge of Islam and an anti-Islamic stance given her origins in an “Iranian elite family” which can mean she has sympathies toward the Pahlavis and Iranian monarchical rule and this may obfuscate her view of MENA (Middle East and North Africa) region countries that are culturally Islamic with an Islamic constitution or elements to their constitutions such as in Iran, Algeria and Morocco.

Khalida Messaoudi, who has been known as Khalida Toumi since her divorce, is a very divisive figure in Algeria for her anti-Islamist rhetoric and insistence that women should espouse secular mores and dress in a Western fashion. Toumi is regularly portrayed in political cartoons in Algerian newspapers such as *Echorouk* and *El Watan* and in an excessively short mini skirt with a crazed or paranoid look in the leading newspapers in her capacity as Minister of Culture and the Official Censor of books unfavorable to the Bouteflika government. Additionally her comments on Islamic topics particularly polygamy demonstrate her lack of Islamic knowledge and are the reason for her unpopularity particularly with the religious and also the Islamist segments of the population.

According to the Encyclopedia of the Modern Middle East and North Africa, Toumi founded the Women's Grouping (Collectif féminin) in 1981 in reaction to the proposed government ban on Algerian women traveling without a *mahram* (a male that is forbidden in marriage to a woman and who acts as an escort when traveling) and the early and secret drafts of the *Code de la Famille*. Toumi went on to lead the Association for Equality between Men and Women (Association pour l'égalité devant la loi entre les femmes) a Trotsky-Marxist group and co-founded the Algerian League of Human Rights. Throughout her career she has been anti-Islamist and in favor of canceling the 1992 elections wherein the FIS was supposed to win in a run-off election. Toumi stated in *Unbowed: An Algerian Woman Confronts Islamic Fundamentalism (Une Algérienne debout)*, “that the FIS displayed absolutely all the classic ingredients of totalitarian populist movements.” The title of the book in French simply means an Algerian (woman) Standing or An Algerian (woman) Stands up rather than the sensationalist English title which plays up the “War on Terror” and fear of Islamic fundamentalism.

Toumi may have been at the forefront of the women’s movement in the past but has lost much credibility for her staunchly anti-Islamist stance as well as distancing herself from the Berber constituency which helped put her in power. She is now part of the Algerian government and since 2003 has been the Minister of Culture under Bouteflika. Before she was appointed as Minister of Culture she tried to cull public favor through comments questioning polygamy in Islam for men and demanding the same right for women made on television and in several prominent Algerian newspapers such as *El Watan* and *Echourouk*. These comments have made her a target of Islamists. As Minister of Communication and Culture and a sycophantic supporter of President Bouteflika, she has prohibited the publication of books by prominent intellectuals and public figures such as Mohamed Benchicou and Mehdi El Djezaïri which expose

Algerian history and instances of corruption and executions of revolutionaries. These acts of censorship have been documented extensively in the Algerian (French and Arabic language media) and French press. Toumi does not hide her totalitarian stranglehold and has been skewered in the press recently for her blockage of the book on Colonel Amrouche by her former colleague Saïd Sadi. Toumi has come a long way from being a mathematics teacher and now her stance is aligned with the Algerian government because she firmly entrenched within that system. The fact that several of the works consulted for this project hold her in high esteem makes me question the level of knowledge of Algerian history and Islam in Algeria particularly of Moghdam and Salhi.

Algerian women have had agency in the highest echelons of Algerian government through massive and aggressive organization and they have been represented within the government body through election as well. One excellent development in the role of women is that they “make up 70 percent of Algeria's lawyers and 60 percent of its judges.” (Slackman)

Algeria is one of several MENA countries (Tunisia, Egypt and Qatar (1) to have women judges and is ahead in terms of the sheer number of judges appointed.

Part of the hesitation in appointing women judges is based upon the section in the *Qur'ān* from *Sura an-Nisa'* 4:34

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).

There has been discussion and issuance of *fatāwā* (legal rulings) by the *Fatwā* Committee of Al Azhar University which in the past has stated that women were not to be appointed as judges or to positions of public authority due to their menstrual cycles and a predisposition to emotional responses shortly before and during this time. This in turn would interfere with the ability to listen to the facts of a legal matter and render judgment. Some of the exegesis of the aforementioned *sura* delineates men as “protectors and maintainers of women because they have one more (strength) which can potentially point to men not going through monthly menstruation and therefore maintaining their strength in both physically and mentally. There has also been a shift in interpretation that advises that there is no problem in appointing women judges as per Muhammad Sayyid Tantawi the former Grand Mufti and Grand Imam of Al Azhar University. As part of this trend toward giving access to women to positions of authority it is also being mirrored in the religious realm in Syria where Grand Mufti Ahmad Badreddin Hassoun has begun training women to become *muftis* (a Muslim scholar and interpreter of Sharī'ah who has authority to write legal opinion (*fatwā*)) and issues legal rulings according to an interview he granted *Al-Arabiya* in June 2008.

This is in accordance with several *ḥādīth* and is in accordance with the four schools (*Madhahib*) of Islamic jurisprudence (*fiqh*). Algeria practices Islam according to the *Mālikī madhab*, which uses the *Qur’ān* and *Sunnah* as well as traditional opinions (*ra'y*) and analogical reasoning (*qiyyas*) to interpret *Shari'ah*. The *Mālikī madhab* also has the law book *Kitab al-Muwatta'* that is used as a legal reference. The book was written by the students of Mālik ibn Anas (founder of the *madhab*) and it details Islamic law as practiced in Medina during Ibn Malik's time and it sets legal precedent and an example to follow in rendering legal rulings. The manner in which *Shari'ah* is practiced in Algeria could account for the larger representation of women as judges and representation in government in comparison to other countries in the MENA region.

Also, women dominate in the field of medicine and this could be viewed as an asset in terms of society and the creation of a mentoring system of women physicians who could serve as mentors to other women considering medicine as their chosen field of study. This also allows for religious women to have access to women doctors to medically evaluate them given that they would never allow another male including a doctor to see or their unclothed bodies.

Increasingly, women contribute more to household income than men and have moved into fields of commerce as business owners.

"The situation in Algeria has changed rapidly, much faster than was expected...All the stereotypes we held have now disappeared," according to the Nasreddine Hammouda, a statistician at the Centre for Research into Applied Economics (CREAD). She goes on to state that women return to work after marriage and child bearing and due to many possessing higher education degrees than in the past. For these women a career is important before and after giving birth. By having careers Algerian women also have more economic purchasing power through their own salaries as well as household budgets provided by their husbands. The longer-term advancement for women is knowing that they can provide for themselves and not live in fear that they will have nothing to live on if their husbands were to divorce them. (Ouali)

"Sixty percent of university students are women, university researchers say." Algeria is a country in flux in the throes of renewal and change and it would be best if the path taken is a middle path that is not completely French-based nor based wholly on the severe interpretations of Islamic law because those who would be most affected would be women and by extension children. (Slackman)

## **Code de la Famille**

"Although the authors of this Code claim it to be merely based on the teachings of *Shari'ah* law, it is clear from its text that its roots emanate from a tradition of patriarchy and misogyny in Algeria, which was taken up in a particular way in the post-colonial era...Algeria, where women were seen (as in the pre-revolutionary period) as the repositories of men's honour; as guardians of the traditional values which had been disrupted and devalued by the colonial presence. They were also symbols that represented the conflicts inherent in the new historical situation faced by post-colonial Algeria. Hence, the Family Code placed limits on women's mobility." (Salhi 30-31)

“The Algerian Constitution of 1989 provides for equality of both men and women (Articles 28) and equal rights for all citizens (Article 30) and also that the official religion is Islam (Article 2). From this construct is it truly such a stretch to re-introduce elements of *Shari’ah*? It would follow that this is a reaction of the marginalization of this religion under French colonization. Any discussion on Algeria must take into account the role of Islam in Algeria before the French incursion. The *Mālikī madhhab* had been highly influential and had developed and solidified its dominance in Algeria and the rest of the Maghreb as well as al-Andalus from early in Islamic history. It shared space with the Hanafi *madhhab* for matters involving Ottomans during Ottoman rule from 1518-1816.

Under Ottoman rule the role of Islam was not de-legitimized but rather strengthened and Islam’s sphere of influence was great. While under French colonization it collided with Western law and *Shari’ah* was subjugated to a lesser status and de-legitimized in the name of establishing French law.” (Camacho 6)

Under the guise of the *mission civilisatrice* (civilizing mission) the French were being benevolent to their subjects and in opposition to Islamic invaders of lands that were not their own— they did not contextualize their legal codes to take into account *Mālikī fiqh*, local custom or traditions. And perhaps even more problematically they used lands for viticulture previously used to cultivate wheat which went against the Islamic prohibition against alcohol.

In 1881, the French instituted the *Code de l’indigénat* (Indigenousness Code) as indirect law and this solidified the classification and legislation of the second-class personal status of native Algerians in what was formerly their land, their country. The French considered Algeria a *département* (administrative division) of France. Indirect law was not effective given that there were many French citizens on Algerian soil and the divide between who was and who was not French continued to grow when in 1870 the Crémieux Decree granted citizenship to Sephardic Jewish natives of Algeria as well as European Jews living in Algeria. This was truly problematic in that it caused tense relations between Arabs and Berber natives and their Sephardic compatriots and would deteriorate completely in the 1950s and unto the 1960s.

“*Shari’ah* took into context local traditions, common practices and the law was applied to each case per the merits of the situation not as in Western law with specific punishments and a delineation of specific crimes. Justice was meted out according to the circumstances and particulars of the case as well the customary law of the land. The French wanted to translate and codify the law and limit it to personal status issues only which resulted in a situation that did not take into account these complexities and nuances of the intricate legal underpinnings and framework of *Shari’ah*. By doing this the French took the *Shari’ah* out of context which is counterproductive to a modernization process since it only took one of the many aspects of Islamic law and tried to apply them and make them fit a Western legal framework which would then be applied in Muslim countries. Under occupation any person could opt for the French civil code in legal matters.” (Camacho 6-7)

“Along with the Algerian constitution that guarantees women equality they have had to contend with the Family Code which was introduced in 1984.

Before that year women did not have to have a *mahram* or his consent in order to marry or act as her representative in the proceedings. The *Code de la Famille* puts women in a position in relation to men – be it as daughters or those who need a guardian or as wives who need the guidance of a husband. The *Code* does stipulate a woman's working rights but a husband must agree to it and he has the right to change his mind.” (Camacho 7)

In the case of divorce, a woman must have consent of her *mahram* while the husband has the right to divorce at any time per his will. A woman can lose custody of her children in some cases of divorce and the wife will be perhaps given the home if she has no family to whom she may return. If children remain with the mother the father is still the legal guardian and must be consulted in matters of education, health and well-being. And should a woman remarry – she loses custody of her children. This shift from the constitution to the Family Code puts women in detrimental position particularly if they are uneducated or illiterate and have no means of their own economic support or support from their families. Without education or experience they will be on the street, perhaps with children if their husbands divorce them. This in fact has occurred and according to *Women's E-News*, “I suffered from the family law in all its horror,” she recalls. “If I had been able to benefit from housing rights and if I had received a correct alimony, I wouldn't have gone through all these difficulties.” This is just one example of a women who was divorced and a husband who had the means to pay alimony but simply did not. In response, the government of President Bouteflika enacted a law in 2005 to curtail this problem and prevent the homelessness of divorced women partly caused by a severe housing shortage. “Advocates, however, say the law is not enforced and women are still winding up in the streets.” (Rachidi)

“The law is left mostly unenforced even though it has the potential for huge impact. Perhaps a better solution would be a middle path between the constitution and the Family Code in order to offer a more equitable solution and opportunities for economic solvency, work experience and education for women outside the home. It will ensure their survival in cases of abandonment or divorce under unjust circumstances or no alimony. To assume that the *Code de la Famille* is a manifestation of *Shari'ah* is not correct. It is a legal text which purports to be based on *fiqh* but it is not so.” (Camacho 7)

It is a legal text that operates in isolation and does not have the context of Islamic law or an experienced *qādī* to render judgment per the particulars of a case and context of the case and circumstances of the couple or family.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) states that the *Code de la Famille* according to its definition of discrimination “excludes or restricts on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” The problem with this construct is that it contains a Western bias and does not

contextualize the document within a majority Muslim country even though the document can only be considered marginally Islamic. Also, the CEDAW is a UN body which in the MENA region is viewed as operating under the aegis of the US and working toward US interests and therefore can be perceived as biased. This stated, Algeria does have a representative on this Committee, Meriem Belmihoub-Zerdani. “The provisions of the Convention target all impediments to the advancement of women, whether these hindrances exist officially at the government level or behind the closed doors of the family home. The Women’s Convention blurs the line between public and private, obliging the state and public officials” to resolve private family matters.” (Behrouz 1141)

Behrouz' analysis of *fiqh* is elementary at best and from his analysis he places Islamic law as a context of limited *'ijtihād* (independent juristic reasoning by an *'ālim* when the *Qur'ān* and *Sunnah* set no precedent and there are no previous rulings by other *'ālim* on the matter being considered). For *'ijtihād* to flourish fully it would need to become the purview of Shari'ah courts staffed with knowledgeable *qādīs* (Islamic judges) in *mustahabb* (marriage, death and family issues) matters to allow for specific rulings tailored to each set of constituents in varying circumstances as it was prior to French colonization.

### **Islamist Movements**

“In general, Islamist parties have fared badly in popular elections and referendums, however, there are important exceptions to this general trend. The first country where the Islamists came to power through electoral processes was Algeria.” (Knudsen) This occurred after the Algerian government’s referendum in 1989 for multi party elections where the Front Islamique de Salut (FIS) was victorious. In 1991, the FIS was slated to win by a large margin after a lead in the first round. The Algerian government canceled the run-off election and arrested FIS leaders. This was the impetus for the cycle of violence and the Algerian Civil War that took the lives of “left 200,000 Algerians dead and approximately 15,000 forcibly disappeared” according to a figure cited by *Al Jazeera* in November 2010.

The perpetrators of violence are not believed to be the FIS but rather the Armed Islamic Group (Groupe Islamique Armée or GIA) who operate on the margins of Algerian society.

The GIA has been blamed for massive violence against journalists and intellectuals (both men and women) as well as women deemed un-Islamic (those not wearing hijab or working outside the home) have borne the brunt of kidnapping, torture and rape.

“Most of the Middle Eastern states are run by autocratic regimes bent on keeping Islamists from gaining power, both through denying them a popular vote and by brutal suppression of their leaders and followers. To many analysts, it is exactly the prevalence of autocracy in the Middle East that has given rise to Islamist movements, which are seen as a way of expressing popular sentiment against illegitimate rulers.” (Knudsen) There exists support of an Islamic agenda and political parties and platforms in terms of women’s status founded on justice and equitable solutions rather than gender equality that can according to some analysts be called Islamic feminism. According to Krennerich and Thibaut the FIS won 47.3 % (voter turnout was 59%) of vote during the first multi-party elections in 1991.

Islam as a motivator and as national identity has roots in pre-colonial Algeria as well as in contrast to French colonial constructs of “free” Algerian women during anti-colonial struggles. Stated differently religion and family were important vis-à-vis the Algerian woman without her *hā'ik* (body covering which also incorporated a head covering worn by women in the Maghreb) and images of French women “unveiling” Algerian women publicly in 1958. Some Islamic feminists are well aware of their rights within Islam and work to educate others so that they are also aware and able to advocate for themselves. Examples of Islamic womanhood cited by Islamic feminists to be followed are Khadijah, Maryam, ‘Ā’isha and Fatima. The reality is that even though many Algerian women who are religious Muslims do know the stories of the aforementioned great women of Islam they possess little or no knowledge of their rights in terms of marriage, divorce, children and maintenance as per Islam. One way to make progress in this realm would be the Islamic education of women to empower them to have the knowledge and understanding of Islamic law in general and specifically as it pertains to their rights and therefore advocate for themselves.

On the other hand, there are issues of interpretation by groups such as FIS and GIA that are not only patriarchal but more specifically erroneous when it comes to addressing secular feminist grievances about issues as diverse as hijab, working outside the home and traveling without a *mahram*. Women are seen as either following Islam or they are seen as modern and transgressive. Simply by reading Algerian newspapers, watching Algerian news and films (*Rachida* and *Bent Keltoum*) one becomes aware that women who did not wear hijab and were out alone walking to work or school or perhaps anywhere for that matter, were kidnapped off the street. Some were killed, some were taken to mountain refuges and kept as sex slaves and later returned to families who wanted nothing to do with them.

“Countries in the Middle East have pursued different strategies vis-à-vis the Islamist threat.” (Knudsen) Algeria’s strategy had in the past been a laissez-faire attitude and there are incidents such as Bentalha massacre of 1997 where 400 people were massacred and the earlier Raïs and Beni Messous massacres (though there were others) where approximately 400 and 100 were massacred by armed guerrilla fighters. Both villages are on the outskirts of Algiers in a zone of various military bases but the military did not intervene to prevent the violence. There has been widespread speculation of government collusion in these incidents and a book about the incident written by a survivor – Nesroullah Yousof Bentalha titled *Qui a tué à Bentalha?* (Who Killed at Bentalha?) documents the events leading up to the massacre such as the leave offered to security forces which protected the area; how the village was illuminated by projectors to facilitate access during the cover of night; a military helicopter hovering above the massacre; road blocks to prevent access to the village by outsiders as well as open access and a route out of the village by the attackers. There is also a book by an officer in the Algerian Special Forces - Habib Souaïdia - *La Sale Guerre* (The Dirty War) with claims that he and others participated in various killings and the torture of civilians. The events related are precise with dates and names given. The issue with both accounts is that there are details that are unclear but there is a strong indication that the military is not completely innocent in these matters. More than likely their participation lies somewhere between sitting and doing nothing and actually committing the massacres

themselves. More evidence must be examined in order to reach a conclusion and that is beyond the scope of the project.

Whatever the case, the Islamist parties have a firmly entrenched space in Algerian politics though only if they act within the framework of the law. Algerian citizens have grown weary of the violence and will not tolerate it as evidenced by an entire village finding and rescuing an old man who was kidnapped by GIA rebels in 2010. The villagers warned the GIA members and made them leave the vicinity. The GIA party is not a Muslim group but a group who operates under the guise of what it calls Islam or their skewed interpretation of it since it allows for mass rape and killing which are not condoned in Islam.

### **Conclusion**

By examining the *Code de la Famille* against Islamic law it becomes evident that it is not based strictly on Islam. In the *Code de la Famille* there are elements that go against Islam such as being allowed to be married to two sisters. Also a man being allowed to marry up to four wives with no conditions differs from Islam which sets precise conditions before a man can have multiple wives. *Nikah* (marriage) does not have to be registered with a notary or legal functionary as is the case for marriage as set forth by the *Code de la Famille*. Though Islamic elements exist in the *Code de la Famille*, it cannot be deemed a text of *Shari'ah* for it is somewhat divorced from religion. Perhaps it should be eliminated completely and members of the '*ulamā* (Muslim legal scholars) should be involved in drafting a new *Code de la Famille* which is equitable to women within a Muslim or secular marriage. Also, terms for maintenance of the woman and her children must be specified in the event of a divorce to assure that they are provided sustenance and housing and to eradicate the many women who have been cast out into the streets with nothing after the advent of the *Code de la Famille*. Islam clearly commands men to provide for their ex-wives and children.

Along with the suggested involvement of '*ulamā* in the drafting of a new *Code de la Famille* – women must be included in talks before a draft is written in order to take into account their concerns and to allow a context within Algerian society to incorporate and accommodate the needs of Algerian feminists whether they are secular or Islamic. The new *Code de la Famille* should be a document that extends rights to all constituencies (women, men, religious, secular, Arab or Berber) in an equitable fashion. It is a process that will take time since Algeria is still working toward defining itself as a country but change will come sooner than most in the West expect.

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