Khulʿ divorce in Egypt: public debates, judicial practices, and everyday life
Sonneveld, N.

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Khul’ Divorce in Egypt
Public Debates, Judicial Practices, and Everyday Life

Nadia Sonneveld
Khul‘ Divorce in Egypt
Public Debates, Judicial Practices, and Everyday Life

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aan de Universiteit van Amsterdam
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Nadia Sonneveld

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Prof. dr. W.H.M. Jansen
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Faculteit der Maatschappij- en Gedragswetenschappen
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Acknowledgments

Ithaca

If you decide to go to Ithaca,
Hope that the journey is long,
Full of adventure and experience.

Those Laestrygonians, the Cyclops, angry Poseidon,
Do not be afraid of them
For you will never see them on your way
As long as your thoughts are pure
And passion touches both your spirit and your flesh.

The Laestrygonians, the Cyclops, fierce Poseidon,
You will not meet
Unless you carry them in your heart;
Unless your heart puts them before you.

Pray that your journey be long,
That there will be many summer mornings
When with joy and delight you will enter harbours
You have never entered before
See Phoenician ports, gain gifts
of mother of pearl, coral, amber and ebony
Perfumes, sensuous and varied,
As many as you can sense.

Visit those varied Egyptians cities
And gather knowledge from the wise.

But always, have Ithaca in your mind.

Your destination is to arrive there,
But do not hurry your journey
Better that it may last many years,
That you toss out your anchor at some island
As you grow old, richer for having traveled,
Expect nothing from Ithaca
Other than the journey of your life.

For without her, you would never have begun,
And it is this that Ithaca has given you,
What more could she offer?

And if you do arrive
And find her poor…
Ithaca has not deceived you.

For you now have the experience, the wisdom to know
What all these Ithacas mean.

C. P. Cavafy (1863-1933)

Alexandria, October 1910

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Notes on transliteration

In this thesis both Standard Arabic and Egyptian Arabic terms are presented. In general, Egyptian Arabic terms are presented in the way they are pronounced. In order to present the Standard Arabic and Egyptian Arabic terms, I have adopted a simplified version of the transliteration system employed by Hans Wehr, one that indicates the Arabic ‘ayn (‘) and hamza (‘) but omits other diacritical marks as well as the extension of the vowels.\(^2\) In this way I hope to make the thesis more easily accessible to readers who are not familiar with Arabic.

An exception has been made for the titles of books, newspapers, films, and magazines that were written in Arabic. In order to enable the interested reader to retrieve these titles, I decided to follow the transliteration system employed by Hans Wehr but instead of presenting the emphatic letters (ص, ض, ط, and ظ) as well as ح by using diacritical marks, I use capital letters, as shown below.

Finally, I should mention that conventional English spelling is used for most personal, place and proper names as well as frequently translated Arabic words such as Koran and sheikh.

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Introduction

Presenting: the “khul’ law”

In January 2000, the Egyptian nation was rocked by the implementation of a new procedural law in the field of Personal Status. This was ‘The Law on Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters,’ or Law no. 1 of the year 2000. As its name suggests, the new law aims at facilitating and speeding up litigation in matters pertaining to Personal Status Law disputes such as divorce by compressing the 600 clauses of the old procedural law into 79.

One of the clauses of this law, article 20, gives women the right to unilateral divorce or khul’. According to this article on khul’, women have the right to divorce their husbands unilaterally on condition that: they renounce their outstanding financial rights and pay back the dower to the husband; go through a three months period of arbitration and explicitly claim in court that they hate living with their husband and, as result of that, are afraid to cross the limits of God. It was the first time in modern Egyptian history that women could divorce their husbands irrevocably without the latter’s consent being relevant and, upon fulfilling the above mentioned conditions, not even a judge was able to stop them from obtaining a divorce. Moreover, compared to already existing fault-based divorces, which could often take many years under the Egyptian legal system, a khul’ divorce could be obtained within a few months, in theory at least.

In practice, law no. 1 of the year 2000, was soon nicknamed by Egyptians “the khul’ law” as the article on khul’ (article 20) proved highly controversial and provoked widespread public discussion in the People’s Assembly, among the ‘ulama’ (religious scholars) and the general public. Opponents to the law frequently claimed that since women in a khul’ procedure needed to give up their financial rights and pay back the dower, the law was merely for rich women who wanted to divorce their husbands for frivolous reasons, for example, to marry another man. In general, women were perceived to be irrational and, when no longer controlled by their husbands or under the supervision of a judge, women would misuse the right to divorce. They would abandon their families and their children in order to marry more handsome or wealthier men, leave their children to grow up like vagabonds and in the process Egyptian family life would be destroyed. Often, women’s irrationality was juxtaposed with men’s rationality and

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3 There were other controversial points in the new law, such as the recognition of ‘urfi marriages and the clause which was finally removed to allow women to travel without their husbands’ consent. However, for most people, the law will always be known as the khul’ law.
related to Islamic religion by saying that women are under the guardianship of men. Opponents did not deny the Islamic basis of khul’ but they claimed that the sources of Islam were misinterpreted because the four schools of Islamic law only know a form of consensual khul’ divorce. Even though a woman can take the initiative to request a divorce from her husband, she still cannot do it without his permission. In some cases, opponents were of the opinion that khul’ was pushed through by international Western organisations and they accused the Egyptian government of having become a lackey of the West.

Khul’, however, was not only much talked-about in Egypt. Throughout the Muslim world, and especially in the Middle East, the developments in Egypt were closely followed. By introducing a form of khul’ divorce in which the consent of the husband is irrelevant, the Egyptian legislator had given women one of the most extended divorce rights in the Muslim world, the only exceptions being Turkey (1926), Tunisia (1956) and Pakistan (1967). Just like in the case of Tunisia and Pakistan, the right of Egyptian women to divorce their husbands unilaterally was presented as being derived from Islam and shari’a. As such, the Egyptian khul’ could be presented as a case of how Islam and Islamic law could be used to women’s advantage and various countries have taken the Egyptian khul’ as an example to improve women’s rights to divorce (Welchman 2007). Despite the fact that its opponents had criticized khul’ for being pushed through by international organisations, it must be mentioned that Egypt’s divorce system in general, and khul’ in particular were also criticized by some of these same international organisations, especially Human Rights Watch (HRW). In that sense, the khul’ reform forms part of what Welchman calls a third phase of Muslim personal status law reform in the Arab world (from approximately the last quarter century onwards) (2007, 13) in which due to “changed global, regional and national circumstances in Arab states…amendments to Muslim family law demonstrate an intense political contingency reflecting national and international pressures and dynamics” (2007, 42-3). In line with this, academic research in the late twentieth century has set out to evaluate the impact of such reform on the position and options of women (ibid, 14). This study on khul’ offers one such modest

4 Besides the Egyptian and Jordanian judicial khul’, Welchman also pays attention to other approaches to judicial khul’ such as the divorce based on niza’ wa shiqaq (discord and strife) and the Yemeni rules on dissolution for hatred or aversion (karahiya). In case of niza’ wa shiqaq, one or both of the spouses can ask the court to proclaim a divorce on the grounds of irreconcilable differences that make the continuation of marital life impossible. In such cases, the court will appoint mediators who must try to solve the marital dispute. If they fail, the court is obliged to rule for a divorce; to establish which of the two parties is at fault; and to assess financial rights accordingly (2007, 120). For more details on the Yemeni divorce based on karahiya, see Würth (2003, 14). For the Palestinian niza’ wa shiqaq divorce, see Moors (1995, 143).
contribution to academic research on a ‘third phase’ of Muslim personal status law reform.

Research questions and research perspective
Although the introduction of this new form of khul’ divorce received a lot of attention, both in and outside Egypt, to my knowledge the subject has not been studied in a comprehensive manner within academia. Apart from the public debate on khul’, which has been analysed to a certain extent, there has been no study which also takes into account the way in which khul’ operates in the courts and in daily life. This, I felt, was important since I depart from the idea that when people debate and criticize khul’, they are engaged in a struggle over hegemony that invokes and refers to wider issues of concern in Egyptian society. What are these wider issues? Do they also relate to Islam and Islamic law or are other non-religious factors at play as well? In order to provide an answer to these questions, it is necessary to conduct a comprehensive study on khul’ which not only analyses the public debate on khul’ but also relates and compares this debate to the operation of khul’ in daily life. Hence, in light of a PhD project, I started in March 2003 with a study on khul’ consisting of two sub-research areas: an analysis of the public debate on khul’ as well as an analysis of the way in which khul’ operates in the Egyptian courts and in contemporary everyday life.

1 Analysing the public debate on khul’
As indicated above, the public debate on khul’ has been studied to a certain extent. For example, in a comparative study on India, Israel and Egypt, Yüksel takes as a point of departure the 1955 reforms under Nasser which abolished the religious communal courts and unified them under a network of national courts. He shows how the Nasser government did not, however, abolish the communal laws and did not unite them under a common civil code. As a result, the language of Islam remained important in the field of Personal Status Law (PSL) and by using the example of the “khul’ law” of 2000, Yüksel makes clear that if the Nasser government had united all communal laws under one civil law there would not have been any need to use the language of Islam. This phenomenon has actually weakened the control of the state over the social and religious institutions that it originally intended to establish by means of the 1955 reforms (2007).

Another study of the public debate on khul’ by Singerman also pays attention to the phenomenon of women movements’ increasing usage of the language of Islam to push through substantive reform in the field of PSL. In fact, Yüksel refers a lot to this study by Singerman, published in 2005, which offers the reader an account of how the women’s movement, and their cooperation with high
ranking government officials, was instrumental in bringing about and ushering through parliament a form of unilateral khul’ divorce in Egypt. According to Singerman, using the language of Islam and seeking cooperation with government officials even “strengthened the links and the relevance of parliament to civil society” (2005, 164). A more factual account of the debate on khul’ by Zakariyya (2003) and Fawzy (2004) makes Singerman’s assumption doubtful as both Zakariyya and Fawzy show how even the MPs of the ruling NDP party strongly opposed khul’. Only through enforcing party discipline, the political leaders of the NDP were able to finally push through parliament the article on khul’.

What all of these studies have in common, is that their analysis is based on interviews with the main actors behind the law as well as newspaper articles and other written texts. At first, I also wanted to approach the analysis of the public debate in this way but after my first period of fieldwork in May and June 2003, I began to realize that other kinds of publicity, through popular culture media such as films and cartoons, played an important role as well.

When I arrived in Cairo in May 2003, the film muHāmī khul’ (The Khul’ Lawyer) had just been released. It would be an exaggeration to claim that the film was the talk of the town but when people asked me what I was doing in Egypt and learned that I was there to study khul’ they would at first laugh mischievously and then suggested that I should see this film. “It is a comedy about a very rich woman who wants to divorce her husband because he is snoring” they would say while giggling. Was this the heavily debated khul’ law which had aroused so much controversy and which had even led MPs of the ruling National Democratic Party (NDP) to proclaim their opposition to it and now people were making fun of it?

During that period I also watched urīdu Hallan (I Want a Solution), starring Fatin Hamama, one of Egypt’s most famous living actresses and who is also known as sayyidat al-shasha al-’arabiya (The Lady of the Arab Screen). Full of drama, the film, which was released in 1975 tells the story of an upper class woman – Fatin Hamama - who wants to divorce her alcoholic, abusive and unfaithful husband but who fails to convince the judge of her “good” reasons for divorce. After four years of legal battle, the judge declines her case.5

I found out about this film in the same way that I had found out about muHāmī khul’. In both cases it was the word khul’ that lead people to direct my attention to these two films. In the case of urīdu Hallan some people commented that I had to see the film and that it was a sad film because of its depictions of unjust court practices and wrongful oppression by the husband. However, then they would start to laugh playfully and say that it had all changed now and that if

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5 In a study on popular Egyptian cinema Shafik analyzes the film urīdu Hallan in the context of what she calls “cinematic misery feminism.” Cinematic misery feminism represents a view that sees women as objects of male power thereby neglecting women’s capabilities to improve their situation (2007, 133-7).
I wanted to find out, I should see *muḥāmī khul’*. In other cases, people would say the opposite: “*muḥāmī khul’* is a comedy. If you really want to learn about the practice of divorce in Egypt you have to see *urīdu Hallan*.”

In this same period (shortly after my arrival in Egypt in May 2003), this feeling was reinforced when I told my Arabic teacher that I was studying the khul’ law. He warned me not to focus only on khul’ as there were other controversial issues in the law such as ‘urfi-marriages which had provoked a lot of consternation too. ‘Urfi-marriages are marriages which are not officially registered with the relevant state authorities. Before the introduction of the khul’ law women who had married through ‘urfi could not obtain a divorce. This, my teacher told me, had left many people in bewilderment, wondering what would happen to Egypt with these secret love marriages (which it was thought were often conducted by young people without the parents’ knowledge with no other purpose than sexual pleasure outside marriage) now officially being recognized by the state. “And,” he continued, “to make things worse, a film was released which confirmed all the things they had been afraid of.” The film my teacher was talking about was *mudhakkira al-murāhiqa* (Diary of a Teenage Girl) by Inas al-Daghadi. It was released in 2002, two years after both the controversial khul’ and ‘urfi article had been implemented and it tells the story of a young girl who becomes pregnant after she and her boyfriend conduct an ‘urfi marriage without their parents’ knowledge.

Hence, a few weeks after my arrival in Egypt in May 2003, I had already seen three films and many cartoons about divorce in Egypt but I had hardly glanced at any written materials such as newspaper articles. When a film by the title *urīdu khul’an* (I Want Khul’) was released in 2005 – a spin on the film *urīdu Hallan* - I became more convinced that popular culture in general and films and cartoons especially were playing an important role in the public debate on khul’.

The importance of popular culture media is based on certain factors. One factor is related to the relatively high level of illiteracy in Egypt. As a result, written texts, such as those found in newspapers, are inaccessible to large parts of the population. Secondly, in a culture where political opposition is limited, Egyptians use fun and joking “as a safe way to express rejection, opposition and anger, and to break tension” (Saleh 2004, 2). Thirdly, not only do works of popular culture release tension but Egyptians are extremely fond of their film stars. In this sense, Abu-Lughod even speaks of “star magic” as stars serve as icons of Egypt and

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*This, of course, is different with regard to talk shows on television in which rational arguments are exchanged through the use of the spoken word. However, it could also be argued that formal usage of language also serves to create a distance between speakers and viewers. For my analysis, however, I have chosen to not include television talk shows in the analysis as it was difficult to gain insight, retrospectively, in a television debate that had been raging at the end of 1999 and the beginning of 2000, a period in which I was not present in Egypt.*
people’s attachment to them even fosters a sense of national belonging: “To be involved with the stars is to be part of a national romance,” she says (2005, 228).

**Studies on public debates & reform of Muslim Personal Status Law**

Eager to know more about the subject of Personal Status Law in relation to popular culture, I searched for literature on public debates surrounding reform of Personal Status Law in Egypt and other Muslim countries. I found a few studies which explicitly analyse public debates on reform of Muslim Personal Status Law, but these did not analyse films, cartoons or other works of popular culture.

For example, in an issue of the journal *Islamic Law and Society*, four case studies are presented in which Buskens, Welchman, Schulz and Würth provide an analysis of the public debates which surrounded reform of PSL in Morocco, Palestine, Mali and Yemen respectively (2003). They point out the different participants in the debates and show how the circle of participants in the public debates on reform of PSL has widened and has increasingly come to include Islamists and women NGOs with a Western agenda who were supported by international donor organizations. As well as the inclusion of new participants, the authors also pay attention to processes of exclusion (Moors 2003). In addition, and in line with Yüksel, Singerman, Fawzy and Zakariyya, they mention how all participants use the language of Islam in order to convince the other of the merits of their case. In a study on the enactment of Personal Status Law in the *shari‘a* court of Gaza city in Palestine, Shehada (2005) also pays attention to these questions.

Notwithstanding that these studies on public debates over law reform, both in and outside Egypt, were informative and insightful,7 the sources they used were largely based on verbal statements of participants in interviews and from newspapers and there was little mention of statements made through cartoons and films. As a result, I was not sure how I could relate these studies to the Egyptian public debate in which films (both drama and comedies) and cartoons seemed to play an important role and in which words but also dress and other non-written expressions were used to articulate a certain message.

There are a few works which allude to the influence of popular culture on PSL reform. For example, in her already mentioned article, Singerman refers to the film *urūdu Hallan* saying that the film had taken the reform of PSL “out of the closet”. In a study on judicial discretion in Syria, Carlisle believes that legal awareness is influenced by popular culture, a factor which “has yet to receive the attention of studies into Muslim family law in practice” (2007, 58). Finally, in the introduction to the above mentioned issue of *Islamic Law and Society*, Moors presents a Palestinian documentary to illustrate how the debate on reform of PSL

7 In fact, the approach to chapter 2, which deals with an analysis of the public debate in newspapers and magazines, is largely based on these studies.
has come to include a large number of participants. Although interesting, these references did not provide me greater insight into the role of films and cartoons in public debates. However, in *Religion, Media, and the Public Sphere* Moors explicitly pays attention to the “…ways in which particular media in Palestine present and engage with public debates on family law” (2006, 115). According to Moors, texts and films provide the audience with different information. Where written texts mention that the main participants in the debate on reform of PSL have become the Islamists and women NGOs, films depict a different picture as they (unintentionally) show that women Islamists also partake in the debate. Although these women remain silent, it is through their body language and style of dress that they make their presence felt. By comparing written texts to films, Moors makes clear that women Islamists are not mentioned in, and therefore excluded from the debate in written texts, while in the films they are not only visibly present but also know how to make their voice heard (2006, 125).

Not only did Moors’ study make me understand why it is insightful to include visual materials in the analysis, it made me realize that in order to form an idea as to what themes were included and/or excluded in the Egyptian public debate on *khul’*, it was important to analyze national media such as newspapers and magazines as well as popular culture media. In this way, it becomes clear whether newspapers and magazines address the same issues as films and cartoons.

With regard to the debate on *khul’* I found out that where newspapers often pointed to the conformity or non-conformity of *khul’* with sharia, the films and cartoons did not mention religion, at least not explicitly. While in newspapers the West and the Egyptian government were accused of participating in a Zionist conspiracy the only intention of which was to attack Islam, in the films and cartoons it was the modern city which was juxtaposed with the Egyptian countryside. Hence, where newspapers highlighted the difference between Egyptian Islam-based culture versus Westernization, the films pointed out the difference between the Egyptian countryside versus the modern Westernized city of Cairo. The latter difference is played out by the element of dress but also by the elements of music and language whereby the Egyptian countryside is presented as good, while the modern Egyptian city is presented as detached from its roots and therefore as foolish and bad. Yet, there was one element which the newspapers, on the one hand, and the films and cartoons, on the other hand, had in common and this was the fact that they both presented a picture of *khul’* women as being westernized women from the upper classes who threatened Islam and the Egyptian countryside, respectively. The inclusion of films and cartoons made clear

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8 Zarzycka also claims that cultural productions are a form of knowledge which can offer an understanding of the subject matter under study –in this case pain and the female body– that is unavailable through purely cognitive means (2007).
that the debate on *khul’* did not only centre on Islam and Islamic law-related issues. Upon closer inspection, other issues such as cultural authenticity, modernization and changing notions of man- and womanhood were at stake as well.

At this point, it needs to be stressed that the interpretation of the films which I just mentioned, is a product of my own analysis and not based on interviews or statements of the filmmakers or others involved in the films’ production or performance. While looking for literature in connection with my analysis of the films, I came across the work of both Abu-Lughod and Armbrust on popular culture in Egypt. I was especially interested in Armbrust’s analysis of a film genre which he calls the “vulgar genre.” With Upper Egypt being the stereotypical site of backwardness and the subject of many jokes made by Egyptians living in the urban areas of Egypt, in his study on mass culture and modernism in Egypt, Armbrust directed my attention to a new film genre in which the region is no longer the site of backwardness but representative of the honour of the nation instead. This reversal is used to criticize the modernizing project of the government and I found it interesting because this reversal also takes place in the two films on *khul’*.

In her study on the politics of television in Egypt, Abu-Lughod explicitly pays attention to the modernizing project of the Egyptian government and how it uses television serials to disseminate its message to the population. While this is interesting in itself, I also found her study interesting for another reason. While, according to Abu-Lughod, television serials are used by the government to underline its modernizing project and to educate its citizens, they often do not bear much resemblance to the lives of its viewers (in her study: women villagers and female workers in Cairo), as most television serials deal with urban, often upper-class problems. As a result, viewers tend to be selective in their reading of the message of television dramas. Viewers merely perceive the television serials to be constructed fantasy with a high level of entertainment (2005, 237-9).

If we apply her analysis to the two films on *khul’* it would mean that the lives of the upper class women in the films who file for *khul’* are very different from the lives of the people who watch the films, and one would tend to believe that *khul’* would only be used by upper class women. However, the first woman of the country who filed for *khul’* was not a rich woman from the upper class as was the case in the film *urīdu khul’an* (which presented the case of this woman as the first *khul’* case of the country) but a fallaha (female peasant) from Lower Egypt! Dressed in a black *gallabiya* (long, loose outer garment) and the veil typically worn by lower-class women and pursuing a *khul’* divorce because her husband was abusing her and had married a second wife, this woman clearly was not the
modern westernized woman depicted in films who only wanted to file for a divorce because her husband was snoring.

This of course raises the question as to the daily reality of khul’. Is khul’ a problem of the urban upper (middle) class or did the two films present in a comical way a problem that bore resemblance to the lives of its viewers and which could not solely be explained away as what Abu-Lughod calls “constructed fantasy” (2005, 238)? It is at this point that the analysis moves from the public debate on khul’ to the implementation of khul’ in the courts and its operation in daily life.

2 Analysing the operation of khul’ in practice

With khul’ sparking much controversy in the public debate, I wondered if this would affect its implementation in court. Of course, it is difficult to establish a causal relationship between the public debate and the way in which judges implement khul’ in the courts. Nevertheless, I was eager to know more about judges’ opinion on khul’; whether they related khul’ to Islamic law; what they thought of women who use khul’ and whether these perceptions influenced their professional attitude in court. I wanted to analyse this both by interviewing judges and by observing in court sessions how judges interacted with women litigants who had filed for a khul’ divorce.

Interesting court studies on Egypt had been conducted by Hill and Zaalouk in the 1970s. When I was doing my main fieldwork between October 2003 and October 2004, I initially was surprised to learn that hardly any other ethnographic research had been conducted after this period. This I found somewhat strange for two reasons. First, Egypt has always taken a prominent place in academic literature on legal reform in the field of Islamic law in general and PSL in particular (cf. El-Alami 1992; El-Alami and Hinchcliffe 1996; Bernard-Maugiron 2004; Bernard-Maugiron and Dupret 2002; Brown 1997; Esposito 1982, 2001). Second, in general, studies on the implementation of PSL in (Islamic) courts have increased (see also Hirsch 2006). According to Hirsch “Much recent literature on Islamic courts consists of ethnographic studies in a wide range of societies” (2006, 176), such as Iran and Morocco (Mir-Hosseini 1993), Morocco (Rosen 1989; Buskens 1999), Indonesia (Bowen 2003), Malaysia (Peletz 2002), Palestine (Shehada 2005), Yemen (Würth 1995) and Syria (Carlisle 2007). In all these studies, a legal-anthropological perspective is used in which the interaction between litigants and judges is studied. Apart from these works which deal with the here and now, historical studies on court records have also increased, as the works of Shaham on Egypt (1997) and Tucker (1998) on Ottoman Syria and Palestine, show.9

9 For more information on scholarship on court studies in general, see Hirsch (2006).
The reason for the relatively few ethnographic court studies on Egypt might be related to a methodological constraint which I came across during the fieldwork: I was not allowed to attend PSL cases in the courts of Egypt and could only talk to judges, women litigants and lawyers on an individual basis. This also transpires in the report of Human Rights Watch on women’s divorce rights in Egypt (2004) in which interview fragments with judges, lawyers and women litigants are presented abounds but where no mention is made of how judges interact with female clients and/or their lawyers. This was different in the early 1970s when Hill conducted her research on the Egyptian court system. Her book *Mahkama* (1979) is full of references to court sessions, both personal status sessions and sessions in other fields of law. However, in the mid to late ’70s, a shift towards secrecy seems to have occurred as personal status cases were no longer heard in public (Agrama forthcoming). The draft to law no. 1 of the year 2000 even included an article stating that all personal status cases needed to be heard in secret out of respect for public order, morals and the sanctity of the family (ibid, 28). Under parliamentary discussion, the article was changed and in its final form it was left up to the courts to decide whether or not personal status hearings should be held in secret in particular cases, based on public order considerations (ibid, 29).

This methodological constraint made me realize that I would not be able to conduct a court study in the “traditional” way. Yet, I also had another reason for not wanting to do this. In my eyes, the court studies which I mentioned above are often focused on the figure of the judge (an exception would be the study of Buskens 1999). What does the judge say and what does he do in reality? Hirsh too claims that although court studies explore the court’s operations as part of ongoing social life, ultimately, though, judges receive the most scholarly attention (2006, 176-7). However, if we want to know more about women litigants, what they say in court and what they really do both in and outside court, we need to proceed in a way that takes us away from the court’s premises.

In the case of the Egyptian *khul’*, newspapers had often claimed that women would only use the law to marry a rich and more handsome man. Women in court, however, often vehemently claimed that they had enough of marital life and that they never wanted to marry again. What happened in reality? Did women really remarry and if so, to what type of men or did they remain single? Where did...

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10 In this article Agrama argues that the shift from open personal status sessions to secret sessions is an example of a conflict in Egypt that seems to arise from a clash between Islamic precepts and secular ideals. In actuality, he argues, this and other conflicts arise from deeper tensions within liberal secularism itself (forthcoming).

11 In 2008, al-Sharmani published a report on Family Courts in Egypt. The data on which the report was build largely consisted of in-depth interviews but also of observations of court- and mediation sessions.
they live after the divorce? Were they supported by their families and others close to them? Did they take their children with them or did they abandon them, as opponents to *khul'* had often predicted? Were they forced to work or were they already employed? Were they involved in other (PSL) cases?

Providing an answer to these questions is important since there are few studies which deal with the lives of divorced women in Egypt. In a study on female-headed-households in Egypt, Bibars pays attention to the phenomenon of divorce but she does this in an indirect way since her study concerns female-headed-households in general, and not only those in cases of divorce (2001). The interesting ethnographies on family life in Egypt (mainly Cairo) by Wikan (1980); Rugh (1985); Singerman (1995) and Hoodfar (1997), do not pay much attention to the issue of divorce. This is surprising when we consider that approximately one out of five marriages ends in divorce; that women are under constant threat to be repudiated by their husbands; that Egyptians frequently claim among themselves and in the public debate that divorce rates have sky-rocketed; and that divorce is a recurrent theme in popular media.

An interesting work on women and divorce is Jansen’s *Women Without Men* (1987). Focusing on an Algerian town in the 1980s, she pays special attention to women who are widows, divorced or orphaned. She shows how they all have to provide for themselves, how they have come to occupy a marginal position in a society in which men are expected to provide for female family members, but that this women’s marginality simultaneously leads to forms of emancipation (1987). Interestingly, Jansen also remarks that “Widows and others on the fringes of the kinship structure of North Africa have not been studied by scientists, but their situation has received ample attention from novelists and filmmakers” (1987, 4).

Two decades later, this situation does not seem to have changed. There are still few scholarly works which pay attention to the lives of divorcees from an anthropological perspective while the issue of divorce still receives ample attention in cartoons and films (such as *urīdu Hallan*, *muHāmī khul’* and *urīdu khul’an*).12

Because of this, and for practical reasons as mentioned above, I have chosen not to take the courts as a point of departure but instead to focus on the lives of women who file for a divorce through *khul’*. Specifically, I focus on the life of one woman whom I met in court and who had filed a *khul’* divorce. After our first meeting, she invited me to meet her colleagues, her friends and family. Through these meetings and the telephone conversations we had, I was able to gain an understanding of how divorce in general and particularly the controversial

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12 In *Women, the Family, and Divorce Laws in Islamic History*, Sonbol (1996) pays attention to women and divorce but from a historical and not an anthropological perspective, while Chemais’ "Obstacles to Divorce for Muslim Women in Egypt" (1996) is based on a study of court documents, law texts and interviews with judges but not on anthropological study of the lives of divorced women.
khul’ divorce impacted on her life during, but especially after, the divorce. It showed me that there was a difference between her words, her plans and her hopes as expressed in court and their actual realization in her life after the divorce. It also became clear that there was a discrepancy between the themes that were brought forward in the public debate, and those brought by this woman, to whom I have given the fictitious name Nura, and other women’s daily experiences. In this light, Mernissi would say that the way in which women were depicted in the public debate was a defense mechanism against profound changes in sex roles and sexual identity, a psychological need to maintain a minimal sense of identity in a confusing and shifting reality (1987, xxvii). This study particularly singles out this “shifting reality” by analyzing socio-economic changes that do not only influence the making of the law by the legislature but also its remaking by people, to use the words of Shehada (2005, 8). We will see that husbands’ obligation to maintenance and wives’ obligation to obedience play an important role.

Organization of the study
In the first chapter, I pay attention to the evolution of PSL in Egypt, from the early 1920s when the first codified PSL codes were introduced, until the introduction and implementation of Egypt’s first law of the new millennium, the “khul’ law” of 2000. In this overview I will not contextualize PSL by presenting a full picture of Egypt’s legal system. Others have done that (cf. Bernard-Maugiron and Dupret 2002). Neither will I elaborate on the sources of Islamic law which underlie the issues that are codified in PSL (such as marriage, divorce, custody and inheritance) or the different techniques which reformers used to present the reforms as being in accordance with Islam and Islamic law. Apart from the fact that others are more knowledgeable in these fields (cf. Arabi (2001, 2001b, 2002); Layish (2004); Lombardi (2006)), I am of the opinion that in this case it is more interesting to relate reform of PSL to the film urīdu Hallan since many Egyptians whom I encountered during research for this thesis said that this film was a catalyst for publicly exposing issues surrounding the reform of PSL. While it is of course difficult to answer the question as to whether this is really true, it is still worthwhile to briefly present the film and then elaborate on the issues which according to Egyptians I met, aroused most empathy. These issues are: the ease with which husbands can throw their wives on the street, leaving them without any source of income or a place to stay, even if there was no fault on the part of the wife; sluggish court procedures; abusive husbands who refuse to grant their wives a divorce and prevent them from starting new lives, in some cases even invoking a so-called ta’a ordinance where the police could force a wife to return to the marital home. In a way, all these issues encompass the so-called maintenance-obedience relationship. This relationship which is still anchored in Egypt’s PSLs today
demands that husbands are providers and that, in return, women need to obey their husbands.

While the maintenance-obedience relation is a legal concept, it also featured prominently in the public debate on *khulʿ*. In newspapers, for example, women’s irrationality was often presented as the main reason behind women’s need to obey their husbands and in the films and cartoons we see what happens when women no longer need to obey their husbands because they can divorce unilaterally. In chapter 2 and 3, I relate the maintenance-obedience relation to the public debate on *khulʿ* and show how it was politicized by the different parties to the debate. In chapter 2 this will be done for the public debate as it appeared in the written texts of national media such as newspapers and magazines. Here I follow the authors of the *Islamic Law and Society* issue by posing the same questions: who were the parties to the debate; what arguments did they use; did they try to exclude each other from the debate, and if so, what were their methods (Moors 2003)?

In addition to an analysis of the debate on *khulʿ*, I also decided to analyse reform of PSL which was adopted in the wake of the “*khulʿ* law” in the period between 2000 and 2007. I decided to do this after I had noticed how, in contrast to the debate on *khulʿ*, the controversial nature of these reforms (such as the right of women to travel without the permission of their husbands) was not reflected in the public debate in newspapers. In this light Moors claims that it is not only important to understand who gains or loses positions of authority, but that a study of the public debate should also try to investigate “…the moments when groups highlight their particular identities and interests, and when they downplay such specificities” (forthcoming). By applying this to the analysis of the public debate on PSL reform during 2000-2007, I found out that this time the strongest criticism did not come from newspapers but from two films: *muḤāmī khulʿ* (2003) and *urīdu khulʿan* (2005).

In chapter 3 I present these two films. I describe and analyse the use of dressmakers, music and language and show how in these works of popular culture they served to articulate a political message through which the Egyptian state was ridiculed and criticized. These first three chapters cover part I which analyses the public debate on *khulʿ* and which also provides a background to part II where the discussion turns to the operation of *khulʿ* in practice.

Part II comprises of 5 chapters. Chapter 4 describes the first meeting with Nura in the Zananiri court of Cairo. An analysis of this first meeting challenges the claim that *khulʿ* is for rich women only as the case of Nura and other women makes clear that the amount of the dower is only symbolic. I explain why this is the case; how it led husbands to appeal the return of the dower; how and why judges often
took the side of the husband, and made women pay back an amount which exceeded the dower they had received.

In chapter 5, the issue of court arbitration is discussed. In light of the establishment of a new Family Court in 2004, which took as it main rationale solving marital disputes in an amicable way, I wonder whether this new opportunity for “dialogue” between judges and women litigants influences judges’ perception of women who file for *khul*. I pose the same question with regard to the professional court-appointed arbitrators who started working in the new Family Courts from 2004 onwards. Although it turns out that both judges and the male arbitrator often link *khul* to women’s disobedience, this does not necessarily mean that they treat women accordingly.

After the divorce, Nura wanted to travel abroad in order to find a well-paid job through which she hoped to take back into custody her children. Chapter 6, then, presents the issue of women travelling without the consent of the husband. While opponents to the law had often claimed that the travel article would only give rich women the opportunity to travel without the permission of their husbands, the case of Nura shows that it is not unlikely that lower class women also want to travel, preferably to the countries of the Gulf. The reason for their travel is economic as they either are not married at all or have husbands who are not working. However, travelling without the husband’s consent exemplifies women’s disobedience par excellence and gives the husband the right to call his wife back into his obedience by submitting a *ta’a* claim. In this chapter it will become clear when and why men and women turn to court to submit *ta’a* and divorce claims, respectively.

After the divorce Nura started living with her old and sick mother. This, however, did not mean that Nura started to take care of her mother. In chapter 7, I pay attention to this phenomenon by bringing up the issue of female-headed-households. I show how they exemplify the decreasing strength of family ties in general and the decreasing ability of the family to negotiate in cases of marital disputes in particular; and whether, in the absence of family, friends take up such tasks. I also pay attention to the problems between wives and their in-laws.

Finally, chapter 8 shows how Nura wanted to marry again. However, in order not to give up her independence and freedom, she only wanted to marry an already married man. I discuss why she wanted to marry again and why she chose to marry in this specific way. By doing so, I simultaneously deal with the subject of secret marriages, the so-called *urfi* marriages, which also formed a point of heated discussion in the public debate on *khul*, both in newspapers and in films.
Research methods

As indicated earlier, this study on khulʿ is part of a PhD project which I started in March 2003. In May and June 2003, I stayed in Egypt for the first period of fieldwork. From October 2003 until November 2004, the second and main period of fieldwork was carried out. Thereafter, I returned to Egypt for several shorter periods of fieldwork in May 2005, September 2005, November 2005, and April 2007.

A comprehensive study on khulʿ in Egypt is ambitious and complex. It crosses disciplines and requires the researcher to have a good understanding of these disciplines. In what follows, I elaborate on the research methods which I used for this study as well the problems and limitations I encountered.

After four years of studying Arabic language and culture, including a semester in Cairo, I found conducting interviews in Egyptian or standard Arabic not so easy. But there was no escape. In general, people’s command of English was very limited. Even in the case of well educated judges and lawyers, especially when we spoke about their work, we had to use Egyptian Arabic, and often even Standard Arabic as will be seen in chapter 5. I learnt a whole new legal vocabulary (at the time I did not have a background in law) and I also had to read legal texts (such as legal books, legal documents and different Personal Status Laws), newspaper articles and watch films. In my contacts with “common” Egyptians, I had to switch from formal (legal) discourse in Standard Arabic to informal talk in Egyptian Arabic. This felt like learning a new language. As a result, during the different periods of my fieldwork, a considerable amount of time was invested in improving my Arabic. I must say that my reading and communication skills in Arabic, both Standard and Egyptian, improved quickly and I found mastering the different levels of the Arabic language the most enjoyable part of my research.

1 Analysing the public debate on khulʿ

I have used different sources with regard to the analysis of the public debate. Chapter 2, which deals with an analysis of the debate in written national media, is based on Egyptian newspapers and magazines which are distributed nationwide and which cover both governmental (al-ahrām, al-jumhūrīya) and oppositional (such as al-shaʿb, al-wafd) papers. The opposition papers cover both left and right wing positions. In general, all papers are written in Arabic although I have also made use of an English-based newspaper by the name al-Ahram Weekly. Since the papers dealt with a debate which had largely taken place in a period when I was not in Egypt, I had to rely on the archives of the American University in Cairo. Other papers of a later period I simply bought and read when I was in Egypt.
I decided to limit the analysis of the national media debate to written texts and to exclude the debates which were broadcasted on television during the introduction and implementation of the “khul’ law.” Although rational arguments can and were also expressed through the use of the spoken word in talk shows on television, it was difficult to gain insight, in a retrospective way, in a television debate that had been raging at the end of 1999 and the beginning of 2000, in which period I was not present in Egypt.

With regard to the analysis of the public debate on khul’ in films and cartoons, I partly relied on the same sources. For example, I found most of the cartoons for this study in the library of the American University in Cairo, while others have been gathered from private collections. I bought all the films I watched and since they were all in Egyptian Arabic, I always made sure that I watched them in the company of a native speaker.

2 Analysing the operation of khul’ in the courts
Most of the limitations of this study are to be found in the sub-research area which deals with the operation of khul’ in the courts. First of all, and as indicated before, I was not able to attend personal status sessions in court. It was only during a short period of fieldwork in May 2005 that I met a judge who was willing to let me attend his personal status sessions. It was through his cooperation that I was able to attend four personal status sessions. Being too good an opportunity to be true, and in order not to miss out a word, I always made sure that a friend, Muhammad, who was a graduate of law, accompanied me to these sessions and that both Muhammad and I made notes which we compared and processed immediately after the court sessions.

Secondly, the geographical location of the courts was limited. During the main fieldwork period which extended from October 2003 till November 2004, I mainly visited courts in Cairo (especially the Zananiri court), and only once a court in Kafr as-Sheikh, a provincial town in Lower Egypt.

Inside the courts, I conducted formal interviews with about fifteen judges. I never made appointments but simply let the hagib (bailiff), knock on their door and introduce me to them, after which they were always willing to be interviewed. Interviewing them was difficult because they were hardly ever alone and often, I found myself speaking to several judges at once and sometimes others, such as friends of the judge or the katib (court clerk) also mingled in our conversation. Therefore, the interviews were rather loosely structured and I was not always able to bring the same topics to the attention of each individual judge. I interviewed most judges only once, but there were also two judges whom I was able to interview a few times. Obviously, the statements of these two judges play an
important role in the analysis. As a result of these limitations, the interviews with judges should not be used to make numerical conclusions.

It was difficult to obtain statistics on a number of topics such as the number of women-initiated divorces in Egypt; the number of women who file for khul'; and the time it takes for different divorce cases to be issued a ruling, if at all. All endeavours from my side and from others to collect statistics were in vain and I ceased research in that area.

In the courts I also spoke to arbitrators, lawyers, hagib-s, katib-s and litigants, mainly women but also a few men. The interviews with them ranged from loosely structured to informal unstructured conversations and discussions which also varied greatly in length (from a few minutes to a few hours). I talked to the same categories of people outside court as well, in the same way: sometimes casually and loosely structured while at other times the conversations were more structured and formal.

With regard to the arbitrators, it must be mentioned that the new Family Court, in which the arbitrators had started working, was up and running in October 2004, at which period I was preparing to leave Egypt. Consequently, I was only able to conduct research on the new Family Court during the fieldwork period which lasted from May until June 2005. In this period, I was lucky enough to get permission to visit one arbitration office in Cairo’s Zananiri court and conduct interviews with the male and female arbitrator. I was able to observe the way the arbitrators interacted with their clients; and to obtain from them the reports which these arbitrators had to submit to the judge. Yet, since these findings are based only on a month-long observation from this particular arbitration office and its two arbitrators, I am reluctant to state that they give an exact picture of reconciliation in the new Family Courts. Instead, they rather show one way of doing this.  

3 Analysing the operation of khul’ in daily life

As indicated above, the analysis of the operation of khul’ in daily life formed an important part of my research since I believe it fills a gap in the anthropological study of the lives of divorced women in Egypt and in the Muslim world in general. The analysis of this part of the research is mainly based on informal conversations with men and women from different social-economic backgrounds. I must say that the communication with Nura, whose story forms the basis of the five chapters of part II, was somewhat difficult. Even though she was extremely friendly and cooperative she would change the subject every few minutes making it difficult for me to follow her and to elaborate on any one subject in depth. In addition, she was

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13 For a more numerical study on arbitration in the new Family Courts, see al-Sharmani (2008).
hardly ever alone. In court, at work and at home, she was always surrounded by others who would interrupt our conversation; who would provide their own opinion; or who would change the conversation into another subject. In fact, the only time I was really able to systematically interview her and take notes was during our first meeting in the court in Cairo. The other meetings and telephone conversations with her were all informal, unstructured conversations. The same applies to her colleagues, friends and family, whom I met several times during the research and whose life stories I was also able to follow to some extent.

Apart from Nura (and her colleagues, friends and family), I also met a lot of other women, often through mutual friends, who wanted to divorce: either through *khul'* or a regular judicial divorce, while others had not taken any legal steps yet but were “only” considering the possibility of divorce. The meetings with these women were sometimes arranged rather formally by my friends, while in other cases they were coincidental. Some of these women I would only meet once but through my friends, I was able to stay informed of their situations.

In many other cases, I only heard stories about women with marital problems without actually meeting these women. Friends often knew that I was conducting research on *khul'* and when a story would come to their attention, they would tell me about it. Most of my friends, and the women I met through them, were young women from the middle and upper middle classes who were in their twenties and thirties and who lived in Cairo, or who had come to Cairo in order to study and work.

However, many close friends were also men whom my partner Tom had befriended and with whom we spent many enjoyable evenings in the many *qahwa*-s (coffeehouses) of Cairo. I always felt that the presence of Tom increased my research opportunities considerably. In his presence, I could go out with men without raising any suspicion and at the same time hear these men argue about *khul'* but also about marriage and divorce in general. As a matter of fact, the subject of marriage and divorce often aroused strong emotions as many of these men were in a phase in which they were considering or even preparing for marriage. One of them became such a close friend that we accompanied him on several occasions to a village in Lower Egypt where we met his family as well as his old schoolmates and friends. With his mother, brother and sister-in-law, I talked a lot about marriage and divorce related issues during the day while Tom and I would accompany him in the evenings to a *qahwa* (coffeehouse) where he would meet friends. Like my female friends, most of these male friends were young middle and upper-middle class men in their twenties and thirties who lived in Cairo or were there to study and / or work.

Tom and I were also introduced into a group of older men and women from the higher middle classes the majority of whom lived, like us, in Masr al-
Gadida, a large upper-middle class district, thirty minutes away from the center of Cairo. This group consisted of men and women who were highly educated and who gathered a few times a week in one of their apartments or somewhere outside the home, in order to have a drink and discuss literature and other intellectual subjects. Living lives completely different from that of Nura and most of the other people I met, they always reminded me of Duriya, the main actress of urīdu Hallān. Since they had grown up; married; become mothers and fathers and had often also divorced in the mid-sixties of urīdu Hallān, they were able to depict a very lively picture of this period.

I have also included many stories which came to my attention through people whom I did not know such as taxi drivers; women in the metro; street vendors and so on. This was related to the fact that many wanted to know what I was doing in Egypt and when I explained to them the purpose of my visit, they would often tell me their opinion about khulʿ and illustrate this by a case they knew. I should also mention the lawyer’s office of Amal. During the fieldwork Amal worked as a lawyer in an office in Cairo which offers women free legal assistance. This office was part of the Egyptian NGO called The Egyptian Center for Women’s Rights (ECWR). I often accompanied Amal on her visits to the courts in the mornings. In the courts, there was never time to meet women litigants as Amal was always in a hurry, filling out and submitting different forms in different parts of the courts. Even when she met litigants in court, there was hardly ever time for me to talk with them. However, in the afternoons she would go back to the office to prepare the court cases for the next day and to register the cases of women who dropped by and who wanted to apply for a divorce. I frequently accompanied her to the office in order to interview these women. These interviews were conducted in a private room adjoining the room where Amal and her four colleagues were working. In Amal’s office, I interviewed around fifteen women from the lower and lower-middle classes who wanted to divorce either through khulʿ or a regular judicial divorce. In contrast to the other data I collected, these data were based on interviews which lasted approximately one hour; were taped and transcribed and conducted in a rather formal and structured way; and were carried out in the course of one meeting. Although I could not follow these women’s stories over the course of time, I found them very useful as I compared the issues which were raised in these interviews with those that occurred in the lives of the many women and men whom I met in a more informal way.

Finally, I should mention that, in order to protect the anonymity of my respondents, I have chosen to give them fictitious names.
Part I

The Public Debate on *Khulʿ*

*Qalamani (two pens)*
1 Maintenance & obedience: a history of Personal Status Law in Egypt

1.1 Presenting: “urīdu Hallan”
In urīdu Hallan (1975), Duriya, a middle-aged woman from the upper class, wants to divorce her husband. Since her only son has grown up and has just left the parental home in order to study abroad, she decides that the time is ripe to divorce her unfaithful, alcoholic and abusive husband whom her father forced her to marry twenty years earlier. When she requests a divorce from him he refuses, saying that he can not understand why she suddenly wants to divorce him after twenty years of marriage unless her eye is on another man. As a consequence, Duriya is left with no other choice than to file for divorce in court. But, her case is endlessly postponed and she finds herself dividing time between work and court without any results. As her case drags on, she becomes more interested in learning the difference between women’s divorce rights in Islam as compared to the divorce rights she has as an Egyptian Muslim woman under the Egyptian legal system. She discovers that Islam gives women the right to divorce their husband unilaterally through a procedure called khul’.

One day, she finds the police at her door—sent by her husband—to force her back to the marital home through a so-called “ta’a” (obedience) ordinance. In the film this means that when a wife leaves the marital home without her husband’s permission he is legally permitted to force her home and lock her up until she becomes obedient to him again. Instead of returning “home” Duriya runs down the stairs and flees to her brother’s apartment. There she meets a friend of her brother and after a while the two fall in love. Slowly Duriya starts to hope for a new future.

Now the obedience ordinance has angered her to such an extent that she decides to make an appointment with the Minister of Justice. During her visit she tells him about the hadith (Prophetic tradition) on khul’ in which a woman approached the Prophet Muhammad telling him that she hated living with her husband although she thought of her husband as a good and religious man.14 The

14 The hadith on khul’ (the Habiba hadith in the following) is transcribed in four of the six authoritative compendia of the Prophet, this being the collections of al-Bukhari, Muslim, Abu Dawud, al-Tirmidhi, al-Nasa’i, and Ibn Maja. Al-Bukhari reported that: “The wife of Thabit b. Qays b. Shammas [Habiba] came to the Messenger, peace be upon him, and said: ‘O, Messenger of God, I do not hate Thabit neither because of his faith nor his nature, except that I fear unbelief.’ The Messenger of God, peace be upon him, said: ‘Will you give back his orchard?’ She said: ‘Yes’ and she gave it back to him and he [the Prophet] ordered him and so he [Thabit] separated her” (1868, 266). In the hadith, the Prophet ordered Thabit b. Qays to divorce his wife Habiba after she returned to him the orchard which he gave her as a dower. The consent of Thabit b. Qays was not sought after. This is in contradistinction to the four
Prophet asked her if she was willing to give him back the mahr (dower) which he gave to her upon marriage. She agreed and, after she returned it to her husband, the Prophet divorced her from him. The Minister of Justice is impressed by Duriya’s knowledge of Islamic law and he promises to study the matter. He abolishes the obedience ordinance in the sense that the police are no longer allowed to force a woman back “home.”\textsuperscript{15} Notwithstanding the importance of this change, he does not give women the right to divorce by way of khul’, nor does he set out to facilitate the existing divorce procedures so as to put an end to a practice which makes women spend years in court without necessarily obtaining a divorce at the end of that period. The latter is what happened to Duriya. After four long years the judge still refuses to grant her a divorce. Instead of marrying the man whom she has fallen in love with, she remains legally married to a man whom she hates and from whom she has already been separated for years.

In actuality Duriya is a character played by Fatin Hamama, one of Egypt’s most famous actresses. Situated in the mid-1960s and released in 1975, \textit{urīdu Hallan} (I Want a Solution) had a profound influence on the public, both in and outside Egypt, and many claimed that it breathed life into reform initiatives of the old Personal Status Laws which were last amended in the 1920s. Even today, \textit{urīdu Hallan} is frequently rebroadcasted on television and on a list of the hundred most important Egyptian films in a century of Egyptian cinema (1907-2007), the film ranked 60. One women’s activist even claimed (in 2004) that she still uses \textit{urīdu Hallan} in her legal-awareness and consciousness-raising programmes since the film knows how to move even the most fervent opponents of women’s rights.\textsuperscript{16}

In this light, lawyer Abu Bishoy drew my attention to a particular scene in \textit{urīdu Hallan} where Duriya meets an old woman from the lower classes in court who is crying softly. When Duriya asks her what is wrong with her, she sobs that after a marriage of more than thirty years her husband has divorced her to marry a younger woman. He had thrown her out of the house and since then she had been living on the streets. Begging the judges to help her by forcing her unwilling husband to provide for her, she dies before her case is issued a ruling.\textsuperscript{17}

\textsuperscript{15} It was really abolished in February 1967.
\textsuperscript{16} Personal interview with Hoda Zakariyya, May 2004, Cairo.
\textsuperscript{17} The issue of women being thrown out of their houses after long marriages in which they had raised their children and taken care of the household became the subject of another film that was released in 1987 and which bears the title \textit{al-qānūn lā ya’rif ‘aīsha} (The Law does not Know Aisha). There are other films on women and personal status rights (see Shafik 2007, 135). As I have restricted myself to the films which were brought to my attention by the Egyptians I encountered, other films on personal status rights are not included in the present analysis.
Four years after the release of *urūdu Hallan*, a new law on Personal Status was issued (law no. 44 of 1979) which included a clause that gave women the right to *mut'a*, a compensation of at least two years alimony in cases where a husband divorced his wife even though the marriage had been consummated and there was no fault on her part. The law also included a clause that gave women with children in their custody the right to stay in the marital home. According to lawyer Abu Bishoy, the *mut'a* clause was a direct result of the influence which *urūdu Hallan* had on the government as the film was a shameful reminder of, and a critic of, a government which had ignored the plight of women in the courts and which had neglected reform of PSL for more than fifty years. Let us now return to the evolution of PSL in Egypt.

1.2 Egypt’s first Personal Status Laws: emphasizing the conjugal relation

In *urūdu Hallan*, Duriya wants to divorce her husband but she does not want him to pay her alimony after the divorce. As a matter of fact, being a wealthy woman with a good job, she does not want his money at all. The only thing she wants is to get rid of him. Her lawyer, however, makes clear that every Egyptian marriage is based on the maintenance-obedience relation. Even in the case where a woman is wealthy or has her own sources of income, it is still a husband’s duty to provide financially and materially for his wife in return for which she should remain obedient to him. The film suggests that obedience means that Duriya should not leave the house without her husband’s permission. Because she did, her husband had the right to force her back to the marital home through the already mentioned *ta'a* ordinance. Although Duriya succeeds in convincing the Minister of Justice of abolishing it, she is not able to push the rights of “disobedient” women one step further by having them granted the right to unilateral divorce. Hence, not heeding Duriya’s attempt to shake the traditional maintenance-obedience relation, the legal and social pillars underlying the husband-wife relationship stayed firmly in place.

The maintenance-obedience relation was codified in the 1920 PSL, Egypt’s first Personal Status Law. This law also gave women more grounds for divorce. These grounds, which were expanded in the PSL of 1929, reflect a wish to

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19 This is in line with article 1 of PSL 25 of 1920, which states that it is a husband’s duty to maintain his wife, even in the case where she is financially independent or from another religion.

20 These grounds are: prolonged absence of the husband without legitimate cause for a period exceeding one year (art. 12 of law 25/1929); imprisonment of the husband for a period exceeding three years (art. 14 of law 25/1929); mental or incurable and grave sickness of the husband of which the wife had no knowledge at the time of the conclusion of the marriage (art. 9 of law 25/1929); a husband’s failure to
encourage the formation of a specific relationship between husband and wife in which the husband worked outside the home to earn a living for his family and where the wife in her role as mother and housewife remained at home.\textsuperscript{21} Only in cases in which a husband did not live up to his duty of providing (due to illness or imprisonment for example) a woman had the right to request a divorce from him. In an attempt to further strengthen the formation of the conjugal relation and in order to curb the high divorce rates which were threatening it (it was still fifty percent at the beginning of the 1930s),\textsuperscript{22} reformers and women activists\textsuperscript{23} also sought to curb men’s exclusive rights to divorce and polygamy. Yet, despite the fact that they took Islam as a point of departure in order to highlight where the ordinances of Islam were not applied in daily reality, the opposition proved too hard to fight (Badran 1995, 135; Shaham 1997, 9).

In 1931, a procedural law on the organization of shari’a courts (law no. 87/1931) was introduced. This law, which was replaced in 2000 by procedural law no. 1 of the year 2000 - the colloquially called “khul’ law” \textsuperscript{24} included a new marriage contract which was stripped of the right to include substantive stipulations (Zulficar forthcoming). This change was a significant departure from the past where scholarly studies of Ottoman court records have revealed that it was quite common for women to include substantive conditions in their marriage contracts.\textsuperscript{25} By leaving it up to the woman and/or her family to decide which conditions they wanted to include, if any, there was more room to give shape to the marital relationship. The codification of women’s rights “into law and implementation by the modern legal system broke with the old Islamic legal system that had been practice oriented” (Mitchell, cited in Hatem 2000, 40).\textsuperscript{26} It is especially the greater flexibility and freedom of the old system that contrasted with the new system. Where the independence of men and the dependence of women had also been prevalent in the Ottoman period, at least to some extent, in the new system the categorization of women’s grounds for divorce and the abolition of the inclusion of stipulations in the marriage contract specifically, gave women less opportunities to influence the conditions of the marital relationship.

\textsuperscript{21} For the case of Palestine, Moors also notes that PSL reforms have placed greater emphasis on the conjugal relation (1995, 87, 138).
\textsuperscript{22} Fargues (2001, 258).
\textsuperscript{23} For more information on the Egyptian women’s movement at the turn of the twentieth century, see Baron (1994) and Badran (1995).
\textsuperscript{24} For more information on this subject for the case of Ottoman Syria and Palestine, see Tucker (1998).
Apparently, we should be cautious to view reform of PSL as essentially progressive and liberating to women since, in the words of Abu-Lughod: ‘…new ideas and practices considered “modern” and progressive […] might usher in not only forms of emancipation but new forms of social control’ (1998, 6. See also Sonbol (1995, 1996)). Reformers, however, presented the PSLs of 1920 and 1929 and the 1931 law, as modern and beneficial to women. They argued that compared to the official Hanafi family law of nineteenth century Egypt, which only permits judicial divorce in cases where the husband does not consummate the marriage or when he commits apostasy from Islam, the 1920 and 1929 PSLs gave women four additional grounds to divorce (cf. Arabi 2002, 183). By using the principle of *takhayyur* (adopting elements from the other three schools of law in an eclectic manner) the legislator had resorted to the Maliki school of law which gives women more grounds for divorce than the Hanafi school of law. However, Mona Zulficar, lawyer and one of the main forces behind the “*khul’* law” of 2000, claims that “With this law [law no. 87/1931], the Egyptian legislature expressed its view that there was no further need for substantive conditions in the marriage contract, since these were already covered by the law. This was not completely true, as the laws passed in 1920 and 1929 placed no restrictions on polygamy, for example, and did not codify *khul’*” (forthcoming).

1.3 Personal Status Law under Nasser: socialism without reform

After the 1920 and 1929 PSL reform and after the marriage contract was stripped of its possibility to include stipulations in 1931, it was not until 1979 that PSL was amended again under Sadat. This is somewhat surprising since under Nasser’s rule (1956-1970) many social reforms were introduced. Large-scale agricultural reforms were introduced by redistributing land, free medical care and education. By making admission to university competitive, the state assured the entrance of the middle class in institutions of higher education. What is more, after graduation the latter were promised a job in the government as a result of which the state became the principal employer of college graduates. The annual increase in the number of graduates and state employees consisted of both men and women as, under Nasser, women were encouraged to get an education and a job. Through the constitutional amendment of 1956 the state even promised to support women’s effort to reconcile public work with family obligations by providing them with maternal leave (Hatem, cited in Botman 1999, 42).

Women were also granted other constitutional rights. After some women activists went on hunger strike when the new independent government planned

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27 Perl and Menski claim that classical Hanafi law only allows a woman to divorce her husband if she can prove to the court that he is not able to consummate the marriage (1998, 285). They do not mention apostasy as a reason for divorce.
not to allow women the right to vote in national elections, the government quickly gave in to their demands and in 1956 their right to vote became anchored in the constitution (Hatem 2000, 46). However, whereas it was compulsory for men to be registered in the elections rolls, in the case of women it was optional. The 1956 constitution also decreed that all Egyptians were equal and that there was no difference on the basis of gender, religion, creed, language and ethnicity (Hatem 2000, 48).

Hence, both the constitutional decree saying that men and women were equal and the fact that an increasing number of women started to work outside the home in government jobs, seemed to undermine the maintenance-obedience relation. By providing a nation-wide state school system and an individual salary for working wives, the state had changed women’s position of dependence on men and, in the process, prevalent notions of space and space segregation were transformed. This, however, was not reflected in the PSL where the basis of the maintenance-obedience relation was not changed.

It is remarkable that the Nasser government dared to introduce far reaching reforms in all fields of law, which were governed by secular (French) codes, while it shied away from introducing accompanying reforms in PSL, the only field of law still governed by *shari‘a* principles. Women were equal to men, they could vote, they could work outside the home, they could even become a minister but in order to do so they had to leave the house, an act for which they still needed the permission of their husband. As long as the husband was providing, a wife was still legally obliged to remain obedient to him. In case she rebelled, often by leaving the house without his permission, the husband could still petition a *ta‘a* claim in court and, if he won, the judge would declare the wife *nashiz* (disobedient) as a result of which she would be deprived of the right to be maintained by her husband. Yet, we can of course wonder if women still needed their husbands’ money in a period in which a growing number of women were engaging in education and (government) jobs. In such a context, it seems sufficient that the *ta‘a* ordinance was amended and that women could no longer be forcefully returned to the marital home.

In *urīdu Hallan* a clear answer is provided to this question as the film makes a number of points about changes taking place in society. Although many women in the film work, one cannot escape the impression that these are mainly upper class women who are divorced, in the process of divorcing or in any other way no longer tied to children and their husbands who work. What is more, even when women worked outside the home, their main task was still that of a mother.

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28 In this light Bernard-Maugiron and Dupret say that the “…reformist momentum in the field of personal status was interrupted and relegated to the domain of questions of secondary importance when the Arab Republic of Egypt was declared in 1952” (2002b, 2). See also El-Alami (1994, 116).
and a housewife. Duriya, for example, only started working after her son had grown up and it was only after he had left the house in order to study abroad that she felt that the time was ripe to file for a divorce.

Most significantly, despite Nasser’s hopes of redistributing wealth and dissolving class differences and, notwithstanding his revolutionary middle class aims, the question as to what difference Arab socialism really made to the Egyptians becomes painfully clear in the film. Duriya desperately claims to her lawyer that she does not want her husband’s alimony at all and that she certainly does not want this to obstruct a smooth proceeding of her case. The only thing she wants is to divorce him as soon as possible. This scene clearly contrasts with Duriya’s female counterparts from the lower classes who do not file for a divorce but who all file maintenance and custody cases. These women, who apparently have no sources of income of their own, are dependent on their husbands’ income for a living. The contradiction becomes tragically clear in the scene in which the poor, old woman whose husband has thrown her out of the marital home after a marriage of more than thirty years, begs the judges to help her by forcing her unwilling husband to provide for her. However, in this period of Arab socialism nobody could help this old woman and she was left to starve in the streets.

Botman also observed that, notwithstanding the fact that Egypt went through a phase of secularism and socialism under Nasser, women’s increased participation in education, the labour force and politics had not gone hand in hand with a change of gender relations in the family (1999, 63). With the maintenance-obedience relation still firmly in place, women were subjected to two different messages. While they had the same rights as men and while they were allowed to work, their main task was still that of a mother and a housewife who—as long as her husband provided for her—had to pay obedience to her husband and had to ask him permission to leave the home in order to work.

It does not become clear in the film why the Minister of Justice changes the ta’ā ordinance but does not grant women the right to a unilateral khul’—a right Duriya explicitly requests from him and describes to him as being in accordance with the sunna of the Prophet (sayings and doings of the Prophet). And, to extrapolate this question to reality, it is not clear why the Nasser government shied away from reform of PSL. The reason behind this might become clearer if we consider that the ta’ā ordinance was changed in the year 1967, a year that transformed the Middle East as the Egyptian, Syrian and Jordanian armies were

29 In this thesis, maintenance refers to nafaqa, the duty of a husband to provide for his wife as long as they are married, while alimony refers to the ‘idda-period, a three menstruation-cyclus period in which the women is divorced but not yet allowed to remarry and in which the husband must maintain her. Until today, maintenance claims still constitute a primary reason for women in Egypt specifically, and in the Middle East in general, to turn to court. See also 6.4.
defeated by Israel in the Six Day War of June 1967. This led the Ministry of Justice to claim that although more fundamental changes in PSL were planned they were postponed since Egypt’s defeat in the 1967 war had changed the political climate and agenda (Hatem 2000, 52). Of course one can only guess as to the precise meaning of this statement but I believe that it also refers to the emergence of Islamism as the dominant ideology and the revival of Muslim religiosity (al-sahwa al-islamiyya) which spread in the Muslim world from the late 1960s and early 1970s onwards. Long before the 1967 defeat, Nasser was entangled in a fight with the Muslim Brotherhood. In 1954 and 1956 this led to sweeping arrests of its members followed by Nasser’s declaring a state of emergency in 1958, and the execution of Sayyid Qutb in 1966. However, it was the 1967 defeat which also turned large segments of the population back into the arms of religion. In such a situation, it is not unlikely that the government shied away from introducing changes in a sensitive field such as PSL, fearing that this would further drive the masses into the arms of the Islamists.

Egypt’s defeat in June 1967 left the country in despair and left many people in bewilderment, wondering what had gone wrong. In seeking an explanation, the period of Arab Socialism and its lack of religious involvement were reassessed and people concluded that the military defeat was God’s punishment to a country that had deviated from the true path of religion. In order to link up to the new religious mood of the Egyptian population, Nasser decided to promote religion as a national cause. He even described the crisis as a lesson sent by God to the nation in order to “purify” it (Zeghal 1999, 381). This move by Nasser into the realm of religion would culminate under Sadat, eventually leading to a public sphere in which the language of Islam became increasingly dominant and in which an increasingly diversified field of participants all claimed that their specific interpretation of the Islamic sources was the right one. In urdu Hallan, where Duriya starts to study the sources of Islam in order to learn about her legal divorce rights in Islam, we are given a prelude of how elite women with no background in Islamic studies would become participants in the public debate. Islamists, however, are absent in the film which is striking but understandable if we follow Abu-Lughod’s observation that the religious awakening and the portrayal of Islamists and the modern urban religious man and woman was “strictly ignored” in television drama until 1992 (1998, 254; 2005, chapter seven).  

In what follows I will show how elite women became involved in a public debate in which the language of Islam dominates.

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30 In 3.5 I elaborate in more detail on the absence of Islamists in works of fiction in Egypt.
1.4 Personal Status Law under Sadat: Islamization and internalisation

After Nasser had died in 1970, Sadat stimulated the establishment of Islamic student associations at the universities and he released the Islamic fundamentalists from prison, since he saw in the Islamist movement an ally to offset leftist and Nasserist political trends in the country. Through this policy of inclusion, and the relative liberal political climate which he created, the field of participants in the public debate widened.

On 11 September 1971 Sadat adopted a new constitution. The shari’a was declared a major source of legislation and in 1979, a High Constitutional Court was established which had to decide on the constitutionality of any new piece of legislation. By including the question of the application of Islamic law in the constitution, the government had set an agenda for Islamization. The constitution also amended women’s equal right to citizenship by stipulating that gender equality only applied when it did not contradict the shari’a (Botman 1999, 79). This of course was confusing since the shari’a, as reflected in Egypt’s PSLs, claims that it is a husband’s duty to maintain his wife if she has surrendered herself to her husband.

Yet, in this period of religious awakening Sadat also officially instituted in 1974 the infitah, or “Open-Door” policy which aimed at opening up the Egyptian economy to the greater world market as well as to search for outside finance and technology (Hillal Dessouki 1981). Opening up to the outside world had a social cost and it led to an increasing foreign influence in domestic policies as Sadat, who wanted to establish closer ties with the “West”, and in particular the United States, had to take into account the demands of the international community and in its wake national organizations for women’s rights, on whom the government depended for money. Hence, while Sadat gave political Islam a freer hand and while he was responsible for turning the shari’a into a major source of law, he was also responsible for meeting the requirements of international development agencies and, as a consequence, he introduced major reforms in PSL. The field of participants in the public debate was to widen again. In addition to Islamists, it was now ready to also include women activists whose relationships with international women’s organizations turned them into influential players and a factor to be reckoned with.

During the process of drafting the new constitution, questions had arisen about the role of the shari’a in the new constitution. In the early 1970s, a committee

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31 According to Welchman the period 1975-2000 can be identified as a third phase of Muslim family law reform in the Arab world. Due to “changed global, regional and national circumstances in Arab states... amendments to Muslim family law demonstrate an intense political contingency reflecting national and international pressures and dynamics” (2007, 42-3).
for the Revision of Family Law was appointed and by making the following suggestions they attempted to introduce major reforms in Personal Status Law. For instance, polygamous marriages were to require the permission of a judge; divorces should only be pronounced in court; and cases involving family problems should be handled by a female judge (Esposito 1982, 60-1). However, in 1975 this draft law was blocked (ibid, 62).

When the prospects for advocates of reform of PSL looked bleak, domestic and international forces gave reform of PSL a new impetus. First of all, urūdu Hallân was released in 1975. Although the film was set in the mid-1960s and formed a critique on the previous Nasser government which had failed to reform PSL, it simultaneously pressured the Sadat government to take up reform of PSL. The same applies to the first United Nations conference on women which was held in 1975 in Mexico and which was headed by none other than Jihan Sadat, the wife of President Sadat. The conference “caused the regime, which was searching for stronger ties with its new allies, particularly the United States, to promote gender issues” (al-Ali 2000, 74). In the mean time, Sadat was still working to achieve a peaceful resolution with Israel (and the United States). With international pressure increasing and with the Copenhagen second world conference on women coming up in 1980, Sadat had no choice but to work on reforming PSL quickly. This became clear in 1979 when the peace treaty between Israel and Egypt was signed. Parliament was dissolved and new elections were held. In the meantime the constitution was revised again and Sadat instituted mandatory quotas for women in the electoral system. From now on, women were automatically assigned thirty seats in Parliament and 10 to 20 percent of the seats in the twenty-six government councils of the country (Botman 1999, 82).

In May 1979, no consensus was achieved on matters of Personal Status Law. Not wanting the draft law to be blocked again by the opposition groups, Sadat looked for an alternative way of effecting legislation. Shortly after the conservative sheikh of al-Azhar, ‘Abd al-Halim Mahmud, died (Zeghal 1999, 387) and during the absence of Parliament, Sadat used his constitutional right to issue an emergency decree in which he passed into law one of the proposals, formulated after interpretation by Islamic scholars of all four Sunni schools (law no. 44 of 1979). The new law became well known as Jihan’s Law, named after the wife of President Sadat who is said to have played an instrumental role in the passing of the law (cf. al-Ali 2000, 74; El Alami 1994, 116).

The new law changed the laws of Personal Status of 1920 and 1929 considerably, as the conjugal relationship was altered in various ways. For example, a woman’s right to maintenance was not affected if she went out to work without the consent of the husband (Fawzy 2004, 35). The provision allowing a husband to have his wife return to the marital home by force was now officially
abolished (ibid). Additionally, women’s grounds for divorce were expanded: the first wife was allowed to obtain a divorce when a husband took a second wife without her consent; and if a husband did not inform his new wife that he was already married. Women who were divorced without their consent and without just cause, were eligible to at least two years of additional maintenance (mut’a) in addition to alimony during the ’idda period. After the divorce, women became entitled to stay in the marital home until they remarried or the custody over their children ceased (El-Alami 1994; Esposito 1982, 61-2; Fawzy 2004, 36).

The law provoked much controversy which was not only related to the content of the law but also to the personal involvement of the president and the fact that the law was implemented during a period of parliamentary recess (Bernard-Maugiron and Dupret 2002b, 4). It was held to be particularly offensive that this new law designated polygamy as darar (harmful) (Fawzy 2004, 37-9), while the Koran itself approved of polygamy. Other grounds, on which the law was rejected, included the article which gave women with children the right to stay in the matrimonial home in cases of divorce. The article enraged men who feared that they would be thrown out of their houses into Cairo’s difficult housing market. Opponents also rejected the law because it would only lead to the Westernization of society (Bibars 1988, 37-9). Moreover, the legal right of women to work outside the home was seen as being contradictory to her divine duty as a mother and wife.

After the introduction of the 1979 law, judges decided not to follow its letter. They considered the law unconstitutional, because it violated the shari’a (Bernard-Maugiron and Dupret 2002b, 16; El Alami 1994, 116-7; Fawzy 2004, 36). They appealed to the Constitutional Court -which had only been established in 1979- to decide on the constitutionality of the law. On 4 May 1985, the High Constitutional Court of Egypt declared the 1979 law unconstitutional. The emergency decree had been issued while no true state of emergency had existed and it was therefore declared invalid. The prospects for feminists looked bleak since they were likely to have to resort to the 1929 Personal Status Law again. However, the decision of the Constitutional Court was not based on the observation that the law ran counter to the stipulations of the shari’a.

It is remarkable that Sadat, who first appeared to be more conservative than Nasser, introduced far-reaching reforms of PSL in 1979 and when he also

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32 In a dossier about divorce in Egypt, Fahmi presents a collection of press articles on the debate which surrounded the implementation of PSL 44 of 1979 and PSL 100 of 1985 (1987, 105-61).
33 This observation should not lead us to believe that the High Constitutional Court always shies away from judging whether a law or a decree is (not) in accordance with the principles of shari’a. Arabi, for example, argues that the HCC adopted the classical doctrine of legal interpretation (of al-Shafa‘i) in order to judge whether or not a law or decree is in line with the constitution which states that the principles of Islamic Law are the main source of legislation (2002).
signed the UN Women’s Convention\textsuperscript{34} in 1980, it looked as if Sadat had turned into a great advocate of women’s rights. At the same time, however, Sadat included reservations in the Women’s Convention in which it was stated that the convention should not contradict the \textit{shari’a}.\textsuperscript{35} Sadat wanted to keep Egypt’s image up abroad, while at the same time he did not want to play into the hands of the Islamists who had a large following among the population, as well as al-Azhar, which was also pushing during this time for the implementation of the \textit{shari’a} and whose support the government needed in its fight against the Islamists and on whom it depended for its religious legitimacy. For that reason, Sadat again amended the constitution and article two of the April 1980 Constitution turned the principles of \textit{shari’a} from a major source of legislation into the main source of legislation in Egypt.

Following the assassination of Sadat in 1981, the international community, whether consciously or not, continued to bring pressure on the subsequent government under Mubarak to take up the reform of the Personal Status Law again. Immediately before the Egyptian women’s delegation departed for the third United Nations Forum on women in Nairobi, a watered-down version of the annulled 1979 Personal Status Law was enacted in July 1985. The government understood that it would not do for Egyptian women to take their grievances to this international meeting (Badran 1995, 135; Karam 1998, 146). The main difference between the 1979 and the 1985 laws was the absence of the clause that restricted men’s right to polygamy (El Alami 1994, 117). The 1985 law still offered a woman the possibility to divorce her husband if he took a second wife, but she needed to prove to the judge that polygamy had caused her material damage. In contrast, the 1979 law simply deemed polygamy injurious to the wife. Like in the old law of 1929, the judge once again had to decide whether polygamy was harmful to the wife or not.

1.5 Personal Status Law towards the new millennium: re-invention of \textit{khul’}

Although women’s groups recognized that the 1979 PSL was unconstitutional, they still claimed that its content was in line with the \textit{shari’a} as the law had been approved by the Sheikh of al-Azhar, and both the Ministers of religious endowments, Justice and of Social Affairs (Bibars 1988, 145). For that reason, they felt disappointed when a watered-down version of the 1979 PSL was implemented in 1985. To increase the likelihood of future reforms of PSL being accepted by the Egyptian masses (cf. Singerman 2005, 167-9; Zulficar (forthcoming)) they opined it had to be in accordance with both the constitution and the \textit{shari’a}.

\textsuperscript{34} The implementation of this convention is monitored by the UN committee on the Elimination of All Forms of Discrimination against Women (CEDAW) (Welchman 2007, 35).

\textsuperscript{35} See also Welchman (2007, 35) for Arab states in general.
In the period after the implementation of the 1985 PSL, a group of women activists sought cooperation from the Ministry of Justice, particularly a high ranking official named Fathi Naguib in order to work on improving women’s rights, in much the same way Duriya does in the film urīdu Hallan. There was one important difference, however. Whereas Duriya had requested the Minister of Justice to implement a unilateral form of khul’ divorce, these women activists, who called themselves “The Group of Seven,” first set out to re-introduce the old Islamic marriage contract which had included the right to enter substantive stipulations in the contract.

In 1992 the Ministry of Justice set out to draft a new marriage contract in the context of drafting a new procedural PSL in 1992 (Zulficar forthcoming) but the amendments, which were proposed by the Ministry, did not contain the right to include substantive conditions in the marriage contract. Then, three national and international conferences in 1994 and 1995 came as a godsend: a national conference on women held in Cairo in June 1994, the International Conference on Population and Development (ICPD) of the United Nations held in Cairo in September 1994 and the Fourth World Conference on Women held in Beijing in September 1995. Especially during the ICPD, which was held in Cairo and attended by more than 180 states and 1254 NGOs, the Egyptian government tried to present to the world an image of a modern and liberal Egypt in which women were not oppressed. With foreign pressure increasing the government officially adopted the new marriage contract (Shaham 1999, 466). This draft was rejected after it met with a lot of resistance from the Egyptian women’s movement which claimed that the draft demanded rights, such as the right to education and travel, which Egyptian women were already entitled to by the constitution (Zulficar forthcoming).

In 1995, the National Women’s Commission approved a third draft in which the activists again requested the right to include substantive conditions. Although the draft was approved by the then Grand Mufti, Tantawi, the then Sheikh of Al-Azhar did not approve it (ibid, 9; Shaham 1999, 462). Only a few days

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36 According to Singerman, by lobbying the Ministry of Justice women activists were pursuing a back-door approach (2005b).
37 This draft of the new marriage contract included the following stipulations: agreement as to the ownership of the furniture in the marital abode and to whom it should devolve in case of divorce; agreement as to who should keep the conjugal home in case of divorce, without recourse to the current law on maternal custody; a specific amount of compensation to be given in monthly instalments or in cash to a wife who is divorced against her will, in addition to her other legal rights; the right of a wife to obtain employment and education or to continue her education, as well as her right to travel abroad for a legitimate cause; agreement that the husband may not take a second wife; agreement as to the wife’s right to divorce herself (which does not deprive the husband of his right to divorce his wife); agreement that the wife may renounce all her financial rights in exchange for an irrevocable divorce, if such divorce is not due to a fault on the part of the husband (dul’) (al-AhramWeekly 1-7 June 2000).
before the Egyptian delegation went to attend the Beijing Fourth International Women’s Conference, in September 1995, did the ruling party of Mubarak agree to discuss the draft in the People’s Assembly (Karam 1998, 146).

Although the new marriage contract was drafted under the leadership of prominent lawyers and religious jurists who took care that it would not transgress the delimitations of Islam, it provoked widespread public discussion (cf. Karam 1998, 146; Shaham 1999). Two headlines published by the newspaper *al-Ahram Weekly*, reading “A Contract for Equality” and “A prelude to Westernisation,” (25-31 May 1995, 13), give a good impression of how the contract was received respectively by proponents and opponents. Most opponents to the draft contract were either conservatives or Islamists. For example, Jad al-Haqq, who was the Sheikh of al-Azhar at the time, stated that the new marriage contract “legitimises the forbidden and forbids the legitimate.” The Sheikh also objected to the law on non-religious grounds, saying that it would discourage young people to marry (Zulficar forthcoming). In view of this it was often argued that including stipulations in the contract would turn the marital bond into a trade contract, something which would lead to heavy materialism inside families (cf. al-Wafd 11 February 1995).

Shaham wonders why the Sheikh of al-Azhar rejected the new marriage contract while its content to a great extent resembled that of law No.100 of 1985, a law to which the sheikh had approved. Shaham comes to the conclusion that although all parties involved in the public debate resorted to the language of Islam, the actual reasons for their opposition were not religiously motivated (1999). The sheikh of al-Azhar, for example, was afraid that the new marriage contract would develop into a civil marriage contract (cf. al-Wafd 11 February 1995). As a consequence, ‘ulama’ would lose their last bastion of control, namely, Personal Status affairs. The government’s motives were inspired by its wish to improve its image internationally. Nevertheless, it did not want to lose its Islamic legitimacy domestically and when the sheikh of al-Azhar opposed the new marriage contract firmly and vocally, the government decided to sacrifice women’s groups’ demands. Nevertheless, the importance of the international context should not be underestimated as a wave of family reform proposals is awakened inside Egypt, whenever the convening of a United Nations World Conference on Women is seen on the horizon (Shaham 1999, 481).

According to Mona Zulficar (one of the members of “The Group of Seven”), the campaign for the new marriage contract developed into a campaign for a new procedural PSL in 1995 (forthcoming). Since the project of the new marriage contract lacked popular support, the Group of Seven decided to put it on the shelf and they turned their attention to changing PSL itself (Singerman 2005, 173-5). Since the Group of Seven wanted to begin with something small, changing the
procedural law came to mind (Singerman 2005, 175). Five years later, on 26 January 2000, the Egyptian Parliament passed a new procedural law on Personal Status: Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters. Three days later, the president of Egypt, Hosni Mubarak, promulgated the law in the Official Gazette as Law No. 1 of the year 2000. The new law aimed at facilitating and speeding up litigation in matters pertaining to Personal Status disputes such as divorce, by compressing the 600 clauses of the old procedural law into seventy-nine. However, the new law also contained a few substantive clauses such as the legalisation of divorces from ‘urfi marriages and women’s right to travel without the consent of the husband (cf. Bernard-Maugiron 2004, 356). Although these clauses provoked much controversy, it was the substantive clause which included a new interpretation of khul’ which provoked most controversy. According to this new interpretation of khul’, a woman has the right to divorce her husband on any grounds, as long as she renounces all her financial rights. Like in urīdu Hallan, the Habiba hadith (discussed in section 1.1) provided the Islamic justification for the implementation of a form of khul’ divorce in which the consent of the husband was not a prerequisite to divorce. In urīdu Hallan, the heroine Duriya could only exclaim “if only there was khul’”, but twenty-five years after the film’s release, Egyptian women who want to divorce their husband can now say “I want khul’.” If a woman is prepared to renounce her financial rights as well as to pay back the dower, the husband cannot prevent his wife from obtaining an irrevocable divorce. In this way, khul’ has turned upside down a marriage system which depended both legally and socially on the maintenance-obedience relation. Not surprisingly, this landmark legislation caused much controversy in Egyptian society, an issue which forms the subject of the next chapter.

2 The “*khul’* law” criticized: the first pen

Introduction

In 2005 an Egyptian opposition paper by the name *al-dustūr* re-emerged after it had been banned in 1998. Even though I liked reading the newspaper for its good selection of news topics, I was especially attracted on another level by the many cartoons which were always included. Not only were they rather easy to read for a non-native Arabic speaker and reader like me but they also knew how to disseminate their message very well in funny, albeit concise, ways. A section in the newspaper presented itself as a newspaper of *qalamani* (two pens). Inspired by this concept, I decided to also present the analysis of the debates on *khul’* as an analysis of two pens: the first pen being the one with which newspaper articles were written and the second pen being the one with which cartoons were drawn and films were produced.

On a more theoretical level an analysis of “two pens” shows that the public debate is not only an exchange of rational arguments, depending on discursive texts and words. The other half of the debate is largely graphic in nature: in works of popular culture media, such as films and cartoons, not only language but also what Moors calls the politics of appearance and dress play an important role (2006, 115-31). Given the visual nature of the film and cartoon genre, it is even quite difficult to de-emphasize the body (cf. Noble 2004, 156), and as a result graphics and images can be used to make non-verbal statements. Moors, who criticizes the Habermasian notion of the public sphere (among other things) for its exclusive focus on rational debate as the only legitimate form of participating in the modern public sphere, claims that other forms of critical expression and non-verbal modes of communication should also form part of an analysis of the debate in the public sphere (2006, 115-31).

In this chapter I will elaborate on the debate on *khul’* as it appeared in the written text of national media such as newspapers and magazines whereas chapter 3 provides an analysis of the cartoons and two films on *khul’*. Questions that are raised include the following: Who were the opponents and defendants of the new law; what reasons did they have for either opposing or defending the new law; what arguments did they use to express their criticism; which sources did they refer to when they tried to legitimatize their point of view (e.g. did they refer to *fiqh* (jurisprudence in Islam), to societal problems, to international conventions such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), to other countries where women already had gained the right

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39 Bilal Fadl and ʿAmr Salim are the cartoon’s textwriter and illustrator.
to file for a divorce without the consent of their husbands) and how did certain points of view become dominant (Moors 2003)?

2.1 Opponents and proponents of khul’: using the language of Islam

The adoption of the landmark khul’ clause turned Egyptian women into one of the few groups of women in the Muslim world who were in a position to file for a unilateral divorce and “received considerable coverage internationally” (Welchman 2007, 42). Domestically, I recall, the introduction and implementation of khul’ did not pass without resistance. The clause rocked the country at the turn of the third millennium and provoked widespread public discussion in the People’s Assembly, among the ‘ulama’, the Islamists and among the general public. The khul’ clause was so controversial that the law itself became popularly known as the “khul’ law” making people forget that khul’ was actually only one article of a procedural law consisting of seventy-nine articles.

In contrast to what one might expect, the “khul’ law” was also criticized by many defenders of women’s rights, one of whom was none other than Husna Shah, the scriptwriter of uridu Hallan. In an interview in an Egyptian newspaper in 2000 she said that khul’ will only be used in cases of extreme necessity since the wife will have to forgo her financial rights such as alimony. For this reason, a woman will hesitate to approach a court. Husna Shah even predicted that women who do not opt for khul’ but who continue to live in discordant marriages, will resort again to “the cleaver and the plastic bags,” a reference to criminal cases in which women, unable to obtain a divorce, ended up murdering their husbands. Husna Shah did not stand alone in her criticism. Other women’s activists also were of the opinion that khul’ would only be an option for richer women since they were

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It is only in Tunisia that men and women have equal divorce rights. Repudiation outside of court is prohibited and makes the divorce invalid (article 30 of PSL 1956). Men and women in Tunisia can divorce by mutual consent; on the basis of harm or without a ground for divorce being explicitly mentioned (Mashour 2005, 585-86; Perl and Menski 1998, 289). Except perhaps South Yemen in 1974, no other Arab state has gone as far with regard to reform of Muslim divorce law as Tunisia (Pearl and Menski 1998, 290).

It is often argued that already in the 1960s Pakistan became the first country where a unilateral form of khul’ divorce was introduced in which the consent of the husband was not a prerequisite to make the divorce legally binding. While this is true, it must be noted that until 2006 the basic issue debated in case law was whether a woman seeking khul’ needs to provide proof of her inability to live with her husband (cf. Akbar Warraich and Balchin 1998, 201; Hodkinson 1984, 271). In 2006, however, the Pakistani Supreme Court decided that the khul’ request itself is demonstrative of the wife’s hatred and aversion towards her husband. This decision implies that a court cannot refuse a khul’ request to a wife (Lau 2007, 464). From its implementation in 2000 onwards, Egyptian women who request a khul’ divorce only need to state that they hate living with their husbands. They do not need to satisfy the court that this is the case.
the only ones likely to be able to repay the dower as well as give up their financial rights. It is worth recalling that the issue of women’s financial hardship also transpired in *urdu Hallan* where in contradistinction to Duriya, the other (lower class) women did not come to court in the hope of obtaining a divorce. Most of them so desperately needed their husbands’ *nafaqa* (maintenance) that they had no choice but to enter in endless and sluggish court procedures in order to force their unwilling husbands to provide for them (see also 1.3).

At this point opponents and some proponents of improving women’s rights were united in their criticism of *khul*’. Yet, where opponents to the law also criticized it for being a law for rich women only, their criticism went deeper than that. Especially in the Islamist newspaper *al-sha’b*, mouthpiece of the al-’Amal (Labour Party) political party, it was claimed that elite women were behind the implementation of the “*khul*’ law” and that the law only talked about their problems, not about those of Egyptian society in general. The private aspirations of these elite women even became fixed items on the agenda of many international conventions (*al-sha’b* 28 January 2000, 5). According to *al-wafd* newspaper, newspaper of the liberal al-Wafd political party, this was exemplified by the fact that they mainly draw on a repertoire of concepts such as human rights, UN conventions and other international conventions, which do not mean anything to the masses. For example, the National Conference on Women, which was held in Cairo in June 1994, was criticized for failing to address the real problems Egyptian women are facing. “Away from the spotlights of official conferences and declarations, Egyptian women face serious challenges.” Egyptian women are not interested in “the importance of their political role” and “the philosophy of equality.” These women worry about other things: husbands who ran away; crowded public transport; raising their children (*al-wafd* 12 June 1994, 3).

Interestingly, these elite women, of whom many work in women’s NGOs went to great lengths to present the law as being in accordance with Islam. They used the Habiba *hadith* to improve the acceptance of *khul*’ among the masses. Faced with “…difficulties in reaching out to the people who are supposed to be the direct beneficiaries of their programmes” (Abdelrahman 2004, 139), women’s NGOs have become increasingly aware of the fact that women from different class backgrounds may have different interests in family law reform. This is clear in the

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41 See for example Hoda Zakariyya (2003); Hoda Badran, head of the Alliance of Arab Women, an NGO (The Independent, 25 January 2000); and Azza Soliman, director of the Center for Egyptian Women’s Legal Rights, an NGO (al-Ahram Weekly, 3-9 February 2000).

42 Although al-Wafd is said to be a liberal political party, they entered into electoral alliances with the Muslim Brotherhood in 1984. In 1987 the Muslim Brotherhood also forged an alliance with the Labour Party.

43 Abdelrahman shows how the Egyptian middle classes used NGOs to achieve a Western model of progress at the beginning of the twentieth century (2004, 47).
statement of Mona Zulficar, lawyer, member of the NCW and one of the leading forces behind the implementation of the “khul’ law”:

“It was evident that we could not rely on modern constitutional rights of equality before the law, as these did not equally apply under family laws, which claimed to be based on the principles of Shari’a. We could not afford to shy away from the challenge and continue using solely a strategy based on constitutional and human rights. We had to prove that the religious discourse could also be used by women to defend their cause” (forthcoming).

This statement proves that women’s rights organizations have chosen to adopt a religious discourse in order to reach out to the masses. However, this strategic thinking also serves another purpose:

“They [the religious extremist groups] accuse any secular feminist opposition of being anti-Islamic, an agent of either the “non-religious” Eastern block or “the corrupt” Western block. It was therefore essential for the women’s movement to diversify its strategies and adopt a credible strategy that could reach out and win the support of simple, ordinary religious men and women.” (forthcoming).

In a study on the Egyptian women’s movement, al-Ali also observes that the women’s movement has often been accused by Islamists and conservative forces of collaborating with the West “by importing alien ideas and practices and disseminating them throughout society” (2000, 1). Consequently, the discursive framework came to be dominated by Islamist agendas (ibid, 216). In the case of the “khul’ law”, this had the effect that women activists tried to reach out to the masses by speaking what they perceived to be “their” language, that is to say, the language of Islam, while it simultaneously resulted in the almost complete absence of the usage of terms such as human rights and women’s rights. For example, when Zeinab Radwan, dean of dar al-‘ulum (House of Knowledge) of Cairo University was asked about the new law and its relation to human rights conventions, she claimed that: “Human rights conventions are not the term of reference here, the Islamic Shari’a is, so let us not get off the subject” (al-Ahram Weekly 13-19 January 2000). Only Magda Adli, physician and member of the Nedim Centre for the Reparation and Management of Violence against Women, pointed to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was absent from the debate. She was of the opinion that the shari’a should not have been the only term of reference (ibid).

44 The National Council for Women was established in 2000. Under the leadership of the president’s wife, Suzan Mubarak, it serves as the umbrella organization for all Egyptian NGOs working on women.
In her analysis of the Egyptian press coverage at the time of the promulgation of the “khul’ law”, Tadros noticed how the government shied away from using the vocabulary of equality, human rights and women’s rights. Instead it used to justify the implementation of the law by claiming that the new law would stabilize the Egyptian family. It hardly ever dared to say that the law was in the interest of women too (2003, 87-8). Ironically, opponents to the law used the language of human rights (saying that the new law is a violation of human rights since it mingles in the internal affairs of the family) and they referred to a violation of the constitution (since a husband is not allowed to appeal a khul’ verdict), but only when it served their own goals (ibid, 86-7). Tadros claims that: “…Since the beginning the government was determined to distance itself from both those who call for equality among the genders and women’s NGOs (as it was careful not to back the law under the pretext of defending women’s rights) (ibid, 88).”

As has been noted earlier, since the 1970s Islamists have succeeded in attracting a large following among the lower (middle) classes - often through the establishment of Islamic NGOs- as a result of which women’s organizations have become increasingly aware of the fact that they have to adopt a strategy that challenges the religious extremist movement (cf. Singerman 2005). Both developments strengthen the emergence of a public sphere in which the religious language of the shari’a becomes a forceful argument to persuade others and to gain legitimacy for one’s actions.

This, however, should not lead us to conclude that former attempts at reforming PSL were not articulated in the language of Islam. Since its codification, starting at the beginning of the twentieth century, Muslim Personal Status Law has always been subject to legal reform. By making use of different Islamic methods, such as takhayyur (adopting elements from the other three schools of law in an eclectic manner), talfiq (combining elements from the various schools of law into a new doctrine) and ijtihad (independent interpretation of the sources of Islam) reformers have tried to adjust Islamic law to the needs of modern times.

By applying these methods reformers presented the reforms as the result of a process of internal revision within the shari’a and thus they hoped to avoid confrontation with the conservative elements in their societies. This has not proved to be easy and reform of family law has often aroused public controversy. Especially in the nineties, when debates on family law reform were attended by a wider and more diverse group of participants “family law reform has been hotly contested throughout the Muslim world” (Moors, 2003, 1).

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45 See also Abu-Lughod (1998, 15, 18, 20).
46 Pearl and Menski note that “it appears that the Ottoman Law of Family Rights of 1917 opened the floodgates of legal reform” (1998, 287).
47 For a more detailed account, see Layish (2004).
Egypt is no exception to the way of Family Law reform. Starting from the beginning of the twentieth century, reformers have applied the methods of takhayyur and talfiq in order to present the reforms as the result of a process of internal revision within the shari’a.48 However, the fact that its first personal status laws were issued in periods in which no Parliament was functioning in order to put a stop to the conservative opposition, reveals much of the controversy that reform of PSL provokes, even when articulated in the language of Islam. Thus, it was not new to resort to the language of Islam in the khul’ case while the khul’ case also shows that resorting to the language of Islam is only a means to participate in the debate. It does not tell us anything about the outcome of the debate or its acceptance by the masses as will become clear in the following.49

Despite the fact that opponents and proponents of family law reform in Egypt differ in their interpretation of how family law should be reformed, due to conflicting visions of society, family and Islam, both groups express their wishes in terms of Islam and shari’a. During the debate all participants claimed that the Habiba hadith was the determining precedent behind the “khul’ law” but they all used an interpretation of the hadith that best served their interests.50 Hence, all participants were looking for a true understanding of Islam and they all claimed that they have the right to interpret the sources of Islam in an authoritative manner. This brings up the question, who decides what interpretation is the right one? In other words, who decides what real Islam is, and, as a consequence, who is the better Muslim?51

In this light Buskens (2003) and Schulz (2003) claim that in order to arrive at a true understanding of the debates which surround reform of PSL (in general

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48 For a more detailed account on Egypt, see Lombardi (2006, chapter 5).
49 This raises the question as to why women activists such as Mona Zulficar make it look as if the strategy of framing reform of PSL in the language of Islam was innovative? Were women activists really of the opinion that “the ordinary Egyptian woman” who wants to divorce her husband is looking for some sort of Islamic justice or was this idea imposed on them by international women’s organizations? For example, in the 1980s, the CEDAW committee had suggested the idea of “…taking into consideration the principle of El Ijtihad in Islam” (Welchman 2007, 35) in response to the reservations as to compatibility with Islamic law which Egypt (and other countries) had included in the Women’s Convention in the 1980s.
50 In Speaking in God’s Name, Abou El Fadl claims that the new ijtihadists (the Wahhabis and Salafis) use the classical tradition in a highly selective, unsystematic and opportunistic fashion but since the criteria for inclusion or exclusion are never clearly articulated, this explains why they reached the conclusions as they did (2003, 171-77).
51 In this light it is interesting to note that Juynboll, in Encyclopedia of Canonical Hadith reports that except for one tradition [the Malik tradition], the canonical traditions are silent on khul’. In the pre-canonical collections, however, the khul’ procedure is not only discussed extensively but also always against a non-Prophetic background. This leads him to suggest that “Perhaps the inference is justified that khul’ was in the first instance a separation device based upon (ancient) customary law (’urf) rather than on legislative reasoning by means of Qur’ān and sunna (2007, 380-1).
and respectively in Morocco and Mali), we must analyse them as political phenomena, i.e., we need to clarify the power balance between influential groups, both within and outside society, and their respective relationships to the state. Welchman even states that scholarly literature on PSL in the Arab World has come to consider family law reform as an almost primarily political issue (2007, 39).

2.2 The government and al-Azhar: an uncomfortable alliance

At first glance, one is inclined to treat the conflict which was ignited by the “khul’ law”, as one between opponents (Islamists and religious conservatives) and proponents (the government and women activists – often embodied through advocacy groups such as women’s rights and human rights NGOs-).

Abdelrahman, for example, reinforces this assumption when she claims that the general political life of the country is characterized by the struggle between Islamists and secular intellectuals (2004, 186) whereby Islamists - often through Islamic NGOs - accuse both the government and women’s groups of being puppets of the West. According to Islamic NGOs, women’s groups “are trying to upset the natural laws about men and women which God created” (Abdelrahman 2004, 193). In order to combat their power, the Egyptian state tries to adopt an Islamic identity. In this light, the relationship between al-Azhar and the government also plays an important role as Egyptian governments from Nasser onwards have used al-Azhar to give their politics a veneer of legitimacy.

In 1961 Nasser turned al-Azhar into an arm of the Egyptian government expecting its ‘ulama’ who had become government employees to promote Nasser’s ideas of Arab Socialism and to give his policy a veneer of religious legitimacy. After Nasser, Sadat and Mubarak also used al-Azhar to acquire public approval for controversial policy decisions such as the Camp David Accords of 1978. The khul’ law of 2000 was no exception to this rule. Of course, not all ‘ulama’ of al-Azhar were happy to lose their independent position from the state and the Grand sheiks of al-Azhar have had different relationships towards the government varying from outward hostility to the government to close cooperation and allying with the government. Thus, although the government had assumed the authority to appoint the sheikh of al-Azhar, the institute was not completely under government control and was still able to influence Egyptian politics. Sadat, for example, is said to have awaited the conservative Sheikh of al-Azhar to die before he dared to

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52 Apart from Islamic NGOs, Islamists have also tried to exert political influence through other institutions of “civil society” such as political parties and professional associations. When they were barred from parliamentary politics – after the government had put an end to the experiment of “controlled inclusion of mainstream Islamist opposition forces in Parliament” in the 1990 and 1995 elections (Norton 2005, 136), Islamists were able to gain important positions on boards of professional legal and scientific associations and syndicates through democratic elections (cf. al-Sayyid 1995; Ibrahim 1995; Karam 1998; Zubaida 2001).
introduce the 1979 PSL reform and it was very painful for the Mubarak government when the 1994 International Conference on Population and Development (ICPD) of the United Nations, which was held in Cairo, met with such fierce resistance from both the side of the Islamists and al-Azhar that the foreign press coverage predominantly focused on the conflict between al-Azhar and the Egyptian government (Moustafa 2000, 13).

A few months earlier the controversial ICPD\textsuperscript{53} was preceded by a national conference on women in Cairo in June 1994 during which the then sheikh of al-Azhar, Jad al-Haqq, also had taken an anti-governmental position. At this point it is worth mentioning that during the \textit{khul’} debate some anonymous members of al-Azhar’s Academy of Islamic Research started to compare the current sheikh of al-Azhar, Tantawi, with his predecessor, Jad al-Haqq. They claimed that the latter dared to oppose Mubarak during the Women’s conference of June 1994 as a result of which Mubarak finally decided to choose the religious side saying that he would not allow anything to be stated in Egypt that is against religion (al-sha’b 21 January 2000, 2).

In fact, sheikh Tantawi’s reputation of uncritically representing the views of the government was a recurring topic in the debates on \textit{khul’}. The controversies surrounding the sheikh of al-Azhar started in November 1999 when the Academy of Islamic Research of al-Azhar had discussed and approved the draft of the \textit{khul’} law. According to Fawzy, however, in the session of 11 February 1999, in which the draft was approved, “...fourteen of the members of the Academy were absent; fourteen members spoke and eight others stayed silent throughout the session. Of the fourteen who spoke, according to the record of the meeting, five supported the law and eight objected” (2004, 59). In spite of this, from November 1999, when the draft law was first presented to the parliament, the government and the sheikh of al-Azhar, Tantawi were not afraid to repeatedly claim that a majority of the members of the Academy for Islamic Research had given its approval to the law and that, therefore, it was compatible with Islam (cf. al-ahālī 19 January 2000, 10; al-sha’b 18 January 2000, 3). Apart from the fact that some members of the Academy gave anonymous interviews in which they conversely claimed that many members of the Academy actually opposed the law (cf. al-sha’b 28 December 1999, 3; al-sha’b 18 January 2000, 1) since it was contradictory to Islam (cf. al-aHrār 1 January 2000; al-sha’b 18 January 2000, 2; al-sha’b 20 January 2000, 3; al-sha’b 25 January 2000, 3), some members also stated that Tantawi was behaving as a \textit{muwazzaf} (civil servant) and not as the sheikh of al-Azhar. They said that only the

\textsuperscript{53} The conference was criticized both in and outside Egypt. Sudan and Saudi Arabia, for example, boycotted the conference (Shaham 1999, 466). The Vatican also vehemently opposed the conference. It particularly rejected women’s right to abortion and Family Planning.
government employees of al-Azhar had voted in favour of the law. The independent members had voted against the law (al-sha’b 21 January 2000, 2).

What is even more surprising is that during the sessions in which the Academy had gathered to discuss the draft law and which were chaired by Tantawi, the latter repeatedly took an anti-women stance. For example, when the Academy was discussing the issue of women being repudiated without their knowledge,\(^\text{54}\) Tantawi stated that it was dangerous to believe women on their word (in cases of repudiation without the wife’s knowledge) as it would only lead to zina’ (adultery). He added that many women, who hated their husbands, claimed that the latter had repudiated them so that they could marry other men. “We often read in the newspapers that women marry four men,” he concluded (Sawt al-umma, 17 December 1999). Despite this women-unfriendly attitude, Tantawi vociferously defended the draft law before the People’s Assembly as well as in the public debate. In my view this proves that Tantawi deems it important to represent the views of the government on controversial issues even if they contradict his own personal opinion or that of al-Azhar in general.

It also shows that it would be too simple to treat the debate which surrounded the introduction of the khul’ law as one between opponents, that is the religious establishment and the Islamists, and proponents, that is women’s organizations, religious modernists and state officials (cf. Moors 2003; Schulz 2003, Welchman 2003). During the heated controversies not only the government and women’s rights organizations were being attacked by opposition parties, even the sheikh of al-Azhar was summoned by al-sha’b newspaper to resign. Moreover, within al-Azhar controversies broke out between those who were supporting the reforms and those who were opposing them.

According to Zeghal, scholars have focused too exclusively on the political emergence of the Islamists in the 1970s as a result of which they tended to overlook the emergence of a new political behaviour among the ‘ulama’ during the same period (1999, 371-2). She calls these ‘ulama’ peripheral ‘ulama’ and shows how they distanced themselves from the official voice of al-Azhar through the process of da’wa (proselytism), thereby introducing different colours of Islamism inside al-Azhar. The Front of al-Azhar ‘ulama’ is but one example of the new behaviour of al-Azhar ‘ulama’. It reappeared again after it was forced to submit to the Nasser regime in the 1960s. In 1995, Yahya Isma’il, a professor in the faculty of theology,

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\(^5\) According to Fawzy, the issue of the validity of extra-judicial divorces by men that are not formally registered nor witnessed, also formed a point of contestation in the debates on the “khul’ law” (2004, 59). In the newspapers and magazines which I read, the subject did not form an important issue. In the life of Nura, however, it was a recurrent problem and even one of the main reasons behind her reasons for divorce. See for more, chapter 4 onwards.
became the secretary-general of the front (Zeghal 1999, 390-1). It is remarkable that the front appeared again on the instigation of the then sheikh of al-Azhar, Jad al-Haqq, who tried to disengage al-Azhar from the Mubarak regime from 1989 onwards (ibid, 388). With regard to the “khul’ law”, some parliamentary observers claimed that the government had waited for some highly visible conservatives to die, such as the sheikh of al-Azhar, Jad al-Haqq (died in 1996); Muhammad al-Ghazali (died in 1996), and sheikh Muhammad al-Sha’arawi (died in 1998), before it dared to introduce the new law (Cairo Times: Divorce on Demand). I doubt whether it is a coincidence that all three prominent religious figures had been government ‘ulama’ of al-Azhar who had started to become critical of the government. For some “deviant” ‘ulama’ (and other Islamists, including the Muslim Brotherhood) al-sha’b newspaper became a platform for disseminating their anti-government rhetoric.

Apart from the fact that some ‘ulama’ accused Tantawi of deviating from the teachings of Islam, they might also have been worried that the new interpretation of khul’ threatened their position of power since the doctrines of the four schools of law were bypassed during the process of drafting the law. The four schools of law do not have an interpretation of khul’ in which the consent of the husband is not a prerequisite for the divorce to become valid (cf. Arabi 2001, 182; Linant de Bellefonds 1965, 422:1061). In order to arrive at an interpretation of khul’ as a unilateral divorce the drafters of the law presented the Habiba hadith as the decisive principle behind the khul’ law. Where fighters for reform of PSL had resorted to practices such as takhayyur (adopting elements from the other three schools of law in an eclectic manner) and talfiq (combining elements from the various schools into a new doctrine) to arrive at a “modern” interpretation of PSL, women activists and the government could not have accomplished the khul’ reform by using the methods of takhayyur and talfiq. They needed a method that opened up the possibility of exploring the sources of the shari’a (the Koran and the sunna of the Prophet) without the interference of fiqh (jurisprudence in Islam) (Arabi 2001). Arabi even claims that by sidestepping the four schools of law generations of Muslim jurists and their intellectual heritage were neutralized (2001, 186-88).

Despite and perhaps because of the fact that their position of influence is being undermined, it is not unthinkable that the ‘ulama’ will turn out to be one of the most prominent participants in a public sphere that is in debate over the correct interpretation of Islam and Islamic law in modern times. However, ‘ulama’

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55 In 1994, the Front of al-Azhar ‘ulama’ fought its first battle against the ICPD conference which was held in Cairo in September 1994.
56 The position of ‘ulama’ is also being undermined by the emergence of new mass media such as the Internet, satellite television and the mobile phone. Internet and television mufti’s, for example, are in competition with mufti’s who work at al-Azhar’s dar al-ifta’ (building housing the office of the Grand Mufti).
and Islamists were not the only participants in the public debate on *khul’d*. In the case of the *khul’d* law parliamentarians, even those of the ruling NDP party, strongly objected to the law too.

### 2.3 *Khul’d* in front of the Egyptian parliament: a far from dull debate

The fact that even the MPs of the ruling party vehemently opposed the law reminds me of the fact that, as we have seen before, reform of PSL was often pushed through in periods of parliamentary recess to put a stop to the conservative opposition in parliament. The ruling of unconstitutionality of 1985 has shown that in the long term such ploys are inapplicable to any attempt at legislation which is not deemed by the Egyptian High Constitutional Court to be in accordance with the constitution (see also 1.4). Does this mean that the “*khul’d* law” made its way through parliament in a democratic manner notwithstanding the fact that many MPs of the ruling party fervently opposed it? The way the government and women’s rights activists finally ushered the “*khul’d* law” through parliament led Singerman to conclude that the *khul’d* law of 2000 “strengthened the links and the relevance of parliament to civil society (2005, 164). Strangely enough, Singerman also claims that the speaker of parliament “used the derisive descriptions of women [in the parliament] as an excuse to halt debate on the bill…” and that “closing off debate certainly enhanced the bill’s chance to survive a vote” (2005, 178) while it “represented only the second time that the NDP seriously opposed government policy, but in the end, party discipline won the day and the bill was passed by a majority” (ibid, 176-77). Let us now turn to the presentation of the *khul’d* law in front of the parliament to see what happened.

A friend of mine once said that Egyptian parliamentary life was not only dull in as much as the MPs, of whom the greater majority were of the ruling National Democratic Party (hereafter, NDP), never deviated from the government’s point of view, she also thought it outrageous that they were paid such big salaries for doing nothing and for not trying at all to improve the life of the ordinary Egyptian citizen. Her story illustrates a widely felt feeling of resentment towards an indifferent and apathetic People’s Assembly. In January

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57 The 1920, 1923 and 1929 reform laws were all enacted in periods in which no Parliament was functioning (cf. Bernard-Maugiron and Dupret 2002b, 5).
58 In imitation of Egypt, Jordan also implemented an unilateral form of *khul’d* divorce in the summer of 2003, when the parliament was on recess. When the parliament returned from its holiday, it rejected the *khul’d* clause saying that it was violating the shari’a and that it would encourage the breakdown of the family (cf. al-safīr 4 August 2003).
59 For a presentation of the debate on *khul’d*, see also Fawzy (2004, 63-7); Tadros (2003, 83-100); and Zakariyya (2003, 45-81).
2000, however, when the parliament had to vote on the draft of the “khul’ law” the situation was different. A few days before the People’s Assembly would first convene, 100 MPs requested to participate in the discussions surrounding the new law (al-masā’ 8 January 2000) and a heated confrontation between the members of the People’s Assembly was expected (al-masā’ 8 January 2000).

On 16 January 2000 the People’s Assembly convened to discuss the draft law. In a meeting of the National Democratic Party delegates, held one hour before the People’s Assembly convened, the Minister of Parliamentary Affairs Kamal al-Shazli, asked the Members of Parliament to exercise party loyalty and to keep their objections to the bill to a minimum. After the passing of the law, some National Democratic Party deputies complained, mostly anonymously, that a lot of pressure was exerted on the MPs of the NDP to vote in favour of the law and to withdraw their more than 100 amendments to the law (al-sha’b 18 January 2000, 3; al-jumhūriya 20 January 2000; al-wafḍ 26 January 2000, 1; al-wafḍ 28 January 2000, 3; Cairo Times, 20-26 January 2000; al-ʿarabī 30 January 2000). This seemingly left a MP of the NDP from Upper Egypt unimpressed, as he claimed that khul’ would destroy the basis of the family and for that reason his religious commitment preceded his political commitment to his party (al-sha’b 18 January 2000, 3).

Other MPs claimed that khul’ would only encourage women to rebel against their husbands (cf. al-sha’b 28 January 2000, 3; al-wafḍ 17 January 2000). It was said that women were too emotional to be granted the right to unilateral divorce and that they would misuse it for frivolous reasons thereby destroying their families. For example, Yassin Serag al-Din, head of the opposition Wafd party delegation rejected khul’ on the grounds that it would only benefit women from wealthy backgrounds. Moreover, in his view, it was a violation of the shari’a to give women the right to unilateral divorce. Besides, women would misuse the right to khul’: “If a woman sees that her husband is less handsome than his friend, should she seek a divorce?” he asked (al-wafḍ 17 January 2000; al-sha’b 18 January 2000, 3). Other opponents seconded this, adding that the law would invite women to rebel against their husbands, thereby disrupting their families.

During the second session MP ‘Ali Nasr objected to the draft arguing that men are superior to women. He illustrated his statement by making the following comparison: “A rooster can have forty hens and a lion marries more than four lionesses, but it has never happened that a hen married two roosters.” Thereupon the minister of Parliamentary Affairs, al-Shazli, objected, and Surour interrupted to say that Nasr’s opinion was insulting. MP Mustafa al-Ridi apologized on Nasr’s behalf. Nasr said he had nothing to apologize for and walked out of the Assembly hall (al Ahram Weekly 20-26 January 2000). Ragab Hamida, representative of the

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See also Fawzy (2004, 63) and Singerman (2005, 176).
Ahrar party warned not to sacrifice the supremacy of men for the sake of the principle of equality. He, like many others, claimed that the consent of the husband is a prerequisite in order to make *khul'* valid. The Minister of Justice reacted to this by rhetorically asking why the wife of Ibn Thabit (Habiba) went to see the Prophet if the matter was dependent on the consent of both spouses? According to the Minister, she went to see the Prophet because he was the judge (al-sha’b 18 January 2000, 3).

During the session on 25 January, Yassin Serag al-Din, head of the Wafd Party, exclaimed that only twenty-three members of the Academy of Islamic Studies had attended the meeting (in which they voted on the draft law) while the government had claimed that 35 members had voted in favour of the law while only five had opposed the law. Therefore, he said, any agreement they had reached with regard to the new law was invalid. In his hands he held the papers that were supposed to corroborate it. Thereupon, his microphone was closed so that others could not hear him, in something, which according to *al-sha’b* was a serious precedent that the PA had not witnessed before. However, Serag al-Din continued by screaming that the law was against the *shari’a* and that it would destroy the future of the *umma* (the community of Muslim believers) (al-sha’b 28 January 2000, 3). Serag al-Din was annoyed by the fact that the Assembly did not bother to listen to the opposition’s viewpoint, which was supported by documents. “Unless it listens to this viewpoint, the Assembly will turn out to be something like a cabaret.” Speaker of the Assembly, Ahmad Surour, objected, saying that is was shameful to use the word cabaret to describe the Assembly. Hereupon Serag al-Din and four other members of the Wafd Party walked out of the session (al-wafd 26 January 2000, 1; al-sha’b 28 January 2000, 3; al Ahram Weekly 27 January-2 February 2000).

On 26 January, after six sessions lasting thirteen hours in total, the People’s Assembly passed a revised version of the draft Personal Status Law. The People’s Assembly was decidedly more vociferous than what people had come to expect, with a larger than usual number of deputies present to discuss the new procedural law. Of its 454 members 111 members voted for the draft, three abstained, and the remaining 340 members of the Assembly either did not show up or did not sit out the debate (Cairo Times, 29 March 2002). The compromise version still allowed women the right to *khul’*, however, on the condition that she and her husband participate in a three months arbitration process instead of the original sixty days. If the arbitration attempt fails, a judge has to pronounce an irrevocable divorce. As for the article that allowed women to travel unaccompanied, whether their husband consented or not, it was stricken from the draft altogether. The article on imprisonment of husbands who had refrained from providing for their families, even after a judge had ordered them to do so, was abolished as well. Moreover, the
government decided that instead of sixty percent, a husband should now spend fifty percent of his salary on alimony (al-wafd 28 January 2000). The article on legal recognition of ‘urfi marriages came through unaltered. It allows both spouses to apply for divorce in court, a circumstance denied to them in the previous law.

Apart from the venomous criticism which was aired, it was surprising to see that the most fervent opponents of the khul’ clause (as well as the clause that gave women the right to travel alone and the clause that allowed women in ‘urfi-marriages to obtain a divorce) were MPs from the ruling NDP as a result of which NDP party leaders had to resort to all sorts of measures to enforce party loyalty. Hence, where I claimed before that it is not easy to simply class people in either camp of opponents or proponents, the case of the MPs of the ruling party again shows that not all government officials were in favour of the law. Just like the ‘ulama’ of al-Azhar, who are governmental paid functionaries too, the MPs of the ruling NDP were divided on the issue of khul’. Many MPs of the ruling party stated that they were under considerable pressure to vote in favour of the law. Apparently, this was one measure the government resorted to in order to silence opposition to the law.

2.4 The right to exercise ijtihad

Yet, where in the People’s Assembly the religious legitimacy of the law; women’s right to travel without the consent of the husband and the fact that a wife could obtain a divorce without her husband’s consent caused general dismay and were recurrent points of discussion, we have already seen that the opposition in the newspapers went further than that. With only one representative in the parliament, the Labour Party relied on its newspaper (al-sha’b) to attack the law (Fawzy 2004, 67). For example, in its 28 January 2000 edition it claimed in its headlines that that the government used the People’s Assembly as a cover to pass whatever amendments to the law. Furthermore, the large media campaigns, which were launched to criticize the law, also served to give a political dimension to the new law in which the international political context characterized by globalisation and the bad influence of Zionism and the United States, was assigned an important role. Especially al-wafd and al-sha’b newspapers, the mouthpieces of the Wafd Party and the Labour Party respectively, were very vocal in their criticism of the law. Despite the general use of Islamic language and al-Azhar’s approval of the law, they still said in their headlines that: “The project of the Personal Status Law is a step towards complete secularisation of the state” (al-sha’b 31 December 1999, 2), “The colonization strips Egyptians of anything that refers to shari’a” (ibid), “The

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61 The al-Azhar ‘ulama’ were not divided on the clause that allowed women to travel alone. Even the sheikh of al-Azhar declared that it was against Islam after which the clause was stricken from the draft law altogether.
Zionist plans to destroy the family go further than amending Personal Status Law” (al-sha’b 18 January 2000, 2), “Undoubtedly, the West pressures [for the new law] aiming at spreading the dissolution of the Egyptian and Islamic family” (al-sha’b 21 January 2000, 5), “The law is a result of the Population Council…and this affront against men hurries to destroy society” (al-wafd 23 January 2000, 3), “The government wrests approval of the People’s Assembly on the amendments of the Personal Status Law” (al-wafd 28 January 2000, 1), “‘Shazli’ [the Minister of Parliamentary Affairs] speeds up the ratifications of the proposals [to the new PSL] in order to prevent misunderstandings abroad” (ibid).

Where the NDP MP from Upper Egypt openly questioned why the government was in such a hurry to implement the draft law and why it could not add another one or two months in order to properly discuss the draft law (al-sha’b 18 January 2000, 3) and where other MPs also wondered why the government hurried to implement a law which had taken nine years to prepare, Magdi Husayn from al-sha’b newspaper was quick to provide an answer to this question. This well know Islamist journalist claimed to have found an answer in the United Nations’ international agreements on Women and Population which the Egyptian government had signed and which it had to implement before April 2000 on pain of penalties imposed by the United Nations and the United States (al-sha’b 18 January 2000, 2). Especially al-sha’b newspaper spoke in terms of a Western, Zionist conspiracy which aimed at destroying the Egyptian, Muslim family. Through international conferences on Women and Population the enemy tries to enter in an alliance with the Egyptian women’s movement which subsequently pressures the government to take up the project of liberating women.62 Hence, by accusing the government and the women’s movement of collaborating with the West, this Islamist newspaper tried to exclude the former’s right to participate in the debate on reform of PSL. This simultaneously makes clear that a larger issue was at stake: namely, who has the right to speak out in matters pertaining to Islam and Islamic law (see also Buskens 2003). In this context the principle of ijtihad plays an important role, something which is exemplified by the following statement in al-sha’b.

In the statement: “Text of the proclamation of ‘ulama’ of the honourable al-Azhar concerning the PSL project” ‘ulama’ of al-Azhar claimed that not even the colonizer, who employed two reigns in order to spread its vices, namely, education and legislation, dared to change PSL. They accused al-Azhar’s Academy of Islamic

62 Welchman states that for Arab states in general “References [by opponents of women’s rights] to ‘international conferences on women’ are not infrequent…” and serve to situate the discourse on women’s rights “within the larger context of colonial and neo-colonial agendas, cultural imperialism and hostility to Islam and the Arabs” (2007, 38-9). Abu-Lughod claims that this has been the case ever since the late nineteenth century (1998, 243). See also Mernissi (1987, 23).
Studies of having confiscated the right of the righteous ‘ulama’ to debate and criticize the law, of having monopolized authority in Islamic Law. By way of an Islamic precedent, they wanted to make clear that every scholar has a duty to disseminate his knowledge or else God will curse him and throw upon him a ring of fire. In the end they addressed the president in a friendly way and asked him to postpone the introduction of the law by at least three months in order to enable them to revise the law (al-sha‘b 18 January 2000, 2).

This statement makes clear that some ‘ulama’ of al-Azhar felt excluded from what they considered their field of specialization: ijtihad, the process of deriving fiqh from direct engagement with religious texts (Lombardi 2006, 21). The importance of interpreting the sources of Islamic law in the debate stems from the possibility it may give to steer a new course for Islam and Islamic law. This is exemplified by the fact that both opponents and proponents of the law are in agreement that the Habiba hadith serves as the determining Prophetic precedent behind the new khul’ clause (Arabi 2001). However, they all used different versions of the hadith in order to use an interpretation which best served their interests. Hence for liberals, Islamists and the government alike, ijtihad is a prerequisite for the renewal of Islam in a modern world. However, the question arises, who decides who has the right to exercise ijtihad? In other words, whose interpretation ultimately becomes the dominant one?

While the government pressured and threatened the NDP MPs to vote for the new law, in the case of the Labour Party and its newspaper al-sha‘b the government reacted by banning its activities in May 2000 after a press incident in May 2000. This had incited a public demonstration by al-Azhar students over the re-printing of a controversial book (A Banquet for Seaweed) which led to “1200 [tear gas] bombs and 4200 shots being fired by the police at al-Azhar students” (al-sha‘b 12 May 2000, 3). The al-Azhar students admitted to not having read the book but claimed that a three-article series in al-sha‘b had evoked their anger. While the Labour Party won several lawsuits over its disclosure, the government appealed and decided that “the party would remain banned until it expelled anti-regime elements and abandons its Islamist rhetoric” (Stacher 2004, 229).

What is more, in August 2002 Yahya Isma’il, former secretary-general of the dissolved Front of al-Azhar ‘ulama’, was ruled a one-year prison sentence for having insulted the sheikh of al-Azhar, Tantawi. Tantawi felt insulted after an article, published by Isma’il, had appeared in al-sha‘b newspaper. The article was entitled “Khul’: Made in America’ and criticized Tantawi’s approval of khul’. The article reflected an old dispute between the sheikh of al-Azhar and the Front of al-

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63 It merits note that Lombardi states that the type of ijtihad as it was practiced by the classical Sunni fuqaha (experts of fiqh) is not always in line with the way practitioners use ijtihad now (2006, chapter 5).
64 For more details, see Stacher (2004).
Azhar ‘ulama’. Since the latter repeatedly criticized the liberal views of the Sheikh concerning different matters, Tantawi decided to dissolve the front in 1999 (al-Ahram Weekly 29 August-4 September 2002). The whole affair reflects conflicting points of view within al-Azhar and it clearly shows how the deviant ‘ulama’ of al-Azhar are affiliated with Islamist-oriented groups.65

The government, however, not only had to put up with opposition stemming from NDP MPs, al-Azhar ‘ulama’ and independent Islamists. At the same time, it also had to keep under control women activists who were critical of the government. In the nineties it sometimes reacted by pitting adversaries against each other. For example, in the early nineties the government closed the liberal Arab Women’s Solidarity Association of Nawal al-Saadawi and its license and assets were handed over to an Islamist women’s organization (cf. al-Ali 2000; Zuhur 2001). In February 2000, only a few weeks after the January legal reforms, this renowned and controversial secular woman activist attempted to establish a national Women’s Union NGO to unite 200 NGO’s working in the field of women under one umbrella organization. The government, which did not support this initiative, decided instead to establish its own organization, the National Council for Women (NCW) in March 2000 with Suzanne Mubarak as president. At the 2000 UN Beijing +5 conference on women in New York, Egypt’s delegation was dominated by the National Council for Women. Two reports had been written, one by the National Council for Women, the other by the other 421 NGO’s. However, the speech Suzanne Mubarak held almost totally passed over the views of these NGO’s (Zuhur 2001).

Allowing women like Nawal al-Saadawi, in their eyes a renowned secular women activist, to become head of an organization that intended to take 200 NGO’s under its wings would have thwarted the interests of the government. Certainly, she would have deployed activities to upset the Islamists and the general public. To curtail social unrest and to promote its own moderate form of feminism in- and outside Egypt, the government established the National Council for Women. According to some independent women activists most of the donor money from the European Union and USAID now goes to the NCW instead of being distributed among the other women’s rights NGOs. Some also argue that the government has tried to bring influential advocates of women’s rights under the wing of the NCW. By alluring potential “troublemakers” with influential positions

65 Buskens mentions how in the case of Morocco the small minority of ‘ulama’ who were critical of the proposed reform of family law “[M]ay fit with the Moroccan tradition of individual Islamic scholars who confront the government in Islamic terms…” (2003, 123). For the case of Egypt, see Zeghal (1999).
in the government with good salaries the government attempts to keep the public sphere under control. With one political party and its mouthpiece having disappeared from the public debate; one Islamic scholar in prison for having insulted the sheikh of al-Azhar for defending the “khul’ law” and with women’s NGOs all brought under the wing of the governmental NCW the political landscape had changed and the Egyptian public sphere was reconfigured. This seems to transpire in new reforms of PSL which were implemented in the wake of the “khul’ law” in January 2000. They included: an amendment of the “khul’ law” in May 2000 through which the previously abolished article (which stated that men who do not provide for their families were liable to imprisonment) was included in the law again (article 76 (bis) of law No. 91 of 2000); the implementation of a new marriage contract including the right to include substantive stipulations in August 2000; the implementation of a clause which allowed women to travel without the consent of the husband in November 2000; the appointment of the first female judge in January 2003; the right of Egyptian mothers to pass on Egyptian nationality to their children in 2004; the opening up of a new Family Court in October 2004; while at the beginning of 2007 thirty women judges were appointed to the lower courts.

Why did all these developments follow one another so quickly after the introduction of the “khul’ law”? Was khul’ used to divert attention away from these other, controversial changes? Was the opposition stricken numb or were opponents’ priorities drawn by other developments? Did opponents simply grow tired of the debate or did they start to realise that khul’ did not have such a profound influence on society after all? Did these reforms stir up such a commotion again? For the sake of conciseness, I mainly focus on the debates surrounding the introduction of a new marriage contract and women’s right to travel, since these reforms incited heavy opposition in the mid-nineties and January 2000 respectively.

2.5 Khul’: a cover for other controversial reforms?
A few months after its controversial introduction, the “khul’ law” was amended for the first time. In January 2000, due to heavy opposition in the People’s Assembly, the government had decided to strike from the draft law the article which made husbands who did not pay alimony to their families liable to imprisonment. According to opponents in the People’s Assembly, this provision was already covered by article 293 of the penal law. However, since the main reason behind the introduction of law no. 1/2000 was to facilitate procedures in the field of PSL, the

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66 The NCW has assumed an increasingly important role in stimulating and preparing reform of family law. For example, the NCW, along with the Ministry of Justice, helped prepare the draft law for the setting up of a Family Court in Egypt.
A new marriage contract

A few months later, in August 2000, a new marriage contract with the right to include stipulations in the contract became operative. We have seen before that the proposal for a new marriage contract caused a lot of upheaval in the mid-nineties. The then sheikh of al-Azhar opposed it saying that it deviated from the shari'a as well as that it would discourage young people from marrying. Another common argument was that the new contract would shift the relationship between the spouses from one which was based on compassion and respect to one in which heavy materialism would prevail. Due to the heavy criticism it suffered, the project of the new marriage contract was put on the shelf and ultimately developed into the new procedural law of 2000, the “khul’ law”.

When the new marriage contract was implemented after all on 16 August 2000, the controversies it aroused were relatively mild in tone. Where in the discussions which had surrounded the introduction of the “khul’ law”, advocates of the reform had been continuously accused of participating in a Western (Zionist) conspiracy which aimed at destroying the Egyptian Muslim family, such language remained largely absent in the discussions concerning the new marriage contract. For a large part this can be attributed to the fact that a few months earlier (May 2000) the government had banned the activities of the Labour Party and its newspaper al-sha'b. In January 2000, both al-wafd and especially al-sha'b newspaper had not only claimed that the law was against the shari'a and that it exposed society to a great danger, their opposition to the law had been especially characterized by their vicious anti-Western and anti-government criticism.

Hence, when the new marriage contract was implemented, al-sha'b was not longer able to express criticism while al-wafd hardly took up a pen to cover the reform. As far as I know, not a single caricature or article was published. This minimal coverage might have been related to the death of the leader of the Wafd Party, Fu’ad Serag al-Din on August 14, 2000, an event that filled the newspaper for many days. However, a few months later, in November 2000, when al-wafd finally published an article about the new marriage contract, its criticism was still void of anti-Western and anti-government rhetoric. In the article it was argued that the new contract would make it more difficult for youngsters to marry. As a result, the number of spinsters would increase significantly thereby posing a threat to the stability of society. In the article a ma’dhun (marriage and divorce registrar) predicted the course of marriage in Egypt by giving an example in which a bride,
insisting on including stipulations in the marriage contract, angers the groom to such an extent that he walks out of the mosque. At the same time, however, it was also predicted that future spouses would hardly dare to insert stipulations in their contract, not wanting to cause problems in a marriage which had not yet even taken place. The new Family Insurance Fund was criticized too. In this fund the groom had to donate an amount of approximately 2000 Egyptian pounds in order to make sure that his future family would not be left with nothing in case he repudiated his wife. In the article it was argued that the instigation of this fund would only serve to increase the problems of young couples that wanted to get married (al-wafd 11 November 2000).

In general, the same lines of argument that had prevailed in the mid-nineties were repeated in 2000: “The new marriage contract is void of love and compassion!! The holy contract is transformed into an agreement that resembles the establishment of a trade company. Youngsters are afraid of the stringent stipulations…and the number of disputes will increase” (al-masā’ 10 April 2000); “The confusion surrounding the procedures of the [new marriage] contract are a clear invitation to disintegration” (al-aHrār 22 August 2000); “Islam arranges for a stable relationship between husband and wife. So, why should we fool around with the shari’a?” (al-aHrār 22 August 2000); “Prohibited from marriage because of the new marriage contract” (al-aHrār 30 August 2000). In particular, ma’dhun-s (marriage and divorce registrars), who were supposed to implement the reform in their daily practice, were opposing the reform, both on religious and procedural grounds. Sheikh ‘Azz al-Din al-Sayyid ‘Ata, head of the association of ma’dhun-s, complained that the reform had passed without the ma’dhun-s being consulted or informed about the new procedures. Furthermore, this ma’dhun and the secretary of the association of ma’dhun-s agreed that they would never allow a couple to insert stipulations which would deviate from the shari’a, such as granting a woman the right to travel without the consent of her husband (al-aHrār 22 August 2000).

Both in the mid-nineties and in 2000, advocates of the new contract merely reacted to these accusations by saying that the stipulations would only become legally valid when both parties had consented to it (cf al-wafd 11 February 1995; al-jumhūriya 14 April 2000; ākhir sā’a 31 May 2000; al-ahrām 8 September 2000). Moreover, inserting stipulations would make men think twice before they set out to harm their wives. This, the proponents to the new contract claimed, would not

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67 The same arguments dominated an article about the new marriage contract which al-wafd published on 28 May 2000, two months prior to the implementation of the new marriage contract, on 16 August 2000.

68 We can of course wonder whether grooms really donate 2000 Egyptian pounds to the Family Insurance Fund. During my fieldwork, people never brought up this subject while they certainly would have complained about it in cases where the provision—presenting yet another financial burden on the groom (and his family)—was implemented in reality.
lead to the destabilization of the family. On the contrary, it would bring balance and harmony to the family (al-wa'id 11 February 1995). Not surprisingly, advocates of the new contract denied that the reform was against the shari'a (cf. al-Ahram Weekly 1-7 June 2000). In this light, councilor and head of the department of the High Constitutional Court, ‘Abd al-Muna’im Ishaq, said that the new contract was not against the shari’a as long as its stipulations did not legitimize the forbidden or forbid the legitimate (akhir sā’a 31 May 2000).

Strikingly, during the debate on the new marriage contract, participants seldom mentioned that in the Ottoman period it had been common for women to safeguard their interests in marriage by including stipulations in their marriage contracts (cf. Abdal Rahman Abdal Rehim (1996); Hanna (1996); Sonbol (1995); Tucker (1998)). A professor of religion and philosophy at al-Azhar University who claimed that inserting stipulations was already being practiced in the formation period of Islam as well as in the Andalusian era (al ahrām 8 September 2000) was the only reference to this old practice which I came across.

Women’s right to travel without the consent of the husband

A husband laughs boisterously at the funeral of his wife. A friend approaches him and requests him to show some respect on this occasion. He obeys his friend for some time, but cannot help himself and starts laughing loudly again. His friend wants to know the reason for his strange behaviour. The husband whispers into his friend’s ears: Can you believe that this is the first time in our marriage that I can see my wife outside the house and know where she is going (al-sha'b 28 January 2000, 5).

It did not take long for the next reform to come up. In November 2000 the High Constitutional Court declared unconstitutional article 3 of decree 3937 of 1997 which stated that women were only allowed to apply for or to renew a passport after they had obtained permission from their husbands. Article 8 and 11 of law no. 97 of 1959, which stated that the Minister of Interior Affairs was authorized to decide the conditions upon which a citizen could be granted a passport, were abolished too. The court concluded that both articles contradicted the constitution which states that every citizen has the right to freedom of movement, unless a judicial order states otherwise."^9

In January 2000, article 26 or the travelling article of the “khul’ law” had been abolished due to the heavy opposition it faced. Instead, law no. 1 of 2000 states that those who are prevented from travelling can resort to a judge of temporal matters. Through the ruling of the HCC, however, this article was cancelled and women were given the right to obtain a passport without the

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^9 Ruling of the High Constitutional Court, 4 November 2000.
consent of the husband or the Minister of Interior Affairs after all. Since the consent of the husband to allow his wife to obtain a passport had always been seen as an implicit authority to travel (Bernard-Maugiron 2004, 381), the ruling of the HCC had the effect that from that time onwards, women could travel without the permission of their husbands.

Where ‘ulama’ had been divided on whether or not to agree to the khul’ article in January 2000, with regard to women’s right to travel without the consent of the husband almost all, if not all, ‘ulama’ stood united in rejecting this right in January 2000. Even the Sheikh of al-Azhar, who was heavily criticized by other ‘ulama’ for his support of khul’, surprised both friend and foe when he rejected firmly women’s right to travel without the consent of the husband in the People’s Assembly. MPs, both those who were opposing and proposing the law, reacted to this unprecedented move by applauding. The Minister of Justice and the Minister of Religious Endowments, who had not expected that the Sheikh would object to the travel article, were not amused (al-jumhūriya 20 January 2000). The Sheikh’s statement had undermined the religious legitimacy of the article which then was doomed to failure. According to the government-based newspaper al-ahrām, Tantawi’s objection to this article constituted one of the most important results in the discussions which surrounded the introduction of the “khul’ law”, both in and outside the People’s Assembly (19 January 2000).

In practice, however, the issue of women’s right to travel soon moved to another plane after some court cases showed that husbands’ preventing their wives from travelling was not in the interest of the family. In March 2000, Alexandria’s court of administrative procedures decided in its ruling that the right of a husband to prevent his wife from travelling is not an absolute right, meaning that a husband can only use this right in cases where it serves the interest of the family and not when it is exercised out of sheer desire by the husband to get back at his wife (al-ahrām 6 March 2000). In June 2000, again an administrative court overruled the decision of the Ministry of Interior (jihat idari) which had refused to grant a sick boy, whose mother wanted to seek medical treatment for him in France, a passport since the father objected to this. In its ruling the court declared that medical treatment is a human right (al-ahrām 3 June 2000).

When the ruling of the HCC passed in November 2000, advocates of women’s rights were quick to defend the new reform by pointing out that husbands often infringed on the interest of the family by preventing their wives from travelling. They used examples of women who wanted to visit sick family members or who sought medical treatment abroad but whose husbands refused to give them permission to travel. The reform was also defended by a psychologist and others who claimed that the reform would lead to a balance between men and women. As a result, women would become more aware of their responsibilities
towards their families which, contrary to what the January 2000 opponents to the article had claimed, would prevent the breakdown of the family (cf. niSf al-dunyā 19 November 2000). Others, like Nawal al-Saadawi, also argued that the law was not a blessing for women, although they considered the amendment to be an important step in the right direction. Al-Saadawi warned that article 11 of the constitution, which states that a proper coordination between the duties of a woman towards her family and her work in society should be secured [by the state], would be used by men to prevent their wives from travelling under the pretext of the interest of the family (al-ahrām 7 November 2000).

The law was also defended on religious grounds. Mona Zulficar, lawyer and member of the National Council for Women (NCW) was one of the most important forces behind the “khul’ law” and quoted a few Koranic verses to stress that the Koran sees men and women as equals. As for the Prophetic saying in which the Prophet says that a woman is not allowed to travel for more than three days without a mahram (close male relatives of a woman with whom she cannot marry), she claimed that the saying was not absolute and that it was interpreted in a specific historical setting. Times have changed, she said, and women in Muslim countries have come to occupy important positions, such as head of the government, and for that reason women should not be denied the right to travel (niSf al-dunyā 19 November 2000).

It is remarkable that this time the January 2000 opponents to the travel article did not criticize women’s right to travel. al-wafd, which in January 2000 figured among those who were at the forefront of opposing women’s right to travel, did not publish a single article or cartoon about the reform. Other January 2000 opposition papers mainly restricted themselves to a rather objective covering of the reform in November 2000. The discourse which had previously predicted the destruction of the family once women were given the right to travel at will and which had been characterized by fierce anti-government and anti-Western propaganda, suddenly had lost most of its viciousness. In a few cases it was argued that the shari’a does not allow women to travel for more than three days without a mahram and for that reason the ruling of the High Constitutional Court was opposed (cf. al-aHrār 7 November 2000; al-muSawwar 10 November 2000; al-ahrām 29 November 2000). It was also argued that only in cases where a husband misuses the right to prevent his wife from travelling: when she wants to visit sick family members who are living abroad, or when she or any of her children need to travel abroad for medical treatment for example, she should have the right to travel without his consent (cf al-muSawwar 10 November 2000). This opinion was seconded by the Sheikh of al-Azhar who added that in such cases there should be: “No obedience to a human being [the husband] who disobeys his creator.” It is interesting that Tantawi’s defence of the travel article and the ruling of the HCC
was followed by an attack on the constitution by a professor of al-Azhar University, Ashraf Abu al-Sa’ud, who wondered how it was possible that women were allowed to travel at will while the constitution stipulates that the shari’a is the main source of legislation. According to him, women’s rights and human rights were just slogans which aimed at the destruction of the Egyptian family (ibid). While not arousing much debate, his criticism again shows how the ‘ulama’ of al-Azhar have divergent opinions on women’s rights.

The “khul’ law” declared constitutional

Since its instigation in 1979, Egypt’s High Constitutional Court has often played a decisive role in matters of high controversy such as: the PSL of 1979 which it declared unconstitutional in 1985; the issue of polygamy which it declared in 1994 to be a definitive right and a universal human interest while it simultaneously stated that it is not contrary to the right to polygamy for a wife to stipulate in her marriage contract that her husband may not take a second wife (Arabi 2002, 345-51); the travel article of 2000 and the “khul’ law” of 2000 which was declared constitutional in December 2002. Hence, almost two years after the HCC had given women free space to travel alone, the High Constitutional Court again arrived at a controversial ruling in December 2002 when it declared that the “khul’ law” was constitutional.

A man from Alexandria whose wife had divorced him by way of khul’ had filed a case in which he contested the constitutionality of the new Personal Status Law and, in particular, the khul’ clause. In its ruling, the High Constitutional Court declared the new Personal Status law constitutional on the grounds that it did not violate the shari’a because both the Koran and the sunna of the Prophet supported it and because legislators have the right to promulgate a law whose rulings are not open to appeal, if there is an acceptable justification for it. It is interesting to note that the HCC used the al-Bukhari version of the Habiba hadith in which the Prophet divorced Habiba against the will of her husband (al-jarida al-rasmiya, issue 52, 26 December 2002, 50-9).

The ruling of the HCC incited al-wafd to take pen in hand and within a period of ten days two caricatures and six lengthy articles were published. Surprisingly, however, its tone had become very mild. Before, in February 2000, al-wafd had published the story of the first Egyptian woman to ask for khul’. She was portrayed as an ignorant peasant woman who wanted to divorce her husband because he started to treat her badly after he married a second wife, a marriage to which she herself had been a witness (al-wafd 1 February 2000, 3). In December 2002, however, al-wafd published a lengthy article in which women were called upon to speak about the difficulties they were facing with husbands who, among other things, ran away and who stopped providing for their families and whom the
interviewed women tried to divorce by way of khul’. The article was very mild in its tone and the women were portrayed as victims of reckless and irresponsible husbands. It was even said that: “The final rulings on khul’ [had come as] a means for tortured women to fast relief” (al-wafd 18 December 2002, 3).

When I compared these and other articles to those which were published before, during and shortly after the introduction and implementation of the “khul’ law”, I was under the impression that al-wafd had changed from a fierce opponent of reform of PSL –linking it to issues of Westernization and foreign influence, to a sympathizer of women who were stuck in difficult marriages. In general, I am inclined to conclude that newspapers and magazines no longer presented reform of PSL as a conspiracy between foreign powers and Egyptian government officials (including religious government officials) notwithstanding the fact that the PSL reforms which followed the “khul’ law” were controversial in nature as well. What is interesting is that the cartoons that al-wafd published still depicted brutish and ugly women dominating their small and insignificant husbands, an issue which will be taken up in the next chapter which deals with films and cartoons.

2.6 Conclusion

Where in urīdu Hallan the Islamists had been absent, they were clearly present in the public debates on khul’ as played out in newspapers. The two newspapers al-sha’b and al-wafd that ran the most blaring headlines were both newspapers of political parties –the Labour Party and the Wafd Party respectively - and as such marked the debate on khul’ as a political game in which there was a struggle “between those who seek to locate women’s emancipation…at the heart of the development of nation and of society, and those who try to dislocate such a project as an alien Western import”, to use the words of Abu-Lughod (1998, 243).

However, things are not as straightforward as they seem. If the debate has made one thing clear then this is that it is not easy to classify opponents and proponents of the law. The religious establishment did not form a homogenous bloc nor did the government. With many of its own MPs opposing the law, the government first had to work to secure the cooperation of MPs from its own party. Having realized the passing of the law with a majority vote in Parliament, high government officials were confronted with ‘ulama’ from al-Azhar who accused the government of being a Zionist entity. These “deviant” government ‘ulama’ even accused the sheikh of al-Azhar of being kafir (unbelieving). Conversely, the women’s movement and the leftist political parties used the religious authority of al-Azhar to claim that since the khul’ law was approved by the sheikh of al-Azhar, its Islamic validity was secured. After intensive cooperation with high government

70 This also applies to the case of Yemen (Würth 2003), Mali (Schulz 2003), Palestine (Welchman 2003 and Shehada 2005), and Morocco (Buskens 2003).
officials, women activists were proud to present the *khul*’ law as being in accordance with Islam.

Yet, the women’s movement did not form a homogenous bloc either as many women’s activists claimed that the law was only a law for rich women who could afford to renounce their financial rights in return for a *khul*’ divorce. One of them was Husna Shah, none other than the scriptwriter of urdu *Hallan*. Other activists went further and accused women activists who were behind the implementation of the “*khul*’ law” of having become members of the governmental NCW for reasons that were related merely to prestige and money. Apart from that, they also accused the government of not having dared to address reform of substantive law out of fear of the Islamists. For that reason, they believed the government to have introduced substantive clauses such as *khul*’ in a procedural law.

Despite the complexities of the alliances made in the debate, there is one thing that stands beyond doubt: all parties resorted to the language of Islam in order to present their particular point of view as the true understanding of Islam. For this reason, and in line with the contributions to the issue of *Islamic Law and Society* concerning public debates on reform of PSL, we can speak of the emergence of a Muslim “public sphere” in which norms and values are legitimized only when expressed in the language of Islam. Within this public sphere, however, the issues that are at stake are not necessarily religiously motivated. Fawzy, for example, argues that the MPs of the ruling party who vehemently opposed the “*khul*’ law” on religious grounds had to bear in mind the upcoming parliamentary elections. The MPs of the NDP wanted to present the voters with an image of being defenders of religion, “filling for public opinion the space left by the absent ‘Muslim Brothers’” (2004, 65).

Probably, the Wafd and the Labour Party too had the parliamentary elections in mind when they venomously attacked the “*khul*’ law.” In order to touch emotions and to create an appearance of being guardians of true Islam, they accused the government and the religious authorities that were supporting it of being lackeys of the West who sacrificed the principles of Islam for donor money. Other ‘ulama’, however, who used *al-sha'b* newspaper as a platform to disseminate their message, might have been worried that their position of power was threatened now that the legislature had issued a form of *khul*’ divorce which was absent in the four schools of Islamic law. While reformers in the past had resorted to *takhayyur* and *ta’fīq* in order to reform PSL, this time around the legislator had directly consulted the Koran and the *sunna* of the Prophet. According to Arabi this

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71 In 1995 military trials had sent many of its best members to prison while in the manipulated parliamentary elections of 1995 the Muslim Brotherhood had only managed to win one seat in the Parliament (Makram-Ebeid 2001).
would impact on the course of legal development in Egypt and other Muslim countries for some time to come (2001).

Yet, the debate has also shown that resorting to the language of Islam is only a necessary means to participate in the debate. The use of religious language does not tell us anything about the outcome of the debate (see also Buskens (2003) and Schulz (2003)). In the Egyptian case, the government seemingly was the one that ultimately decided who had the right to interpret the sources of Islamic law, and hence, the limits within which the public debate could take place. The fact that under no circumstances was it willing to allow the Labour Party to operate again unless it restrained its anti-regime and Islamist rhetoric makes it clear that this political party and its newspaper had pushed the limits of acceptable political behaviour. After the Labour Party and its newspaper were forced to leave the public debate, the Wafd party and its newspaper apparently decided to rein in their language, and as a result the fierce and venomous anti-Western critique of the government and al-Azhar was struck dumb. In fact, numerous PSL reforms which were introduced shortly after the implementation of the "khul' law", some of which had proved highly controversial before, hardly seemed, on implementation to arouse any editorial emotions.

Of course, we might well think of other reasons that also explain the lack of interest in reform of PSL. For example, the Palestinian Intifada which started in September 2000, and the widespread anger the Israeli response provoked, surely contributed to diverting attention away from matters of PSL. The government did not, however, allow Islamists who before had slandered its Islamic credibility by accusing it of merely being a puppet of the West, to assault its cultural authenticity as well. Instead, the government responded to its critics by creating and implementing its own Islamic politics. It created its own form of Islamic modernism which has been succinctly described by Fathi Naguib (died 2003), then first deputy president of the Court of Cassation and one of the main forces behind the law: “Compliance with shari'a must continue because it is closely related to people’s religious beliefs and it does not contradict any of the international agreements that Egypt had signed” [my addition] (al-Ahram Weekly 1-7 March 2001).

Interestingly, this statement simultaneously shows that the Egyptian state cannot forcefully impose its ideas about modernization and reform of PSL. In other words, the Egyptian state is forced to come up with an answer to reform of PSL that both satisfies the international community, which includes activists for women’s rights, on which the state must rely for much funding, and satisfies Islamists and the population at the grassroots level on whom the government ultimately depends for its legitimacy. This explains why the government made concessions to the opposition (by extending the reconciliation period; abolishing
the travel article and by refraining from issuing an Explanatory Memorandum). The debate on *khulʿ* reflected the general political situation of a country in which Islamic identity and cultural authenticity both play an important role.

Apart from making concessions to its opponents, the Egyptian government also had to contend with the authority of the High Constitutional Court. A popular strategy of Islamists is to take matters of controversy to court. In this way Islamic lawyers have won many controversial cases. I have already touched upon the fact that during the debate on *khulʿ*, opponents of the law sometimes referred to the constitution (which states that the principles of Islamic law are the main source of legislation), in order to highlight that *khulʿ* was unconstitutional and thus unislamic. Hence, where proponents of *khulʿ* used al-Azhar as an authority in matters of religion, Islamists rejected the authority of al-Azhar and instead relied on the judiciary in general and the HCC specifically to deal with matters dealing with Islam. By bringing before the HCC lawsuits in which they challenged Egyptian laws as un-Islamic and unconstitutional, “the responsibility for creating and implementing an official government theory of Islamic law moved from the executive and legislative branches to the increasingly independent judiciary” (Lombardi 2006, 5).

In such cases, the government is no longer able to ultimately decide on the right interpretation of Islam and Islamic law. Hence, when a husband in Alexandria whose wife divorced him through *khulʿ* filed a case in which he claimed *khulʿ* to be unconstitutional, the government was no longer in a position to control the fate of the *khulʿ* article. In the end, the outcome of the public debate on *khulʿ* was decided, not by the government, or al-Azhar, but by the High Constitutional Court, a body that had not participated in the public debate on *khulʿ* and that used the Koran and the al-Bukhari version of the Habiba *hadith* to provide a final answer to the question as to whether *khulʿ* was constitutional and, for that matter, in accordance with Islamic law. In this sense, the Egyptian case resembles the case of Morocco where both opponents and proponents of reform of PSL looked to the king to make a final decision with regard to a new proposal for reform of PSL (cf. Buskens 2003). However, while in the case of Morocco, the king is the *amir al-muʿminin* (commander of the faithful), the Egyptian High

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72 For more on opponents’ efforts to extend the reconciliation period, see 5.2. In 4.5 and 4.6 I elaborate on the issue of the Explanatory Memorandum.
73 The High Constitutional Court has a reputation for being a bastion of independence and while the ruling of constitutionality of the *khulʿ* law was to the government’s advantage, this should not lead us to conclude that the HCC in general takes the side of the government. The 1979 PSL, for example, was ruled unconstitutional by the HCC in 1985 and in the 1980s the HCC invalidated laws concerning elections to the Parliament as a result of which the Parliament was dissolved twice (cf. Arabi 2002, 353). Arabi stresses that the commitment of the HCC “to democratic values and constitutional principles ought to be emphasised” (2002, 353).
Constitutional Court consists of secularly trained judges and, as such, is not an institute of religious authority or learning. This, one would expect al-Azhar to be.

In all, the way the debate on reform of PSL unfolded in the period after the introduction of the “khul’ law”, should not lead us to conclude that the criticism surrounding khul’ had been completely struck dumb. As we have already seen, after the HCC ruled khul’ to be constitutional, al-wafd newspaper continued presenting cartoons which depicted what would happen once women were given the right to khul’. What is more, in the years following the implementation of the “khul’ law”, the films muHāmī khul’ (2003) and urīdu khul’an (2005) constituted the most critical voices in an otherwise rather docile public debate concerning PSL and women’s rights. The issue of PSL reform was shifted away from newspapers, where rational ideas and opinions are exchanged through the use of texts, to other styles of communication and to other ways of making a statement, in this case through using films and cartoons in which (audio) visual materials play an important role. The next chapter will show how this happened.
3 Films and cartoons: the second pen

3.1 Presenting: “urīdu khul’an”

1919: The year in which the first woman becomes active in politics

1958: Dr. Hikmat Abu Zayd becomes the first female minister in Egypt

1975: The release of the film urīdu Hallan leads to a modification of PSL

2001: Maha al-Shanawi becomes the first Egyptian woman who divorces her husband through khul’

These are the opening sentences of the film urīdu khul’an. In the film we see how an upper (middle) class woman by the name Maha al-Shanawi arrives home from work only to find her apartment in chaos. Her husband, who arrived before her, is very angry and castigates her for not taking care of her household and children (who were responsible for the chaos). She wants to tell him that she has won a prize for being the best teacher of her school but her husband, Tarik, does not want to hear about her work again. “Your children should succeed, not you,” he tells her and he forbids her to work again. Besides that he tells her that his uncle and his nephew from the village will be paying them a visit that night. While Maha prepares a meal for the visitors Tarik tells his nephew who will marry soon that the most important thing in marriage is that he will become ragil il-bayt (man of the house). “Kida (like this),” while pointing at Maha who enters the room to serve them tea. The other visitor –Tarik’s uncle in gallabiya, who is ‘umda (chief) of an Upper Egyptian village - could not agree more.

The next morning as Maha looks out on the city from her balcony her female neighbour asks her why she is not working. After having listened to her story, the emancipated Samiha, who orders her own husband around, advises Maha to “drive Tarik crazy.”

In the meantime Maha’s younger brother goes to the bank where Tarik is the director. This brother by the name of ‘Amr was supposed to look after the children the day before but since he spent all his time behind the computer the children escaped his attention and subsequently turned the house into chaos. This led Tarik to expel ‘Amr from the house. ’Amr, however, is not a man to be easily daunted and still approaches Tarik to ask him if he has a job for him at the bank. Tarik refuses.
In the late afternoon Maha takes Tarik and the two boys to the tower of Zamalek. Tarik, who suffers from acrophobia, is bad company until his eyes fall on a female business colleague. He immediately approaches her and greets her heartily. When he comes back he tells Maha that the woman is very nahga (successful). “What about me?” Maha asks him. “I want to work as well. I even have a right to work” she exclaims angrily. Tarik replies by saying that he has a right to protect his family and that her success does not mean anything.

The next morning Maha - accompanied by her brother ‘Amr and her neighbour Samiha - approaches a lawyer to help her divorce Tarik through khul’. The lawyer initially hesitates to accept her case because Tarik is a friend of his. But when ‘Amr tells him that this case will bring him a lot of success since it will be the first khul’ case of the country, he is easily persuaded. The next morning Tarik reads in his newspaper at work that his wife has filed the first khul’ case in the country and it suddenly dawns upon him why everybody at work was trying hard not to burst into laughter. He immediately leaves his office and when he meets the bawwab (doorman) to his apartment building, the latter, cannot control himself and laughs right in his face. To his dismay, Tarik finds out that his house is full of press people who interview Maha about her khul’ case. He shows them all the door.

Tarik’s situation is getting worse as the marital home has changed into a place where Tarik is only designated a small part of the house to sleep and dress in while ‘Amr -the brother of Maha- has arranged that Tarik can only enter the bathroom by entering a security code. When Tarik approaches another lawyer and tells him that he is denied access to his own bathroom, this lawyer tells him that the law does not mention anything about a bathroom. It does, however, mention that in case of khul’ the wife has custody over the children and has a right to the marital apartment. According to the lawyer, Tarik will only get the dower. “How much did you pay actually?” he asks him anxiously.

In the meantime, we see how a group of fallahin (peasants from Upper Egypt), including the uncle of Tarik, is watching on television how a woman tells the interviewer that she does not care about the twenty-five piasters [which is the dower which she must return to her husband in case of khul’] but that her husband does not understand her and that her job is the most important thing in her life. Tarik’s uncle is shocked to recognize that this woman is the wife of Tarik. Was she not the one who had been submissive when he was recently visiting Tarik’s flat in Cairo? “I was so proud of you, what has happened?” the uncle asks Tarik the next morning after he and a few fellow country men have taken a service taxi to Cairo in order to find out what has happened.

Later in the evening, Tarik, the uncle and the other fallahin visit a qahwa (coffeehouse). After having listened to Tarik’s story, two of them ask in surprise: “can women divorce us through khul’? It is at this point that Tarik’s uncle
suddenly realizes what will happen to him if his own wife would divorce him through *khul*. In order to prevent his brothers and sisters from inheriting his land, he had put his land in his wife’s name. While the uncle takes measures to take his land back, Maha’s star is rising and when she gives a press conference in a chic hotel, the crowd recites: *isha tarik wi shuf, maha mish bitkhuf* (Tarik, wake up and see, Maha is no longer afraid of you).

In order to change the tide, the submissive male neighbour (husband of neighbour Samiha) advises his friend Tarik to try to be more romantic in his approach to Maha. “Why should I?” Tarik replies. “If only because of that flat of yours [which Maha is going to take away in the case of divorce].” However, when Tarik tries to be as romantic as he can be, reciting a classical Arab poet and by presenting Maha with a bunch of flowers in front of their children’s school, the guard of the school gets suspicious and asks Maha if the man with the broken classical Arabic and the bunch of flowers is disturbing her. Yes, she replies. In the next scene we see Tarik at the police station desperately trying to convince Maha to come there and prove to the police that he is her husband. “Isn’t prison for real men?” she asks him sarcastically. When she finally arrives at the police station, she confirms that Tarik is her husband but adds that he is “hanging.”

When we are taken back to the countryside again, Tarik’s uncle cuts the wires of the satellite disc, after he has noticed several times that his wife is watching television programs in which female-related issues are discussed.

In the next scene, Maha’s classical Arabic turns out to be as bad as that of Tarik and her knowledge of Islam does not fare any better - something which becomes clear when Maha (accompanied by her brother ‘Amr, Samiha and her lawyer) and Tarik (accompanied by his uncle and lawyer) stand in front of the three judges. The judge points out to Maha that the court is obliged to offer the couple a possibility to reconcile their problems whereafter Maha first tries to say something which she has learnt by heart but then takes a piece of paper out of her bag and reads aloud in classical Arabic that she is afraid to cross the limits of God were she to stay married to Tarik.

Back in Upper Egypt, the uncle chases away a female neighbour who reads aloud the newspaper to the uncle’s illiterate wife. The wife is in stitches when she hears the neighbour read her the story of the cloned-sheep Dolly. “We no longer need men,” she tells her husband, “because the female sheep got a baby without the interference of a male.” Notwithstanding his diminishing influence over his wife, the uncle manages to make her sign a document with a thumb-print which entitles him to take back his land.

Meanwhile Maha begins to regret what she has done. Her brother, however, sticks to his guns and in a meeting with Tarik and his uncle he tells them

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24 Most likely Maha was referring to the Arab saying “Prison is for real men” (*al-sign li-l gid‘an*).
that he will be able to solve the matter: \textit{ti’ayinni fi-l-bank, wi tirga’ il-bayt Malik} (give me a position in your bank and you will return to your home as a king). Again, Tarik refuses.

In preparation for the last meeting in court, the uncle orders his fellow countrymen to guard his house and to make sure that nobody [i.e. his wife] leaves the house until he has returned from Cairo. He turns the house into a prison by guarding it by a few dozen of fallahin who must ensure that his wife, who is behind bars, cannot leave the house.

In front of the judges Maha tells Tarik that she does not know how she could have let this happen and, much to the horror of her brother ’Amr, they reconcile. The uncle is happy and invites them to his village. When they arrive in the village, the uncle cannot believe his eyes when he sees that his house has turned from a prison into a venue for a big conference which his wife is presiding. In classical Arabic she tells the large audience of both men and women fallahin that women constitute half of society and that this half of society is...While the uncle walks away in despair, Tarik gets angry with Maha for giggling. Maha’s brother ’Amr comes between them and Tarik, who no longer can control himself, starts a fight with him.

3.2 Is \textit{urīdu khul’an} a continuation of \textit{urīdu Hallan}?

In the opening sentences of \textit{urīdu khul’an} (see 3.1), which are based on reality, Maha al-Shanawi (the wife of Tarik) is presented as the first woman in Egypt who filed for a divorce through \textit{khul’}. The credits of the film show that she is the (special) director of the film. Thus, the main actress in the film and the special director of the film have the same name. This creates the impression that the name of the main female actress in the film is in reality the name of the first Egyptian woman who filed for \textit{khul’} and that the film has strong links to everyday life. There are several other reasons which underline such an assumption. As we have seen, the opening sequences of the film suggest that \textit{urīdu khul’an} stands in a long tradition of women empowerment and that it is a continuation of \textit{urīdu Hallan}. Ashraf ‘Abdalbaqi (who plays Tarik, the husband, in the film) denies that \textit{urīdu khul’an} is the second part of \textit{urīdu Hallan} (Sawt al-umma, 21 November 2005) but he is quick to emphasize that he is not a comedian and that \textit{urīdu khul’an} is predominantly a realist drama blended with comedy (al-sharq al-awsaT, 11 October 2005).

At the same time, however, one cannot escape the feeling that the film is ridiculing \textit{khul’} and that its portrayal of women who want to file for \textit{khul’} does not nearly evoke the same feelings of empathy many viewers felt for Duriya and the other women in \textit{urīdu Hallan}. What to think, for example, of the scene in which Maha is approached in court by an upper middle class woman whose hair is neatly
styled and who wears a lot of make-up and who proudly tells Maha that the latter’s example encouraged her to put an end to a marriage which only lasted six months. This starkly opposes the story of Duriya, who endured a bad marriage for more than twenty years and who only decided to divorce her husband when she felt she had finished her duty of raising her son. Besides, by having waited for her son to leave the country (in order to study abroad), she made sure that the latter would not be exposed to the scandal which going to court entails. Unlike Duriya, Maha’s two very young children fully witnessed the fights between their parents and one time they even appeared in court. In fact, in a review of the film it was claimed that the director of urīdu khul’an –Ahmad ‘Awad- was firm in pointing out the danger for children and he considered them to be the only victims of these fights (al-siyāsa al-kuwaytiyya). Furthermore, Maha is not prepared to put her career on hold in order to fully devote her time and energy to raising her two children and running the household. Finally, Maha made extensive use of the mass media to embarrass her husband in front of the nation while Duriya, endowed with virtue and discretion, decided not to wash her dirty linen in public as a result of which it was only during a secret session without the public, that she revealed to the judge part of her reasons for wanting a divorce.

Possibly because of her reluctance to tell the court her full reasons for divorce, the judge did not grant Duriya a divorce in the end. A divorce would have changed her life completely as she would have been separated from a husband who was adulterous, an alcoholic and who even abused her. While Duriya had “good” reasons for the divorce, that is to say, reasons which would make her eligible for a regular divorce case, in urīdu khul’an Maha becomes the first woman of the country to file for khul’ “only” because her husband forbids her to work. I say “only” because when a husband refuses to let his wife leave the house in order to work, for the sake of the family for example, this does not constitute a legal ground on which a wife can file for a judicial divorce. To the contrary, if she disobey his command and nevertheless leaves the marital home for work, she runs the risk of being declared nashiz (recalcitrant) and of losing her alimony.74 In muHāmī khul’ the picture is even worse. Here we find an incredibly wealthy woman (played by Dalya al-Buhiri) who wants a khul’ divorce because her husband is snoring and boring. In this case the marriage only lasted three months. Arguing that these reasons will never make a judge (who –according to her

74 In an addition to article 1 of law no. 25 of 1920, law no. 100 of 1985 states that the wife will not lose her right to alimony if she leaves the marital home without the permission of the husband in cases in which this is allowed by the sharī’a, by ‘urf (custom), by necessity or when she goes out for lawful work. Unless, the wife has misused this right or when this right is against the interest of the family and the husband has requested her to refrain from using it (al-jarīda al-rasmiyya, issue 27, 4 July 1985, 5). See also, Fawzy (2004).
lawyer- is likely to also snore himself) grant her a *khul’* divorce, yet her lawyer Badr (played by Hani Ramzi) pressures her to file a divorce request on the basis of her husband *la ya’rif* (literally: he does not know. Here it refers to impotency).

Yet, what most convinced me that *urūdu khul’an* is critical of *urūdu Hallan* and women’s divorce rights in general is the scene in which Tarik meets an old man in court (played by ‘Abd al-Mun‘im Madbuli) who is crying. Full of emotion, the old man tells Tarik that his wife divorced him after forty-seven years of marriage after he made only one mistake, a mistake of which the details are not given in the film. When Tarik searches his pocket for money to give to the old man, in the same way as Duriya wanted to give the old woman some money, the film continues on a supposedly comical note but which is not funny at all. The old man tells Tarik that he does not want his money: “I have a lot of money with me, thirteen piasters (less than two eurocents).” Instead of money he wants a handkerchief from Tarik so that he can dry his tears. When Tarik gives him one, he throws it away because he only wants perfumed handkerchiefs. This scene clearly imitates and ridicules the scene in *urūdu Hallan*, in which Duriya tries to console the old woman (played by Amina Rizq, 1910-2003) whose husband threw her out of the house in order to marry a younger woman, after a marriage of more than thirty years in which she had been devoted to raising their children and running the household. All in all, one cannot escape the impression that the film suggests that women are self-centered, ignoring their children and their household for the sake of work, and filing for *khul’* for frivolous reasons and/or because they are after their husband’s flat. While this may not be new, *khul’* now makes it impossible for men to exercise their natural authority to correct their wives’ behaviour and to protect the family’s honour, not even when patriarchal authority (symbolized through the uncle from Upper Egypt) intervenes.

3.3 Cartoons and films: notions of the “self” and the “other”

In chapter 2 I have mainly focused on the criticism in the press which targeted women activists, the government and the Sheikh of al-Azhar, and in which all were accused of being lackeys of the West and of sacrificing the principles of Islam for international donor money. However, both the fact that opponents often

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76 This is not in line with the idea behind *khul’* in which a woman does not need to prove to a judge her reasons for the divorce. It is enough that she claims that she hates living with her husband and that she is prepared to pay back the dower and renounce her financial rights.

77 Under the Egyptian legal system, impotency makes women eligible for a judicial fault-based divorce.

78 In a review of *urūdu Hallan*, Yusuf criticizes this scene since it was supposed to make people laugh while in actuality it did not make people laugh at all (al-‘arabī, 13 November 2005).

79 Although Amina Rizq never married herself, she often played the role of mother and even became the standard for the role (Darwish 1998, 22). According to Darwish, the great directors of Egyptian cinema “…saw in her face a strong peasant beauty which expressed the grace of Egyptian womanhood” (ibid).
criticized the law for only being for rich women and the discussion of khul’ in Parliament already revealed that this was not the only criticism dominating the debate on khul’. In fact, in chapter 2 it seemed as if the controversies centered on conformity with Islam, Westernization and foreign influence, but it cannot be denied that deeply engrained beliefs about the perceived irrationality of women and men’s divinely ordained superiority were also greatly emphasized. The following statement of Su’ad Salih, a female scholar of fiqh of al-Azhar, not only shows that she feels that khul’ is threatening the maintenance-obedience relation, it simultaneously makes clear that female religious scholars also had a voice in the public debate on khul’.

This well-known TV preacher and former dean of the women’s college of al-Azhar University aired her opposition to the law on various occasions. She claimed, among other things, that women who travelled without the permission of their husband were nashiz (recalcitrant) (al-sha’b 25 January 2000, 3) and that Islam accorded husbands qiwama (guardianship) and wives ta’a (obedience) (al-aHrār 1 January 2000). The issue of women’s obedience and men’s guardianship was a recurrent issue of heated discussion in newspapers, among the general public and, as we have seen, in the Parliament. It was often argued that women were too emotional to be given the right to unilateral divorce. They would only use it for frivolous reasons, worse even, to marry or run off with a more handsome or richer man and in the process they would destroy their families and undermine social stability.

Women activists rejected this critique. Where some like Hoda Badran (head of an Egyptian NGO by the name The Alliance of Arab Women) had claimed that the law would merely benefit rich women who could afford to forfeit their financial rights (see 2.1), responding to the heavy anti-women criticism the law was exposed to, she wondered when they would finally get away from the general stereotype that pictures men as strong and rational beings and women as weak and emotional creatures. According to her, this transpired on the insistence of several MPs to extend the legal arbitration period from sixty days to ninety days. In this way it could be verified if women really insisted on having a divorce, given that women were very impulsive and might apply for khul’ only to regret it later, something which the film urīdu khul’an seems to confirm as the wife Maha states in the final court session that she regrets her wish to divorce her husband. Hence, where opponents to the law as well as some women’s activists had condemned khul’ for being a law for rich women only, with regard to the anti-women rhetoric surrounding khul’ they fiercely opposed each other.

80 In this way, the film seemingly shows the success of reconciliation in divorce cases that are instigated by women. In chapter 5, I will elaborate in more detail on reconciliation in general and in the film urīdu Hallan and urīdu khul’an specifically.
This time, however, not only al-wafd and al-sha'b newspapers took up their pens to predict what would happen if women were given the right to unilateral divorce. State-owned newspapers such as al-ahrām and al-jumhūriya which had refrained from using anti-Western and anti-governmental rhetoric, ran headlines also expressing strong criticism on women and khul’. Through khul’, men would turn into women and women would turn into men. At least this was the message which cartoons bestowed on the general public.81 One-panel cartoons provided a very popular means for those opposing reform of divorce rules to express their worries about the new “khul’ law.”

They often depicted brutish women who were twice as big as their husbands. Sometimes these huge women also had moustaches while their small and insignificant husbands were performing typically female designated tasks such as pushing prams and doing the dishes, while other cartoons depicted husbands obeying their wives and being punished by them. Some cartoons even depicted men being pregnant. All cartoons communicated the same message: once women were given the right to unilateral divorce, society would be turned upside down.

Figure 1: Cartoon “The right of the strongest”

The husband says to his wife: “This is not the right of khul’, this is the right of the strongest!”

‘Amr ʿUkasha, al-wafd, 31 January 2000

81 Although most cartoons were produced by al-wafd newspaper, many others were produced in (state-owned) newspapers and magazines as well.
What I found interesting is that the cartoons almost always portrayed women as westernized Egyptian women wearing no veil but instead wearing tight garments and walking on high heels. By not depicting veiled women and women in gallabiya-s or the typically muwazzafin outfits, it was as if the message they wanted

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[82] The typical muwazzafin outfit often consists of a long, wide skirt; a long blouse that covers both the arms and part of the upper legs; and a headscarf which covers the hair, the neck and sometimes the
to communicate was that *khul’* would only be used by westernized Egyptian women from the upper class.\(^3\)

By presenting *khul’* women as classy and frivolous, the cartoons left no room for women from other backgrounds to apply for *khul’*. Looking at these cartoons, one could hardly imagine their good reasons for divorce.

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\(^3\) In comparison, I found it interesting that a women’s NGO (The Egyptian Center for Women’s Rights) had published a series of booklets by the title “Stories of Nabaweya” in which they used cartoons and simplified language to explain basic political and electoral rights to illiterate women. The figure of Nabaweya had to resemble the women of their target group and as such was depicted wearing the veil and a *gallabiya* (see figure 3).
Figure 4: Cartoon “The constitutionality of khul’”

The High Constitutional Court confirms the constitutionality of the “khul’ law.” The wife says to her husband: “If you step out of this room, and go to the coffeehouse..I will divorce you through khul’.

al-jumhūrīya, 22 December 2002
Although the cartoons did not fail to bring about a smile, after all it fits the genre of cartoons to present things in a comical way, they simultaneously suggested a society at risk in which using western dress was suggestive of moral decline and representative of the dominance of the West. In a study on cartoons in the Ottoman cartoon space of 1908-11, Brummett argues along similar lines when she states that “...[cartoons] imagined the extent to which the familiar old society would be altered by the new constitutional regime and by the increasingly pervasive influences of Europe” (1998, 17). The new was often embodied through the figure of the super-westernized Ottoman woman and dress markers in particular were used to signify a division between women who were supportive of the nation and those who threatened it (ibid).

We do not find this in Egyptian cartoons during the interwar period since they depicted Egypt as what Baron calls a “new woman” (2005, 70-1). This new woman was modestly dressed, with a head-scarf and a cloak but underneath her cloak she wore contemporary European dress and high-heeled shoes. Later, Egypt as a woman removed her veil and her cloak and dress became shorter. In this case, European inspired dressmakers were used to give Egypt an image of being educated, sophisticated and urban (ibid). Comparing these interwar period cartoons to the cartoons on *khul’*, the cartoons from the interwar period depict Egypt as a woman and the aggressor (England and Egyptian leaders) as male.
while the cartoons on *khul'* depict Egypt as male and the aggressor as the Westernized Egyptian female. However, I also found a 1935 cartoon depicting a woman who looked like the women in the cartoons on *khul'*'. This woman was also unveiled, walking on high heels, and using lipstick. The cartoon was accompanied by the following statement: “Brutish wives have been a favourite theme of cartoonists with irony (or misogyny) on their mind (al-Ahram Weekly 13-19 January 2000).”

The cartoon presented above also shows that depicting Westernized upper class Egyptian women as the aggressor is not new in Egyptian cartoon history. This cartoon was published in al-wafd (13 June 1994) in the context of the introduction of a new marriage contract. Hence, the cartoons I have elaborated on above have in common that they all use sexual relations as metaphors for politics, but the way they represent the gender order differs. That is to say, in some cases women are presented as the aggressor and men as weak, while in other cases, women are weak and passive and men aggressive.

Figure 6: Cartoon “The new marriage contract”

The husband (the people) says about divorcing his wife (the government): “I will never be able to divorce from her..... the authority is in her hands...!!”

‘Amr ‘Ukasha, al-wafd, 13 June 1994
In addition, it is interesting to mention that in the Ottoman cartoons of 1908-1911, we find that the honour of the nation was not only embodied but also defended by the figure of the female peasant. Egyptian women-magazines of the turn of the twentieth-century also provide examples of female heroines. One of the most popular female heroines was of Western origin. Her name was Jeanne d’Arc (Joan of Arc) and even during the period following 1919, “the high point of popular resistance to Britain’s imperial presence,” Jeanne d’Arc’s biographies often featured in women’s magazines (Booth 1998). Being of peasant origin, Jeanne d’Arc “offered an impeccable representation of the peasant as pillar of the nation” (ibid, 188) in a period in which ‘Egyptian nationalism was heavily imbued with a “salt-of-the-earth” romanticism’ (ibid). The image of Jeanne d’Arc as both a woman and a peasant served to show what nationalism would lead to: the uplifting of peasants and the training of women (ibid, 189).

Apart from foreign female heroines such as Jeanne d’Arc, Egyptians also have Egyptian female heroines such as the wife of Sa’ad Zaglul who is called the mother of all Egyptians or the mother of the nation, after she continued the struggle for national independence following her husband’s and other leaders’exile (cf. Baron 2005, 78; Hatem 2000, 39). In sculpture it was also the fallaha (peasant woman) who emerged as the representation of the nation. The nahdat misr (The Awakening of Egypt) forms an example in point (Baron 2005, 68-9). In the cartoons on khul’, however, we do not find a fallaha defending the nation. In fact, there is no hero(ine) at all. On the contrary, as we saw earlier, these cartoons portray the modernized Egyptian woman as the aggressor and the small and helpless Egyptian man represents the nation in danger. In the next section we see whether the absence of a hero(ine) applies to the films as well.

Films

In muHāmī khul’ there is a slight notion of a heroine embodied in the figure of the mother of the lawyer Badr. In contrast to her husband, Badr’s mother is capable of connecting with the world of Rasha, the female main character (played by Dalya al-Buhiri) who wants to divorce her husband because he is snoring and who later falls in love with her lawyer Badr. Badr and Rasha even think of marriage and for that reason they are invited by Badr’s father - ‘umda (chief) of a village in Upper

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84 This, I think, is also the case in Europe. Good European examples are the famous painting Liberty Leading the People (1830) by Delacroix (1798-1863) in which Liberty, in the form of a half-draped woman, leads the people in the French revolution of 1830, as well as the Peasants’ Revolt series of Käthe Kollwitz (1867-1945), one of German’s most famous artists, which also show a woman who leads the troops.

85 Television serials from the end of the twentieth century also intended to uplift peasants and women (Abu-Lughod 2005, chapter three and four).
Egypt - to visit the village for three nights. Rasha, however, has never visited Upper Egypt and her tight clothes, leaving her shoulders and arms uncovered, are clearly out of place in the village. The mother of Badr, however, understands that women in Cairo dress differently from women in Upper Egypt, and that they use another language which Badr’s mother resorts to when welcoming Rasha. “How are you?” she asks Rasha in English with a heavy accent after which Rasha happily replies, also in English: “Fine, thank you.” The scene is significant since the only English that is otherwise used in the film is spoken by Rasha (as well as the female dancers and singers who perform at the numerous parties which Rasha organizes). Add to this the fact that the mother of Badr is the only peasant woman in the film who actually speaks, which seems to me an indication of her being an important figure. However, even Badr’s mother cannot prevent the scandal that was caused when Rasha, who cannot endure the heat and the mosquitos, puts on her bikini and takes a swim in the Nile.

Maha (played by ‘Ula Ghanaym), the female colleague of Badr who is in love with him could be highlighted as a female heroine as well. Like Badr’s mother, she is able to adjust to a different world, this time to the world of an Upper Egypt village. In order to put a stop to the romance between Badr and Rasha, Maha travels all the way from Cairo to the village in Upper Egypt. She appears in the village right after Rasha’s swim in the Nile has caused a scandal and has put the ‘umda - Badr’s father - in a very awkward position. By wearing a loose dress and a small veil Maha show that she knows how to dress according to Upper Egypt standards. She even saves Badr’s father from total embarrassment in the village and therefore seems to be an ideal marriage candidate for Badr. Badr, however, is not interested in marrying her and instead still prefers “to eat icecream with bread,” a phrase often used by Maha to blame Badr for dating and being maintained by women who are from a higher class.

Instead of presenting a female heroine who defends the nation, the film seems to suggest the opposite, namely: that the Egyptian nation is threatened by a westernized Egyptian woman. In this light it merits note that, in a study on popular Egyptian cinema, Shafik claims that in films which picture the encounter with Europeans or the Western Other, the Other is often imagined as female herewith indirectly re-coding the Egyptian nation as male (2007, 90-1). The difficulties which it takes to maintain a male self in such a context, engenders a kind of popular allegory of impotence (ibid, 93). Does male impotence also feature in muHāmī khul’, uridu khul’an and the cartoons, or do the films and the cartoons – in the absence of a female heroine - provide a picture of a male hero alternatively? In the case of cartoons the latter question must be answered in the negative. As we saw earlier, men are either not present or suppressed by female aggressors. What about the films?
3.4 Film and space: men’s maintenance and women’s obedience
Where the cartoons sketched a picture of men becoming women and women becoming men, and used dressmakers to suggest that *khul’* was an external threat, from the criticism in the newspapers it became clear that notions of man- and womanhood were closely related to the concept of space as the proper place of men and women in society was to be understood literally. The term place was related to men’s role as providers in return for which women had to remain obedient, meaning that they should not leave the house without their husband’s permission. Hence, men’s proper place was outside the house where they would apply themselves to their task of earning a living for their families while women’s proper place was within the four walls of the marital home where they would perform their divinely inspired duties of mother and housewife.

The theme of space is significant in the film *urīdu khul’an*. In the beginning the husband takes on the role of a male patriarch who decides on his wife’s freedom of movement. In Egypt such a person is often given the nickname “*Si Sayyid*”, a reference to a character of Naguib Mahfouz’s trilogy who severely punished his wife who, without his permission, left the house in order to visit the shrine of a saint. I will return to the character of Si Sayyid later. At this moment it suffices to note that Tarik castigates his wife for neglecting their children and the household and no matter how much she excels in her job as a teacher, after their children turned the house into chaos during her absence, he forbids her to leave the house in order to work. Reluctantly Maha obeys her husband and so the maintenance-obedience relation is re-established. This situation is well approved of by Tarik’s uncle - ‘*umda* (chief) of a village in Upper Egypt. Soon after, the tide is turned since Maha starts to rebel against her husband.

If we compare Maha to Duriya, we witness that from that point onwards their lives start to develop in different directions. First of all, while Maha stays in the marital home, Duriya is the one who leaves it, prompting her husband to lodge a *ta’a* complaint. In *urīdu khul’an*, a totally different picture emerges as it would make little sense for the husband Tarik to initiate a *ta’a* complaint since Maha had not left the marital home. To the contrary, she had obeyed his command to give up work and to stay at home to take care of the children and the household. Besides that, the legal consequence of a husband winning a *ta’a* claim is that the wife no longer has a right to be maintained by her husband. In the case of *khul’*, depriving

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86 Writer, scenarist and cinema critic Khayr Allah is of the opinion that the wife Maha is not rebelling against her husband. According to her, Maha is a superficial personality who only files for *khul’* because her neighbour Samiha and her younger brother ‘Amr want her to do so. In her eyes, Maha is merely a person who follows and who does not really oppose the behaviour of her husband (akhir sā’a 16 November 2005).
a wife of her right to maintenance does not make sense since *khul'* is an absolute renunciation of all of a woman's financial rights in the first place. Instead of leaving the house, Maha and her brother humiliate Tarik by turning him into a stranger in his own house. He is forbidden to enter the bathroom and the only place where he is tolerated and where he can sleep is a small corner of the house. In this sense the films resemble the cartoons where the perceived disturbance of the maintenance-obedience relation was also visualized by making use of the technique of gender reversal.

However, there is more to come. Like Maha, Duriya did not care about the financial consequences of a *ta'a* complaint but the humiliation Duriya felt when she needed to hide from her husband and the police is in no comparison to what happens in *urīdu khul'an* where, it is not Maha, but her husband Tarik who runs into problems with the police. We see Tarik at the police station where he is charged with harassing his wife. He tries to talk his way out by telling the police that he is the director of a respectable bank. This is to no avail as the only one who can help him out of trouble is Maha who needs to declare to the police that Tarik is her husband. She does tell the police that he is her husband but that he is a "hanging" husband. This scene deprives Tarik of his manhood in a way far more embarrassing than if Tarik had been confronted with a wife who had left the house without his permission. In another scene it gets even worse. Tarik is faced with the threat of expulsion from his own house as his lawyer tells him that his wife who has custody over their two small children is legally entitled to the marital flat in case of a *khul'* divorce. The male patriarch Si Sayyid had lost control over his wife and children and was no longer *ragil al-bayt* (man of the house). What the future has in store for such men is illustrated by juxtaposing Tarik and Maha’s marriage with that of the neighbours Samiha and her husband. Samiha clearly is the one who has on the pants and her husband does everything to please her and make her comfortable. In this marriage, the gender roles are turned around which is symbolized by the fact that Samiha is in control of the remote control. When her husband is watching soccer, she simply grasps the remote control out of his hands in order to watch a woman’s talkshow, ignoring her husband’s objection to this. Tarik, still the "man of the house", did the opposite: when his wife was watching a woman’s program, he took the remote control and started watching a soccer game. The same applies to the uncle from Upper Egypt who, by cutting the wires of the satellite disc, also wanted to remain in control of the television.

In *muHāmī khul'* the theme of manhood is worked out more directly. It is not the remote control but the twining of a moustache which serves as the ultimate

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87 This is not totally true as law no. 100/1985 already states that in divorce cases a husband has a legal obligation to provide his wife and children with a dwelling which is of the same standard as the original marital home.
symbol of virility. Rasha, the female main character who wants to divorce her husband through *khul‘* because he snores, owns the largest fashion company and confection factory in Egypt. Fashion-minded as she is, she wants her lawyer –Badr– to dress in a more modern way in court. She tells him that her lawyer must be the most elegant lawyer in the country and for that reason she also wants him to shave off his moustache. The next morning we see Badr entering his office in a fashionable white suit and without a moustache. When his colleague Maha sarcastically asks him whether he has shaved off his moustache, he asks her if there is anything wrong with that, after which she replies: “Il-aib inmanak ta’ish ‘ala ‘araq il-niswan” (it is a shame that you live of the sweat of women). Here Maha makes it very clear that it is wrong for a man to be maintained by a woman. By linking the moustache to a husband’s legal and social duty of maintaining his wife, it is suggested that a man without a moustache is not a man. This would be in line with what Mernissi says: when masculinity is defined as the capacity to provide the family with a salary, then this condemns men who, for whatever reason, are not able to work, “to perceive economic problems as castration threats” and “…a woman who earns a [bigger] salary will be perceived as either masculine or castrating. If the privileges of men become more easily accessible to women, then men will be perceived as becoming more feminine” (1987, 171).

In light of this I found it interesting that the female main character in *muHāmī khul‘*, Rasha, who was making a lot more money than the lawyer Badr and who also had a much bigger car than he, was not depicted as masculine at all. In effect, the camera constantly shows a picture of a slim and, I would say, very female body. One of the film reviewers even said that Dalya al-Buhiri (who plays Rasha in the film) moved in front of the camera as a beautiful, tender and attractive girl (al-akhbār 2 October 2002). To a lesser extent the same applies to Maha in *uridu khul’an*. Hence, notwithstanding the fact that both these women made their own money and did other male designated tasks, in contrast to the often ugly, plump and brutish women depicted in the cartoons, these two women were depicted as attractive.

This was different with the two male main characters. After Badr the lawyer had his moustache shaven off, his father literally addressed him by using the term *bint* (daughter), a clear reference to his physical integrity as a man being put into question. Hence, we do find Badr performing all kinds of female designated tasks such as ironing and also enjoying all the luxuries which the wealthy Raha has to offer him, personifying Badr as emasculine. This shows that *khul‘* brought to light the problem of men’s sexual identity. In fact, both films seem to imply that the best place to find masculinity is not necessarily found in men. This manifestation of trans-gendered or differently gendered bodies is an effect of
the sex/gender system in crisis and transition (Noble 2004, xxvii). No man is automatically granted the status of manhood as the link between anatomy, identity and authority no longer holds (Noble 2004, iv-v). In the 1960s of urīdu Hallan, Duriya’s husband could still get away with behaving as a Si Sayyid. In urīdu khul’an the husband Tariks initially also sets out to behave as a Si Sayyid. This time, however, his bullying is backfiring as his wife starts to rebel with unexpected consequences. On this basis, I would argue that the films’ two male main characters: Tarik the husband and Badr the lawyer, do not provide the viewer with a picture of an Egyptian male hero. To the contrary, what they seem to reveal is Egyptian manhood in crisis and how it needs to be rescued by the peasants of Upper Egypt. In the following section, I analyze whether male peasants can be presented as saviours of the nation in general and Egyptian manhood in particular.

3.5 Film and space: the city- countryside dichotomy and religion

The city and the countryside

From what has been said above, it has become clear that space and its relation with behaviour is an important issue. Where in urīdu khul’an space was related to the house which became a live embodiment of change, there is a second way in which the concept of space is used in both the films muHāmī khul’ and urīdu Hallan and which is absent in urīdu Hallan and the cartoons. This time space is related to the city-countryside dichotomy, a dichotomy which Abu-Lughod also analyzes in Dramas of Nationhood, albeit in a different way. This will become clearer below.

In both muHāmī khul’ and urīdu khul’an it is the Upper Egypt countryside which takes up a prominent role in the lives of the main actors. Where in the written debate on khul’ the arguments put forward showed an attempt to redefine male superiority on a religious basis (it was often maintained that men’s superiority over women is divinely inspired and is proven by the fact that men are rational individuals, whereas women are highly irrational and emotional beings, the films do not explicitly speak of religion and instead seem to use the figure of the peasant to provide an image of the real man.

In muHāmī khul’ we see how Rasha and the lawyer Badr fall in love with each other. When Badr wants to marry her, Badr’s father, who is the ‘umda (chief)

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*In Masculinities without Men, Noble argues that the twentieth century will be remembered as an interesting time for masculinity in which plays a central role the question as to whether we will need “more Ironing Johns, not more Iron Johns” or “more Iron Johns, not more Ironing Johns” (2004, iv). A good example of proponents of the “More Iron Johns, not more Ironing Johns” is the book The Dangerous Book for Boys which took the United Kingdom by storm in 2006. Proclaiming to be a guidebook for “every boy from eight to eighty” it emphasizes the rough nature of boys and their difference to girls. In the film muHāmī khul’ where the lawyer Badr irons his own clothes, the message is clear too: “more Iron Johns, not more Ironing Johns.”

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of an Upper Egypt village, insists his son and his fiancée pay a three-night visit to the village. Although this is uncommon in Egypt, the father does not want to travel all the way to Cairo to see her and by inviting her to their village he wants to test whether she will be able to stand the mosquitos. As we have seen, Rasha cannot stand the heat and the mosquitos. Unable to resist the enticing cool water of the Nile which runs through the village, she puts on her bikini and takes a swim in the river. Her action causes a scandal and Badr realises that their relation will not last very long. This is exemplified by the scene following the bikini-scene in which we see how Rasha packs her bags while Badr tells her that “andina (we)…” whereafter she surprisingly asks him “anduku? (plural form of you)” Apparently Badr has come to realise that he cannot erase his roots which are still in the village. Rasha knows it well enough and, while Badr stays behind in the village, Rasha drives her big air-conditioned car back to where she belongs in cosmopolitan Cairo.

In urīdu khul’ an the Upper Egypt countryside is also juxtaposed with urban life in Cairo and again we see how the saviour of the male main character (Tarik the husband) is a ‘umda from a village in Upper Egypt (Tarik’s uncle). After the uncle witnesses on television how his nephew is in danger of becoming the first makhlu’ of the country,89 he - like the father of the lawyer Badr - immediately travels in a service taxi from the village to Cairo. In both cases, the two ‘umda-s arrive in Cairo only to find the two male main characters bereaved of their manhood. As we have seen, in the case of muHāmī khul’ this is symbolically expressed by the scene in which the father addresses his son by the words “fayn shanabak, ya binti” (where is your moustache, my daughter). In short, in the two films the countryside represents the site where men and women still behave in accordance to a sex/gender system which is dictated by the maintenance-obedience relation and in which women need to be controlled or, if necessary, locked up (in urīdu khul’an) by their husbands. The countryside becomes the site of all that is authentic and for that matter good while in the city we find women who work outside the home and who are no longer controlled by their husbands, worse even, whose husbands have lost their authority. Thus, the city has become the site of all that is modern and thus bad.

In a study on politics and television in Egypt, Abu-Lughod shows how the Egyptian state promotes its modernizing project through television melodramas in which rural backwardness and urban modernity are presented as bad and good respectively (2005, chapter three). This notion of modernity is in opposition to the notion of modernity used in the two films. This becomes clearer when we compare the two films to state sponsored television campaigns which endeavour to eradicate: illiteracy; marriages of old men to young girls; and female circumcision. These

89 Makhlu’ derives from the same verb as khul’ and is used to refer to husbands who are divorced by their wives through khul’. It is very humiliating for a man to become a makhlu’.
campaigns, which were often broadcasted when I was doing fieldwork in 2003-4, showed how modernity and backwardness are situated in the city and the countryside respectively. One of the films starts in the countryside where a young girl is in tears because she cannot attend school. Through the help of a “modern” dressed female teacher without a veil, she is finally able to learn how to read and write. A few years later she is again in tears, this time because a man of her father’s age and who is dressed in gallabiya and ‘imma (turban) wants to marry her. Her parents –also in gallabiya- prevent her from marrying this man and in the next scene we see how the young girl has become a young woman who is marrying a man who is of her age and who is dressed in “modern” clothes. They are going to live in an urban environment where she gives birth to a girl. When the girl grows up the proud parents –in their “modern” outfits- and the grandparents –in their “traditional” outfits- attend her performance at school.\(^9\) One of the things which this television campaign shows is that, first, modernity (education and work for women) is preferable to traditionalism and that, second, the city and the countryside are locations of modernity and tradition respectively.

**Religion**

Before elaborating on this dichotomy in more detail in 3.6, I deem it important to mention at this point that according to Abu-Lughod the state’s notion of modernity changed somewhat in the second half of the 1990s when the state started to combat religious extremism through the use of mass media. For this matter, it pursued, among others, a strategy of recuperation of Upper Egyptian values such as their sense of honour and courage while distressing the new value of Islamic fundamentalism which the area had become notorious for (2005, 180-8). With muḤāmī khul’ and urīdu khul’an also employing a notion of the countryside and its peasants as good, the question arises as to how the element of religion is employed in the two films. This question, of course, is especially interesting since in the public debate as described in chapter 2, (the language of) religion played an important role.

In contrast to al-wafd and al-sha’b newspapers that were critical of the West and the government because the latter’s introduction of khul’ threatened the Islamic foundation of Egyptian society, the films did not explicitly present a picture of Islam being threatened nor did they present the Islamic alternative as an alternative to the official modernity project of the state. An implicit reference was made to Islam in a scene in urīdu khul’an in which Maha and her neighbour Samiha watch a woman’s program on television in which it is claimed that al-khul’, huwa

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\(^9\) It must be mentioned, however, that in a study on the fashion scene in contemporary Cairo, Abaza shows how the modern use of traditional dress has become fashionable among the upper classes (2007). The same applies to the fashion scene in Tehran, Iran (Balasescu, 2007)
al-hall (khul') is the solution). This is speaking out against the Muslim Brotherhood and its slogan al-islam, huwa al-hall (Islam is the solution). Apart from this reference, the element of religion seemed to be absent in both films.

As for muHāmī khul’, its scriptwriter, the secularist Wahid Hamid, is said to be well-known for his opposition to the Islamic movement (IslamOnline 28 August 2002). He wrote a number of films (starring Adil Imam) and a television serial al-ā’ila (The Family, 1994) which all criticize the Islamic movement harshly. Mabruk, who reviewed the film muHāmī khul’, noted how this time Wahid Hamid had not attempted to present the religious and societal elements of khul’ in the least. This led Mabruk to conclude that this time Wahid Hamid must have intended to present the silliness of Egypt’s upper class instead (IslamOnline 28 August 2002). Although I agree with Mabruk that the film did not explicitly set out to criticize the Islamic movement, it must be mentioned that the avoidance of religion or politics can also be seen as a way to criticize religion or politics. For instance, Chinese sixth-generation filmmakers focus on “reality” and leave the socialist discourse of their government behind as if it is irrelevant for daily life. It is this disengagement from the official political discourse that makes these sixth-generation filmmakers so controversial (Lau 2003, 13-27). Another example concerns the Egyptian television writer Tharwat Abaza who avoids any reference to Egypt as a nation and who uses stories from the Koran or from Islamic history as inspiration (Abu-Lughod 2005, 115). With Wahid Hamid being very critical of including religiosity in mass media (Abu-Lughod 2005, 172-3), it might not come as a surprise that in muHāmī khul’ he chose not to include religious elements and, by doing so, was making a statement against religion.

Besides, given the heated debates which the “khul’ law” aroused, I think a scriptwriter would not have been allowed to take as an example of the silliness of the upper class, a veiled woman who wants to divorce her husband because he snores as this would enrage the Islamists, nor would it have been possible to present the figure of the veiled urban Egyptian woman as a saviour of the nation against khul’. In any case, if we believe the veil to be “…the quintessential sign of Muslim resistance and cultural authenticity” (Ahmed, cited in Abu-Lughod 1998, 14), then the element of Muslim resistance was missing, whether consciously or not. Rather than following in the lead of Islamists who used the language of Islam to discredit the state and its modernizing project, the two films used other techniques to ridicule and criticize the state.

3.6 Ridiculing the modernizing project of the state

In the last section, we have seen that Abu-Lughod argues that through the use of television serials, the Egyptian state tries to promote a notion of modernity in which the countryside is characterized as bad and the city as good. This notion was
also animated the Egyptian film *Terrorists*, “…a privately funded film released in a coordinated government campaign against terrorism” (Armbrust 2002, 924). According to Armbrust, the Islamist cause had to be situated firmly outside of modernity, among other things by showing the male protagonist –an Islamist assassin- in the Upper Egypt countryside, stereotypical of backwardness (2002, 925).

Interestingly, in the same article Armbrust also pays attention to another film, *Closed Doors*, which was only shown abroad. Both *The Terrorists* and *Closed Doors* deal with Islamism but where in *The Terrorists*, Islamism is situated outside modernity –in the Upper Egyptian countryside- in *Closed Doors* the modern state is portrayed as failing since one of its most crucial institutions –education- is so debauched that it has become a breeding ground for Islamism (Armbrust 2002, 925). In what follows, I want to pay more attention to the issue of education since, through the use of language and music, education plays an indirect but significant role in especially *muHāmī khul’*.

**The educated and the non-educated: the use of language and music**

*muHāmī khul’*: Maha (the female colleague of the lawyer Badr) asks Badr over the phone: “Are you singing the ‘andalib?”

‘Andalib’ literally means nightingale but in Egypt *al-‘andalib al-asmar* is the nickname of ‘Abd al-Halim Hafiz (1929-1977), one of the most popular singers and actors in Egypt and the Middle East. When Maha asked the lawyer Badr if he was singing *al-‘andalib*, Badr was watching a film starring ‘Abd al-Halim Hafiz. Apparently, he had seen the film many times as he knew it by heart and was singing all the songs which Abd al-Halim Hafiz was singing in the film. Hence, when he picked up Maha’s phone call, he was just in the middle of a song. His lying on the couch in a *gallabiya* watching films and singing songs of ‘Abd al-Halim Hafiz clearly linked Badr to the cultural heritage of Egypt. Where Maha immediately recognized in Badr’s singing the songs of Abd al-Halim Hafiz, this was not the case with Rasha who also calls him when he is watching the film. This seems to position Maha within and Rasha outside the popular cultural tradition of Egypt. In fact, Badr’s musical preferences are in contrast with those of Rasha which becomes clear after they start falling in love with each other. Under the cover of discussing Rasha’s upcoming *khul’* case, Badr starts to visit her palatial home in Six October (satellite city just outside of Cairo) several times. The first time he is treated with a live performance by an orchestra which plays in the classical Western music tradition. Badr is clearly unfamiliar with this type of music and when the violins suddenly come in with their characteristic high-pitched and powerful sounds, Badr starts to feel uncomfortable and leaves the table for a walk in the garden. On other
occasions, Rasha arranges for live performances of female singers who wear tight little dresses and who sing English-based songs such as the “Lady in Red” lyrics of Chris de Burgh and the Spanish-based Suavemente lyrics of Elvis Crespo that stir up the crowd who have gathered in Rasha’s garden in order to celebrate her divorce from her husband. This time Badr is not afraid and dances with Rasha while some others guests dance in a circle around them.

As a matter of fact, Rasha not only likes Western music better (she does not even know Egyptian music), she also likes English better than Egyptian Arabic. This transpires on numerous occasions. When she meets Badr’s father for the first time who, I recall, is ‘umda (chief) of an Upper Egypt village, she greets him by using the word oncle (uncle). Oncle is often used by upper class Egyptians who have received bilingual education at one of the expensive private schools and who use a mix of Egyptian-Arabic and English among each other. In contrast, Badr often addresses Rasha in rather formal Arabic as if he wants to compensate for the fact that he does not speak English. Rasha’s bad classical Arabic comes to light when she has to state in court that she is afraid to cross the limits of God were she to stay married to her husband. As for Badr, it is only on one occasion that we hear him making a language switch. When Badr enters his office in his modish white suit and without his moustache, he greets his colleagues by saying bonsoir (good evening) instead of bonjour (good morning) which, in my eyes, is a vain attempt to become something which he is not. Apart from this one attempt by Badr, Rasha and Badr do not try to level out their language differences.

Surprisingly, it is Badr’s mother, a pesant woman who uses the few English words she knows, clearly realizing that in order to link up to Rasha’s world she must at least attempt to welcome her in English. Hence, where in the last section a dichotomy was presented between the “good” city and the “bad” countryside, this time around music and the language it is articulated in seemingly served to create a dichotomy in which the cultured and the educated were presented as foolish and urban while the less-cultured and the less-educated were presented as smart and rural.

When I was in Egypt, I often heard people say that the private institution of higher education did not necessarily offer a better quality of education notwithstanding the fact that admission fees are extremely high compared to those of their public counterparts. In fact, people would often mention that private schools were merely ways for upper class children - who did not have the intellectual ability to enter public higher education - to buy their way into higher education. This assumption also transpires in the film muHāmī khul’ where Rasha, notwithstanding the fact that she is a successful bilingual businesswoman, is also portrayed as ignorant. For example, when Badr tells her that his parent’s village is

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91 This also applies to the female protagonist, Maha, in the film urīdu khul’an.
along the Nile, Rasha thinks that the Nile is a sea and that Badr’s parents are living near the beach. Her assistant manager befalls the same fate. Showing Badr slides about the history of Rasha’s factory, he explains that the factory was completely destroyed during the Second World War to which Badr replies that Cairo was not bombed in the Second World War.

Thus, in the film *muHāmī khul’* the city is presented as morally and intellectually backward with its citizens having no geographical, cultural, linguistic and historical awareness of the country they live in. The same notion transpires in the film *urīdu khul’an* where the wife Maha is not able to repeat by heart a few lines in classical Arabic, although she has won a prize for being the best teacher of her school and where Tarik the husband fails to recite a few lines of poetry in classical Arabic. This starkly contrasts the fact that the illiterate wife of Tarik’s uncle from Upper Egypt is able to address in classical Arabic the peasants whom she has managed to mobilize for her cause of empowering women.

Again, the articulated message seems that in comparison to their rural counterparts modern urban Egyptians, even teachers (the bearers of national development par excellence) are intellectually backward. The films, then, do not only criticize the fact that the maintenance-obedience relation is disturbed and leads to changes within the space of the marital home (in which the husband in *urīdu khul’an* is expelled from the house). By making a clear distinction between Egyptian and Western music and language, their criticism went further than that. The state’s development philosophy of the educated and cultured individual representing the good and being a prerequisite for national development was ridiculed, especially the value of education and work for women. By clearly placing the upper class outside Egyptian tradition and by linking the city to the West, the films took the matter of space across the national borders of Egypt including the West as well, something which would not lead to national development at all. Just like in the newspapers *al-sha’b* and *al-wafd*, the films also criticized the Western influence and the state’s ideas about national development.

But, where *al-wafa’d* and *al-sha’b* had linked their criticism of the West and the Egyptian government to Islamic religion being under threat, the films also criticized the West and the government but instead of showing how it threatened religion, it seemed that they criticized the official modernity project of the state by presenting a picture of urban citizens as both morally and intellectually backward. In my opinion, by ridiculing the modernity project of the government, the filmmakers used the medium of film to “talk back” to the government. This is in contrast to what the authors of *Media Worlds* call the classic formation of mass media in which governments and commercial institutes attempt to create modern citizens and consumers (Ginsburg, Abu-Lughod and Larkin 2002, 7) and which
applies to the Egyptian case where the basis of this collaboration is the national interest (Abu-Lughod 2005, 189).

Does this mean that we have finally found in the male peasant the hero which was missing in the Egyptian cartoons on khul? In order to provide an answer to this question, I now turn again to Armbrust’s study on mass culture and modernism in Egypt. As indicated in the introduction, I was curious to read how Armbrust elaborates on the way in which the modernizing project of the state is ridiculed through what he calls a “vulgar” film genre. He shows that it became clear in the last quarter of the twentieth century that national development was not accessible to all and that education often was not a guarantee for a better future. Consequently, a “vulgar” film genre developed which criticized the official modernity project of the state by conversely portraying the countryside as a site of both morality and progress while the city was portrayed as corrupt (1996, 207).

What is interesting for the analysis at this point is that in some of these films degradation is communicated by putting the protagonist into an emasculated world (ibid). This, I think, is also the case in muHāmī khul' and urīdu khul'an.

muHāmī khul' and urīdu khul'an: an emasculated world

In muHāmī khul', the male peasant from Upper Egypt exemplifies manhood and patriarchal culture. This is well exemplified by a scene where the father of the lawyer Badr gets very upset by an anonymous phone call about his son. He travels all the way from the deep south of Upper Egypt to pay his son in Cairo an unexpected visit. Badr, who has fallen in love with Rasha, and who, on the instigation of Rasha had his moustache shaven off opens the door and much to his surprise finds his father, with moustache and wearing a gallabiya and turban - standing in front of the door. While Badr stumbles hamdilah 'ala al-salama (welcome back), his father sarcastically aks him: “fayn shanabak, ya binti?” (where is your moustache, my daughter?). Now that Badr is bereaved of his manhood, it is his father who is the personification of the authentic Egyptian.

However, as we have seen, even the authority of Badr’s father is ridiculed. This is well illustrated by a scene which follows right after the “bikini scene” where we see how a poor villager addresses Badr’s father as ‘umda of the village. In the presence of the whole village, the man shouts at the ‘umda: “you have punished me earlier [in front of the whole village] for letting my wife leave the house without underwear to wash our clothes in the water stream, so what are you going to do now [after your son’s fiancée has swum in the Nile without clothes]?” The ‘umda is speechless and needs Maha, the female colleague of Badr who has her eye on Badr, to rescue him. In contrast to Rasha, Maha has changed her modern city clothes for a more modest dress and has covered her hair with a loose veil. Where the ‘umda, Badr’s father, is still too perplexed to adequately address the angry
villager and to save his position of authority in front of the whole village, Maha shouts at all the people who have gathered that they should not be so hypocritical: “Haven’t you seen women in bikini’s while you were in Sharm as-Sheikh (well-known seaside resort in the Sinai)?”

In urīdu khul’an the picture gets even worse. Here we see how the illiterate wife of the ‘umda tells him that a female neighbour has read to her a newspaper mentioning that women no longer need men since the female sheep Dolly got a baby without male intervention. Although the ‘umda locks up his wife in the marital home, during his absence she still manages to start a revolution in the village by winning over support from both male and female peasants for women’s empowerment. Again, peasants seem to be unable to put a stop to the disruptive influence of khul’. Just like in the cartoons, it becomes clear in the films that the best place to find masculinity is not with men at all. Historically seen, this is not new. In a study on popular Egyptian cinema Shafik notes that, first, the Egyptian nation is often represented as male in the face of a female West (2007, 90-3), and, second, that maintaining a male self in such a context can be hard resulting in a popular allegory of impotence (ibid, 93).

3.7 The issue of censorship
Although Armbrust’s book shows that popular media in Egypt is a popular place for expressing different ideas of modernization as well as for criticizing the value of education for peasants and women which is so characteristic of the official modernity project of the state, Herrera is right in criticizing him for not having paid attention to the question as to how such films can pass censorship in a country in which all film scripts must pass censorship (review of Armbrust 1996). With the two films seemingly propagating a political message, albeit one that is less explicit than the one expressed by al-sha’b and al-wa’f newspapers, we can wonder why in the case of muHāmī khul’ and urīdu khul’an the government allowed them to pass censorship and, more importantly, consented to their release during the biggest filmgoing week of the year, the week of the ‘id al-fitr (the feast of breaking the Ramadan fast).

I think that part of the answer lies in the fact that the films are comedies. Given the fact that joking is widespread in Egyptian society (Herrera even speaks of the legendary role that language and humour play in Egyptian society (review of Armbrust 1996), it is not unlikely that Egyptian filmmakers turn to comedies in order to provide a channel for ventilating frustration (in the same way as cartoons are used to ventilate frustration). In the words of Sadek: “Perhaps because of political instability in the Middle East […], Arab audiences seek comedy films, and in the last few years Egyptian comedies have been the top-grossing hits in the Arab world” (2006, 170).
Of course, the scriptwriters and filmmakers of muḤāmī khul’ and urīdu khul’an could also have resorted to social realist drama (as was the case in urīdu Hallan) but this would have increased the likelihood of their films being banned. Especially if we take into account the fact that the state controls audiovisual media more directly than the press (Armbrust 2002, 922). In addition, Armbrust claims that heavy social realism is out of step with current fashions which favour among others comedies (Armbrust 2002, 927). Although this might be true to a large extent, it must be mentioned that serious films such as saḥar al-layāli (2003) and baḤibb al-sīma (2004) were box office hits.

Yet, in the case of urīdu khul’an it is not totally clear whether the film is a particular form of social realist drama or light and humorous comedy drama. The male protagonist of urīdu khul’an, the well-known actor Ashraf ‘Abdalbaqi, claims that the film is social realist drama containing elements of comedy. The opening sequences to the film also suggest that we are dealing with a film depicting reality as they place urīdu khul’an in a tradition of women empowerment (it mentions the first woman in active politics; the first female minister; the release of the film urīdu Hallan and the first woman of the country filing for khul’). Critics accused the film of being an affront against men and while Ashraf ‘Abdalbaqi explicitly denies this (Sawt al-umma 21 November 2005), another film critic conversely claims that urīdu khul’an is against women instead of being against men. According to her, the female protagonist Maha is a superficial character who only files khul’ because her neighbour Samiha and her brother ‘Amr want her to do so (ākhir sā’a 16 November 2005).

Hence, my impression is that by leaving undecided whether the film is a work of social realism or comedy, the filmmakers hit two birds with one stone. Through the use of comedy they appealed to an audience which tends to favour comedy over works of social realism and whom the filmmakers’ income depends on. The hybrid nature of the film made it more difficult for the censors to forbid the film on political or moral grounds. However, what looks on the surface like pure comedy is at the same time criticism of the institution of khul’ and the Egyptian government.

Perhaps the censors were of the opinion that films such as muḤāmī khul’ and urīdu khul’an would vent frustration by providing Egyptians with a means to turn to satire instead of revolt. This is reinforced by the timing of the two films.

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92 The advent of satellite broadcasting has changed this, although “In audiovisual expressive culture the situation is more complex” (Armbrust 2002, 922).

93 Even in the case of muḤāmī khul’, writer and cinema critic Ahmad Salih claims that the film was a move away from eight years of what he calls “youth cinema,” that only produced comedies which Ahmad Salih considered to be farces while muḤāmī khul’ was able to address “youth cinema” while simultaneously discussing an important subject (akhbār al-yawm 7 January 2006).
Both films made their entrance in the week of the ‘id al-fitr. While during the rest of the year people do not often visit cinema, this is different during the week of the ‘id al-fitr which prompts people to scramble for tickets for whatever film. For filmmakers the importance of the week of the ‘id al-fitr is of such significance that it even led Hani Ramzi (who plays the lawyer Badr in) muHāmī khul’ to delay the release of his film from the summer season to the ‘id al-fitr (al-sharq al-awsaT 14 July 2002). Besides, with the Egyptian film industry only producing 10 to 15 films annually, it is not a sinecure that within a period of a few years two films on khul’ were released, during the biggest week of the filmgoing year. It suggests that state officials at least did not object to the films and the issue of khul’ being disseminated in this particular way among a large audience.

3.8 Conclusion

In the last two chapters, I have analysed the public debate on khul’ through the use of two pens: one pen describing debates in written media such as newspapers and the other pen presenting the debate through the use of audiovisual techniques in popular culture media such as films and cartoons. When comparing these two different ways of engaging in the debate, it became clear that in both cases khul’ was linked to Westernization and modernization and that women who use khul’ were depicted as Westernized upper class women who filed for khul’ for frivolous reasons as a result of which they put their family in danger. The traditional husband-wife relationship, which was based on the maintenance-obedience relation was destabilized and men were no longer in a position to control their wives. In the written debate, opponents to the law vehemently argued that this was in contrast to Islam and they accused the government and the Sheikh of al-Azhar of collaborating with the West. Proponents to the law also used the language of Islam to defend their point of view. In the end, opponents’ harsh criticism seemed to have led to their expulsion from the public debate by the government. In the years after the implementation of khul’ many controversial reforms in the field of PSL were introduced but this time the criticism was void of the harsh anti-Western and anti-government critique which had dominated the debate on khul’ in the press. What remained was a discussion in newspapers of how these new reforms would change the proper place of men and women in society.

Cartoons and films, communicated the same message through a visual, non-rational mode. Since it is hard to not emphasize the body and styles of dress in films and cartoons, the message they articulated was one of sex- and gender reversal: men would become women and women would become men. More than in the press, films and cartoons made it very clear that men’s sense of manhood was put under threat by khul’. In the films Islam was not explicitly presented as a
means to put a stop to this process as the language of Islam was absent, neither did we find bodily references to Islam such as women wearing the veil. Although the absence of religion can be seen as a statement in itself, in order to demonstrate the dominance of men over women, the films rather presented the figure of the peasant from Upper Egypt as the saviour of the nation. In contrast to their urban counterparts, men from Upper Egypt were assigned masculine attributes and in this sense the films seemingly criticized the official modernity project of the state in which the countryside is often presented as backward and the city as good. Ultimately, however, the peasants from Upper Egypt were also not in a position to resist the cultural violence brought about by *khul'* . This allegory of male impotence was not new in the history of Egyptian film and cartoon industry. The same applies to presenting women as putting the Egyptian nation under threat. This suggests that using sexual relations as metaphors for politics has a history in Egyptian films and cartoons.

At this point, I would like to point out that although both films suggest that women who use *khul'* put the nation at risk, Mernissi mentions in the case of Morocco that “the serious blows to male supremacy did not come from women […], but from the state” which takes over more and more functions that used to be the traditional functions of the male head of the family such as education and providing economic security (1987, 172). Bourdieu even claims that changes in perceptions of what it constitutes to be a man or a woman do not change because some women’s movements want it so and they will only change when the state sets out to institutionalize through its institutions the changes (2001). The introduction of a unilateral form of *khul'* divorce provides an example of a state depriving men of their exclusive right to unilateral divorce. It also explains why in both the cartoons and the films women were depicted as the aggressor and men as representing the Egyptian nation under threat.

At the same time, however, the question arises as to whether the state’s implementation of *khul'* was really meant to initiate a change in perceptions of man and womanhood as well as in the traditional maintenance-obedience relation, or was it more concerned with its image abroad? The question is important as we have seen that the state allowed: state- dominated and opposition newspapers to present the public with a picture in which women’s irrationality was presented as a threat to the nation; cartoons depicting pictures of brutish wives turning the proper gender roles upside down; and two films to criticize the official modernity

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94 The way the state promotes Family Planning makes clear that the state still considers the husband to be the head of the family. In a lesson about family planning it is claimed that: “Kamil loves his family. Habiba is Kamil’s wife. Kamil loves his wife and Habiba loves her husband. Tariq is Kamil’s son and Samah is Kamil’s daughter. Tariq and Samah are Kamil’s children. Kamil’s family is small. Kamil’s family is small and happy” (Ali, cited in Abu-Lughod 2005, 63).
project of the state by ridiculing *khul’*, in the biggest filmgoing week of the year. In other words, the state allowed the image of *khul’* to be slandered in the public sphere which is strange considering the fact that it has a (inter)national “reputation” for being the guardian of the public sphere. Does it mean that the state was not able to control what was being said and done by participants in the public sphere or was it merely interested in presenting to the international community a picture of a modern nation state in which women were not suppressed but given many rights instead? It is true that the Egyptian state values a good record abroad but because of international pressure it cannot suppress all forms of opposition in the public sphere and therefore it needs to provide its opponents with an outlet for venting frustrations.

This undermined the role of the state as the “guardian” of the public sphere and ultimately it was not the state nor the religious authority of al-Azhar but the secularly trained judges of the High Constitutional Court who decided on the Islamic validity of *khul’* (see also 2.6). What underlines the observation that the supremacy of the Egyptian state in the public sphere is contested is the fact that opposition to the film *muHāmī khul’* did not come from the state. This time a lawyer filed a lawsuit in which he called for a ban on the film *muHāmī khul’*. Interestingly enough, the lawsuit was not only directed against the director and the producers⁹⁵ but against the Minister of Culture, the Chamber of Film Industries and the Censor as well. According to the lawyer⁹⁶ the film misrepresented Egyptian social values, attacked the sanctity of the judiciary, misrepresented lawyers and the judiciary and scorned marital relationships (al-Ahram Weekly, 23-29 January 2003). Hence, this time around the state was criticized for not having guarded the morality of the public sphere and for having allowed a film to misrepresent reality.⁹⁷

As for representing daily reality, the question arises as to whether the public debate on *khul’* in general and the two films in particular were in line with reality or was the way in which women were depicted a defence mechanism against profound changes in sex roles and sexual identity (Mernissi 1987, xxvii). In other words, did the public debate on *khul’* refer to daily practice or was it rather a psychological need to maintain a minimal sense of identity in a confusing and

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⁹⁵ This was not the first time that legal actions were taken against a film of Wahid Hamid. *awān al-ward* (Time of Roses), a 2000-1 Ramadan serial about Coptic-Muslim relations befell the same fate (Abu-Lughod 2005, 176-7).

⁹⁶ The identity of this lawyer has remained unknown to me.

⁹⁷ In the case of the controversial film *baHibb al-sīma*, Mehrez also argues that “…the role of the State as the guardian of public morality was contested when 40 Coptic priests and Christian and Muslim lawyers’ demanded ‘that legal action be taken against not only the director, the scriptwriter, the actors, the producer, but also the Minister of Culture, the Censor, and the Minister of Interior for “contempt of religion”’ (2005, 35).
shifting reality (ibid)? What serves to underline the postulate that the debate on khul’ is merely a reflection of deep-rooted fears about self-representation; manhood; and identity building is the fact that long before urūdu khul’an (2005) presented Maha al-Shanawi, a rich and well-educated urban upper class woman, as the first Egyptian woman filing for khul’, newspapers in 2000 had already presented the case of Wafa’ as the first khul’ case of the country and this woman was a fallaha (peasant) from Lower Egypt.
Part II

The Implementation of Khulʿ in Court and in Everyday Life

From urīdu Hallan to urīdu khulʿan?
4 On the dower and “emotional” women

4.1 A new version of “I Want a Solution”?

Interview with Judge Muhammad, 13 April 2004, Cairo:

....urīdu Hallan is a very old film, the film is twenty years old,” the judge said. “The film is even older,” the katib said, “and a lot has changed during all these years. The problems in the film are mashakil 'adima (old problems).” The judge: “Not only has the law changed a lot, Egyptian society has too. Man has become weak. In case of a divorce he has to return the flat, he has to give his wife nafaqa and so on. Women have become much stronger. However, this is not bid'a (innovation), it is all in line with the shari'a. It is a good thing that husbands now start to learn how to behave towards their wives and it is good that women feel how many rights they have.” The katib smiled and said: “Maybe it would be a good idea to make a new version of urīdu Hallan.”

Naturally, one is inclined to think of urīdu khul'an as the new version of urīdu Hallan. However, we can of course wonder if this image of irrational, upper class women who divorce their husbands for frivolous reasons destroying their families in the process, is in accordance with daily reality, especially if we take into account that the first khul’ case of the country was filed by a fallaha. It is for this reason that I follow in the lead of Moors who states, in a study on families in public discourse, that at the level of social life, “we need to take into account how such ideological notions [of the family] relate to and (mis)represent everyday interactions” (forthcoming).

When I started my main fieldwork in October 2003, I still had no idea which types of women were actually making use of khul’. This, however, changed when I met a woman on the third floor of the Zananiri court in Cairo, the same court in which Duriya of urīdu Hallan learned that the judge was not willing to give her a divorce after four years of legal battle. Although almost 30 years had past, the building still looked the same. There were a few differences, however. First, while Duriya of urīdu Hallan and Maha of urīdu khul'an were both members of the upper class, the woman I met in January 2004 was clearly from the lower (middle) class. Second, where Duriya could only exclaim “if only there was khul’”, the lower class woman could tell the judge “I want khul’”. By showing the story of this lower class woman, a woman whom I have given the fictitious name Nura, I hope to contribute to a new version of the film urīdu Hallan thereby providing flesh on the bones of the question concerning the implementation of the “khul’ law” in daily life.
This I felt to be important since, as indicated in the introduction, there are not many (ethnographic) studies which pay attention to how the process of divorce impacts on the daily life of Egyptian women. In the studies on the operation of Personal Status Law in the courts, divorce (next to issues such as maintenance and custody) occupies a central place. However, in these studies researchers have often not established a link with daily reality by observing what happened to women before, during and after the divorce. Thus, while it might look self-evident, it is through the encounters with Nura that I explicitly started to realize that the process of divorcing is not an activity confined to the courts and that her court experiences should not be isolated from other aspects of her life, i.e. her work, children, friends, colleagues and her village as they impact on all these in a multitude of ways. Through short meetings and phone conversations with Nura, her family and her colleagues, I began to see her, not only as a female litigant who was trying to obtain a divorce, but also as a muwazzaffa (civil servant), as a mother, as a daughter and as a friend. For that reason, I have decided not to take the court premises as a point of departure but instead to place Nura’s story at the centre of this thesis. Furthermore, her story is not presented in one consecutive narrative. This is due to the fact that I met Nura on a regular basis but certainly not every day. As a result, I felt it imperative that these fragmentary moments of contact should be presented in chronological sequence and in the manner in which they occurred. Therefore, the course Nura’s life took both during and after the divorce was decisive in establishing the subjects of the different chapters on which the second part of this thesis depends.

Using Nura’s story as a thread running through the book does not imply that the story of this Egyptian woman from the lower (middle) classes in Cairo is representative of how Egyptian women experience divorce in general and khul’ specifically. Quite the contrary, some aspects of her life might be rather exceptional. At the same time, however, Nura’s case forms a basis from which profound socio-economic changes in Egyptian society are presented and analysed.

**4.2 Presenting: “Nura”**

In January 2004, I went to the Zananiri Personal Status Court; at the time the only court of first instance which handled divorce cases in Cairo. I did not go there alone. Raouf, an older friend of mine, had insisted on accompanying me on my visit to the court, thinking it would be impossible for a foreign woman who spoke only reasonable Arabic to find her way around the chaotic courts of Cairo. Although I had visited the courts a few times before, I nevertheless accepted his offer as I felt more comfortable visiting the court with an older Egyptian man. Raouf was an excellent help as he knew exactly whom to approach: the hagib (bailiff). He told him the purpose of my visit and that I needed to talk to women
who were in the process of divorcing by way of khul'. He gave him ten pounds and the hagib started to look for women who were willing to talk to me.

A few minutes later he came back with Nura, a small, well-rounded woman in her thirties. Raouf did most of the talking and urged her to sit and accept a cup of tea. “Tell me your story” he more or less ordered her to do so. I thought Nura would be shy about telling her story to a strange man accompanied by a foreign woman but the opposite was true. “I will tell you my story,” she said. “I am a mother of three and I went to live with my mother-in-law from the moment I married my husband. We lived in the area of Basatin (lower class neighbourhood in Cairo). Right from the beginning my husband did not work. Even after he travelled to Kuwait for a period of three months and ten days he came home without any money, as if he had not worked at all. We borrowed 7000 Egyptian pounds (approximately 1000 euros) from the family and from the neighbours in order to buy him a minibus. We paid the deposit and we agreed with the money lenders that my husband would pay monthly instalments in order to pay back the rest. A crisis arose when he did not do that. The cause of this crisis was that he does not like to work and instead prefers to sit in the coffeehouse and whenever I quarrelled with him about his lazy behaviour, he often started to hit me with a khartum (hose).” Nura uncovered her arm in order to show us the scars which the beatings with the hose had caused her. “After a while, his creditors filed a case against him and he was sentenced to three years in prison. He often said to me: inti taliq (you are divorced). He divorced me orally more than once and then he would take me again in the presence of a sheikh from the mosque” she continued.

Only two months before he went to prison, her husband decided to marry another woman. Like Nura, she came to live in the house of his parents. This was the last straw. Not only did her mother-in-law start to treat her worse, the house was now also filled with the second wife of Nura’s husband Mahmud and the prospects following Mahmud’s release from prison looked bleak. He would not provide and every time they would quarrel about this and other things, he would abuse her, be it verbally or physically. Moreover, since Mahmud’s family always came to his rescue, both financially and by defending him against Nura, it was not difficult for Nura to foresee that under these circumstances Mahmud would never change. Nura would live forever in the house of her family in law. She decided that her freedom was worth the sacrifice of divorcing Mahmud and leaving her children behind in his family. She said, while crying: “I could not keep my children, because my mother and I, we do not have a lot of money.” My mother

Although divorced women have a legal right to custody of their children, it is not exceptional that women in Egypt as well as in other Middle Eastern countries, are not able to keep the children in the case of divorce. For the case of Palestine, Moors shows that the family of the wife does not always want or is able to accommodate both the divorced woman and her children (1995, 143-4) while Shehada also
takes a pension of 150 pounds (approximately 20 euros) monthly. I work in a post office without a contract and I earn 80 pounds monthly. Moreover, my mother never fully recovered from a stroke and since she has a house with no running water and only one small room which can only accommodate two beds, I had to leave my children in the custody of my family in law. If I want to see my children, I have to go to their school, because my mother-in-law does not allow me to see them at home. Since the youngest is not enrolled in school yet, I have not seen him since the day of the Minor Feast [November 2003].” I asked her how the second wife was treating her children. She said that she was raising her children well and that she was nice to them. “They do not have children of their own yet, since Mahmud went to prison only two months after they married” she added quietly. She continued by telling us that her mother-in-law was prepared to give her an allowance of a hundred pounds a month so that Nura could take back and care for her youngest son who was not attending school yet. Nura’s eyes spat fire when she said that: “I refused to do this. I have plans to travel to Dubai to work as a murabbiya (nanny). Through a colleague at work I know people who are looking for a nanny. In that way, I will be able to save money to rent a flat for the children and me.”

I asked her why she decided to opt for a khul’ divorce instead of a normal divorce in which she would be entitled to keep all her rights. She answered by saying that a normal divorce would take too long. She wanted to finish everything as soon as possible. Raouf asked her when her case had started. She replied by saying that her case had started on the 14th of September 2003 and that there had been three sessions of arbitration. Nura was positive about her case and expected the divorce to come through soon.

When she paused to take a sip of tea, she simultaneously looked around for a woman, ‘Afaf, who was of her age and who had also started a khul’ procedure. “‘Afaf has become a friend of mine” Nura told us “and every time one of us has a court session, we try to come together to support each other.” After a little while, ‘Afaf entered the empty courtroom in which we were sitting. In terms of physical appearance ‘Afaf was the opposite of Nura as she was small and very thin which was accentuated by the tight clothes she was wearing. The only similarity between the two women was that both were wearing a small veil. Nura and ‘Afaf greeted each other heartily and immediately started exchanging questions relating to the amount of money they had to pay the court for the arbitrators. Nura excitingly told ‘Afaf that she finally had paid the 50 pounds for the mediators that day. ‘Afaf looked a bit sad. Her brother had promised her to pay the 50 pounds but he still had not done it as a result of which the judge had

shows that in some cases the father (and/or his family) wants to take the children in order to avoid paying nafisa for the children (2005, 251, 259).
postponed her case once again. ‘Afaf explained: “My husband refused to appoint an arbiter. As a consequence, the judge appointed an arbiter for him. This arbiter costs me fifty pounds, an amount I do not have. I only earn seventy pounds a month. Now, the judge does not want to rule my case because I cannot pay the fifty pounds for the arbitration sessions.”

I asked them if they had already paid back the prompt dower. Nura told me that she had: “Of course, women who want to divorce through khul’ are supposed to pay back the prompt dower. Although I only had to pay back 0.25 pound [the amount registered in the marriage contract] to Mahmud, I gave him one pound. It is a present from me to him,” she said as she smiled triumphantly. “Furthermore, I will take the furniture, and the flat is the right of the husband” she said.

Nura asked me if I wanted to hear ‘Afaf’s story too. Although ‘Afaf was a bit reluctant to disclose her story, she nevertheless told us briefly how she came to divorce her second husband: “I married [for the first time] in 1992. Two girls were born from this marriage. When my first husband divorced me, I was pregnant with the second girl. I worked to support my children but my brother was unhappy about the fact that I was working and so he asked me to marry again. One of the neighbours came to solve the matter and brought an ’aris (bridegroom). I agreed to marry him and went to see the flat in which we were going to live and I found it empty. He told me not to worry. He would get me all the furniture. Although he lived up to his promise, I soon found out that all the things he brought me were stolen. He used to wander around in rich neighbourhoods to find out where he could steal valuable assets. Then he would steal it and bring it to me. So, I found out that his occupation was as a thief and a cheat. Later he used to hit me and since he was also always short of money, he asked me to go back to the house of my mother. In the meantime he married another woman, one of our neighbours and left me completely while I was three months pregnant with his son. Till today he has never seen his son, nor have I seen him again. So, I decided to get rid of him through khul’.”

Raouf interrupted and said that he had to go back to work but that he was willing to offer the two ladies and me a ride home in his car. In the car, Nura and ‘Afaf continued their conversation. Nura repeatedly stressed that she had had enough of marriage and that she did not want to marry again. She only wanted her children back. She asked me whether I thought she would ever marry again. It was a rhetorical question. “Of course not” she said before I was able to reply. ‘Afaf said that if she was to marry again, it would be by way of ‘urfi. According to her such a marriage was easy to contract and easy to dissolve. Later Raouf told me that he considered ‘Afaf to be sayha (a loose woman).
4.3 Khul’…a law for rich women only?

Whenever I entered a court, I was always struck by the high number of women litigants from the lower (middle) classes. In their gallabiya-s and their typical muwazzafin outfits, they were the main visitors to the courts. As such, the contrast with the female protagonists in the three films could not have been greater. In their neat skirt suits, beautiful jewellery, tights clothes and high-heeled shoes, Duriya, Rasha and Maha clearly would have been out of place in the courts which I was visiting. This became painfully clear in a scene in muHāmi khul’ where the presiding judge linked the issue of fancy and beautiful women litigants’ clothes to a pleasant scent. In the film we see this judge ask the hagib (bailiff) an explanation for the pleasant smell which penetrates the courtroom. Normally it stinks he says. He then notices the presence of a large number of upper class women in his courtroom.

Judging from her outer appearance Nura exemplified the lower middle class litigant in the court. This small and well-rounded woman in her thirties wore a small veil, a large synthetic blouse which covered her from the neck to halfway down her knees, synthetic black trousers and old sandals. From the minute I met her, I was under the impression that she was working as a muwazzafa. Afaf, seemingly in her late twenties, looked somewhat different. She was also wearing a small veil, but in contrast to Nura she was very thin which she might have tried to accentuate by dressing up in tight clothes. Yet, the materials her clothes were made from and the way she had put on her make-up revealed her lower class upbringing. Now one could object to the observation that the greater majority of the female visitors to the court are from the lower classes by claiming that women from the higher classes avoid appearing in court in person and instead send a lawyer to court who acts as their representative. While this would run counter to the image which was presented in all three films, many judges and lawyers interviewed indeed confirmed that upper class women often send a lawyer to court to act as their representative. However, according to them this did not change the fact that the majority of the court cases were submitted by women from the lower classes as upper class women will hesitate profoundly before submitting

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99 In a study on the Egyptian legal system in the 1970s, Hill also repeatedly claims that people from the lower classes appear more frequently in court than other groups (1979).
100 The typical muwazzafin outfit often consists of a long, wide skirt; a long blouse that covers both the arms and part of the upper legs; and a headscarf which covers the head, the neck and sometimes the larger part of the chest and the back as well. Generally this outfit is quite plain and made of synthetic fabrics.
101 See also Hill (1979, 15). For the case of Morocco, Mir-Hosseini also claims that litigants from the upper classes use a lawyer to avoid personal involvement in the court. Conversely, in Iran, lawyers are absent since marital disputes that are brought before court must be presented by the two parties personally (1993, 30).
a court case in the first place. They are afraid that a court case will damage their reputation and for that reason, they will always try to settle a dispute indoors.  

What is interesting in this respect is that although opponents and proponents of the law fiercely attacked each other’s points of view concerning *khul’*, we have seen that the one time that they were united in their criticism was when they both criticized the law for only being a law for rich women who can afford to pay back the dower which their husbands had given them on the occasion of the wedding. However, when I asked Nura and ‘Afaf about their experiences with regard to returning the dower, they, apart from the fact that they were hardly interested, did not have any troubles in returning the dower as it had only consisted of one pound. Nura had even triumphantly recalled how she had returned one Egyptian pound to her husband instead of the one-quarter of a pound which was registered in the marriage contract. In another case, a judge I interviewed told me jokingly how he had once asked a woman to return at least a decent and clean one-pound note to her husband. In what follows, I present a few fieldwork stories in order to gain an insight in the practice of the dower in Egypt.

4.4 The practice of the dower in Egypt

During the Ramadan of November 2003, my partner Tom and I met Muhammad and his friend Ahmad for the first time in the city centre of Cairo. In their late twenties, Muhammad and Ahmad were both originally from the area of Kafr al-Sheikh (KAS in what follows), a provincial town in Lower Egypt where they had grown up and pursued universal education. Apart from sharing the same social and geographical background, Ahmad and Muhammad were also united in having marital problems. Ahmad was married to a foreign woman whom he wanted to divorce but did not know how to and Muhammad had recently got engaged to a girl from his village (with a university degree) whom he planned to marry next August. During our meeting Muhammad complained that he had to fulfill what he described as “all the nasty things which come with marriage and engagement.” At that moment he was especially worried about the *shabka* (engagement gifts, usually consisting of gold) since they were already engaged but he was still unable to give his fiancée a *shabka*. Although her family had insisted on a relatively low *shabka* (compared to the other villagers), Muhammad complained that he was still not able to carry this financial burden.

When I told Ahmad about my research, he immediately asked me whether I had heard of a Yeminite sheikh’s *fatwa*.  

103 I told him that I had not after which

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102 See also Brown (1997); Hill (1979); Human Rights Watch (2004, 29); and Zaalouk (1975). According to Shehada and Mir-Hosseini, the same applies to the case of Palestine (2005, 81), Morocco and, to a lesser extent, Iran (1993, 29), respectively.
Ahmad started to explain that this sheikh had issued a fatwa in which he suggested the idea of a zawag al-frind for Muslims who are living in the West. In order to prevent illicit relations, this sheikh had suggested that youngsters should be able to marry each other while they continue to live with their parents until they were financially capable to buy or rent a flat and establish real marital life. Although the sheikh had addressed a western Muslim audience, Ahmad strongly believed that he was also surreptitiously trying to change marital customs in the Middle East. According to Ahmad, the family of the bride often overcharged the groom and his family. “For example, why does the marital home have to be completely furnished and why does a woman need fifty cups and plates while only two people are living in the house?” Ahmad had asked me rhetorically. Now that the fatwa on zawag al-frind had been issued, he hoped that suggesting such a marriage to the family of the bride would pressure the latter to lower their financial demands towards the future groom. According to Ahmad, the enormous costs which marriage entailed were not religiously ordained but a product of local culture. He especially meant the shabka which often equalled absurd amounts of money. “And what about the prompt dower?” I asked him. “Well, people in the cities hardly ever pay out a prompt dower and even in the villages the importance of the prompt dower is decreasing rapidly. The place of the prompt dower has been taken by the shabka. In the past people used to register high amounts of prompt dower, now they tend to only register one pound, a symbolic amount. The shabka, on the other hand, costs at least a few thousand pounds,” he sighed.

A few months later, in January 2004, my partner Tom and I went to the airport to pick up a Dutch friend. As always, Fathi drove us to the airport in his car. At the time, Fathi was 46 years old and had worked in Europe for a couple of years. After he was refused permission to extend his permit of residence, he had returned to Cairo in 1988. He now lived with his wife and three daughters in Masr al-Gadida, a higher middle class area in Cairo. At the time, his eldest daughter was 21 and studied art at Ain Shams University. Six months before she had been engaged to a student whom she had met at the university. They had planned to marry after she had finished her studies in one and a half years. Fathi told me that the family of the groom and the family of the bride had agreed on how to share the expenses of the marriage. The bride would furnish the bedroom and the kitchen and the groom would furnish two other rooms. Since both families would share the costs of furnishing the marital flat, Fathi and his wife had decided not to ask for a prompt dower (mahr). “You cannot overcharge the groom, especially since he will also

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103 This fatwa was issued by sheikh Zindani in 2003 and, according to al-jazīra (al-Jazeera), sparked much public debate among scholars of Islamic fiqh and the authorities (‘awliya’ al-‘umur). It was also discussed in an episode of al-jazīra’s li-l-nisā’ fiqaT on 18 August 2003.
carry the burden of arranging for a flat,” he said. “But you have to register a prompt dower in the marriage contract,” I reminded him. “True,” he said, “but most people only register a very small amount of prompt dower, in order to avoid paying taxes to the ma’dhun (marriage and divorce registrar) who takes five percent of the prompt dower.” “So you will only register one pound as a prompt dower?” I asked him. “No, not one pound, I am thinking of registering twenty-five pounds. The deferred dower, however, will be much higher. Around 500 or 1000 LE so as to prevent the groom from divorcing his wife for frivolous reasons,” he said. “And what about the shabka, will you ask him to pay your daughter a shabka?” I asked him. “Yes, I will although I am not sure whether I should insist on a shabka or not. It would definitely put the groom to great expense with the result that he cannot spend money on buying ‘afsh (furniture) since he already spent it on the shabka,” Fathi explained seriously. “In any case, we will not register the furniture of my daughter in an ayma (a list stating the furniture which belongs to the wife). I do not like the idea of an ayma. Marriage is about love and when the love is gone, the woman can have all the furniture,” he said.

In March 2004, I stayed in Kafr al-Sheikh, Lower Egypt for a couple of days. At the time, a Dutch friend was working on a water project in KAS and in order to learn more about marriage and divorce outside Cairo, I took the opportunity to travel to KAS where I was able to talk to a few of her female colleagues. I told them about my research and about the questions I had related to the dower, the shabka and other issues which form part of marriage preparations. My friend’s colleague from Tanta, Nervien, a married thirty-one year old mother of three, told me that her husband had given her a large shabka of LE 3000, which, according to her, would now equal the huge amount of LE 10,000. Besides the shabka, her husband had also bought the marital flat. Nervien and her husband decided to share the expenses of furnishing the flat. “We did it fifty-fifty,” she said. “As a result we only registered a prompt dower of 0.25 piasters in the marriage contract but we also stipulated a deferred dower of LE 15000. In cases where the husband still gives the wife a prompt dower, she is supposed to spend it on furniture. However, when you decide to share the costs of furnishing an apartment, it is of no use to give the wife a large prompt dower. We registered in an ayma both the shabka and the furniture I bought. If problems between us will occur, we will be able to divide our belongings on the basis of the ayma. In fact, the ayma is a better daman (safeguard) for the wife than the prompt dower,” she said as she finished her story.

Another colleague, Hind, did not fully agree. Hind, who was 24, had married nine months earlier and at the time of our meeting she was seven months pregnant. Immediately after her graduation from the University of KAS, Hind’s father had set out to find his daughter a suitable marriage candidate. For that
purpose, Hind was introduced to, among others, a pilot, an engineer and her present husband Ahmad. She had chosen Ahmad, the son of the brother of Hind’s father, because she had felt most at ease with him and because they both liked to joke. Since Ahmad was family, Hind and her family decided to register both a prompt dower of 0.25 piaster and a deferred dower of 0.25 piaster. “However,” she said, “in case you and your family do not know the future husband too well, it is better to ask for a high deferred dower. This will function as a kind of safeguard against a husband who divorces his wife at whim.” In contradistinction to her colleague Nervien, Hind did not consider the *ayma* and the *shabka* to be safeguards. “During a marriage the value of the furniture decreases rapidly. Look at my grandmother, of all the furniture she bought, only the furniture in the guest room still exists. And regarding the *shabka*, my grandmother sold her gold when my father needed money. It still happens a lot that women sell their gold when their husbands and family need money,” she said. Nevertheless, her *shabka* had equalled LE 10.000. What is more, they had registered the *shabka* as well as the furniture in an *ayma* and both Hind and her husband had contributed to furnishing the apartment.

Since the dower is a contractual obligation of Islamic marriage, an Egyptian marriage is not valid without a dower. Even when no specific amount is specified, the marriage contract will mention a so-called *mahr al-mitl*: in case of marital dispute, a judge will establish the amount of dower by estimating what amount fits the class background of the female litigant. Hence, every marriage contract contains a dower which is divided in two parts: a *muqaddam al-sadaq* (prompt dower) and a *mu’akhkhar al-sadaq* (deferred dower). As the cases show, the prompt dower has come to occupy a relatively symbolic and marginal place in the field of marriage. People only register a symbolic amount, ranging from one pound to fifty pounds, as the prompt dower (*muqaddam al-sadaq*) in the marriage contract.104 Husbands are reluctant to register a higher amount in the marriage contract because they do not want to pay taxes to the *ma’dhun*, the government official who registers marriages and divorces and who, according to local opinion, appropriates between one and five percent of the amount registered. Furthermore, nowadays a future wife and her family often refrain from asking a high prompt dower. Instead, they prefer to ask for engagement presents in the form of gold as well as providing a nice and sometimes also a well-furnished flat. It would therefore be offensive if the bride’s family were also to ask for a high prompt dower. For the case of Palestine, Moors also remarks that from the 1960s onwards, it became fashionable

104 In Egypt this is often pronounced without a qâf, as *mu’addam as-Saddq*.
105 This statement is based on a random sample of marriage contracts which I collected from friends; women litigants; in the courts and in a lawyers’ office.
among upper class women to receive gifts (such as gold) at their engagement and wedding instead of a high prompt dower (1995, 108).

This trend towards the marginalization of the prompt dower does not mean that the overall cost of marriage has decreased. To the contrary, according to the cases which I just presented, marriage has become more and more expensive. Not only were Ahmad and Muhammad complaining about the difficulties men encounter when trying to marry. On television, in the newspapers and among themselves, Egyptians often express their worries about the financial expenses which marrying (off their children) entails. Singerman and Ibrahim estimate that the total cost of marriage in Egypt were four and a half times higher than GNP per capita in 1998 (2003, 92). Instead of lower marriage costs, it rather seems that resources are shifted away from the dower in favor of the shabka as well as furnishing the flat.106

This picture of wives overcharging the future groom and his family, worse even, of abusing a husband’s financial investment in the marriage for years on end, clearly transpires in uridu khul’an where we see how Tarik spoils the wedding negotiations of his uncle’s nephew. When Tarik and the nephew meet the father of the future bride, Tarik explains to the latter that there is no need to talk about the flat, the shabka and the ‘afsh (furniture) but that it is more important to register 50,000 pounds as the mahr. The nephew whispers that he does not have 50,000 pounds but Tarik is unstoppable and much to the nephew’s astonishment Tarik tells the father of the bride that he wants the bride to sign a check consenting to pay back 50,000 pounds in case of khul’. Tarik explains to the father of the bride that he is afraid that his nephew will register twenty-five piasters in the marriage contract whereafter she will divorce him through khul’ and take the rest of the money and the flat, much in the same way Tarik’s wife Maha was doing. This lack of faith in the prospective bride angers the father to such an extent that he thunders: “Barra!” (out!). Tarik, however, is confirmed in his worst fears when he meets a man in court who registered 1000 pounds in the marriage contract. Since he paid 20,000 pounds in reality, he is about to lose 19,000 pounds to his wife who has filed for khul’. The man is desperate. He had given in to all her whims except for one and now she had filed for a khul’ divorce.

What seems to be in contradistinction to the observation that men who want to marry often face heavy financial difficulties, is the trend whereby the

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106 Singerman and Ibrahim who did a study on the cost of marriage in Egypt seemingly confirm this when they claim that “there may be a trend toward shifting resources away from the bride price in favor of contributions to necessary items like furniture and furnishings” (2003, 100). I say seemingly because they use the term bride price instead of dower while they also do not specify whether people are less inclined to pay out the prompt dower (muqaddam al-sadaq), register a high deferred dower (mu’akhkhar al-sadaq) or maybe do both.
(family of) the bride increasingly shares the burden of the marriage costs. This was clearly shown in the cases which I just presented and according to Singerman and Ibrahim this financial contribution to marriage costs is caused by the fact that especially younger women are now able to work (2003, 98). Women I met often had another explanation and claimed that women’s increasing financial contribution was a result of females outnumbering males in Egyptian society by a ratio of sixty to forty (a perception which is demographically incorrect as males actually outnumber females by a ration of fifty-two to forty-eight (Central Agency for Public Mobilisation and Statistics 2004, 6). As a result, men could chose whomever they wished to marry and unless women wanted to end up in a polygamous marriage they had better not set their marital demands too high. Some women even claimed that the uneven ratio of males to females resulted in an increasing number of marriages in which the groom is not only younger than the bride but also from a lower class. Statistics confirm that these phenomena, which are frowned upon in large segments of Egyptian society, are now spreading in number. In the 1990s, in three age groups more than one fourth of the marriage contracts were between an older wife and a younger husband. In the 1960s they only represented 2 percent of all marriage contracts (Osman and Shahd 2003, 51-61). In chapter 8 we will even see that women in informal (misyar) marriages, bear the financial burden of marriage. Putting no obligation on the husband to provide accommodation or to maintain his wife, these misyar (resembling) marriages look a lot like the zawaq al-frind (cf. Welchman 2007, 103). This and women’s growing financial contribution to marriage are not reflected in the film urīdu khul’an which only stresses the husband’s financial input into the marriage and the way in which women try to appropriate this. In the following section we see whether or not this also applies to judges.

4.5 Returning the prompt dower: the practice of the courts

In the last section we have seen that marriage is a pressure on the welfare of the family and that this is not likely to change as the cost of marriage is still increasing.

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107 In an anthropological study on the lives of low-income families in Cairo, Hoodfar also notes that the family of the bride is increasingly expected to contribute more to marriage preparations (1999, 66).

108 According to the Central Agency for Public Mobilisation and Statistics, there were 33,542,913 females and 35,105,576 males in Egypt in 2004 (June 2004, 6).

109 In a study on dowry and the position of single women in Bangladesh, Rozario (1998) shows that, like in the Egyptian case, people tend to think that there is a surplus of unmarried women. Although this perception is also demographically incorrect, it led parents to start paying large dowries to future husbands in order to marry off their daughters.

110 Article 20 of Law No. 1 of the year 2000 denotes the dower with the word sadāq, whereas respondents, both the legal experts and the people at the grassroots level, either use the word mu’ādām al-sadāq or maḥr.
These increasing costs, however, are not negotiated in the prompt dower which, as we have seen, often only consists of a symbolic amount. This raises the question as to why the Egyptian legislator decided to make a *khul'* divorce conditional upon paying back the prompt dower while in practice the prompt dower is nothing more than a formality in marriage preparations (see also Fawzy 2004, 76) and why opponents often claimed that *khul'* was only a law for rich women who could afford to pay back the dower and renounce their financial rights. Did the legislator try to make it easy for women to obtain a *khul'* divorce? But how, then, do we explain that there is no Explanatory Memorandum to the law which defines what the dower should consist of? Did the legislator simultaneously try not to confront the opponents to the law too much by giving judges a lot of leeway to interpret the prompt dower as they like? Hence, in what follows I look at the way in which the courts deal with the issue of the return of the prompt dower and whether judges take into consideration women's financial contribution to the marriage.

First, however, I take a brief detour and pay attention to the question as to whether future couples and their families take into account that the huge resources they spend on marriage might be lost in the event of a divorce. Statistics show that in the period between 1991-1995 17.8 percent of the marriages ended in divorce. Although the divorce rate was much higher in the past (at the beginning of the 1930s 50 percent of the marriages ended in divorce) the present number still signifies that almost one out of five marriages ends in divorce (Fargues 2001, 258). Cuno also states that divorce rates used to be high during the late 1930s and 1940s when ‘Egypt had the highest divorce rate of any “independent” state reporting data’ and then continued to fall to the end of the century (in press). Cuno nevertheless opposes the recent reevaluation by both foreign and Egyptian scholars of Egypt’s divorce rates from “high” to “relatively low.” This, according to Cuno, reflects growing divorce rates in the West, more than changes in the Egyptian rate, even though the latter was declining (ibid).

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111 It is unclear to me whether or not there is an Explanatory Memorandum to the law. Some, such as Azza Soliman have argued that there has only been a draft Explanatory Memorandum and that the legislator never issued a final one. I have indeed been able to track down an Explanatory Memorandum which was issued on 13 December 1999, a few weeks before the “*khul’* law” was discussed in the People’s Assembly (manSūr 2001, 739-54). However, I have never succeeded in obtaining an Explanatory Memorandum that was issued after the discussion in the People’s Assembly and which included the changes that the People’s Assembly made to the law. For the purpose of this study, however, it is especially significant that none of the judges (including a judge who was a main force behind the law) and lawyers were able to give me a copy of the Explanatory Memorandum.

112 Historical trends have demonstrated -on the basis of court records and other historical sources- that both in the Mamluk and the Ottoman Period women frequently initiated divorce (cf respectively Rapoport (2001) and Abdal-Rahman Abdal-Rehim (1996)).

113 I elaborate in more detail on this issue in 7.3 and 7.4.
Added to this, during my fieldwork in Egypt, I was often under the impression that divorce is as natural a thing to happen in a person’s lifetime as marriage and childbirth. For example, notwithstanding the fact that there is a limit to the number of times a husband can divorce his wife, i.e. he can only pronounce the repudiation three times in his life, in the case of Nura we have seen how her husband used to utter the divorce formula every time emotions were running high. This, of course, leaves women in a position in which they are not certain whether or not they are still legally married. Although this also applies to men, in many cases men such as Nura’s husband did not care since they have a right to marry up to four wives. However, men who do care to know whether the relationship still has the legally binding status of marriage, sometimes approach the sheikhs at al-Azhar in order to seek legal advice concerning the triple divorce. In a fit of anger, these men have uttered the divorce formula the three consecutive times necessary to bring about final divorce, although they did not intend to divorce their wives. In the same way, a friend told me how he had once visited the dar al-ifta (building housing the office of the Grand Mufti) in order to request a fatwa from one of the sheikhs. While he was waiting in the waiting room, he had asked the other men about the purpose of their visit. Most of the men were reluctant to tell him but some confided in him that they had come to ask the sheikh whether or not they could take back their wives after having pronounced the divorce formula three times, often in a fit of anger. Notwithstanding my focus on divorce cases, what probably also added to the fact that I was under the impression that divorce happens frequently in Egypt, is the popular perception in Egypt that the divorce rate is high and has skyrocketed in comparison to the past (see also Cuno (in press)). In such cases, people often blame women and young people for the high divorce rates. Sometimes they put the blame on khul’ but in other cases they also claim that women express the words tallaq-ni in order to put pressure on their husbands to divorce them. In other cases young people are accused of massively conducting informal ‘urfi marriages which, according to local opinion, all too often end in divorce.

After having shown that the likelihood of a marriage ending up in divorce is significant, both statistically and in popular discourse, I now move on to show how families try to protect their daughters from divorce. The cases which I presented above, show that Egyptian families use the deferred dower, the shabka and the deferred dower, the shabka, and the deferred dower, the shabka.

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114 In a study on Islamic courts in Malaysia, Peletz shows that women often turn to court in order to seek clarification of their marital status (2002, 155). What I found interesting in the case of Palestine is that during the British mandatory period (1920-48), women who wanted to divorce their husbands but who had few valid grounds to do so, used to their advantage triple repudiations which their husbands had uttered, regretted but could not revoke. In such cases, women asked the court to confirm their husbands’ repudiation (Moors 1995, 144).
ayma to protect their daughters from the possibility of a divorce. At the same
time, the case of Fathi also shows that the bride and her family try to create a
balance between overcharging the future husband and including safeguards
against divorce. We have also seen that the prompt dower did not play a role in
protecting a woman from the negative consequences of a possible future divorce.
In fact, it was only after the introduction of the khul’ divorce, that its significance
suddenly increased again. As we have seen, this was well illustrated in the film
urīdu khul’an. At first it seemed that women such as Nura and ‘Afaf profited from a
situation in which they could compensate their husbands by returning a prompt
dower which often only consisted of a symbolic amount. Judging from Nura’s
body language I had even been under the impression that she was happy to have
been able to humiliate her husband by pulling him out like a bad tooth through the
payment of only one pound. Nura’s husband had reacted by refusing to accept
the one pound as a result of which it is still waiting for him in the safety of the
court. Other men, however, soon started to appeal in court about their wives’
payment by claiming that the prompt dower, as registered in the marriage
contract, did not correspond with the amount which they had paid in reality.
According to an article which appeared in the well known Egyptian magazine rūz
al-yūsuf, many husbands did appeal about the returning of the prompt dower:

“Eight thousand husbands [ninety percent] who were taken off [whose wives
divorced them by way of khul’] revolted against the muqaddam al-sadaq [prompt
dower]. They refused to accept the amount of mahr [prompt dower] and they brought
witnesses to the court to prove that they paid more” (13-19 March 2004).

Hence, low prompt dowers would make it rather easy for women to divorce their
husbands by way of khul’, were it not for the fact that most husbands do not accept
the dower which their wives return to them. In such cases they tell the judge that
they paid more. At this point it is interesting to see how judges respond to
husbands’ claims and whether or not they take into account the resources both
men and women have invested in the marriage. The following cartoon, which
accompanied the above-mentioned article in rūz al-yūsuf, provides a preliminary
answer (13-19 March 2004):

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115 See also Hoodfar (1999, chapter 2) in an anthropological study on the lives of low-income families in
a Cairene neighbourhood.

116 This raises questions about the inclusion of marriage stipulations in the marriage contract. While it is
common to use the shabka and the deferred dower as a means to deter husbands from divorcing their
wife at will, it is still rare and socially unacceptable to include in the marriage contract stipulations
concerning divorce.

117 The verb khala’a can be used to denote both the pulling of a bad tooth and the act through which a
woman divorces her husband through khul’.
It states that the husband, who is walking out of the Personal Status court and whose wife divorced him through *khul‘*, has been returned all the *mahr* which he paid. The sentence at the bottom reads a line from the song “*salma ya salama*”. This song is often used in the context of someone returning home safely and/or gainfully.\(^{118}\)

**Judges**

The problems concerning the prompt dower soon prompted many lawyers, judges, and NGOs to take up their pen and many booklets started to circulate in which the issue of defining the prompt dower took a prominent place. What I found interesting is that none of these booklets posed the question as to how judges should handle cases in which husbands tried to evade paying taxes by registering a low prompt dower while in reality these husbands themselves had claimed to have paid more.

The booklets as well as numerous interviews with judges show that judges know about the practice of not registering the real amount in the marriage contract and that they are of the opinion that an investigation should be opened to establish the real amount of prompt dower which the husband paid the wife. For example, judge Hasan, working in the court of Kafr al-Sheikh, said that some judges will open an investigation and some will not. Why is there this difference, I asked him? “Because there is no legal text which explains what the judge should do.” In the

\(^{118}\) This song was composed by Sayyid Darwish (1892-1923), considered one of Egypt’s greatest musicians and composers
same vein, other judges, lawyers, and women’s rights organizations also frequently mentioned that the lack of an Explanatory Memorandum is responsible for the difficulties which surround the implementation of *khul‘* in the courts. For how should this amount be established if there does not seem to be an Explanatory Memorandum which explains how the dower should be interpreted? Judge Muhammad, working in Kafr al-Sheikh, even told me that: “If you want to do your research seriously you have to be aware of the fact that the returning of the dower is responsible for most problems and delays which occur in *khul‘* cases.” This judge claimed to stick to the amount of dower as registered in the marriage contract. I asked him why. “Because that is the official amount,” he responded. “Yet,” he continued, “many other judges rather open an investigation and since this takes up a lot of time, many cases are considerably delayed.” Other judges I spoke to confirmed that the problems caused by the restitution of the prompt dower are the main reason why most *khul‘* cases are delayed.

Apart from taking up a lot of time, some women interviewed reported that in the end they had to return not only the prompt dower to their husbands but often the *shabka* (engagement gifts, usually consisting of gold) too and sometimes even the *ayma* (a list stating the furniture which belongs to the wife) and the deferred dower. While one can agree to paying back the *shabka*, after all this forms part of a husband’s contribution to the marriage, we should also not forget that the *shabka* often consists of gold which many women sell in case their households face financial hardship. As for the *ayma* and the deferred dower, it seems strange that women have to pay back the *ayma* and the deferred dower since the former consists of a list stating the contribution of the wife to the marriage while the latter is a financial safeguard which a woman is entitled to when her husband dies or when he divorces her. Consequently, women who have a very small sum of prompt dower registered in their marriage contract, pay back different sums of money, diverging from one pound to cases in which they also pay back the *ayma*, the *shabka* and the deferred dower. Apparently judges often do not only take into consideration that husbands have paid more to the marriage than the symbolic amount of prompt dower which is registered in the marriage contract, they even appropriate a woman’s financial contribution to the marriage by ordering her to return the *shabka*, *ayma* and sometimes even the deferred dower to her husband which he has never paid out at all. In this way, judges indirectly

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119 Akbar Warraich and Balchin argue that in Pakistan “Family law as a whole is undermined by numerous practical problems arising out of a lack of procedural clarity” which are often the result of “customary practice and social attitudes moderate the behaviour of the legal system and influence trends in interpretation” (1998, 187).

120 In a study on Family Courts in Egypt, Al-Sharmani also notes that some female litigants had to pay back the deferred dower to their husbands (2008, 20-1).
contribute to the prediction becoming true that *khul'* is a rich-women-only divorce. What reasons can they have for doing so?

### 4.6 A “precedent” and it’s evasion

During a visit to Judge Hasan, whom I knew quite well and who was former judge of the Zananiri Court in Cairo, he had confirmed that *khul'* cases might take a year or more instead of six months due to problems concerning the returning of the dower.121 “The fact that *khul'* cases sometimes take a year or more is related to the fact that judges have to investigate how much the husband paid the wife upon marriage” he had said. His colleague and friend of mine, Ranya, had added that the investigation was done by the prosecution whereupon Judge Hasan had corrected her by saying that it was done by the court itself. Subsequently, I had taken the opportunity to show him an article which appeared in an Egyptian newspaper a few months earlier. It mentioned that, due to the problems the restitution of the prompt dower causes, three judges of the Cairo Personal Status Court decided to set a precedent in January 2004 by stating that “…The [personal status] court confirmed not to pay attention to the contentions of the husbands as long as they are not sustained by evidence; in that case they are tantamount to a trick aimed at sabotaging the case rulings” (al-akhbār 9 January 2004). Judge Hasan had reacted by saying that in ninety percent of the cases the couple only registers one pound in the marriage contract and that, for that reason he still thought it to be fair that the judge opens an investigation in order to establish how much the husband paid his wife in reality. He had continued by saying that these judges were not sincere and that he suspected them of wanting to finish as many cases as possible in a year. In order to underline what he had said about the unlikelihood of men only paying one pound as a prompt dower, he had remarked that husbands from the higher classes definitely do not register one pound in the marriage contract. That would be a shameful thing to do. “Look, I am a man. I have to show that I can prepare for a house, a car and so on for my wife.”122

There are some interesting features to this interview fragment. First, where Ranya (and other judges and lawyers too) was under the impression that the investigation into the husband’s payment had to be conducted by the prosecution, Judge Hasan had corrected her by claiming that the court itself had to do the investigation.123 Hence, besides the fact that there does not seem to be an

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121 Interview with Judge Hasan, Sep. 22, 2004, Cairo.
122 In the case of Palestine, the opposite happens. From the 1960s onwards, it became popular among the upper classes to only register a very low prompt dower (Moors 1995, 106-8).
123 In Pakistan, the country where *khul’*, in the form of an unilateral divorce, was introduced as early as the 1960s, the husband is the one who needs to prove that he paid more prompt dower than was registered. Judges do not accept a simple oral claim by him as sufficient evidence and force him to come up with documentary proof to sustain his claim. Besides, if the husband does not explicitly demand the
Explanatory Memorandum explaining how to define the *sadaq* (dower), there also appears to be a great deal of confusion regarding the type of court that should lead the investigation into a husband appealing the returning of the dower.

A second interesting feature that springs from the interview with Judge Hasan and Ranya is the way Judge Hasan reacted to the newspaper article. After I showed him the relevant precedent in the newspaper, Judge Hasan claimed that the precedent is not a binding one since it was not established by the court of Cassation, a prerequisite for a precedent to be binding. As a result, this judge did not consider the precedent to be binding, although he admitted that returning the dower causes delays in *khul'* cases. However, what I found more interesting is that he did not stress that men's allegations might be a trick to delay *khul'* cases. Instead, he still claimed that it was fair to thoroughly investigate whether or not the husband paid the wife more than the prompt dower registered in the marriage contract. As Judge Hasan in Cairo remarked on this occasion: “If I am under the impression that a woman has an eye on another man I will make sure that she pays back to him everything he ever gave her. I will make sure he gets his rights and that she pays back everything to him. Otherwise he will not be able to marry again.”

Apparently, this judge is of the opinion that women who file for *khul'* are only looking for other men to marry, behaviour which is unacceptable to him since these women use the money their husbands invested in the marriage in order to marry other men as a result of which the divorced husbands no longer have the financial means to marry again.\textsuperscript{124} Most other judges whom I showed the newspaper article reacted in the same way. Of special interest is the case of three judges working in the court of Kafr al-Sheikh, a provincial town in Lower Egypt. On the first of April 2004, I had entered this court with a friend of mine, Muhammad, in order to observe some personal status cases. Inside the court building Muhammad had asked a lawyer the way to the court room. The lawyer, who was an influential lawyer in KAS, said that the sessions for that day were over but that he could take us to the room where the three judges were residing. When I explained my research to the judges and after I had asked them some questions in Arabic, one of the judges turned to Muhammad and the lawyer telling them the following:

\textsuperscript{124}This practice contradicts the attitude of Pakistani judges. According to a Pakistani article, judges were often willing to accept small, symbolic amounts as the *zar-i-khula* if they felt that the husband was at fault (She December 2004, 264).
“Most khul’ cases are filed in the countryside. In the cities women can live anonymous lives. As a consequence they can and do have many illegal relationships. Here in Kafr al-Sheikh this is not possible. So, if a woman has an eye on another man, she will have to divorce the first husband first. For this reason, women in the cities prefer to file for a judicial divorce. They do not want to give up their rights and they do not mind if their case might take a little longer than a khul’ case because in the mean time they can still enjoy an affair with another man. So, don’t trust women’s tears in court. These are just crocodile tears. All women cry in court.”

The judge did not address me, maybe under the impression that I would not fully understand. Judging from the body language of Muhammad and the lawyer it was clear that they felt very uncomfortable and Muhammad did not dare to translate this judge’s words to me. “I will tell you later, outside” he hissed. The lawyer asked me, in Arabic, if I had more questions left, clearly wishing the meeting to come to an end. Following up on the judge’s remark, I decided to pose a last question and asked the judge to explain to me why some women file for a judicial divorce and why others want to divorce by way of khul’. Interestingly enough, the judge now became more subtle and less outspoken and used the legal categories under which a woman must fall in order to become eligible for a judicial divorce, such as abuse and desertion, to denote the difference. I found this interesting and back in Cairo I tried to find out how other judges would react to this question. Would they tell me that khul’ women are only looking for other men or would they explain the difference in legal terms? In the Zananiri Court in Cairo, Judge Magdi, for example, reacted as follows:
NS: “Do women who divorce by way of a judicial divorce and women who file for a divorce by way of khul’ have different reasons for the divorce?”

JM: “Yes, women who file for a judicial divorce are suffering from maltreatment by the husband, desertion or a second marriage of the husband. Women who file for khul’ have reasons unrelated to the reasons I just mentioned.”

After a few interviews I was under the impression that most of the judges have a dual discourse. When being “officially” interviewed, most of them have a tendency to explain things according to legal categories. In a more informal setting they tend to stress that khul’ women are emotional and demanding. Cases in which a woman files for a khul’ divorce will only encourage this line of thinking since women do not need to state their reasons for divorce which leaves ample room for judges to interpret those women’s cases as they like. Although I (regrettably) never asked the judges what made them think that women want to divorce in order to marry a second husband and why they think that husbands really paid more than one pound, I was often under the impression that judges’ class background (the greater majority of the judges are from the upper classes) influences the way they perceive female litigants who ask for a divorce through khul’. As we have seen, Judge Hasan said that in reality husbands pay much more than one pound for the simple reason that if they do not impress their future wife (and her family) with a nice apartment and a good car, they fail in their role as men. What adds to this is the information Judge Muhammad provided me with during an interview at the Zananiri Court in Cairo.

Seemingly, this judge had a good idea as to what husbands from different classes spend on marriage preparations. During the interview he told me that whereas the number of khul’ cases had been high in the beginning, the number of khul’ cases was now declining in comparison to the old-style judicial divorce. As a

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125 Interview with Judge Magdi, Jun. 5, 2004, Cairo.
126 In the Netherlands, a Dutch Parliamentarian requested research into the societal background of judges in general and those of the High Council specifically. A survey had revealed that Dutch judges were detached from reality and as a consequence, their representativeness was in question. The survey which was conducted as a result of the Parliamentarian’s request, revealed that the majority of the judges were from the upper classes (Huls 2004). Something similar transpires in the case of Yemen, where Würth presents a case of a woman which Würth and the rest of the audience in the courtroom found astonishing. Astonishing since the woman was able to address the judge in eloquent literary Arabic. This contradicted the majority of the cases in which educated judges are confronted with clients who are not well educated and who speak unintelligible dialect to them (1995, 321).
127 Although I do not deem it unlikely that a husband from the upper classes buys a car in the name of his wife, I wonder whether he will buy an apartment in her name.
consequence, whereas the majority of khul' women had first been from the higher classes, lower class women became the major consumers of khul' later. I did not understand and asked the judge to explain to me why this was the case. The judge tried to explain by asking me very patiently: “Did the registered prompt dower before the introduction of the khul' consist of a small or big amount of money?” “A small amount of money” I answered. “So, how much did a women pay back in case of khul'?” “Something like one pound” I answered again. “Exactly, and this is why husbands from the higher classes told their sons to register the true amount, so that they would get it back in case of khul'. For this reason it became too expensive for women from the higher classes to file for khul' and they turned to file for a judicial divorce. In the lower classes, however, the husband really was not in a position to pay more than one pound and so he always registered the true amount as a result of which it is still easy for lower class women to pay back the prompt dower” he ended.128

What I found interesting in this regard is that while the government and women's NGOs had defended the khul' law by explicitly claiming that it was in accordance with Islam, the judges whom I interviewed on the issue of the dower seldom took Islam or Islamic law as a point of departure in explaining why they interpreted the prompt dower the way they did, although law no. 1 of 2000 clearly states in article 3 that the prevalent opinions in the school of Imam Abu Hanifa apply when the law is unclear.129 According to Bernard-Maugiron, this especially applies to situations which concern the dower (2004, 359), in theory at least. In practice, judges rarely look for Hanafi principles (ibid, 383-4), and rather resort to the code of Muhammad Qadri Pasha (ibid, 358), or, as I argue bring to the fore their own class background and their own perceptions of women, marriage and divorce. This is interesting since the Hanafi jurists were of the opinion that in khul' cases, women needed to compensate their husbands by paying the latter an amount which was equal to, or possibly less than, her dower, but not exceeding it in value (Zantout 2006, 3, 13, 40-1). Both Bernard-Maugiron and my observations are supported by Dupret who claims for the case of Egyptian Personal Status Law that “At the very place where it is supposed to be massive and overwhelming, that is, in personal status law, references to Islamic law are conspicuous for their paucity” (2007,97).

128 Interview with Judge Muhammad in Cairo on 13 May 2004.
129 In a study on polygamy in Egypt, Lindbekk explicitly paid attention to the question as to whether judges refer to fiqh in their rulings. She states that upon interviewing judges about their use of fiqh, it seemed they had turned the traditional sources of law in classical shari'a upside down. Their list of sources in order of priority was as follows: (1) legislation and judicial practice; (2) the Koran; (3) the sunna; and (4) the Hanafi school (2006, 111).
Hence, the data reveal that many khul’ cases are delayed due to problems caused by returning the prompt dower. Husbands frequently appeal the fact that their wives only return the amount written in the marriage contract which, with the exception of the upper classes, often consists of only one pound. Instead of one pound these husbands claim that they paid more. Apart from the fact that it is not clear which court should investigate such a claim, it is surprising that judges as well as legal literature are not disturbed by the fact that these husbands are in fact admitting that they violated the law by evading paying taxes. Nor do they pay attention to the possibility that men might use such a claim to obstruct a smooth proceeding of the khul’ case. Instead, they seem to be more disturbed by the idea that, according to them, many women who file for a divorce through khul’ want to marry another man and use the money the first husband invested in the marriage for this purpose. When I asked some of the judges whether they had considered the possibility that women were opting for a khul’ divorce because it was faster than an old-style judicial divorce, they reacted by saying that this was no longer the case since a lot of new judges were appointed a few years earlier. None of the judges mentioned women’s financial contribution to the marriage.

Although some judges oppose the idea that women want to divorce in order to marry a second man, others do not care or reason that this is preferable to adultery. However, what remains is the fact that they think women want to divorce for this reason. A polite way of saying this is by claiming that khul’ women do not have explicit reasons for the divorce as opposed to women who file for a judicial divorce. The fact that in cases of khul’ a woman’s reasons for divorce are not explicit, while in the case of a judicial divorce there are legal categories, such as harm and desertion by the husband, which she must fall under in order to become eligible for a judicial divorce, simultaneously reinforces judges’ perception of khul’ women as women who want to divorce to marry another man.

Women litigants know that the way judges perceive women might influence the proceedings of their case. As early as 1975, Zaalouk remarks in a study on divorce cases initiated by Egyptian women in the Zananiri Court that: “There seems to have emerged among the women [litigants] a sensitive, instinctive knowledge of what were proper modes of behaviour, speech and appearance one had to adopt before the judges in order to secure a better chance of obtaining a divorce. Women advised each other never to mention the fact that they hoped to remarry, to always appear meek and poorly but conservatively dressed, and to mention non-support and absence as the cause of divorce.” (1975, 152. See also Fahmi 1987, 20). Almost thirty years later, not much seems to have changed. For

130 See also Human Rights Watch (2004).
example, Hoda, a woman from the higher middle classes who lives in Masr Gadida, said to her friend Laila who filed for a divorce by way of khul’:

“If you go to the court tomorrow, make sure you are dressed very soberly. Tie up your hair in a knot. You are a beautiful woman. The judge and the lawyers will notice that. If you are dressed elegantly they will suspect you of having a relationship with another man.”

At this point it needs to be mentioned that although judges perception of khul’ women might influence the way they view such women’s cases, I was often under the impression that even if khul’ contradicts the judges’ social beliefs they will adhere to it rather then have their case overruled in the Court of Cassation. As a result, judges do implement khul’ in a legally correct way. This is underlined by Dupret who claims that with regard to Personal Status cases in Egypt, the orientation of judges and other legal practioners is towards procedural correctness, reflecting among others their bureaucratic resistance to the possibility of being overruled (2006, 167-8). In view of this, Lombardi claims that in the nineteenth century, the Egyptian legal system was heavily influenced by the then existing (French) continental legal system in which ‘creative judicial “interpretation” was, at least theoretically, kept to a minimum…’ (2006, 63). For the case of Syria and Palestine during the seventeenth and eighteenth century, Tucker also concludes that due to the codification of (family) law, the old system lost its flexibility as judges’ discretion was minimized considerably (1998, 185).

131 Interview with Dr. Hoda Zakariyya in Cairo on 14 May 2004.
132 For the case of Palestine, Shehada states something similar. There the women’s waiting room in the court has become a forum for peer-to-peer advice (2005, 80-7). In a study on Islamic family law in Morocco and Iran, Mir-Hosseini also observes that litigants try to influence the judge by appearing poor and needy: “For the sessions, women take off their jewellery and dress shabbily; men underquote their earnings and hide their actual level of income” (1993, 29).
133 For the case of Pakistan Sheikh notes how with regard to the issue of consentive marriages: “Though both Justice Malik Muhammad Qayyum and Justice Khalil-ur-Rehman Ramday upheld a woman’s right to contract a marriage without the consent of her wali (marriage guardian), the wording of their judgment made it clear that they felt constrained to uphold a law that dictated a stance which was in contradiction to their own moral convictions” (unpublished paper). For the case of Jordan, Sonbol too mentions that judges in Jordan stick to the law as they do not have much leeway to interpret the PSLs in a free manner since codes and procedures have to be applied strictly. This means that “Although most judges are quite conservative, the one who could make a difference are constrained from doing so by the law (2003, 183).
134 After two hours of vehemently disparaging on the khul’ law I asked a Sufi leader who claimed to have many judges among his following, how these judges’ disapproval of the law affected their work in court. He looked at me in surprise and said: “Not at all. They are judges and so they have to implement the law, whether they like it or not.”
Nevertheless, while this might be true to a certain extent, I agree with Dupret that this does not mean that judges merely become “la bouche de la loi” since a judge always needs to interpret the law and apply it to the facts which are brought to his attention (2006, 148). In other words, “applicable law is itself an object of interpretation” (ibid) in which the act of interpretation can be constrained by judges’ orientation to procedural correctness, or facilitated by the (un)deliberate creation of legal lacunae by the legislator. The latter, I argue, transpires in the Egyptian case on khul’ where judges use the parts of the law that are not (yet) clearly defined, in an Explanatory Memorandum for example, or not legally binding, such as the principle to adhere to the amount of dower as registered in the marriage contract, as a way to create difficulties for women who want to divorce by way of khul’. In a study on decisions taken by the shari’a courts in matters related to PSL during the period 1900-55, Shaham also claims that judges who were opposing the reforms expressed their opposition by interpreting the reforms’ articles narrowly. This narrow interpretation took advantage of the existence of legal lacunae – that is, issues left undealt with by the legislators or issues that were defined in an ambiguous manner (1997, 233). This observation is important as we have seen how in the year 2000 the Egyptian legislator seemingly refrained from issuing a final Explanatory Memorandum to the khul’ law as a result of which judges were given much leeway to interpret the prompt dower as they wished. Something similar seems to apply to situations in which women file a fault-based judicial divorce on the basis of harm. In such cases, the law does not specify harm, and leaves it up to judges’ discretion to decide whether a woman is eligible for a fault-based divorce. In practice, judges often issue a ruling on the basis of the socio-economic class of the woman, whereby they reason that women from the upper classes are more easily harmed than women from the lower classes (cf. Chemais 1996, 68; Fahmi 1987, 21-3; Human Rights Watch 2004, 28-30). Hence, while Tucker shows that flexibility and judges’ discretion worked to women’s advantage, the case of Egypt makes clear that flexibility can also work against the interest of women (see also 5.4).

4.7 Emotional women and polygamy
In this section I explore in more detail the difference between women who file for a judicial divorce and those who file for a khul’ divorce. We have seen that according

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135 This is also the case in Palestine (Shehada 2005, 147) and in the secular legal system of Turkey, lower court judges often tolerate formally forbidden practices such as polygamy and informal (religious) contracted marriages (Yilmaz 2003). See also Welchman (2007, 20-1).

136 Although praising Shaham’s study, Dupret simultaneously criticizes Shaham for having failed to see that “applicable law is itself an object of interpretation” too and that a practical study of Personal Status law should always include an analysis of how judges orient themselves to legal categories (2006, 144-9).
to many judges interviewed the former have “good” legal reasons for the divorce while *khul’* women’s wish for divorce is informed by “other” reasons. Although we have already noted that “other” reasons often can be seen as a polite way of saying that women who file for *khul’* are looking for other men or have other unjust reasons, I now use the cases of women who file for a judicial divorce on the basis of polygamy to explore in more detail the precise meaning of women litigants’ “other” reasons for divorce.

During my fieldwork, a Norwegian student of the sociology of law, Monika Lindbekk, did research on Egyptian divorce cases based on polygamy. According to the judges she spoke with, (in a few cases I was present too) women can easily obtain a divorce on the basis of polygamy if they are able to prove that the second marriage caused them harm. Although five judges said that they often allowed women to divorce on the basis of both material and emotional harm, most other judges said that women in such cases can only divorce if the second marriage causes them material harm, which, according to them, means financial harm because the husband stopped providing for his wife and children, or sexual harm caused by the fact that the husband neglected his first wife sexually in favour of the other wife. These judges said that they would not grant a divorce on the basis of polygamy if the wife “simply” could not bear the thought of her husband having married a second wife.

With regard to law no. 100/1985, Monika claimed that the legislator initially intended to grant women the right to divorce their husbands on the basis of both immaterial and material harm. In the People’s Assembly there was much discussion on how to define the term “immaterial harm” (*darar manawi*). The outcome was that the People’s Assembly left the question of the definition of “immaterial harm” up to the discretion of the judges. The legal practice was quite liberal in the years that followed the promulgation of law no. 100 of 1985 (Lindbekk 2006, 70). However, in 1994 the High Constitutional Court issued a verdict in which it said that the negative subjective emotions which wives in polygamous marriages experience are not sufficient to override the benefits that arise from polygamy such as the possibilities it offers women “to having a family in whom her life finds continuity” (ibid; Arabi 2002, 347).

If women cannot bear the thought of their husbands having married other wives, they better file for a *khul’* divorce. At least, this was the message which I heard one of the judges bestow on Monika. Apparently, this judge believed that *khul’* had become a repository for women whose decision to divorce was based on emotional reasons. During the debates which I described in part one, one of the most expressed reasons for opposing *khul’* was that women were too emotional to be given the right to unilateral divorce. At the slightest sign of trouble they would rush to divorce their husbands thereby destroying their own families as well as
Egyptian family life. In general, the judges I met did not deviate from this line of thinking. Although they did not always care, it was clear to them that women’s wish for *khul’* was often driven by irrationality and jealousy.\(^{137}\)

In view of this, it is interesting to mention a few fieldwork cases in which women, whose husbands married a second wife asked for a *khul’* divorce. Were the reasons underlying their request motivated by jealousy “only” or did the second marriage cause them material harm? If we consider the case of ‘Afaf again, we cannot help but concluding that her case is an example of a woman who was deserted by her husband who married one of the neighbours while ‘Afaf was pregnant with their first child; had two small children from a former marriage to take care of; and was left without any financial provisions. As a result, she was forced to work again. Her case was not an exception. After Nura’s husband married a second wife, his financial contribution to the marriage declined even further while strangely enough he had also been the one who ordered Nura to resign from work after they had just married. After Nura’s husband was sent to prison, Nura too was forced to resume work. During the research I met and heard of women who were abandoned by their husbands and who either went back to the parental home or who went on living alone with their children. Since the second marriage of their husbands had caused them material harm they were all eligible for a judicial divorce through which they could have kept all their financial rights. Still they decided to file for a *khul’* divorce instead, which they explained by saying that a *khul’* divorce was much faster than a judicial divorce.\(^{138}\) Besides, they reasoned, even if they were to obtain a judicial divorce it might take them another few years for the alimony to come forward, if at all. Apparently at least some women filed for *khul’*, not because their suffering was purely emotional, but rather because they suffered from material harm but felt that they were not able to claim their legal rights.\(^{139}\)

Now one could object and claim that the cases mentioned above are exceptional cases, since statistics show that only a small percentage of the husbands marry polygammously. Cuno, for example, notes that from 1927 to 1986 the proportion of married Muslim men with more than one wife declined from 4.8 percent to 1.9 percent (in press). Most likely, however, these statistics are based on

\(^{137}\) See also 5.5 and 5.6 for the case of professional arbitrators.

\(^{138}\) As has been mentioned earlier, regular fault-based divorce cases can take many years.

\(^{139}\) In a study on Family Courts in Egypt, Al-Sharmani also notes that women in *khul’* and regular divorce cases seek divorce for similar reasons the most common of which are the failure of husbands to provide; husbands’ desertion and spousal abuse (2008, 21). Interestingly, according to her findings the main difference between women who file for *khul’* and those who file for a regular divorce was that the latter “had complete financial and emotional support of their extended family” (ibid, 43). See also chapter 7.
officially registered marriages in which the husband neatly registers all his wives in the new marriage contract (a fact which the law obliges him to do). This practice does not seem to be in line with the reality which I experienced in Egypt and in which many husbands leave the marital home for another woman while they do not divorce their first wife; do not maintain her and their children; and marry the second wife through an informal so-called ‘urfī marriage. Statistics by the National Centre for Sociological and Criminological Research (NCSCR) underline this impression as they show that during the first three years of marriage 25 percent of the husbands marry another wife. Seventy percent of these second marriages end up in divorce (al-Ahram Weekly 26 February-3 March 2004). Unfortunately, I was not able to access the statistics myself and find out how the research centre had arrived at such a high number of polygamy cases. Still, I have decided to include them at this point since both the centre’s findings and my fieldwork experiences make clear that we should at least be aware of the fact that polygamous marriages, both formal and informal, might occur more frequently than statistics suggest (see also Hill, 1979, 89). Often, polygamous marriages cause severe material harm to the first marriage as the husband loses interest in his first wife and children and more often than not, reduces the money he spends on them and in some cases he completely stops providing for them.140

This problem, however, was not paid much attention to during the debates which accompanied the introduction of the khul’ law, nor did judges believe that women could have good legal reasons for a khul’ divorce. Instead of castigating men for leaving their families in order to marry other women and for not providing for their families as a result of which women were often forced to work outside the home (again), judges and those participating in the public debate often accused women who filed for khul’ of being nashiz. That is to say of having left the marital home for frivolous reasons thereby destroying the marital home and their families in the process. I will return to the issue of women’s disobedience in more detail in the next two chapters.

4.8 Conclusion
The debates and the films which I discussed in part one, portrayed women who filed for a divorce through khul’ as emotional and irrational beings who only wanted to divorce for trivial reasons. This picture of women, often from the upper classes, was most clearly embodied in the main female character of muHāmī khul’

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140 Households in which the husband runs away and in which the wife is left to take care of the household alone form part of so-called “female-headed-households” (in the following: FHH). The percentage of female-headed households in Egypt reached between eighteen and thirty per cent in urban Egyptian families (Bibars 2001). I will return to the issue of female-headed-households in more detail in chapter 7.
who not only wanted to divorce her husband because he was snoring, but who had also fallen in love with her lawyer before her divorce case was even issued a ruling.

The story of Nura, however, represents a markedly different reality. Her story, and that of other women such as ‘Afaf reveal that women are accused of characteristics which are actually those of men. First, at least a large number of women who resort to *khul*’ are women from the lower (middle) classes (see 4.3) who want to divorce husbands who often themselves were looking for other women and who had married a second wife without continuing to provide for their first family (in the case of Nura) or who had left their first family for another woman without divorcing their first wife (in the case of ‘Afaf). As a result, both Nura and ‘Afaf were forced to work outside the home again.

Apart from the fact that in such cases women are often forced to shoulder the financial responsibility for their families, in case they want to divorce their husbands through *khul*’ they also have to compensate them by paying back the prompt dower. In contrast to the public debate in which it was claimed that only rich women would be able to do that, the prompt dower is not negotiated in marriage preparations, and often only consists of a symbolic amount. This would make it rather easy for women, from all classes, to divorce their husbands, were it not for the fact that men soon started to appeal in court the fact that their wives were divorcing them in what they considered to be a cheap way.

The question arose as to how judges would react. Would they castigate men for having evaded paying taxes (by registering a false amount of prompt dower in the marriage contract); for not providing for their families; would they recognize women’s financial contribution to the marriage or would they take the side of men? Often judges responded to husbands’ claims by commanding the wife to return to her husband not only the prompt dower but also the *shabka*, the *ayma* and sometimes even the deferred dower. Why did judges feel the need to put the *shabka* on the same footing as the dower; to appropriate the furniture which women had invested in the marriage (through the *ayma*); and why did they make them pay back a deferred dower which the husband had never paid out? Interviews with judges revealed that they were often of the opinion that *khul*’ women only wanted to divorce in order to marry another man and that women would use the money which the first husband had invested in the marriage to marry the second husband. As a result, the bereaved first husband would not be able to marry again. This picture, however, was not in accordance with social reality as the fieldwork data show that women’s (and their families’) financial contribution to the marriage is increasing, something which is most clearly illustrated by the fact that in the 1990s more than twenty-five percent of the
marriages in Egypt was the result of women marrying men who were not only younger of age but also from a lower class.\textsuperscript{141}

Yet, most of the judges interviewed not only did not recognize women’s financial contribution to the marriage but they seemingly also failed to see that sometimes women were the main providers in their families. Instead (like opponents in the public debate) some judges called \textit{khul’} women \textit{nashiz} (recalcitrant). On a legal level being declared \textit{nashiz} signifies that a woman has disobeyed her husband and no longer has a legal right to be maintained by the latter. Disobedience by the wife towards the husband often implies that the wife has left the marital home without his permission. While it is true that \textit{khul’} women often leave the marital home in order to work we have already seen that their absence from the marital home was not motivated by a desire to pursue a career – as was the case with Maha in \textit{urīdu khul’an} – but rather they tried to make ends meet as their husbands were not willing to provide for their families. What is more, where \textit{khul’} women were accused by judges of using the divorce to marry another man, we have seen earlier that often these women’s husbands were the ones who had left the marital home for another woman and who were destroying their families financially, by not providing for them, as well as emotionally.

Husbands were not called to account by judges. To the contrary, it seems as if men’s failure to provide; the fact that they were looking for or even marrying other women; and the fact that they appropriated women’s financial contribution to the marriage were projected on women and as such women became symbols for problems which men were having. In the same way as the cartoons had illustrated a process of gender role reversal, the social practice of the dower in \textit{khul’} cases also shows that what is at stake is a process of reversal, this time of reality. On a judicial level this was expressed by ordering women to give to their husbands their furniture, their gold and sometimes even a deferred dower which they had never received. The very fact that judges were in a position to treat women in this way was facilitated by the legislator who had seemingly refrained from issuing a final Explanatory Memorandum through which it could have explained how to define the prompt dower. This created a legal lacuna as a result of which judges were in a position to use the prompt dower, of all things a symbol of women’s increased financial contribution to the marriage, as a means to make it difficult for women to obtain a divorce through \textit{khul’}.

Hence, the practice of \textit{khul’} in the courts reveals judges’ perceptions concerning changing gender norms and the financial contributions of men and women to the marriage. To some extent these perceptions reflected judges’ own upper class background. Where these judges’ perceptions were in line with the

\textsuperscript{141}In chapter 8, we will see that this also applies to situations in which men and women conduct informal marriages.
public debate on *khul’*, there was also a difference between the statements of judges and the ones in the public debate in the press. In contradistinction to the public debate in the press, judges seldom referred to Islam (ic law) to explain why they acted as they did.

What applies to the dower equally applies to the issue of legal arbitration. While women who ask for *khul’* are accused of destroying the family and as a result have to undergo arbitration, in cases where husbands (literally) run away from their marital responsibilities, the welfare of the family is hardly ever considered, nor are these husbands subjected to a compulsory legal form of arbitration for the sake of the family. This led Human Rights Watch, in its report on divorce in Egypt, to conclude that: “Taken to its logical conclusion, the troubling implication of the court requirement that women, and only women, attempt to reconcile with their spouses is that only women are capable of destroying the family (2004, 26).” In the next chapter I elaborate on the phenomenon of arbitration in *khul’* cases.

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142 For the case of Jordan, Sonbol also states that in the case of divorce “the good of the community” is not considered in cases where husbands abuse their right to divorce or polygamy (2003, 179).
5 Arbitration

5.1 Arbitration: why Nura obtained a divorce while ‘Afaf did not
A few weeks after our first meeting, Nura asked me to accompany her to a court session. When I arrived at the court premises at 9.30 I met the same hagib (baillif) who, without any prompting, told me that he would do his best to find me “khul’ women” again. I took the stairs to the third floor where I bumped into ‘Afaf who took me to the place where Nura, her sister’s husband and Nura’s lawyer Muhammad were waiting for their turn just outside the courtroom.

Nura’s lawyer appeared to be the husband of the daughter of Nura’s mother’s sister. He was living in Sharqiyya (governorate in Lower Egypt) and every time Nura had a court session he would take an early bus from Sharqiyya to Cairo. He told me how he had become her lawyer after another lawyer (the lawyer of her husband Mahmud) had cheated on her. He took a lot of money from her without ever registering her case in the Zananiri court. During a visit by Nura to her village, Muhammad had learnt about Nura’s divorce case. When she told him that her case had been in court for more than a year by then, without a single session being held, he got suspicious and urged her to check whether her lawyer had registered the case in the first place. When Nura checked the registers she found out that he had not. Thereafter Muhammad offered to become her lawyer. “Although I am specialized in criminal law, I decided to take on her case. What else could I do? After all she is one of my ‘arib-s (family member) and for that reason I have to protect her from other lawyers of whom I am sure that ninety percent will laugh in her face” he said.

I asked Nura whether she would be happy if her case was over after that day. “Of course, then I will be able to try to find a job in the Gulf,” she immediately replied.

Since Nura’s case was the last one of that day, we decided to go outside and have a drink at the coffee house which was situated next to the court. Although ‘Afaf came with us, she looked depressed and I had the feeling that she was feeling excluded. Apart from that, her feelings could also have been motivated by the fact that her brother again did not show up in court with the fifty pounds which she needed to pay for the arbitrator of her husband. This arbitrator had been appointed by the court since her husband had not chosen an arbitrator. When we descended the stairs of the courts, an old lady in gallabiya asked Nura the way to the courtroom. Nura asked her what kind of case she was having. “Khul’”, she replied. “So you have to go to the third floor,” Nura yelled at her after which her lawyer Muhammad summoned her to keep her voice a bit down.
At the coffee house Muhammad told me how he had travelled from Sharqiyya to Cairo earlier that week after the court had summoned them to appear for an arbitration session. Nura’s brother-in-law had joined them too in order to testify that Nura’s husband had divorced her many times in the presence of others. I asked Muhammad if he could explain to me what the returning of the dower exactly consisted of. He said that women should only pay back the mu’addam al-sadaq (prompt dower). “What about the shabka and the furniture?” I asked him. “They should not pay that back, but I have to admit that many lawyers tell women to do so. You know, the problem with many lawyers is that ninety percent of them want to earn money without making an effort. As a consequence, they are too lazy to study the law carefully. Instead they rather rely on mouth-to-mouth information from other lawyers. Fortunately, Nura only had to pay back the prompt dower which only consisted of 0.25 pounds,” he said.

Muhammad continued by saying that Egyptian law was not good: “For example, in the case of maintenance and alimony cases, the procedures take at least a year, even in cases where the judges and lawyers are doing their work properly. How will a woman eat in the meantime? And what about her children? Besides, if her husband has disappeared, how will she be able to locate him? The government presents Bank Nasser as the solution, but Bank Nasser only pays out maintenance and alimony to wives whose husbands work for the government. In other cases it will be impossible for Bank Nasser to deduct the alimony from his salary. But even in the case where the husband works for the government, the wife will only be entitled to a very small amount of his salary. For example, if the husband earns 1000 pounds a months, she will receive approximately 30 pounds per month. This is unfair. What adds to this is the fact that many husbands have a second job which, of course, is not included in his government salary,” he sighed.

I asked him why Nura had chosen to file for a divorce by way of khul’ instead of a regular divorce. “Of course, Nura could have opted for a regular divorce. However, a regular divorce takes approximately two years while a divorce through khul’ only takes six months. So, what would you opt for?” he asked me rhetorically. We talked a little about Nura’s husband who was in prison and I asked his opinion on Nura’s husband having married a second wife just a few months prior to his imprisonment. “Well, you see, some people want to study more, some want to work more, and others want to have more sex” he said.

In the meantime ‘Afaf was still sitting with us. She was not only looking depressed but also annoyed and again I had the feeling that she felt excluded. Nobody talked to her and she was not part of the conversation at all.

After having finished our drinks we entered the court again. When it was Nura’s turn, she, her lawyer Muhammad and her brother-in-law entered the room of the judges while ‘Afaf and I had to wait outside. Only a few minutes later they
came out again. Nura looked happy. It was all over. Before I had time to ask one of them about the judges and the proceedings, Nura was pushing me down the stairs. The lawyer Muhammad was in a hurry too as he wanted to go home and when a bus passed in front of the main street he ran to catch it as a result of which I did not even have time to say goodbye to him. Nura’s brother-in-law excused himself too as he had to go back to work. I looked around for ‘Afaf but she had disappeared. I would never see ‘Afaf again.

Nura did not seem bothered. She was so happy with the good news that she wanted to celebrate it and so she invited me to eat kushari with her on the other side of the street. I offered to pay but she declined it resolutely. After our lunch she used a public phone to share the happy news with a Christian friend and colleague who was living in Shubra, a woman whom Nura called Madame Jeanet. Madame Jeanet invited us for tea and we took a bus to her apartment.

I was left with mixed feelings by the events of that day. On the one hand I was happy that Nura was able to obtain a khul’ divorce after a last session of arbitration. On the other hand I felt sorry for ‘Afaf. Not only had she left without saying a word, but where her situation had resembled Nura’s in the beginning, now the contrast between them could not have been bigger. First, ‘Afaf was not able to pay for a lawyer. Second, since her brother repeatedly did not show up to pay the court the fifty pounds for ‘Afaf husband’s arbitrator, the proceedings of her case were constantly postponed. Later, I learnt from the hagib that the judge had closed her case a few months later in May 2004 on the grounds that he could not accept it if she did not go through the required arbitration sessions. If she still wanted to divorce her husband, she had to file for a divorce through khul’ again. Where Nura had overcome the obstacle of paying 50 pounds for the arbitrations sessions, ‘Afaf had not. I remember finding it strange that in cases where husbands are unwilling to arrange for their own arbitrators, wives are summoned to bear the financial consequences. It led me to conclude that there was not only an emotional facet to the case, the financial concerns were as decisive.

In what follows I elaborate on the role of arbitration, both at the state level and inside the court premises. I show why state provided arbitration became an increasingly important issue for the government and how state provided arbitration is applied to by those who are supposed to implement it: judges and professional governmental arbitrators.

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143 Kushari is a typically Egyptian dish made of pasta, rice, fried onions and tomato sauce.
144 The Zananiri court is located in Shubra, one of the largest as well as one of the most densely populated areas in Cairo. It is also home to a large number of Christian Copts.
145 In chapter 7, I elaborate on the question as to whether the growing importance of governmental arbitration reflects a decreasing ability of “the family” to reconcile a couple living in disharmony.
5.2 Arbitration in the new family court: the state and judges

Where the government’s eagerness to introduce divorce by way of *khul’* in 2000 does not automatically mean that judges will implement the reform according to the wishes of the government, the same applies to the much-desired introduction of a new family court by the government in 2004 and the functioning of one of its main attributes, arbitration. Are judges willing to implement extensive arbitration in their courts? Before providing an answer to this question, I first describe the situation before the introduction of the family court in October 2004.

In January 2000, during the heated debates on *khul’*, the People’s Assembly succeeded in extending the arbitration period from sixty to ninety days. Some MPs were of the opinion that in this way it could be verified if a woman really insisted on having a divorce, given that women were very impulsive and might apply for *khul’* only to regret it later. According to the majority of the judges I interviewed, however, arbitration does not make women change their mind since most women who come to court to ask for any type of divorce have already been through a long period of attempted arbitration. In such cases, parents, brothers and sisters, friends, even neighbours and children, have all tried to prevent the marital breach. When a woman goes to court, it signifies that she is determined to divorce her husband. Even if she were to change her mind, it would be very humiliating for her husband to accept her back since, by going to court, his wife had in fact publicly announced the end of their marriage. Seen in this light, it is ironic that some judges at the Zananiri Court in Cairo chose to raise fees for cases in which the court has to appoint one or more arbitrators.

In general, the judges leave it to the spouses living in disagreement to choose one arbiter from either side. However, if one of the parties does not put forward an arbiter, the court appoints one. Whereas the arbitration process was free of charge in the beginning, it gradually became more and more expensive, at least in Cairo. In the case where a woman’s husband did not choose an arbiter from his side, she became obliged to pay the costs of the arbiter appointed by

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146 Article 20 of law No. 1 of 2000, second section, states: “The court shall not rule for divorce through *al-khul’* except after trying to reach reconciliation between the two spouses, and after delegating two arbitrators to continue attempts at reconciliation between them, within a period not exceeding three months.”

147 In the seventies, judges in the Zananiri Court in Cairo also stated that cases of arbitration were rare and hard to implement (Zaalouk 1975, 145).

148 This is in line with article 19 of law No. 1 of 2000, first section, which states: “In forced divorce actions wherein the law necessitates delegating two arbitrators, the court shall charge each of the two spouses to name an arbiter from his/her own kindred, as much as possible, at most in the following session. If either spouse neglects to appoint his/her arbiter or fails to attend that session, the court shall appoint an arbiter therefore.”
the court. According to some lawyers interviewed, the amount due to be paid differs from judge to judge and from case to case. Some judges charge a woman nothing while others might charge her thirty, or fifty or even one hundred pounds, depending on whether they think she has good reasons for the divorce. The judges decided to opt for this strategy because they wanted to put a stop to what they perceived to be the large number of women filing a *khul'* divorce in the Zananiri Court. Although the judges were of the opinion that arbitration sessions were just a formality, they nevertheless managed to turn arbitration into a financial obstacle for women from poor economic backgrounds, such as ‘Aaf. What adds to this is one observation in the Zananiri Court in which the lawyer Amal and I witnessed how one of her clients, who had requested a divorce by way of *khul’*, was asked by the judge to bring forward her arbitrator. Her brother, in a *gallabiya* which clearly showed his lower class background, stepped forward and presented himself to the judge as her arbitrator. Without explaining, the judge told the woman that her brother could not act as her arbitrator. Instead he told her that the court would appoint both her and her husband’s arbitrator. Although Amal’s

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149 The preliminary findings of statistics collected by the Association for the Development and Enhancement of Women (ADEW) show that 1695 *khul’* cases were filed in Cairo’s Northern division between 1 April 2002 and 31 March 2003. In Cairo’s Southern division 856 *khul’* appeals were made during the same period. The total number of *khul’* appeals made during this period is therefore 2551. However, since I do not yet have the number of regular divorce cases filed in the Zananiri Court, I am unable to accurately estimate the relative weight of *khul’* cases in Cairo. However, other (older) statistics show that in the governorate of Cairo 2695 *khul’* appeals (1751 in the Northern and 944 in the Southern division) were made in the period between 31 March 2000 and 31 March 2001. The same period witnessed 2509 regular divorce cases. In the period between 1 April 2001 and 31 March 2002, 2740 *khul’* cases and 2367 regular divorce cases were filed in the governorate of Cairo. For the latter statistics, see Azza Soliman and Azza Salah (2003, 18-9). The numbers show that *khul’* cases take up around 50 percent of all the divorce cases which women file in the courts in the governorate of Cairo. While showing that the relative weight of *khul’* cases is quite high, it cannot be concluded from these figures that the total number of divorce cases has increased (or decreased). In this light it is also interesting to compare the Egyptian case with the Pakistani one. In Pakistan *khul’* divorces were introduced in the 1960s. Almost forty years later, *khul’* is the most common form of divorce used by Muslim women in Pakistan and still the number of *khul’* cases is rising rapidly. However, *khul’* is not a woman’s only option. The 1939 Dissolution of Muslim Marriages Act (DMMA) provides nine grounds for a judicial divorce which will entitle women to keep their right to the deferred dower and alimony during the ‘idda period. However, court procedures are slow and in many cases a divorce case can take many years after which a woman is not even sure she will obtain a divorce. For this reason most women are advised to resort to *khul’* (She, December 2004, 265). This practice has become so common that when a lawyer was asked about the judicial divorce, she did not even know what the judicial divorce entailed.

150 Amal works as a lawyer in an office which offers women free legal assistance. This office is part of the Egyptian NGO The Egyptian Center for Women’s Rights (ECWR). I often accompanied Amal on her visits to the courts in the mornings. In the afternoons she would go back to the office to prepare the court cases for the next day and to register women who dropped by in the office and who wanted to apply for a divorce. I frequently accompanied her to the office in order to interview these women.
facial expression did not reveal any emotions, back in the office she was furious when she told her colleagues what had happened.

All in all, one cannot escape the impression that although judges do not take arbitration seriously as part of their duty, they nevertheless use it to make it difficult for women to obtain a divorce through khul’. Notwithstanding this reality, the government decided to raise a new Family Court system in October 2004 of which its main task was to become a place of arbitration for couples living in disharmony. In addition it was also claimed that arbitration would be free of charge.151 Was the court to become a women-friendly place after all?

5.3 The new family court: international donors and the Egyptian state

“One notices that at intervals of five years, whenever the convening of a United Nations World Conference on Women is seen on the horizon, a wave of family reform proposals is awakened inside Egypt” (Shaham 1999, 481).

Nearly five years after the introduction of the khul’ divorce in January 2000 and the United Nations World Conference on Women in April 2000 as well as Egypt’s evaluation in the 2001 CEDAW report, a new Family Court started running in October 2004, a few months prior to the 2005 World Summit. At the summit a large number of world leaders reaffirmed the need to keep gender equality at the top of the development agenda (www.unfpa.org/icpd, 23 November 2006).152 Rather than being a place for issuing judgments and orders, the new Family Court of October 2004 was meant to look into the social realities of families in distress and attempt, through arbitration, to solve their problems in an amicable way. For this purpose, each court was to appoint two experts, one a social worker, and the other a psychologist, including at least a female expert, who would try to solve all marital disputes amicably before a case was brought in front of a judge. If the experts were to fail in reaching a settlement within a period of fifteen days, the case would be brought in front of a competent family court within at most seven days (article 8 of

151 Al-Sharmani, who works as a researcher at the Social Research Center of the American University in Cairo, and who did research into the new Family Courts in Egypt, told me that women still pay for the arbitration sessions, even after the establishment of the new Family Court. Often this amount consists of two times fifty pounds: fifty pounds for the woman’s arbitrator and 50 pounds for her husband’s arbitrator (Cairo, 10 April 2007).

152 In June 2000, at the United Nations General Assembly Special Session on Beijing +5, the governments agreed to bring together in 2005 all parties involved in the Beijing Platform for Action. Later, however, it became clear that the UN was not yet committed to having a fifth high level World Conference on Women (WCW) in 2005 as the possibility of convening regional meetings instead was also taken into consideration (www.wicej.addr.com, 23 November 2006). Since I have not been able to find information on this 2005 Conference, I assume that the Conference was not held.
law 10/2004). During the trial, a family court judge would again offer the relevant woman another attempt at arbitration (the one which they also used to offer her before the introduction of the new family court). As a result of the introduction of the new family court, women now have to go through two periods of arbitration instead of one. All in all, the period of arbitration is extended by fifteen days. Apparently the government set out to tackle the problem of marital conflicts by offering more professional arbitration. The question arises as to why it felt compelled to do so.

First of all, economic interests seem to have played an important role. The fact that ordinary Egyptian citizens overwhelm the court with divorce and other personal status cases has obstructed a smooth proceeding of court cases. This frustrates (international) business interests since it takes a long time for their court cases to be issued a ruling. “…From the perspective of business actors, the courts are probably too responsive to non-elites” (Brown 1997, 221). In order to relieve the overburdened Egyptian courts, procedural reforms are believed to form a good solution. Among other things these procedural reforms focus on institutional changes such as the establishment of arbitration boards (Brown 1997, 194).

Apart from (inter) national business groups exerting pressure to speed up litigation, there was a second economic facet to the case which I became aware of after a friend of mine told me that USAID had hired him to translate documents and questionnaires concerning the new Family Court from Arabic into English. According to him USAID was a main contributor to the development of the new family court as it wanted to provide the technical applications the new court was going to need.153 In June 2005, when USAID started looking for contractors who could monitor the development of the new family court, a “statement of work” paper was circulated in which USAID mentioned that: “The USAID program will work with the Ministry of Justice in supporting implementation of selected aspects of the new Family Court Law (FCL). The program will assist in strengthening the capacity of the family justice system to mediate family disputes, in increasing access to information on family legal services, and in establishing a management information system on mediation services and results.” Eight years earlier, in 1997, Brown already noted that USAID had shown interest in supporting the court system with technological assistance, “…including a computerized case-tracking system” (1997, 194). The USAID paper further stated that: “USAID is the principal donor engaged in supporting implementation of the FCL at this time.” In this light it is interesting that: “After the Camp David agreement, the USAID mission at Cairo became the biggest office of US governmental aid in the world” (Otto 1995, 109). One cannot help wondering to what extent this extensive financial donor involvement in domestic affairs encouraged the Egyptian government to set up a

family court system although it must have known that judges do not take serious arbitration as part of their job.

An answer might be provided by looking into the case of Rwanda. In the case of Rwanda, Oomen concludes that donors see judicial aid as a neutral form of aid which explains why they decided to focus so strongly on ‘doing justice’, as opposed to other forms of assistance (2005). At the same time she points out that the implementation of this philosophy is not always without danger since governments of developing countries often have a double agenda. They adopt the language of gender, good governance and popular participation in order not to alienate themselves from the international community on which they depend for financial help (in the case of Rwanda donor help accounts for nearly half of Rwanda’s GDP) while at the same time they pursue their own political agenda. Oomen warns that as justice becomes more and more important to the development project, there is a real danger of losing sight of the original purpose of this industry. This, she claims, is exemplified by the fact that in the case of Rwanda, a large majority of the Rwandan people do not see the trial of genocide suspects as a main priority. Instead these people’s main priority is an improvement of their living conditions (Uvin, cited in Oomen 2005).

In the case of Egypt, it is not unlikely that the introduction of the new family court had the effect of hitting various birds with one stone. First, by introducing arbitration before divorce, the Egyptian government accommodated business participants whose interests served that of the government as well. Second, in light of the upcoming UN conference on Women in 2005 as well as the 2005 World Summit, the Egyptian government could now prove to its international donors that it had introduced pre-court mediation programmes. These programmes would not only unburden the heavy workload of the courts in general and that of the Personal Status Courts in specific but which would simultaneously serve as another step to improve the rights of women. Since it is often claimed that US aid mainly goes to two countries, Egypt and Israel, it is not difficult to understand that the Egyptian government was eager to introduce a new Family Court and cash the donor money.

Third, for the opponents of the khul’ law, on the other hand, it could present the introduction of the family court as a form of compensation for the introduction of the khul’ divorce since the freedom which women were given by the introduction of this no-fault divorce were curtailed by the fulfilment of yet another condition. By requiring a second session of mediation before divorce, the government launched a campaign against the internationally and domestically objected way of handling women’s divorce cases as well as a retreat from “Western” divorce on demand (khul’) of which the latter had been strongly
opposed by society. Mediation before divorce was an effective compromise as it could be presented as being both in line with Egyptian and Western culture.\textsuperscript{154}

At least, this was how it looked like on the surface. In reality, however, this governmental type of mediation differs from Western mediation since mediation in the donor countries (in this case the United States) serves to give both men and women time to reflect on their marital problems and their wish for divorce, while in Egypt, this condition is only imposed on women. Men who take the initiative to divorce apparently do not need time to reconsider their decision, something which was also strongly criticized by Human Rights Watch (2004, 26).\textsuperscript{155} Although one could argue that the ‘idda period serves to give the husband a chance to rectify the situation, we have already seen in the last chapter that in some cases men such as Nura’s husbands uttered the divorce formula at whim, often when feelings were running high, during an argument for example. The previous chapter also showed that women were often accused of filing for khul’ in order to marry a second husband while in reality a significant number of cases showed that often husbands literally ran away from their marital responsibilities, often because they felt attracted to another woman. In such cases husbands sometimes divorced the first wife, in other cases they simply left her and/or refused to divorce her.

Moreover, not only did the governmental type of mediation differ from western forms of mediation, it also differed from Egyptian forms of mediation, at least from formal mediation as is customary in Upper Egypt and in which so-called local councils play an important role. A first difference is that reconciliation through these local councils in Upper Egypt is always carried out by men. The same applies to the disputing parties involved. If a party in a case is a woman, she is represented by one of her male relatives (Korsholm Nielsen 2003, 64-7). Apart from these official local councils, Korsholm Nielsen also mentions how groups of leading men in the community intervene in minor disputes such as those between spouses and neighbours (ibid, 64). Again, we see how only men lead the attempts at reconciliation while in the case of government appointed arbitrators at least one is female.\textsuperscript{156}

\textsuperscript{154} In an article on divorce and mediation in China, Huang also shows how the Chinese government under Mao in the early sixties tried to seek a compromise between the old-style of divorce (in which it was nearly impossible to divorce) and the communist parties’ wish to introduce a form of unilateral divorce. By introducing mediation before divorce it was able to appease “traditional” society while at the same time being able to pursue the parties’ philosophy (2005).

\textsuperscript{155} The recent reform of the Moroccan Family Law (2004) makes it compulsory for both men and women to undergo arbitration in cases where one of the parties expresses the wish to divorce (Buskens 2006, 66).

\textsuperscript{156} In this light it merits note that in Palestine religious mediators in general and religious female mediators in particular started to play an important role in informal dispute settlement after classical conflict resolution mechanisms, which were based on kinship were affected by spatial and social
With regard to both the local councils and the more informal types of reconciliation, Korsholm Nielsen mentions that not only the interests of the couple are at stake. But by intervening, arbitrators want to make sure that a minor dispute does not evolve into larger and more violent cases which could be a threat to the wider community (ibid). This, then, constitutes another difference with the governmental style of mediation where, as we will see later, the couple’s emotional relationship is emphasized as the basic element of marriage. Finally, there is a last difference which should be mentioned. Where arbitrators in Upper Egypt do not receive any formal training in the field of conflict resolution and are not paid for their work, the government appointed arbitrators are graduates in the field of sociology or psychology and are paid for their work.

My reasons for focusing on conflict resolution in Upper Egypt, rather than to other forms of dispute settlement, in the urban context of Cairo for example, is related to the fact that people, involved in the establishment of the new Family Court, told me that the way in which Upper Egyptians settle disputes, had served as an example for the new Family Court. This should not surprise us, since conflict resolution is, in the words of Korsholm-Nielsen, “…a central characteristic of Upper Egyptian society and Upper Egyptian identity” (2003, 63).

Hence, the new form of state-provided-arbitration deviates from both “Western” and “Egyptian” forms of arbitration since it is the result of a complex interaction between international and domestic forces in which the Egyptian government, just like in the khul’ case, tried to walk the thin line between staying in favour with the donors while at the same time trying not to confront its domestic opponents too much.

5.4 The new family court: judges
Although the law makes it compulsory for judges in Egypt to offer marital arbitration, we have seen that the majority of the judges interviewed do not see arbitration as an important part of their duty. With this in mind, it would be interesting to see to what extent the implementation of the new family court, which offers family dispute settlement as a main priority, changed judges’ point of view regarding arbitration.

The Egyptian state took its task seriously in attempting to help to solve its citizens’ marital disputes in an amicable way. In the summer of 2004 all judges in the country were called to follow a course given by the Centre for Judicial Studies in Cairo in preparation for their roles as judges in the new family courts. The

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fragmentation of the Palestinian territories. These female mediators who have a religious and educated background present themselves as sub-mediators to male religious leaders (Shehada 2006, 34-5).

\(^{157}\) For more information on dispute settlement in Cairo and the town of Port Said, Lower Egypt, see Drieskens (2006) and Hegel-Cantarella (forthcoming), respectively.
whole enterprise created an enormous logistic challenge as accommodation and transport had to be found for hundreds of judges from all over the country. Sociologists and scholars from other disciplines from Cairo and Ain Shams University trained judges in the field of arbitration, family life, and the sociology of marital problems.

After my return to Cairo in May 2005, I managed to meet some judges and ask their opinion on the new Family Court. One of them, Yusuf, judge in the Zananiri Court, told me that the social experts were doing a fine job and that due to their attempts at arbitration around twenty percent of the cases did not appear in front of a judge. One of the other judges (personal status cases are always chaired by three judges) did not fully agree as he was of the opinion that the new Family Court does not relieve judges from their heavy workload, although it does save women a lot of time since they no longer need to travel from court to court in order to obtain a ruling in different cases. Another judge in the court of Masr al-Gadida, Cairo, was of the same opinion. To him the Family Court had not made a difference. The number of cases which he had to handle was still the same. According to him this was due to the fact that the new social experts only managed to reconcile one or two percent of the cases. “Look, today I still had sixty cases and five tahqiq (investigation) cases. Nothing has changed,” he said as he was pointing at a huge pile of files which the katib was trying to store in a big bag at the end of the court session. Apart from judges, some lawyers also complained about the heavy workload and how it had even increased after the introduction of the Family Court.

These fieldwork data seem to indicate that although some judges are pleased by the workings of the new Family Court, others whom I have spoken to do not consider the new court to be a significant improvement. These judges still tend to regard the arbitration sessions as a formality, something which they simply have to do. Although the judges’ course, which they had followed less than a year before was supposed to make them more aware of the socio-economic reasons which are behind women’s wishes for divorce, I found it strange that Judge Yusuf always answered the questions which I had in this regard in formal legal terms. For any further sociological questions, he always urged me to talk to the sociological experts. He said that judges in court do not ask for women’s reasons. Later, after I attended a few of his court sessions, he would always say the same.

158 Visiting the Zananiri Court, 23 May 2005.
159 Visiting the Zananiri Court, 30 May 2005.
160 Visiting the court in Masr al-Gadida, 26 May 2005.
161 As I mentioned in the introduction, personal status sessions are not open to the public (Agrama forthcoming). This judge was the only judge who allowed me to attend his court sessions. Since I met him during a short fieldwork period in May and June 2005, I was only able to witness four court sessions.
whenever I asked him about women litigants’ backgrounds: “I do not know, as you have seen [during the court sessions], we do not ask for her reasons. It is enough that she claims that she hates living with him. Why she hates living with him is something private.” We do not want her to confess in front of a judge that her eye is on another man,” he once said.” In short, on the basis of these and other interviews I was not under the impression that judges’ behaviour towards, and their understanding of, women’s litigants’ cases before and after the introduction of the family court had really changed. In fact, Judge Yusuf’s swift remark to the effect that he did not want women to confess in court that their eye is on another man, indicates that he had formed an idea as to why women apply for a *khul’* divorce but that he considered himself to be bound by the law, a law which does not give him much room to investigate a woman’s reasons for divorce.

In chapter 4, I already referred to this formalistic attitude of judges when I remarked that whatever judges’ personal opinion on *khul’*, they still adhere to the law afraid of having their case overruled in a court of appeal. Only in those cases where the law gives them leeway for own interpretation, will they try to make it difficult for women to obtain a divorce by way of *khul’*. In this light, the remark of Monika’s translator, Mahmud, is interesting. When we first met Judge Yusuf in the Zananiri court in May 2005, Monika asked the judge several questions concerning her research on polygamy which Mahmud translated for Monika. After we left the judge, Mahmud said to me: “I have the feeling that in Monika’s case the judge was dictating from a textbook.” I replied by saying that I had felt the same when the same judge had answered my questions earlier that morning.

On another occasion a judge at the court in Masr al-Gadida, Cairo, also told me that he thought it problematic that most women who come to court want a divorce for the wrong reasons. According to him many simply want to marry another man, a man with more money for example. In such cases there is not much a judge can do since he is not allowed to open an investigation. “In the end,” so he said, “a judge has no other choice but to give a woman a *khul’* divorce.” “Of course, he can try to reconcile them, once, twice, maybe a third time but in case the woman simply refuses the arbitration, there is nothing left he can do.” “This” he said, “is not good.”

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162 This is in stark opposition to *muḥāman khul’* in which the lawyer Badr does everything he can to convince the judge of Rasha’s good reasons for divorce.
163 Visiting the Zananiri Court, 16 May 2005.
164 Al-Sharnami notes that judges are supportive of the arbitration office, in theory at least. In practice, however, six out of the eight judges interviewed did not find the arbitration reports helpful and they did not depend on it for background information about the conflict and the litigants in any substantive way (2008, 28).
165 Zananiri Court, Cairo. 14 May 2005.
166 Visiting the court in Masr al-Gadida, 26 May 2005.
Apart from the fact that these and other experiences taught me that judges do not easily deviate from the law, I found it interesting that their formalistic attitude to the law was expressed by the language which the judges used. In their communication with me, judges often used Standard Arabic instead of Egyptian Arabic. Apart from judges, other legal practitioners also frequently resorted to Standard Arabic when I interviewed them. In this respect it is interesting to consider the following case. In 2003, when I was visiting a friend’s father who was a lawyer, the friend got a little bit agitated by his father answering all my questions in Standard Arabic, a language which I found difficult to understand. He urged his father to reply in colloquial Egyptian Arabic since he thought that would be much easier for me to understand. This proved to be extremely difficult for the father and he could not help but switch to Standard Arabic every now and then. When my friend drove me home after the interview he explained that this is how it works in Egypt. People simply memorize things and when you ask them a question about their field of specialization, they will give you a standard answer which comes straight from the textbooks.

Due to the fact that I was only able to attend four personal status sessions in the Zananiri court in Cairo, I do not have a clear idea as to whether judges also use Standard Arabic in their communication with litigants. At least Judge Yusuf did approach litigants in a formal and strict way, among others by communicating with them in Standard Arabic. As a result, two things are accomplished. First, women are not given much room to express their reasons for divorce and second, judges are hardly interested in exploring women litigants’ socio-economic backgrounds and how this background might influence their decision to file for a divorce through khul'.

There are probably two things which explain the construction of a formal and strict relationship between this judge and his litigants. First is the fact that Judge Yusuf could hardly have viewed himself as a member of the community his litigants were coming from. Not only was he living outside Cairo (in a town in Lower Egypt), but with Cairo counting approximately 15 million inhabitants who are divided over a few legal districts only, it is very unlikely that judges have any connection to the communities that their litigants are coming from. Second, as indicated earlier, judges seem to be orientated to procedural correctness which is

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167 This also transpires in Hill’s study on the Egyptian legal system of the 1970s, where judges pose very short questions and expect litigants to provide very short answers (1979, chapter 3). Hill, however, does not mention whether judges approach litigants in formal Standard Arabic or the more informal Egyptian Arabic.

168 According to Al-Sharmani, this seems to be different with regard to judges who work in rural communities (2008, 36). The same applies to Palestine and Malaysia where lower court judges often are familiar with community norms and customs and view themselves as members of the community (Shehada 2005, 148; Peletz 2002, 70-6).
exemplified by the fact that Judge Yusuf apparently deemed it important to reiterate a few times to me that he, as a judge, does not ask a woman who is applying for khul’ to explain her reasons for divorce (see also 4.5). And indeed, whenever I attended his court sessions, I never heard him ask women to explain her desire for divorce (although he too was clearly under the impression that women wanted to divorce in order to marry another man). To the contrary, in court I always witnessed how he often interrupted both litigants and their lawyers when he was of the opinion that they were not providing a straight and short answer to his question (see also footnote 157) while much time was sacrificed to make sure that the right documents were submitted by his litigants and their lawyers. In a study on Family Courts in Egypt, Al-Sharmani even claims that “...judges devote much less time to hearing from lawyers and litigants and interacting with them than they do to the process of ensuring that all procedures have been fulfilled by closely reviewing the submitted documents” (2008, 48). This way of handling court cases does not give women litigants much leeway to explain their reasons for divorce.

Instead of being a place for issuing judgements, the new Family Court was meant to look into the social realities of couples with marital problems and try to solve them in an amicable way. This required judges to change their formalistic attitude and to maintain an open and unprejudiced attitude toward women litigants. The national judges’ course which judges had to follow was meant to make them more aware of the social and economic factors underlying women’s reasons for divorce. Yet, judging from the fact that Judge Yusuf repeatedly made it clear that: he could not answer our questions about women’s socio-economic backgrounds; let alone to what extent it influenced their reasons for divorce; that he did not want women litigants to confess in court that their wish for divorce was motivated by the desire to marry another man; that he used the formalistic language of Standard Arabic to communicate with women litigants and their lawyers; that he always cut short women and lawyers who tried to provide a background to their cases- I tentatively conclude that the new Family Court has not changed judges’ perception and treatment of women.

In a study on gender and Islamic law in Ottoman Syria and Palestine, Tucker shows that flexibility (in opposition to the fixity of a codified legal system) and judges’ legal discretion work to women’s advantage (1998). Al-Sharmani also claims that one of the main problems behind the new Family Court is its heavy procedure-oriented approach towards the implementation of the law (2008, 57). According to her, it is of paramount importance to have specialized and experienced judges who have a comprehensive and critical understanding of the laws that they are implementing and who adopt a less literal interpretation of the law (ibid). Nevertheless, with regard to khul’ we should also take into account that
the main idea behind the “khul’ law” is that that women can divorce unilaterally without having to state their reasons for divorce and without being dependent on the judgement of a judge. The new Family Court, however, seems to turn the rationale behind khul’ upside down by submitting women to a form of arbitration in which they have to state, explain and justify their reasons for divorce. In theory at least, as we have seen that the judges I have spoken to still approach khul’ cases in a formalistic way. It would, of course, be interesting to see whether or not the first group of female judges, who were appointed in 2007, use the same approach as their male counterparts. In what follows, however, I analyze whether male judges’ formalistic attitude applies to professional arbitrators as well.

5.5 The new family court: professional arbitrators

Apart from judges, arbitrators too play an important role in implementing the regulations of the new family court. Appointed through the Ministry of Social Affairs from 2004 onwards, social experts are especially considered by the government to fulfil an important role in arbitration. To illustrate the process of marital mediation in the new Family Court and the attributes of arbitrators, I consider the following mediation cases in the Zananiri court in Cairo, which are based on 4 meetings I had with two arbitrators in the Zananiri court in Cairo.

Shortly after Judge Yusuf had recommended Monika and me to take counsel with the social experts of the Zananiri court on women’s socio-economic backgrounds and their reasons for divorce, we went back to the Zananiri court in order to try to arrange for a meeting with them. It was easy to find their office, as it was located next to the courtroom which Judge Yusuf was always chairing on Mondays. The two experts, one social and one psychological, were very friendly. The social expert was Hisham, a friendly and good laughing man in his fifties who, at the time, was working on a MA in sociology. The psychological expert Fatin, a woman in her late forties who held a degree in psychology, was friendly too albeit more timid. She told us that ustaz Hisham was doing a fine job as he was able to settle marital disputes in approximately sixty-five out of a hundred cases. I remember being surprised when she elaborated on that by saying that of these sixty-five cases most of them end up in a consensual divorce (through ibra’) while in a small number of cases couples were reconciled through sulh.169 “It is the same deal, in both cases [khul’ and ibra’] the wife will lose her rights but a divorce through ibra’ will save her time and money,” Fatin finished after which Hisham immediately continued by saying that women who are around the age of twenty-five are responsible for most marital problems as they are not mature enough to shoulder marital responsibilities. “They behave as children and, at the first sign of

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169 I will return in more detail to the issue of consensual divorce through ibra’ in 6.5.
trouble, they go back to their parents and ask them to solve their problems. Often these women have a negative image of their fathers, something which they project on to their husbands. Around the age of thirty it is men who account for most marital problems," Hisham said. After this short psychological introduction into the reality of marital disputes in Egypt, Hisham invited us to come back next Monday in order to witness a few arbitration attempts.

“"The breakfast story”’

On Monday, Monika, translator Muhammad and I went to the Zananiri court in order to meet Hisham and Fatin again. Between 9 and 9.50 we witnessed how Hisham tried to convince a young man, a doctor at Ain Shams University who married nine months ago, to treat his wife with more respect. The man was accompanied by his older sister and a quiet old man whose identity remained unclear to me. Three months after the wedding his wife had run away and gone back to stay with her mother. He told Hisham that she was too demanding. “For example, she wants me to spend more time with her, but on Thursday and Friday evening I am always at home!” he exclaimed. Later, the young man’s lawyer entered the office. He explained to Hisham that he was both his lawyer and a family member. “I do not only speak as his lawyer but also as a family member who speaks in the name of love,” he said. He continued by saying that his nephew had told him that he wanted to have his wife back but not by force. He wanted her to return by her own free will and for that reason he had advised him to file a ta‘a ordinance in order to pressure her to return home. The lawyer continued and said that she had quite a lot of demands most of which came from her father who demanded his son-in-law to do all kinds of things for his daughter, while the son-in-law was busy with his work as a doctor. The young man added that since he works a lot he thought that it was more than reasonable to expect her to run the household. “But even asking her to make a cup of tea in the evening is too much,” he complained.

After having listened to the husband and the lawyer, Hisham surprised everyone by telling them that he did not really see the problem: “It is only a problem of food and drinking. So, if she feels tired in the morning and does not want to make your breakfast, tough luck!” he said. Except for the older man who kept quiet, nobody in the room agreed with Hisham. Fatin told Hisham that the wife’s behavior was not acceptable. The older sister of the husband took Fatin’s side and told Hisham that it was unreasonable that her brother paid for everything and that his wife was not even prepared to run the household in return. “Above all, she even pushes him to take a housekeeper,” she said in surprise. “You just

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170 Visiting the arbitration office of the social experts. May, 22. 2005, Cairo.
have to talk with each other,” Hisham said. “No marriage comes without problems, isn’t that true Nadia?” I confirmed shyly.

Then Hisham, whose English was not very good, suddenly changed from Egyptian Arabic into rather fluent English and said something to the effect that: “And this is why we are having this open discussion now. We need an open discussion which allows every individual involved to express their opinion and to get things off their chest.” After this intermezzo in English, he returned to speak Egyptian Arabic and introduced Monika and me to the others, also because the old man wanted to know who we were. The old man was really very genuine and when he helped Hisham with preparing us tea with mint, he expressed his positive feelings about Hisham. “He really knows how to solve problems,” he told me. In the mean time the older sister of the husband and Fatin had formed a separate discussion group. Later Fatin told me that the sister of the husband did not approve of her sister-in-law at all. She explained to Fatin that her brother had first filed a \textit{ta’a} ordinance after which his wife had replied by filing a \textit{nafaqa} and \textit{khul’} lawsuit. This was her way of opposing the \textit{ta’a} ordinance. Hisham told us that he asked the wife to come to talk to him next time. The time after that, Hisham wanted both husband and wife to come to his office in order to talk to each other again.

Hereafter Hisham and Fatin had to leave in order to attend a court session in the adjoining courtroom. Hisham asked us to join him but the \textit{hagib} did not allow us in and so we waited in the arbitration office for them to return. After an hour, only Fatin returned to the office. She told me that the wife of the doctor was \textit{mitdala’a} (spoiled) and according to her the wife was not willing to take her responsibilities. She asked me about the allocation of jobs in Holland. “In Egypt,” she said, “the husband is just a \textit{musa’ada} (help). Officially, he is not obliged to help his wife with household chores, although my husband sometimes helps me which I appreciate a lot.” I told her that in the Netherlands the general idea is that when both spouses work outside the home, both should be working inside the home too. “However, in practice, this often works out differently which accounts for a lot of marital problems,” I told her. I continued by saying that in the Netherlands many women work part time. Fatin liked the idea, also because she realized that she had a rather busy life as she was working from early in the morning till late in the evening. Household chores before going to work; working; cooking; helping the children with homework; doing the laundry and ironing were daily recurring pursuits. Fatin told me that after she graduated in 1984 she spent eight years at home. Then she started working for the Ministry of Social Affairs. She had been working for the Ministry of Social Affairs for fourteen years when she was asked to work in this arbitration office.
Suddenly Hisham dashed into the office and said to me: “You see, that man is a doctor at the Ain Shams Hospital. Both he and his wife are highly educated, but their social skills are really basiet (limited). Didn’t I tell you, young people don’t know how to communicate with each other. But now I have to go, I have an arbitration case at al-Azhar,” Hisham said as he rushed off. When we left the arbitration office at 12.15, I realized that neither Hisham nor Fatin had made any notes of the case they had had that morning.

“The prostitution story”

After I had heard during the first visit to the arbitration office that the wife of the Ain Shams doctor had reacted to her husband’s \( \text{ta}'a \) claim by submitting a \( \text{khul}' \) claim, and after having read a number of legal textbooks on \( \text{khul}' \) where this relation was also discussed, I started to wonder about the relation between \( \text{khul}' \) and \( \text{ta}'a \). I decided to ask Hisham about it and during our next visit Muhammad, with whom I had read the legal textbooks, I told Hisham that we were under the impression that men sometimes use \( \text{ta}'a \) to claim back a women but that in other cases men submit a \( \text{ta}'a \) claim in order to push their wives into a \( \text{khul}' \) divorce. Hisham replied by saying that if a woman is smart, she will tell the judge that she is willing to go back to the house of her husband. This will automatically end the \( \text{ta}'a \) case. He continued by saying that many women change their lawsuit from a judicial divorce into \( \text{khul}' \). According to him \( \text{khul}' \) was really becoming the standard divorce procedure for women now. It had become very normal for women to marry and divorce successively. Muhammad told him that he did not believe this and that Hisham’s words were not confirmed by the women he knew. Thereafter Hisham corrected himself and said that it did happen but not a lot. I reacted by telling Hisham that I was under the impression that women do not easily make the decision to divorce since being a \( \text{mutallaqa} \) (a divorcee) is a stigmatizing experience in Egypt. I tried to illustrate this by giving him the example of a woman who was desperately looking for a husband to marry in order to get away from the stigma of being a \( \text{mutallaqa} \). Hisham responded by saying that this woman was not telling the truth. According to him she might have said that she did not like being a \( \text{mutallaqa} \) but in reality she just wanted to get married again so that she could have sex again. This outraged not only Muhammad but Fatin too who said that this was not true. “Even her own sisters will be afraid that she will take away their husbands. As a \( \text{mutallaqa} \) she is not \( \text{mustaqirra} \) (stabile). Her

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171 I was a bit surprised about Hisham going to al-Azhar and asked Fatin about it. She explained that judges sometimes refer the arbitration to a religious man, most often one who is affiliated to al-Azhar. When I asked her if this was happening a lot she said that a judge regularly decided that a man of religion should do the arbitration. Yüksel also claims that couples often had to attend reconciliation sessions at al-Azhar (2007, 200).
reputation is not good and for that reason she will be treated as a child,” Fatin told him seriously (see also Bibars 2001; Hill 1979, 87).

Hisham reacted by saying that many women in prison are prostitutes who love to destroy other people’s life. These women’s lack of what he called fulfilled emotions often leads to an unhealthy sex life something which they want to take out on married men. Men’s prisons on the other hand are full of men whose crime is related to money. That has nothing to do with feelings” Hisham responded. Muhammad sarcastically remarked that men will never be imprisoned for enjoying the service of a prostitute since the law protects them and even states that when the police catch them in the very act, they will be called to court to testify against the prostitute (see also Bibars 2001, 19). “Moreover, aren’t there prostitutes because there is a certain demand?” he asked Hisham. Hisham responded by saying that it is not fair to deny a hungry husband his food. “Is it fair to tell him, don’t eat?” he asked rhetorically after which Muhammad concluded that these men cannot control themselves and therefore must be weak. “No” said Hisham, “the man is the patient and the woman is the virus that must be exterminated.” He gave in a little by adding that men who want more women were abnormal too. He believed that their problems were related to childhood experiences as they had experienced bad mothers on whom they sought revenge by marrying several wives.

Out of the blue Hisham started talking about men and women in Europe and how they both save 100 euros a month on a communal saving account. “This will never happen in Egypt where the husband pays for everything,” he said. Although I had to digest his sudden attempt to create a diversion, Fatin was quick to criticize Hisham: “This is not true. The Egyptian family has changed a lot. There is a lot of musharaka (cooperation) nowadays and women do contribute a lot financially.” Hisham denied this and Fatin reacted by saying that this was reality now. Hisham still denied it and said that even if it were true, it would be a bad development: “On a boat you simply need one captain who consults all the others and then makes a decision.” Fatin sarcastically asked him: “What do you mean? I thought you were just married to one wife, or are you telling me now that you have three or four wives?” We all had to laugh aloud after which the hagib entered the office angrily commanding us to be quiet since the judge in the adjoining room was still busy handling cases from the district of Ma’adi - a large district in Cairo - notorious for its large number of court cases. Hisham asked me what I would do in case an argument arose between my husband and me. I told him that we would

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172 In the early twentieth century, prostitutes numbered about a third of all prisoners in central prisons in Egypt (Gorman 2005, 7). In the last quarter of the last century, most women prisoners were drug traffickers while the second largest category of women prisoners consisted of prostitutes (Mohsen 1990, 26).
first talk and then would make a joint decision. Fatin said: “This is how it works in Egypt too, ustaz Hisham.”

Hisham then asked me another question which was whether I thought that khul’ was good for women? I responded by telling him a story which I had heard from a friend who told about a technician who had been called to repair a phone in her office at the university. After they had chatted a bit, he openly told her that he had filed a ta’a case. When she asked him why he had done that, after all they had been recently married. He said that he wanted to divorce his wife but that he was reluctant to pay a lot of money for the divorce. Now he was hoping that she would ask for a khul’ divorce. I told Hisham that there were also women who use khul’ to put their husbands under pressure.” This apparently was more to Hisham’s liking as he immediately confirmed this and said that women often use khul’ for bad reasons: “If you don’t do this, I will divorce you through khul’.” This way he was trying to imitate what he considered to be a khul’ woman and to illustrate his point he started telling me about a polygamy case he had in his office: “Although the woman in question had known for more than a year that her husband had married a second wife, she felt very jealous and decided to divorce him through khul’. Notwithstanding three months of attempted arbitration as well as her husband’s willingness to give her both money and a separate apartment, she still refused to be reconciled with him. She just wanted to get rid of him and kept insisting on a divorce through khul’ which she actually succeeded in obtaining. However, soon after, she regretted what she had done. She was having a lot of financial problems and even had to file a nafaga case in order to get money for her children. And do you know what caused her behaviour? Her jealousy,” Hisham concluded.

“Of course,” I said, “such cases happen but what about cases in which the husband pushes the wife into a cheap khul’ divorce?” “Well, if she is smart, she will invalidate the ta’a ordinance by telling the judge that she is willing to go back to him,” he responded. “So, both scenarios occur?” I asked him. “Yes, it happens that husbands try to push their wife into a khul’ divorce but there would not be much what the judge could do,” he said. Fatin added: “How is the judge going to prove that the husband is actually the one who wants to obtain a khul’?” She continued: “The husband knows that the wife will oppose the ta’a ordinance by filing for a khul’ divorce. It is her way to save herself a lot of problems as well as her way to take revenge.173 If you treat me badly, I will do the same,” she said where after Muhammad and I asked her simultaneously: “So that he becomes a makhlu’?” “Exactly” she said seriously. While Muhammad and I wanted to elaborate on this interesting point, Hisham clearly wanted to pick up from where

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173 In such cases there is actually no use in staying together. If the woman loses the case the husband will stop providing. If she wins the case, he will make her life miserable until she cannot bear it any longer and asks for a divorce.
he had ended and out of the blue he made the following remark: “Women especially suffer from jealousy.” Muhammad started to get irritated and wanted to cut him short: “Come on, men too. You know that.” Hisham still denied that and said that it was easy to obtain a khul’ divorce since women did not need to prove that they had good reasons for the divorce, which was not good.

5.6 Speaking in two languages?
What struck me most during our visits to the arbitration office of Hisham and Fatin was Hisham’s transformation from a friendly, understanding, women-friendly person into a person who linked khul’ to women’s jealousy, sexuality and prostitution. It was as if the sociological expert Hisham was programmed to speak in the (academic) sociological language of “communication” and “mutual understanding” when explaining his work and when helping clients with marital problems. I had already noticed this when we first met him. During that occasion he had immediately provided us with a sociological and psychological explanation for divorce in Egypt. According to him the problem underlying many occurrences of divorce in Egypt was related to communication. Young couples simply lacked the ability to communicate and they did not (try to) understand the other half. The case of the “breakfast story” also seemed to reveal Hisham’s academic background in sociology surprising everyone in the room with his liberal ideas about the ideal relationship between husband and wife in Egypt.

However, after Muhammad and I asked Hisham to reflect on the relationship between ta’a and khul’, he started to express a point of view on women which was diametrically opposed to what he had said earlier and to how he had treated his clients. This not only surprised us but also his colleague Fatin who started to teach Hisham a lesson in contemporary Egyptian society in which women also work outside the home and in which husband and wife are jointly responsible for the family.

Just like the judges whom I interviewed, it was as if Hisham was using two different discourses in two different settings. In that sense, both the judges and Hisham seemed to literally repeat what they had memorized during their studies and, in the case of judges, what was written down in the law books. This behaviour might be a result of the Egyptian curriculum which is characterized by inculcation, memorization, and recitation (Naguib 2006, 68. See also Saad 2006). This transpired in the case of judges (and lawyers) who really found it difficult to answer my questions in a language other than Standard Arabic, the language in which their textbooks and the laws they have to work with are written. Although this was not so clear in Hisham’s case, he did surprise me every time when he

\[174\] In this light it is interesting to note that in a study on an Algerian town in the 1980s, Jansen claims that women without a father or a husband are also equated with prostitutes (1987, 196-7)
suddenly was able to express a few sentences or technical terms in almost fluent English, while he found it difficult to carry on an informal English conversation.

In this light I found a study on code switching and style shifting as discourse strategies interesting in which Blom and Gumperz mention how in a small Norwegian town teachers use one variety of Norwegian, Bokmål, for formal lectures where interruptions are not encouraged while another variety of Norwegian, RanaMål, is used when they want to encourage open and free discussions among students (1972, 424). These findings also apply to the Egyptian case in as much as I noticed how judges often switched from the formal Standard Arabic to the informal Egyptian Arabic only after we had met several times. This switch, however, did not only entail a switch in language, at the same time judges also changed the way they spoke about women who wanted to divorce through *khul*’. From explaining women’s behaviour by using legal terms they became more open and often bluntly stated that women’s wish for divorce was motivated by their desire to marry another man. ‘If language is the space of confrontation of differently oriented accents, then by rearticulating and “re-languaging,” subjects reconfigure both the social context in which speech occurs and themselves (Noble 2004, 149).’ What applies to the judges, also applies to the case of Hisham. Where Hisham resorted to the liberal and individualized language of sociology in the beginning and often switched from Egyptian Arabic into English, after a few meetings he also started to express feelings about women that were not only opposed to what he had said before, but that also lacked the use of English idiom.

It was as if the judges’ and Hisham’s social backgrounds where reverberating when they used Egyptian Arabic while their formal education transpired when they used Standard Arabic and/or English. Apparently there is a relationship between a linguistic code and a set of social values which Blom and Gumperz explain as follows for the Norwegian case: “The dialect is required in most homes and in the sphere of domestic and friendship relations. As a result, it has acquired the flavour of these locally based relations. However, dialect speakers learn the standard in school and in church, at a time when they are also introduced to national Norwegian values. It has therefore become associated with such pan-Norwegian activity systems” (1972, 417). Hence, “…the dialect and the standard remain separate because of the cultural identities they communicate and the social values implied therein” (ibid).

This seemingly applies to Egypt as well. When Egyptians learn Standard Arabic and English in school, they are not only introduced to another language, they simultaneously are introduced to national values which might differ from local values. Illustrative in this respect is the study of Abu-Lughod on the politics of television in Egypt. As indicated in chapter 3 and 4, Abu-Lughod claims that through education as well as television serials the Egyptian state tries to propagate
a national version of modernity. This national version of modernity, promoting certain values such as family planning, often does not bear much resemblance to the lives of many of its consumers, in Abu-Lughod’s study rural women and female domestic workers in Cairo (2005).

In order to study this difference in more detail, I searched through the course, which the judges had to follow before the introduction of the new family court and found that most of the sociological theories which they had to study were written in Standard Arabic. However, many technical terms such as: styles of conflict inventory, family environment scale, relationship dimensions, conflict, personal growth dimensions, control theory, were not translated and written down in English. Apparently students of sociology and psychology such as Hisham -who is working on a MA in sociology-, are trained to use English idiom when it comes to technical jargon in their field of study. Apart from borrowing English jargon, the judges’ course simultaneously shows that most sociological and psychological theories were Western theories (for example: Zastrow and Karen; Maslow (psychology); and Durkheim (sociology)). Hence, the Arab curriculum affects the performance of professionals in general and judges, lawyers and arbitrators specifically through the language in which the textbooks are written as well as through academic theories which students have to study and which subsequently forms the basis on which they will operate professionally.

It is also important to take into consideration professionals’ informal opinion concerning a certain subject. In Hisham’s case his informal opinion transpired when we asked him to reflect on the relationship between khul’ and ta’a. He largely ignored the situation in which men submit a ta’a claim in an attempt to push their wives into a khul’ divorce by saying that in these types of cases the solution was simple. Women had to tell the judge that they were willing to go back to their husband, period. Although wives in Egypt do have various strategies to avoid or delay the enforcement of obedience orders (Fluehr-Lobban and Bardsley-Sirois 1990, 47), Hisham did not elaborate on the fact that many other women are not aware of this, nor did he mention the likely impossibility of continuing a happy marital life when a husband has made it clear that he wants to get rid of his wife. Instead he started to explain how especially jealous women, who are often jealous because their husband married a second wife, use khul’ as a means to pressure their husbands. He even linked women’s jealousy and lack of satisfied emotions to prostitution making a distinction between men and women and their reasons for imprisonment. Where women’s imprisonment was a result of irrational sexual emotions, men’s was the result of a rational desire for money. The fact that a divorce through khul’ does not require a woman to present “good” reasons for

\[175\] I will return to this issue in more detail in chapter 6.

\[176\] For more information on how judges deal with polygamy and irrationality, see 4.7.
divorce, only encouraged Hisham to continue this line of thinking. In fact, Hisham’s criticism of *khul’* did not differ much from the criticism which was aired both in the public debate and by the judges and which centred on women’s unstable and emotional state of mind.

In a study on criminal justice in Egypt in the 1980s, Mohsen shows that most women who broke the law mentioned the fact that their husbands had abandoned them and their children, and since they lacked skills for legitimate work they had indulged in illegal activities. Interestingly, women convicted for drugs trafficking and prostitution constituted the largest and second largest category of women prisoners (1990, 25-6). This not only provides a different perspective on women’s prisoners than the one which Hisham offered us, it simultaneously shows once again that men frequently do not live up to their marital duties.

The question as to how Hisham’s multiple discourses affect his work as an arbitrator will be elaborated upon later. At this moment, I merely want to point out that although the psychological picture of women plays a role in modern legal disputes, the example of Hisham also shows that he was generous and “modern” in his attitude towards his clients and that he often took the side of the woman. In the same way as Judge Yusuf’s way of handling court cases showed his orientation to procedural correctness. Hisham’s professional behaviour also indicated that he remained formal and loyal to the rules of the system. My meetings with the judges as well as Hisham show that, like in the Norwegian case, their practices needed to be understood as the product of a complex interaction between national (Western) education and local understandings of men and women’s proper role and place in society. From the first language (the national and professional academic language) comes, in the case of Hisham, the emphasis on mediation; compromise; talking with both sides; trying to make each see the other’s point of view; to listen to the petitioners as equals, and in the case of judges: the letter of the law and their orientation to procedural correctness. From the second language, which is acquired in the sphere of domestic and friendship relations, comes the language in which the issue of women’s emotional state of mind is dominating. Threatening the stability of the family, women needed to remain under the control of a husband.

At the same time, however, we should be careful in juxtaposing these discourses and the settings in which they occur too much as they are not

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177 In a study on Family Courts in Egypt, Al-Sharmani claims that “The observation of mediation sessions did not reveal any biased or discriminatory practices and behaviors on the part of the mediation specialists towards the disputants” (2008, 30), although Al-Sharmani also notes that some of the mediation specialists upheld negative views on women who wanted to divorce through *khul’* (2008, 41).
hermetically sealed units. As for the two discourses of formal Standard Arabic and informal Egyptian Arabic, according to the classical 1959 diglossia theory of Ferguson, formal Standard Arabic constitutes the highly-valued H (high) variety which is learned in schools and is not used for ordinary conversations, while the informal Egyptian Arabic represents the L (low) variety, which is used in conversations. This definition has been criticized extensively by scholars, among others because the H and L poles are not sealed units but overlap, both functionally and formally (Bassiouney 2006, 3).  

What applies to the two poles of H and L, also applies, in my eyes, to the set of social values to which the H (formal) and L (informal) language relate. These values do not form strictly separated and oppositional categories. This is exemplified by the female arbitrator’s (Fatin) reaction to both Hisham’s formal and informal use of language. If we take into account again “the breakfast story” and “the prostitution story”, we see how Fatin in both cases disagreed with Hisham. In the breakfast story after Hisham had said that if a wife does not feel fit to make breakfast, the husband should not insist on it. Fatin disagreed and publicly told Hisham that the wife of the Ain Shams doctor was a lazy wife and housekeeper. However, when Hisham started to claim that women’s jealousy leads to prostitution and the destruction of the family, she not only again disagreed with him but also took the opportunity to teach Hisham a lesson about contemporary Egyptian society. She made it very clear that women nowadays work outside the home and also contribute to the household income. Furthermore, so she argued, in case a conflict arises, the husband can no longer be seen as the captain on the boat who ultimately takes the final decision, with or without having consulted his wife or wives. Instead, nowadays husband and wife often try to talk things through in order to reach a joint solution which satisfies both of them.

In a rather informal setting, when there were no litigants in the office and when she was alone with us and Hisham, Fatin actually argued in favour of a system in which husband and wife are equal and as such share joint responsibility for the family, while, in a more formal setting, when the litigants were present, she seemed to do the opposite by accusing the doctor’s wife of being a lazy wife and housekeeper. Hence, Hisham and Fatin were using different discourses in the same setting. In this light, I found the following study on religious courts and cultural politics in Malaysia interesting in which Peletz argues that while counterhegemonic discourses on manhood are produced in the Islamic courthouse, they are merely oppositional, not dominant. This, he argues, is because, among

\[\text{178 For an overview of the study of diglossia in general as well as an overview of the criticism to which Ferguson’s classical diglossia theory was subjected, see Bassiouney (2006, 3-14). For an overview of studies which refine Ferguson’s theory by proposing intermediate levels between H and L, see also Bassiouney (2006, 7-8).}\]
others, the household is often the focus of an individual’s most intimate and most sustaining and meaningful social relations. As a result, the prestige of the household vis-à-vis other households plays an important role in keeping one’s identity high. This “inhibits the (further) elaboration of oppositional discourses” (2002, 188). These factors might also explain why Fatin reacted the way she did, and it shows that education (on the basis of retentive memorization) alone cannot explain the position of Fatin and Hisham. Another element shaping their different opinions was gender, and perhaps the particular context of the moment (the presence of two foreign researchers) contributed to this difference as well.

When witnessing Hisham and Fatin arguing with each other it seemed as if their conflict was representative of the conflict that occurs in many Egyptian households between husbands and wives and in which the proper place of men and women in society plays an important role. There are numerous ways to justify such an assumption. The cases of Nura and ‘Afaf were clear cases of husbands neglecting their role as providers. Studies discussing Cairene lower and middle class life also point out that in many instances the main points of conflicts between couples revolve around the maintenance-obedience relation and husbands failing to provide as a result of which women feel forced to go out for work.179 Finally, the court studies of Hill (1979) and Zaalouk (1975) also show that women’s main reason to go to court was to submit *nafaQA* or alimony claims. The developments which Fatin was describing are closely related to macro economic, political and socio-cultural processes such as women’s increased participation in the labour force. These developments threaten the dominant gender ideology which sees men as breadwinners and women as mothers and wives. When the ideal of “proper” gender roles conflicts with daily reality and when this is explicitly articulated and thrown into the public debate as happened during the introduction of the “*khul’* law” this prompts people to react and to actively engage in a debate in which they try to (re) define the “proper” place of men and women in society. After having elaborated on the issue of repaying the prompt dower as well as the governmental attempts at arbitration, it became clear that the issue of proper gender roles plays an important role in the courts as well.

5.7 Conclusion

In chapter three we have seen how the prompt dower changed from being a formality during marriage preparations into an important issue after the introduction of the *khul’* law. The same applies to the issue of the required legal arbitration sessions. Although judges often stated that they did not consider arbitration to be an important part of their duties, they nevertheless managed to

179 For more insight in these issues, see the work of Wikan (1980); Rugh (1985); Singerman (1995) and Hoodfar (1997).
turn it into a financial obstacle by raising the fees which women had to pay for the
court arbitrators, often because their husbands were not willing to appoint an
arbitrator. In the case of Nura and ‘Afaf we have seen how both women had
problems paying for these court-appointed-arbitrators. ‘Afaf’s case was even
cancelled since she was unable to pay the fifty pounds for her husband’s arbitrator.
In the same way as the prompt dower, the issue of arbitration was turned from
being a formality into a big issue in order to make it difficult for women to obtain a
divorce through khul’. Once again, judges’ perception of khul’ women as irrational
beings who have an eye on other men, obstructed a smooth proceeding of
women’s cases and once again women such as Nura and ‘Afaf were blamed of
something which could also be said of their husbands, namely: leaving the first
wife and the children for a second wife without continuing to provide for the first
family and thereby destroying the marital home.

This, however, was all about to change as the Egyptian government
proudly presented the introduction of a new Family Court with arbitration as one
of its main assets in October 2004. From then on arbitration was to be provided for
free and instead of being a place for issuing judgements, the court would become a
place where judges and arbitrators, both male and female, would do their best to
understand the social and economic problems underlying women’s reasons for
divorce. In light of what has been concluded before, one can wonder whether this
was realistic and what reasons the government could have had for turning the
courts into a place of arbitration.

Economic interests played an important role in the decision to turn the
courts into a place of reconciliation instead of a place of issuing judgements. The
Egyptian government tried to appease both national and international business
representatives who were often frustrated by the huge number of personal status
cases which overwhelmed the courts and which prevented their court cases from
being issued a speedy ruling. At the same time, the Egyptian government seemed
to be eager to land a big fish: donor money which was provided by USAID which,
already in the nineties, had shown interest in computerizing personal status cases
in order to make the court a better place for women.

In order to make the court a better place for women and their children, all
judges had to follow a course through which they were introduced to the basic
sociological principles underlying marital problems. In this way, it was hoped that
judges would be better equipped to maintain an open and unprejudiced attitude
toward women litigants. In practice, however, judges did the opposite as they
made communication difficult by still approaching female litigants in formal
Standard Arabic and by remaining loyal to the rules of the legal system which do
not give judges much room to explore women’s reasons for divorce. This fixity,
however, seems to work to women’s advantage as they do not need to convince a
judge of their reasons for divorce, while we have seen how flexibility and judges’ discretion could also be to the disadvantage of women.

Judges, however, were not the only players in the new Family Court as the government had selected civil servants working at the Ministry of Social Affairs to become arbitrators at the new Family Court. Although I am careful in making general statements, my experiences in an arbitration office in Cairo reveal two things. First of all, it became clear that the language the male arbitrator used reflected different sets of underlying social values. When in a formal setting Hisham used English, was quite liberal and put forward ideas about the allocation of jobs between men and women which were controversial, not only among his clients but also among the general public and which had aroused heated debates during the introduction of the khul’ law. However, when Hisham used the colloquial Egyptian Arabic in an informal setting, he changed into a man who made a clear distinction between men’s rationality and women’s irrationality. At the same time, however, this did not mean that Hisham treated women litigants accordingly. The “breakfast story,” for example, showed that Hisham was quite liberal in the way he treated his clients.

Secondly, the female arbitrator Fatin did the opposite. In a formal setting, she seemed to uphold the traditional maintenance-obedience relation, while in a rather informal setting she fulminated against Hisham’s analysis of men and women by teaching him a lesson about contemporary Egyptian society in which both husband and wife work outside the home. This made me realise that there is no strict separation between the set of values to which the formal and the informal discourse relate.

The interaction between Hisham and Fatin in the arbitration office reminded me of the points of conflict between husbands and wives. These points of conflict encompass the maintenance-obedience equation and come to the fore in a society which witnesses rapid transformations in its fabric of social relations. These transformations challenged and continue to challenge the dominant gender ideology, which dictates that men are providers and women mothers and wives who obey their husbands by not leaving the marital home without their permission. When Egyptians go to court, it is likely to be over one of these issues. In the next chapter, I discuss this more extensively.
6 Maintenance and obedience: Egypt's changed reality

6.1 Nura wants to work abroad

Nura wanted to introduce me to her colleagues, so we had arranged to meet in front of the post office where she was working. When I met her there, she explained to me that she worked six days a week from eight until one, after which she always went home to prepare lunch and watch television for the rest of the day. Since she had left her children at her mother-in-law’s house, she no longer had many obligations after work. She used to see her children after school in the late afternoon. However, now that their timetables had changed she had to go to their school early in the morning in order to be able to see them.

When we entered the post office she introduced me to her colleagues who were very welcoming and friendly. Most of her colleagues were female, except for her boss and one other male colleague. Nura urged me to sit down and proudly presented our breakfast of *mahshi* (one of Egypt’s most famous dishes) which she had prepared at five o’clock that morning. She talked a lot about her children and, like in court she opened her wallet to show me photos of her children. She told me that her eldest daughter would turn thirteen next week and that she was very worried about her since she had to repeat a year at school. According to Nura this was due to her, and her two younger brothers missing Nura a lot. “Every time they see me, they tell me that they want to live with me. Unfortunately this is impossible,” she said. “My mother is opposed to the idea. She thinks that the house is too small; that we do not have money to provide for them; and that three children in such a small house will cause a lot of *dawsha* (noise). Well, I guess my mother is right. We only have one room and a kitchen without running water. My mother is disabled and never leaves the house. It is not fair. My mother-in-law receives a lot of money from her children who work in Saudi Arabia and Kuwait. She uses part of the money to raise my children. However, if I want to take back my children, she is only prepared to give me an allowance of a hundred pounds a month. Of course, that is not enough. Three hundred pounds is the minimum for raising three children. At the moment, I only earn 79 pounds a month. Here at work, I am the only employee who does not have a permanent contract. I work on a temporary contract basis and they can fire me whenever they want,” she finished her story.

At noon, just before I wanted to leave the post office, Nura’s boss summoned Nura to come, telling her that her daughter was on the phone and that she wanted to talk to her. Nura jumped to her feet and ran to the phone. “I will see

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180 Meeting Nura at the post office, Feb. 17, 2004, Cairo.
her on Thursday at seven o’clock in front of her school,” she said happily when she came back. Nura was still hoping that she would be able to find work which would pay better. She asked me if I knew a solution. Just like the times I met her in court, she told me that she hoped to find work in the Emirates where she knew people who could employ her. “But first I have to be divorced, otherwise I need my husband’s permission to travel and of course he will never let me go.” In the meantime I will try to find a second job so that I can rent a flat and take back my children,” she said.

I asked her why her husband had married a second wife although he knew that he would go to prison soon. Nura said that she did not know. “Because he is very selfish I guess,” she said while shrugging her shoulders. “And what about his mother, can’t she take financial responsibility for you and his children if he is not able to shoulder his responsibilities?” I asked her. “Well, that is the way it should be. But she really spoiled him and the other members of his family did so too. After all he has done, they still provide for him. After I left the house of my mother-in-law, I first went to live with my sister who lives near to them. This enabled me to still see my children a lot. However, after a while I decided to move in with my mother who lives far away from my children’s school. I felt I did not have a choice, as the husband of my sister got tired of my presence in the house and the fact that there was another mouth to feed. Next month it will be a year since I left my sister’s house,” Nura said sadly.

Upon overhearing our conversation about mothers-in-law, a colleague of Nura joined our conversation. She had just become the mother of a baby son called Yusuf, who was lying in a cradle next to her desk. Like Nura she was eager to tell me about her problems with her mother-in-law. “I live with my mother-in-law too. She is my mother’s sister,” she started to tell me after which I interrupted by saying: “So, she is treating you well, isn’t she?” “Not at all,” she replied, “She should treat me nicely since she is my maternal aunt, but she does not,” Nura’s colleague said. She wanted to continue but she was interrupted by Nura who said that she does not see her mother-in-law any longer. “She is killing me,” Nura said, as she was pointing at her knee which was infected and which was causing her a lot of pain. “The doctor already gave me six injections, and now I have to take a lot of pills. All the problems come from the pressure in my head. I could have been paralysed, just like my mother,” she finished her complaints. The mother of Yusuf had to laugh and said that Nura’s problems with her knee were simply a result of her and so many other Egyptian women being overweight. And indeed, Nura, who was short, weighed more than a hundred kilos. Another female colleague of Nura, who was also clearly overweight, said that her husband would divorce her if

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181 At the time of this visit (17 February 2004) women no longer needed the permission of their husband in order to be able to travel (see also 6.2).
she were to lose weight. One of the few male employees in the department was tall and slim and he addressed me by saying: “This” and he pointed at Nura and the other woman, “is the result of eating a lot of mahshi. So, you better be careful, Nadia. I refuse to eat a lot of mahshi and for that reason I am still rather slim,” he said jokingly.

Another female colleague of Nura joined our table. She looked like she was in her forties and told me that she had been working at the post office for more than ten years. She looked serious when she told me that she wanted to find a good husband for Nura. “I know a lot of nice men and hopefully one will be Nura’s next husband. I want to help her. Nura is afraid of her husband because she is divorcing him by way of khul’. He will not like that at all and therefore she is afraid of his reaction,” she told me. “But at the moment he is in prison, isn’t he?” I asked her rhetorically. “Yes, he is, but it will only take a few years before he will be released again,” she said anxiously whereafter she asked me if I could find Nura a Dutch husband so that she could leave the country in order to earn money. I told her that he should be Muslim. “Or a Christian who does not mind that his children will be raised by Islamic standards,” she replied. I was not sure whether Nura minded us talking about a new husband or about religion, but it was clear that she tried to change the subject by introducing me to her “habibi” (darling), a boy in his early twenties who worked at the office performing all kinds of errands for the employees of the office. He was standing in the background for a while listening to our conversation but finally decided to approach Nura to ask her if the foreigner (me) knew about khul’. Nura told him something which I did not understand but he grabbed a chair and started to tell us about the sister of his mother who also divorced her husband by way of khul’. “Why?” Nura asked him. “Because they were always fighting,” he replied. Nura turned to me and said that the boy’s aunt had deserted her children too. “Did she really leave her children after the divorce?” I asked him. “Yes,” he replied, “she really did so since she was unable to provide for them.” “You see,” Nura said almost relieved, “I am not the only one. She is in the same circumstances as I am.”

Shortly after, most of the employees left the office as it was time to go home. I found myself alone with Nura again and while Nura was putting the pan with the mahshi leftovers in a plastic bag for me, I decided to ask her about ‘Afaf’s whereabouts. Instead of telling me how ‘Afaf was doing, Nura started to castigate ‘Afaf for not being muta’llima (educated) and for just saying everything that came to her mind. “‘Afaf can hardly write her name,” she continued, “and her case is on the 22nd of February. I wanted to call her, but it seems that she was not at home. By the way, I will go to my village again on Thursday or Friday,” she said. Nura gave me the bag with the mahshi leftovers after which we walked to the buses. On our
way, she showed me a small bottle of perfume. “It costed 17 pounds. I bought it in instalments,” she said. Then she had to run in order to catch her bus.

6.2 Going abroad: only a prerogative for rich women?
After I left the post office I kept thinking of how Nura’s colleague was trying to find Nura a new husband while Nura herself had repeatedly made it clear on that and on other occasions that she did not want to marry again. Marital life had disappointed her and besides that, her mind was more occupied with getting her children back. So, where Nura was concerned about finding a (second) job, preferably abroad, her colleague talked about a new husband. In other words, where Nura was hoping for a future in which she was no longer dependent on a husband and in which she would be able to provide for her children, her colleague wanted her to return to a situation in which she would be dependent on a husband again. However, marrying again while simultaneously regaining custody over the children do not easily go hand in hand. Apart from the fact that women lose their right to custody if they remarry,182 it is also unlikely that a man would consider providing for three more children who are not his. According to Nura it was even of paramount importance to divorce her husband and remain single, since she was of the opinion that if she wanted to travel abroad in order to find work, she would need the permission of her husband.

In this light it is interesting that the draft law of the “khul’ law” (law no. 1 of the year 2000) was not only criticized for giving women the right to unilateral divorce, it was also criticized for allowing women to travel without the permission of the husband. Yet, where the khul’ article finally made its way through the Egyptian Parliament, the travel article was so controversial that it was struck from the draft law altogether (see 2.5). What the khul’ article and the travel article had in common though, was the criticism they conjured: they were said to be designed for rich women only.

However, many Egyptians, who live and work abroad, are from modest backgrounds as they are migrant workers in the countries of the Gulf, Jordan, Lebanon and Libya.183 Although, it cannot be denied that the majority of the Egyptian migrant workers are male, during my fieldwork I came across a few cases that show that situations of economic hardship force women to migrate too,

182 For a legal overview of the allocation of custody in Arab states, see Welchman (2007, 137-42).
183 Although the situation might have changed somewhat as a result of the establishment of big industry clusters such as Dubai Media City (DMC) and Dubai Internet City (DIC). Dubai Internet City, for example, has over 850 companies employing more than 10.000 workers (http://en.wikipedia.org/wiki/Dubai_Internet_City, 28 July 2008). It would not surprise me if many of its workers are from Egypt as DIC claims that its skill and manpower opportunities are good due to its strategic location between two large pools of highly skilled knowledge workers – Egypt/Jordan and the Indian subcontinent (http://www.dubainternetcity.com/why_dubai_internet_city/, 28 July 2008).
or at least make them consider travelling abroad for a while in order to find better job opportunities. For example, whereas Nura wanted to work as a *murabbiyya* (nanny) in an Egyptian family living in the Gulf, a client of lawyer Abu Bishoy had worked as a teacher in Oman. Her husband, who was much younger than she was, had decided to follow her and, apart from stealing the money she had earned with her job, he had also accused her of adultery after which she had decided to divorce him by way of *khul’*. A client of lawyer Waguih was working as a nurse in Saudi Arabia, while her husband, also younger, who was working as an electrician had stayed behind in Cairo. In another case Amina left Egypt in order to work in the Gulf as a teacher. She was from a small village close to Dumyat (provincial town in Lower Egypt) and although she had always worked as a teacher in the village, she and her husband had decided that wages in the Gulf were much better. She was the first to leave Egypt. Her husband and children were to follow her later. The last case I came across concerned an unmarried upper middle class woman in her late forties who decided to migrate to Yemen in order to find a better paid job. She chose to live in Yemen because her brother already worked there as a judge.184

Although it is well known that the majority of female domestic workers in the Gulf, Jordan and Lebanon are from South-East Asia (Sri-Lanka, Indonesia and The Philippines), the examples show that at least a small number of Egyptian women work there too. This is not strange given the fact that many Egyptian women work as domestic servants or teachers in Egypt. In light of the fact that between 18 and 30 percent of the total number of Egyptian households consists of female-headed-households I would not be surprised to learn that the number of women who consider working abroad is even larger than expected.185

What is important in this regard is the observation that during my visit to the post office where Nura was working, Nura was of the opinion that she could only travel abroad after her divorce had been finalized. If she was still legally married, her husband would definitely object to her wish to travel without his consent. Apparently Nura did not know that this was no longer the case. Although the travel article had been struck from the initial draft law, it was still silently implemented in November 2000 (see also 2.5). During an interview with judge ‘Abdalrahman, one of the main drafters of the “*khul’* law”, he mentioned that most women are not aware of this amendment and that they still think that husbands can prohibit their travelling.186 If this was not the case, the number of women who

184 In a study on the Egyptian women’s movement, al-Ali also mentions how after her father’s death, one respondent had lived in Saudi Arabia where her mother was trying to scratch a living by working as a teacher (2000, 86).
185 I am aware of the fact that the total number of female-headed-households also includes households in which women were left alone precisely because the husband migrated to work in the Gulf.
186 Interview with judge ‘Abdalrahman, 28 January 2004, Cairo.
might consider working abroad or who might actually take the step to work abroad, might be even higher.

Although research has been done on male Egyptians who work as migrant workers in the Gulf, as far as I know, no research has yet been conducted on Egyptian female migrant workers. Such an investigation is important, especially after the Minister of Labour and Immigration signed a memo in June 2007 to the employment of 12000 Egyptian women in Saudi Arabia (Haaretz 7 June 2007). The agreement raised a loud outcry of protest because people feared that women would become prostitutes. The protest involved a gender element as well, as people wondered why women rather than men were being sent to Saudi Arabia. One opponent remarked that it would have been better if the Minister had solved the unemployment of young men since men who find work will marry immediately and thus solve the problems of young single women too (ibid). This, as we have seen in chapter 4, is not totally in line with reality as women increasingly contribute to marriage preparations, among others because men sometimes marry women who are many years their senior. In fact, in two out of the five cases which I just discussed, the migrating woman was married to a younger husband.

The new developments concerning Egyptian women working abroad enhance the importance of the cases which I presented above. Although their numbers are too small to allow for strong inferences, I still consider these cases to be significant since we observe again how a draft law was criticized for merely being a law for rich women while it is not unlikely that a large number of women who would profit from a law which gives them the right to travel without the consent of the husband, would be women from poor or modest backgrounds. This not only challenges the accusation that the “travel article” was merely designed for rich women. It also, and more significantly argues against a prevalent notion in Egypt of women in roles as mothers and housewives confined to the house. The cases which I presented show a different reality since women were the ones who were travelling abroad for the sake of work, leaving the (ex-) husband and sometimes also the children (temporarily) behind. In most cases husband and wife agreed that the wife would go abroad in order to look for better work opportunities. These women left the marital home with the permission of the husband.

In Nura’s case, however, the situation was more complex as her husband had summoned her to give up work after they married. How would he agree to Nura working abroad now? Moreover, according to the Personal Status Law of 1985, women are not allowed to leave the home for the sake of work without the permission of the husband. Nura would have been declared nashiz (recalcitrant) if she had left the marital home in order to work. At the same time, however, the
decision of the High Constitutional Court in November 2000 gave her the right to travel without her husband’s consent, at least this is how the decision was explained to me by the high judge who was one of the main drafters of the “khul’ law” (and how the reform was presented in newspapers). In my opinion, these conflicting messages about women’s obedience at the legal level, reflect changes taking place at the societal level where the issue of women’s obedience and men’s duty to provide forms a recurrent issue in marital disputes and often leads women to run away and petition the court for nafaqa. This subsequently prompts husbands to submit a ta’a claim. I will discuss these court actions in the following sections.

6.3 Women who abandon the marital home & the issue of ta’a

Let us now consider the following story from the 1970s. Although this story and the following story are about the divorce experiences of men from the upper (middle) rather than the lower (middle) class, for reasons that will become clearer below, I have decided to include them at this point.

Mahmud, doctor at a Cairene university, married his first wife in the early seventies. Soon after she got pregnant problems started. According to Mahmud, his father-in-law, who was a judge of good standing, was very demanding and afraid that Mahmud would not be able to give his daughter the life which he thought she deserved. He urged his daughter to ask Mahmud to divorce her which Mahmud refused. After his refusal, his wife ran away to her parents and subsequently filed for nafaqa, claiming that Mahmud was not providing for her. She demanded a large amount of money and in an effort to stop her claims, Mahmud’s lawyer advised him to submit a ta’a claim. Mahmud was shocked and told his lawyer that he would never do such a thing. “I am not going to drag my wife back home,” whereupon his lawyer told him that he had no other choice if he did not want to go bankrupt. Reluctantly, Mahmud submitted a claim for ta’a.

Soon after that, his wife, her father and Mahmud came together and they decided that Mahmud would drop the ta’a claim and pronounce the talaq. In return his wife and her father promised to drop the nafaqa claim.

The story of Mahmud resembles the story of the Ain Shams doctor of the “breakfast story” (see 5.5) in several ways. Both men were doctors at a university; having troubles with a meddlesome father-in-law; and reacting to their wives’s running away from the marital home by submitting a ta’a claim. Nura’s husband did not submit a ta’a claim, but it is very probable that this was because he was in prison at the time Nura filed for a khul’ divorce. In many other cases, however, I

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168 See also Al-Sharmani (2008, 24). This is not only the case in Egypt. For an overview of cases outside Egypt, see Antoun (1990: Jordan, see also 6.4); Mir-Hosseini (1993: Morocco and Iran) and Peletz (2002: Malaysia). In the court of Gaza City, women also file a lot of nafaqa cases, but the number of ta’a cases is low, only forming 1 percent of all lawsuits (Shehada 2005, 151, 222).
found that husbands reacted to their wives’ leaving of the marital home by submitting a *ta’a* claim. The pattern in the pre-*khul’* as well as in the *khul’* era is often the same: the wife leaves the marital home without the permission of the husband after which the husband reacts by submitting a *ta’a* claim, which subsequently prompts the wife to oppose the *ta’a* claim by filing for a divorce in response (see also Brown 1997, 214, and Würth (1995) for the case of urban Yemen), be it a judicial or a *khul’* divorce. Moors notes a similar pattern in Palestine: women who feel badly treated by their husbands return to their father’s house after which the husband sends mediators to persuade her to return home. Placing conditions on her return, she might accept but when mediators are not able to solve the marital dispute, women often submit maintenance and suitable housing claims which subsequently prompts husbands to control the damage by submitting a *ta’a* claim (1995, 143). At this point, I will first elaborate on the precise legal and social meaning of *ta’a*.

6.4 The meaning of *ta’a* (obedience) on the legal and social level

In a study on litigant strategies in an Islamic court in Jordan Antoun notes that in 1959-60 “…the largest single category of cases involved a wife’s demand for maintenance (63).” The second largest involved the husband’s demand for conjugal obedience [underlining is mine] (1990, 25). A few decades later the situation in neighbouring Egypt is not much different as the concepts of women’s obedience (*ta’a*) and maintenance (*nafaqa*) are often bracketed together, both on a social and a legal level.

Where the law assigns husbands the legal duty to support their wife and children, wives have a legal duty to be obedient to her husband in return (article 1 of law 25/1920; article 11, bis. 2 of law 100/1985). Although the link between maintenance and women’s obedience on the legal level is clear, the precise meaning and nature of women’s obedience is not. According to Najjar “obedience involved the wife staying at home and not leaving without his permission, and giving him sexual enjoyment” (cited in Welchman 1999, 331). The explanation of disobedience in the Explanatory Memorandum of the 1979 PSL reads: “the most obvious manifestation of this obedience is that the wife lives in the marital home which the husband has prepared for her” (jum’a, 261; Welchman 1999, 122). Differentiating between overt and covert forms of disobedience, Fluehr-Lobban and Bardsley-Sirois found that courts have been reluctant to become involved in

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188 According to Welchman, maintenance claims still constitute a primary reason for women in Arab states to turn to court (2007, 93). The same applies for women in Malaysia (Peletz 2002, chapter 3).
189 According to Welchman there are only four Arab states in which the legal code makes no mention of a wife’s duty to obey her husband. These are the codes of Tunisia (1993), Libya (1984), Algeria (2005) and Morocco (2004) (2007, 94).
allegations of covert disobedience since they take place in the intimacy of the marital home and are hard to prove as a result of that. For this reason, disobedience has become associated with more overt forms of disobedience, such as cases in which a woman leaves the house of the husband without his consent (1990, 40).

What these different descriptions of obedience have in common is that they point to a duty for women to stay in the marital home. In a society, however, which requires women to participate in the public economy as a result of which women, like men, contribute to the household income, such a definition of obedience becomes unpractical.\textsuperscript{190} As a result, law codes in Arab states concerning women’s obedience to her husband usually also deal with the wife leaving the marital home in order to go out to work (Welchman 2007, 97). In Egypt, article 11, bis 2 of law no. 100/1985 reads that a woman who leaves the house to go out for work does not lose her right to maintenance, unless she abuses this right, when it harms the interest of the family and when the husband has requested her to not exercise this right (see also Fawzy 2004, 39). Hence, in Egypt, women’s specific right to work and their right to leave the marital home in general, are still very much dependent on the permission of the husband. The decision of the High Constitutional Court to give women the right to travel without the permission of the husband (see also 2.5), is in contrast with this. This contradiction in the law is reflected in public debate. On the one hand, opponents of women’s liberty base their arguments on the 1985 PSL, while on the other hand, advocates of women’s rights lean on the decision of the High Constitutional Court and see themselves backed up by daily reality.

Not surprisingly, the issue of women’s obedience and freedom of movement especially surfaced during the introduction of the \textit{khul’} law as the Egyptian \textit{khul’} divorce considers the consent of the husband to the divorce irrelevant and, as a consequence, this type of \textit{khul’} divorce highlights women’s disobedience par excellence. At the judicial level this is reflected by the fact that the practice of \textit{khul’} is often equated with disobedience. For example, in some legal textbooks \textit{khul’} is defined as disobedience or recalcitrance on the side of the wife,\textsuperscript{191} while in other sources it is claimed that women who resort to \textit{khul’} are hypocrites whose lot will be hell (reciting a saying of the Prophet who claims that women who ask for a divorce without good cause will await the smell of hell).\textsuperscript{192} Since a woman’s disobedience gives a husband the right to enforce his wife’s obedience by

\textsuperscript{190} See also Fluehr-Lobban and Bardsley-Sirois (1990); Welchman (1999, 123); Sonbol (2003, 155).
\textsuperscript{191} See for example: al-najjār (2004, 46) and al-ahrām (13 July 2001). Scholar Zantout shows how in the view of the Hanafi jurists, \textit{khul’} is closely linked to the concept of \textit{nishuz} (2006, 10).
\textsuperscript{192} See for example: jum’a (n.p., n.d.).
submitting a ta'a claim, this partly explains the observation that ta'a and khul’ frequently go hand in hand.

When a judge declares a woman disobedient, she will lose her right to be maintained by her husband. What is interesting is that the implications of the institution of ta’a go beyond the (now) ultimate sanction of the withdrawal of maintenance for a wife who has left the marital home (Welchman 1999, 132). This is exemplified by judge Yusuf admitting that there is a strong relationship between ta’a and khul’ claims. In his perception a ta’a claim is often an indicator of a marriage which has come to an end.193 Hence, when a husband submits a ta’a claim, the wife often makes the best out of a bad bargain by filing for a khul’ divorce.194 Judge Yusuf’s perception is in line with how many Egyptian women think of a ta’a claim. When we talked about ta’a they seldom mentioned the fact that if a woman loses a ta’a claim, she no longer has a right to demand nafaqa (maintenance) from her husband. Apart from the fact that many did not know or, in the cases where they knew, that it was very difficult to secure the forthcoming awards of maintenance, they seemed to be more worried about the social consequences a ta’a claim could entail. These women perceived such a claim to be a message from their husband that the marriage had broken down and that he wanted to end the relationship without costs. As Iman, who at the time of the fieldwork was a MA student at Cairo University, told me: “If a man resorts to ta’a, the wife knows that he wants to get rid of her at all costs and that he wants to break her” (see also Human Rights Watch 2004, 30-2).

A few years earlier, Iman had already brought up the concept of nushuz (violation of marital duties on the part of the wife) when we were talking about khul’.195 At the time Iman had been very critical of the new khul’ law saying that when a woman expresses her wish to divorce her husband, the latter can appeal the divorce in court after which the wife will be declared nashiz (recalcitrant) and will enter the bayt al-ta’a (“house of obedience”) as a result of that. According to her, the “house of obedience” was a kind of home where nashiz women were confined, each in a small room with a bed, until they were willing to pledge obedience to their husbands again.196 Iman concluded that she feared the

193 For the case of Palestine, Shehada also notes that judges in ta’a cases know that the marital relationship has become bitter and that the husband is likely to have acted out of revenge (2005, 211).
194 Visiting the Zananiri Court, 30 May 2005.
195 According to the sources of shari’a, nushuz also includes those instances in which the husband violates his marital duties. For more, see Zantout (2006, 1).
196 A Palestinian woman who had lived for a long time in Egypt and whom researcher Shehada met in the waiting-room of the court of Gaza city, said: “In Egypt, [the house of obedience] consists only of a mattress and jug, that is all. But in Gaza, the house of obedience is an apartment with full equipment. How is it possible to discipline women in such a way?” (Shehada 2005, 212). At least in terms of treatment, the Egyptian House of Obedience seems to have had a Tunisian equivalent: the so-called prison of Broken Hearts (Dar Juwad). In sixteenth-twentieth century Tunis, in cases which concerned the
stigmatization she would have to suffer as a nashiz when she went to file for khul’:

“It is one thing for a woman to say that she is applying for divorce and quite
another for her to say that she is applying for khul’.”

It was only later that I learnt that a woman who is declared nashiz will
“only” lose her right to maintenance. According to some lawyers I interviewed,
many people do not know this and they still think that husbands have the right to
force women home who ran away without their permission. For the Jordanian
situation, Welchman also concludes that “…by no means all women are aware of
their rights in the face of a ta’a claim by their husbands, and may not be aware that
the award cannot be forcibly executed. …Although the actions for ta’a have “lost
their teeth” due to non-enforcement, and although the number of claims are
decreasing, the concept still intimidates women” (1999, 132). This, I think, is partly
a result of the pervasive influence on its audiences, both in and outside Egypt, of
the Egyptian film industry in general and the film urīdu Hallan in particular. For
the case of Syria, for example, Carlisle shows that lawyers suggested to her “that
when men threatened to have their wives forcibly returned to the marital home
under bayt al-ta’ā they were making a claim to a right that had been depicted in a
recently televised Egyptian historical drama, since it is not a provision in the SLPS
[Syrian Law of Personal Status]” (2007, 59). This anecdote underlines that,
notwithstanding the introduction of legal changes to the contrary, many Egyptians
(and Syrians for that matter) still associate ta’a and nushuz with a forceful return of
the wife to the marital home or the bayt al-ta’ā. In such a situation, women will
resort to various strategies to avoid the enforcement of a ta’a claim.

Strategies to avoid the enforcement of a ta’a claim

According to the male arbitrator Hisham, women can easily avoid the enforcement
of a ta’a claim by telling the judge that they are willing to return to the house of
their husbands. In that way they show they are willing to pledge obedience again
after which a judge must dismiss the ta’a claim. Nevertheless, I wondered how a
couple would continue marital life after the husband has made it very clear that he
does not approve of his wife’s behaviour and/or no longer wants to provide for
her. Apparently judge Yusuf was of the same opinion as he considered a ta’a claim
to be an indicator of a marriage’s end.

Fluehr-Lobban and Bardsley-Sirois also stated that ta’a seemed to indicate that
a marriage was breaking down as it often precedes a petition for divorce (1990, 51-2).
As they remarked in 1990, ten years prior to the introduction of the “khul’ law”:

treatment of conflicts that involved the intimate side of love and sexual relations between couples,
judges sometimes sent women to these prisons of Broken Hearts (Largueche 1996).

According to Carlisle, legal awareness is influenced by popular culture, a factor which she believes
“has yet to receive the attention of studies into Muslim family law in practice” (2007, 58).
“Divorce because of proven abuse (talaq al-darar), is the most frequent ground for judicial divorce in Egypt, and many of these cases have arisen from prior instances of obedience orders, and on objections and appeals to the ta’a orders” (1990, 50). According to the authors there are various strategies which women invented in order to oppose their husbands’ ta’a claim.

A first strategy was to tell the judge that living under the constant threat and reality of abuse made them decide to leave the husband’s house. A second strategy consisted of telling the judge that the house their husband had provided them with, was not a proper shari’a-dwelling and for that reason, they had a right to refuse and to leave it (1990, 47). In two cases (out of five) women castigated the court for not having offered them sulh (arbitration) and for that reason they still explicitly requested the court to attempt to reconcile them. When the court offered sulh both women rejected it. Although Fluehr-Lobban and Bardsley-Sirois did not count a request for sulh as a strategy, I do consider women’s explicit sulh request to be a third strategy to delay the enforcement of a ta’a claim. Some litigants will use the delays, due to the courts’ heavy reliance on expert opinions (Brown 1997, 192), to their advantage.

The findings of Fluehr-Lobban and Bardsley-Sirois were based on cases which had happened at least a decade before the “khul’ law” was introduced. With the introduction of khul’ in 2000, I argue, a fourth strategy emerged as women tried to circumvent a ta’a claim by submitting a khul’ request in response. In the case of the “breakfast story,” for example, we have seen how the wife of the Ain Shams doctor reacted to her husband’s ta’a claim by filing for a divorce for khul’. We have also seen how the female arbitrator Fatin remarked that in such cases wives hope that filing a request for khul’ will frighten their husbands to such an extent that they would rather make the best of a bad bargain by dropping the ta’a claim. Thus, in the same way as ta’a and nashiz are stigmatizing concepts which still intimidate many women, the concept of khul’ intimidates many men since husbands who are divorced by way of khul’ are often sarcastically called makhlu’, which literally means that their wives have got rid of them, like pulling out a bad tooth. We only need to remember the films muHāmī khul’ and urīdu khul’an as well as the many cartoons on khul’, to get an idea of what it means for men to become makhlu’.

Thus, while some women will submit a khul’ claim out of fear and in order to terminate the marriage as soon as possible, other women will resort to khul’ in order to pressurize their husbands to drop the ta’a claim. In both cases, the new Family Court and the arbitration which it offers can play an important role as the couple living in disharmony is summoned to appear in front of two professional arbitrators. Especially in cases such as those of Nura where women move into households which are composed of females only and in which a father figure is absent, the arbitration in court might be the only way to guarantee a dialogue.
which is otherwise not forthcoming (see for further elaboration on this subject chapter 7). This, of course, raises the question as to what the result of this will be. In the case of Hisham we have seen how he associated khul’ with women’s irrationality and jealously, even linking it to prostitution, while in his dealings with his clients he professed a women-friendly attitude.

According to Fatin, in approximately sixty-five out of a hundred cases, the marital dispute is settled through a so-called ibra’ divorce (see for further elaboration 6.5), while in a much smaller number of cases, disputes are settled through sulh (reconciliation). Her statement was underlined by the reports which Fatin and Hisham had to submit to the judge, and of which I was given a few copies. Studying these copies not only made clear that most disputes were settled through a consensual (ibra’) divorce, they also showed the conditions on which the settlement was based. Often these conditions were more favourable to women than the conditions under which women obtain a khul’ divorce. As pointed out in chapter 4, in case of khul’, women often have to pay back more than the registered (symbolic) prompt dower, while they sometimes also have to pay back their outstanding rights, such as a deferred dower which they have never received at all. In case of an ibra’ divorce taking place inside court, under the auspices of Hisham and Fatin, women usually agreed to “only” give up their financial rights in return for an officially registered divorce through the ma’dhun (marriage and divorce registrar). Moreover, a divorce to which the husband has consented is likely to be less damaging to the status of women than a controversial khul’ divorce.

Besides being favourable to women, in my opinion, a settlement through ibra’ can also be in the interest of men. This especially applies to men who fear the consequences which a khul’ divorce, and their subsequent status as a makhlu’ would have on their status and reputation. In such cases, the consensual ibra’ divorce is likely to have the approval of both husband and wife, who are happy to escape the humiliation which a divorce by way of khul’ would entail for both of them. Sometimes, however, a settlement inside court (formal in the following) through ibra’ is not at all what husbands who submit a ta’ā claim hope to achieve. In the next section, I discuss what they had hope to achieve and how the khul’ court procedure thwarts their plans.

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108 In this light, I found a study on Tunis interesting in which Largueche shows how judges in sixteenth-twentieth century Tunis tried to regulate marital disputes. In case of “poor treatment” or “cohabitation difficulties” the couple would be supervised by a judge, in their own house or in a house prepared for that reason. According to Largueche, women often regarded the intervention of the court as a means to guarantee a dialogue that was otherwise not forthcoming (1996).
6.5 Husbands using ta‘a as a strategy

When a wife is “disobedient” her husband has a right to call her back into his obedience by submitting a ta‘a claim. Sometimes, however, a husband’s claim is motivated by a wish to divorce his wife without costs and marry another woman instead. In such cases the husband is the one who is “disobedient” as it were. According to Judge Tarik, women have started to also use khul‘ in order to frustrate a husband who wants to divorce in a cheap way.\(^{199}\) In such a case, the husband does not want to pronounce the talaq but instead tries to push his wife to accept an informal (out-of-court) ibra’ divorce. In return for his “consent” to the divorce, whether or not encouraged by submitting a ta‘a claim, he will ask her large sum of money. According to Judge Tarik the introduction of khul‘ has made such ibra’ divorces by “mutual consent” nearly impossible. In case a husband asks an exorbitant sum of money, the wife can file for khul’ in which case she “only” needs to pay back to him the dower which he gave her upon marriage.\(^{200}\)

The observation of Judge Tarik is interesting as it rejects the idea expressed in the previous section that ibra’ may be advantageous to women. Judge Tarik, however, was not referring to a formal ibra’ divorce which is obtained inside court, but to an informal, out-of-court ibra’ divorce.

In case of an informal ibra’ divorce the wife will normally request the husband to divorce her (by expressing the words talliq-ni) after which he will ask her to exempt him (by expressing the words ibri-ni) from all legal rights to which she would be entitled in case the husband were to repudiate her. Although in most cases the wife will exempt the husband from paying her the mu‘akhir al-sadaq (deferred dower) and the different types of alimony, she sometimes also pays her husband a large amount of money in addition. This informal ibra’ divorce is also known in Egypt and the rest of the Muslim world as a khul’ or mukhala’a divorce.\(^{201}\)

The four Sunni schools of law emphasize the character of khul’ as a negotiated divorce settlement initiated by the wife and in the Ottoman Period, this consensual khul’ divorce was quite common. This explains why I sometimes witnessed how Egyptians were under the impression that the new khul’ was actually not that new. For example, when a journalist visited Wafa’s village (the first Egyptian woman who filed for khul’), an old man asked the journalist: “What is new about Khul’? We have always done it here.” According to the journalist, the man was referring

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\(^{199}\) For women trying to push their husbands into a cheap divorce, see 6.6.

\(^{200}\) Visiting Judge Tarik at the Zananiri Court, 18 October 2004.

\(^{201}\) According to Welchman mukhala’a divorces are in fact mubara’a divorces. Mubara’a divorces are based on a renunciation of outstanding rights, while under a khul’ divorce, a wife needs to return rights she already received. However, in most legal codes in the Arab states, khul’ refers to settlement in which the wife has to relinquish her outstanding rights (2007, 112). See also Pearl and Menski (1998, 283).
to ibra’ (al-Ahram Weekly 17-23 February 2000). This meaning of \textit{khul’} as a consensual divorce is also expressed in the first sentence of article 20 (the \textit{khul’} article) of law No. 1 of the year 2000: “A married couple may \textbf{mutually} agree to \textit{khul’}…” [underlining is mine]. The rest of the sentence highlights a different meaning of \textit{khul’}: “…However, if they do not agree and the wife sues demanding it [\textit{al-khul’}], and separates herself from her husband by giving up all her financial legal rights, and restores the dower to him which he gave her, then the court is to divorce her from him.”

As far as the past is concerned, Ottoman court records have revealed that judges did not only register \textit{khul’} divorces, they were also very keen on preventing men from coercing wives into a \textit{khul’} agreement in order to take their dower (Tucker, unpublished paper). When I asked a few judges whether they check if a woman’s wish for \textit{khul’} is generated under pressure from her husband, they told me that they do not do this as it is not part of their duty although they admitted that it does happen.

A regional excursion encourages the presumption that the number of out-of-court \textit{ibra’} cases, in which women are forced to consent to their husbands’ \textit{talaq} and renounce their rights, might be quite high. In the case of Gaza and the Westbank, where 90 percent of all divorces take place outside the court in the form of unilateral \textit{talaq} and through divorce by mutual consent (\textit{khul’} or \textit{talaq muqabil ibra’}) (Welchman 1999, 135), the number of \textit{khul’} (or \textit{talaq muqabil ibra’}) cases consistently outnumbered the number of unilateral \textit{talaq} cases (Welchman 1999, 139). This means that “in the vast majority of cases where marriage is terminated by divorce, the wife is not entitled to claim the financial rights she is otherwise assumed to be due at the end of a Muslim marriage” (ibid, 142). Although Welchman says that the good thing about these \textit{ibra’} divorces might be that most marriages break down by mutual consent, she also draws attention to the fact that at least in some cases husbands push their wife into a “consensual” divorce in order to obtain a cheap divorce (1999, 143). This is confirmed by Shehada, who observed how judges in Gaza City court often tried to find out the real reasons behind a husband’s \textit{ta’\'a} claim as they knew that men often acted out of revenge (2005, 211, see also Moors 1995, 141). For the case of Egypt I have not found any data on the ratio between unilateral \textit{talaq} cases and informal divorces by mutual consent. However, I came across many instances which led me to believe that an

\begin{itemize}
  \item In the campaign to eradicate \textit{khul’} from the draft law, \textit{al-sha’b} newspaper published in one of its headlines that: “The \textit{khul’} article contains seven words which are in accordance with the \textit{shari’a} and these words are in the introduction [A married couple may mutually agree to \textit{khul’}]…the rest is in opposition to the \textit{shari’a}.”
  \item In Egypt as well as in Gaza and the Westbank, \textit{khul’} divorces by mutual consent always take place outside court. Only the final registration of the divorce happens in court (cf. Bernard-Maugiron 2004, 361-2 for the case of Egypt).
\end{itemize}
ibra’ divorce is sometimes used by husbands as a means to divorce their wives in a cheap way.\textsuperscript{204}

For the Moroccon situation, Mir-Hosseini noted that wives submitted nafaqa claims which led their husbands to react by submitting ta’a claims.\textsuperscript{205} Mir-Hosseini explains this as a “reflection of the unequal nature of marital rights and obligations. Women resort to court to improve their bargaining position vis-à-vis their husbands. Men come to court to offset—or pre-empt—their wives’ actions (1993, 50). In a study on religious courts in Malaysia, Peletz argues along similar lines (2002, chapter 3). We have seen that the Egyptian case is more complex as husbands also initiate actions in court to obtain a particular aim, a cheap divorce for example. According to Judge Tarik, this strategy is now made difficult as the introduction of the “khul’ law” has thwarted husbands in their attempts to divorce their wives in a cheap way. Instead of wives paying their husbands a huge amount of money, this judge claimed that women can now resort to khul’ in which case they “only” need to pay back one Egyptian pound.

At this point, some critical observations should be added. On the one hand, women sometimes pay much more than the amount which is registered in the marriage contract (see also chapter 4). On the other hand, however, we have also seen how, in case of (the judicial) khul’, both husband and wife are now required to appear in court in front of two professional arbitrators who seem to put pressure on both the husband and the wife to reach, through a formal ibra’ divorce, a reasonable settlement which takes into account the needs of both parties. Most likely, this will especially work to the advantage of women who return to households which are run by females only and in which a father-figure, for whatever reason, is absent. Hence, the result of the introduction of the compulsory governmental attempts at reconciliation is that in cases in which husbands try to push women into a cheap divorce, often through filing for ta’a, women’s bargaining power has increased.

6.6 Women using khul’ as a strategy

In the previous section I paid much attention to husbands who push their wives into a cheap divorce. In this section, I want to show that women too try to push their husbands into a cheap divorce, by constantly nagging him to divorce her, for example. The examples of films and television serials in which women express the words tallaq-ni (divorce me!) to their husbands are numerous. During the British

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\textsuperscript{204} See for example: the observation of Judge Tarik Amin; the different meetings with a woman arbitrator at an arbitration office in Kafr al-Sheikh; the meetings with lawyer Abu Bishoy and different reports in the newspapers.

\textsuperscript{205} This is no longer the case in Morocco as the 2004 legislation no longer mentions the wife’s duty to be obedient to her husband (Welchman 2007, 94).
mandatory period (1920-48), women in Palestine who wanted to divorce their husbands but who had few legal grounds to do so, used triple repudiations, which their husbands had uttered, regretted but could not revoke to their advantage. In such cases, they would ask the court to confirm their husbands’s repudiation (Moors 1995, 144), and obtain, whether or not intentionally, a cheap divorce in the process. And while the previous section showed how the consensual out-of-court ibra’ divorce made its appearance inside the court building, as it were, in the following section I want to pay attention to the way in which the judicial khul’ divorce came to be used as a strategy outside the court building, by women such as Rahma.

Through a common friend of ours, I met Rahma, an upper middle class woman from Cairo in her early thirties, who wanted to divorce her husband because he refused to consummate the marriage. When she asked her husband to pronounce the talaq, he refused. At the time, khul’ had just been implemented and Rahma threatened her husband that he would become the first makhlu’ of the country if he did not divorce her. Finally, he gave in to her wishes and they divorced out-of-court by way of ibra’.

Apparently there are various reasons which make women decide to opt for a khul’ divorce. Where women sometimes use khul’ as a response to avoid the enforcement of a ta’a claim or to thwart a husband who wants to divorce in a cheap way, Rahma’s and other cases also show that women not only use khul’ to offset their husbands legal actions, they also take the initiative to file for a divorce through khul’: to encourage a divorce by “mutual consent” in the case of Rahma; but also to pressure the husband to change his behaviour towards her; to urge the husband to increase his financial contribution to her and the children, or for reasons which are not related to the marital relationship itself. For example, divorced women in Egypt are entitled to a part of their father’s pension and in case the father does not have a pension, they have a right to social security money from the government. A judge in the Zananiri court told me that for this reason many women decide to ask for a khul’ divorce, after which they cash the money from the government while they remain living with their husbands.206 Where in the latter case it is unlikely that a woman’s request for khul’ will be followed by a ta’a claim, in the majority of the cases, a request for khul’ is followed by a ta’a claim. I once asked Amal, lawyer at the Egyptian Centre for Women’s Rights (ECWR) which gives poor women free legal assistance, whether a khul’ request provokes the husband to submit a ta’a claim. She immediately said: “Oh yes, this happens all the

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206 This was confirmed by a woman who works as an arbitrator in the arbitration office in Kafr al-Sheikh and who said that she sometimes suspected women of filing for a khul’ divorce in order to become eligible for financial support from the government (October, 9, 2004).
time.” To be sure, she consulted one of her colleagues who said that this happened in approximately seventy to ninety percent of the cases.

In 1990, Fluehr-Lobban and Bardsley-Sirois concluded that the area of ta’a was the most active of PSL in Egypt (41, 43). After the introduction of the khul’ divorce at the beginning of the new century, it seems that not much has changed.

Yet, there is one important difference. If the husband in the pre-khul’ era could prove that the wife had run away from home for no “good” legal reason, the court would declare her nashiz after which she would be exempted from her right to maintenance. In cases where women file for khul’, the issue of (not) receiving maintenance, alimony and a deferred dower is irrelevant since the wife will have to give up her financial rights anyway. For this reason, financial considerations cannot be the reason husbands often react to their wives’ khul’ request by submitting a ta’a claim. Although lack of legal awareness may partly explain why they still do so, it is also possible that they use ta’a to delay the proceedings of the case as well as to redeem their shattered pride, and to make their wives give up the khul’ claim by appealing to the fact that the concept of ta’a still intimidates many women. Just as he would carry the stigma of being a makhlu’tor the rest of his life, his wife would also bear the stigmatization of being nashiz.

All these strategies, employed by both men and women, show that Egyptians use the court as one among a set of tools to achieve a particular end. Or, as Brown claims “…Cairenes seem exceptional in the Arab world only in the full range of legal tools available to them and their need and inventiveness in using them” (1997, 201). This might explain why the results of preliminary statistics on khul’ show that of the total number of divorce cases filed in court, a majority was dropped after a certain period of time. Although this may be due to several reasons (pressure from the family to drop the case; insolvency on the part of the women to pay back the prompt dower; lawyers’ failure to show up in court leading to dismissal of cases), it may well be that once men and/or women have achieved their particular end, they will drop their case. In a study on litigant strategies in an Islamic court in Jordan, Antoun also concludes from court cases of 1959-60 that: “a very significant portion of cases raised in the Islamic court is dropped before reaching the stage of court judgement: 40 percent of claims for conjugal obedience [ta’a]were dropped, while more than half of the 63 claims for maintenance by the wife were dropped” (1990, 39). These, and other scholars’

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207 This contradicts the situation in the Palestinian territories where the number of ta’a cases is decreasing (Welchman 1999, 126).
findings all suggest that courts are a forum where marriage problems are negotiated.208

6.7 Conclusion
In chapter 5, I remarked that the conflict between the female arbitrator Fatin and the male arbitrator Hisham seemed to be representative of the conflict that occurs in many Egyptian households and in which the issue of men’s authority in the home and wives’ obedience is debated. In this chapter, further impetus was given to this assumption.

First of all, by the observation that not only upper class but also lower class women like Nura use, or want to use, a new law which gives them the right to travel abroad, for the sake of work. Apart from the fact that this made clear that the travel article was not only designed for rich women, it also made clear that the picture of Egyptian women being confined to the house is not in accordance with daily reality. On the contrary, in some cases women even leave behind their children thereby defying rules about their proper roles as mothers and wives in the marital house. The ruling of the High Constitutional Court of November 2000 seemed to recognize this development by giving women the right to travel without the permission of the husband.

According to Personal Status Law 100/1985, however, women need their husbands’ permission, not only to travel abroad but also to leave the house in the first place. If women leave the marital home without the permission of the husband, the husband can petition the court to declare his wife nashiz as a result of which she will be exempted from her right to nafaqah. Thus, where women have a legal right to travel without the consent of the husband, practice shows that there are numerous cases where the husband opposes his wife’s leaving the marital home (after a marital dispute for example) by submitting a ta’a claim. Although we have seen earlier that “disobedient” women are no longer returned to the marital home by force, the concept of ta’a still intimidates many women. As a consequence, women have always resorted to various measures to avoid the enforcement of a ta’a claim. Submitting a khul’ request, I argue, has proven to be a new way to push husbands to drop their ta’a claim. This is related to the fact that the concept of khul’ frightens men who are afraid to become a makhlu’, that is to say, a husband whose wife has got rid of him in much the same way one pulls out a bad tooth.

As indicated earlier in chapter 4, khul’ cases are often opposed by husbands and sometimes these husbands’ opposition has the result that women pay back large sums of money to their husbands. In that respect, I tentatively claim

208 See for example, Carlisle’s study on Syria (2007); Mir-Hosseini’s study on Morocco and Iran (1993); and Shehada’s study on Gaza, Palestine (2005). For the case of Islamic law and courts in general, see Rosen (1989).
that the establishment of a new Family Court in October 2004 has come as a relief, especially to women who left their husbands and subsequently moved into a household headed only by their mother, in which a father-figure who could mediate on the “disobedient” woman’s behalf is missing (for more see chapter 7). Why is this the case? When a woman submits a khul’ request, she and her husband are summoned to appear in front of two professional arbitrators who have their office in the court. Although Al-Sharmani’s findings on family courts in Egypt show that generally husbands do not show up for mediation sessions (2008), the situation might be different with regard to khul’ court cases. In such cases, it is not unlikely that the husband appears in court if only to escape the humiliation which becoming a makhlu’ entails. This seems to transpire from the documents from and communications in the office of Hisham and Fatin which made clear that in most cases the marital dispute resulted in a divorce by mutual consent, a so-called ibra’ divorce in which the (financial) needs of both parties were taken into account and through which both husband and wife could escape the humiliation which becoming a makhlu’ or nashiz, respectively, would entail. This “reasonable settlement,” however, is not in the interest of men who use ta’a as a strategy to obtain a cheap divorce. This strategy implies that when a husband wants to divorce his wife without costs, he will make her life so miserable, among others things by submitting a ta’a claim which might frighten her to such an extent, that she will accept a divorce by “mutual consent” in which she has to give up her financial rights. However, if the wife reacts to her husband misbehaviour by submitting a khul’ case, both she and her husband will need to appear in front of the two professional arbitrators with results which I described above and which thwart the original plans of the husband.

Where men use ta’a as a strategy, women sometimes use khul’ as a strategy, not only to prevent a costly divorce such as described above but also to achieve other particular aims. Although there are cases in which women use khul’ in order to obtain an additional source of income by appropriating (parts of) the pension of their fathers (to which divorced women are entitled), in many cases I was under the impression that they hoped that khul’ would change the husband’s behaviour, and make him provide for her and the children for example. Especially in such cases, the intervention of professional arbitrators can guarantee a dialogue between husband and wife which would otherwise not be forthcoming leading to a settlement which takes both parties’ needs and desires into account.

The previous chapters give reason to believe that courts do not work to women’s advantage. Judges think that women use khul’ to marry other men and make women back large amounts of money to their husbands and for court-appointed arbitration. Male arbitrators such as Hisham use women-unfriendly language. And there is the establishment of a new Family Court, which might have
the result that the justice system is being closed to many women, because of its explicit rationale to keep divorce and other personal status cases out of the overburdened legal system. This chapter, however, has also shown that courts and the new Family Court in specific, sometimes also work to women’s advantage.

For the case of Egypt, Brown claims that the courts have become one forum among several that are used to negotiate marital disputes (1997, chapter 7). His findings are supported by Rosen, who claims that Islamic courts in general are used by litigants to negotiate (marital) relationships (1989). This explains why, notwithstanding the many obstacles women may face in court, a large number of women still resort to court. While this chapter has shown that this is certainly true to some extent, the cases of Nura and ‘Afaf, have also pointed out that for some women the court is the only forum of resort. In such cases, where the husband is in prison or absent, women seem to be more motivated by practical reasons than by negotiating the terms of divorce (see also Hill (1979)). This raises the question as to when courts become the only forum of resort and when courts become part of a social landscape in which out-of-court strategies are also used to negotiate marital disputes. Posing this question simultaneously raises another question, namely: to what extent do “traditional” forms of support still play an important role in situations of marital dispute? This question gains special importance in cases where women such as Nura return to a female-headed-household where there is no father figure who can mediate on their behalf. The issue of the strength of “the family” in general, and that of “traditional” forms of reconciliation in specific forms the subject of the next chapter.
7 Reshaping relations in Egypt

7.1 Meeting Nura’s mother

Nura wanted me to meet her mother. Since she also had an upcoming court session to attend, we decided to meet halfway, in front of the post office at 1230. When I arrived at the post office at the appointed time, I not only found Nura but also her lawyer Muhammad waiting for me. Earlier that morning they had gone to court to pick up the verdict and some other papers which Nura needed to fill out and stamp the next day. The forms consisted of two pairs of identical divorce certificates which Nura was carrying in a big brown envelope. She said she would show me the papers at home.

We took one of Cairo’s overcrowded buses and after we managed to get two seats next to each other, Nura inquired whether I had any news about ‘Afaf. I said I had not seen or heard from her at all and neither had Nura. She said that she used to call ‘Afaf a lot but that things had been quiet for some time now. “When did you last hear from her?” she asked me. “The day we all met in court. The day she had been really sad because her brother did not show up,” I answered “And for that reason she could not pay the 50 pounds for the arbitration sessions and her case was postponed again,” Nura added.

When we got off the bus, all of a sudden the world became very quite. We had entered the City of the Dead: an area containing a group of cemeteries which stretch out along the base of the Muqattam Hills and in which a few million poor Cairenes live illegally among the graves. Nura and her mother were living in one of the houses. After we had made our way through a maze of dusty and sandy alleys, we arrived at their tiny house. Leaning on her walker, Nura’s mother was waiting for us in front of the door. She welcomed me heartily and invited me to enter her small house which consisted of a fairly large entrance, one small room, a kitchen and a very small bathroom. Nura’s mother had never fully recovered from a stroke as a result of which she needed a walking frame, even to cover small distances inside the house.

After she had invited me to sit in the small room, which was completely filled up by two beds and a table, she pointed at the wall where a few photos were hanging. She pointed at a big photo of her deceased husband (Nura’s father) and started to tell me how her sister-in-law (the wife of her husband’s brother) had thrown them out of the house after she had found out that Nura’s mother was pregnant with Nura. From the large five-roomed apartment in the area of ‘Abdin

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209 6 April 2004, Cairo.
they had moved to the tiny house in the City of the Dead. Nura’s father passed away some 5 years ago, leaving his wife a small pension. After she had finished telling about this episode in her life, Nura’s mother pointed at a photo of her brother and sister who had also passed away. Then her face lit up as she pointed at a large baby photo of her eldest daughter (Nura’s elder sister). I did not see a photo of Nura hanging on the wall.

Nura gave me the envelope with the divorce papers which I started to read. Muhammad offered to help me. We browsed through the papers of which he thought that the most important was the one stating that Nura had renounced all her rights and had returned the sadaq to her husband. “Will he pay alimony for the children?” I asked him. “No, he will not do that because his family, especially his mother and second wife, are taking care of the children,” he said. Later both Nura and her mother said that the second wife of Mahmud was good to Nura’s children.

He then explained to me that other papers would be filled out tomorrow. Nura would go to the court alone and someone would fill them out and stamp them. Then, after a period of nine months, her court case would be really over. Nura asked Muhammad many questions about the forms. Which forms should she take with her and so on. Muhammad often called her ‘abita (stupid).

When we had just started lunch, Nura’s sister and her two children came to visit us. Nura told me that her sister wanted to divorce her husband through khul’ too, after which her sister looked shocked and exclaimed in English: “Noooo!” Later I learnt that Nura had not been joking as her sister was really having serious marital problems and a few months later her sister even decided to leave her husband. She took her three children with her and started renting a flat of her own in a neighbourhood far away from the marital home.

The neighbours, curious to see who this foreign visitor was, poked their heads through the house’s only window and asked Nura’s mother who I was. She proudly introduced me to them meanwhile explaining that they were all living next to her and that she was really happy to have such neighbours. “They are like family. Whenever I need something, they will help me,” she said in a tremulous voice.

After lunch Nura’s mother told me that she was not sleeping well due to many worries. Although she worried about both her daughters she was especially concerned about Nura’s situation. She did not try to hide her dislike of Nura’s husband whom she found a very bad man who was always short of money and who had even wasted the money which Nura’s sister had once lent him (in order to rent a minibus). I asked her how Nura and her husband had met each other. “At the post office, she met this man who used to divorce her all the time, something which is haram (forbidden),” she said.
Upon overhearing our conversation Nura confirmed how she had met her husband. “We met in 1988. When we married, I stopped working because he wanted me to do so. He said that it was not worthwhile working there on such a small salary. So, I resigned and stayed at home with my mother-in-law. Now, I work at the post office again but I still receive a very small salary. It only covers breakfast and transportation. In the old days you would become a muwazzaf (civil servant) after three years. But now nobody knows when you will be promoted muwazzaf. As for my husband, he once hit the boss of the post office after which he was expelled. It was then that he started working as a taxi driver. He also used to divorce me all the time,” she said. Like her mother, Nura also had a habit of changing the subject of our conversation quickly which I found difficult to get used to. “But you can only divorce a woman three times?” I asked her. “Yes, but he just did it orally, he did not register the divorce” she replied. “So, you never knew whether you were married or divorced?” I asked her. “Exactly, and this was really killing me. This was among one of the main reasons which made me decide to divorce him” she said angrily. “Does his second wife have children from him?” Nura: “No, he went to prison two months after they married.” “And didn’t she know that he was going to prison?” “No, she is an ‘abita (stupid)” Nura’s mother interrupted. “And did she know that he was married?” “Yes, she knew that,” Nura said. “And didn’t she mind? No, she was very eager to marry because she was a divorcee” Nura said after which she left the room again.

A little later Nura and her mother were arguing whether it would be better for Nura’s children to live with their father and his family or with Nura and her family. Her mother said that the house was too small for three children. “Besides,” she explained, “I am a sick woman, I cannot take care of them, and I do not have money. Nura’s family-in-law has a lot of money, since the children of Nura’s mother-in-law are working in the Gulf and they give her a lot of money. However, she refused to give us any of that. When I needed money for the doctor, Nura asked her mother-in-law to give us some money but she refused. Fortunately they are good and generous to the children and for that reason I would rather leave the children in the care of their father’s family. Nura, however, does not understand this. Tell me Nadia, did I make a mistake?” I felt uncomfortable answering her question since Nura was sitting near me and so I told her that she presumably had not. “Tell Nura this” her mother more or less ordered me to do. Nura started to get a bit angry and asked her to stop meanwhile defending herself by telling me that if the house had been bigger, she would have taken the children. Then Muhammad entered the small room and after he had inquired what they were arguing about he said: “No, the children better stay at their father’s place. They are better off there. End of story.” After this firm pronouncement Nura and her mother immediately stopped arguing about the children.
Around four o’clock I wanted to take a bus back into town. I said goodbye to Nura’s mother after which Nura, her sister and two children and the lawyer Muhammad walked me to the bus. When Nura and her sister were buying cold drinks, I talked to Muhammad and told him that Nura’s mother seemed to be really worried about Nura. He nodded: “Yes, I know. She is very worried about the reactions that will come from society. However, every person chooses his own path in life and Nura has chosen to divorce her husband in this way. I have tried to make her change her mind but she wanted it this way” he said. I wanted to know what he had wanted her to do instead but at that moment the bus arrived and Muhammad entered the bus in order to buy me a ticket.

Looking for a job in Australia

Nura and I had arranged to meet and again the post office served as our meeting point. After I gave Nura a missed call she came to pick me up and guided me to a small street next to the post office where a car was waiting for us. She told me that the driver was the son of the sister of Nura’s mother and that he and his friend had just arrived from the village in Sharqiyya. Nura summoned me to take the back seat which I did although I had no idea where we were going. Nura came to sit next to me and when her cousin’s attention was diverted as he tried to cope with Cairo’s chaotic traffic conditions, she said in a low voice that she had received the shahada (certification), and that she was now officially divorced. “I will show you the papers but not in front of my cousin and his friend,” she said with a big smile. As always, she changed the subject quickly and this time she wanted to know whether it would be difficult for her to find a job in Australia. “Australia?” I exclaimed in surprise. “Well, I can tell you one thing and that is that Australia is really far from Egypt. It lies at the far side of the world” I said, not knowing whether she was serious or not. However, Nura was serious and asked me with a glance of despair: “Will I not be able to see my children?” “Well, it will be difficult as the journey takes approximately twenty-four hours by plane. But why are you considering working in Australia? Don’t you have any news from the job in the Gulf?” I asked her. “I told you that I will know more about it in August” Nura said a bit annoyed. “Why do you have to wait until August?” I asked her as I started to become a bit irritated too. Nura: “Because the friends of Madame Jeanet will visit Egypt in August and then they will see me and see if I am suitable for the job.”

In the meantime we had entered the City of the Dead and when we passed the house of one of ‘Abdurraouf’s (the husband of Nura’s sister) family members, this prompted Nura to tell her cousin that the sister of ‘Abdurraouf had left her children because her husband had married a second wife. Although she was

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210 Personal meeting (30 April 2004, Cairo).
opposing the second marriage, she was afraid to divorce her husband out of fear that he would stop providing for the children. For this reason she decided to leave the children with him so as to force him to take care of them. “Now his brothers and sisters are taking care of their children” she said. Just as in the post office I had the feeling that Nura used this story to create more understanding for her own decision to divorce her husband and leave her children behind.

A few turns later we arrived at Nura’s mother’s house where Nura’s mother and two of her granddaughters were waiting for us. The eldest girl, a daughter of Nura’s sister, was approximately fourteen years old and the younger girl was Nura’s twelve-year-old daughter. Nura proudly introduced her daughter to me and constantly asked me what I thought of her daughter who had turned 12 years old the day before. Her daughter and I did an English lesson together. At a certain moment, when Nura’s mother and I were left alone in the “living room,” I told her that her granddaughter was a really nice girl. “Yes, the girl is nice but her father is a very bad man. He once beat his daughter severely in the eyes. “Thank god he is in prison now” she said angrily.

Then the neighbours, whom I met last time, poked their heads through the window again and asked me how I was doing. Nura’s mother started to smile as she was pointing at a fanus (a magic lantern used as decoration during Ramadan), which was placed high in the air on a long pole. “Look Nadia, we made this fanus together. I am really happy to have such good neighbours.”

After lunch everybody got dressed to visit Nura’s sister’s who was living in Basatin, the lower middle class area where Nura used to live too before she left her husband. When Nura’s daughter changed her pyjamas for a red skirt and a red vest, Nura told me that the clothes were a gift from her ex-husband’s brothers and sisters who were working in Kuwait. “It is really better to leave the children in the care of my family-in-law” she said. Her remark surprised me. Only a few weeks earlier she and her mother had argued about where to accommodate Nura’s children. While Nura wanted to bring her children to her mother’s house, now it seemed that she had accepted that they were not living with her and that they would not, at least not in the near future. I wanted to ask her about her change of attitude and why she wanted to work in Australia at the same time, but as always there was no time for that. Everybody was sitting in the car and waiting for me to come too.

These meetings with Nura illustrate two important issues. Firstly, there is the issue of Nura’s neglected old and sick mother who lived on her own and whom the neighbours took care of. Even after Nura came to live in her mother’s house, Nura left her mother in the care of the neighbours. Second, both Nura and her mother
often complained about their family-in-law. The aim of this chapter is to explore these issues in more detail.

7.2 Nura’s neglected mother: is friendship replacing kinship?
After my first visit to Nura’s mother, I was surprised to see that this seriously handicapped woman was living on her own in a very small house without running water. Although she could barely walk and moved through and around the house with a walking frame, her mother took care of most of the household chores including cooking. When she was in need of something from outside or when she needed to see a doctor, the neighbours, who lived next to her, would often come and help her. Apart from the neighbors, Nura’s mother had no family or others to rely on for help. This situation had not changed after Nura had left her husband and children and had started to live with her mother. On the contrary, instead of helping her mother, I found that the relationship between Nura and her mother was rather tense. They argued a lot, especially about Nura’s children whom Nura wanted to lodge in her mother’s house, something which her mother refused all the time.

There was something else which had surprised me. Although Nura’s mother knew that Nura had serious marital problems, Nura had waited a long time to tell her that she was trying to divorce her husband through *khul’*. Her cousin from the village who knew that Nura was trying to obtain a divorce did not know that she was trying to obtain a divorce through *khul’*. So, when he visited Nura in Cairo, Nura told me that she wanted to show me the divorce papers which she had just obtained but not before we had left the car which her cousin was driving. She did not want him to see the divorce papers. Now one could argue that Nura’s lawyer was a family member who knew all about her case. Although this is true, it must be mentioned that it was only after one-and-a-half years that Nura confided to him that she was having problems with her *khul’* court case. Instead of seeking help and advice from her family in the village, Nura had first asked her husband’s lawyer to help her! As such, Nura’s situation clearly contrasted with the one in *muHāmī khul’* and *urīdu khul’an* where the chiefs of the village travelled from the village to Cairo as soon as they could in order to help their son and nephew, respectively, who had run into difficulties.

In contrast to her mother and her cousin, Nura was always eager to share her divorce experiences with her colleagues at work, her sister and me. Sometimes I felt that although Nura continued to live at home with her mother, she actually lived “beyond” with friends and colleagues with whom she stood on a more equal footing and to whom she turned for support, not only for emotional support but

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211 In this area only 20 per cent of the households and workshops are connected to electricity, water and telephones (Bibars 2001, 36).
also in order to acquire access to much needed services, such as her Christian colleague who tried to help her to find a job in the Gulf.

The way Nura treated her mother and the fact that she had tried to keep the *khul'* divorce a secret from her mother (and her cousin) while she was very open about the divorce to her colleagues and to me, had led me to question whether in Nura’s case friends and colleagues were replacing kinship ties, at least in terms of emotional support? At the same time, however, Nura was very close to her sister with whom she shared all details about her life and her divorce. Yet, I still felt that the question as to whether colleague and friendship ties were replacing kinship ties was relevant if only since it was after several months had passed that Nura asked me to come and meet her mother. In fact, her mother was among the last in line for me to meet. First, I had met Nura’s friend ‘Afaf in court twice; thereafter I had met Nura’s colleagues in the post office; ‘Abdurraouf - her sister’s husband - and her lawyer Muhammad –husband of the daughter of Nura mother’s sister- in court; her Christian friend in Shubra; her colleagues again; her mother and sister and finally a cousin from Nura’s village. Did this sequence have a particular meaning? Did it tell me that the people whom I met in the beginning were more important to Nura than the people at the end of the line, such as her mother and a cousin from her village? Was it just a coincidence that the people whom I met first were friends and colleagues while the persons whom I met later were family members? Or, to ask the same question from a different perspective, does this particular sequence signify that the support of the family in general, and in times of marital problems specifically, is losing ground to the wish to establish relationships of care and trust with people outside the family such as friends and colleagues? If so, is this wish symptomatic or indeed typical of an increasing number of women who go to school and who work outside the home? In a study on friendship ties in Western culture, Paine predicted that friendship would replace kin ties and that friends would become intimates without much cultural fuss (cited in Risseeuw, 2005, 90). For the case of sub-Saharan Africa, Baerends says that the control of extended families and kinship groups is nowadays less effective in settling marital disputes than it used to be (1998, 68). Does this also apply to the case of Egypt?

7.3 The strong Egyptian family, myth or reality?
At the end of the last chapter I remarked that courts are sometimes used to negotiate marital problems. At the same time I questioned whether this was a response to deteriorating out-of-court arbitration by family and kin. Although Brown in a study on the rule of law in the Arab world does not explicitly answer this question, he nevertheless claims that in cases of marital disputes Cairenes employ a wide variety of fora, often simultaneously. “Husbands and wives will
deal directly with each other, use the mediation of relatives and friends, and/or use the criminal, civil, and personal status courts in complex strategies to obtain (or prevent) a divorce on the most favourable terms“ (1997, 198). “Courts are not the last forum of resort but they are hardly seen as a forum of first resort either” (1997, 200). This would mean that couples with marital problems do not necessarily exhaust familial arbitration and support before they turn to the court for help. It would also mean that the ability of family and kin to settle disputes in general and marital disputes specifically has not necessarily weakened but that family and kin are only one among a number of fora which people with marital problems resort to.

Nura too resorted to different people for support during and after the divorce trajectory. For example, Nura sometimes entered the court in the presence of her sister’s husband as well as a maternal uncle who at the same time acted as her lawyer in court. On other occasions she and ‘Afaf supported each other by showing up in court if one of them was having a court session. After a court session Nura often visited a Christian friend and colleague of hers who was living in the vicinity of the court in order to unburden her soul. At work Nura was very open about her situation and and she frequently discussed her divorce at work with her female colleagues (see 6.1). Finally, Nura also asked me on several occasions whether I was willing to accompany her to a court session. All these observations led me to believe that Nura relied on different kinds of people for support and, as such, her case seems to confirm the findings of Brown.

While Nura did rely on different people to support her during the divorce process, none of these different relations had heard the story from her husband’s side. Moreover, none of them had actually met her husband and even the few who knew him (such as her sister, her mother and her brother-in-law) had not tried to look for him and talk to him (in prison). This clearly contradicts uridu khul’an where the uncle of Tarik tries to negotiate a settlement by approaching the younger brother of the wife Maha. Conversely, in uridu Hallan Duriya’s brother, with whom she was on close terms, did not try to talk some “sense” into his sister’s husband. Worse even, early in the marriage, when Duriya had approached her parents for help, her father had refused to help his daughter: “What will people think? This will be the first divorce in our family,” he had said. The next day he had put Duriya back on the plane to her husband in Switzerland. In Nura’s case things were a bit different since the people who knew both Nura and her husband were not opposing the divorce but they also did not try to reach a settlement. In fact, I was led to believe that Nura relied on all kinds of people such as friends and colleagues for support but that, apart from Nura’s sister and her uncle by marriage, her family did not play a significant role in the way she handled the divorce trajectory. Research done in the early seventies seems to confirm this as it
concluded that individuals were more likely to resort to court for the solution to their problems when the relationship with their families was problematic or absent (Zaalouk 1975, 119-21): “The most striking feature amongst lower class litigants of both rural and urban origin was their alienation from their families and the increased tendency towards atomization” (ibid, 140-41).

During the fieldwork, however, judges often claimed the opposite as they were of the opinion that, in case of marital problems, courts are mainly visited by lower class women for whom the court was a strategy of last resort after all attempts at out-of-court arbitration had failed. In the same vein, Nihad Abu al-Qumsan, director of the Egyptian Centre for Women’s Rights, claimed that most women only go to court to file for a divorce if they are supported by their families and if all other attempts at mediation have failed. Ranya, an upper middle class woman from Cairo and member of a women’s NGO, told me that her father, himself a judge, had tried everything he could to spare her the indignity of a court case by persuading his daughter’s husband to divorce her out-of-court. “Women,” Ranya told me, “will only go to court when there is no other solution (see also Fahmi 1987, 11). It is a humiliating experience to appear in court.”

Something similar transpires in the film *urīdu khul’an* where we see how the family (from the countryside) plays an important role in the life of the main actors: Tarik and the lawyer Badr. In the film, Tarik’s family from the countryside - wearing *gallabiya*-s and *‘imma*-s (turbans) and carrying *bunduqia*-s (rifles) - came to rescue Tarik after they had seen on television that his wife wanted to divorce him through *khul‘*. In order to spare Tarik the humiliation of a court verdict, his uncle tries to settle the matter out-of-court by persuading the younger brother of Maha to look for a solution. In the same vein, many Egyptian serials provide an image of family members spinning intrigues while at the same time being the most important source of arbitration in case of marital disputes. This picture was supported by a few fieldwork experiences. The *ma’dhun* of Farafra (an oasis in Egypt’s Western Desert) as well as a woman arbitrator working in the arbitration office of Kafr al-Sheikh (Lower Egypt) told me that in case of marital disputes family members go to great length to try to settle the dispute.

At this point it is noteworthy to mention a study by Hegel-Cantarella on lawyers and customary law dispute settlements in a Lower Egyptian town, Port Said. She observes how lawyers, who are valued for their familiarity with customary arbitration as well as their legal expertise and their ability to make the summary of the arbitration “official” by bringing it before the judge, are often called to participate in customary assemblies. She concludes that the value which the parties to the conflict attach to a lawyer’s ability to “officialise” documents

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212 This also applies to the cases of Iran and Morocco where people use the court as a forum of last resort, when other attempts at solving the marital dispute have failed (Mir-Hosseini 1993, 29).
through the courts is a validation of the authority of the courts while it is exemplifies a rejection of the courts at the same time. Lawyers provide “the means to access the power of the state without having to engage the legal institution except as a last resort” (2007). In my eyes, the same applies to conflict resolution in Upper Egypt. Apart from the fact that the parties to the conflict must sign an agreement beforehand that they will not bring the case before the court after it has been settled by the local council, it is interesting to note that it has become common to deposit a copy of the final statement of the local council with the court (Korsholm Nielsen 2003, 68). These two cases show that while parties in a dispute do value and make use of the authority of the court, this does not mean that they want the court to settle the dispute. To them the court is only a forum of last resort.

How do we explain these opposing points of view on the role of the family and the courts in marital dispute settlements? An explanation might be that the judges and the NGO-leaders are all from the higher (middle) classes. As Ranya’s case made clear, women from the upper classes consider it very shameful to take their marital problems to court. Does this mean that upper (middle) class individuals such as the judges and the leaders of the women NGO’s were projecting their own values on the lower (middle) classes or is kin indeed a main channel of care and support across all social classes?

7.4 *Khul’* women and the issue of female-headed-households

In order to start providing an answer to the questions posed above, it is important to assess what women actually do when they have marital problems. To whom do they turn to for support and mediation? In this respect, people – both those who were interviewed formally and those whom I met informally – often stressed that in case of marital disputes women return to the house of their family and that their families will take care of them. Indeed, we have seen that Nura did go back to her family. Yet, the size of this family and its structure were not the one of an extended family but one of a household which consisted of her mother alone, a female-headed-household.

A similar case concerns a 24-year-old woman from the lower middle classes – Firdaus - who had married her husband without the consent of her parents when she was sixteen years old. From the beginning of the marriage he used to hit her. Whenever Firdaus complained about it he threatened to leave her and marry a second wife. Since Firdaus had married without the consent of her parents she was reluctant to divorce him and ask her parents for help. Her parents

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213 See also Hill (1979, chapter 3); and Brown (1997, 200).

214 See also Bibars (2001, 57). For the case of Palestine Moors notes that women who feel badly treated by their husbands return to their father’s house after which the husband will send mediators to persuade her to return home (1995, 143).
had even cut lose from her during the first years of the marriage. After eight years of marriage she was no longer able to endure the beatings and the threats and she decided to go back to her mother’s house and file for a *khul’* divorce. With her mother and father having separated in the meantime, her mother was sharing a household with one of her daughters (the younger sister of Firdaus). Firdaus decided to leave her children in the house of their father and his brothers and sisters with whom he was living. “If I take the children with me, I will be constantly tempted to go back to him. By leaving them with their father it is easier for me to really distance myself from him. Besides, he is taking good care of them and I want the best for my children. I did not finish my studies so they are better off with him,” she finished her story.215

Another story is that of the *fallaha* Wafa’, the first Egyptian woman who filed for a *khul’* lawsuit. Wafa’s case was reported in both an Arabic based Egyptian newspaper (*al-wafd*) and an English based Egyptian newspaper (*al-Ahram Weekly*). At the time she filed her case, Wafa’ had been married to her husband for fourteen years. Soon after their marriage her husband had started to beat her. At least three times Wafa’ had left the house as a result of that. Although her mother understood the difficult situation her daughter was in, she nevertheless had always urged her to go back to her children saying that all homes were like Wafa’s. Things got worse when Wafa’s husband married a second wife. After another major fight Wafa’ again left him and took the train to her mother. This time she refused to go back and instead she asked her husband to give their two-year-old daughter to her but her husband refused saying that it was in the interest of the girl and the other children that they stay together (*al-Ahram Weekly* 17-23 February 2000). When Wafa’ returned to her mother’s house, she also moved into a female-headed-household since her divorced mother was living on her own in a small village in Lower Egypt.

Can we still speak of a family in such cases and what to think of women like Seham who did not go back to their family but instead decided to rent an apartment and live on their own? Seham, a middle class woman in her late thirties was working as a nurse at a private hospital in the upper middle class area of Medina-t-Nasr when I met her through a common friend. She told me that soon after the marriage problems had started between Seham and her husband. For many years both families intervened and tried to iron out the problems between them. However, according to Seham their attempts at mediation helped in the beginning but after a while her husband always fell back into his old behaviour. She asked him for a divorce, but he refused. After fourteen years of marriage, Seham was no longer able to endure his bad behaviour and against her parents’

215 Interview at the lawyer’s office of the Egyptian Center for Women’s Rights (ECWR), June, 21, 2004, Cairo.
will she left him. She had nowhere to go but since she had a good salary, she
started renting a flat of her own. She took her two sons with her and divorced her
husband through khul’. In the case of ‘Afaf, her family also refused to take her
back and ‘Afaf was forced to remain living alone with her children in a small
apartment. In contrast to Seham, ‘Afaf did not have a good salary and could barely
make ends meet.

Do these examples tell us that the importance of the family as a first forum
of resort is deteriorating? Is it merely a coincidence that in these cases women often
took refuge in a household without an adult male? In this light it merits note that
in a study on Family Courts in Egypt, Al-Sharmani says that in contrast to women
who file for a regular divorce, women who file for khul’ often lack financial and
emotional support of their extended family (2008, 43). For the case of a large town
in northern Algeria, Jansen observes in the early 1980s, how many widows and
even more divorcees are not well supported by their families, although the existing
ethos prescribed that women without men should be supported by their families
(1987, 8-9). Something similar seems to occur in the urban context of Sana’a,
Yemen, where Würth also claims that the ability of the larger family to negotiate
marital disputes has deteriorated as a result of which members of “socially
unembedded nuclear family units” increasingly take their disputes to court (1995).
In order to see if this is also the case in Cairo, it would be interesting to look at
some ethnographies on family life in Cairo.

Family life in Cairo
In a study on family, politics and networks in urban quarters of Cairo in the 1990s,
Singerman claims that the predominant goal of families and the community at
large is to maintain the preservation of the household unit. She claims that in
general behaviour of Egyptians can be explained by the underlying principles of
what she calls the “familial ethos” which is based on families’ wishes to reproduce
the family unit. So strong is the will to reproduce the family unit and hence to look
for suitable marriage candidates, that, according to Singerman, not many
marriages break down. When the integrity of the household is threatened, others
are called upon to arbitrate disputes of which marital disputes occur most
frequently (1995, 50-1). Singerman claims that the pervasiveness and the success of
these arbitration channels, whether familial or governmental, are proven by the
extremely low divorce rate of 2 percent in Egypt (ibid, 53). In a study on the lives
of poor families in Cairo Hoodfar too uses the declining divorce rate to suggest
that marriage is a relatively stable institution in Egypt (1997, 54; 1999, 101).

In the same vein, in a study conducted in the late seventies and early
eighties in a lower (Bulaq) and middle class (Shubra) neighbourhood in Cairo,

216 Interview at the hospital in which Seham was working. Feb. 19, 2004.
Rugh, argues for the strength of corporateness. Although her fieldwork provides interesting data on social developments in Egypt (such as the spread of love marriages, women’s increasing freedom of movement, women’s participation in education and the labour market and disruption of the family as a result of divorce and death), she nevertheless concludes that response to new circumstances are only surface rearrangements of behaviour, the changes do not represent major changes in Egyptian society (1985, 274).

In Life among the poor in Cairo, a study carried out in a lower class neighbourhood in Giza during the late sixties and early seventies, Wikan presents a rather different picture by showing the devastating effect poverty has on family relations. She argues that poor people try to conform to the Egyptian ideal, which measures a person’s value by the amount of material goods she or he owns (1980, 135). However, since most families are too poor to live up to this ideal, people engage in kalam al-nas (gossip), which destroys family relationships. This main feature of the social system surfaces most clearly during marriage negotiations when it becomes clear that the decisions that the young couple make, are largely decided by a more diffuse network of involved people, spinning intrigues.

Contrary to Singerman and Hoodfar, Wikan claims that marriage negotiations show how larger kin groups play an insignificant role in social life (1980, 93-4). Bibars, who conducted fieldwork among female-headed-households in Egypt in the 1990s, also shows the poor state of family relations. Her study shows that female-headed-households now comprise approximately 18-30 per cent of urban Egyptian families (2001).

Apart from the fact that these works arrive at different conclusions concerning the strength of family relationships, I was also surprised to find that later work of Singerman and Rugh contains conclusions that are opposed to what they concluded in the ethnographies which I presented above. For example, eight years later, in an article on Islamic resurgence and changing family relations in Egypt, Rugh claims that “…resurgent Islam, […] is drawing upon a tendency already present in contemporary Egypt in which individuals operate more independently from their families than has been the custom in the past” (1993, 151). As for Singerman, where she concluded before that the stability of the family is reflected by the extremely low divorce rate, ten years later, she describes in an article on divorce in Egypt how divorce cases and personal status disputes overwhelm the court system. “The judiciary is paralyzed by these cases and the backlog they produce” (Singerman 2005, 166) and political forces even consider the high number of cases to be a hindrance to Egypt’s growing involvement in the global economic order (ibid, 166). How do we account for the fact that academics as well as respondents reach different conclusions on the strength and solidarity of the Egyptian family?
One explanation might be that people remarry quickly. Relative easy divorce on the side of the husband, for example, might go hand in hand with that of remarriage which explains the scarcity of divorced people in the population, despite the frequency of acts of divorce (Fargues 2001, 258). This is in line with my fieldwork findings. In the context of my research, I, of course, met a lot of divorced men and women from the lower (middle) classes, but I also met many divorced men and women from the upper (middle) classes in an informal way. For example, one of my friends from the upper middle class, who had divorced her husband out-of-court by way of *ibra’* after a marriage of a few months, had even introduced me to a group of approximately ten female friends of different ages but who shared one experience: they were all divorced and eager to marry again.

Another explanation could be that social science studies, dealing with family and household, have assumed the model of a consensual, harmonious household. Even social work/sciences, which interfaces with the family at points of conflict and crisis, used to emphasize the need to support and maintain the unity of the family (Ganesh 1998, 117) as a result of which scholars failed to recognize changes in family relationships (cf. Risseeuw 2005). In fact, this is what Cuno, in a study on divorce and the family in contemporary Egypt, criticizes Rugh and Hoodfar for. According to him, “The recent reevaluation of Egypt’s divorce rate from “high” to “relatively low” reflected skyrocketing Western divorce rates more than changes in the Egyptian rate, even though the latter was declining” (in press) (see also 4.4).

At the same time, however, one could also argue that these studies reflect a particular time and space and thus show that it is difficult to reach unequivocal conclusions about the strength and stability of the family since family relationships are always in an incessant flux, one that not only differs across time and space, but also depends on the situation which a particular family is facing. In Singerman’s first study on the strong “familial ethos,” poor urban families were confronted with a powerful state. In order to face the demands and restrictions of a powerful state, families are more likely to unite and form a front against an external “enemy” (the state). In Singerman’s second study on divorce there is more room for conflict within the family. Singerman’s contradictory conclusions about divorce and the Egyptian family suggest that a strong Egyptian family does not and did not exist. Moreover, sometimes individuals have strong, good relationships with certain family members while at the same time having conflicts with other family

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217 We should be aware of the fact that divorce rates do only inform us as to the relative stability of marriage. They do not tell us much about the quality of marital life. For example, a study conducted in the Netherlands showed that 25 percent of the children who grew up before the divorce wave claimed to have had an unhappy childhood while only 15 percent of the children who had grown up in a period in which the divorce rate was increasing rapidly claimed to have experienced an unhappy childhood (HP De Tijd 15 September 2006, 33).
members. After a certain period of time, these relationships may have altered due to changed circumstances. Furthermore, at some times people may be regarded as family members while at other times they are not and even individuals who are not related in terms of blood ties might be considered to be family. Interestingly, in a study on single women (such as widows and divorcees) in Algeria, Jansen points out that these women have a low status and that one way to make them “less remarkable is by symbolic reclassification back into the category of decent women through […] fictitious kinship” (1987, 247).

This last remark on being in/outside kinship ties touches on a second problem that occurs when scholars maintain the model of the harmonious and unchanging family: they fail to recognize the importance of other social categories –such as friends– in an individual’s support and survival network. In this respect Risseeuw notes that: “Historically within anthropological circles, ‘kinship’ and to a lesser extent ‘family’, as concepts and practices have received far more attention than ‘friendship’ (cf. Risseeuw 2005). According to her this was the result of Euro-American assumptions [with their exaggerated attention to biological idiom] being at the heart of much of the anthropological study on kinship. In contrast to the heavily analysed concept of ‘kinship’, social science literature, especially anthropology, paid little attention to the concept and practice of friendship.218 In the context of this chapter, it would be interesting to analyse what role friends play in general and, in cases of marital disputes, specifically. With this question in mind, I move on to analyse the case of Nura and explore what types of relationships –family, kin, friends, colleagues– were important to her at a certain moment during the divorce process, why they were important and why they sometimes ceased being important.

7.5 Defining friendship

When thinking over who could be labelled friends of Nura, I suddenly realized that in a way I had become a friend of Nura too. During the fieldwork we often called each other and we met regularly both at her work and at her home thereby sharing news and feelings. Since researchers always have to enter into a form of friendship with their informants, I started to realise that in fact the concept of friendship lies at the heart of anthropological practice. “After all, the development of some form of friendship is inherent within anthropological practice” (Bell and Coleman 1999, 2). Immediately after, I started to wonder why I considered Nura to be a friend of mine. Even though we shared all kinds of intimate details about our personal lives I was reluctant to tell her frankly that my brother and his “wife” had two children although they were not married, for example. Did this mean that we

218 See also the different contributions in *The Anthropology of Friendship* of Bell and Coleman (1999).
were not real friends since friends should trust each other completely or could these “white lies” be justified by the fact that Nura and I were not only from different cultural but also from different class backgrounds? Or was Nura a friend because we had both voluntarily chosen to enter into this relationship? I also wondered about the pragmatic side of our relationship. Since I was studying women who had decided to file for a divorce through khul’, there was a practical need to establish ties with women such as Nura. In the same vein, Nura used my relationship with her to show off to both her colleagues and family, and to iron out problems between her and her second husband (see chapter 8), something which turned me into the only person who had access to both her friends and colleagues in the post office and her family at home. To what extent are notions of friendship shaped by sympathy or instrumentality or can they be the result of both? Another question that kept me occupied was to what extent Nura considered me to be a friend of hers and if she did, why?

Before answering this question, I felt it important to first define friendship and find out whether there are universal notions of friendship (see also Bell and Coleman 1999, 2). By providing an answer to these questions, I also touched on the question as to whether there is a clear distinction between kinship and friendship and whether friendship could replace kinship?

Often friendship is described in terms of its constituting elements of which the personal, the voluntary and equality are thought to be the most central aspects of a friendship. Yet, in The Anthropology of Friendship Bell and Coleman explore the question of “…whether it makes sense to think of friendship as existing in mutually comprehensible ways across cultures” (1999, 2). They conclude that “…there is little pragmatic sense in attempting to construct a rigid, globally applicable, definition of friendship” (ibid, 15). Instead they rather use the study of friendship to produce an anthropology that understands kinship in the context of other forms of social ties as well as to study the emergence of new types of social relations in a globalizing world whose cultural and social boundaries are constantly being transformed (ibid, 16).

In line of this, Gort—in a MA thesis on friendship in Uganda— claims that friendship comprises both emotional and functional aspects and that it varies in its degree of intimacy. Depending on the context, the development of friendship is continually redefined by changing rules of relevancy (2005, 115). When we apply the idea of changing rules of relevancy to the case of Nura, we see that when I first met Nura she and ’Afaf were good friends. They were both in the process of

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219 According to Paine this is what characterizes friendship: “There are certain things which one does not tell a friend because he is a friend...It is because the matter to be divulged is a “dark secret” or one that is “incompatible with...image of self” (1974, 132).
getting a divorce and appreciated each other’s support to the extent that Nura would come to court when ‘Afaf was having a court session and visa versa. This changed when Nura was able to pay the fees for the court’s arbitrators while ‘Afaf was not. This change in their friendship was related to the fact that Nura’s and ‘Afaf’s position in the divorce process started to follow different courses. As a result, Nura no longer needed ‘Afaf’s support. Nura’s Christian friend and colleague in Shubra, however, remained important to her. Not only did Nura go to her house to unburden her soul after a court session and to celebrate the divorce, Nura also kept visiting her after the divorce had been obtained. This Christian friend and colleague knew people in the Gulf who were looking for an Egyptian nanny, a job Nura was interested in. In other words, Nura still valued the relationship with this friend and colleague because she needed her. Sociological literature often stresses that modern friendship should not be exploitative as it should not be a relationship which is formed for instrumental reasons (cf. Paine (1974) and Allan (1989)). Silver, however, argues that the concern with anti-instrumentalism is linked to a modern view of friendship (cited in Gort 2005, 14). Also Brain argues that “In a hierarchical society poor and powerless people need friends in high places” (cited in Gort, 2005, 14). Indeed, friendship relations between people of unequal status are common in the Egyptian context. Hence, if one wants to analyse the question as to whether friendship could replace kinship ties, it is important to keep in mind that friendships sometimes are hierarchical relationships which have a clearly pragmatic side and that are often maintained in the public domain.

7.6 Friendship cannot replace kinship

In The Anthropology of Friendship Bell and Coleman argue against opposing kinship ties to friendship ties. Clear distinctions between kinship and friendship are not always easy to sustain which is shown by the fact that the idiom of kinship is applied to friendship and visa versa (1999, 7). Their book shows that in some case studies kinship is transformed into friendship and in other cases friendship took the guise of kinship. Although I initially agreed that a distinction between friends and family is not always easy to make, I nevertheless was of the opinion that the data which the case of Nura and other Egyptian friends provided me with, point out that in this specific context there is a distinction between friendship and kinship ties, one which is based on friends, and kin being designated to different spatial arenas.

What struck me in Egypt was that so many friendships are maintained in public spaces such as universities, sport clubs and coffee shops. When friends meet, they often meet outside the home. I met my Egyptian friends, from all classes, outside the home in public places, such as the work place, the campus,
middle class coffee places (such as Cilantro) in middle class neighbourhoods such as Masr al-Gadida, Zamalek and Down Town, in qahwa-s (coffeehouses) and in Nura’s case, in court. Among themselves, my Egyptian friends do not often meet friends in the private domain of the house. In the introduction to this chapter I have already pointed out that I was surprised by the fact that I met Nura’s friends and colleagues first, most often in public spaces such as the post office and the court and that it was only a few months later that I first met her mother and other family members, often within the confines of the house. Nura seemed to keep friends and family separated. Nura’s colleagues as well as ‘Aaf never met her mother or other family members and visa versa. Rahma, a friend of mine from the higher middle classes who introduced me into her circle of divorced female friends, seldom brought friends to the house. Only once, during Ramadan did she invite many of these divorced female friends to the house where she was living with her mother. Otherwise, she would always meet them outdoors in typical middle class coffee shops and restaurants. In a study on space, class and gender in middle class Cairo, De Koning, narrates how her friends - middle class professionals - tried to maintain a distance between family and friends (2005, 18, chapter 4). In another case, a woman from the upper middle classes tried to exclude a female colleague of hers from a party she and her husband were planning to have that evening in their apartment. When her colleague did attend after all, she and her husband felt extremely uncomfortable as the colleague was not of the same social standing as the other guests and was not socially gracious. Although this woman and her colleague shared all the intimate details of their lives at work, the colleague was not welcome to visit her at home.220

In light of these findings I found a study on family and friendship in the Netherlands interesting in which Risseeuw shows that family and friendship ties are arenas of social relations which are not interchangeable. Where respondents were often of the opinion that one could ask family members to take up support roles such as providing temporary childcare, they considered it improper to ask friends to perform support roles. Risseeuw calls the phenomenon where friends do not know each other’s families or friends the matter-of-fact compartmentalization of ‘social life’ and ‘relationships’ (2005, 104) and she says that “In situations where family and friends remain fairly separate it is not easy to ask friends to take up support roles that could be linked to ‘family’ (2005, 106). Homes are private and not often walked into casually (ibid, 107). Friends are important but they do not

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220 In a study on family and friends in Darfur, West Sudan, Willemse focuses on daily support networks of both educated elite women and market women. Elite women go to great lengths to keep family members apart from colleagues since they have to keep up the appearance of being an elite woman while simultaneously they have to stay connected to other non-elite family members whom they might need in times of crises. Elite women’s multiple identities cause them to keep people from different identities separate (1998).
assume the domain of families” (ibid, 111). This resembles the situation in Egypt. First of all, friends and family were kept separate and in some cases people even kept family members apart from other family members. For example, Nura’s new husband (see also chapter eight) never came to Nura’s mother’s house as Nura was reluctant to let him meet her. When she once used my mobile phone to call her husband, she even told me that I should not tell her husband that we were visiting her mother.

Second, there is a similarity between the Egyptian and the Dutch context in the sense that friends did not easily take up support roles. Nura valued her colleagues and friends for their company; their understanding; and their help in trying to find a job abroad but as far as I know Nura did not ask them to undertake regular, practical help or to visit her at home (see also Zaalouk 1975). In other cases, friends often helped each other by offering each other emotional support and sharing each others company. In Rahma’s case, most of her friends were divorced too and when they met they almost always spoke about children and men. Broadly speaking, friends were there to offer emotional support while family offered housing, childcare and, in the case of Nura, an uncle by marriage provided legal help.

Yet, here too the exception proves the rule as families sometimes do not support members well who are in need of help. In section 7.1 we have seen how Nura refrained from taking care of her old and sick mother and instead relied on and expected the neighbours to continue taking care of her mother. She also stopped taking care of her three children by leaving them in the house of her family-in-law. Also what can one think of the fact that after ‘Afaf’s husband left her for another woman, ‘Afaf was left on her own, both by her parents and her brother? Although in general family members take up support roles, Nura’s and ‘Afaf’s cases exemplify that this is not always the case. Jansen’s (1987) and Würth’s (1995) findings for Algeria and Yemen, respectively, support this observation. Although it was true that friends and kin were often designated different spatial arenas in which friends were supposed to perform specific tasks such as offering emotional support in public spaces and kin to perform support roles in the domain of the home, the cases of Nura and ‘Afaf, and the other cases in which women moved into a female-headed-household, simultaneously showed that social reality sometimes showed a different picture. Hence, where the data on

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221 For the case of Uganda Gort also mentions how she expected friends to replace family members in their role of care givers in the face of the large number of individuals needing care who, as a result of AIDS, no longer had family upon whom they could rely for support and care. Gort, however, found out that friends were not often called upon to perform care giving roles (2005, 91). Although this might be related to the stigma associated with AIDS, I nevertheless found it interesting that both Risseeuw’s (The Netherlands), Gort’s (Uganda) and my data (Egypt) present a picture in which friends do not easily take up support roles which used to be performed by family members.
Egypt support the phenomenon of “compartmentalization of social life and relationships” (albeit the relation does not necessarily run along lines of friendship and kinship), this was different with regard to the division of “labour” between friends and family. Where friends almost always live up to their role of offering emotional support, families sometimes do not care for female relatives with marital problems. As we have seen, sometimes they refuse or are reluctant to accept daughters back with marital problems. In the more affluent classes this seems to be related to the fact that the family is afraid that divorce will cause a stain on its reputation. This aspect also occurs in urūdu Hallān, where the father of Duriya refused to help his daughter Duriya to divorce her husband, since he was afraid of what other people would say, especially since there had never been a divorce in his family before.222 In the lower classes it seems that economic reasons more aptly explain why families sometimes are reluctant to accept a daughter back with marital problems. Especially when a woman has many children, there is often no room to accommodate them all while having so many extra mouths to feed also weighs heavily on the financial resources of the family. This, as we have seen, was the case with Nura.

In such situations, one would expect the importance of reconciliation to become even more important but in the case of Nura the opposite was true as reconciliation did not occur. I relate this to the fact that Nura’s father had passed away and, without brothers or other male relatives to take over the father’s guardianship, there appeared to be nobody who was able or willing to represent Nura and her family vis-a-vis the family of her husband. This is well exemplified by a statement by Nura’s mother who told me once that she felt the position of both her daughters to be very weak since they had no father and no brothers who could help them in case of marital problems. In a study on conflict resolution within one Cairene family from the lower middle classes, Drieskens pays attention to this aspect of male representation. She says that the head of the family, al-kabīr, is important since he represents the face of the family in the confrontation with the opposing party. According to her, the concept of face illustrates “the multiple voices of both men and women [which] are temporarily muffled and unified behind one face, which confronts the other as one (collective) person” (2006, 23). When families are without a “face”, and this applies to Nura’s family and that of female-headed-households in general, then this negatively impacts on mediation.

222 Although economic facets might also have played a role, after all higher class families often invest a lot of money in marriage preparations, Duriya’s father did not mention this in the film. This also applies to my fieldwork findings. When people from the higher classes talked about divorce, they emphasized the impact which divorce would have on their reputation, rather than the financial consequences which it might entail.
The “face” of the family and the mediator

It is important to distinguish between a male family member who represents the family vis-a-vis the opposing party and who subsequently tries to bring the parties in dispute together and the person (or institution) who is the mediator. In official attempts at reconciliation these two people are not the same as it is imperative that the mediator is neutral. This applies to the new Family Court as well as the local councils in Upper Egypt (cf. Korsholm-Nielsen 2003). In the Cairene family which formed the subject of Driesken’s study it also becomes clear that this is important. In that case, the strength of the victim’s demand was weakened because his representative tried to be the mediator as well as the representative of the victim and his family (2006, 1201). In the film urīdu khul’an something similar transpires. Here we see how Tarik the husband is represented by his uncle from the village and Maha the wife by her younger brother. Tarik’s uncle tries to bring the disputing parties together by arranging a meeting between him, Tarik and Maha’s brother. During this meeting, however, he also tries to mediate between Tarik and Maha’s brother with disappointing results as the demands of Maha’s brother are declined by Tarik. In the film, then, the actual mediation is successfully left to the court where, as we have seen, Maha declares that she still wants Tarik to be her husband.

Things can be different when there are no representatives but when there is a mediator who serves as the common link between the parties in dispute, a common friend for example. The following case from Kafr al-Sheikh, a town in Lower Egypt, serves to illustrate this. The mediator, Muhammad, who was a friend of mine, told me about this case when we had just visited the court of Kafr al-Sheikh. According to him divorce was a frequent problem, not only in Egypt in general but also among many of his friends specifically. Often, he would intervene and try to reconcile them. He then told the following story to illustrate this.

After a courtship of seven years, two friends of Muhammad got married. They went to live in Cairo. After a baby was born the problems started and the husband frequently called Muhammad to complain about his wife and that she was no longer paying attention to him. Muhammad often visited them to talk about their problems. A few times he also visited the wife while she was alone in the house, something which he alone was allowed to do as the husband trusted him completely and saw him as a brother of his wife. So, by talking to both of them, he tried to persuade them to understand each other better. To no avail, since on a certain day, the husband called Muhammad to tell him that he wanted to divorce his wife that very day and that he had already sent her to her parents’ house.

Immediately, Muhammad rushed off to meet the wife in her parents’ house. He tried to persuade her to go back to the marital home with him and the
baby. Her parents tried to stop him, but he managed to persuade them and the wife too. When they arrived in the marital home in Cairo Muhammad called the husband, who was working, to tell him that his wife had had an accident and was in hospital. In shock the husband said that he would come home immediately only to find Muhammad, the wife and the baby in the house. Husband and wife were not ready to reconcile and both sat in a different corner of the house. Muhammad took the baby and started to talk to the baby. The wife was the first one who started to talk to Muhammad and the baby. She expressed her feelings and Muhammad started to defend her husband. Then her husband did the same, complaining about her. Now, Muhammad started to defend the wife. He tried to make them understand each other’s points of view. He also asked her why she had come with him to the flat. “Because you are a brother to me,” she said. “Come on, that is not the only reason. You did it because you still love him” he said. Then Muhammad asked the husband the same question. In the end Muhammad told husband and wife that there was still love and for that reason they should give their marriage a second change. If he had felt that there was no love anymore, then he would agree to the divorce. His reconciliation effort worked out well as the couple is still happily living together. He advised them to spend a free day for themselves without the baby every second week. They are not calling him any longer which means that they are not having problems anymore. That is how it goes, he explained. They call you when they have problems and they do not call you when everything is going fine but that is fine.

The story of Muhammad shows that in cases of successful mediation the mediator does not necessarily need to be a neutral outsider. What is more, when the mediator is a common friend (or any other common contact) it can be less important for women to have a male representative. This is especially important in situations where women such as Nura are deprived of a father figure who acts as their representative vis-a-vis the family of the husband. As a matter of fact, in the case of Nura where we have seen how she was very open about the divorce towards her colleagues, one of her colleagues could have taken up the role of mediator. This, however, is not what happened and seems to be related to two factors. First, where Muhammad was male, Nura’s colleagues were all female, except for her boss and one male colleague. Apparently mediation is still very much a male task. This is exemplified by a personal contact who said that mediation in the new Family Courts is good as it teaches people how to communicate. However, he added, the mediators should be male otherwise the male defendant will behave disobediently. According to him, the new Family Court had taken this aspect of mediation from the villages. And indeed, an article about “conflict resolution” in Upper Egypt makes clear that all dispute mediators are male (Korsholm Nielsen 2003). This also transpired in the arbitration office of
Fatin and Hisham, where Hisham presented himself as being in charge of the office while he was also the one who went to visit litigants at home. Fatin, on the other hand, never left the office to visit litigants at home.

A second explanation for Nura’s colleagues not taking up the role of mediator seems to be related to the fact that none of them knew her husband. In other words, there was no common link between Nura and her husband. Already in 1975 Zaalouk, in a study on the social structure of divorce adjudication in Cairo describes that “In the absence of kinship groups and the existence of other forms of social organization or reference groups, individuals were more likely to resort to court for the solution of their problems. Friends and neighbours were indeed alternative reference groups, however they could not substitute for family councils or courts. Attempts to reconcile couples in disharmony had never been made by friends or neighbours, this might be due to the fact that initially the couple never had friends or contacts in common, who therefore felt in a position to interfere as friends of the family” (ibid, 120). In this light Antoun speaks of estrangement of the conjugal relation which he believes to be a distinctive feature of Middle Eastern family relations (1990, 38-9). For the case of an Algerian town in the 1980s, Jansen also speaks of a gap between conjugal partners and of a weak matrimonial tie as husbands and wives are separated from each other in many aspects of life (1987, 169).

In summary, when there is no male representative; and when there is no common contact who takes up the role of mediator, women with marital problems seem to become dependent on courts to provide mediation.

7.7 A source of marital disputes: in-laws

Only a few minutes after I had first met Nura’s mother, I was taken by surprise as her mother immediately started to tell me how her sister-in-law had thrown her, her husband and her children out of their house, almost forty years ago. That same day she would also complain about her ex son-in-law (Nura’s ex-husband) and how he used to take their money although his own family was quite wealthy. When Nura’s mother once needed a doctor, Nura’s mother-in-law was not prepared to help her out by giving her money. On later occasions, she would often castigate her other son-in-law (the husband of Nura’s sister) for having stopped greeting her when he passed her little house on his way to his parent’s house (who lived opposite Nura’s mother). She would then cry and tell me that she had no idea what had happened and why he had stopped greeting her. Clearly, her family-in-law had played and continued to play an important role in her life.

In Nura’s case, Nura held her mother-in-law responsible for her marital problems but especially for not being willing to create the financial means which would make it possible for Nura to take back her children into care. Like in the
case of her mother, there was an economic aspect to her suffering since her mother-in-law was unwilling to provide Nura the money with which she could have taken care of her children. In fact, Nura complained more frequently about her mother-in-law than about her ex-husband and I was often under the impression that she held her mother-in-law responsible for her situation - something which I think is exemplified by Nura telling me and her colleagues that the problems with her knee were caused by her mother-in-law. Nura even claimed that her headaches which were a result of the pressure which her mother-in-law was exposing her to could easily have caused Nura a stroke. Although Nura’s colleague had to laugh about it, she nevertheless started to complain about her mother-in-law, with whom she and her husband shared a household, too (see 6.1).

In the case of Jordan, Sonbol argues how legal records show that one of the most important reasons for family disputes involves the mother-in-law’s presence in the family home as well as the interference of the mother- and the sister-in-law in a wife’s affairs, even if they are not living with her (2003, 180). For the case of Lebanon, Faour claims that most marital disputes are related to economic factors. In many cases the husband is not able to provide financial support or to secure a separate dwelling for his nuclear family. “A large number of poor and middle-class newlyweds have been forced to live with their families of origin in the same dwelling, due to scarcity of affordable housing. Co-residence with parents-in-law, often the husband’s parents, has caused a lot of tension in the relation between the spouses, with the wife being particularly disadvantaged” (1997, 178). In such cases Faour even speaks of the wife’s house being turned into a “virtual prison” (ibid).

I was intrigued by the metaphor of a virtual prison since it immediately reminded me of the Egyptian House of Obedience (bayt-al-ta’a) and its connection to the maintenance-obedience relationship. In this light it is interesting to also look at husbands who are having problems with their family-in-law. Earlier, (in 6.3), we have seen how two husbands accused their fathers-in-law of pressuring their daughters to make excessive claims on them. What is interesting is that both husbands reacted to their in-laws interventions by submitting a ta’ā claim.

Women, like Nura, having problems with their in-laws, reacted to a meddlesome family-in-law by filing a khul’ claim through which they had to give up their financial rights. Apart from different financial and legal consequences,

223 On another occasion, when I was interviewing a woman at Fatin’s lawyers’ office, the whole story revolved around her mother-in-law as well. Like Nura, this woman was of the opinion that her mother-in-law had spoiled her son (the interviewed woman’s husband) to such an extent that he was not able to shoulder his marital duties. In a study on Family Courts in Egypt, Al-Sharmani claims that women’s reasons for filing a khul’ divorce is often related to problems arising out of living with in-laws (2008, 41).

224 For Palestinian examples, see Moors (1995) and Shehada (2005, 187-95). For the case of Morocco and Iran, see Mir-Hosseini (1993).
these different moves also have different psychological and sociological consequences for men and women as men who react to interventions by submitting a ta'a claim put the blame on somebody else, namely their wives whom they accuse of behaving disobediently, while wives who react by filing khul' cases accuse themselves of being disobedient, as it were. Even in the case where a husband’s request for having his wife declared disobedient is declined, because he cannot provide a shari'a dwelling for example, this does not necessarily carry a social stigma for the husband. Whatever the different motivations men and women may have had for resorting to these measures, the fact remains that both on a legal and a social level women behave disobediently by breaking free from the “virtual prison” which living with the husband and his family entailed, while men, who break away from a marriage, resort to measures which put the blame on their wives. No matter who takes what legal measures, in the end women are often the ones who are blamed for the situation.

Nura’s case is a telling example. Where Nura lived in a virtual prison her husband was living in a real prison. Although her husband was behaving “disobediently” since he had committed a crime (of fraud) while he had also not been able to provide for his family, Nura was the one who felt that escaping her virtual prison was only possible through opting for a stigmatizing khul’ divorce. The economic facets which often force women to start living with their in-laws played such an important role in Nura’s case that it even influenced the relationship with her children. Although Nura took upon herself the role of provider by entering the workplace again, she was not able to take care of her children financially. As a consequence, she was left to leave her children in the house of her mother-in-law and her ex-husband’s co-wife. In order to change this situation Nura even considered working in the Gulf and Australia where wages are higher. By taking up a second job as a migrant worker Nura was considering something which was publicly seen as the prerogative of men. Where in reality gender roles were reversed since Nura became the provider while her husband remained in prison and let his mother and co-wife take care of their three children, on a legal level Nura was behaving disobediently. In a sense, this also applies to the public level where we have seen how women who divorced through khul’ were often accused of leaving their husband and children behind for another man, Nura’s divorce experiences had given ammunition to such an assumption, especially after she decided to marry again, a topic which I present in the next chapter on secret marriages and polygamy.

225 Shehada argues that the low number of ta’a claims in Giza City court, Palestine, is related to the fact that due to the occupation by Israel, husbands are often not able to provide their wives a separate dwelling (2005).
Before doing so, a refinement must be made. I showed in this section that women often face problems with their family-in-law, mainly because they are living with them under one roof. In such cases, women can be said to live in a virtual prison. So far, I only related the metaphor of the virtual prison to women and did not question whether it also applies to men. At first glance, such a question seems out of touch with Egyptian reality, where men do not usually seem to live with their in-laws. Yet, in the film uridu khul’an, the husband Tarik also came to live in some sort of prison after his wife and her younger brother had taken over the marital home. They designated him a small corner of the house where he could sleep, (un)dress and move freely while he was denied access to other parts of the house or could only enter them by entering security codes. Moving from fiction to reality and from the urban to the rural context, a study on an Upper Egyptian village near Aswan shows that in cases of polygamy the newly wed couple often remains with the parents of the wife after marriage or the husband visit his second wife regularly if he has already established a household with his first wife (Haugaard Bach 2003, 56-60). When husbands move in with their in-laws, this not only increases the potential for conflict between a husband and his family-in-law, it simultaneously raises the question as to whether the husband’s non-sustenance of a marital dwelling undermines the maintenance-obedience relationship. I pay attention to this question in the next chapter.

7.8 Conclusion
I started this chapter with the question as to whether kin is still a main channel of care and support and whether friendship relations are replacing family ties. It is not easy to obtain an answer to this question as both respondents interviewed and academic literature express opposing points of view on the importance of the family in contemporary urban Egypt. Where Nura’s and other women’s divorce experiences suggest that family ties are often not strong as a result of which the court becomes the only forum of resort for women with marital conflicts, others such as judges and NGO leaders claim that women will only use the court as a forum of last resort. Only after their families have made numerous failed attempts at mediation and after they have reassured themselves from the latter’s support, will women take their marital problems to court. Some scholars claim that family ties are strong, while others such as Bibars, Wikan, and Zaalouk show that they are not. In a study conducted in Cairo’s Zananiri court, Zaalouk even argues that women go to court when family ties are lacking or weak. In such instances women might have had alternative reference groups consisting of friends or colleagues but these groups hardly ever tried to mediate between a couple with marital problems simply because they did not know the other partner. In fact, friends and colleagues
were often the ones that pressed women to take their problems to court. What to make of these conflicting points of view?

One way is to recognize that socio-economic background plays an important role. For example, judges are from the higher classes in which family ties are indeed very strong when it comes to divorce. In case of divorce a family has much to lose both financially, as they have invested much capital in the marriage and socially, as going to court implies that the marital dispute is made public. This can be very damaging to the reputation of the family.

In the lower classes things are often different as both men and women make use of the court system as a strategic means to obtain what they want which is not necessarily a divorce. In cases where family ties are not so strong or when family members live far apart from each other, women (especially women who live in households headed by females only) have nobody to represent them vis-a-vis the family of the husband and/or to mediate on their behalf and in such cases the court becomes the only forum of arbitration and resort. This is partly informed by the fact that friends who do not know the other half do not try to solve the marital dispute by taking up the role of mediator. Where friends offer emotional support, family members are still expected to offer mediation. Although it is true that women with marital problems often return to their family’s home, this home often consists of women only, that is to say, women in such cases often move into a female-headed-household, a household without an adult male. In such cases there is often no mediation coming forward, a situation which forces women to either endure a bad marriage or to go to court.

Earlier we have seen how these findings are supported by research in a court in Sana’a, Yemen (see 7.4). In that case, Würth claims that the ability of the family to negotiate has decreased as a result of which disputes are increasingly taken to courts which ‘are not partners in the (re)negotiation of relationships’…(1995, 337) and which either dissolve (marital) ties or do not issue a ruling at all (ibid). For the Egyptian case, I tentatively argued in chapter 6 that things are different. After the introduction of a new Family Court in 2004, courts seemingly became “partners in the (re)negotiation of relationships” as professional government-appointed arbitrators provide mediation which often has the result that marital relationships are either solved or dissolved in an amicable way, which takes into account the interests of both spouses.

Since wives often move into the household of their family-in-law when the husband is not able to provide for a separate dwelling, it should not come as a surprise that in such cases the family-in-law accounts for a large percentage of marital disputes. In the case of Nura for example her husband did not provide Nura a separate dwelling nor did he provide for his family. He rather abdicated these duties to his mother, brothers and sisters. Although husbands have a legal
and social duty to provide financially for their families, the fact that wives often move in with their family-in-law exemplifies that husbands fail in their marital duties. When problems arise between the wife and the family-in-law, often the mother-in-law, wives frequently end up living in a so-called virtual prison which they sometimes escape by resorting to *khul*. *Khul*, we have seen, is usually related to women’s disobedience, both on a legal and public level. When husbands have problems with their in-laws things are different as they can submit a *ta’a* claim. Although it is true that in such cases, a husband needs to substantiate his *ta’a* claim (for example: if his wife is living with his family, he needs to prove in court why he has not provided his wife a separate dwelling), in the end, however, it is the wife who runs the risk of being declared *nashiz*.

Things are different in cases of polygamy where the wife remains living with her natal family and where the husband often moves in with his family-in-law, or when the wife starts living on her own while the husband only visits her on a visitor’s basis. While this last scenario seems unlikely for the case of Egypt, this is precisely what happened to Nura. In this light, we should also pay attention to the fact that Nura suddenly stopped talking about her children. It seemed as if she was no longer interested in working abroad and taking back her children. Where Nura could not stop worrying about her children in the beginning, at a certain moment she stopped talking about her children and every time I asked her about them, she would simply say that they were doing fine. One time she even said that she loved the three children of her sister more than her own children. What had happened? Nura had escaped her virtual prison and after she had obtained the divorce she was free to work abroad and provide for herself and her children. It was even imperative to her to remain single since she thought that a new husband could object to her wish to work abroad. At a certain point in time, however, Nura started to think about marrying again. She wanted to escape the stigma of being a divorcee and she wanted a husband who could provide for her, at least partly.

Why did Nura want to give up her freedom and why did she choose to enter a marital prison again, in ways similar to the one from which she had just escaped?
8 On secret marriages and polygamy

8.1 Nura wants to marry again...polygamously and by way of ‘urfī

Nura called to tell me that she was very angry with me since I had not asked about her for a long time. I could tell that she was really upset since she was not even asking me how I was doing but almost immediately continued to complain about her knee which was hurting her again. “Besides that, there is also hāga nafṣiyya, something psychological which I want you to tell about. Can you come to the post office tomorrow?” she asked me in a sad but compelling voice.

When I arrived at the post office the next morning I gave her a missed call where after she came to pick me up. She gave me the usual four kisses but then she threw her arms around me very strongly. She had never hugged me like that before. When we went inside the post office she was not laughing and smiling as much as she normally used to do and apparently she had not slept well because she had bags under her eyes. Nura made me a small breakfast which we ate together. When I asked her what was wrong she said that she was tired of having nothing to do. She wanted to work more instead of sitting at home the whole afternoon and evening. She showed me immigration papers to Australia saying that an Egyptian man, who migrated to Australia two years ago and who had gained Australian nationality, had advised her to fill out the forms. She asked me whether I was willing to help her with that.

A little later she asked me to accompany her on her way to the public oven where she wanted to buy bread for her and some colleagues. On our way, she started to talk about ‘Afaf saying that she had not heard from her again after that morning in court. Nura was of the opinion that ‘Afaf had been angry with us for not having paid her the fifty pounds which she so badly needed. “Yet,” she said, “if I had the money, I would have given it to her.” “Wasn’t her brother supposed to pay?” I asked her. “No, he was her mediator, so he cannot pay.” “And what about her parents?” “She does not have parents. Well, at least she is not in contact with them. She is living alone with her children,” Nura said after which she suddenly asked me: “Do you really want to know why I am feeling depressed?” Nura did not wait for my reply and started to tell me that: “You know that Mahmud has debts because of the minibus which we wanted to buy in instalments. Since he cannot pay back his debts his creditors are still after him. However, because he is in prison they cannot get him and now his creditors want to come to my house to get the money.” “How do you know that?” “My daughter

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226 Personal meeting, Nura (10 May 2004, Cairo).
told me that they were at their door and that my mother-in-law told them that she had not seen me in two years and that she did not know where I was living at the moment. However, if they come back again I am afraid that she will tell them where I live. So, in order to escape them I sleep in another house every night. One night I stay at my mother’s, another night at my sister’s and sometimes I even sleep at the house of Madame Jeanet (her Christian colleague). I even considered giving up my work in order to leave Cairo and live in my village again. Yet, if I do that it will be very difficult to see my children” Nura said sadly.

In the meantime we had arrived at the oven and I asked Nura: “What will they do if you cannot pay it back?” “They might put me in prison too.” “But why does his family not pay for this?” “His mother said that it was my problem.” When we walked back and while I was still thinking of this unfortunate development Nura told me that a married man with four children had proposed to her. He had promised her that he would write a flat in her name in one of the new satellite cities and that he would provide for her. She said that it was haram (forbidden) and that her sister had opposed the idea since it would only bring problems as he would marry and leave her again. “However, Muhammad, the lawyer, supports me and told me that I could give it a go. What do you think Nadia?” “How old is he?” I inquired. “He is 36 years old.” “And what does he do for a living?” “He works as a zabît il-jaysh (officer in the army). He has a very good job.” “How did you get to know him?” “Through the neighbours, who are always answering the phone when you call my mother. They know this man. He used to live in our neighbourhood and we actually grew up together. From the time we were little he has been in love with me,” Nura said and for the first time that day I saw a smile on her face “So, why did he not marry you?” “He wanted to, but his family decided that it was better to marry a woman from the family. And so he did.” “So, she is his first wife?” “Yes.” “And you will become his second wife?” Nura smiled shyly as she nodded. “Yes. Look…the best solution, of course, is to find work but it has not been easy to find work,” she said. “Well,” I replied, “you should be careful. You should see the flat, and when you are going to sign the marriage contract you should register…” “There will be no marriage contract” Nura interrupted me. “We will marry by way of ‘urfi. Do you know ‘urfi?” she asked me. “Yes,” I said. “Well, that changes everything. Why does he want to marry you by way of ‘urfi? Does he want to keep the marriage a secret from his first wife?” “Yes,” she told me. “He does not want his wife and children to know. He wants to keep it a secret for their sake. He promised to spend three days with her and four with me.” “And she will not get suspicious?” “No, he is an officer in the army, so his absence will not arouse a lot of suspicion.” “Well, I guess it is not bad when he is only around four days a week” I said while I looked at her with a smile “Yes, that will be very relaxing indeed,” Nura said and it was clear that she understood what I was
alluding to. “And will you take the children back?” “No, that is impossible. Their schools will be too far away.” “And your future neighbours, won’t they get suspicious when he is coming and going, leaving you alone in your new flat?” “No, they will know that he is an officer in the army and during his absence I can stay with my mother and sister. But, if I can get this flat, then Mahmud’s family and the creditors will no longer be able to find me” she told me with a sense of hope in her eyes.

In the mean time, we had arrived at the post office again and since it was past ten there was no more work that needed to be done and so we sat a little with two colleagues of Nura. One of them told us proudly that her daughter had started studying law. She started to smile as she said that she would divorce her husband through *khul’* as soon as her daughter had graduated from law school. Her daughter would then be the legal expert of the family and her with filing a case. I asked her smilingly whether she was talking seriously. “No,” she said a bit shocked, “of course not. I was only joking.” Thereafter Nura and her two colleagues started talking about a divorce case in Nura’s family which I assumed was the case which Nura had told her cousin about on the day that the latter drove us from the post office to Nura’s mother’s house (see also 7.1). Nura told her colleagues how the husband was the one who had kept the children. Her colleagues were clearly very surprised when they heard this but concluded that at least he was a good husband since he did not refrain from taking care of his children. “Mahmud would never do that,” Nura told them but I was under the impression that her colleagues did not want to talk about it as they only nodded and did not elaborate on her remark.

Zeinab, another colleague of Nura who had got engaged recently came to show me her *shabka* which consisted of two bracelets, a necklace, a ring and something else which she said she had left at home. She said that they planned to marry after one year or maybe even in December if everything worked out fine. I asked her where they hoped to live. “Maybe in al-Marg or in Medina-t-Nasr, if he can get a flat over there,” she said. When Zeinab left again Nura told me that Zeinab’s fiancée was a friend of her brother.

Then my mobile phone rang and after I had hung up I told Nura that a man who claimed to live in Saudi Arabia had been calling and harrassing me for the last couple of days. Nura had to laugh: “From Saudi Arabia, wow, can’t you get him for me?” Nura’s two colleagues had to laugh and told Nura that he wanted me and that he definitely would not be interested in Nura.

A few minutes before we intended to leave the building, the director and another man came to the table where we were sitting. Without introducing the other man the director whom I always found very friendly pointed at Nura: “This
is the woman who divorced by way of *khul‘.* The other man did not know how to react. Neither did Nura. You could hear a pin drop.

At noon we all left the building. I warned Nura to be very careful with the flat and to make sure that someone checked the papers concerning the ownership of the flat. She said that (her lawyer) Muhammad had already promised to check that and that he thought this marriage to be a good solution. She looked at me quite energetically saying that her brain was working like crazy.

**A secret meeting at the Muqattam Hills**

A few weeks later Nura told me that the man who wanted to marry her by way of *‘urfi* was actually one of the sons of the neighbours who were living next to Nura’s mother and who always took care of her old and handicapped mother. Nura told me that she really feared that her mother and the neighbours would find out about their secret. “I cannot take the risk. If they get angry with me, they will stop taking care of my mother,” she said. Although she claimed that she had put the idea of marrying him out of her mind, it was clear to me that she still liked talking to him as she constantly asked me whether she could use my mobile phone to call him or to send him text messages. One day she even used my mobile phone to call him in the presence of her mother. To make her mother think that she was calling a female friend, she used the feminine form of you –*inti*– instead of the masculine *inta.* Apparently they had arranged to meet since it was only a few minutes later that her secret lover whose name was Rami, entered Nura’s mother’s little house making it look as if this meeting was a coincidental meeting between two neighbours.

On another occasion Nura told me that Rami had invited her for a visit to the Muqattam Hills. “Will you come with me this evening?” she asked me. Since I knew that the Muqattam Hills had a very bad reputation for secret lovers to meet, I told Nura that I would only join her on condition that my partner could come with me. Of course we never went there; that same day she called me to say that he had not called her again and that it was therefore very unlikely that we would go. Instead she asked me to come to the post office on Wednesday morning. “I want to make couscous for you,” she said as if she wanted to have a good reason for inviting me.

**Visiting Nura at the post office again**

In June 2004, I went to the post office and as usual I waited in front of the gate to be picked up by Nura. I was quite surprised when instead of Nura, Ahmad, the boy doing all kinds of errands in the post office, came to fetch me. When I met Nura inside she told me that Rami had not called her and that she had only accepted his invitation to go to the Muqattam Hills for my sake. She asked my permission to
call him on my mobile phone. “Rami says that we can go to the Muqattam Hills tonight. Would you like to go there tonight?” Nura asked me full of expectation. “No, I am sorry but I am not free tonight,” I told her as I was getting slightly irritated by the whole Muqattam Hills business.

A little later I was witness to Ahmad telling a group of female employees about one of his aunts who had divorced her husband by way of khul’ and who had married again recently. Nura told me that this aunt married a man who was already married. “So, she became the second wife?” I asked Nura. “Exactly. This happens a lot,” Nura said. Ahmad interrupted saying: “Of course, divorced women often marry again, but they seldom marry a man who has never been married before. Men who marry for the first time want to marry a virgin,” he concluded. “Suppose you like a girl, but that she is a divorcee, would you marry her?” I asked Ahmad, knowing that he had never been married. “Certainly not. I want to marry a virgin. It would be very embarrassing for me to marry a woman who is not a virgin,” he said firmly.

After this short conversation with Ahmad, Nura wanted me to say hello to her sister who was working in another department of the post office. On our way Nura told me that the problems between her sister and her husband were getting worse. “Are they still living in the same flat?” I asked her. “Yes, where can she go to? She wants to get rid of him but she does not have anywhere to go to with three children and she is also afraid that she will lose custody of the children. Moreover, since I already divorced Mahmud by way of khul’, she feels she cannot divorce too. That would be too embarrassing. My parents only have two daughters. What will people say when both of them divorce by way of khul’? Sometimes my sister teases me and accuses me of having stolen a march on her,” Nura said half seriously half jokingly.

**Nura cuts off her hair**

When I visited Nura at the post office in September 2004 she told me that she had cut off her hair in a fit of despair. After work we took a bus to her mother’s house. When she unveiled in order to show me what she had done to her hair, I was shocked to see that she had not only cut it off but criss-cross as well. Nura who only donned a small veil and who was normally not bothered by showing her hair to both her male and female neighbours was now careful in keeping it covered as much as possible. “I want my children back,” she exclaimed. “My mother-in-law takes good care of them but of course she is not like a real mother who helps them with things such as doing home work” she sighed as she poured me a cup of tea.227

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227 In 1911 an Egyptian magazine used the story of a young woman who was forced to marry an eighty year old man to illustrate that it was wrong to marry a young girl to an old man against her will. This
One year later: Nura insists on marrying polygamous
I left Cairo in October 2004 and during a one-month period of fieldwork in May 2005 I met Nura again. As always we decided to meet in front of the post office. Although we were both very happy to see each other again I also noticed that something was bothering Nura. When I asked her about it she told me that she was sick and tired of people talking behind her back about her status as a divorcee. “I thought a divorce would make me a free woman but the opposite is true. Even my colleagues are talking behind my back. I really think it is better to marry again. When you were in Holland, a few men have asked for my hand, but they were all widowers and I refused to marry them,” she said as she looked at me earnestly.

“Why? Didn’t you just tell me that you want to marry again?” I asked her in surprise. “Yes, but if I marry a widower I will have to take care of his children and the entire household. I do not want that. I want to keep my freedom. Look Nadia, I have three children whom I am not able to take care of and whom I had to leave in the house of my mother-in-law. Will I now take care of somebody else’s children? Of course I will not. And, do I want to become a housewife again? Mahmud [her ex-husband] forbade me to work, so I gave up my job at the post office, just before I completed three years of work which would have enabled me to become a muwazzafa (civil servant). Since he did not provide, I went back to work at the post office. However, now it is much more difficult to become a muwazzafa. Three years of work does no longer automatically turn you into a muwazzafa. At the moment I even work on a contract basis, which means that my salary is small; that I am uninsured; that I will not build up a pension; and that they can fire me whenever they wish. I will not give up another chance to become a muwazzafa by marrying a widower who wants me to become the new mother of his children. I would rather marry an already married man with children who is so busy with his first wife and family that he will only have time to spend a few days a week at my place. That is fine with me. After all the problems I experienced during my first marriage, I do not think I will be able to endure the presence of a man 24 hours a day. I need my freedom. By marrying a married man, I will have the respectable status of a married woman again. Moreover, I will be living in my own flat and he will pay part of the rent,” she ended her story.

“So, why didn’t you marry Rami? You like him and he is already married,” I asked her. “No, I can’t marry him because he is the son of the neighbours and by marrying him I risk disturbing the relationship with them and that is something which I cannot do because the neighbours are taking care of my mother,” she explained seriously. “No, I already have my eye on somebody else.” “Well, tell me who he is and how you met him?” I asked her impatiently. 

twenty-year-old educated Cairene woman became distressed and also “cut off her hair in despair” (Baron 1991, 282).
working in one of the shops near the post office and that is how I met him. He is not handsome but he is already married, has children and a second job. He wants to marry me because his wife is no longer a real zawga (wife) to him and he said that he would arrange for a flat for me to live in and he also said that he would pay the rent and furnish part of the flat,” Nura concluded happily. “And what about his first wife, does she know that you want to marry her first husband?” “No, he wants to keep it a secret from her.” “But he is legally obliged to inform his first wife of his wish to marry again.” “No, we will not do that,” Nura simply said.

“What do you mean, do you consider again marrying by way of ‘urfi?” “Maybe, I don’t know yet. We will see,” she said and it was clear that she did not want to talk any longer about it. Instead she urged me to go inside the post office.

**Nura is unhappy and considers divorcing again**

After I left Cairo in June 2005 I returned for a few weeks in September 2005. Nura and I immediately made an appointment to meet, in front of the post office of course. When I saw her again I could immediately see that she had lost a lot of weight, at least ten kilos. When I asked her about it she told me that she got married again in July [2004], to a man called Magdi, the same man she had told me about last time. It had been a small wedding which only her sister had attended, notwithstanding the fact that her sister had opposed this polygamous marriage. Nura had kept the second marriage a secret from her mother although she now knew that her daughter had married again. Like her sister, Nura’s mother had disapproved of the marriage as well.

Nura started to complain immediately: “We have been married for six weeks now, and during this period he has only visited me six times. He did not even give me a dibla (wedding ring). Even 200 pounds for the dibla were too much for him. I feel so embarrassed because my colleagues keep asking me about the wedding ring. So, now I have told them that he gave me a refrigerator instead. However, it is not true. He did not even bother to give me a fridge. Remember, in my mother’s house we did not have running water. Now I have a house with running water but without a fridge. Every day, I bring a few empty bottles and store them in the fridge of the post office in order to take home cool water. On top of it all, he refuses to pay the rent for the flat, which costs 200 pounds a month. I only earn a little bit more than 130 pounds a month. I had to borrow 200 pounds from my sister and 500 pounds from my work. Soon, I will join a *gam‘iya* (association - here it refers to a saving association) in order to make ends meet. Sometimes when he comes to visit me he even asks me for money to buy cigarettes. His last visit was eight days ago. Can you believe it? I asked him to divorce me, but he refused, saying that he does not want to lose me since his wife is no longer a good zawga (wife) if you understand what I mean. What did I do? In
this situation a prostitute would at least earn money,” Nura complained bitterly. I wondered why Nura was so upset about the money. Was it because she wanted to have a place of her own which she could only afford with his help or was she afraid that the neighbours would suspect her of prostituting herself to a man whom she called her husband but who only came to visit her once a week? Or was it a combination of both? There was no time to ask her as we had entered the post office.

Inside the post office, I was greeted heartily by Nura’s colleagues and after Nura and I were left on our own again, Nura opened her wallet to show me the contraception pills which she was taking. “I absolutely do not want to have children by him,” she explained after which she continued saying that everybody had warned her that “these things often happen.” “I am even considering to resort to khul’ although I am very reluctant to do this again. I have already been divorced once. Moreover, if I divorce him I will have to give up the flat, sell the furniture and move in with my mother again,” she said. “I really hate the idea of having to spend the night at another house every few evenings. The only thing I had hoped for was to find a place of my own,” Nura finished her story. After Nura finished her work at 1230, we walked to the bus together. When we said goodbye she made a last remark: “When I see you in November, I might be divorced again.” I did not know how to reply and told her to take care of herself.

**Nura’s injured knee**

When I visited Cairo again in November 2005 Nura and I held on to our tradition of meeting at the post office. I no longer used to give Nura a missed call but entered the building by myself. When I entered the department where Nura was working, Zeinab was the first who came to welcome me back. I asked her if she had already married. She told me that she had not and that the wedding had been postponed to January. Since Zeinab looked as happy as in September I had the impression that everything was still all right.

“Habibti” (my dear one) a shrill voice sounded from inside the department. It was Nura who hurried to welcome me back. She looked happy and I was even under the impression that she had gained weight again. Nura confirmed but complained that due to her being overweighted her knee was hurting her again. When we had a private moment I asked her how she and Magdi were doing. “Oh, things are better now. Since my knee is hurting me I have to take injections twice a day and these injections are very expensive. For this reason I told Magdi that he had to pay for the rent of the flat or else I would be forced to leave the flat. So, he finally agreed to pay for the rent,” she said with a smile.

When we left the post office Nura let a few buses pass since she wanted me to greet the bus driver whom she knew and who always drove us to the City of
the Dead. When the bus arrived the driver gave us a free ride and we even managed to find two empty seats next to each other. I told Nura that I was three months pregnant. Nura looked happy although I was also under the impression that she considered this to be about time too. “Will you call the baby Yasmina?” she asked me with a smile referring to earlier meetings in which we had talked about favourite baby names.

When the bus had to break for a speed bump Nura twisted her knee, the one that was already hurting. When we got off the bus, she could hardly walk and I had to support her. A male passer-by whom she obviously knew supported her too but since Nura was very heavy and since he was very thin, he asked her to wait so that he could mobilize other people to help her. Within a few minutes a group of neighbours came to help her. Nura started to sob and told them what had happened after which they reassured her that they would take her to the hospital.

When her mother saw us approaching her house I expected her to be worried about Nura. Instead, however, she looked rather annoyed saying: “Here we go again.” Nevertheless, she still gave her daughter a hundred pounds which she had hidden underneath her clothes. “This will cost us a lot of money,” she complained. Nura did not react and instead told her mother in the presence of all the neighbours that I was pregnant. This clearly diverted attention away from the money issue as her mother started to smile meanwhile pushing me inside the house so that I could tell her all about it. Nura and most of the neighbours, a few males and many females entered the house too in order to wait for the taxi which would take Nura to the hospital. When the taxi came and Nura and a few of the female neighbours left the house to go to hospital, I was left alone with Nura’s mother and a few older female neighbours who took the opportunity to ask me all about my husband, pregnancy and family.

Although Nura was still not able to walk without the help of others, she insisted on going back to her flat. Since I wanted to go home too we said goodbye to her mother and the neighbours and left for the buses. Although it was only a short walk to the buses it took us quite a long time to get there as I had to support Nura who could still barely walk. When we finally got there Nura found an empty chair to sit on. She wanted to call Magdi so that I could talk to him for a few minutes and tell him that she had had an accident with her knee and that we had to go to hospital. “And do not tell him where we are. I do not want him to know that my mother lives here. I told him that she lives in the village,” she commanded me meanwhile pushing her mobile phone into my hands. When I talked to Magdi I told him what had happened and that Nura was going home. I asked him to take care of her.

While we were waiting for a taxi - I had convinced Nura of taking a taxi instead of a bus- Nura met a man from the neighbourhood. He apparently knew
that Nura had divorced recently and asked her how she was doing. She told him that she had married again and what her husband was doing for a living. “OK, so he is just a normal employee,” he concluded. Nura nodded but added that he was a little bit better than Mahmud. “He is just as greedy as Mahmud but he does not swear at me, nor does he hit me.” On the way to the buses she had told me that this was very important to her.

Nura started telling me that her sister had also come to live in her apartment building. “A few weeks ago she finally decided to take the big step and move out of her husband’s flat.” “Did she divorce him?” I asked her in surprise. “No, she cannot divorce him, because she is afraid that she will lose custody of her children. The two girls are already quite old so she only has a right to keep the boy.” “And what about you? Do you still plan to divorce Magdi?” I asked her. “No, since he started paying for the rent of the flat I decided not to do that. Moreover, I divorced a husband before, so unless there is no other way out, I will not consider divorcing again. Can’t you come to meet him?” she asked me. I told her that I could not as I was travelling soon. Finally a taxi arrived and Nura got in. In the evening I called Nura to see if she had arrived home safely. She told me she had and that Magdi had visited her to see how she was doing.

8.2 Khul‘ women remarrying: confirming the stereotype?

During my first meeting with Nura in court, she had told me firmly that she did not want to remarry. Her courtmate ‘Afaf had also stated that she had had enough of marital life but that if she were to marry again, she would conclude an ‘urfi-marriage (see 4.3). Later, when I often went to the post office to visit Nura, she regularly repeated that she did not want to marry again. Although her colleagues tried to find her a new husband, Nura wanted to find a well-paid job instead so that she could take back her children. After Nura had made it very clear on these occasions that she did not want to marry again and that she only wanted to have her children back, I was quite surprised to see that her life had taken quite a dramatic turn. Not only had Nura decided to marry again, she had also taken the initiative to find a suitable husband whom she married in July 2005. By marrying again and by actively pursuing a new husband, she unintentionally confirmed what opponents to the law had always predicted and warned against, namely: that women who resort to khul‘ only want a divorce in order to marry another man. Furthermore, so they had claimed, by exchanging one husband for another, khul‘ women were destroying their families in the process. Nura who had left her children behind when she divorced her husband would certainly fit the picture which opponents had formed of khul‘ women.

While a lot of attention was paid to women who wanted to divorce through khul‘ –the way they were dressed, their bad habits – hardly any attention
was paid to the men who were the so-called victims of these women. The only thing that became clear from opponents’ criticism was that the divorced husbands were divorced for frivolous reasons. The front page of a Dutch newspaper even carried the story of an Egyptian woman who had divorced her husband after he had refused to give up a childhood habit of spraying himself and the entire house with a perfume which she was allergic to (Metro 8 January 2007, 1).

The image of the men that khul’ women wanted to marry was even less clear and the only thing that was clear was that these men were more handsome and/or richer than the husbands these khul’ women wanted to divorce. Nevertheless, Nura’s case showed that the two men she wanted to marry were neither handsome nor rich. In fact Nura often complained that Magdi was not handsome at all and that he was not living up to his promise to pay part of the rent of the flat. On the contrary, when he visited her, he would ask Nura to give him money in order to buy cigarettes and it was Nura who spent her money on preparing him good meals. He had not even given her a dibla (wedding ring) on their wedding, a fact which she tried to hide from her colleagues by telling them that he had given her a refrigerator instead. Rather than being rich and handsome these two men were married, had children and at least Magdi had two jobs in order to scratch a living.

Why did these men want to marry Nura and why was Nura interested in marrying them? Both Rami and Magdi wanted to marry Nura because they no longer felt attracted to their wives but since they also wanted to maintain life with their first wife and children the second marriage with Nura had to be kept a secret from their families. For that reason, they both wanted to marry Nura in secret through an ‘urfi marriage, a controversial and informal type of marriage.228 In return they promised Nura to rent or write a flat in Nura’s name and to visit her regularly.

At the time of the introduction of the khul’ law, not only the khul’ article but also the article on ‘urfi-marriages had been subjected to fierce criticism since, according to local opinion, ‘urfi-marriages are illegal marriages which young people contract without the knowledge and permission of their parents. One newspaper article on polygamy in Egypt expressed another view and claimed that ‘urfi-marriages are often conducted by husbands who are already married and who want to marry a second wife in secret. Through an ‘urfi-marriage it is easy to get around the legal obligation of informing the first wife (al-Ahram Weekly 26 February-3 March 2004).229 Statistics show that twenty-five percent of the married

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228 Rami wanted to marry Nura through ‘urfi. In the case of Magdi, Nura was reluctant to tell me whether she had concluded an official marriage or not.

229 See article 11bis of law 100/1985 (al-jarida al-rasmiya, issue 27, 4 July 1985, 1).
male population marry a second wife within three years of marriage (ibid).\textsuperscript{230} Again we see how women were accused of exactly the thing that men wanted, namely, to marry another woman.\textsuperscript{231}

With this being the case, two questions spring to mind. First, where opponents to the law had said that women would only want a \textit{khul’} divorce in order to marry another man they had refrained from predicting that most of these women would end up becoming a second wife. As Ahmad, the boy running all kinds of errands in the post office, had said, divorced women often marry again and in such cases they frequently become a second wife. With this being common practice in Egypt, and other Muslim countries as well,\textsuperscript{232} why did opponents to the law make it look like as if \textit{khul’} women were pursuing a tall, dark, handsome and rich man while in reality they must have known that most of these women would end up becoming a co-wife through a secret marriage?

Moreover, Nura did not remarry a rich man. To the contrary, she married a man who could hardly provide for her. What is even more significant is that at first she was not even looking for a husband to take care of her. She wanted to keep her freedom and she was not prepared to give up her financial independence by letting another opportunity go to become a \textit{muwazaffa} (civil servant). Hence, if Nura was not pursuing a tall, handsome man and if she wanted to keep her financial independence and her freedom of movement, why then did she marry again and why was she even prepared to give up the idea of taking back her children? Now one could argue that Rami’s offer provided her with an opportunity to escape the creditors of her ex-husband. Yet, after the issue of the creditors had disappeared into the background a few months later, Nura still wanted to marry again. She was sick and tired of people gossiping about her status as a divorcee and by marrying again she hoped to escape \textit{kalam al-nas} (gossip). She no longer wanted to be “outside the structure.”

\textsuperscript{230} I am aware of the fact that this number is quite high. For more on this issue, see 4.7.
\textsuperscript{231} In a Dutch newspaper it was argued that after the introduction of a new Personal Status Law in Morocco in 2003, many men decided not to marry the official way but to conclude a marriage in the mosque in order to circumvent the new marriage rules which give women more rights in case of divorce (NRC Handelsblad 4 March 2005). The article does not raise the question as to why women would agree to enter a so-called mosque marriage which deprives them of their rights and whether women who agree to conclude a “mosque marriage” are first, second or third wives. In Egypt unofficially conducted marriages are often second or third marriages.
\textsuperscript{232} A good example forms the study of Jansen on women without men in an Algerian town. She shows how in case of remarriage, almost half of the widows and twenty percent of the divorcees became second wives (1987, 2). For the case of Syria, Carlisle remarks that court arbitrators warn women that insisting on a divorce will have the result that in case of remarriage they will be forced to marry older men or to accept to become a second wife (2007, 250).
8.3 Social pressure to (not) remarry

Without any prompting from my side, almost all women who divorced through *khul'* vehemently claimed that they did not want to marry again. This starkly contrasted Rahma’s circle of divorced female friends who had all divorced out-of-court through *ibre'* and who did not hide their eagerness to marry again. In my eyes, the reaction of women who divorced through *khul'* was fuelled by a fear to confirm the picture of *khul'* women which opponents had spread in the public debate. Nura, for example, had once told me that: “It is true that most women who file for a divorce by way of *khul'* have an eye on other men.” “But,” I asked her, “you have divorced your husband by way of *khul'* too, haven’t you?” “Yes, but I am one of the few, one of the five percent, who has good reasons.” Hence, women who divorced by way of *khul'* were under considerable pressure to not marry again. At the same time, however, most women remarried and the case of Nura shows that she was even pressured by colleagues to remarry! This had not become immediately clear to me as the post office in which Nura was working and which had come to occupy a central position in our meetings, exuded a friendly and informal atmosphere.

For example, at first Nura invited me to meet her at the post office instead of at home. She wanted to show me where she was working and introduce me to her colleagues. I remember quite well my first visit to the post office. Not only was the copious meal of *mahshi* which we shared amid all kinds of letters and envelopes, and in the presence of a crying baby, illustrative of the informal sphere in the post office, but the same applied to the way Nura and her colleagues interacted with each other. I remember being surprised by the fact that all her colleagues, of whom all but one were female, as well as her (male) superior knew that Nura had filed for a divorce through *khul'*. Besides, at least some of them also knew that her husband was in prison and that he used to hit her. Nura spoke very openly about her divorce with her colleagues and apparently was not disturbed by the fact that the tone in the public debates which had surrounded the introduction and implementation of *khul'* had been very critical and sometimes even venomous towards women. Proponents to the law had even exclaimed that it would influence women to such an extent that they would be very reluctant to file for a divorce through *khul'*. All of this seemingly went unnoticed in the post office and it looked as if it was the most natural thing in the world that Nura was in the process of divorcing and, at a later stage, had divorced through *khul’*.

Yet, when her male superior explicitly pointed out to another man that Nura was the women who had divorced by way of *khul'*, Nura had felt very uncomfortable (see 8.1). On another occasion when Ahmad told the other women in the post office that his aunt had not only divorced through *khul'* but that she had also left her children behind when she left the marital home, Nura felt a jolt of
recognition and it was as if she was relieved to have her colleagues hear the story of a woman who was in a similar position. When one of Nura’s colleagues told me that she wanted to help her to find a new (Dutch) husband, Nura became irritated and tried to divert attention away by bringing up a new subject. I had never asked Nura why this had irritated her but I assumed that it was either because her colleague and I were discussing whether a future Dutch husband could be Christian or because Nura did not want to marry again as that would curb her chances of working abroad and providing for her children. Looking for a second job (abroad) and wanting to become a provider for her children was a deviation from what her colleagues expected her to do after divorce, namely: to marry again.

These incidents slowly made me realize that the friendly and informal post office also exuded an atmosphere in which issues such as marriage, love and children were recurrent topics of discussion and where one could feel the need to live up to unwritten but authoritative and compelling codes of behavior. Apart from offering emotional support colleagues and friends also exert a lot of pressure to conform to certain societal standards. When we realise that Nura and her colleagues were sharing the same space in the post office five hours a day for six days a week, it should not come as a surprise that colleagues can play an important role in a working woman’s life; as an important source of emotional support but also by exerting a considerable amount of social pressure. As a result of this pressure Nura decided to remarry and consequently dropped the idea of taking back her children.

When I asked a friend of mine about the status of divorced women, this divorced upper class woman said: “According to the majority of the people divorced women are dangerous and for that reason they receive a different treatment (see also Bibars 2001). For example, here at work I am never able to have a meeting with a male colleague behind closed doors while this is not a problem for my female colleagues who are married. Apart from that I also have to endure a lot of remarks from my colleagues about the way I am dressed. They would never make such remarks to a married female colleague. A female colleague of mine used to tell me all the gossip which my colleagues were spreading about me. In the beginning I wanted to know it all but now I have asked her not to tell me any longer. It is too depressing. I recently tried to find a job in the Gulf where one of my brothers is living. Unfortunately I did not succeed and had to return to Egypt. I was really depressed in the plane on the way back to Egypt. Going back to a place where there is constant pressure to marry again was not really something I was looking forward to.”

In other cases I also witnessed that it was difficult to be a divorced woman and that divorced women were under a lot of pressure to remarry. For example, a teacher at one of Cairo’s most expensive and prestigious private universities
divorced her husband out-of-court through an *ibra’*-divorce. She told me: “In my case my family still hopes that I will return to my husband since it is hard to be a single woman in Egypt. Married women are afraid that you will run away with their husbands and as a result you are kept out a bit from everything. The family of my father, for example, no longer invites me that much. As a divorced woman you suddenly become an individual. You are no longer part of a family. Being unmarried at my age is abnormal. It means that you are out of the structure,” she concluded her story.

In the case of Algeria in the 1980s, Jansen remarks that women whose defining relation with a man is lacking, are also outside the accepted family structure (1987, 1). “Being out of the structure” was exactly what happened to Nura. She was divorced and the fact that she had a “good” excuse to not marry again (she wanted to work in order to provide for her children) was not reason enough to justify her single status. The post office which exuded a sphere of intimacy and which served as an environment of emotional attachment simultaneously provided an internally differentiated structure of power and authority in which colleagues and superiors served as surrogate family. As a matter of fact, in Nura’s case there was no pressure from the side of her family to remarry. Although one cannot take Nura’s mother and sister’s objection to her second marriage as a sign that they opposed her remarrying in general, it does signify that they did not want her to marry at all costs.

In the context of the post office and its employees serving as surrogate family, I found a study by Kondo on a Japanese workplace interesting. Kondo describes the workplace as *uchi* (inside) as opposed to *soto* (outside) and states that the distinction between inside and outside is crucial in determining one’s mode of behavior and one’s form of emotional expression (1990, 150). According to Kondo, “inside” and “outside” are not fixed, kinship-based entities. They depend on a large extent on the “other” against which they are set, and there can be room for individual play and choice” (ibid, 152). I found the aspect of “inside” not being a fixed, kinship-based entity interesting as well as the concept of individual play and choice as it shows once again that the importance of the family should not be taken at face value while it also reminded me of what Willemse has described as “personal preference.” In the case of market women in Sudan who sell in the market on a daily basis and who share the same space in the market from morning

233 Although it might seem far-fetched to include a study on Japan, it actually is not if we take into account that the Arab press at the turn of the twentieth century often invoked Japan as a model to emulate. Japan provided a modernity which was not Western, one in which women could be modernized without undermining social hierarchies and morality (Worringer, cited in Abu-Lughod 1998, 15). The Christian Egyptian socialist essayist Salama Musa (1887-1958) also wanted Egyptian society not to take the Western model of liberation of women as an example but to turn to China and other Asian nations instead (Memissi 1987, 13).
until the evening for six days a week, Willemse concludes that rather than kinship relations, personal preference is one of the most decisive aspects for maintaining relations on a daily basis (1998, 309-10). This is not to say that biological family members are not important. Their importance, however, should not be overestimated as personal preference also determines whom one wants to associate with, and whom one is likely to feel socially pressured by as a result of that.

8.4 Divorced women remarrying: whom should they marry?
When divorced women are under considerable pressure to remarry, the question arises as to whom they should marry? Ahmad, the boy performing all kinds of errands in the post office had claimed that divorced women do not marry men who have never been married before. According to him it would be humiliating for him to marry a woman who was not a virgin anymore. Others confirmed the importance of virginity. For example, Rania had divorced her husband among others because he was unable to consummate the marriage. When I asked her if a new husband would be bothered by her previous marriage she told me: “As soon as they find out that the marriage was not consummated (she had proof of that) they will no longer be bothered by the fact that I was married before.”

In another case my friend Rahma, a thirty-year old upper middle class woman who divorced her husband a few months after their wedding, was having difficulties trying to find another husband: “I recently wanted to marry a pilot who liked me but his family opposed our marriage saying that he should not marry a divorcee.” In this case not the husband but his family was opposing his plans to marry a divorcee. According to Rahma his family thought it too humiliating and stigmatizing for their never married son to marry a divorcee.234

One evening Rahma had introduced me to her circle of female friends of whom almost all were divorced. One of her friends was ten years Rahma’s senior and had been a widow for many years. During all these years she had never remarried. Rahma explained why this was the case: “At her age it is very difficult to find a new husband. Suitable partners are almost always married and if they are not, because they are divorced for example, they have children or problems from a former marriage.”

During a conversation with another upper middle class woman whom I met through a common friend, this middle-aged divorced mother with two children claimed that being a divorcee is more problematic for women from the upper classes. “Women from the lower classes can opt for a polygamous marriage but for women with my class background this is impossible,” she said after which I

234 See also Jansen (1987, 198) for the case of Algeria.
asked her whether she had ever considered marrying again. “No,” she replied, “I
did not and do not want to marry again. After all, all potential husbands will be
divorcees with children who will try to profit from my situation by moving into
my house and subletting their apartments.”

From these different meetings with divorced woman it became clear to me
that while there is a lot of pressure to marry again, it is also not easy to find a
suitable marriage partner since social rules dictate that divorced women cannot
marry a man who has never been married before. Both (young) women from the
lower and the upper classes would rather not marry a widower or a divorced man
since they are afraid that in such cases husbands will either require them to take
care of these husbands’ children; burden them with problems from a previous
marriage; or take advantage of their situation by subletting their flats and move in
with their new wives, for example. In a way this also applies to Nura’s situation
since her husband Magdi was happy to make use of Nura’s flat every now and
then, imposing the additional financial burden on her. This picture of husbands
who profit from their wives’ residential independence contrasts sharply with urīdu
khul’an in which khul’ women were portrayed as being after the flat and money of
their husband. However, in muHāmī khul’ we see how the lawyer Badr is accused
of living on the sweat of women, that is to say, of profiting from all the luxuries
which the wealthy Rasha has to offer him (see 3.4).

In any case, when remarriage is difficult for divorced women but where
staying alone is hardly an option too, women from the lower classes often end up
becoming a second wife. For upper class women the idea of being a co-wife is very
humiliating and therefore they would prefer to remain single.235 In a way, women
from the lower classes are in a better position than women from the upper classes
since the latter have few chances to remarry and, as a result, face a future in which
they will be under constant pressure to marry again and in which family, friends
and colleagues will perceive them as a threat to their marriage. In fact, a woman
like Nura was not only able to free herself of societal pressure by marrying again,
at the same time she was also able to give her own twist to whom she wanted to
marry and under what conditions. Even after she realised that the khul’ divorce
had not given her the freedom which she had expected, she was still not willing to
give up the little freedom she had obtained and therefore did not want to marry a
man who would expect her to become a housewife and the new mother of his
children. For that reason she rejected all potential husbands who were not already

235 Sonbol argues the opposite as she claims that while the number of polygamy cases was on the
decline among the middle and lower classes in the 1980s, it became fashionable among the upper class.
According to Sonbol, the declaration of unconstitutionality of the 1979 PSL as a result of which
polygamy no longer constituted a basis upon which a woman could automatically obtain a divorce was
a reflection of that development (1996, 284).
married. By making it very clear that she only wanted to marry an already married man with children, Nura was turning around the obedience-maintenance relation, the corner stone of the Egyptian Muslim marriage system.

8.5 Becoming a second wife by choice?

“T’ve often said that if polygamy didn’t exist, the modern American career woman would have invented it. Because, despite its reputation, polygamy is the one lifestyle that offers an independent woman a real chance to “have it all” (Elizabeth Joseph - an American journalist and the sixth wife of a Mormon man, May 1997, www.patriarchywebsite.com, 6 February 2007).

At the beginning of the twentieth century Egyptian men and women from the upper classes revolted against the institution of polygamy. Qasim Amin and Muhammad ‘Abduh, for example, were famous opponents of polygamy, and the Egyptian Feminist Union fought hard to abolish polygamy from the Personal Status Law. Yet, where countries such as Turkey and Tunisia have abolished polygamy, Egypt is among those countries where the legislature has “only” tried to curtail husbands’ rights to polygamy. In Egypt the husband needs to notify his first wife of the second marriage and needs to include in the marriage contract the names and addresses of all wives. The wife also has the right to request a divorce on the basis of polygamy. To this day, fighters of women’s rights try to abolish polygamy and women’s NGOs such as the Egyptian Centre for Women’s Rights claim that the Personal Status Laws are not compatible with the reality of Egyptian society (http://www.ecwronline.org/english/researches/2004/changingworld.htm, 14 February 2007).

In fact, Bibars, leader of the women’s NGO The Association for the Development and Enhancement of Women (ADEW), wrote in her research on female-headed-households in Egypt that a small percentage of female-headed-households is made up of women whose female headship is the result of a polygamous marriage (2001, 49). Bibars suggests that it is men who have created this situation (2001, 49, 54). But there are women, for instance Nura, who chose to marry polygambously on their own initiative. It is true that social pressure played an important part in her decision to marry again but it was Nura who took the initiative to look for a new husband and decided who she wanted to marry. In other words, to some extent Nura was the architect of her new marital situation.\footnote{Although Chant in a study on female-headed-households pays attention to female agency and to the fact that not all instances of female-headed-households have arisen out of an action on the part of the husband, she simultaneously remarks that it is not easy to determine the relative power of individual agency and to disentangle cause from effect (1997, 19).}
The following story supports the finding that not all women who marry polygamously are forced to do so.

Iman was a university student from a middle class background. I had always thought of her as a rather exceptional and independent woman since she was not only studying but also working to help her divorced mother to make ends meet. During her student days she had sold computers, worked as a secretary, worked in a hotel, started a business in artificial flowers and textiles, and, near the end of her college life, she had started a business in tourism. Being the enterprising woman she was, I remember being quite surprised when she told me that she was not only considering marrying a married man but also a man who was twenty-seven years her senior. Iman told me that she had met him in the hotel in which she was working and that she had already arranged for a wedding dress which was stored under the sofa. When she showed it to me she said that: “In the beginning I really wanted to marry him but now I am no longer sure whether I should. We have different ideas and a different sense of humour. When I laugh, he does not laugh and when he laughs, I do not laugh. Money is not important and our relationship should also be based on love.” Apart from that she was afraid that he was in his midlife crisis: “Men who become older want to go back to their youth and in such cases they often do stupid things. He is married to a Palestinian woman and together they have children who are of my age.” She showed me a photo of him and I remember being even more shocked as her husband-to-be looked even older than I had expected and when Iman asked my opinion I told her the first thing that was on my mind: “You will soon be a widow.” Iman did not take that as an insult and when she put the wedding dress back into its place under the sofa she again told me that love was the most important thing. “So, have you made up your mind?” I asked her. “Yes, I will call him to tell him that I want to cancel the wedding.” “Are you in a hurry to marry because you are already twenty-eight years old?” I asked her as I still could not think of another reason for her wish to marry this man and become a second wife. “No, when I meet a potential husband, I will consider marriage again but otherwise I am not in a hurry,” she said airily. “So why did you consider marrying him?” “I wanted to marry him because it would be a good opportunity to accompany him on his business trips and to travel.”

Comparing Nura and Iman, there is a difference in the sense that Nura was a divorced woman while Iman was a student who had never been married before. The reason for having included Iman’s story at this point is related to the fact that both Nura’s case and her case refine the widespread assumption prevalent among many scholars that women are forced into polygamous marriages as well as the dominant assumption within Egyptian society which dictates that women often do
not have an alternative but to marry a husband who is already married. This latter assumption is often explained and justified by claiming that there is a large surplus of women in Egyptian society (see also 4.3). Some people even claimed that sixty to seventy percent of the Egyptian population consists of females and for that reason polygamy is a good solution both in cases in which divorced women want to remarry and in cases in which young women cannot find a suitable partner.

**Women do not outnumber men in Egyptian society**

Women do not outnumber men in Egyptian society

When I told a well-educated and professional divorced woman that I had found statistics showing that approximately fifty-two percent of the Egyptian population was male and approximately forty-eight percent female, she not only looked very surprised but happy too. “I have always been under the impression that the number of women is much higher than the number of men. I am so relieved to hear you say that this is not true. It will increase my chances of remarriage significantly. You know, I will write this on a poster and stick it on all the windows of my car. Everybody needs to know this,” she said with a furtive smile.

**Is the shadow of a man better than the shadow of a wall?**

Nura’s and Iman’s cases show that at least in some cases women deliberately opt for polygamy because it provides them freedom to travel and spatial independence. Of course, Nura could have opted to live alone but her case clearly shows that Nura realised that she was dependent on Magdi to visit her at least a few times a week. It was important to Nura that the neighbours knew that she was married and therefore she felt rather uncomfortable when he started to only visit her once a week. At a later phase in their marriage she would even stop complaining about the fact that he hardly contributed towards paying the rent of the flat but his occasional visits remained a great worry to her and the fact that she even compared her situation to that of a prostitute, saying that a prostitute in her situation would be better off, made it very clear that Nura could not live alone unless a husband was visiting her regularly. Naturally, Nura felt relieved when her sister decided to leave her husband and started renting an apartment for her and her three children next to Nura’s apartment. Her story and other stories show that in case women do not have family or cannot rely on them for offering housing, requesting a divorce is a big step with major social implications as Egyptian society.
does not easily accept women living alone (especially women living alone without children). In such situations I often heard women say that “the shadow of a man is better than the shadow of a wall,” thereby referring to an old and well-known Egyptian saying which promotes the idea that any marriage is better than being alone. Let us now look at the case of ‘Azza, whom I met early in the fieldwork, through a common friend of ours.

At the time of the fieldwork ‘Azza was eighteen years old and studying commerce at Ain Shams University. Together with her parents and five brothers and sisters, ‘Azza was living in a small house with only one very tiny little window in one of the poorest neighbourhoods in Cairo. ‘Azza’s father was treating her mother badly and although she wanted to get rid of him she did not want a divorce. When I asked ‘Azza why, she told me that after a divorce her mother would be thrown out of the house and since she had no family to return to it was better to endure “the shadow of a man than the shadow of a wall.”

Although the father’s pension was far from being enough to scratch a living (during the fieldwork one of his daughters died of diabetes because there was not enough money to pay for adequate medication and care), ‘Azza’s father nevertheless married a second wife in 2004. Although ‘Azza felt relieved that her father had left the home as his presence always caused a lot of tension, the financial situation of the family deteriorated rapidly after her father invested his small pension in his new wife, who, according to ‘Azza, was around the same age as his own children. Since they could no longer pay for the rent, ‘Azza’s mother had to leave the small apartment and go back to her family whom she had not seen in a long time and who lived in Lower Egypt. Her family, however, did not want her back, let alone accommodate her six children. As a result, ‘Azza stayed in Cairo with different friends and acquaintances. When they had enough of her presence in the house she would then move and stay with other friends for a few nights. When I asked ‘Azza why her mother did not consider divorcing her father, she told me that that would have been a possibility if her family had agreed to let them stay in Lower Egypt. Since there was no place for them, her mother did not dare to ask for a divorce fearing that she would lose the only thing that she still had: the respectable status of being a married woman. Even that, however, was taken from her as ‘Azza’s father divorced her a few months later.

The case of ‘Azza’s mother is illustrative of many cases I came across and to which the saying “the shadow of a man is better than the shadow of a wall” could be applied. This group of women forms one end of a continuum that runs between two extreme poles and where at the other end of the continuum we find women who do not want to endure a bad marriage and who rather opt for a divorce or a separation even if that means living alone. This, as we have seen, applies to some upper class women who do not want to become a co-wife. In other
cases, women like Iman who were already in their late twenties rejected potential marriage partners and claimed not to be worried that they would become too old for the marriage market. Such women also did not think that any marriage is better than living alone.

A newspaper article on Egyptian proverbs pays attention to this difference between women: “...traditionally it has been argued that dhill ragil wala dhill heta (The shadow of a man is better than the shadow of a wall) to promote the idea than any marriage is better than being single...But changing socio-cultural realities lead many women to retort that al-wihda khayrun min galis al-sou’ (Better alone than in bad company)” (al-Ahram Weekly 4-10 January 2001). Another Egyptian newspaper article, carrying the title “A woman alone,” presents the story of four young, educated, professional and financially independent women who not only insisted on establishing an independent household after their divorce but who also claimed to be happily divorced. Although the author writes that “[Happily] was the most astounding adjective I’d ever heard to describe what is, in our society, the most dreaded of states...” and although being happily divorced runs counter to “the established idea that divorced women are miserable and weak without a man,” she nevertheless concludes in her article that the trauma of divorce is not always “a prelude to living with the stigma of being a divorcee” (al-Ahram Weekly 11-17 July 2002).

It is difficult to assess whether the stories of these four women represent a growing trend among women across all classes to rather live alone or whether deliberately “living alone” should be viewed as an exception merely reserved to a class of professional and financially independent women, as Arabi suggests for the case of Saudi Arabia (2001b).

Whatever the case, we should be careful in using the expression “living alone” as the case of Nura shows that while she was on her own, she was also married. Hence, instead of saying “Better alone than in bad company” there are situations where it would be better to say “The shadow of a man is better than the shadow of a wall...but not the shadow of any man.” In Nura’s case this meant that she would not accept to marry a widower or a divorced man. Nura only accepted to marry an already married man. She decided to opt for a polygamous marriage since such a marriage would give her the freedom she needed. Polygamous marriages, however, are typically conducted outside the official marriage system. For example, Rami wanted to conclude a polygamous marriage on condition that it would be concluded through urfi since he wanted to keep the second marriage a secret from his first wife and children while it was not clear whether the polygamous marriage to Magdi was an official marriage or not. Nura had always avoided answering my question as to whether she was married by way of urfi.
Yet, if we take into account the attributes of unofficial marriages there are several reasons to believe that she had concluded an unofficial marriage.

### 8.6 Unofficial marriages in Egypt

While quite a number of scholars have written on official marriage and marriage preparations in Egypt,\(^237\) it is not easy to find information on unofficial marriages in Egypt or in the Muslim world for that matter.\(^238\) In a way this is strange because unofficial marriages, the so-called ‘urfi marriages have frequently aroused heated public debates in Egypt. They even led the legislature to recognize divorces from informal marriages (cf. Fawzy 2004, 42-3) and they also formed the subject of a controversial film in 2002. At the time of the introduction of law no. 1 of the year 2000, not only the khul’ article, but also the article on ‘urfi marriages led to much controversy as it was often claimed that it would legalize marriages which young people had concluded secretly, without the knowledge of their parents.\(^239\) Being considered the only legitimate alternative to premarital sex, ‘urfi was treated as disguised prostitution. It was even claimed that a large percentage of Egyptian university students, ranging from 17.2 percent to 67-70 percent was involved in ‘urfi-marriages (Abaza 2001, 20). ‘Urﬁ-marriages were also criticized since they wave nearly all of the husband’s responsibilities towards his wife. In cases where the husband divorces the wife, she and her children are not entitled to alimony. In an Egyptian newspaper article some Egyptian scholars stress the need to distinguish between legitimate and illegitimate or secret ‘urfi marriages. According to them, legitimate ‘urfi marriages are not officially documented but fulfill the conditions of legitimate matrimony as stipulated by the shari’a: consent of both partners to the marriage; signing of the contract by two male witnesses; payment of the bride’s wedding gift; and the public announcement of the

\(^{237}\) See for example Singerman (1995) and Hoodfar (1997).

\(^{238}\) Exceptions are Hasso (in press) and Yilmaz (2003). In a study on Egypt and the United Arab Emirates (UAE), Hasso pays attention to the rise of non-traditional marriages such as ‘urfi and misyar. Hasso calls these marriages ‘Recent challenges to “Traditional” Marriage’ since the “traditional” marriage is becoming too expensive, especially among the middle class. In a study on the interaction between official secular state law and unofficial Islamic law in Turkey, Yilmaz argues that approximately fifteen percent of the marriages are conducted religiously only, carrying no legal weight in Turkish’ secular legal system. Nevertheless, it is rather simple to turn an unofficial marriage into an official marriage. What is more, since children born out of such unofficial marriages are illegitimate in a legal sense, “The response to the great increase in illegitimacy as defined in the law has seen the passing of a series of enactments to make legitimization extremely simple” (2003, 34).

\(^{239}\) Article 17 of law no. 1/2000, second section states: “…In case of negation/ denial, the actions arising from marriage contracts shall not be accepted in respect of the facts subsequent to August 1, 1931 – unless the marriage is established by virtue of an official document. However, actions for forced divorce, or for rescission exclusively shall be accepted to each case, if the marriage is established by any written evidence” (underlining is mine).
marriage, at least to family and neighbours (Al-Ahram Weekly 18-24 February 1999). The public announcement of the marriage is where the shoe pinches as many marriages which are now performed in secrecy, often even without the knowledge of the parents, are called ‘urfi marriages. According to the Egyptian scholars and experts in the newspaper article mentioned above, these types of ‘urfi marriages do not conform to the officially documented marriages nor the stipulations of the shari’a and are therefore simply illegitimate or secret (‘urfi) marriages (ibid). In Turkey so-called gizli (hidden) marriages (which, in my eyes are the Turkish equivalent of the secret ‘urfi marriages in Egypt) are also seen by some Islamic scholars as a legitimized flirt, especially since there is no announcement of the marriage to the public. By contrast, religious marriages which are made public, are often seen by Islamic scholars and the general public as valid marriages although they are not recognized by the secular legal system of the Turkish state (Yilmaz 2003, 39).

Other scholars in the Egyptian newspaper article also condemn the fact that people who marry through ‘urfi, often do not have the intention of raising a family. For example, the former president of the Maglis al-Dawla (the State Council, an administrative court) believes that “In most cases, […], youths resort to such a marriage to fulfil a sexual desire, but not to form a family – which should be the main target of marriage.”240 “The husband,” he adds, “resorts to this type of marriage because he cannot fulfil the financial obligations of traditional matrimony. According to Shari’a, however, the man should be financially capable of getting married…” (Middle East Times 7 April 2000). Saleh, professor of Sociology at the American University in Cairo adds that ‘urfi-marriages often occur between well-to-do women and poor men who cannot afford to get married (Middle East Times 7 April 2000). This raises the question as to which types of people resort to ‘urfi marriages. Are these merely youngsters who are looking for a minimal Islamic standard for premarital sex or do other social categories also make use of ‘urfi?

In an article on perceptions of ‘urfi marriage in the Egyptian press, Abaza argues that in the debate on ‘urfi marriages, there was a moral condemnation of especially young people and women’s loose sexual norms. In the same way as the press associated “khul’ women” with westernized women wearing high-heeled shoes and tight clothes, lustful, mostly European-looking, ‘loose’ women were associated with stories about ‘urfi marriages (2001). For the case of Turkey, Yilmaz argues that young people, usually university students, increasingly contract (religious) marriages in secret, without informing their parents (the so-called gizli

240 Soad Ibrahim, a professor of jurisprudence at Al Azhar University also claims that unofficial marriages often do not aim at fulfilling the religious aim of marriage: forming “a settled family surrounded by care and love” (Middle East Times 7 April 2000).
(hidden) marriages to which I referred above). In this way they avoid the stigma of pre-marital intercourse, although the real intention might not be to conclude an official marriage in the future. Apart from the fact that religious marriages are not recognized by the state, often parents also do not recognize these secret marriages (2003, 39).

During my fieldwork, I found out that the practice of ‘urfi marriages in Egypt was not confined to the social category of youngsters (see also Hasso (in press)). For example, ‘urfi was and is still used by women who want to remarry but who do not want to lose the state pension of the deceased husband or their father (see also Abaza 2001). I was told several times that divorced women who want to remarry but who are afraid that they will lose custody of their children sometimes remarry through ‘urfi. In other cases well-to-do women who have become too old for marriage marry men who are too poor to marry and who are often many years younger. Finally, ‘urfi marriages are also conducted by men who desire to marry a second wife but who also want to maintain life with their first family.

Such was Nura’s fate. Her first potential new husband, Rami, wanted to take her as a second wife but only on condition that the marriage would be concluded by way of ‘urfi. He did not want to run the risk that his first wife would find out about his marriage with Nura. In the case of Nura’s second marriage candidate and the one whom she eventually got married to, it was not clear whether their marriage was an officially documented marriage, an “legitimate ‘urfi-marriage” or an “illegitimate (secret) ‘urfi marriage.” Nura had always avoided answering this question but there were some things that made me believe that she had conducted an illegitimate ‘urfi marriage.

First of all, Magdi had not paid Nura a dibla (wedding ring). This had embarrassed Nura to such an extent that she had lied to her colleagues by telling them that he had given her a refrigerator instead. In view of this, it is unlikely that Magdi had paid Nura a substantial dower (for the issue of the declining importance of the dower, see also chapter 4), and although he sometimes paid for the rent of Nura’s flat, he did not share in furniture expenses, neither was he prepared to pay for the household expenditure. In fact, the marriage of Magdi and Nura is a good example of women’s increasing contribution to the costs of marriage (see also chapter 4). Secondly, since Magdi wanted to keep the marriage a secret from his first wife and children, he insisted on marrying in secret. Nura, however, did not want to keep the marriage a secret. To the contrary, her marriage to Magdi served to stop the gossip at work. Besides, Nura needed the status of being a married woman in order to be able to rent a flat and live alone for a part of

241 In 4.7 and 8.2 I already pointed out that twenty-five percent of the newly married men marry a second wife within three years of marriage and that these second marriages are often concluded through ‘urfi.
the week. For these two reasons, announcing the marriage was of great importance to Nura.

At the same time, however, Nura’s mother only learnt of the marriage after it had been concluded. More importantly, Nura did not want Magdi’s wife to find out about her. She was afraid that this would make Magdi’s wife want to divorce him and that was the last thing Nura wanted. Hence, Nura wanted to make her marriage public to her colleagues but at the same time it had to be kept a secret from her mother and Magdi’s wife.

Third, both Nura and Magdi did not marry with the purpose of forming a family. To the contrary, Magdi had only married Nura since his first wife was no longer a zawga (wife). According to Nura, sexual pleasure was his main reason for wanting to conduct a second marriage.242 Nura too took great care to prevent pregnancy which she had tried to make clear by showing me the contraception pills she kept in her wallet. Moreover, Magdi who already had two jobs in order to make ends meet before he married Nura, did not provide for Nura, nor did Nura marry him for the sole purpose of being maintained by a husband again. Although Nura needed Magdi to help her in paying for the rent of the flat, she did not want to become financially dependent on him and for that reason she did not consider giving up her job at the post office. All this deviates from the principles of official marriage. In fact, to a large extent Nura’s marital situation resembled that of the so-called controversial misyar marriage.

8.7 Is the shadow, even the ambulant shadow, of a man better than the shadow of a wall?243

Misyar marriages are very controversial. In a misyar marriage husband and wife agree contractually not to live together and agree to the husband not bearing any financial responsibility to his wife. The couple also agrees that he visits her every now and then but that the marriage remains on a visitor’s basis (cf. Arabi 2001b; Welchman 2007, 102-5). Generally, the woman also accepts a condition that the marriage is not made public (Welchman 2007, 103). Local opinion often claims that this type of marriage was brought to Egypt by Egyptian men working as migrant workers in Saudi Arabia. Resembling the so-called zawag al-frind to a great extent (see also chapter 4), it is interesting that the Mecca-based Islamic Jurisprudence Assembly legitimized on 12 April 2006 both the misyar marriage and the zawag al-frind marriage (Welchman 2007, 103). The legitimization of the misyar marriage led an inhabitant of Saudi Arabia to post on Sabbah’s Blog a response by the title: “Prostitution is now official and religiously condoned in Arab land.” He states the

242 According to Haeri, temporary marriages in Shi’a Iran (mut’a marriages) are mainly conducted for reasons of sexual pleasure as well (1989).

243 I have taken this expression from Arabi (2001b, 159).
following: “Okay, don’t you think that prostitution is better than this marriage? At least she sets the price and gets paid for giving what the man was looking for, which is sex. But in Misyar, the woman get laid…without getting paid. So the formula is “Laid but not Paid.” And in case in this marriage she is paid a little, then that is nothing but prostitution….Anyway, I once called for prostitution to be regularized in the Arab/Islamic world. I don’t remember anyone agreed with me…Now, I’m happy to see that my dream is coming true. Yes, it is not called prostitution in this part of the world, we call it Misyar…” (http://sabbah.biz/mt/archives/2006/04/27/, 6 February 2007). This person wondered what couples benefit from a misyar marriage. According to him the husband enjoys sex without any liability towards the unpaid woman. As for the woman “The woman and her family seems to enjoy nothing but the woman’s sexual instinct seems to be fulfilled…” (ibid). In addition to this, opponents to misyar also condemn the secrecy of the marriage as misyar marriages are typically conducted by married men244 and they argue that the marriage should be made public (cf. al-aHrār 24 August 1998).245

On the other hand, proponents of misyar argue that misyar is practiced by “some professional women [in Saudi Arabia] especially those in good financial standing…who would like to maintain their hard gained independence and empowerment, at the price of giving up some of the privileges attached to conventional marriage” (Arabi 2001b, 161). Yet, the Saudi Arabian ambulant women Arabi is talking about do not live alone but remain living with their parents and other family members and for that reason Arabi argues that it is questionable whether women’s freedom and independence is secured through the conclusion of a misyar marriage (ibid, 159-60). In fact, in Egypt, women often view marriage as a way to escape parental supervision and to attain freedom and independence. Therefore, I would like to pause at this point and look in more detail as to how Egyptian husbands and wives in misyar-marriages are benefiting. Do husbands only want to indulge in cheap sexual pleasure and do women only wish to marry through misyar in order to avoid spinsterhood and to attain the respectable status of a married woman, as many opponents to misyar claim, or are other factors such as looking for an innate need for intimacy at play? In this light, it is interesting to have a closer look at polygamous marriages in general as misyar marriages are often conducted by already married men.

244 In the famous interview on al-jazīra (al-Jazeera) in which Yusuf al-Qaradawi stated that he supported the misyar marriage (although he would not encourage people to practice it), he also mentioned that misyar is typically a marriage to a second or third wife (al-jazira, 3 May 1998). See also Arabi (2001b, 154).

245 For more information on misyar marriages and how they are criticized, see Welchman (2007, 104).
With regard to polygamous marriages, Haugaard Bach observes how in an Upper Egyptian village near Aswan “The second wife is usually the choice of the husband, a love marriage, whereas the first spouse is chosen by the parents” (2003, 60). In a more generalized way, these findings are supported by a newspaper article on polygamy in Egypt in which the motives of husbands to marry a second wife can be succinctly summarized by the statement of one of them: “I married a second wife in order to have the opportunity to enjoy the love, emotions and feelings I never had with my first wife” (al-Ahram Weekly 26 February-3 March 2004). In the case of Magdi, it is more difficult to reason why he wanted to marry a second wife as I never met him and do not know what finding a real zawga (wife) implied to him. According to Nura, Magdi’s marriage to Nura was motivated by a wish to find a real zawga again without giving up life with his first wife and children. Magdi would visit Nura a few times a week in her flat and leave again. In return Magdi had promised her to pay (part of) the rent of the flat a thing which he hardly ever did. What were the benefits for Nura? Magdi was using her flat, her furniture and she even complained that she herself had to pay his cigarettes and the food she cooked him. This led her to exclaim that prostitution was better than this marriage since a prostitute would be paid for giving Magdi what he wanted while she was not. While this may be true, Nura had also deliberately opted for such a marriage. We have seen how she gave in to the pressure to marry again but that she refused to enter a marriage which would make her financially dependent on a husband again by giving up her job and by becoming housewife and mother of his children. For this reason she rather married an already married husband with children who simply would not be able to be with her all the time and who also would not be interested in raising a new family. And indeed, Nura and Magdi took great care to prevent pregnancy and Nura was happy to be married while at the same time relieved that she and her husband were seeing each other on a visitor’s basis. In other words, Nura simply was not prepared to give up her freedom by entering a situation in which her husband would provide for her and in which she had to remain obedient to him in return. Hence, Nura’s case seems to resemble those of her Saudi Arabian counterparts to a great extent. Yet, there was one big difference: where women in Saudi Arabia stay at their parents’ house, Nura saw marriage as an opportunity to leave her mother’s house and start living on her own by renting a flat far away from her mother’s home. To her this type of (misyar) marriage really constituted an opportunity to safeguard her independence.

In this light I found some interesting articles on the Internet in which women themselves all view polygamy and misyar marriages from a positive perspective. One article deals with part time marriages (passers-by marriages) being the rave in Egypt. Assuming that part time and passer-by marriage
translates as *misyar* marriages, the article tells us about a 46 year old woman who formed a passers-by marriage to become the second wife of a married man. The story of this woman resembles that of Nura to a great extent. First of all, she became the second wife of a married man for reasons that were also related to the fact that it is not easy to be a single woman in Egypt: “The concierge, the grocer and the neighbours show more respect towards me now than when I was single.” This woman sees her husband three or four times a week: “It suits me fine. I have to travel a lot because of my work, and not having a husband at home means I’m not tied down and can move when the job calls.” In the article it is argued that this kind of convenience is appealing to more and more Egyptians, of both sexes (The Straits Times 12 October 1998).

In another Internet article by the title “Egyptian wife promotes polygamy” a forty-two year old female journalist claims that her work keeps her so busy that she feels that her husband needs a second wife. Although her husband refused, she has started a campaign in favour of polygamy and even helped to form an association, Al-Tayseer, which promotes the idea of polygamy (Deseret News 4 September 2005). These Egyptian women have the support of religious authorities such as the late Mufti of Saudi Arabia, Ibn Baaz, the Grand Mufti of Egypt, Nasr Farid Wasil, and Sheikh Yusuf al-Qaradawi in the sense that Yusuf al-Qaradawi, for example, justified *misyar* marriages by arguing that women desire such marriages. “If a woman is rich and a professional, she does not need financial support. It is a way for rich women to separate sexuality from obligations” (al-jazīra 3 May 1998; Abaza 2001, 20). He also argued on al-jazīra (al-Jazeera) that a *misyar* marriage is typically a marriage to a second or a third wife. In fact, so he claimed, “I do not know of a first woman who married by way of misyar” (al-jazīra 3 May 1998). To a certain extent Nawal al-Saadawi, a controversial Egyptian feminist, agrees when she says that women married through *’urfi* are financially independent and free woman. According to her, women in these *’urfi* marriages “are free from the subservient obligations of the ordinary marriage provided by the anti-women law” (Middle East Times 18 February 2000).

Although it is difficult to establish the precise meaning of al-Saadawi’s words, I assume that when speaking of “the subservient obligations of ordinary marriage” she is referring to the fact that Egyptian women must obey their husbands in return for the financial support these husbands provide. If that is the case, then both al-Qaradawi and al-Saadawi are of the opinion that financially independent women are no longer obliged to pledge obedience to their husbands. In other words, when *’urfi* marriages are not based on the maintenance-obedience relation all sorts of questions concerning men and women’s proper gender roles are raised.
For the case of Saudi Arabia, Arabi argues that since one of the features of the *misyar* marriage is the agreement between husband and wife that the former is under no obligation to provide for his wife and children, this “seems to tinker with one of the crucial pillars that underlie the structure of authority in the Muslim family…: the role of the husband both as family leader and provider of maintenance (2001b, 156). Strangely enough, “The fatwa [of the late Mufti of Saudi Arabia, Ibn Baaz] is silent on the basic traditional structure of maintenance or *nafaqa*, of which the provision of marital domicile and sustenance by the husband was the corner stone” (although the issue of non-provision of marital domicile by the husband was explicitly addressed by the questioner) (Arabi 2001b, 165).

According to Arabi the introduction of a new structure of marriage did not change the authority of the husband on a symbolic level although in practice ambulant marriages have changed the dictum that in return for their husbands’ maintenance wives must pledge obedience to them as the loyalty of the wife to her natal family has been strengthened (2001b, 167).

What I found interesting with regard to the case of Egypt is that the authority of the husband is not replaced by that of the wife’s family, at least not in the case of Nura. To the contrary, her case shows that *misyar* (resembling) marriages in Egypt enable the wife to leave the parental home and to start living on her own. Nura, however, was still largely dependent on Magdi to pay for the rent of the flat. In other cases where the wife has a good job; is not dependent on the husband for housing; and does not need to share a household with her husband, let alone with her family-in-law, this undoubtedly leads to the establishment of different marital relationships. For how can husbands in such cases demand that their wives remain obedient to them while their wives have their own domiciles and sources of income? Additionally, in such cases women are more likely to be able to keep their children.

From earlier chapters it has become clear that the maintenance-obedience relation is often merely a theoretical construction which has lost at least some of its practical relevance in Egypt of the new millennium. Nevertheless, it has also become clear that many in Egyptian society have found it difficult to accept this reality – something which became evident after the introduction and implementation of the *khul’* law led many to accuse women of neglecting their marital duties while in actuality these accusations merely reflected a negation of a living reality whereby men increasingly fail to fulfil their marital duties. For example, where women were accused of appropriating a husband’s investments in the marriage by divorcing through *khul’*, in actuality women increasingly contributed financially to marriage preparations, a contribution which they were

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246 The same seems to apply to the newspaper articles that presented the stories of women who “happily” started to live alone.
often not allowed to keep in case of a divorce through *khul‘* (see chapter 4). Where it was often said that women only wanted to divorce through *khul‘* because their eye was on another man, in reality many women divorced through *khul‘* because marital life was somehow made impossible or because the husband married a second wife. In the same vein, young people and women’s loose sexual morals were seen as the reason behind what is believed to be the rapidly increasing number of *‘urfi* marriages and while the Egyptian public put on a par *‘urfi* marriages such as *misyar* with prostitution, the case of Nura shows that where Magdi seemingly looked for sexual pleasure, Nura saw polygamy (second marriages are typically conducted by way of *‘urfi*) as a way to obtain the respectable status of a married woman again while at the same time maintaining her financial independence and freedom. In these cases too, men hardly pay out a dower, let alone provide for housing.

One last remark, in section 5.5 we have seen how the arbitrator Hisham was of the opinion that most women in prison were prostitutes who loved to destroy a happy marriage.247 In Nura’s case, however, we have seen how she entered a marriage liaison which was put on a par with prostitution but that she only did so in order to be able to marry a man with a wife and children and that she was very careful to make sure that his first wife would not find out and possibly break up the marriage since a broken marriage was the last thing she wanted. It would curtail her freedom, both financially and emotionally. For this reason it was important for her to conclude a secret marriage.

8.8 Conclusion

By remarrying and by actively pursuing a new husband even at the detriment of her children, Nura fitted the picture which opponents to the law had spread of women who wanted to divorce through *khul‘*. While a lot of attention was paid in the public debate to these women’s bad habits and the way they were dressed, hardly any attention was paid to the men who were the so-called victims of these women. The only thing that became clear from opponents’ criticism was that these men were handsome and rich. Nura, however, married an already married man with children, who could barely scratch a living and whom she did not find handsome at all. Instead of Nura pursuing a rich and handsome man, it was her husband who, according to Nura, was secretly looking for a real *zawga* (wife). Although it would go too far to conclude that all men who marry a second wife do so for reasons of sexual pleasure, it remains significant that statistics claim that 25

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247 In this regard it is interesting that sometimes both married and unmarried Egyptian men who are in need of money prostitute themselves to Russian women who come to the Red Sea for a two or three weeks’ holiday. Since Egyptian law forbids Egyptians to share a hotel room with someone they are not married to, these men and their Russian “brides” conduct *‘urfi* marriages. See also Abdalla (2007).

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percent of the married men marry a second wife within three years of marriage. Hence, it seems that men fit the profile of khul’ women better than khul’ women themselves. Because they are looking for sexual intimacy, but also since at least some of them want to marry a rich woman, that is to say, a woman whom they do not need to provide for. So, the question arises why Nura decided to marry again while she had always claimed that she wanted to remain independent, if only to be able to provide for her children. Why would she agree to marry a man about whom she knew beforehand that he would not or hardly provide for her?

There were several reasons, the main reason being the pressure from her social environment. However, since divorce carries a stigma, it is not easy for divorced women to remarry. That is to say, to marry a man who has never been married before since “virgin” men seldom marry a woman who is no longer a virgin. In such cases the alternative is either to marry a widower, a divorced husband or an already married man. The general perception in society is that divorced women often become a second wife. This perception is in accordance with my fieldwork experiences that show that divorced women often do not want to take care of children or problems from a former marriage nor do they always want to give up their job in order to become a housewife and live under a husband’s obedience again. As a result, lower class women prefer to be the second wife rather than the new wife of a widower or divorced man, while upper class women often decide not to remarry at all.

The story of Nura, and other women’s stories, as well as some statistics, seem to indicate that second marriages are typically conducted unofficially and secretly through ’urfi. With regard to ’urfi marriages it is important to distinguish between informal marriages which are concluded in secrecy and those that are not. In Egypt, ’urfi marriages have typically come to be associated with young people who marry secretly, without the permission and knowledge of their parents and other family members, and who use ’urfi in order to provide a minimal Islamic standard for sexual intercourse outside wedlock. One form of ’urfi marriage in which secrecy plays an important role is the so-called misyar marriage. Often equated with prostitution misyar marriages are controversial as husband and wife agree that the husband will not provide, a religious obligation which underlies the very structure of Islamic marriage. This, however, did not prevent the late Mufti of Saudi Arabia, the Mufti of Egypt and Yusuf al-Qaradawi to religiously condone misyar marriages, Yusuf al-Qaradawi even claiming that through misyar women are able to keep their freedom and financial independence.

Keeping her freedom and financial independence were the main reasons to marry by way of polygamy. Although she seemed reluctant to admit whether her marriage was an official marriage, a “legitimate ’urfi marriage” or an “illegitimate ’urfi marriage” through misyar, in the end it does not really matter whether Nura
married officially or unofficially, overtly or secretly. The mere fact that she married a husband without the intention to establish a household and to raise a family and without wanting to become financially dependent on him, is an indication that the basis upon which traditional Egyptian marriage relied, has changed. When husbands no longer provide for their wives, the latter no longer have an obligation to remain obedient to their husbands in return. In theory, at least. In practice, however, the issue of non-sustenance by the husband was not paid much attention to in the public debate on *khul’*, notwithstanding the fact that in May 2000 a legal clause was introduced which proclaimed that men who fail to provide for their wives are liable to a 30-days-term of imprisonment (see 2.5). The late Mufti of Saudi Arabia who condoned *misyar* marriages, also remained silent on this issue. Instead of paying attention to husbands’ unwillingness or incapability to provide maintenance and housing, critics fixed their attention to the issue of women’s (dis)obedience. In this chapter it became clear that this pre-occupation with women’s (dis)obedience resulted in women who divorced through *khul’* being exposed to conflicting messages. One the one hand, they were accused of having divorced to marry another man, while on the other hand these women felt under considerable societal pressure to remarry.

Women in Egypt deal differently with bad marriages. Some women claim that “the shadow of a man is better than the shadow of a wall.” Others say that “being alone is better than bad company,” and other women claim that “the shadow of a man is better than the shadow of a wall, but not the shadow of any man.” Through secret *’urfi* marriages, be it through *misyar* or not, this latter group of women tries to get the best of both worlds: having the respectable status of a married woman while at the same time experiencing some freedom and financial independence. Hence, this group of women not only accepts to marry secretly because the husband wants to keep the second marriage a secret from his first wife and family. They too do not want to risk that the first wife finds out and asks for a divorce since that would jeopardize their freedom and independence. In some situations, making the marriage public is desired while in others it is not. Hence, we could better speak of “partially secret marriages.”
9 Conclusion

From the last quarter of the last century onwards, in a so-called “third phase” of reform of Muslim personal status law, much scholarship has emerged which examines the substance, context and implications of such reforms (Welchman 2007, 13). This study on the introduction and implementation of Egypt’s first law of the new millennium, law no. 1/2000 or “The Law on Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters,” forms one such modest contribution. This procedural law in fact included a few substantive clauses which aroused much controversy. Especially article 20, the article on a unilateral form of khul’ divorce sparked much debate, both in and outside Egypt. As a consequence, law no. 1 of the year 2000 was soon nicknamed by Egyptians the “khul’ law.”

I start from the idea that when people debate and criticize khul’, they are engaged in a struggle over hegemony that involves other, wider issues of concern in Egyptian society. I wondered what these wider issues were; whether or not they related to Islam and Islamic law; and how they related to contemporary everyday reality? In order to provide an answer to these questions, I thought it necessary to conduct a comprehensive study on khul’ which not only analyses the public debate on khul’ but which also relates and compares this debate to the social reality in which it must operate. Hence, I started in March 2003 a study on khul’ consisting of two sub-research areas: an analysis of the public debate on khul’ as well as an analysis of the way in which khul’ operates in the Egyptian courts and contemporary everyday life.

9.1 The public debate on khul’

The analysis of the public debate consisted of an analysis of written texts such as newspapers and magazines as well as an analysis of works of popular culture such as films and cartoons on khul’. While the public debate on reform of Muslim PSL has been studied before, my fieldwork in Egypt made me decide to include works of popular culture in the analysis as well. I decided to do this after I noticed how many cartoons featured in the debate on khul’ and after Egyptians often drew my attention to films when I told them about my research. This was not only reflective of the legendary role of film, language and humour in Egyptian society but also of a culture where political opposition was limited as well. As a result, Egyptians use fun and joking “as a safe way to express rejection, opposition and anger, and to break tension” (Saleh 2004, 2). By studying both ways of participating in the public debate, I was able to see who the participants in the debate were; what issues they addressed; and what arguments they used to justify their various points of view (Moors 2003).
In newspapers and magazines, the legislator and women activists who were behind the introduction of the law presented *khul’* as being in accordance with Islam and Islamic law. Opponents to the law, however, often claimed that *khul’* was violating the *shari’a* and that the introduction of a unilateral form of divorce for women was just another indicator of how much the Egyptian government was functioning as a puppet of the West. They also claimed that *khul’* was merely a law for rich women who could afford to forfeit their outstanding rights and repay to their husbands the dower. Moreover, they charged that *khul’* would destabilize Egyptian society since (rich) women would use it to divorce their husbands for frivolous reasons. In this light, opponents sometimes called *khul’* women *nashiz* (recalcitrant).

A study of the debate in newspapers and magazines also made clear that it was not easy to classify opponents and proponents of the law. The religious establishment, women’s activists and the government did not consist of homogenous blocs: opposition did not only come from political opposition parties but also from members from the ruling party; while some women activists were behind the introduction of an unilateral form of *khul’* divorce, other women activists opposed the law by saying that it was only a law for rich women; and while the Sheikh of al-Azhar approved of *khul’*, some ‘ulama’ of al-Azhar not only opposed *khul’*, but even went so far as to accuse him of being an unbeliever.

Despite the complexities of the alliances made in the debate, it became clear that there was one thing that all parties had in common: all parties resorted to the language of Islam in order to present and justify their particular point of view. Notwithstanding the utilisation of an Islamic framework by the Egyptian women’s movement and the legislator, it has become clear that resorting to the language of Islam is only a means to participate in the debate, it does not tell us anything about the outcome of the debate. Where all participants tried to interpret the sources of Islamic law in an authoritative manner (*ijtihad*), I wondered whose interpretation ultimately would become the dominant one. After a number of incidents (one political party and its mouthpiece were abolished; one Islamic scholar was put in prison for having insulted the sheikh of al-Azhar for defending the “*khul’* law”; women’s NGOs were brought under the wing of the governmental National Council of Women; the public debate on other controversial reforms, most of them concerning PSL, and which were issued in the wake of the “*khul’* law” hardly aroused any emotions), it seemed as if the government was the one that ultimately decided who had the right to interpret the sources of Islamic law, and hence, the limits within which the public debate could take place.

Later, however, two issues merited note. First, when the constitutionality of the “*khul’* law” was brought in front of the High Constitutional Court, the “responsibility for creating and implementing an official government theory of
Islamic law moved from the executive and legislative branches to the increasingly independent judiciary” (Lombardi 2006, 5) as the High Constitutional Court, and not the government, had a final say in deciding whose party’s interpretation of Islam and Islamic law was the right one.

Second, in newspapers and magazines the debate on other controversial reforms of PSL, which were implemented in the wake of the “khu’l law” seemed to have been stricken dumb as a result of suppression by the government. Debate on the matter, however, continued in works of popular culture, through two films and numerous cartoons. Studying the debate on khul’ in works of popular culture made clear that, just like in newspapers and magazines, cartoons and films linked khul’ to upper class women who divorced their husbands for frivolous reasons, thereby disturbing the maintenance-obedience order. In the same vein, khul’ was also linked to Westernization and modernization. This was not done, however, by explicitly using the language of Islam. In the films and the cartoons, explicit references to Muslim religion in general and the language of Islam in specific, were largely absent. Instead, dress, music and language were used to suggest a world in which women dominated men and in which the traditional ways of the countryside were superior to those of the backward city. The films and the cartoons even presented a picture of an emasculated world. In this way, the films fit what Armbrust calls a “vulgar genre” (1996). This “vulgar genre” in Egyptian film criticizes the state’s project of modernity. In this light, the question as to why the government seemingly consented to the release of these films in a country where political opposition is still restricted requires more attention.

The government uses television serials to disseminate its project on modernity. Lower class viewers of television serials, however, perceive them to be constructed fantasy as these serials deal with urban, often upper-class, problems (Abu-Lughod 2005, 237-9). I wondered whether this also applied to the films (and cartoons) on khul’ since khul’ seemed to have things in common with the lives of lower- and middle class viewers. After all, the first Egyptian woman to file for a khul’ divorce, was a fallaha (peasant) called Wafa’. At this point the analysis turned from the public debate to the operation of khul’ in the courts and daily life.

9.2 The operation of khul’ in court and everyday life
Court studies on reform of Muslim PSL often focus on the position of the judge and his/her interaction with female litigants. I decided to focus on the impact of the khul’ reform on women before, during and after divorce. My decision was based on two factors. First, except for one occasion, I was not able to attend personal status cases as they were held in secrecy (behind closed doors). Second, notwithstanding a number of studies on Egyptian and Cairene family life as well as a study on female-headed-households in Egypt, to the best of my knowledge no
an anthropological study on the lives of divorced women in Egypt has yet been conducted.

Taking as a point of departure the life of one woman, who wanted to divorce her husband through *khul'*, enabled me to see that there was a difference between her words, her plans and her hopes as expressed in court and their actual realization in her life after the divorce. It also became clear that there was a large discrepancy between the themes that were brought forward in the public debate, and those brought by this woman, to whom I have given the fictitious name Nura, and other women’s daily experiences.

 Whereas in the public debate it was claimed and insinuated that (upper class) women would use *khul'* for frivolous reasons: to marry a richer or a more handsome man; because the husband was snoring and boring; or because he forbade her to work, my fieldwork showed that at least a considerable number of adherents of *khul'* were women from the lower (middle) classes who were married to husbands who were not adequately providing for them, but who nevertheless often married a second wife without divorcing the first one. Although these women had reasons which made them eligible for a regular judicial divorce in which they would be entitled to their financial rights, in theory at least, they often opted for *khul'* since they considered this type of divorce to be faster and thus less costly.

 Even though Nura only had to repay her husband a dower of one pound, the practice of the courts has shown that often judges made women pay back the *shabka* (engagement gifts), the *ayma* (a list stating the furniture which belongs to the wife) and sometimes even a *mu’akhkhar* (deferred dower) which they had never received. While this study pointed out that women’s financial contribution to the marriage and to the household organization was increasing (because women sell the gold of the *shabka*; work outside the home; increasingly marry men who are many years their junior; conduct polygamous marriages), this was not reflected in court. The judges interviewed used the open norms in the law to make it difficult for women to obtain a divorce. This applies especially to the issue of the dower as the legislator seemed to have refrained from issuing an Explanatory Memorandum. Consequently, the interpretation of what exactly constitutes the dower was left to the discretion of the judges.

 In the film *urīdu khul’an* it was suggested that the husband was about to lose his flat and a lot of money to his wife who has filed for a *khul'* divorce. Interviews with judges also made clear that many of them were of the opinion that *khul'* women often were after their husbands’ financial contribution to the marriage, sometimes with an eye toward marrying another more desirable man. At first instance, this had not become immediately clear to me as judges often used formal Standard Arabic and the language of law in communicating with me. Only in a
more informal setting in which they expressed this negative view on *khul'* women, was I able eventually to understand why they often made women pay back to their husbands a dower to their husbands which was higher than the dower registered in the marriage contract. The one judge whose court sessions I could observe, showed that this attitude did not affect the way in which he interacted with his (female) litigants. He remained very formal and used a lot of Standard Arabic in his dealings with them. I related this to judges’ orientation to procedural correctness and their bureaucratic resistance to the possibility of being overruled (Dupret 2006, 167-8) as well as to the Arab curriculum which is characterized by inculcation, memorization, and recitation of textbooks (Naguib 2006, 68).

Interestingly, judges interviewed seldom referred to Islam or to Islamic law to explain why they acted as they did (see also Dupret 2007).

Where judges used the language of law in their dealings with their clients (and with me), observations in one arbitration office in Cairo showed that the male arbitrator used the academic language of sociology in the communication with his clients (and with me). I especially noticed this when he used English sociological terms. In a more informal setting, judges as well as the male arbitrator expressed a negative view on (*khul’*) women. This view was quite different from the one expressed by the male arbitrator in his approach to his clients and which was marked by the absence of English sociological terms. Interestingly, having the same educational background, the female arbitrator did not use sociological (English) terms. In opposition to the male judges and the male arbitrator, the female arbitrator expressed a rather traditional view on the husband-wife relationship and the maintenance-obedience relationship in communicating with her clients, while in more informal conversations with me and the male arbitrator she tried to convince the latter of the fact that contemporary husband-wife relations in Egypt are based on cooperation and equality. It led me to tentatively conclude that in addition to class background, gender also exerts a major influence on the way court actors approach female (and male) litigants. This makes the issue of the newly appointed female judges all the more interesting. What perception do they have of women who divorce (through *khul’*)? Do they approach female litigants in a formal way, as their male counterparts seem to do, or do they create a more informal sphere in the courtroom, thereby encouraging women to express their reasons for *khul’* in court? In line with this it would be interesting to see which language they use in their communication with (female) litigants: formal Standard Arabic; informal Egyptian Arabic and/ or the language of Islam?
Courts: bringing forward a dialogue between husband and wife

Where the female arbitrator pointed out that contemporary husband-wife relationships in Egypt are characterized by cooperation and equality, the male arbitrator was of the opinion that the husband needed to be in control. It seemed as if this conflict was representative of the conflict that occurs in many Egyptian households and in which the issue of men’s authority in the home and wife’s obedience is debated. It was also reflective of a conflict in Egyptian law. Where women were given the right to travel without the permission of the husband in November 2000, women still needed the permission of the husband to leave the marital home, according to PSL 100/1985. The issue of husband’s and wife’s duty to maintenance and obedience respectively was played out in court where personal status cases clogged up the legal system and where husbands’ ta’a claims prompted women to submit nafaga and/or divorce cases and vice versa.

What have women to gain in courts where a negative image of women seems to prevail? This study pointed out that women sometimes used the court as a strategy to pressure the husband. More importantly, it also showed that for some women, such as Nura, the court was the only forum of resort. In line with this, it was of importance that, notwithstanding the male arbitrator’s negative perception of women who file for khul’, he still did his best to try to make both parties understand each others point of view and to promote a dialogue. This was of important consequence in a society in which the courts are the only forum of resort for some groups of women and in which the ability of the family to negotiate in cases of marital dispute is unclear. Although academic literature presents different views on the strength of Egyptian (and Cairene) family life, with a view of the strong Egyptian family in the majority, this study has shown that women who requested a divorce through khul’ frequently returned to or established a female-headed household, that is to say, households in which a male adult was absent and in which women supported and managed the household on their own. Wafa’, the first Egyptian woman to file for khul’, went to live with her divorced mother; Nura also set out to live with her mother who lived alone, and ‘Afaf and her three children started living in a household of their own. Although in such cases friends and colleagues sometimes supported a woman on an emotional level, they did not take up the role of mediator. Instead, they rather referred the woman in question to court. As a result of the male arbitrator’s emphasis on mediation and compromise; talking with both sides; trying to make each see the point of view of the other; to listen to the petitioners as equals, I tentatively argued that the new family courts were bringing forth a dialogue which was otherwise not forthcoming. Arbitration in court, I argued, again tentatively, often led to an ibra’ divorce, a divorce in court.
through mutual consent in which the financial needs of both parties were taken into account and in which both men and women escaped the humiliation which a *khul’* divorce entailed. In this sense, courts have become involved in the renegotiation of relationships.

The subject of households which are led by females, and the lack of arbitration within such households, as a result of which the court becomes the first and the only forum of resort, is an issue which deserves more attention, especially if we take into account that between 18 and 30 per cent of urban Egyptian households consist of female-headed-households (Bibars 2001). It is also an important subject for further research because it argues against prevalent notions in literature which state that women use the court as a strategy to negotiate marital problems. I do not deny that this is sometimes true. After all, this study has shown that men and women use the court as a strategy to obtain a particular aim. This, however, should not obscure situations in which the court becomes the only forum of resort, as happened in Nura’s case.

In the introduction to this study I observed how there is little anthropological literature on the lives of divorced women in Egypt although there are a number of studies on family life in Cairo and Egypt. This is strange since divorce occurs in approximately one out of five marriages; forms a frequently discussed subject in local opinion; and has severe consequences for women as it places them outside the social structure of society. This study has shown that one consequence of a divorcee’s being outside the social structure was that Nura considered a polygamous marriage which gave her the respectable status of a married woman while it simultaneously allowed her to live on her own and to continue working. Although the number of officially registered polygamous marriages in Egypt is low, this study has given reason to assume that the number of unregistered polygamous marriages might in fact be much higher.

After a brief period on her own, Nura married again and thereby provided ammunition to opponents to the law. However, her new husband was not handsome and rich but was already married with children and had to work at two jobs in order to eke out a living. Their marriage resembled a so-called *misyar* marriage: Nura and her husband did not live together and her husband visited her on a visitor’s basis in her flat; they did not intend to establish a family and they even took great care to prevent pregnancy. Although he sometimes paid the rent of the flat to which Nura had moved subsequent their marriage, he did not pay her a *dibla* (wedding ring), let alone a *shabka*, nor did he contribute at all to furnishing the apartment; to paying water, gas and electricity; and in addition Nura always paid for his food and cigarettes when he was visiting her. He also did not want his first wife to find out about his second marriage. When I came to think of it, both Nura’s polygamous marriage as well as her first marriage were in line with the findings of
my research which have shown that the model of the husband-wife relationship which is promoted by public culture is often not in line with daily reality.

This question arose as to what extent women still needed men. Not only did husbands often not shoulder their marital responsibilities by not providing for their families, but with an increasing number of women engaged in paid-jobs, they no longer seemed to need a husband to provide for them. This applied to Duriya in the film uridu Hallan, did it also apply to Nura? In the beginning Nura had been very averse of marrying again. She wanted to retain her financial independence (by keeping her job in the post office and by expressing a desire to travel to the Gulf for work) and her freedom of movement, if only because she considered this to be the best way to bring back into her custody her three children. Why, then, had Nura married again, only a year after she obtained a khul’ divorce, to a man who was already married, not providing for her and who was living, at least in part, on her money?

I concluded that in Egypt, the role of a woman is defined almost entirely by her relationship to a man. After her divorce Nura did not want to marry again. Instead of taking up the position of the obedient wife, she wanted to take up the male role of provider. However, her case makes clear that everything which marks membership of the other gender, tends to be excluded from the universe of the feasible and thinkable (Bourdieu 2001, 23) and Nura’s colleagues in particular forced her to take up her role as a wife again. Their gossiping about her status as an unmarried woman made Nura feel compelled to marry again. Marriage remained the prime means of acquiring a social position and Nura had to become obedient again, at least symbolically. By resorting to a marriage to an already married man, she hoped to retain her freedom of movement and her freedom to work outside the home, and thus to make the best of both worlds.

These two worlds consisted of a public culture which promoted a model of marriage in which the husband provided in return for which the wife pledged obedience to her husband on the one hand, and everyday life experiences concerning the husband-wife relationship on the other hand. This study has shown that it is not rare for the public model of marriage and the everyday practice of lower and middle class marriages to not be in accordance with each other. The introduction and implementation of khul’ touched on a tender spot in Egyptian society since women were given the legal right to divorce their husbands in a humiliating way. That is to say, unilaterally and by returning to their husbands one Egyptian pound. This one Egyptian pound was reflective of the increasing contribution of women to the costs of marriage and the financial organization of the household as well as the failure of some husbands to provide. The mere fact that in films and cartoons, in court, and in daily life, the language of Islam was largely absent, signified that khul’ had provoked a discussion which was not
primarily related to Islam and Islamic law. Moreover, despite the fact that in the public debate the focus was on rich women who would use *khul’* for frivolous reasons, the practice of *khul’* in the courts and in daily life has shown that *khul’* reveals the story of Egypt’s lower and middle classes and their struggle to define the rightful place of men and women in a society which is witnessing socio-economic changes and in which the issue of cultural authenticity and modernity plays an important role.
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The article on *khul’*
Article 20 of PSL no. 1/ 2000

“A married couple may mutually agree to *khul’*.”

“…However, if they do not agree and the wife sues demanding it, and separates herself from her husband by giving up all her financial legal rights, and restores to him the dower he gave to her, then the court is to divorce her from him”.

“The court shall not rule for divorce through *khul’* except after trying to reach reconcilement between the two spouses, and after delegating two arbiters to continue reconcilement endeavors between them, within a period not exceeding three months, as indicated in clause 2 of article 18 and the first clause of article 19 of this law, and also after the wife explicitly declares that she hates life with her husband, that there is no way for continuing marital life between them, and that she fears to commit a violation of the restrictions that God has placed because of that hatred.”

“It is not permissible that in compensation for *khul’*, children’s fostering, or their maintenance, or any of their rights will be dropped.

“The separation effected by *khul’* is, under all circumstance, an irrevocable divorce. The court’s decision is, under all circumstances, not subject to appeal, in any of the forms of appeal.”

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248 Partly translated by the Middle East Library for Economic Services (MELES) in Cairo, and partly my own translation.
Summary


From 2000 onwards women in Egypt have a right to unilateral divorce, that is to say, to a divorce which no longer requires the consent of the husband. This right is called khul’ and gave women in Egypt one of the most extensive divorce rights in the Muslim world. Only Turkey, Tunisia and Pakistan preceded Egypt.

The right to khul’ is contained in article 20 of a procedural law in the field of Personal Status. Consisting of 79 articles, this law is the first law of the new millennium and intends to speed up and facilitate litigation in personal status matters. Especially the article on khul’ aroused much controversy and led to heated debates, although the legislature and women’s activists had presented khul’ as being in accordance with Islam and Islamic law.

This study deals with the introduction and implementation of khul’ in Egypt and starts from the idea that the discussions on khul’ involved issues of wider concern. Central questions are: what are these wider issues, to what extent are they related to Islam and Islamic law, and what is their relation to contemporary everyday reality? In order to answer these questions, this study is divided into two parts. The first part consists of an analysis of the public debate on khul’; the second part deals with the implementation of the khul’ procedure in the courts as well as the way khul’ is used in contemporary everyday reality.

The public debate

In this study, written texts such as newspapers and magazines were used in order to analyse the public debate on khul’. Films and cartoons also played an important role in the debate and for that reason they too were included in the analysis. Analyzing newspapers made clear that the legislature and women’s activists defended khul’ by saying that khul’ was in line with Islamic law. They referred especially to a hadith (saying) of the Prophet Muhammad in which the latter gives a woman permission to divorce her husband without his consent. Opponents of the law, however, claimed that khul’ was an attack on Islam and that khul’ was part of a conspiracy of the West and the Egyptian government to weaken Islam in Egypt. Through khul’, Egyptian family life would be damaged and Egyptian society would destabilize. It was claimed that women were irrational beings who would resort to khul’ for frivolous reasons, if their eye would fall on a handsome or rich
man, for example. Since *khul’* requires the repayment of the dower by the wife to the husband, it was often claimed that *khul’* would be a law for rich women only.

A study of the public debate made clear that it was not easy to classify opponents and proponents of the law. The religious establishment, women’s activists and the government did not consist of homogenous blocs. Opposition did not only come from political opposition parties but also from members from the ruling party; while some women activists were behind the introduction of an unilateral form of *khul’* divorce, other women’s activists opposed the law by saying that it was only a law for rich women; and while the Sheikh of al-Azhar approved of *khul’* some ‘ulama’ of al-Azhar not only opposed *khul’*, but even went so far as to accuse him of being an unbeliever. This lack of mutual consensus shows how sensitive the debate was and how interests diverged.

Despite the complexities of the alliance made in the debate, it became clear that there was one thing that all parties had in common: all parties resorted to the language of Islam in order to present and justify their particular point of view. In newspapers and magazines explicit references to Islam were made while in films and cartoons this happened rather implicitly. In films and cartoons others means were used to propagate the same message. Apart from suggesting that *khul’* would be used by rich women, dress, language, and music were used in films and cartoons to also suggest that these women were westernized.

An analysis of the public debate made clear that discussions on *khul’* were not limited to the place of Islam and Islamic law in Egypt. At the same time, there were discussions about the influence of the West on traditional marital relationships and how these would change as a result of *khul’*. Opponents of *khul’* were afraid that traditional marriage, in which the husband has a duty to maintenance and the wife a duty to obedience, would be undermined as a result of the implementation of this law. Men would lose their authority and their role as provider to dominant and financially independent women.

Studying *khul’* in the courts and in everyday life practice made clear that conventional marriage was indeed under pressure: most women who filed for a *khul’* divorce and who were included in this study, worked outside the home. These women were not pursuing a career but wanted to make money to take care of their families. They were often forced to work because their husbands had left them, not seldom to marry a second wife. Being everything but rich, these women from the (lower) middle class exemplify the macro socio-economic changes which this class is experiencing.

**Reality**

Central in this study was the story of a woman who wanted to divorce through *khul’*. Her experiences during and after the divorce formed the basis of each new
chapter in the second part of this study as well as the basis for the stories of other women included in the analysis.

The story of this woman - Nura - and that of other women in similar situations made clear that women often had good reasons to ask for a divorce. That is to say, reasons that made them eligible for a regular judicial divorce through which they would be entitled to their financial rights. Nura and other women, however, opted for a khul’ divorce since they considered this type of divorce to be faster than a regular judicial divorce, which could often take many years under the Egyptian legal system.

Judges interviewed were of the opinion that women who requested a divorce through khul’ were after their husbands money and flat. As a result, they often decided that in case of a khul’ divorce, a woman needed to repay the husband everything that he had every given her. Apart from paying back a sum of dower, which often exceeded the one Egyptian pound that was registered in the marriage contract, women sometimes had to pay their husbands the mu’akhkhar al-sadaq (the deferred part of the dower), which none of the women had ever received. Moreover, this study shows that women often carry the financial responsibilities for their families and that women’s financial contribution to marriage preparations was significant. The financial contribution of the wife and the husband’s failure to provide adequately for the family give rise to conflicts in many Egyptian households, but was hardly brought forward in the public debate, nor discussed by judges.

**Conclusion**

Notwithstanding the negative perception of women in court, women used the law and the possibility to divorce by way of khul’. Two arguments can explain why this is the case. First, to some women the court was the only place where they could go with their problems. Often these women were not supported by their families and/ or did not have many family members. This is supported by the fact that the women who were included in this study often went living with their single mother or had started living on their own with their young children. There seemed to be a relation between khul’ and these “female-headed-households.” Other women, often those who were supported by their families, used the court as a strategy to put their husbands under pressure. They made use of the fact that many Egyptian men fear becoming a makhlut, that is to say, that their wives would “repudiate” them. The strategies of men in divorce procedures were also included in this study.

Second, this study made clear that although judges often have a negative perception of women who want to divorce through khul’, there seemed to be a difference between these judges’ personal opinions and their attitude in court. In court they adhered to their formal position, something that was reflected in their
usage of Standard Arabic and legal language. Only in a more informal setting did judges express a negative perception of women. The one judge whose court sessions I could observe, showed that this attitude did not affect the way he interacted with his (female) litigants. He remained very formal and used a lot of Standard Arabic in his dealings with them. I related this to judges’ orientation to procedural correctness and their bureaucratic resistance to the possibility of being overruled (Dupret 2006, 167-8) as well as the Arabic curriculum which is characterized by inculcation, memorization, and recitation of textbooks (Naguib 2006, 68). However, because the legislature seemed to have refrained from issuing an Explanatory Memorandum, judges used the open norms in the *khul’* procedure to their own discretion, for example to define the dower.

This study also made clear that women who divorced through *khul’* often remarried making it look as if opponents of *khul’*, who had claimed that women would use *khul’* to marry a rich and handsome man, were right after all. However, the new husband was not always rich and in some cases he and the wife even agreed that he would not provide for her. Single women in Egypt are often in a difficult position and are under considerable pressure to remarry. Since they were married before, it is very difficult to marry a man who had never been married. Although this requires further study, it seems that in some cases women choose for a polygamous marriage instead of getting married to a widower or a divorced man. A polygamous marriage gives them the possibility to keep their jobs and to remain living alone and at the same time have the respectable status of a married woman. In this way these women try to reach a compromise between a public culture which promotes a model of marriage in which the husband provides and the wife obeys, and everyday reality where they have to stand on their own feet.
Samenvatting

Khul’ Echtscheiding in Egypte. Publieke Debatten, Rechtspraktijken, en Alledaags Leven

Sinds 2000 hebben vrouwen in Egypte het recht om eenzijdig een echtscheiding aan te vragen, dat wil zeggen, een echtscheiding waarbij toestemming van de echtgenoot niet langer bij wet vereist is. Dit recht wordt khul’ genoemd en heeft vrouwen in Egypte in een klap een van de meest uitgebreide rechten op echtscheiding gegeven die er in de moslimwereld bestaan. Alleen Turkije, Tunesië en Pakistan gingen Egypte voor.

Het recht op khul’ is vervat in artikel 20 van een procedurele wet op het personen- en familierecht. Deze wet is de eerste van het nieuwe millennium en bevat 79 artikelen die als doel hebben om de procedures binnen het personen- en familierecht te vereenvoudigen en te versnellen. Met name het artikel omtrent khul’ deed veel stof opwaaien en leidde tot verhitte publieke debatten, ondanks het feit dat de wetgever en activisten voor de rechten van vrouwen khul’ hadden gepresenteerd als zijnde in overeenstemming met Islam en islamitisch recht.

Dit proefschrift behandelt de introductie en implementatie van khul’ in Egypte en gaat ervan uit dat de discussies rondom khul’ symptoom stonden voor andere en dieperliggende kwesties in Egypte. Centrale vragen zijn: wat zijn deze kwesties, in welke mate hebben ze met de Islam en islamitisch recht te maken, en in welke verhouding staan ze tot de alledaagse praktijk. Om deze vragen te beantwoorden is het proefschrift in twee delen verdeeld. Het eerste deel behandelt de publieke debatten rondom khul’; het tweede deel de implementatie van de khul’ procedure in de rechtbanken alsmede de manier waarop khul’ in het dagelijks leven gebruikt wordt.

Het publieke debat

De publieke debatten omtrent khul’ zijn geanalyseerd door geschreven teksten zoals kranten en tijdschriften te bestuderen. Aangezien films en cartoons ook een belangrijke rol in het debat speelden, zijn zij eveneens in de studie betrokken. Een analyse van kranten maakte duidelijk dat de wetgever en activisten voor de rechten van vrouwen khul’ verdedigden door erop te wijzen dat ze in lijn was met islamitisch recht. Ze wezen met name op een hadith (vertelling) van de profeet Muhammad waarin de laatste een vrouw toestemming geeft om zonder toestemming van haar man te scheiden. Tegenstanders van de wet echter, beweerden dat khul’ een aanval op de Islam was en dat khul’ deel uitmaakte van
een samenzwering van het Westen en de Egyptische regering om de Islam in Egypte te verzwakken. Door *khul‘* toe te laten, zou het Egyptische familieleven onherstelbaar beschadigd raken en de Egyptische samenleving uit balans raken. Vrouwen, zo werd beweerd, waren irrationele wezens die bij het minste of geringste toevlucht zouden nemen tot *khul‘*, bijvoorbeeld als hun oog op een mooie of rijke man zou vallen. Aangezien een van de voorwaarden voor *khul‘* bestaat uit het terugbetalen van de bruidsprijs door de vrouw aan haar man werd vaak beweerd dat *khul‘* slechts een wet voor rijke vrouwen zou zijn.

Het bleek overigens niet gemakkelijk om binnen het publieke debat een duidelijk onderscheid te maken tussen tegenstanders en voorstanders van de wet aangezien het religieuze etablissement, activisten voor vrouwenrechten en de regering geen homogene verbonden vormden. Zo kwam het protest niet alleen uit de hoek van de politieke oppositiepartijen maar ook uit monde van parlementsleden van de regerende partij die de wet had geïmplemeert. Tevens waren sommige activisten voor de rechten van de vrouw kritisch en van mening dat *khul‘* slechts een wet voor rijke vrouwen zou zijn terwijl andere activisten een belangrijke rol hadden gespeeld in de totstandkoming van *khul‘*. En waar de Sheikh van al-Azhar zich voorstander van *khul‘* verklaarde, waren andere islamitische geleerden, de zogeheten ‘ulama’, niet alleen tegen *khul‘*, maar beweerden ze zelfs dat de Sheikh van al-Azhar een ongelovige was. Deze onderlinge verdeeldheid maakte duidelijk hoe gevoelig het debat rondom *khul‘* was en hoezeer belangen uiteen liepen.

Een ding echter hadden alle partijen gemeen: ze gebruikten de taal van de Islam om hun argumenten kracht bij te zetten. In kranten en tijdschriften werd daarbij expliciet naar de Islam verwezen terwijl dit in films en cartoons eerder impliciet gebeurde en andere middelen werden gebruikt om eenzelfde boodschap duidelijk te maken. In films en cartoons werd, behalve dat *khul‘* gebruikt zou worden door vrouwen die rijk waren, tevens gesuggereerd dat zij, afgaande op hun kleding, taalgebruik en muzieksmaak, verwesterd waren. Analyse van het publieke debat maakte duidelijk dat de invoering van *khul‘* niet alleen discussies opriep over de plaats van Islam en islamitisch recht in Egypte.

Zij wierp tevens vragen op over de invloed van het Westen en de moderniteit op de traditionele rolpatronen binnen het huwelijk en hoe deze door *khul‘* zouden veranderen. Tegenstanders waren bang dat het conventionele huwelijk, waarin de man een onderhoudsplicht en de vrouw een gehoorzaamheidsplicht heeft, door de invoering van de wet ondermijnd zou worden. Mannen zouden hun rol als kostwinnaar en hoogste autoriteit binnen het gezin verliezen aan dominante en financieel zelfstandige vrouwen.

De studie van *khul‘* in de rechtbanken en de praktijk van het alledaagse leven maakte duidelijk dat de traditionele huwelijksrelatie ook daadwerkelijk
onder spanning stond: de meeste vrouwen die bij deze studie betrokken waren en een *khul'* scheiding aangevraagd hadden, werkten buitenshuis. Dit deden zij niet om een carrière na te streven maar om in het levensonderhoud van hun gezin te voorzien. Zij waren daartoe vaak gedwongen omdat hun echtgenoten hen verlaten hadden, vaak om een tweede vrouw te trouwen. Deze vrouwen, afkomstig uit de (lagere) middenklasse en juist verre van rijk, dienden als voorbeeld van de macro sociaal-economische veranderingen waarmee deze klasse te maken heeft.

**De praktijk**

In de studie stond het verhaal van een vrouw die wilde scheiden door middel van *khul’* centraal. Haar belevenissen tijdens en na de echtscheiding vormden de basis voor ieder nieuw hoofdstuk in het tweede gedeelte van dit proefschrift alsmede de basis waarop de verhalen van andere vrouwen een plaats kregen.

Het verhaal van deze vrouw, in dit proefschrift Nura genaamd, en dat van andere vrouwen in een soortgelijke situatie maakte duidelijk dat vrouwen vaak gegronde redenen hebben om een echtscheiding aan te vragen, redenen waardoor ze in aanmerking komen voor een reguliere echtscheiding waarmee ze hun financiële rechten kunnen behouden. Nura en andere vrouwen kozen echter voor de *khul’* procedure omdat ze in de veronderstelling waren dat die sneller zou zijn dan de reguliere echtscheidingsprocedure die vaak vele jaren kon duren.

De geïnterviewde rechters waren van mening dat vrouwen die een echtscheiding door middel van *khul’* aanvroegen op het geld en het huis van hun echtgenoot uit waren. Dit had tot gevolg dat zij in het geval van *khul’* vaak beslisten dat vrouwen alles dienden terug te betalen wat hun man hen ooit geschonken had. Behalve de bruidsprijs, die uit meer bestond dan de een Egyptische pond die meestal in het huwelijkscontract vermeld stond, betekende dit in sommige gevallen zelfs dat vrouwen de *mut’akhkhar al-sadaq* (het uitstaande deel van de bruidsprijs) moesten terugbetalen. Een deel dat geen van de vrouwen ooit ontvangen had. Integendeel: deze studie toonde aan dat vrouwen soms niet alleen de last droegen voor het levensonderhoud van het gezin maar dat hun financiële contributie aan de huwelijksvoorbereidingen ook significant was. Dit werd echter nauwelijks ter sprake gebracht in het publieke debat, noch door rechters. Terwijl juist deze financiële bijdrage van vrouwen en het niet voldoen van echtgenoten aan hun onderhoudsplicht aanleiding is voor conflicten in vele Egyptische huishoudens; conflicten die niet zelden in de rechtbank uitgevochten worden.

**Conclusie**

Ondanks de negatieve perceptie van vrouwen in de rechtbank maakten vrouwen toch gebruik van het rechtsysteem en de mogelijkheid om te scheiden door middel
van *khul’*. Hiervoor zijn twee argumenten aan te dragen. Ten eerste was voor sommige vrouwen de rechtbank de enige plek waar ze met hun huwelijksproblemen terecht konden. Deze vrouwen konden veelal niet rekenen op steun van de familie en/of hadden weinig familieleden. Dit bleek onder meer uit het feit dat de onderzochte groep vrouwen ten tijde van de echtscheiding in veel gevallen hun intrek hadden genomen bij hun alleenstaande moeder of op zichzelf waren gaan wonen met hun jonge kinderen. Er leek een relatie te bestaan tussen *khul’* en deze “female-headed-households.” Andere vrouwen, vaak degenen die wel konden rekenen op de steun van hun familie, gebruikten de rechtbank als een strategie om hun echtgenoot onder druk te zetten. Ze maakten gebruik van het feit dat veel mannen in Egypte bang zijn om een *makhlu’* te worden, wat betekent dat zij door hun vrouw eenzijdig “verstoten” zouden worden. De strategieën van mannen tijdens echtscheidingsprocedures worden in deze studie ook behandeld.

Ten tweede maakte deze studie duidelijk dat hoewel rechters, zoals gezegd, vaak een negatieve perceptie hadden ten aanzien van vrouwen die via *khul’* wilden scheiden, er een verschil bleek tussen de persoonlijke opvattingen van rechters en de houding die zij aannamen in de rechtbank. In de rechtbank hielden zij zich aan de formele positie die zij bekleedden, wat gereflecteerd werd in het gebruik van standaard Arabisch en juridische taal. Enkel in een meer informele situatie lieten zij zich negatief uit over vrouwen. Observaties van een rechter toonde aan dat deze negatieve houding niet van invloed leek op de manier waarop hij met vrouwen en andere procesvoerende partijen in de rechtszaal omging. Deze rechter nam een formele houding aan en gebruikte veel Standaard Arabisch in zijn omgang met hen. De gehechtheid van rechters aan procedurele correctheid en aan het gebruik van standaard formuleringen en Standaard Arabisch leek gerelateerd te zijn aan de angst van rechters dat hun zaak in hoger beroep verworpen zou kunnen worden (Dupret 2006, 167-8) alsmede aan de invloed van het Arabische onderwijsysteem waarin inprenting van schoolboeken centraal staat. Echter, doordat de wetgever geen memorie van toelichting leek te hebben gepubliceerd, konden de rechters via deze open normen in de *khul’* procedure hun eigen interpretaties geven, aan hoe de bruidsprijs gedefinieerd diende te worden bijvoorbeeld.

Wat deze studie verder duidelijk maakte, was dat vrouwen die gescheiden waren door middel van *khul’* vaak weer hertrouwden. Hierdoor leken tegenstanders van *khul’*, die hadden beweerd dat vrouwen *khul’* zouden gebruiken om een rijke en knappe man te trouwen, toch nog gelijk te krijgen. Echter, de nieuwe echtgenoot bleek niet altijd over veel geld te beschikken en in sommige gevallen hadden de nieuwe echtgenoot en de vrouw zelfs afgesproken dat hij niet in het levensonderhoud van de vrouw zou voorzien. Alleenstaande vrouwen in Egypte hebben vaak een moeilijke positie waardoor er veel druk op hen
uitgeoefend wordt om te hertrouwen. Omdat zij al getrouwd zijn geweest, kunnen gescheiden vrouwen zelden een nieuw huwelijk aangaan met een man die nog voor de eerste maal moet trouwen. Hoewel dit verdere studie behoeft, lijkt het erop dat in sommige gevallen vrouwen een polygaam huwelijk boven een huwelijk met een weduwnaar of een gescheiden man prefereren. Een polygaam huwelijk biedt hen namelijk de mogelijkheid om zelfstandig te wonen en te blijven werken terwijl ze wel de gerespecteerde status van getrouwde vrouw hebben. Op deze manier proberen deze vrouwen een compromis te sluiten tussen het publieke ideaalbeeld van een huwelijk waarin de man voorziet en de vrouw gehoorzaamt en een realiteit die hen geleerd heeft dat ze beter op eigen benen kunnen staan.