

**JOINT REPORT ON ARTICLE 16, MUSLIM FAMILY LAW AND  
MUSLIM WOMEN'S RIGHTS IN  
KENYA**

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## A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, together with Advocacy for Women in Peace and Security Africa (AWAPSA), Kenya jointly submit this Thematic Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of Kenya, reporting before the 68th Session of the CEDAW Committee in November 2017.

This is the CEDAW Committee's fifth engagement with the Government of Kenya, which acceded to the CEDAW Convention on March 9<sup>th</sup> 1984, without reservations. It was noted that past State party and NGO shadow reports had not sufficiently raised issues of discrimination faced by Muslim women in Kenya, particularly in the context of family law.

Hence, this report examines Kenyan laws and practices that enforce *de jure* and *de facto* discrimination against Muslim women in the following areas: challenges with the lack of codified Muslim family law, women's consent and capacity to enter marriage, lack of women in Kadhi Court positions, child and forced marriage, polygamy, divorce and access to justice.

We hope that the research, analysis, and recommendations in this report will provide critical information in:

- (1) Highlighting key concerns and identifying gaps in the State party report and the State party's reply to the list of issues;
- (2) Providing alternative arguments within Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation of its international human rights treaty obligations; and
- (3) Suggesting recommendations for reform based on good practices in Muslim contexts.

We hope that the CEDAW Committee will utilize this report as a key resource during its Constructive engagement with the State party, and in identifying follow-up issues in the Concluding Observations.

## B. LEGAL BACKGROUND

According to the 2009 Census on Population and Housing<sup>1</sup>, Muslims in Kenya constitute 11.1% of the population; however Muslim groups have placed the percentage as high as 30%.<sup>2</sup> Kenyan Muslims primarily belong to the Sunni sect (73%) and follow the *Shafi'i madhab* (school of Islamic jurisprudence).

**Constitutional guarantees of rights:** Article 27(1) of the Kenyan Constitution<sup>3</sup> provides that - every person is equal before the law and has the right to equal protection and equal benefit of the law. It also guarantees that 'the State shall not discriminate directly or indirectly against any person on any ground, including sex and marital status'.

The Kenyan Constitution specifically guarantees equality in marriage and family through Article 45<sup>4</sup>, which provides that:

- (1) *The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State;*
- (2) *Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties;*
- (3) *Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage;*
- (4) *Parliament shall enact legislation that recognizes -*
  - (a) *Marriages concluded under any tradition, or system of religious, personal or family law; and*
  - (b) *Any system of personal and family law under any tradition, or adhered to by persons professing a particular religion;*

**To the extent that any such marriages or systems of law are consistent with this Constitution.**

### LEGISLATION ON MARRIAGE AND DIVORCE

The Marriage Act of 2012 (revised) is the main codified law that governs marriage and family relations in Kenya.<sup>5</sup> The Act recognizes five types of marriages: civil, customary, Christian, Hindu and Muslim.<sup>6</sup> The provisions of the Marriage Act are applicable to all Kenyans unless stated otherwise in the Act.<sup>7</sup> Section 3(1) of the Marriage Act defines marriage as a voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with the Act.<sup>8</sup>

In line with Article 45(3) and other equality provisions in the Constitution, Section 3(2) the Marriage Act provides that parties to a marriage have **equal rights and obligations at the time of the marriage, during the marriage and at the dissolution of the marriage.**<sup>9</sup>

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1 2009 Census on Population and Housing <https://web.archive.org/web/20130115103229/http://www.knbs.or.ke/docs/PresentationbyMinisterforPlanningrevised.pdf>

2 Kenya – Department of State <https://www.state.gov/j/drl/rls/irf/2007/90103.htm>

3 Article 27(1) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

4 Article 45 of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

5 Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

6 Section 6(1) of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

7 See for instance Part III (Christian Marriages), Part IV (Civil Marriages), Part V (Customary Marriages), Part VI (Hindu Marriages), Part VII (Marriages under Islamic Law) of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf); Information obtained from Kenyan advocate, February 2017

8 Sections 3(1) of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

9 Article 45(3) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Section 3(2) of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

However, despite these progressive provisions in both the Constitution and the Marriage Act:

- Section 3(4) of the Marriage Act states that parties to a Muslim marriage shall only have the rights granted under Islamic law, albeit with a proviso that this section is subject to the requirements of Section 3(2);
- Section 49(3) states that any provision in the Marriage Act that is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith.

The Government of Kenya in its 2016 State party report to the CEDAW Committee informed that the Marriage Act 2014 repeals the previous numerous pieces of legislation that had governed the institution of marriage, thus making it easier and more user friendly for women seeking matrimonial justice. It noted that the enactment of the law is a major victory for women in Kenya as *“it champions equality in marriage as well as reiterates the minimum age of marriage for all women across religious and cultural divides as outlined in Section 4 of the Act.”*

Kenya State party report to CEDAW Committee - CEDAW/C/KEN/8 (2016)  
<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

Unfortunately, this statement only applies to the majority non-Muslim population. Section 49(3) of the Marriage Act continues to remain highly problematic. It contradicts the proviso in Section 3(4) requiring Muslim marriages to comply with Section 3(2) which provides for equal treatment at the time of, during and dissolution of marriage. It allows for unequal and discriminatory practices with regard to Muslim marriages to be excused under patriarchal interpretations of what constitutes ‘Islamic law’.

Thus, like many other countries with a plural legal system, Musawah is concerned that governments like Kenya, while willing to push forward with law reform towards equality and justice for women, have shown little concern of the rights of minority women governed by laws based on a particularly discriminatory understanding of Islam.

While there is no restriction in the Marriage Act for Muslims to contract marriages under civil law, it is very rare for a Muslim couple to opt for a civil marriage. This is largely due to the cultural and communal norm that only a Muslim marriage is recognized in the “eyes of God”.

### **Establishment of Kadhi Court system**

In 2010 the new Constitution of Kenya strengthened the position of Kadhi Courts, and subsequent legislation established Kadhi Courts in 47 counties across the country. Article 107(5) of the Constitution provides that the special courts to administer Muslim marriages or ‘Kadhi Courts’ has jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess Islam and submit to the jurisdiction of the Kadhi Courts. This constitutional provision is reflected in Section 5 of the Kadhis’ Court Act.<sup>10</sup>

**This is despite the fact that Kenya does not have specific codified law relating to Muslim marriages and family relations.** Thus these areas of marriage and divorce are governed by a combination of *Shari’ah* principles followed by an individual Kadhi judge and judicial precedence.<sup>11</sup>

10 Article 170(1) of Kenya’s Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Section 5 of the Kadhis Court Act (1967), <http://kenyalaw.org/lex/actview.xql?actid=CAP.%2011>

11 Information obtained from Kenyan advocate, February 2017; Kevin Odimbe Wanyonyi, “The Kadhis Court in Kenya: Towards Enhancing Access to Justice for Muslim Women”, *University of Lund Student Paper*, 2016, pp.20-24, <https://lup.lub.lu.se/student-papers/search/publication/8879897>

Kenyan Muslims are under no legal obligation to have matters relating to marriage and family relations adjudicated by the Kadhi Courts. They may choose for their matters to be adjudicated by other competent courts including Magistrates' Courts and High Courts, which apply civil law.<sup>12</sup>

According to Muslim women activists, many Muslim women have opted to refer their cases to civil courts in hope for a fairer process, however they are still referred back to Kadhi Courts as their husbands have simultaneously filed cases with the knowledge that Kadhis are likely to favor men and thus they will have the upper hand.

In terms of registration of marriages, a new Customary Marriage Act<sup>13</sup> was introduced in April 2017. The Act requires that couples married under customary rules register their marriage at the office of the Attorney General. As stated in the law, *"It is notified for public information that commencement of the marriage (customary marriage) Rules 2017, and in furtherance of section 196 of the Marriage Act, 2014: The registrar of marriages wishes to inform all parties married under African customary law that they are required to register their marriage starting 1<sup>st</sup> of August, 2017"*.<sup>14</sup>

## C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE, AND REFORM

### 1. NO CODIFIED MUSLIM FAMILY LAW

The lack of a codified Muslim family law, despite an operative Kadhi Court system is leading to arbitrary procedures, practices and judgments meted out to Muslim husbands and wives depending on individual Kadhi's knowledge, attitude and nature of legal practice.

The interpretation of law and procedure also differs based on *madhabs* or Islamic schools of laws. For Sunni Muslims of the *Shafi'i* School being the majority of Muslims in Kenya, generally, the rules of *Shafi'i* jurisprudence (*fiqh*) apply in Muslim personal status matters.<sup>15</sup> However, Kenya also has a sizeable *Hanafi* community as well as a small Shi'a community who follow *Ja'fari*, *Zaydi* and *Ahmadi* jurisprudence. The diverse Muslim population in Kenya has in turn resulted in a diversity of applicable Muslim jurisprudence governing Muslim personal status matters in Kenya.<sup>16</sup>

This means that depending on the interpretation, understanding and attitude of the Kadhis, cases of similar nature may have different processes and outcomes leading to arbitrary and unpredictable standards of justice.

<sup>12</sup> Information obtained from Kenyan advocate, February 2017

<sup>13</sup> Attorney General orders registration of customary marriages [https://www.the-star.co.ke/news/2017/06/09/ag-orders-registration-of-customary-marriages\\_c1577559](https://www.the-star.co.ke/news/2017/06/09/ag-orders-registration-of-customary-marriages_c1577559)

<sup>14</sup> Customary Marriages Act  
<http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2017/46MarriageCustomaryMarriageRules2017.pdf>

<sup>15</sup> Kevin Odime Wanyonyi, "The Kadhis Court in Kenya: Towards Enhancing Access to Justice for Muslim Women", *University of Lund Student Paper*, 2016, p. 24, <https://lup.lub.lu.se/student-papers/search/publication/8879897>; AbdulKadir Hashim, "Muslim Personal Law in Kenya and Tanzania: Tradition and Innovation", (*Journal of Muslim Minority Affairs*, 25:3, 2005), p. 452, [https://profiles.uonbi.ac.ke/hashim/files/tradition\\_and\\_innovation.pdf](https://profiles.uonbi.ac.ke/hashim/files/tradition_and_innovation.pdf); Emory Scholar Blogs, "The Republic of Kenya," *Islamic Family Law*, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/kenya-republic-of/>

<sup>16</sup> Emory Scholar Blogs, "The Republic of Kenya," *Islamic Family Law*, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/kenya-republic-of/>

## LIVED REALITIES

According to Kadhi court practitioners the absence of a standard codified Muslim family law in Kenya gives practitioners who include Kadhis, lawyers, scholars and Muslims in general a free hand to resort to their favored Muslim school(s) of law. Ultimately, the choice of *fiqh* (Islamic jurisprudence) adopted by a Kadhi Court judge may be dictated by his personal philosophical inclination towards certain a school of thought, sect or opinion, and applies differently to different Muslim women and men despite similar situations pertaining to marriage and divorce.

## CODIFIED MUSLIM FAMILY LAW MUST BE BASED ON EQUALITY

Musawah believes it is necessary and possible for the State party to codify a Muslim family law that complies with the equality provisions of its Constitution and Marriage Act.

Musawah advocates for its four-pronged **Framework for Action** to develop a Muslim family law based on the principles of equality and justice. This is possible by grounding the arguments in (1) diversity of Islamic jurisprudence and legal concepts (2) national laws and constitutional guarantees of equality, (3) contemporary lived realities, and (3) international human rights standards.

Juristic tools and concepts exist within Islamic legal theory that can be used to formulate equality-based Muslim family laws:

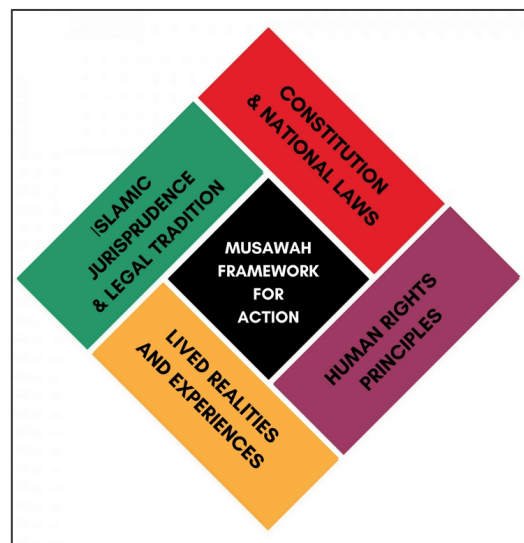
**First**, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh*, jurisprudence - human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practised in its Kadhi's Courts today are in fact, *fiqh* – jurisprudence. It is not divine law. It is human-made, fallible and changeable.

**Second**, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, given changing times and circumstances.

**Third**, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law, with Kenya following the *Shafi'i* school. Principles such as *maslahah* (public interest), and *istihsan* (choosing the best opinion among many) must be used to meet the demands of equality and justice today.

**Fourth**, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These values exist in the Qur'an and the Muslim legal tradition, and they correspond with contemporary human rights principles.

These rights-based principles and scholarship that exist within Islam, the State party constitutional provision that recognizes equality and non-discrimination, and most importantly, the changing realities of women's lives today in Kenya, necessitate the urgent need for a codified law based on equality between spouses.





**ALGERIA**

Under the Constitution and the Civil Code, the family is based on equality between spouses

**TURKEY**

The Family Code requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.

**MOROCCO**

The Family Code (Moudawana) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.

**2. WOMEN AS JUDGES IN KADHI COURTS**

**CRITICAL INFORMATION**

Article 172 of the 2010 Constitution of Kenya<sup>17</sup> outlined the qualification of Kadhi judges as follows:

*"A person shall not be qualified to be appointed to hold or act in the office of Kadhi unless the person -*

- *Professes the Muslim religion; and*
- *Possesses such knowledge of the Muslim law applicable to any sects of Muslims as qualifies the person, in the opinion of the Judicial Service Commission, to hold a Kadhis court."*

While the Kenyan Constitution and 2012 Kadhis Court Act, have no barriers to qualified Muslim women becoming Kadhi judges, no woman has been appointed.

In practice and procedure, women are seemingly disqualified on the basis of gender bias that they cannot preside over legal and religious matters the same way as men can. Some believe given that because women cannot consent to marriage and divorce in the same way as men, they cannot hold Kadhi positions deciding on marriages and divorce cases.<sup>18</sup>

**LIVED REALITIES**

According to Muslim women activists, many women who go to Kadhi courts looking for justice and redress and often in social and financially vulnerable circumstances are often intimidated or taken advantage of by the male Kadhis. As a result of this, after a few trips to the Kadhi courts, women give up on attempts to pursue their cases.

17 2010 Constitution of Kenya <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>

18 Kevin Odimbe Wanyonyi (2016) *The Kadhis' Courts in Kenya Towards Enhancing Access to Justice for Muslim Women* <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8879897&fileId=8879899>



Women’s inability to become Kadhi judges in Kenya highlights two main issues:

- Systemic gender inequality in the Kadhi Court system which considers women inferior to men despite constitutional guarantees of equality and non-discrimination, and;
- The lack of access to a “safe, non-intimidating, and women-friendly” judicial system.

Article 159 of the Kenyan Constitution mandates the judiciary to promote alternative dispute resolution (ADR) mechanisms in the administration of justice. This is further given effect by the Civil Procedure Act (Chapter 21 of the Laws of Kenya). In line with Judiciary Transformation Framework 2012-2016<sup>19</sup>, the judiciary has embraced alternative dispute resolution as an avenue for addressing case backlog in the court system while making justice more accessible.

As part of this commitment, the government of Kenya must address the barriers and challenges to justice that Muslim women face, and facilitate a process whereby Muslim women can contribute and engage in the Kadhi Court system. Muslim women’s groups have recommended forming a ‘Women’s Committee (Majlis)’ or official working groups (with women lawyers, scholars, counselors and advocates etc.) who work closely with Kadhis in each court. They can provide women who come to the court with legal advice, and on process and procedures, and support in mediating and arbitrating cases.

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Introduce special measures to introduce and accelerate the appointment of Muslim women as Kadhi court judges;
- ❖ Work with women’s rights groups and experts to set up a special unit in each Kadhi court system at the county level to provide legal advice and counselling services to women.

WOMEN AS JUDGES	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
<p>List of countries which appoint Muslim women in Islamic / <i>Shari'ah</i> courts:</p> <p><b>MALAYSIA, PAKISTAN, TUNISIA, MOROCCO, EGYPT, INDONESIA, PALESTINE, LIBYA, SUDAN, ISRAEL</b></p>	<p><b>JUSTIFICATIONS USED:</b></p> <ul style="list-style-type: none"> <li>• Upholding constitutional guarantees of equality and non-discrimination</li> <li>• The Qur'an does not prohibit women from becoming judges</li> <li>• Reasons to disqualify women based on biology, inability to make decisions/give judgements or to be witnesses have been debunked through science, lived realities and progressive interpretation of historical events and texts</li> <li>• There are many examples of Muslim women holding positions of leadership throughout Islamic history</li> <li>• Women holding positions in family courts in turn improves women's access to justice</li> </ul>

19 Judiciary Transformation Framework 2012-2016 <http://www.judiciary.go.ke/portal/page/judiciary-transformation-framework>

### 3. WOMEN'S CONSENT AND CAPACITY TO ENTER MARRIAGE

#### CRITICAL INFORMATION

Article 45(2) of the Constitution provides that every adult has the right to marry a person of the opposite sex based on the free consent of the parties.<sup>20</sup> Full and free consent of both bride and groom is also mandated in the Marriage Act where Section 11(1)(e) states that a union is not a marriage if the consent of either party has not been freely given.

Furthermore the Marriage Act declares coercion and compulsion in marriage as a criminal offence. Section 89 of the Marriage Act states that a person who enters a marriage with knowledge or who has reason to believe that consent was induced by coercion or fraud commits an offence and shall be liable to a penalty (imprisonment, fine or both).

**Despite the above national level legislation, which applies to all citizens, the practice is different for the Muslim community.**

In the Muslim community, regardless of her age, a prospective bride requires the consent of a marital guardian (*wali*) to enter into marriage based on the rules of Shafi'i *fiqh*.<sup>21</sup> According to women activists, a father, too, has the right to conclude a marriage on behalf of a virgin daughter of any age even if it is against her will. Only if the prospective bride is an adult and has been married before is her consent considered mandatory.

Consequently, marriage by force (*ijbar*) or coercion (or power given to her *wali* / guardian) of a prospective bride who has not attained puberty or who has never been married does occur "behind the scenes" in Kenya.<sup>22</sup>

#### LIVED REALITIES

Kenyan women activists have observed that marriage without full and free consent of the girl/woman is very common in both urban and rural areas. If daughters refuse the marriage, they face various forms of intimidation including isolation and detention in their homes. Furthermore, in communities of herders or nomads, obtaining the consent of a guardian is difficult, due to travelling men-folk. Women who want to marry thus face various difficulties in doing so.

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20 Article 45(2) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Sections 3(1), 11(1)(e), 89 of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

21 Information obtained from Kenyan advocate, February 2017; Woodrow Wilson International Centre for Scholars, "Best Practices: Progressive Family Laws in Muslim Countries", 2005, p. 16, <https://www.wilsoncenter.org/sites/default/files/Best%20Practices%20%28English%29.pdf>

22 Ending FGM and Child Marriage The role of parliamentarians <http://kenya.unfpa.org/en/publications/ending-fgm-and-child-marriage>

22 Information obtained from Kenyan advocate, February 2017; Woodrow Wilson International Centre for Scholars, "Best Practices: Progressive Family Laws in Muslim Countries", 2005, p. 16, <https://www.wilsoncenter.org/sites/default/files/Best%20Practices%20%28English%29.pdf>

## MUSAWAH JUSTIFICATION FOR REFORM

The twin concept of male authority (*qiwamah*) and male guardianship (*wilayah*) over women plays a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts.

### QUR'AN PROMOTES EQUALITY BETWEEN SEXES

Musawah contends that the very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understanding of *qiwamah* and *wilayah* are juristic (*fiqh*) constructs shaped by gender ideology of classical Muslim scholars in the context of norms and practices prevalent in their times, where men's superiority and authority over women was the norm.

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Ensure that Muslim women have equal right to enter into marriage on their own accord without permission of male guardian or Kadhi;
- ❖ Strictly criminalize forced marriage and enforce punishments on individuals who plan, conduct or fail to prevent forced marriages.

### CAPACITY TO ENTER MARRIAGE

### POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

#### WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES

**AFGHANISTAN, BAHRAIN (Shia), EGYPT, IRAQ, MOROCCO, TUNISIA, TURKEY:**  
The consent of a marital guardian (*wali*) is not required for adult brides and grooms.

**BANGLADESH, PAKISTAN, SRI LANKA:**  
The consent of a *wali* is not required for Hanafi women who have reached puberty.

**ALGERIA, BAHRAIN, BRUNEI, INDONESIA, IRAQ, JORDAN, LEBANON, MOROCCO, OMAN, PAKISTAN, PALESTINE, QATAR, SINGAPORE, TUNISIA, TURKEY, UNITED ARAB EMIRATES:**

Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, *ijbar* marriages are prohibited.

## 4. EARLY AND CHILD MARRIAGE

### CRITICAL INFORMATION

Despite the fact that the minimum legal age for marriage is 18 years for females and males as per Section 4 of the Marriage Act<sup>23</sup>, which applies to all Kenyans across all religions, the rate of child marriage continues to be high.<sup>24</sup>

The Marriage Act (Section 87) states that any person who marries a person below the legal minimum age for marriage commits an offence and shall be liable to a penalty (imprisonment, fine or both).<sup>25</sup> Section 92(1)(a) of the Act also criminalizes any person who celebrates or witnesses a union purporting to be a marriage where that person knows or should know that at least one party is below 18.<sup>26</sup> As per the Article 8 of the Kenyan Sexual Offences Act, if a man has intimacy with a child who is under age (below 18 years) he is liable to be charged for a criminal offence.<sup>27</sup> Section 14 of the Children Act also states that no person shall subject a child to early marriage.<sup>28</sup>

According to UNICEF's State of the World's Children 2016 report - 23% of women aged 20-24 in Kenya were first married by 18 and 4% were first married by 15.<sup>29</sup> The numbers were highest in Northeastern and Coastal areas.<sup>30</sup> According to Girls Not Brides, socio-economic factors are the primary drivers for child/ early marriage in Kenya. These include: (i) girls, particularly in the rural parts of Kenya often being perceived by their families as an economic burden; and (ii) poor access to education. In addition, cultural norms play a part as well.

Girls, particularly in the rural parts of Kenya, are often viewed as capital for their exchange value in terms of goods, money and livestock. To justify these economic transactions, combinations of cultural, traditional and religious arguments are often employed.<sup>31</sup>

### LIVED REALITIES

Also according to Kenyan women activists, child marriage is still practised widely, and predominantly in Coastal and North Eastern regions of Kenya. There are also specific parts of Mombasa, Kwale, Wajir and Marsabit (with a large percentage of Muslims) where marriage of girls much earlier than puberty is common. Marriage at or shortly after puberty is common among those living traditional Swahili and Islamic lifestyles as some Muslim families take advantage of the misconception that *Shari'ah* law allows girls to get married at puberty, even at age 10.

Local activists have observed that in cases of child marriage, girls drop out of mainstream schools and even the madrasahs (religious schools). Subsequently, when and if these child marriage cases come to the attention of Kadhi courts, Kadhis often fail to protect the girl child and stop the marriage. In spite of the law, Kadhis rarely face criminal charges because the information is kept well within the Muslim community, and not official reports are lodged against the offenders.

23 Section 4 of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

24 Kenya State party report, U.N. Doc. CEDAW/C/KEN/8 (2016), para. 195, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

25 Section 87 of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

26 Sections 92(1)(a), 92(2) of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

27 Kenyan Sexual Offences Act No. 3 of 2006

28 Section 14 of the Children Act (2001), <http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

29 UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)

30 Kenya to campaign against child marriage, protect women's rights [https://www.the-star.co.ke/news/2017/03/09/kenya-to-campaign-against-child-marriage-protect-womens-rights\\_c1520876](https://www.the-star.co.ke/news/2017/03/09/kenya-to-campaign-against-child-marriage-protect-womens-rights_c1520876)

31 Girls Not Brides, "Kenya", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/kenya/>

## MUSAWAH JUSTIFICATION FOR REFORM

Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.'

### NEW HISTORICAL EVIDENCE NOW AVAILABLE

- Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old.
- However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (*source: <http://www.sistersinislam.org.my/news.php?item.997.41>*).
- The question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices.

### QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE

- While the *Qur'an* does not provide any specification for the age of marriage, Surah an-Nisa' 4:6 requires that orphans should be of sound judgment before they marry.
- This indicates that a person must have sufficient judgment and maturity to marry.
- Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine.
- The onset of puberty is no indication of sufficient maturity for marriage.

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Enforce 18 years as the absolute minimum age of marriage for Muslim girls and compel marriage registrars and Kadhi judges to report child marriages (including potential marriages) to authorities;
- ❖ Exercise due diligence to prevent, investigate, and punish acts that are aimed at forcing and coercing children into early marriage;
- ❖ Enforce mandatory registration of marriage for all, including those under the jurisdiction of *Shari'ah* law;
- ❖ Introduce and implement policies and programs that encourage and advance tertiary and higher educational opportunities for girls in communities vulnerable to early marriage;

### *Support services and awareness rising:*

- ❖ Strengthen support services (eg: a special unit in the police, legal, psycho-social, emergency support) to ensure that early marriage cases are prevented and girls who are vulnerable to early marriage are able to obtain swift and effective support;
- ❖ Provide reparations to victims and survivors of early marriage, including allowing girls and women forced into marriage the retroactive right to invalidate the marriage, or the right to divorce;
- ❖ Launch media and community campaigns to ensure implementation of the legal age of marriage, the legal consequences of child marriage and impact on women and girls;
- ❖ Support initiatives that work with Muslim men and religious and community leaders to promote attitudinal change.

### *Data gathering:*

- ❖ Facilitate and commission small-scale studies into implications of early marriage and publication of the findings of such studies for awareness raising and policy change.



## 5. POLYGAMY

The Kenyan State party report submitted to CEDAW Committee in 2016 acknowledges that *‘Polygamy has onerous implications on women. It serves to reinforce male dominance and subjugation of women in the private sphere of marriage. If the constitutional and legislative provisions that sanction polygamy are not changed, they will disadvantage women as various males will choose a second wife in order to constrain the women bargaining powers in the relationships. Polygamy also runs counter to the very Constitution that outlaws discrimination and inequality of sexes’*.

Furthermore the section under ‘Challenges with Marriage Act (2014)’ states that – *“The Marriage Act however not only recognizes polygamous marriages but also allows the man to marry another wife without the first one’s consent. This is seen to contravene Article 45(3) of the Constitution that states that Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage. There is urgent need to bring those laws and customs in conformity with the Constitution.”*

Kenya State party report to CEDAW Committee - CEDAW/C/KEN/8(2016)  
<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

### CRITICAL INFORMATION

Section 3(1) of the Marriage Act states that a marriage may be a monogamous or polygamous, while Section 6(3) of the Act states that an Islamic marriage is presumed to be polygamous or potentially polygamous.<sup>32</sup> In Kenya, a Muslim man may marry up to four wives at one time. There is no legal requirement for him to seek the permission of the court or his existing wife or wives to enter into a polygamous marriage.

Section 8 of the Marriage Act provides for a couple to declare their intention to convert their potentially polygamous marriage to a monogamous marriage under the following conditions: (i) each spouse must voluntarily declare their intent to convert the potentially polygamous marriage to a monogamous one; and (ii) at the time the declaration is made, the husband must only have one wife. The declaration must: (i) be made before a marriage officer and must be recorded in writing and signed by each spouse; and (ii) registered with the Registrar of Marriage.<sup>33</sup>

According to Kenya’s 2014 Demographic and Health Survey<sup>34</sup>, 11% of marriages in the country are polygamous. The survey also found that women in the Northern Eastern region of Kenya were most likely to report having co-wives (32%), followed by women in the Nyanza (19%) and Western (15%) regions. Women in the Central region were least likely to report having co-wives (3.9%). The survey also revealed the following:

- Older women were more likely than younger women to have co-wives. For instance, 18% of married women aged 45-49 reported having co-wives, as compared with 6% of women aged 20-24;
- Rural women were more likely to report having co-wives than urban women (14% versus 7%). Women living in poorer households were more likely than women living in richer households to have co-wives;
- For instance, 24% of women living in households in the lowest wealth quintile reported having co-wives, as compared with 5% of women living in households in the highest quintile;

32 Section 6(3) of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

33 Section 8 of the Marriage Act (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage\\_Act2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf)

34 Kenya National Bureau of Statistics, et al., “Kenya Demographic and Health Survey 2014”, Table 4.2.1, p. 57, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>

- Lesser-educated women were more likely to report having co-wives than more educated women. For instance, 32% of married women with no education reported having co-wives, as compared with 6% of women who has attained secondary or higher education.

### LIVED REALITIES

According to Kenyan women activists, Muslim men marry for their own benefit, rather than follow guidelines in Islamic law. First wives are most often left abandoned or no longer get maintenance support from their husbands after the marriage becomes polygamous. This results in high number of divorce cases and single parents and affects the children psychologically, economically and socially.

A wife's inability to consent to a plural marriage, being abandoned or subsequently forced to divorce also has grave impacts on health and psychology, to the extent that some women have reported having depression and suicidal tendencies.

Additionally it has been observed that Muslim women who have more daughters in their families are more likely to have co-wives, because the daughters are married off and the bride price is used to bring another wife into the homestead. Thus it is common for low-income rural women with daughters to end up being in polygamous marriages.

### MUSAWAH JUSTIFICATION FOR REFORM

Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa' 4:3* in the Qur'an states: *'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly [with your wives] then marry only one.... That will be more suitable, to prevent you from doing injustice.'*

#### QUR'AN PROMOTES MONOGAMY

- When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy.
- The verse in Surah an-Nisa' that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans.
- As men were breadwinners in that society, the widows found it difficult to provide for their children. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.

#### CHALLENGING POLYGAMY

- Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe.
- Polygamy was a practice that existed in various civilizations, religions, and cultures in many parts of the world until it was abolished by law as governments acknowledged the injustices it inflicted on women and children.
- Tunisia has forbidden polygamy on the ground that it is impossible for a man to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the situation discussed in the Qur'an.



## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Codify Muslim family law which prohibits polygamy by Kenyan Muslim men, following examples of other Muslim countries which have abolished the practice in the best interest of family well-being;
- ❖ Alternatively, introduce conditions in the law to restrict the practice of polygamy to minimize harm and injustice done to the wives and children, especially:
  - The existing wife/wives have to consent to her husband marrying a another wife;
  - Husband has to provide justification for entering into multiple marriages and show evidence of financial capacity to support more than one wife;
  - The husband signs a contract promising to deal with all wives fairly and equally in terms of financial support, time spent and turn-taking and other marital obligations;
  - Provide a model, standard marriage contract with options for the couple to prohibit polygamy within the marriage and for a wife to explicitly enunciate a monogamous marriage;
  - Enable polygamy as grounds for divorce.

### POLYGAMY

### POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

**POLYGAMY  
PROHIBITED**



**KYRGYZSTAN, TAJIKISTAN, TUNISIA,  
TURKEY, UZBEKISTAN**

#### COURT AUTHORIZATION AND CONSENT OF EXISTING WIVES NEEDED:

##### ALGERIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.

##### INDONESIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only be granted if the husband's existing wife:

- (i) is unable to perform her conjugal duties;
- (ii) suffers from a physical infirmity or an incurable disease; or
- (iii) cannot bear children.

##### IRAQ (KURDISTAN REGION):

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met:

- (i) the first wife has to agree before the court to her husband marrying a second wife;
- (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile;
- (iii) the man has the financial capacity to support more than one wife;
- (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations;
- (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife.

A man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.

## 6. DIVORCE RIGHTS

### CRITICAL INFORMATION

There are four main ways in which Muslims can seek divorce in Kenya:

**(i) *Talaq* or Unilateral repudiation of the marriage:** A husband can unilaterally repudiate a marriage without restrictions<sup>35</sup> and no legislation or administrative practice governs *talaq* divorce in Kenya.<sup>36</sup>

According to Musawah research of Muslim family laws in 31 countries, unilateral *talaq* divorce heightens the vulnerable position of women and children in the family. The husband's right to terminate a marriage without any legitimate reason coupled with the legal practice of polygamy means Muslim women live in a perpetual state of uncertainty and insecurity in their married life. This threatens family stability and well-being.

### LIVED REALITIES

According to Kenyan women activists, *talaq* divorce often leads to abandonment and non-maintenance of former wives and children. Women who have been divorced, suddenly and without any preparation or support, end up raising their children as single parents with the sole responsibility to support their families. Children also suffer the impact of such abandonment and neglect.

Women's groups are concerned that young children, especially from low-income families, are put at serious risk. Some end up living on the streets, or drawn to drug addiction and criminal activity, including violent extremism. The lack of equality in a Muslim marriage and absence of any form of protection against violation of rights of women and children have contributed to breakdown of family units, and for youth to likely look to other sources such as terror groups for emotional support.

There are also many cases of women were divorced unilaterally, but do not have their divorce certificate as it is at the discretion of the husband to give the certificate at his own time. Therefore men have used this loophole in procedure as a weapon to 'punish' their wives, who then face challenges remarrying.

**(ii) *Fasakh* or Judicial divorce:** This is usually initiated by the wife by specifying her ground(s) for divorce and arbitrated by the court. Valid grounds for seeking a judicial divorce by a wife include a husband's: failure to provide maintenance; prolonged absence; imprisonment; failure to his marital obligations; and severe illness.

**(iii) *Khul'* or Redemptive divorce:** A form of divorce initiated by the wife if she is unhappy with the marriage. However, the husband **must consent** to the *khul'* divorce. The wife has to return the *mahr* (marriage gift) to her husband and any other marriage gifts that her husband may have given her.

**(iv) *Mubarat* or divorce by mutual consent** of the husband and wife and can be initiated by either party. The wife loses any right she may have to her dower (*mahr*) but the husband remains liable to maintain the children.

35 See for example, *B M S v M H M* [2015] eKLR, <http://kenyalaw.org/caselaw/cases/view/107530/>

36 Information obtained from Kenyan advocate, February 2017

## MUSAWAH JUSTIFICATION FOR REFORM

It is cruel and unjust to continue to allow men the right to divorce their wives at will. Given today's realities and contemporary conceptions of justice, the urgent necessity to provide equal and just grounds for divorce to both men and women must be undertaken.

### QU'RAN PROMOTES JUST & FAIR DIVORCE

- The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness, justice, fairness and to do what is right and good.
- The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (*ma'ruf*), or separate with kindness (*ihsan*)' (*Surah al-Baqarah* 2:229).
- The proceedings for arbitration and mediation in *Surah an-Nisa'* 4:35 place both spouses on an equal footing: 'If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.'

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ End the practice of a husband's right to unilaterally divorce his wife and ensure a codified family law does not recognize this practice;
- ❖ Ensure that Muslim men and women have the equal right to divorce, including equal grounds for divorce;
- ❖ End the practice of requiring a husband's consent to a *khul'* divorce, and ensure that this is also reflected in a codified law;
- ❖ Ensure standardized procedure for divorce and mandate that all divorces must take place in court, with both parties present;
- ❖ Enforce compulsory registration for all divorces.

## DIVORCE

## POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

### EQUAL RIGHT TO DIVORCE

#### TUNISIA, TURKEY:

All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (*talaq*) by husband is not recognized.

### KHUL' DIVORCE

#### ALGERIA, EGYPT

A wife can obtain a *khul'* divorce in court without the consent of the husband upon payment of compensation.

## 7. ACCESS TO JUSTICE

### CRITICAL INFORMATION

Beyond the discriminatory nature in which Muslim family law is rendered, Muslim women also face additional barriers and challenges to accessing justices and redress in Kadhi Courts. These include:<sup>37</sup>

#### **(I) Set up of Kadhi Courts:**

According to women activists, the structure and set up of Kadhi Courts are not women friendly. Court proceedings are often held in open spaces where women are forced to express themselves in front of other people, mostly men. This is intimidating and uncomfortable to women who find it difficult then to express sensitive matters.

#### **(II) Delay in cumbersome proceedings:**

As the Muslim family law is un-codified and undefined, the procedure pertaining to divorce is also difficult to comprehend and depends on the will of the Kadhi. Women therefore face much uncertainty not just in terms of process, but also in terms of outcomes in their cases.

Women's groups have observed that as there is no defined timeframe for procedures, Kadhis often drag proceedings and procrastinate on cases, without legitimate reason. Women often waste a lot of time and money undergoing Kadhi Court processes. They are also likely to fall victim to corruption, as there have been cases where court clerks colluded with court brokers to charge women money during their court process and even influence Kadhi judges in favor of husbands.

#### **(III) Monetary and logistical issues such as High Court fees and travel distance:**

Due to poverty among many Muslim women, many cannot afford to bring a matter to court. Local advocates have suggested that mobile Kadhi Courts be introduced, where a court may be stationed in a particular town but Kadhis would make periodic visits to the rural parts of counties, where access is limited.

However the judiciary has been reluctant to introduce mobile Kadhi Courts despite the Judiciary Transformation Framework 2012-2016<sup>38</sup>, which provides for bringing justice closer to the people. Under implementation of this framework, a 'court users committee' was established where challenges faced by women and men are being discussed, addressed and rectified. However, this transformation framework does not apply to the Kadhis court system.

#### **(IV) Chief Kadhi referral:**

Appeal cases can go to the Chief Kadhi for final adjudication. However, there is only one Chief Kadhi for the entire nation, leading to a severe backlog of cases. This also provides opportunities for corruption, as a means to prioritize cases.

Women activists have observed a class-difference in women's experience of access to justice, with women from low-income or less advantaged backgrounds that constitute the majority of the court users, face more challenging situations than women with access to lawyers and information about Kadhi Courts.

Muslim women are particularly disadvantaged mainly due to their poverty and illiteracy and difficulties in obtaining the support and guidance they need during and after their cases. Women from middle-income families and who have some degree of knowledge about legal procedure are able to appeal to higher civil courts where their cases are heard and unfavorable Kadhi Court verdicts are overturned.

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<sup>37</sup> Information obtained from Kenyan advocate, February 2017

<sup>38</sup> Judiciary Transformation Framework 2012-2016 <http://www.judiciary.go.ke/portal/page/judiciary-transformation-framework>

## **RECOMMENDATIONS**

**We recommend the CEDAW committee to urge the State party to:**

- ❖ Ensure that a codified Muslim family law outlines clear due process and time frames for procedures pertaining to divorce, maintenance, appeal and enforcement orders;**
- ❖ Ensure that implementation of Judiciary Transformation Framework also covers Kadhi Courts and addresses gendered challenges in accessing justice;**
- ❖ Facilitate establishment of the Legal Clinics and Women Committees as part of the Kadhi court system, where women can reach out and are given free legal services to their long pending cases;**
- ❖ Set up a system to monitor and assess Kadhi Courts and set up a grievance mechanism (Ombudsman), whereby issues and challenges with the Kadhi Courts are investigated and addressed.**

## ANNEXE 1:

### MUSAWAH VISION FOR THE FAMILY

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do these family laws fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances. Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

It is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam and Muslim communities, to:

- ❖ Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family laws today.
- ❖ Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- ❖ Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.