

The Dynamics and Elan of *Ijtihad* to Provide New Readings of Islamic Laws and Customary Practices on Women's Human Rights

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Introduction

The dismal condition of women is a global issue (Shah 2010).¹ Even in the developments taking place in the Third World, gender disparities in technological, social, and economic development are evident (Akubue 2001).² The prejudice against women is a universal phenomenon found in almost every society. When religious sanctions on such prejudice are meted, it becomes much more difficult to do away with them. Lamentably, certain views and practices of Muslim communities militate against women, and even go against the spirit of Islamic Law (Mazhari 2009).³

Currently, in the changing Muslim society, women face challenges. The Western world's stereotyping of Islam and Muslims, and the negative portrayal of Muslim women by media actually have shades of reality in them (Hassan, 2012).⁴

This study shows violence, female trafficking, gender preference in the treatment of children, and polygyny as among the practices present in some Muslim communities (Stearmer, 2007).⁵ These practices that discriminate against women have been attributed to Islamic laws. Such attribution has given rise to both local and international demand for the re-interpretation of Islamic law so as to improve the condition of Muslim women (CEDAW and Muslim Family Laws, 2011).⁶

Some Muslims, however, have insisted that the deterioration of women's condition in Muslim countries is not due to the Islamic nature but to the patriarchal nature of Islam (Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt, 2005).⁷ That the Muslim world is currently facing serious challenges regarding this issue, suggesting that there should be a serious attempt at *Ijtihad*, a reasoned struggle and rethinking, to reform Islam, a liberating force, a kinetic social, cultural and intellectual dynamic for equality, justice, and humane values (Sardar 2002).⁸

Islam grants women a number of revolutionary rights and the spirit of the Quran itself points towards ultimate gender equality. Accordingly, "the dynamic nature of Islamic teachings, the evolving character of its laws, the spirit of Islam toward women's rights, the principles of justice and public welfare, and the essentiality of feminist *Ijtihad* leave no room for doubt that a common ground could be found between Islamic law and gender equality" (Mashhour, 2005).⁹

The possibility of reinterpreting Islamic jurisprudence through *Ijtihad* is possible since Islamic law is a comprehensive system covering broad categories of laws. The general injunctions of Islam for legislation afford the jurist broad powers of discretion that allow him to take ever-changing circumstances into consideration. *Shariah* has a great degree of flexibility and tremendous capacity for development. New injunctions previously unknown, could be worked out in response to changing requirements. The richness and fullness of Islamic law are two of the factors that give it "the ability to develop, grow, and respond to the growth of human civilization, preventing it from becoming rigid and stagnant" (Islamic Shariah Law 2012, 2-7).¹⁰

Ijtihad or personal reasoning is "the total expenditure of effort made by a jurist", or his application of his faculties in inferring rules of Islamic laws from their sources, or in implementing such rules and applying them to particular issues. It is the most important source of Islamic law next to primary sources. *Ijtihad* continues to be the main instrument of changing conditions of the Muslim community in its aspirations to attain justice, salvation and truth. It is not only permissible but constitutes one of the religious and collective duties of all Muslims to regulate all religious and worldly matters nowadays (Kamali 1991, 315-318).¹¹

Jurisprudential *Ijtihad* has a large and limitless scope which encompasses all matters and issues associated with human life. *Ijtihad* can be one based on what traditional legal giants have bequeathed and the other based on issues the likes of which had never before been seen by the previous Muslim scholars. Emphasis has been made on the importance of respecting “the greatness of great tradition” and “the dire need for the law to address contemporary issues not addressed by the tradition”, as long as certain conditions are observed (Qaradawi 2008, 5).¹²

Ijtihad seeks to enable to keep abreast of recent developments and to benefit by their merits while preserving religious and cultural particularities. Muslim communities have constant need for *Ijtihad* and the modernization of various types and fields such as jurisprudential, political, economic, scientific, technological, civilizational, and all other kinds of *Ijtihad* that are concerned with the issues raised by every particular field. Hence, *Ijtihad* has to pursue its course in these fields within the framework of a comprehensive vision that accommodates the objectives of the *Shari'ah* and the interests of individuals, both in the present and the future (The Notion of Modernization and Modernity).¹³ The proponents of a New *Ijtihad* view it as both a response to and a product of the modernization of Muslim societies. Across the Muslim world, as well as in Muslim communities in the West, recent decades have witnessed renewed calls for *Ijtihad* based on rationalist interpretations of Islam, exclusively within an Islamic frame of reference (Voices of New *Ijtihad*).¹⁴ The postmodernist discourse of “contextuality” has proven especially influential.

Reforms gaining popularity in the Muslim world are considered the result of this phenomenon. In Morocco, *Ijtihad* has been used as a tool for Islamic renewal. The contemporary trend is that Muslim thinkers of the 20th century, committed to programs of legal reform or political action, developed a number of theoretical props and adopted law-drafting techniques that reflect the realities of modern nation-states, borrowed legal

and social principles from a variety of sources, and argued strenuously that the door of independent *Ijtihad* is open, and they can make independent legal judgments based on direct confrontation with revelation (Calder, 1998).¹⁵

With the opening of *Ijtihad*, things are beginning to change today. Muslims in Southeast Asia have experienced the same phenomenon. These Muslim scholars are developing a contextually-relevant *Fiqh* for women called *Fiqh al-Nisa*. Numerous *fatwa* related to women’s issues that depart, in significant ways from traditional *Fiqh* prescriptions are being issued. Contextual *Ijtihad* based on principal sources of Islamic tradition have come up with such novel views.

A new group of Muslim thinkers have sought to apply contemporary intellectual methods to the legal reform in Muslim countries, advancing women’s development and ushering in new laws. The condition of Moroccan Muslim women now are far different from 50 years ago (Arshad 2006).¹⁶ The same things are taking place in India where there is a changing interpretation of Islamic law and the revision of *fatwa* using different Muslim schools of thought and different contexts (McLuhan 2008).¹⁷ Iran, despite being very conservative and traditional, made some reforms in its family laws ever since the Revolution of 1979 when the Muslim women movement in the country, which continues on working for the adoption of International Human Rights Norm (IHRN) for women legal reforms pushed for the same (Sadr 2003).¹⁸ In the 90’s and 20’s, Iranian reforms were on divorce, support of children, age of marriage for girls, limitation of guardian’s right to contract a child’s marriage, custody of children, and increasing the age of custody of mothers to children (Ebadi Hails Women’s Custody Rights 2003).¹⁹ In 2004, legislation began to grant women equal inheritance rights (Iranian Lawmakers Pass Women’s Inheritance Bill 2004).²⁰ Each of these measures brought Iran’s legal regime closer to the principles of gender equality and non-discrimination, thus, serving as the foundation of the International Human Rights Law.

Advocates of human development in both Western and non-Western countries, including many Muslim countries, state that human development under the Universal Declaration of Human Rights (UDHR) cannot exist within the framework of religion (Hassan 2011).²¹ Still, there are those who believe that given the nature of “universality” of UDHR, religious laws can be compatible with the concept of the equal role and contribution of men and women to development (CEDAW and Muslim Family Laws 2011).²² Some Muslim women organizations like Femin Ijtihad work for reclaiming the women’s role based on this belief (Femin Ijtihad 2010).²³ Others have united themselves with the global movement for the reform of Muslim Family Laws in Muslim majority and minority countries (Musawah 2011).²⁴ Setting aside the compatibility issue with regard to international and Islamic laws on women, Muslim thinkers have been suggesting for well over a century that there is need to make a serious attempt at Ijtihad to reform Islam (Sardar 2002).²⁵

At present, reforms are possible in some Muslim countries. A good number of Muslim Family Laws have been re-interpreted and continue to be studied for reformation (Musawah 2011).²⁶ Some of the changes in these laws conform to the standards of international laws. The success of these efforts has been quite tremendous, and gains have benefited Muslim women (Shah 2010).²⁷ Given this positive gains made by the women’s call for reforms, an assessment has to be made to improve and push some more for the benefit not only of women, but of society as a whole.

For Muslim countries in Southeast Asia, such as Indonesia, Malaysia, and Southern Thailand, the issue and the process are even more challenging, given the diverse ethnographic and cultural milieus characterizing their societies. Given such fact, it is highly relevant that this study delved into local customary practices, Islamic laws, and the methods of *Ijtihad* in the three countries, focusing on women rights, in a multicultural setting, emphasizing the dynamics of each diverse culture at work with modern changes and international demands, without necessarily deviating from its basic principle. It is within this context that this paper is presented.

Objectives of the Research

In Indonesia, Malaysia and Thailand, a research on the dynamics of *Ijtihad* on matters related to customary practices and Islamic laws on women’s human rights was conducted. The research investigated particular practices and women issues where *Ijtihad* had been applied to promote women rights. These issues are as follows:

1. The prevailing customary practices of women on marriage: early and forced marriage, women’s consent, mixed marriage, non-registration of marriage; divorce: the kinds of divorce that are prevalent; the rights of divorced women; polygamy: wife’s consent; women’s right to deny; equal treatment; inheritance and reproductive health rights.
2. The research identified the kinds, proponents and process of *Ijtihad*.
3. It single out new readings of Islamic prescriptions and customary laws in new *fatwas* or religious legal rulings and looked into the rights of women in these documents.
4. Identified the best practices existing as a result of the implementation of *fatwas*.

Significance of the Study

This study has the following significance:

- The positive use of faith-based mechanisms or tools to reinterpret Islamic laws in favor of women which will create good environment for women and society at large;
- The study provides new readings and bases for women rights advocacy;
- It provides as the basis for grassroots women rights education and the empowerment of Muslim women;
- It lends fairness and objectivity to Islam as a religion of peace, justice, and equality that is as well relevance to the modern situation;

- It benefits Muslims, non-Muslims, and society at large: women, men, policy makers, religious groups, stakeholders;
- It obliges Muslim scholars to fulfil their responsibility as scholars;
- It revives the use of the use of *Ijtihad* in the reinterpretation of Islamic laws to benefit women and society;
- The output of the study, which is this scholarly manuscript, provides new readings on the customary practices and women’s human rights. It also expounds on the textual messages of the Quran as practical and relevant rules pertaining to women. It presents the process of transforming customary practices into new Islamic rulings in favor of women;
- It evaluates gaps in the implementation of religious tools intended for human development.
- The new readings on customary practices and women’s rights in Islam can be compared with other studies and then further developed; and
- Identification of best practices and its replicated in other areas.

Methodology and Tools

The following were conducted for this research: surveys in of common practices among women in villages or communities; a documentation of the analyses of the compilation of *fatwa* and other related documents; focus group discussions (FGD), interview with proponents of *fatwa*, site visits and community immersion.

Findings:

1. Prevailing customary practices of Muslim women in Indonesia, Malaysia, and Thailand

INDONESIA

Marriage	Divorce	Polygamy	Inheritance	Reprod Health
1. Early and forced marriages are not popular anymore. 2. Mixed marriages still exist but are minimal. 3. Non-registration of some marriages is still being practiced. 4. Woman’s consent and decision on marriage are sought; the woman’s right to choose is very popular due to the “boyfriend-girlfriend phenomenon”. Before getting married most couples wait until they are ready.	1. Divorce is mostly initiated by men, while the women has the right to divorce only through the court. 2. support or alimony of children are given through legal process (thru court) or through the agreement of the couple in a traditional process of dialogue	1. Wife’s consent is usually not sought. 2. Unequal treatment of wives had always been the complaint of women.	1. Inheritance is mostly done through the agreement of parties. 2. Sometimes distribution of inheritance is through combination of Islamic law or through agreement of parties	1. Family planning or birth control had long been practiced and continued to the present. But. The use of contraceptives, especially condoms is not popular. 2. Female circumcision is still popularly practiced.

MALAYSIA

Marriage	Divorce	Polygamy	Inheritance	Reprod Health
<p>1. There is an insignificant number of early marriages by parental arrangement.</p> <p>2. Marriage by force of the authority of the bride's parents is also very rare'</p> <p>3. Contract or temporary marriage is almost nil</p> <p>4. The phenomenon of "runaway groom" is a known practice among Malay men (Malay man goes to southern border of Thailand to find a bride and for subsequent marriage). This is not known to the wife left in Malaysia. wait until they are ready.</p>	<p>The number of divorce in Malaysia is low due to the strict process involved under the Islamic law of the country. children are given through legal process (thru court) or through the agreement of the couple in a traditional process of dialogue</p>	<p>1. The wife's consent is strictly required in subsequent marriage, aside from other requirements under the Islamic Law.</p> <p>2. Most of the time there is equal treatment of wives married in compliance with the requirement of polygamy under the Islamic law,</p> <p>3. Wife has the right not to accept polygamous set up of the family and can seek for divorce as a result of such denial.</p>	<p>1. It is done mostly as agreed upon, or sometimes according to Islamic Law of inheritance.</p>	<p>1. Family planning, birth control or spacing is being practiced;</p> <p>2. Contraceptives are used but not condoms.</p> <p>3. The practice of female circumcision is 100% (Malaysia has fatwa or religious ruling allowing it). All circumcision in the cities is done by doctors and health practitioners. In the villages, more than half are done by medical practitioners in the clinic.</p> <p>4. Abortion is done in the cities -but the number of cases is still insignificant.</p>

THAILAND

Marriage	Divorce	Polygamy	Inheritance	Reprod Health
<p>1. Most Muslim families are married according to Islamic rule set out by the provincial Islamic Committee or the village mosque. Prior to marriage, the women are train on how to conduct family life according to Islam by the Islamic Committee</p> <p>2. Early and forced marriages are not so popular, but mixed marriages with Buddhist soldiers have reportedly become a serious problem.</p>	<p>Not so popular</p>	<p>Polygamy is quite an issue, but many Thai Muslims are the second wives of Malay men who come to South Thailand to look for second wives since Malaysian law is very strict about subsequent marriages.</p>	<p>Shares in the inheritance are mostly decided through agreement or following the Thai national law on inheritance</p>	<p>Family planning and birth control are popular among the Muslim Thai. Hence, the number of children in the family is lower. This was rendered possible by the program of the national government.</p>

2. Kinds of Ijtihad

A. In terms of the number of persons performing *Ijtihad*.

In Indonesia, collective *Ijtihad* is performed. The Majelis Ulama Indonesia (MUI) has almost fifty (50) members in the *fatwa* Commission deliberating on certain issues needing *fatwa*. Muhammadiyah (MU) has the Department of *Tajdid* and *Tarjih* who likewise has many members deliberating on

issues needing *fatwa*. The Nahdatul Ulama (NU) performs *Ijtihad* collectively, though their deliberation always centers on the *Ijtihad* Intiqali or based on what had been laid down by *Quran*, *Hadith*, *Mazhab* and previous scholars.

In Malaysia, JAKIM and Selangor's Fatwa Committee are religious legal bodies who with members that collectively deliberate on issues involving Islamic laws by providing reinterpretation.

Collective *Ijtihad* is non-applicable in Muslim dominated Southern border provinces of Thailand. Muslims in these areas follow the *fatwas* of Muslim countries including its neighbors like Indonesia and Malaysia.

B. Traditional and Fundamental (*Ijtihad Intiqali*) or modern-context based (*Inshai*)

Dr. Yusuf Al-Qaradawi mentions that *ijtihad* in the contemporary context consisted of two kinds:

- *Ijtihad Intiqali* - *Ijtihad* based on what our traditional legal giants have bequeathed to us; and
- *Ijtihad Inshai* - *Ijtihad* based on issues the likes of which were never seen by the previous scholars and has to be explored further for interpretation.

Majlis Ulama Indonesia (MUI) and Muhammadiyah (MU) both emphasized the obligation to solve the problem by *Ijtihad*. Hence follows *inshai*. There are problems in society whose answers cannot be found in the primary sources of Islamic laws. The opinion of an Islamic cleric based on the Traditions of the Prophet is applied instead.

Nahdatul Ulama (NU) is traditional and follows the *Intiqali* type of *Ijtihad*.

Malaysia's JAKIM and the Selangor State Fatwa Committee base their fatwa on modern *Ijtihad* or *inshai*.

The Pattani Islamic Council applies modern *Ijtihad* or *Inshai* by adopting the fatwas of other Muslims jurists and other Muslim countries.

Everyone is adopting and working on contextualized *Ijtihad* in accordance with the needs of the time, place, and culture. No Muslim scholar is master of all, unlike in the past. Nowadays, Muslims have particular specializations. Hence, they need to collectively gather for consultations. Even the agencies or organizations involved which have many things to say about the issue are invited to

the consultations. Their participation and the consultations with the experts for the *Ijtihad* process and procedure are most important.

C. Proponents of *Ijtihad*

Indonesia

Majlis Ulama Indonesia (MUI), Muhammadiyah (MU), and Nahdatul Ulama (NU)

The Indonesian Ulama Council is Indonesia's top Muslim clerical body comprising eight (8) Indonesian Muslim groups. It was founded in 1975 so as to produce *fatwā* (religious rulings) and to advise the Muslim community on contemporary issues. Its broad goals are: to strengthen religion while at the same time ensuring national resilience; to ensure the participation of the *ulama* in national development; and to maintain harmony among the different religions in Indonesia. The MUI has given opinions and issues *fatwas* on a large variety of topics to the Muslim community, dictating the general direction of Islamic life in Indonesia.

Muhammadiyah or Persyarikatan Muhammadiyah (MU) is the second largest Islamic reformist socio-religious movement in Indonesia with about 30 million members. It was founded on November 18, 1912 in Jogjakarta. It openly advocates *Ijtihad* (interpretation of Qur'an and *Sunnah*) as opposed to *Taqlid* (the acceptance of the traditional interpretations propounded by the *Ulama*). It devotes itself more to social and educational activities. Its main focus is to heighten people's sense of moral responsibility, purifying their faith to the true Islam. It emphasizes the authority of the *Quran* and the *Hadith* as supreme Islamic law that serves as the legitimate bases of the interpretation of religious belief and practices. It strongly opposes syncretism which Islam acquired from the pre-Islamic period. Its main activities are in the realms of religion and education, running both the *pesantren* (traditional Islamic boarding school) and modern Islamic schools. Some of these schools function as charitable organizations and are open to non-Muslims. Today, Muhammadiyah owns several universities, schools, medical clinics

and hospitals in Indonesia. The MU national headquarters in Yogyakarta is supported by seven autonomous organizations that include the women's wing called Aisyiyah. It has thirteen (13) *Majlis*, one of which is *Tarjih dan Taqlid*.

Formed in 1926, *Nahdatul Ulama* is a traditionalist Sunni Islam group and socio-religious organization that aims to spread Islamic teaching in Indonesia. It has about 30 million members. It undertakes educational activities through its network of 6,830 *pesantren*. It also owns more than 44 universities and is involved in economic and agricultural studies, as well as in social activities including family planning. NU's organizational structure seeps down to the villages. One of its important components is the women's wing, NU-Muslimah.

Malaysia

Fatwa bodies for Malaysia are JAKIM or the National Religious Council is for the Federal Territories of Kuala Lumpur, Putrajaya and Labuan; and the Selangor State Fatwa Committee for the federal State of Selangor.

Thailand

Of the 5 million Muslim minorities in Thailand, 3.5 to 4 million live in the southern part. The rest reside in other parts of Thailand. Islam has been institutionalized in Thailand since 7th century.

The official who adjudicates *Shariah* matters in Thailand is *Dato' Yuthibham* or *Dato' Kadi*, who sits in the Thai Provincial Court in four southern provinces where he assists the civil court judge. Also, the National Muslim Council is intended to play a key role in the administration of Muslim legal matters such as the solemnization of marriage, the paying of zakat, the care of mosques, and so on.

Prior to 1947, a form of Shariah Court existed in Thailand, but was attached to the provincial courts. In 1947, the demand for a separate Shariah court was made but was rejected. In 1952, no separate formal Shariah Court institution was established in southern part of Thailand, although

Islamic law is applied in a limited fashion through the *Dato Yuthibham*.

In 1997, the *Cbularajmontri* or *Sbeikh al Islam*, was appointed only as advisor to the King on Muslim affairs, without any legal authority. He presides over the National Council for Islamic Affairs, which is intended to play a key role in the administration of Muslim legal matters and is accountable to *Cbularajmontri*, who in turn answers to the Ministries of Education and the Interior and, ultimately to the King. The Provincial Muslim Council is part of the National Muslim Council, but operates at the provincial level in Southern Thailand.

The formal application of Islamic law in Thailand began in 1901 through a royal decree which provided that the Criminal and Civil Codes be applied in all cases where both the plaintiff and the defendant or the defendant alone were Muslim, except in civil cases concerning husbands, wives, and inheritance. In the latter group of cases, Islamic law was to be applied, instead of the Codes. This Decree remains in force today. In 1902, the enactment of the Rule of Administration in the Seven Principalities decreed setting up a special court for the Muslims as part of the Provincial Court System. There was a form of Shariah Court in Satun under Rama V led by a *Phraya Shaikh al Islam*, who was closer to the King. He was a religious teacher and had to decide cases according to Islamic law. In 1917, a royal decree by the King mandated the application of Islamic law in Satun and, hence, the appointment of a *Dato' Yuthibham* or *Tok Kadi*.

The 1932 Thailand General Phibun Songkhram military revolution sought to "Siamize" all non-Buddhist minorities, including Muslims. Under General Phibun's leadership, the position of *Datuk Yuthibham* was abolished in 1943. But, the anti-Muslim and Muslim assimilation policies were short-lived. The Civil Code amended shortly after Royal Act 1946 (Thailand) reintroduced Islamic law with respect to family law and inheritance cases, where Muslims are both the plaintiff and the defendants. According to the Islamic Family Law and Inheritance shall be applied in the Court

of First Instance in Pattani, Narathiwat, Yala, and Satun where Muslims were both the plaintiff and the defendant, or a Muslim filed a request in non-contentious cases. In 1997, the government issued the Royal Act Concerning the Administration of Islamic Organizations BE2540 (AD 1997). This affected Islamic organizations including the Chularajmontri, the Central and Provincial Islamic Committee, and the Mosques Committee. These committees deal only with Muslims in Southern Thailand and have no authority over Muslims living in the northern or central parts of Thailand.

Despite the fact that there is no separate Shariah Court, Thailand's judicial system has mechanisms for the application of Islamic law. The Act for Exercising Islamic Law in Pattani, Narthiwat, Yala, and Satun, BE 2489 stipulates that Islamic law may be applied by the provincial courts of first instance and specialized provincial courts in the South. Under Islamic law, the jurisdiction of the provincial courts is restricted to civil law cases that deal with matters of personal law and succession. BE 2489 provides that Islamic law on family and succession applies to all Muslims residing in those provinces. Cases involving penal or criminal matters fall under the general Thai legal system. The Act is also not applicable to persons living outside the four provinces in the south. They are instead subject to the Civil Law of Thailand, even if they are Muslim.

C. Customary Practices and Women Issues where *Ijtihad* Had Been Applied to Promote Women Rights:

The result of *Ijtihad* process is *fatwa*. These *fatwas* either require, encourage, regulate, prohibit or restrict customary practices, viz:

1. Marriage: Restrictions on mixed marriage; prohibition on temporary or contract marriage; Requirements for registration of marriage (non-registration means no marriage); and strict regulations with regards to polygamous marriages.
2. Divorce: Regulated by law. This could be initiated by both men and women. The women's rights to support and the granting of alimony to children are encouraged.

3. Polygamy: Strictly regulated by law, though it is allowed but is no longer popular.

4. Shares in inheritance: Shares are most often worked out through the agreement of both parties or by applying a combination of Islamic traditional and national laws; Illegitimate children may inherit from their father.

5. Reproductive health rights of Muslim women: Reproductive health rights (*fatwa* and State Law in Indonesia)

Indonesia: Reproductive health *fatwas* by MUI and national laws are available. The MUI *fatwa* on population, RH and family planning deals with the following topics: 1. Anti-menstruation pill, 2. abortion, 3. gender bias and human rights, 5. early marriage, 6. marital procedure, 7. population health and development, and 8. prevention of HIV-AIDS.

Malaysia: The Islamic Family Law (Federal territories) Act 1984 covers Kuala Lumpur, Putrajaya and Labuan. It has 10 and 135 sections covering marriage, divorce, maintenance of wife and children, guardianship, and matters connected with family life.

Thailand: Less practices on early, parental and forced marriages. Contract or temporary marriage is seldom practice. There is strict application of laws on polygamy and divorce. Inheritance is by agreement and less practice based on *faraid*. Reproductive health: there is popular practice of birth control or spacing. Contraceptives are used but not condoms, and female circumcision is popularly done by village midwives or medical doctors.

E. Process or Procedure of *Ijtihad*.

Indonesia: MUI formed the Fatwa Commission with about 56 members from different backgrounds. Their thoughts on various issues are allowed to be heard. The commission always consults with experts on the issues at hand to release *fatwa*. The members are asked for their opinions and comments.

Specific MUI process for *fatwa* formulation:

1. A complaint or demand from society received.
2. A plan is made to discuss the issues based on the demand letter from the community.
3. Collective deliberation within MUI Fatwa Commission takes place.
4. A draft is prepared.
5. A plenary meeting takes place that includes consultations with non-members who are experts on the issues at hand. For example, if the issue is reproductive health, the Ministry of Health, the Ministry of Population and others are consulted.

The Muhammadiyah (MU) and Nahdatul Ulama (NU) Processes: are the same as those of MUI. Collective *Ijtihad* where consultation is a very important component is highlighted.

Malaysia: JAKIM and Selangor State Fatwa Committee: According to the Fatwa Committee: It shall, on the direction of his Royal Highness the Sultan, and may, on its own initiative or on request of any person by letter addressed to the *Mufti*, prepare *fatwa* on any unsettled or controversial question or some matter relating to *Hukum Syarak*.

Process or Procedure:

1. Before making a *fatwa*, the *Mufti* may cause any study or research to be carried out as directed by him, after which a working paper will be prepared;
2. Whenever the Committee propose to make a *fatwa*, the *Mufti* shall call a meeting of the Fatwa Committee for the purpose of discussing the proposed *fatwa*;
3. After the *fatwa* is prepared by the Fatwa Committee, the *Mufti* shall, on behalf and in the name of the Fatwa Committee, submit the *fatwa* prepared to the *Majlis*;
4. The *Majlis* may, after deliberating upon the *fatwa*, make a recommendation to His Royal Highness the Sultan, that he give his assent to the publication of the *fatwa* in the gazette;
5. The recommendation made under subsection four (4) shall be accompanied by an explanatory memorandum and the comments of the *Majlis* if it considers such explanation or comments are required;

6. When a *fatwa* has been assented to by his Royal Highness the Sultan, the *Majlis* shall inform the state government of the *fatwa* and thereafter shall cause the *fatwa* to be publicized in the Gazette;

7. A *fatwa* published in the gazette shall be accompanied by a statement that the *fatwa* is made under this section;

8. A *fatwa* shall be published in the national language in the *Rumi* script, but the text of the *fatwa* in the *Jawi* script may also be published.

The *fatwa* published in the gazette is binding. An amendment, modification or revocation of *fatwa* and its provisions that relates to matters of national interest is allowed.

F. Output of *Ijtihad* work

Indonesia: *Fatwa* and State Laws. Indonesian Law of 1945

1. Since 1975, the *fatwa* compilation (*fatwa Sejak*) prepared by MUI has contained almost 40 *fatwas* on women, on the following subtopics:

Nikah wisata (marriage)
Prosedur pernikahan (marriage/wedding procedure)
Perkawinan Campuran (intermarriages)
Talak tiga (divorce on three pronouncements)
Iddah wafat (waiting period for widows)
 Temporary marriage
 Polygamy
 Adoption
 Female circumcision
 Anti-menstruation pill
 HIV AIDS
 Abortion
 Pornography
 Gender bias and human rights
 Female prayer leaders
 Medical and new technology issues: vasectomy, tubectomy, and women's artificial insemination

2. Reproductive health *fatwa* by MUI and national laws consist of the following: *fatwa* on population, RH and family planning. It has provisions on the following: anti-menstruation pill, abortion, gender bias and human rights, early marriage, marital pro-

cedure, population, health, and development, and prevention of HIV-AIDS.

3. *Fatwa* by Muhammadiyah: Volumes 1 and 3 focus on marriage problems, vasectomy and tubectomy. Volume 1 discusses inheritance; Volume 4 focuses largely on problems of women.

4. *Fatwas* by Nahdatul Ulama follow the old rulings.

Malaysia: Act 303 - Islamic Family Law (Federal territories) and Act 1984 covering Kuala Lumpur, Putrajaya and Labuan. With 10 and 135 sections covering marriage, divorce, the maintenance of wife and children, guardianship, and matters connected with family life.

- Amendments to ACT 303:

A. Act A828 – IFL amendment Act 1992 – was enforced on July 17, 1992.

D. Act A902 – IFL amendment Act 1994 was enforced on September 9, 1994.

E. PU (A) 247/02 – Putrajaya (extension and modification of IFL Act of 1984) Order 202 was enforced on January 2, 2001.

F. Act A1261 – IFL amendment of Act 2006 (for federal territories) of Act 2006 was enforced on January 1, 2010.

1. **ADMINISTRATION** of the Religion of Islam (State of Selangor) 2003

A. Enakmen Pentadbaran Agama Islam (Negeri Selangor) 2003

B. Jabatan Agama Islam Selangor Darul Ehsan

11 parts and 124 sections cover the following: the religious department, appointment of *Mufti* authority in religious matters, the *fatwa* committee, *fatwa* related to national interest, *Shariah* courts, prosecution and representation, *Baitul Mal* and financial procedure of the *Majlis*, *Zakat*, *Fitrah*, and *Wakaf* (endowments), Nazr and Trusts, and the administration of the religion of Islam particularly handling mosque, charitable collections, conversion, religious education, and general provisions.

Thailand: Islamic law in Thailand relates to the enforcement of Islamic law only. The country's Civil and Commercial Codes take effect throughout the country, and therefore also apply to Muslims in the south, in Pattani, Narathiwat, Yala, and Satun.

Though the Islamic Family Law has been applied in Pattani, Southern Thailand for nearly seven decades, it creates no legal obligations. The Justice *Dato* in the Islamic court can simply make decisions based on religious principles, and then pass them on to the Thai judges for the final judgement.

G. Fatwa on Islamic laws considered at par with international law and standards

Indonesia

- *Fatwa* on Prohibition of early marriage.
- *Fatwa* on the gradual prohibition of polygamy through strict regulations.
- Legislation and implementation of the reproductive health program (like family planning).
- Regulation of female circumcision: *fatwa* on the way it is done and on the person responsible (circumciser). A transfer of the task from traditional midwives to medical health practitioners has been effected.

Malaysia

- Regulation of parental and early marriage;
- Prohibition of contract or temporary marriage and marriage by force
- Divorce: fewer due to the strict process of Islamic law in obtaining divorce.
- Inheritance: mostly by agreement of parties involved. Sometimes mix agreement and Islamic inheritance law (*faraid*).
- Reproductive health: Family planning through birth control and spacing. Contraceptives are use but not condoms. Female circumcision is 100%. All circumcision in the cities is done by doctors. In villages, more than half are done by medical practitioners in the clinic. Abortion is happening especially in the cities, but remains insignificant in number.

Thailand

- Customary practice of inheritance by agreement of parties is popular.

H. Identification of best practices for use in human rights education among women

Indonesia: Independence of women's group and wings like Muhammadiyah-Aisyiyah and Nahdatul Ulama-Muslimah is being observed. Muhammadiyah's Aisyiyah is autonomous — It focus on education, health, and other autonomous task, It also cooperated with the Indonesian government on some programs' implementation. NU-Muslimah participated in Indonesian politics aside from its traditional roles in the organization.

Malaysia: JAKIM, state Selangor, law professors, lawyers, all agreed on the need for reinterpretation of Islamic laws. Malaysian's Islamic laws is abundant and shows dynamism, but are in constant need of review to check the customary practices involving the rights of women.

Thailand: Agreed on reinterpretation but have has problems because of the non-inclusion of *Sbariah* or Islamic Laws in the state laws of Thailand. Muslim religious scholars agreed to reinterpret these changes, but many still hold on to customary laws.

Conclusion

There is a continuing prevalence of traditional practices inspired by Islamic laws in the three countries visited. However, efforts have been made to reinterpret some of them. The religious groups which are proponents of *Ijtihad* have become aware of the changes in Muslim society. They have produced *fatwas* or religious rulings and are in transition toward considering all those issues needing interventions. The process of *Ijtihad* is collective, and consultation is a very important feature of this process. Some outputs of *Ijtihad* have been considered and *fatwa* on many issues have been released to confirm, prohibit or restrict, regulate, and encourage customary practices and Islamic laws.

Problems and processes connected to *Ijtihad* include the clash between and among old and new Muslim scholars, traditional or modern interpretations of schools of thought. Also there is no scholar knowledgeable in everything. Hence, there should be more collective *Ijtihad* where the traditional, modern and other Muslim experts are included in the dynamic processes of reinterpreting Islamic laws.

In need of particular attention is the situation in Thailand. The Act of Exercising Islamic Law in Territorial Jurisdiction of Pattani, Yala, Satun and Narathiwat BE 2489 (Thailand) indicates that the *Dato' Yuthitham* of Southern Thailand is not a full-fledged judge because he is a "judge without a court". This is because for a judgment given by the *Dato' Yuthitham* to have a legal effect, the legislation requires that a civil court judge sit with *Dato' Yuthitham* during the course of the trial. As a mere assistant to the civil court judge, he cannot make a decision independently. The application of Islamic law on Muslims in Thailand is subject to the approval of a civil court judge. In practice, however, the decision of *Dato' Yuthitham* can sometimes be decisive. According to Mr. Apirat Mad Sae, a *Dato' Yuthitham* in Pattani, the civil court judge generally respects his decisions and follows them. There also seem to be some uncertainty and lack of clarity as to whether Islamic law will always be applied, even if the case is one that is fit to be heard by a *Dato' Yuthitham*. Islamic law in Thailand relates to the enforcement of Islamic law only. The country's Civil and Commercial Codes take effect throughout the country, including in the southern border provinces of Pattani, Narathiwat, Yala, and Satun. This means that the judgment of a civil court judge will, in principle, have priority over the judgment of a *Dato' Yuthitham*.

Some demands of CEDAW have been answered: regulation and prohibition of early, forced and contract marriages, polygamy and the right to divorce, equality of inheritance between male and female based on the agreement, and the popular practice of family planning and reproductive health. The dynamism of *Ijtihad* has obliged religious functionaries to continuously work on

the re-interpretation of customary practices and Islamic Laws, to suit Muslim needs and at the same time comply with CEDAW demands.

Recommendations

General: There should be proper consolidation of the Islamic, customary and *adat* laws, with the international treaty instruments and demands like CEDAW, giving immediate emphasis to the implementation of provisions of laws beneficial to women.

Recommendations for Indonesia

- *Kebiasaan* and *hukum adat* classified as a source of law should be studied and integrated into the *Shariah* and *Fiqh*.
- The proper functioning of the Court of Religion as carried out by the District Court of Religion located in municipalities and its appellate court should be ensured. The High Court of Religion should be seated in the capital of provinces that adjudicate matters between Muslims on: marriage; inheritance, wills, and grants, done in accordance with Islamic laws; and *wakaf* and *shadaqah*; and the *Shariah* economy.
- Further, supervision of the Province of Nanggroe Aceh's distinctive *Mabkamah Syariah* within the national legal system of Indonesia should be undertaken.
- Collaborative work of Indonesian religious institutions and groups like Muhammadiyah's Aisyiyah, Nahdatul Ulama's Muslimah and the Majelis Ulama Indonesia on issues involving women's rights with the Presidential cabinets and independent bodies involved in women rights, viz: State Ministers on women empowerment; Non-Department Government Institutions like the National Coordination of Family Planning Agency; and independent bodies of the National Committee of Human Rights, the National Commission on Violence against Women, and the Indonesian Child Protection Commission should be done.
- The demands of the international treaty conventions and instruments should be consolidated with the different rules of courts and laws in Indonesia.

Recommendations for Malaysia

- JAKIM and State Fatwa Committees should coordinate and collaborate with international bodies like CEDAW on issues pertaining to women's rights.
- The religious courts role, their function and actual work in addressing women rights should be enhanced.
- Human rights and Muslim women lawyers and advocates should work together with religious institutions to strengthen proper legislation, the implementation of *Shariah* ruling on women, and the consolidation of international treaty instruments like the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

Recommendations for Thailand

- The creation of an independent religious court and the installation of the qualified Muslim judges especially in the southern border provinces of Pattani, Narathiwat, Yala, Satun, and Songkla.
- The creation of a National *fatwa* Committee involving all Muslims in Thailand, and its coordination with the Thailand's government, and legal and social institutions.
- Full recognition of the *Shariah*, customary, and *adat* laws of the Muslims in Thailand.
- Full collaborative work with local, national, and international institutions and bodies on popularizing and implementing laws on women's rights.

NOTES

¹ Shah, A. 2010. Women rights. In *Global issues: social, political, economic and issues that affect us All*. www.globalissues.org/article/166/womens-rights.

² Akubue, A. I. (2001) *Gender disparity in Third World technological, social, and economic development*, edited by Marvin I. Sarapin, *ejournal JOTS* Volume 27, Number 2 Summer/Fall scholar.lib.vt.edu/ejournals/JOTS/Summer-Fall-2001/akubue.html.

³ Mazhari, 2009

⁴ Hassan, R. 2012. *Are human rights compatible with Islam? The Issue of the Rights of Women in Muslim Communities in Religious Consultation on Population Reproductive Health & Ethics*. University of Louisville, Louisville, Kentucky www.religiousconsultation.org/hassan2.htm

⁵ Stearmer, M. (2007) *"The great divide: revealing differences in the Islamic World regarding the status of women and its impact on International peace"*. Brigham Young University. Paper prepared for presentation at the annual meeting of the American Political

⁶ *CEDAW and Muslim Family Laws: In search of common ground* (2011) Musawah & initiative of Sisters in Islam (SIS Forum Malaysia) www.musawah.org

⁷ Polygamy in Shariah Law

⁸ Sardar, Ziauddin. 2002. Rethinking Islam

⁹ Mashour

¹⁰ Islamic Shariah Law 2012: 2-7

¹¹ Kamali, 1991

¹² Qaradawi, 2008 p5

¹³ The Notion of modernization and modernity

¹⁴ Calder, 1998

¹⁵ Voices of New Ijtihad

¹⁶ Arshad 2006

¹⁷ McLuhan, 2008

¹⁸ Sadr, 2003

¹⁹ Ebadi Hails Women's Custody Rights, 2003

²⁰ Iranian Lawmakers Pass Women's Inheritance Bill, 2004

²¹ Hassan, 2011

²² CEDAW and Muslim Family Laws, 2011

²³ Femin Ijtihad, 2010

²⁴ Musawah, 2011

²⁵ Sardar, 2002

²⁶ Musawah, 2011

²⁷ Shah, 2010

REFERENCES

Abd Allah al-Muzayni, S K. 2009. *Historical development of Islamic legal methodology*. en.islamtoday.net/artshow-385-3411.htm.

Administration of the Religion of Islam. State of Selangor Enactment 2003.

Akubue, A. I. 2001. Gender disparity in Third World technological, social, and economic development, edited by Marvin I. Sarapin, *ejournal JOTS* Volume 27, Number 2 Summer/Fall. scholar.lib.vt.edu/ejournals/JOTS/Summer-Fall-2001/akubue.html.

Al-Qaradawi, Yusuf. 2008. Shari'ah and life. *Al-Jazeera*. www.suhaibwebb.com

Altwayjiri, Abdulaziz Othman. 2007. Ijtihad and modernity in Islam. *Journal Islam Today*. www.isesco.org.ma/english/publications/islamtoday/24/p1.php.

- Arshad, Amna. 2006. Ijtihad as a tool for Islamic legal reform: Advancing women's rights in Morocco. In *The Kansas Journal of Law & Public Policy*. litigation essentials. lexisnexis.com.
- Bakhsi, Aasem. 2008. *Dynamics of change in Islamic law (II): Iftaa, Ijtihad & Social Customs*.
- Bassam, Tibi. 2002. *Islam Between Culture and Politics* (reviewed by Muqtader Khan. New York, NY: Palgrave, 2002), pp. 271. www.ijtihad.org/tibi.htm.
- Bottorff, J.L. 2004. *Writing Qualitative Research Proposals*.
- Calder, N. 1998. *Islamic philosophy of law*. Routledge. www.muslimphilosophy.com.
- CEDAW and Muslim family laws: In search of common ground*. 2011. Musawah and initiative of Sisters in Islam (SIS Forum Malaysia) www.musawah.org
- Choudhury, Masudul Alam. n.d. *The Dynamics of the Shari'ah and the world system*.
- Diwan, Naazneen. 2010. Carving out a public space for multiple interpretations of Islamic Law: A look at the conference on women's rights: Beyond. *Journal of Middle East Women's Studies*, 6 (2):115-122 muse.jhu.edu/journals/jmw/summary/v006/6.2.diwan.html.
- Dynamics of 'Ijtihad' are 'based on Quran, Sunnah'*. 2009. Islamabad. www.thenews.com.pk/TodaysPrintDetail.aspx?ID=160602&Cat=6&dt=2/2/2009.
- "Ebadi bails women's custody right". 2003. Islamic Republic of Iran Broadcasting www.thewe.cc/contents/more/archive/december_2003/iran_child_custody_rights.htm.
- Fatwa Majelis Ulama Indonesia 1975 – 2011* (Compilation by MUI of religious legal rulings from 1975 to 2011).
- Fauzi, Muhammad Latif. 2007. How the next generation of Fiqh. A book review of *Muslim legal thought in modern Indonesia* by R. Michael Feener. Cambridge University Press
- Golafshani, N. 2003. *Understanding reliability and validity in qualitative research*. *The Qualitative Report*, 8(4), 597-606. www.nova.edu/ssss/QR/QR8-4/golafshani.pdf.
- Haddad, Yvonne Yazbeck, and John Esposito.(eds.). 1998. Islam, gender, and social change. *Journal of the American Academy of religion*. Oxford University Press.
- Hallzon, Patrick. 2008. *The Gülen movement: Gender and practice*. Retrieved October 3, 2011. 13:00 www.fethullahgulen.org/conference-papers/gulen-conference-in-washington-dc/3091-the-gulen-movement-gender-and-practice.html.
- Hassan, R. *Are human rights compatible with Islam?* The issue of the rights of women in Muslim communities in the religious consultation on population reproductive health and ethics. Louisville, Kentucky: University of Louisville. www.religiousconsultation.org/hassan2.htm.
- Hassan-Shahid, Farhana. 2008. *A forward-looking Ijtihad in the modern era: fighting for women's rights in Muslim society on the basis of Allah's compassion and justice in the Quran in Ijtihad, re-thinking Islam*. www.newageislam.com/ijtihad.
- Idid, Sharifa Aliana. *Women's right to post-divorce maintainance. Femin Ijtihad case law project*. Commentary of Md. Hefzur Rahman (petitioner) v Shamsun Nahar Begum. feminijtihad.tumblr.com/post/8425478903/womens-rights-to-post-divorce-maintenance.
- Ijtihad and the development of Islamic legal theory*. 2009. maqasid.wordpress.com/2009/06/15/ijtihad-and-the-development-of-islamic-legal-theory/.
- Increasing the accessibility of academic scholarship on Muslim women's rights to activism*. feminijtihad.com/.
- Iran overturns women's study ban. *BBC News*. January 7, 2001. news.bbc.co.uk/1/hi/world/middle_east/1105272.stm.

36 Panel 1

Iranian lawmakers pass women's inheritance bill; UN Wire. May 12, 2004.

www.unwire.org/UNWire/20040512/449_23730.asp.

Islamic Family Law (Federal Territories) Act 1984 or Act 303. 2012. Compiled by Legal Research Board. Selangor Darul Ehsan: International Law Book Services.

Islamic Shari'ah Law.

www.ediscoverislam.com/About-Islam/Islamic-Lawand-legal-Systems.

Issues on Ijtihad. *Usul Al-Fiqh Al-Islami: Source methodology in Islamic jurisprudence*. Chapter VI.

www.islambasics.com/view.php?bkID=166&chapter=6.

Kamali, Muhammad. H. 1991. *Principles of Islamic jurisprudence*. www.bandung2.co.uk/books/Files/Law/Principles%20of%20Islamic%20Jurisprudence%20-%20Hashim%20Kamali.pdf.

Kayadibi, Saim. n.d. Ijtihad by Ra'y: *The main source of inspiration behind Istihsan*.

Kutub, M. n.d. Equality before the Law. *The Greatness of Islamic Justice*.

www.ediscoverislam.com/About-Islam/Islamic-Law-and-legal-Systems/the-greatness-of-islamic-justice-equality-law-caliph-judge

Kynsilehto, Anita, ed. 2008. Islamic feminism: Current perspective. *Tampere Peace Research Institute*. Occasional Paper No. 96.

Latiff, Natasha. 2008. *Ijtihad, reform and women's rights*.

natashalattiff.com/2008/07/05/ijtihad-reform-and-womens-rights/

Mcluhan, Marshall. 2008. *Dynamics of change in Islamic law (II): Ifta, Ijtihad and social customs*.

pakteahouse.net/2008/01/09/dynamics-of-change-in-islamic-law-ii-iftaa-ijtihad-and-social-customs/.

Mazhari, Maulvi Waris. 2009. *Muslim women's rights: Ijtihad in the light of Maqasid al-Shariah*. Translated by Yoginder Sikand.

www.justinternational.Org/index.php?option=com_content&view=article&id=3385:muslim-womens-rights-ijtihad-in-the-light-of-maqasid-al-shariah.

Mashour, Amira. 2005. Islamic law and gender equality: could there be a common ground: A study of divorce and polygamy in Sharia law and contemporary legislation in Tunisia and Egypt. *Human Rights Quarterly*. Vol. 27, Number 2: 562-596.

Muhammad, Ramizah Wan. 2011. The Dato' Yuthitham and the administration of Islamic law in Southern Thailand. In *ARC Federation Fellowship Islam, Syari'ah and Governance Background Paper Series*. Center for Islamic Law and Society. Melbourne Law School.

Muqtader Khan, M.A. 2006. *Two theories of Ijtihad*.

www.ijtihad.org/ijtihad.htm.

Nazibur Rahman, Muhammad. 2009. *Ijtihad and the development of Islamic Legal Theory*.

Olsen, W. 2004. Triangulation in social research: Qualitative and quantitative method can really be mixed. In *Development in Sociology*, ed. M. Holborn; Omskirk: Causeway Press.

Piggot-Irvine, E. 2008. Triangulation in action: mixed method evaluation of a professional development program for teachers of students with special education needs. *Evaluation Journal of Australasia*, 8 (1), 3-10.

Polygamy in Sharia law and contemporary legislation in Tunisia and Egypt. 2005. *Human Rights Quarterly* 27 (2), 562-596. The Johns Hopkins University Press.

www.muse.jhu.edu/login?uri=/journals/human_rights_quarterly/v027/27.2mashhour.html

Sadr, S. 2003. *Interview conducted by Shadi Mokbtari*.

www.womeniniran.com.

Sanusi Lamido Sanusi. *Democracy, human rights and Islam: Theory, epistemology and the quest for synthesis*. Lagos, Nigeria

www.nigerdeltacongress.com/darticles/democracy_human_rights_and_islam.htm.

Sardar, Ziauddin. 2002. *Rethinking Islam*.

Shah, A. 2010. Women rights. *Global issues: Social, political, economic and issues that affect is all*.

www.globalissues.org/article/166/womens-rights.

Stearmer, M. 2007. *The great divide: revealing differences in the Islamic world regarding the status of women and its impact on international peace*. Chicago: Brigham Young University. Paper prepared for presentation at the annual meeting of the American Political Science Association, Chicago, Illinois. www.womanstats.org/images/StearmerEmmett APSA07.pdf.

Tahir-Ul-Qadri, Muhammad. 2006. *Women & politics in Islam: Full rights to be a member of Parliament political Advisor* by Ghazala Hassan Qadri. Minhaj Women League.

Tahir-Ul-Qadri, Muhammad. 2009. *Philosophy of Ijtihad and modern age*. minhaj.com.pk/en/282/philosophy-of-ijtihad-and-modern-age-dr-tahir-ul-qadri

The notion of modernization and Modernity. www.isesco.org.ma/english/publications/Ijtihad/and-Modernity-in/Islam/.

Voices of a new Ijtihad. islamwest.org/publications_islam_and_the_West/Who_Speaks_For_Islam/Who-Speaks-For-Islam_16.html.

Yavuz, M. Sait. 2009. *Women in Islam: Muslim perspectives and Fethullah Gülen*. Retrieved October, 2011. 15 November 2008 12:00 www.fethullahgulen.org/conference-papers/gulen-conference-in-washington-dc/3112-women-in-islam-muslim-perspectives-and-fethullah-gulen.html

Yilmaz, Ihsan. *Inter-Madhab surfing, neo-Ijtihad, and faith-based movement leaders* fatih.academia.edu/IhsanYilmaz/Papers/293506/Inter-Madhab_Surfing_Neo-Ijtihad_and_Faith-Based_Movement_Leaders.

Ziba, Mir-Hosseini. 2007. *Symposium: Gender relevant legislative change in Muslim and non-Muslim countries: How the door of Ijtihad was opened and closed: A comparative analysis of recent family law reforms in Iran and Morocco*. Washington: Washington & Lee University School of Law.

ACKNOWLEDGEMENT

Special thanks to the Nippon Foundation, and to the men and women of the Philippines Indonesia, Malaysia, and Thailand

Nippon Foundation and API: To Chairman Yohei Sasakawa, Executive Director Tatsuya Tanami, and to the men and women of the partner countries and institutions working with the Asian Public Intellectual (API) Fellowship Program. To API Coordinating Institution based in Thailand headed by Michiko Yoshida and to her staff.

Indonesia: Research counterpart the Indonesian Institute of Sciences (PSDR-LIPI) and the Head of the Research Center Dr. Dundin Zaenuddin, Research Assistant Prima Nurahmi; API- Indonesian partner institution and the Program Coordinator Prof. John Haba and Assistant Dr. Yektim; The Indonesian *Ulama* Council (MUI), Jakarta; MUI Fatwa Commission Chair Prof. Dr. H. Hasanuddin A.F. and members Dr. KH. Hamdan Rashid and Irfan Helmi who are Vice General Secretary of MUI Center of Consultation for Moslem Clerics; Leaders and Intellectuals Mr. Muhyiddin Junaidi (MUI Chairman of foreign Affairs); In Jogjakarta: The Muhammadiyah or *Peryarikhatan Muhammadiyah (MU)* Chairman Dr. Prof. Yunahar and Prof. Syamsul Anwar of MU Department of Tarjih Dan Tajdid; Aisyiyah former woman Chair and Officer Dr. Chamamah Soeratno – Central Board and Chairman Ms. Nordjannah, Hj. Susaliningsih, – with two women representatives; MU *Kawuman* (original village); weekend lecture assembly young MU-IMM Mr. Ghifari Yuriastadhi and Ms. Davina Azalla Khan; Young Aisyiyah and Aisyiyah Health Academy, Hospital, and Cooperative; Pesantren Prambanan; Jogjakarta Religious Courts, University Islam Negeri (UIN) and staff of the Library Women Center; Dr. Suwarshi – Vice Rector *Universitas Negeri Yogyakarta* (UNY); Jogjakarta women respondents and elders of Sleman, Kaliurang, Kalijaga, Kaparakan, Masjid Al Hidayah and Majelis Taalim; women in Masjid Inayah all in Samirono; Ms. Indah Nurahmi English lecturer of Universitas Gaja Mada; Makassar folks Reny Sofia, Sofia daughter, Nu Man; Respondents and women elders of Kebon sirih 1 and II in Central Jakarta; Majelis Ta'lim South Jakarta.

Malaysia: Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University (IIUM), Gombak Campus, Kuala Lumpur. Research collaborators Dr. Nasimah Hussein, Dr. Fauziah Mohd, Noor and colleagues, other Law professors, lady faculty members and lecturers; AIKOL

Faculty and member Fatwa Council of Malaysia Dr. Mahamud Arifin; Ms. Attorneys Dora Binti Abdullah and Mohaygen Naing of Johor Bahru- working for women's legal problems on marriage, divorce, and other cases. The National Council for Islamic religious Affairs in Malaysia (JAKIM) Fatwa Committe – Putrajaya. State of Selangor Fatwa Section; respondents of the State of Kedah, Selangor and Kuala Lumpur

Thailand: Research collaborator Dr. Aree Swarut of the Special Muslim Studies Section, Chulalongkorn University, Bangkok; Ustadz Abdurahman Daud – Head, Islamic Council of Pattani; Khun Walapah Neelaphajit – President of Thai Muslimah Volunteer Group, Division of Women Youth and family Affairs of The Foundation for Islamic Centre of Thailand; Khun Angkana Neelaphajit – President of Justice for Peace Foundation; Deputy Director Dr. Ibrahim Narangraksakhet of College of Islamic Studies, Prince Songkhla University (PSU) Pattani; Thailand Muslim member of Parliament Atty. Muks Sulaiman; Traditional midwife (circumciser). FGD: Narathiwat teachers (with video); Mayo District teachers and Pattani Community Visit and Immersion: Islamic council of Thailand; Pattani Islamic Council; Special Muslim Studies Section, Chulalongkorn University; Pattani Central Mosque; Mayo District School, Narathiwat Community School, Pattani Market & Pattani Foster family.

Philippines: Philippine Partner Institution program Director Jose M. Cruz, program coordinator Isabel Consuelo N. Nazareno, and others from the Philippines who painstakingly assisted in the program.

GLOSSARY OF TERMS

Adat Laws – Conventional law. also called hokum adat. This means conventional law

Kebiasaan – customary practices or customary laws

anti-menstruation pill – a kind of pill that temporarily stops menstruation

Baitul Mal – National treasury

Contract marriage – A marriage agreed to last for specific duration. Also temporary marriage

Dato' Yuthitham – The official who adjudicates *Shariah* matters in Thailand and who sits in the Thai Provincial Court in four southern provinces where he assists the civil court judge. Also called Dato' Kadi.

Department of Tajdid and Tarjih – Department of Renewal and Reformation. One of the many departments of Muhammadiyah.

Early marriage – refers to marriage among Muslims below the required legal standards set up by the secular government.

Fatwa – Islamic legal rulings

Fatwa Sejak – fatwa compilation prepared by MUI and contained almost 40 *fatwas* on women.

Faith-based mechanism – tools or mechanics based on religion or establish faith system.

Faraid - Islamic inheritance law

Female circumcision – refers to circumcision of girls commonly practice among Muslims in Indonesia, Malaysia, Brunei and other Muslim countries. It is believe to be based on the sayings of the prophet of Islam Muhammad (pbuh) and practice during his time.

Fiqh – Islamic jurisprudence.

Fiqh An-nisa – Islamic jurisprudence for women issues.

Fitrah - charity

Hadith – the sayings, practice and silent approval of the Prophet (pbuh)

Hukum Syarak – islamic rules, decision and judgement

Iddah wafat – waiting period for widows before they can contract another marriage, legally four months and ten days or 4 menstrual cycle. The purpose of which is to determine if the widow is pregnant by her husband which requires another waiting period for pregnancy and delivery of the child before she contracts another marriage..

Ijtihad - It refers to deduction on matters related to Islamic Law and how it applies to the changing conditions of society. Also personal reasoning

Collective Ijtihad – Ijtihad performed by many member jurists and experts.

Ijtihad Intiqali – Traditional or fundamental Ijtihad based on what was left by former jurists.

Ijtihad Inshai – Modern context-based Ijtihad and one not mentioning clear interpretation and has to be explored further through Ijtihad.

Jawi script – native language written in Arabic like the Malay or Indonesian language written in arabic script.

Madzhab – The four (4) schools of Thought of the Sunni branch of Islam.

Mahkamah Shariah – Shariah legal system.

Majlis – The Council or the legal department.

Majlis Ulama Indonesia (MUI) – Indonesian Ulama Council.

Mufti – Jurisconsult in Islamic law.

Nahdatul Ulama (NU) – one of the biggest socio-religious organizations in Indonesia.

nikah wisata – marriage

Parental arrangement – marriage initiated and arranged by the parents of bride and groom. It is traditionally done without the knowledge and consent of both.

Persyarikatan Muhammadiyah (MU) – Also Muhammadiyah. Refer to one of the biggest socio-religious group in Indonesia that favors Ijtihad.

Pesantren – traditional Islamic boarding school in Indonesia

Prosedur pernikahan – marriage or wedding procedure

Perkawinan Campuran – intermarriages or mixed marriages

Polygamy – The marriage of one man to several women. In Islamic law it refers to marriage of one man to a limited number of 4 wives with strict conditions attached thereto.

Qur'an – The holy Book of the Muslims written in classical Arabic in the 7th century and had comprehensive contents which are being used by Muslims up to the present.

Rumi – roman script

Shadaqah – charity or good work

Shariah – Islamic law

Shariah economy – economy based on the principles of Islamic laws

Sheikh al Islam – or Chularajmontri. An advisor to the King on Muslim affairs appointed without any legal authority. He presides over the National Council for Islamic Affairs.

Talak Tiga – divorce based on three pronouncements and considered irrevocable.

Wakaf – endowments or religious charitable trust.

Zakat – religious tax exacted from the Muslims net income either in cash or in kind.