



musawah

For Equality in the Family

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

OMAN

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of Oman, reporting before the 68th Session of the CEDAW Committee, November 2017.*

This is the CEDAW Committee's second engagement with Oman, which acceded to the CEDAW Convention on February 7th, 2006.

In particular, this report examines Omani laws and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: Muslim family law based on reciprocity of rights; child and forced marriage; women's consent and capacity to enter marriage; divorce rights; polygamy; custody and guardianship of children; violence against women; and nationality.

The report also contains sections on **Positive Developments in Muslim Family Laws**, with examples of good and better practices from other Muslim contexts based on Musawah's research and comparative analysis of Muslim family laws and practices in 31 countries.

Musawah hopes 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 identifying follow-up issues in the Concluding Observations.

* *Musawah would like to thank the International Human Rights Clinic at Harvard Law School for its support in the research, preparation, and drafting of this report.*

B. LEGAL BACKGROUND

Oman is a predominantly Muslim country, where Muslims make up 88.1% of the population. While there are no official statistics of religious groups, unofficial sources estimate that 72% of Omani Muslims follow the *Ibadhi* sect, 15% are Sunni, and 1.1% are Shia. Other religions practiced in Oman, mainly by non-Nationals, include Christianity and Hinduism.¹

According to the 2016 UNDP Human Development Index, Oman is ranked 52 out of 188 countries.² The 2016 World Economic Forum Gender Gap Index ranked Oman 133 out of 144 countries. In 2007, it ranked 119 out of 128 countries. The Index measures the gap between men and women in terms of economic participation, educational attainment, health, and political empowerment.³ According to 2010 figures released by the National Centre for Statistics and Information (NCSI) of Oman, women head about 7% of households in Oman.⁴

In terms of constitutional rights, Article 17 of the Basic Law of Oman states that all Omanis are equal and that there shall be no discrimination amongst them on a number of bases, including gender.⁵ Article 12 of the Basic Law states that the family is the basis of the society and commits the law to provide for the means to: (i) protect it; (ii) preserve its entity; (iii) strengthen its ties and values; (iv) safeguard its members; and (v) provide suitable conditions to develop their potential and capabilities.⁶

After Oman's accession to the CEDAW Convention, the Convention was incorporated into national law by virtue of Article 80 of the Basic Law. As such, according to the Government of Oman, "the principles of non-discrimination and equality have been incorporated in all laws promulgated subsequently and are taken into account in policymaking and in the preparation of national strategies, plans and programmes."⁷

However, Oman has taken a general reservation regarding "all provisions of the Convention not in accordance with the provisions of the Islamic *Shari'ah* and legislation in force in the Sultanate of Oman." Specifically, Oman has reservations in relation to Article 9(2) and Article 16, regarding the equality of men and women, and in particular subparagraphs (a), (c), and (f) regarding adoption.

In 2015, Oman withdrew its reservation to Article 15(4) of the Convention, "on condition of adoption of the necessary measures to put into effect its decision in this regard according to the Basic Law of the State."⁸

Oman Personal Status Law (OPSL)

The Omani Personal Status Law No. 32/1997 (OPSL) is the main codified law that governs matters related to marriage and family relations of the Muslim majority population in Oman.⁹

In the absence of other codified laws that sufficiently address a particular matter of personal status of Muslims, according to Article 281(d) of the OPSL, "the rules of the Islamic religion

1 Religious Freedom in the World Report (2016), <http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/oman.pdf>

2 UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

3 World Economic Forum, "2016 Gender Equality Index", <http://reports.weforum.org/feature-demonstration/files/2016/10/OMN.pdf>

4 Times News Services, "More than 82 percent Omani families have own houses: Study", Times of Oman, 6 July 2015, <http://timesofoman.com/article/62828/Oman/Omanisation/82-per-cent-of-families-in-Oman-have-own-houses-reveals-a-study>

5 Article 17 of Oman's Basic Law (1996), https://www.constituteproject.org/constitution/Oman_2011.pdf

6 Article 12 of Oman's Basic Law (1996), https://www.constituteproject.org/constitution/Oman_2011.pdf

7 Oman State party report, U.N. Doc. CEDAW/C/OMN/1 (2010), para. 21. <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

8 Ibid, para 21.

9 Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

that are most suitable” apply.¹⁰ Generally, the practice of Islam in Oman is influenced by the rules of *Ibadhi* jurisprudence (*fiqh*).¹¹

Marriage and family relations of Oman’s non-Muslim minority communities are governed by their own laws, as per Article 282 of the OPSL.¹² In less populated areas, tribal laws and customs are frequently used to adjudicate disputes, including those related to marriage and family relations.¹³

The OPSL is administered by the *Shari’ah* Courts of Oman. The Omani Judicial Authority Law established *Shari’ah* Courts (chambers) within each level of the judiciary – the lower courts, the appeals courts, the summary courts, and the Supreme Court – and vested within these *Shari’ah* Courts the exclusive power to adjudicate personal status matters.¹⁴

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

1. FAMILY LAW BASED ON RECIPROCITY OF RIGHTS

CRITICAL INFORMATION

Despite the equality guarantee in Article 17 of the Basic Law, the OPSL provides for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to ‘obey’ him.¹⁵

Thus, for example, Article 4 of the OPSL defines marriage as “a legal contract between a man and woman, the purpose of which is to establish a stable family under the patronage of the husband;” and Article 38 of the OPSL provides that the husband is entitled to: (i) receive the attention and obedience of his wife, as the parent of the family; and (ii) his wife’s duty to be responsible for the home and looking after their children.

Omani women have achieved significant progress in terms of accessing their rights to education, work, and free movement, as demonstrated in international statistics and local civil society reports. Nevertheless, and despite constitutional provisions stating otherwise, the OPSL includes provisions that restrict the personal rights of a Muslim wife as a result of its maintenance-for-obedience legal framework.¹⁶

Various broad legal provisions establish that the wife risks losing her financial rights if she ‘disobeys’ her husband.¹⁷

10 Article 281(d) of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

11 Ministry of Endowment and Religious Affairs Website, <http://www.mara.om/religion-in-oman/ibadism/>

12 Article 282 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

13 See UNHCR, ‘Freedom in the World – Oman’, available at <http://www.unhcr.org/refworld/country,,,OMN,4562d8cf2,4a6452939,0.html>.

14 Article 1 of the Judicial Authority Law (1999), <http://data.qanoon.om/ar/rd/1999/1999-090.pdf>

15 Articles 4, 36-38, 49, 54 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

16 Articles 54, 57-58 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

17 Article 54 states that the wife risks losing her financial maintenance if she: (i) prevents her husband from approaching her; (ii) refuses to move to the marital home without a Shari’ah based reason; (iii) leaves the marital home without valid a Shari’ah based reason; (iv) prevents her husband from entering the marital home without a valid reason; (v) refrain from travelling with her husband without a valid reason;

A wife must live with her husband in the home he provides and is generally required to abide by his decisions with respect to moving residence.¹⁸ In addition, a husband may require his wife to live with his parents and children from other wives.¹⁹ At the same time, she generally may not shelter her children from another man in the marital home, unless she can prove necessity or obtain her current husband's permission.²⁰

2011 Concluding Observations (COB's) of the CEDAW Committee stated that the committee was concerned at the persistence of a significant number of discriminatory laws and provisions including laws pertaining to marriage, divorce, nationality, guardianship and custodial rights that deny women equal rights with men.

In spite of these COB's, the Government of Oman in its 2016 State party report to the CEDAW Committee stated that the Sultanate has "*sought equality in all relations of family and marriage.*" The report further stated that the legislature has "*addressed shortcomings in the application of the Personal Status Law by amending to ensure women's optimal obtainment of their right*".

The Omani Government also stated in the report that it has taken measures to prevent exploitation of women or control of a woman's exercise of all her rights in numerous fields by supporting the legal capacity of women and defining their rights and that there are no restrictions on the legal capacity of women.

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

- The Government's initiatives to improve women's status in society are indeed valuable, and there is data that appears to show a positive environment for women's personal rights in areas such as employment and education²¹;
- Nevertheless, the OPSL is still based on maintenance-for-obedience framework, which is inherently discriminatory. Men who fail to provide financial maintenance do not lose their authority over women, while women who financially provide for the family do not enjoy corollary rights and privileges;
- In spite of the State party stating that the legislature has amended the discriminatory provisions in the OPSL, many of the provisions mentioned in this section continue to ignore Article 17 of Oman's Basic Law, which prohibits discrimination on the basis of gender;
- Discriminatory provisions in the law regarding the right to choose a residence and the restrictions on a married woman's ability have her children from a former marriage live with her are especially problematic. There is an undue burden imposed specifically on women, whereas a man enjoys an unrestricted right to choose a residence and shelter his children from a previous marriage.

18 Article 57 requires the wife to live with her husband in the marital home he provides for her. She is also required to move when he does unless she cites a condition in the contract to the contrary or he means to harm her by making her move from the domicile;

19 Article 58(a) provides that the husband has the right to require his wife to live with his parents and children from other wives in the marital home as long as he is able to support them and provided that she would not be harmed by such requirement;

20 Article 58(b) prohibits the wife from sheltering her children from another man in the marital home unless: (i) they have no other guardian; or (ii) they will be harmed if they live away from her; or (iii) if her husband has agreed to them living in the marital and he has the right to change his mind if their presence is detrimental.

21 The 2016 UNDP Human Development Report shows that 60% of women over 25 have at least some secondary education as compared to 57% of men of the same age group. According to World Bank data, female labor force participation in Oman increased from 17% in 1990 to 30% in 2016. During the same period, male labor force participation rate increased from 81% to 86%.

- Women's equality and freedom of choice should be protected by law, without imposing a burden of initiating a judicial process in order to exercise these rights;
- Anecdotal evidence demonstrates the inherent risks of the maintenance-for-obedience legal framework and lack of legal mechanisms to protect women's right to make free personal choices;
- Even in instances where rights are protected by law, Omani women often remain subject to social restrictions and control of their male relatives.²²

CHALLENGING THE MAINTENANCE-OBEDIENCE FRAMEWORK

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

These concepts have resulted in Muslim legal tradition where the husband's duty to maintain his wife and children comes with a corollary condition—that the wife is required to be obedient to him²³. Her failure to obey (*nushuz*) could lead to her losing her right to maintenance. Musawah argues that the logic of such a law, maintenance in return for obedience, is discriminatory in practice.

Musawah contends that the very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understandings of *qiwamah* and *wilayah* are juristic (*fiqh*) constructs that belong to the time and context where patriarchy was part of the social and economic fabric of life, and where men's superiority and authority over women was theoretically a given.

We can and must reconsider these concepts in line with the Qur'anic principles of justice and fairness, to build egalitarian family laws and practices that are based on social justice and enable families and their individual members to reach their full potential.

The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own, inherit and dispose property. This was the beginning of a trajectory of reform which, if carried forward 1400 years later to reflect changing times and contexts, should lead to the elimination of the legal logic of maintenance in exchange for obedience, and to the introduction of equality between men and women in all areas.

In reality today, many men fail to fulfill their duty to provide, and yet do not lose their right to demand obedience from their wives. This idea of 'complementarity' does not in practice lead to equality in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.

Women's lives and stories reveal that laws based on male authority and guardianship over women are untenable, unjust and discriminatory. Far from creating harmony in marriage,

22 In an article published in MidEast Posts, a young Omani woman writes: "So, yes Omani legislation may grant women their 'rights'... but [in Oman]... "society is more powerful than the law". If your brother or father or uncle or husband decides you can't work, then forget any dreams of working. If they decide you're not allowed to study, then forget about it. If they don't let you drive, then you don't drive. If they don't let you go anywhere without a chaperone, then you aren't going anywhere. The list is long, but this is how our girls in Salalah live. This is their reality." Gucci, Dhofar; "Women's Rights in Oman: a Depressing Conversation", MidEast Posts, December 4, 2013. <http://mideastposts.com/middle-east-society/womens-rights-oman-depressing-conversation/>

23 Musawah, CEDAW and Muslim Family Laws: In Search of Common Ground (2011), http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws_0.pdf.

these laws are the main causes of marital breakdown and violence against women and thus there is urgent need for reforms.²⁴

Oman should take steps to reform its laws in order to achieve gender equality and justice for all Omanis. The Government should take measures towards reform of the OPSL to guarantee that Muslim women and men have equal rights with regard to marriage and family relations, as well as to ensure adequate constitutional remedies for any discrimination faced by Muslim women.

RECOMMENDATIONS

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

- ❖ Remove the general reservation on the basis of non-conformity with *Shari'ah* and legislation of Oman, as well as the remaining specific reservations to Articles 9 and 16;
- ❖ Reform the OPSL to grant both husband and wife equal rights and responsibilities in marriage, within a legal framework that recognizes marriage as a partnership of equals;
- ❖ Amend the OPSL in order to eliminate all provisions that respond to a maintenance-for-obedience legal framework.

EQUALITY OF SPOUSES IN MARRIAGE

ALGERIA

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

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

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.

24 Musawah resources on *Qiwamah and Wilayah*: 1) Men in Charge? Rethinking Authority in Muslim Legal Tradition <http://www.musawah.org/knowledge-building/men-in-charge> 2) Global Life Stories Project <http://www.musawah.org/knowledge-building/global-life-stories-project>

TOOLS FOR REFORMING MUSLIM FAMILY LAW

In addition to human rights instruments, juristic tools and concepts exist within Islamic legal theory that can be used to reform discriminatory Muslim laws:

First, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh* - jurisprudence and human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practiced in its family 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 Oman following a particularly school of jurisprudence. 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.

Forth, 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 Oman, necessitate the urgent need for reform.

2. MALE GUARDIANSHIP AND WOMEN'S CAPACITY TO ENTER MARRIAGE

CRITICAL INFORMATION

As per the OPSL, consent of both parties is required for marriage. However, a prospective bride also needs the consent of a male guardian (*wali*) in order to enter into marriage. The guardian must be a Muslim male relative of the prospective bride.²⁵

If the guardian opposes the marriage, the prospective bride may seek the authorization of a judge in order to get married. The judge may authorize the marriage after providing the guardian with the opportunity to be heard, and determining that the guardian's objections are not justifiable.²⁶

25 Article 13 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

26 Articles 10(a)-(c) of the Personal Status Law, http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf; Royal Decree 55/2010, <http://www.omanlegal.net/vb/showthread.php?t=3091>

Approval of a male guardian (*wali*) is also required in order for an Omani woman to obtain a personal identity card,²⁷ a driver's license,²⁸ and a passport.²⁹

2011 Concluding Observations (COB's) of the CEDAW Committee stated that the Committee was particularly concerned about the legal provisions relating to personal status, including the need for a woman's guardian's (*wali*) permission to marry. Furthermore the committee recommended that the State party embark on reform of OPSL to fulfill international commitments with regard to matters of property, divorce, inheritance and the requirement of the '*wali*' in entering marriage.

However, in its 2016 State party report to the CEDAW Committee, the Omani Government explained that:

'A woman has the same capacity as a man to conclude a marriage contract. While the validity of a marriage contract is conditioned on the presence of the woman's guardian, if the prospective bride insists on marrying the same person despite her guardian's objection she may submit the matter to the competent judicial authorities; A woman who has filed a case for a judge to authorize her marriage and who fears abuse, may seek protection from her guardian pending resolution of her case by staying in the State-run safe house, the Dar al Wifaq (House of Harmony)' which pursues reconciliation between the plaintiff and the defendant.'

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

- As women still require consent of male guardians (*wali*) to marry or alternatively need to seek authorization of a (male) judge, they do not have the same capacity as a man to conclude marriage;
- Requiring a guardian to grant his consent to a marriage, even for women who are legal adults, and requiring a guardian's approval for a woman even to obtain a driver's license or passport, makes women perpetual minors. Thus the OPSL treats women as inferior citizens by requiring compulsory presence of a guardian (*wali*), denying them their fundamental right to equality and non-discrimination and requiring male supervision of their basic right to choose a spouse;
- Adult women should have complete agency and autonomy in these matters by law, without incurring the burden of having to pursue judicial remedies in order to validate their personal choices;
- This is derived from the concept of "protecting" women as they enter into marriage, which is paternalistic and does not recognize the present-day circumstances, where women are educated and earn a living, and undertake equal responsibilities as men.

27 Website of the Royal Omani Police, Instructions to obtain a personal identity card

http://www.rop.gov.om/old/arabic/onlineservices_faqs.asp?catgid=3

28 Website of the Royal Omani Police, Instructions to obtain a driver's license

http://www.rop.gov.om/old/arabic/onlineservices_faqs.asp?catgid=3

29 Website of the Royal Omani Police, Instructions to obtain a passport, http://www.rop.gov.om/old/arabic/dg_pr.asp

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:

- ❖ Amend the OPSL to ensure that Muslim women have equal right and capacity to enter into marriages on their own accord without permission of a male guardian or a judge;
- ❖ Reform all discriminatory provisions that render women as minors in matters of obtaining documentation such as passports and drivers license.

MALE GUARDIAN (WALI)

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

CONSENT OF MALE GUARDIAN (WALI)
NOT REQUIRED
FOR ADULT BRIDE AND GROOMS

TURKEY, TUNISIA, MOROCCO, EGYPT,
IRAQ, AFGHANISTAN

3. EARLY AND CHILD MARRIAGE

CRITICAL INFORMATION

In Oman, the minimum legal age for marriage is 18 for females and males, as per Article 7 of the OPSL. However, Article 10c of the OPSL provides that a judge may permit a girl or a boy below 18 to marry after verifying that the marriage would be “beneficial.”³⁰

The law does not stipulate an absolute minimum age below which a judge may not authorize a marriage; therefore child marriage is permissible at the discretion of a judge.³¹

30 Articles 7, 10c of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

31 Articles 16-19 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

2011 Concluding Observations (COB's) of the CEDAW Committee stated that the Committee was concerned with reports that despite legal prohibition, marriage of girls under the age of 18 is still widely practiced and accepted by Omani custom.

The Omani government in its 2016 State party report to the CEDAW Committee stated that - *“Although custom recognizes marriages below 18, the Registrar of Marriages does not. Marriage registration is compulsory, and consequently, it is forbidden to register a marriage where a partner is under 18. Child marriages, which are concluded through an agreement between the fathers of the children, are socially and legally unacceptable and are not practiced at all in Omani society.”*

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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- The Sultanate's claim that child marriages are not practiced in society because of mandatory marriage registration is untrue as these marriages, albeit unregistered, continue to occur;
- According to Oman's 2014 Multiple Cluster Indicator Survey, about 18% of women aged 20-49 in Oman were first married by 18, and 6% of women aged 15-49 were first married by 15. In addition, about 3% of women aged 15-19 are married.³²
- According to a 2013 study published by the Sultan Qaboos University Medical Journal, 75% of married women aged 20-44 years were married by age 20, with their median age at their first marriage being 16. Another important aspect of the study showed that more than half (52%) of the total marriages in Oman were consanguineous.³³
- An Omani study found that girls married at a young age (between 15 and 24) were twice as likely to contract a sexually transmitted infection as those aged 25 to 54.³⁴
- Early marriage of girls under the age of 18 is a form of violence. These children that enter into marriage are deprived of their childhood and forced to take up heavy household and family responsibilities, sometimes on top of their educational or economic responsibilities;
- Although it is a positive step to include a minimum marriage age of 18 in the law, any recognition of marriage below that age, be it customary or declared by a judge, should be penalized. If child marriage is “socially and legally unacceptable and not practiced at all in Oman,” as the Government report notes, the State is in an ideal position to completely ban this practice at this time;
- Recent anecdotal evidence and media coverage suggest that there is a trend of Omani men seeking to marry minor girls outside of Oman as well, particularly in Hyderabad and Mumbai, India in exchange for money;³⁵

32 Omani National Centre for Statistics Information & UNICEF, “Oman Multiple indicator Cluster Survey 2014”, p. 11, https://mics-surveys-prod.s3.amazonaws.com/MICS5/Middle%20East%20and%20North%20Africa/Oman/2014/Key%20findings/Oman%202014%20MICS%20KFR_English.pdf

33 Maharul, Islam M.; Dorvlo, Atsu S.; and Al-Qasbi, Ahmed M.; “The Pattern of Female Nuptiality in Oman”, Sultan Qaboos University Medical Journal; February 27, 2013 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3616798/>

34 Ending Child Marriage in the Arab World, PRB Policy Brief, May 2013, p. 4, <http://www.prb.org/pdf13/child-marriage-arab-region.pdf>

35 See, for example, “Omanis arrested in India could learn their fate today,” Times of Oman, September 24, 2017, <http://timesofoman.com/article/117878/Oman/Omanis-arrested-in-India-could-face-charges-today>; “Three more Omanis detained over child marriage in India,” Times of Oman, September 25, 2017, <http://timesofoman.com/article/117981/Oman/Three-more-Omanis-detained-by-Indian-police-for-a-probe-into-underage-marriages>; Hyderabad teen married off to Oman sheikh, mother lodges complaint against husband, Indian

- As per the Optional Protocol to the Convention on the Rights of the Child, on sale of children, child rights and pornography, which Oman ratified in 2004, “sale of children” pertains to any ‘*act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration*’. States such as Oman have a duty thereby to ensure, as a minimum, that acts pertaining to sale of children are ‘*fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis.*’³⁶

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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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 (<i>baligh</i>), 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 both girls and boys, and remove all legal loopholes that allow for exceptions to this rule;
- ❖ Enact strict legislation to criminalize child and forced marriages, and enforce punishments for planning, conducting, and failing to prevent child and forced marriages;
- ❖ Ensure that legislation apply for transnational crimes of similar nature.

Express, August 18, 2017, <http://indianexpress.com/article/cities/hyderabad/hyderabad-woman-lodges-complaint-against-husband-for-marrying-off-16-year-old-daughter-to-sheikh-4801596/>

36 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

MINIMUM AND EQUAL AGE OF MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

**18 YEARS
WITH NO
EXCEPTIONS**

EGYPT UAE, MALDIVES, INDIA, PHILIPPINES, JORDAN, TUNISIA

The minimum age for marriage is 18 for both females and males.

PAKISTAN (SINDH PROVINCE)

The minimum age for marriage is 18 for both females and males. The law criminalizes and penalizes the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnized or negligently fail to prevent it from being solemnized.

4. POLYGAMY

CRITICAL INFORMATION

As per the OPSL, a Muslim man may marry up to four wives at one time without restrictions.³⁷ Article 37(6) of the OPSL requires the husband to ensure a sense of equity and fairness between wives. However consent of an existing wife/wives to his subsequent marriage(s) is not required.³⁸

Article 58(a) provides that the husband has the right to require his wife to live with his parents and children from other wives in the marital home, provided he is able to support them and that she would not be harmed by such requirement.³⁹

Article 59 prohibits the husband from requiring his wife to live with his other wives in the marital home, unless she agrees.⁴⁰

According to Oman's 2014 Multiple Cluster Indicator Survey, only about 5% of marriages in Oman are polygamous.⁴¹ However, one media report stated that polygamous marriages are on the rise in Oman, for unjustifiable reasons such as men needing "to keep [their] libido up," thus harming women and children both emotionally and financially.⁴²

37 Articles 35(2) of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

38 Article 37(6) of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

39 Article 58(a) of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

40 Article 59 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

41 Omani National Centre for Statistics Information & UNICEF, "Oman Multiple indicator Cluster Survey 2014", p. 11, https://mics-surveys-prod.s3.amazonaws.com/MICS5/Middle%20East%20and%20North%20Africa/Oman/2014/Key%20findings/Oman%202014%20MICS%20KFR_English.pdf

42 Saleh Al-Shaibany, "Divorce falls in Oman as more men take second wives", 5 January 2010, The National, <http://www.thenational.ae/news/world/middle-east/divorce-falls-in-oman-as-more-men-take-second-wives>

The Government of Oman in its 2016 State party report to the CEDAW Committee explained that the OPSL regulates the terms and conditions under which a Muslim man may marry more than one woman as follows:

“The law requires equitableness among wives in a polygamous marriage. There are no conditions that would lead to a wife’s loss of her financial rights if her husband marries another woman.”

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT:

- Despite considerations of equality among wives in a polygamous marriage, polygamy poses significant emotional, financial, and physical harm to women and family well-being, especially when it is not consensual. In practice, polygamy often results in inequality between wives; harmful emotional consequences for first and successive wives, as well as their children; economic difficulties; and greater levels of conflict and violence within families;⁴³
- Furthermore, the fact that polygamy is legal enables the husband to use the threat of polygamy as a powerful means of control over the wife;⁴⁴
- Given the reportedly low rate of the practice and the high negative impact of polygamy on Muslim women and children, Oman is in the best position to eliminate the practice of polygamy completely.

MUSAWAH JUSTIFICATION FOR REFORM	
<p>Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. <i>Surah an-Nisa’ 4:3</i> in the Qur’an states: <i>‘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’.</i></p>	
QUR’AN PROMOTES MONOGAMY	<ul style="list-style-type: none"> • When the Qur’an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy. • The verse in <i>Surah an-Nisa’</i> 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	<ul style="list-style-type: none"> • 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.

43 CEDAW Committee General Recommendation No. 21, supra note 17. 65 The serious emotional and financial consequences of polygamy have been documented in ground-breaking 5-year research project conducted by the NGO Sisters in Islam (Malaysia) and partner universities, between 2008 and 2010 (Musawah, CEDAW and Muslim Family Laws, supra note 6, p. 35).

44 Musawah, CEDAW and Muslim Family Laws, supra note 6, p. 35.

RECOMMENDATIONS

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

- ❖ Amend OPSL to prohibit polygamy by Omani 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.

POLYGAMY AS GROUNDS FOR DIVORCE

ALGERIA, BAHRAIN, EGYPT, JORDAN, LEBANON, MAURITANIA, MOROCCO, PALESTINE:

A woman can stipulate in the marriage contract that her husband cannot take another wife. If her husband breaches this term of the marriage contract, the woman has the right to divorce.

AFGHANISTAN (SUNNI), EGYPT:

A woman may petition the court for a divorce if she is able to show that her husband's polygamous marriage is causing her harm.

BANGLADESH, PAKISTAN:

A wife may seek a divorce if her husband has taken an additional wife in contravention with the requirements of the law.

5. DIVORCE RIGHTS

CRITICAL INFORMATION

Omani law does not provide for an equal right to divorce. Under the OPSL, a husband can divorce his wife at will without any conditions, while women are provided limited grounds for divorce, obtain a divorce, which require specific conditions and/or consent of husbands. The different methods of divorce are:

(I) *Talaq* - Unilateral repudiation by the husband: A right that a husband can exercise freely with wide discretion, verbally or in writing, with or without the presence of the wife, inside or outside the courtroom;⁴⁵ A person who has special authorization by the husband can also grant *talaq* to his wife. As per the OPSL, a husband may delegate *esma*, or the right to divorce, to the wife provided it is stipulated in the marriage contract.⁴⁶

(II) *Fasakh* - Judicial divorce: Which is available to a wife upon filing a petition to court on a number of grounds, including non-payment of the dower, failure to provide maintenance, incurable or severe illness, prolonged absence, or imprisonment for over three years. In addition, a wife may seek divorce on the basis of harm;⁴⁷

(III) *Khul'* - Redemptive divorce: Whereby a wife is granted divorce in exchange for a mutually agreed compensation, which she pays the husband. A husband's consent is required for *khul'*. The marriage may also be annulled under certain conditions.⁴⁸

⁴⁵ Articles 81-89 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

⁴⁶ Article 82 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

⁴⁷ Articles 98-100, 101(a), 109-113 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

⁴⁸ Articles 87-89, 94-97 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

In its 2016 State party report to the CEDAW Committee, the Omani Government explained that Article 94 of the OPSL states “*the two spouses may agree to end their marriage through a khul’ divorce at the instance of the wife, who must pay compensation.*”

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE PARTY

- The Government of Oman’s report omits to mention that consent of the husband is still required for *khul’*, making it unattainable unless the man agrees;
- The OPSL provides no provision for judicial enforcement of *khul’* or alternate redress in cases where the husband refuses divorce;
- Additionally, although the existence of judicial divorce is positive, the limited grounds for which it may be pursued are not sufficient to protect women’s rights, and place unnecessary burdens of proof on women. In this sense, more flexible grounds, such as irreconcilable differences or discord, should be included in the law;
- The man’s unilateral right to divorce his wife at will contradicts the Omani government’s claim that “*the Sultanate has sought equality in all relations of family and marriage*,”⁴⁹
- The idea that a man can unilaterally divorce his wife without her consent or even her knowledge or her presence in court represents a gross violation of Qur’anic teachings, specifically the message of kindness and equality between spouses;
- 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;
- It is possible for states to formulate divorce laws that provide equal rights at the dissolution of marriage.

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.*’

⁴⁹ Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RECOMMENDATIONS

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

- ❖ Abolish the husband's right to unilateral divorce;
- ❖ Amend the OPSL to ensure that men and women have the equal right to divorce, including the grounds for and procedures in obtaining divorce;
- ❖ Ensure all divorces require knowledge and presence of both parties in court;
- ❖ Include irreconcilable differences and discord as valid grounds for judicial divorce;
- ❖ Ensure that *khul'* divorce by wife does not require the consent of the husband.

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 (<i>talaq</i>) by husband is not recognized.	
TALAQ DIVORCE	ALGERIA, MAURITANIA: A divorce by way of repudiation by the husband can only be effectuated through the court. BANGLADESH, PAKISTAN The standard marriage form includes a provision on the curtailment of a husband's right to divorce. MOROCCO: Divorce by <i>talaq</i> can only be effectuated under judicial supervision. The wife and children must have received all vested rights before it is authorized.	
KHUL' DIVORCE	ALGERIA A wife can obtain a <i>khul'</i> divorce in court without the consent of the husband upon payment of compensation.	

6. CUSTODY AND GUARDIANSHIP OF CHILDREN

CRITICAL INFORMATION

Omani law gives a mother priority when it comes to child custody following a divorce. However, this right only extends until a daughter reaches puberty and a son reaches merely seven years of age, unless a judge determines otherwise.⁵⁰ In addition, there are many reasons for which a mother may lose custody of her child, including remarriage.⁵¹

50 Articles 129-130 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf

51 If she (i) is deemed immature, untrustworthy or does not have the ability to care and nurture the child pursuant; (ii) has a contagious disease; (iii) marries a man who is not a close blood relative of the children (*mahram*), unless a court decides otherwise; (iv) lives in a country where it is difficult for the father to carry out his duties as guardian; or (v) waives her right for one year without valid excuse. Articles 126, 127(a), 135 of the Personal Status Law (1997), http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf.

With respect to legal guardianship, a father is generally the default guardian of his children during marriage and after a divorce, until the children reach the age of civil majority (18 years). However, while article 39 of the OPSL states that the legal age of “a person” to be an adult (*rashid*) is 18, a woman continues to be required by law to obtain her guardian’s permission to be married and to obtain basic identity documents, hence continuing to be treated as a perpetual minor.⁵²

The Government of Oman in its 2016 report to the CEDAW Committee affirmed that:

Custody of the children is the joint obligation of both spouses as during marriage. In the event of a divorce at the instigation of either spouse, the mother has priority right to custody of the children. While the OPSL prioritizes the mother regarding custody of children, the law nevertheless places the interest of the child as primary.

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

- Giving priority in the custody of the child to the mother is a positive aspect of the law. Yet, the limitations to a mother’s right to custody are significant. The age of 7 for sons and puberty for daughters means that these children, at an extremely young age, may be legally separated from their mother, potentially without any viable judicial recourse;
- Additionally, the many grounds over which a woman can lose custody of her child are unacceptably broad, leaving much room for arbitrary decisions that may not be based on the interests of the child;
- Finally, granting guardianship solely to the father by default is clearly discriminatory and disregards the right of a mother to participate in making important decisions regarding her children’s lives. While a father does not lose his right to guardianship even if he fails to fulfill his role as protector and provider for his children, a mother loses custody of her children, even if it is against their best interest.
- In all cases, the child’s best interest should be central to reforming these discriminatory provisions on custody and guardianship, given the stated government’s commitment to this principle already.

RECOMMENDATIONS

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

- ❖ **The grant of guardianship of a child, i.e. to decide all questions relating to the welfare, guidance, upbringing and education of the child, should not discriminate between a male or female;**
- ❖ **Eliminate provisions in the law that deprive a woman from her right to custody of her children if she remarries;**
- ❖ **Amend the law to allow for equal right to guardianship of children and to grant guardianship right to the mother if she has been granted custody of the child.**

⁵² Articles 139, 159-160 of the Personal Status Law (1997),
http://odaa.oregon.gov/events/personal_status_law_english_sharia_law.pdf .

EQUAL RIGHT TO
GUARDIANSHIP**INDONESIA, KENYA, SINGAPORE, TURKEY**

Ultimately, guardianship of children is determined by the courts on the basis of the best interest of the child.

CUSTODIAN'S
GUARDIANSHIP
RIGHTS**ALGERIA**

Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child.

BRUNEI

A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to what-ever conditions that the court thinks fit to impose.

TUNISIA

Mothers who have custody of their children also has guardianship rights as regards travel, schooling, and management of finances. The mother has an equal right to supervise the child's affairs.

7. VIOLENCE AGAINST WOMEN

CRITICAL INFORMATION

There is no law to criminalize domestic violence in Oman. Marital rape is also not recognized and cases of family violence can only be brought under general assault or battery charges.⁵³ Article 20 of the Omani Basic Law asserts that no person shall be subjected to physical or psychological torture, inducement or demeaning treatment and obligates the law to punish anyone who commits such acts.⁵⁴

Domestic violence and 'honor-based' violence:

The Penal Code of 1974 contains some general prohibitions that are applicable to domestic violence, but it does not specifically criminalize marital rape. Article 38(2) of the Penal Code provides that punishment within the limits of public custom is not a crime; and Article 252 provides for a reduction in penalty if a crime was committed by a man who catches his wife or a female relative committing adultery and immediately kills or injure her or her partner.

According to the 2014 Social Institutions and Gender Index,⁵⁵ domestic violence is believed to be common in Oman but is generally unacknowledged in official or media reports; prosecution of spousal assault claims are very rare.

Female Genital Circumcision / Mutilation (FGM):

Various sources suggest a relatively high prevalence of female circumcision / female genital mutilation (FGM) among Omanis. According to a 2000 National Health Survey, 85% of women approve the circumcision of girls and 53% had been circumcised.⁵⁶

53 Human Rights Watch – Oman 2016 <https://www.hrw.org/world-report/2017/country-chapters/oman>

54 Article 20 of the Basic Law of Oman (1996), https://www.constituteproject.org/constitution/Oman_2011.pdf

55 OECD Development Centre, "Oman", Social Institutions and Gender Index, 2014, p. 3, <http://www.genderindex.org/country/oman>

56 Oman State party report, U.N. Doc. CEDAW/C/OMN/1 (2010), para. 187, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

An independent survey in 2014 entitled “Female Genital Mutilation in the Sultanate of Oman” found that 64% of all female respondents said that FGM was still practiced in the family. About 25% of the 100 women participants said they were cut in the first months after their birth, with about 50% saying they were cut between the ages of 1 to 5, and the rest between 5 and 10 years.⁵⁷

In its 2016 State party report to the CEDAW Committee, the Government of Oman explained that the Omani police is required to complete their initial investigations on a report relating to violence against women and refer the case to the Public Prosecutor’s Office.

- The Ministry of Health conducts a medical examination of women who are victims of violence to ascertain the type and effects of the violence to which they were subjected;
- The *Dar al-Wifaq* (House of Harmony) provides ‘safe-house facilities to urgently protect women from violence, including women who are subjected to trafficking by providing them with temporary shelter, social, and psychological counselling, and legal advice on matters and the prosecution of perpetrators’.

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

- Although the State’s efforts to protect women through safe-house facilities are valuable, the current situation of violence against women in Oman remains highly problematic;
- While the State party report mentions specific procedural provisions in cases of violence against women, it fails to acknowledge the gravity of provisions in the law that tolerate domestic violence;
- No level of violence should be tolerated by the State, whether in the name of custom or religion;
- Provisions of the Penal Code that tolerate “punishment” of a wife encourage domestic violence, reinforces discrimination against women, and must be eliminated immediately and without delay;
- Moreover, while the State has made positive strides towards providing programs to protect women from violence, cultural acceptance of domestic violence is an alarming phenomenon that must be addressed as a priority;
- The incidence of family violence needs to be acknowledged and rejected publicly, which requires government leadership and effective engagement with civil society and the media, at all levels;
- Although FGM is banned in hospitals in Oman, anecdotal evidence suggests that it continues to be widely practiced and tolerated by medical staff.⁵⁸
- It is also imperative for the Government of Oman to consider the gravity of Female Genital Mutilation (FGM) and take steps towards ending this practice, which violates girls’ and women’s rights, creating brutal and long-lasting physical and psychological harm;
- The State should plan and implement educational and public outreach programs regarding these issues and their impact on girls and women.

57 Al Hinai, Habiba; “Female Genital Mutilation in the Sultanate of Oman”, January 2014; <https://stopfgmmiddleeast.files.wordpress.com/2014/01/habiba-al-hinai-female-genital-mutilation-in-the-sultanate-of-oman1.pdf>

58 The Issue of Female Genital Mutilation in Oman, <http://www.muscatdaily.com/Archive/Stories-Files/The-issue-of-female-genital-mutilation-in-Oman-1xye#ixzz4uzVfwvNF>

RECOMMENDATIONS

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

- ❖ Urgently repeal Articles 38(2) and 252 of the Penal Code;
- ❖ Urgently introduce legislation that explicitly criminalizes all forms of domestic violence, marital rape and honor-based violence, and include specific punishments in the law;
- ❖ Eliminate all provisions in the Penal Code or other state laws and policies that deem any form of violence against women to be acceptable or justified;
- ❖ Strictly prohibit Female Genital Circumcision / Mutilation (FGM) and enforce criminal penalties for the performance of or for failing to prevent such acts;
- ❖ Put in place educational and public outreach programs to combat violence against women, particularly domestic violence and FGM, and engage constructively with civil society in designing and implementing these programs.

VIOLENCE AGAINST WOMEN

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

'HONOR' -BASED VIOLENCE CRIMINALISED

PAKISTAN

In October 2016 Pakistan's parliament unanimously passed legislation that closed a legal loop-hole which allowed an individual accused of honor killing to walk free if he received a pardon from other family members

TUNISIA

In August 2011, parliament annulled Article 562 of the Criminal Code, which mitigated the sentence of people who claim they killed or injured their wife, daughter, or other relative to protect the family "honor."

TURKEY

Under the 2005 Penal Code honor killings are defined as a form of voluntary homicide and perpetrators are punished with life-long imprisonment. Family members who encourage another member of the family to commit a murder or to commit suicide also commit a criminal offence.

IRAQ KURDISTAN REGION,

In addition to criminalizing physical, psychological and sexual violence within the family, The Act of Combatting Domestic Violence in the Kurdistan region (Act No 9 of 2011), also recognized forced marriage, child marriage, female genital mutilation, forced divorce, verbal abuse, forced prostitution and abortion (among other violations) as constituting as domestic violence. Furthermore the Act formed a competent court to specialize in domestic violence cases.

ALGERIA

Penal Code was amended in 2016 making assault against a spouse or ex-spouse punishable by up to 20 years in prison, depending on the victim's injuries, and by a life sentence if the attack results in death.

INDONESIA

In 2004, Indonesia enacted a law against domestic violence, including physical, psychological and sexual violence, as well as economic abandonment. The law intended to provide protection to spouses, children and relatives, as well as domestic workers or other persons working or living within the domestic environment. It also granted stiff fines and long jail terms to perpetrators.

TUNISIA

In July 2017, government adopted a Law on Eliminating Violence Against Women, which introduced new criminal provisions and increased penalties for various forms of violence when committed within the family. The law calls for establishing family violence units within Tunisia's Internal Security Forces to oversee domestic violence complaints.

MALAYSIA

The first country among the Organisation of Islamic Conference (OIC) countries and the first in the South-East Asian region to pass a specific law on domestic abuse and the. The Domestic Violence Act (DVA) of 1994 recognized all forms of domestic violence as seizable offenses or crimes for which the perpetrator can be arrested without a warrant.

(8) NATIONALITY

CRITICAL INFORMATION

According to the Omani Citizenship Law issued by Royal Decree No. 38/2014,⁵⁹ a foreign wife must be married to her Omani husband for a minimum of 10 years before she can obtain Omani citizenship, while a foreign husband must be married to an Omani woman for at least 15 years in order to obtain Omani citizenship. In addition, a wife's ability to confer citizenship upon her foreign husband is subject to strict conditions.⁶⁰

An Omani man may pass his citizenship to his children automatically when they are born. However, an Omani mother may not pass her citizenship to her children, except if the father is unknown or has lost his Omani citizenship for any reason.

Outside these two conditions, a child of an Omani mother and non-Omani father may apply and be granted citizenship but under strict conditions and in accordance with an individual determination on a case-by-case basis.⁶¹

In its 2016 State Party report to the CEDAW Committee, the Omani Government asserted that there is no gender discrimination regarding citizenship.

Furthermore, the State explained that strict requirements that must be met by the non-Omani husband of an Omani woman wishing to obtain Omani nationality are *"to ensure the stability and permanence of the marital relationship with a view towards enhancing the woman's status and avoiding a situation where she becomes a means to achieve her husband's objective."*

Oman State party report, U.N. Doc. CEDAW/C/OMN/2-3 (2016)
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT:

- While an Omani woman does not lose her citizenship for marrying a foreigner, the law still includes unjust provisions that discriminates against a woman and her ability to pass her Omani citizenship to her children and foreign husband;
- The law is in violation of Article 17 of the Basic Law of Oman;
- Women should be able to transmit their citizenship in the same circumstances as men, without discrimination.

59 Omani Citizenship Law (2014), <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=542a76414>

60 Omani Citizenship Law (2014), <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=542a76414>

61 Articles 1, 2, and 6 of the Omani Citizenship Law, <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=542a76414>; see also: "Human Rights Violations Resulting from Gender Discrimination in Oman's Nationality Law," Global Campaign for Equal Nationality Rights, <http://equalnationalityrights.org/news/44-upr-oman-gender-discrimination-nationality>

RECOMMENDATIONS

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

- ❖ Take immediate steps to repeal all discriminatory provisions in the Nationality Law and other relevant procedural guidelines, which restrict a woman's right to acquire, retain, and transfer citizenship on an equal basis with men;
- ❖ Specifically ensure that Omani women can pass their citizenship to their children and foreign-born husbands, in accordance with guidelines and conditions that should be applicable equally to Omani men and women without discrimination;
- ❖ Recognize the independent right of each parent to confer citizenship based on lineal descent of his or her children.

NATIONALITY	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
TRANSMISSION OF CITIZENSHIP FROM MOTHER TO CHILD	<p>AFGHANISTAN, ALGERIA, BANGLADESH, INDONESIA, EGYPT, KENYA, MALI, MOROCCO, PAKISTAN, PALESTINE, SINGAPORE, SOUTH AFRICA, TURKEY, YEMEN:</p> <p>Mothers may pass their citizenship to their children regardless of where their children are born.</p> <p>EGYPT, INDONESIA, MALI, PAKISTAN:</p> <p>Laws or procedures specifically confer women married to foreign-born husbands with the right to transmit their citizenship to their children.</p>

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.

