



musawah

For Equality in the Family

**Musawah Submission
for 73rd Pre-Sessional Working Group on
BAHRAIN**

November 2018

[Submitted October 2018]

Musawah

15 Jalan Limau Purut, Bangsar Park, 59000 Kuala Lumpur, Malaysia

Tel: +603 2083 0202 Fax: +603 2202 0303

Email: musawah@musawah.org

Website: www.musawah.org

Musawah, the global movement for equality and justice in the Muslim family, in collaboration with the International Human Rights Clinic at Harvard Law School, submits its list of issues and questions for consideration by the CEDAW Committee in its review of Bahrain's fourth periodic State Party report. We hope these issues of concern and list of questions will provide critical information to (1) identify gaps in the State Party report, (2) frame follow-up questions the Committee could ask, and (3) help identify the critical issues for the CEDAW Committee's constructive engagement with the Bahraini government. The list of questions below focus on marriage and family relations (CEDAW Article 16), based on a review of the existing legal framework and evidence of challenges in this area.

Summary of actions since last CEDAW engagement:

Bahrain codified a unified family law in July 2017 (Family Law, No. 19 of 2017), which is a positive development since the last CEDAW engagement with Bahrain in 2014. This new law applies to both Sunni and Shi'a personal status matters. The new unified law creates legal certainty and codifies many rights for women in matters of personal status. Although the new legal framework is a significant positive step forward, there remain gaps in the law, and areas where women of both sects are subject to discriminatory provisions.

I. ISSUES OF CONCERN

A. Addressed in State party report (2018)¹

1. Legal exceptions to the minimum marriage age enable child marriage (SPR para. 201).
2. Penal Code provisions² enable honor crimes and exempt a rapist from penalty if he marries his victim (SPR para. 101).
3. Women cannot transfer their nationality to their children from a foreign husband (SPR para. 158).

B. Not addressed in the State party report (2018)

4. Discriminatory provisions treat Sunni and Shi'a women differently, creating inequalities in terms of the rights afforded to women. This applies to provisions throughout the Family Law relating to marriage, divorce, custody, and other issues.
5. A male guardian (*wali*) is required for woman to enter into marriage.
6. The Family Law includes discriminatory provisions in terms of unilateral divorce and women's access to compensatory (*khul'*) divorce.
7. Default child custody rules remove children from the mother's custody at a very early age, and a mother loses her right to custody upon remarriage.
8. The default guardian of children in the case of divorce is the father.

¹ CEDAW 73rd Session, Bahrain State party report (March 2018), U.N. Doc. CEDAW/C/BHR/4, [hereinafter SPR] available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBHR%2f4&Lang=en.

² Penal Code (No. 15 of 1976), as amended, Arts. 334 and 353, <http://www.legalaffairs.gov.bh/AdvancedSearchDetails.aspx?id=4069#.W9ObYS2ZMuw>.

II. SUGGESTIONS FOR LIST OF QUESTIONS

A. Marriage

- **Exception to minimum age of marriage:** The minimum age of marriage for girls is 16, except with approval of the *Shari'ah* court after verifying suitability of the marriage.³

Please provide data from the past 5 years on how many marriages have been approved for girls below 16,⁴ the number of marriages of girls from age 16 to 18, the ages of the husbands in marriages to girls under 18, and the specific criteria used by judges to evaluate whether the marriages are in the interest of the child.

The State report also mentions that the Bahraini Child Law (No. 37 of 2012) defines a child as any person below 18 years of age.⁵ Please provide information on efforts by the State to eliminate this contradiction in the law and bring Bahrain to compliance with its relevant international commitments.

- **Capacity to enter marriage:** The Family Law treats Sunni and Shi'a women unequally in this regard. The Family Law states that approval of a woman's male guardian (*wali*) at the time of marriage is required for a Sunni marriage contract to be valid.⁶ Guardianship may be transferred to a judge in cases of a guardian's unreasonable withholding of approval (*adl*).⁷ The law further specifies that this provision applies to Sunni Bahraini women in particular, in an apparent exemption of foreign Sunni women from this requirement.⁸ The law does not require a guardian's approval for a marriage contract to be valid if the woman is Shi'a.

Please provide information on whether the State party is considering amending the law to ensure all adult women enjoy equal capacity to enter into marriage.

Please also provide information from the past 5 years on cases in which Sunni women seek court authorization for guardians' unreasonable refusal to grant approval (*adl*); how often these requests are granted or denied; and for what reasons.

³ Family Law (No. 19 of 2017), Art. 20,

<http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=145311#.WacWBa2ZN00>.

⁴ The State report indicates that the average marriage age in Bahrain is 24 years for females, SPR para. 201.

⁵ SPR, para. 201.

⁶ Family Law (No. 19 of 2017), Art. 28.

⁷ Family Law (No. 19 of 2017), Art. 15.

⁸ Family Law (No. 19 of 2017), Art. 28.

B. Unequal rights to divorce and *khul'*

- **Unequal access to divorce:** The Family Law grants men the full and exclusive right to unilateral divorce pronouncement (*talaq*).⁹ A husband may delegate this right to the wife by mutual agreement, which may be incorporated in the marriage contract. The Family Law provides that *talaq* pronouncements are made in court, but out of court pronouncements may be proved by evidence.¹⁰ In the case of Shi'a divorces, two witnesses are required for *talaq* to be valid.¹¹

Please explain the inequality in protection afforded to Shi'a and Sunni women in terms of proving a divorce through witnesses, especially if the *talaq* pronouncement is made out of court.

Please provide data from the past 5 years on the percentage of *talaq* pronouncements that are made outside of court, information on resulting court disputes, and how courts treat these disputes. Please clarify whether the State plans to take any steps to address the inequality in access to divorce – between men and women and between Shi'a and Sunnis – and provide for equal access to Unilateral, non-judicial divorce.

- **Compensated (*khul'*) divorce:** The Family Law provides for compensated (*khul'*) divorce, in which the wife may offer to pay to the husband a mutually agreed upon amount. If a husband objects to the *khul'* or to the compensation amount, a Sunni woman may obtain *khul'* if the judge determines that the husband's refusal is unreasonable.¹² No such provision exists for Shi'a women, who may only obtain *khul'* by consent of the husband.¹³

Please provide information from the past 5 years on compensation amounts women must pay their husband for *khul'* divorce, both as a gross figure and as a percent of the woman's income. Considering that a husband's agreement is generally required (and in the case of Shi'a women, without recourse if a husband refuses), how many Sunni and Shi'a women seek *khul'* divorce and are denied? Please also provide information on the criteria used to determine the amount of *khul'* compensation women must pay, and on measures being taken to limit the amount of *khul'* compensation required.

- **Custody of children:** Different rules of child custody apply to Sunni and Shi'a women: Divorced Sunni mothers lose custody of their sons when they reach 15 years of age and may keep custody of their daughters until they marry. Divorced Shi'a mothers, however, lose custody of both sons and daughters once they reach merely 7 years of age.¹⁴ In both cases, children are afforded a choice to live with either parent upon reaching a certain age, which again differs by sect (for Sunnis the age is 15 for males and 17 for females, and for Shi'a it is 15 for males and 9 for

⁹ Family Law (No. 19 of 2017), Art. 83.

¹⁰ Family Law (No. 19 of 2017), Art. 89.

¹¹ Family Law (No. 19 of 2017), Art. 86.

¹² Family Law (No. 19 of 2017), Art. 95.

¹³ Family Law (No. 19 of 2017), Art. 95.

¹⁴ Family Law (No. 19 of 2017), Art. 124.

females).¹⁵ For both, mothers lose their right to custody if they remarry, unless a judge determines otherwise.¹⁶

Please explain how the current custody regime serves the best interest of children, and the rationale for why women should lose custody of the child upon remarriage.

Please provide data from the past 5 years on the number of divorced women with children (below 15 years of age). Please provide information on custody dispute cases in Bahraini Sunni and Shi'a family courts: what percentage of divorced women seek custody rights through family courts? in what percentage of cases do judges award custody to the mother, and on what basis? How are the best interests of the child defined by Bahraini courts? Please also provide data about how often mothers lose custody of their children upon remarriage.

- **Guardianship of children:** Guardianship of children rests with fathers by default, irrespective of custody.¹⁷

Please provide information on the rationale that underlines this inequitable system, which excludes mothers from participating in making decisions related to their children's education, health, travel, etc. Please also provide information on how women are able to become formal guardians, and how often this occurs.

C. Violence Against Women

- **Honor crimes in the Penal Code:** Article 334 of the Bahraini Penal Code explicitly provides for a lesser penalty (unspecified prison term) for murdering or gravely assaulting a spouse (and the spouse's alleged sexual partner), if the murder or assault is committed immediately upon walking onto them while engaged in adultery.¹⁸

Please provide data from the past 5 years on the number of murders and assaults that were determined to fall under the scope of Article 334, and information on average prison terms in cases of conviction.

The State report (para. 101) indicates the existence of a proposal to amend this article. Please provide the text of this amendment and the progress of the amendment process, including the expected timeline for adoption and entry into force of the amendment.

- **Permitting a rapist to escape his crime if he marries his victim:** Article 353 of the Bahraini Penal Code permits releasing a convicted rapist of criminal liability if the rapist marries his victim. This is a dangerous loophole, which allows rapists to escape criminal liability and renders women, especially in a conservative society, vulnerable to accepting marriage to criminals.¹⁹

¹⁵ Family Law (No. 19 of 2017), Art. 125.

¹⁶ Family Law (No. 19 of 2017), Art. 127.

¹⁷ Family Law (No. 19 of 2017), Arts. 133-134.

¹⁸ Penal Code (1976), as amended, Art. 334.

¹⁹ Penal Code (1976), as amended, Art. 353.

The State report (para. 101) indicates the existence of a proposal to abolish this article, which was referred to the legislature. Please provide further details on the progress of the amendment process, including the expected timeline for adoption and entry into force of the amendment.

A. Nationality

- ***Woman's ability to confer citizenship to their children from a foreign spouse:*** Bahraini women do not have the capacity to confer citizenship to their foreign spouses or children born out of marriage to a foreign husband, except in cases where the children may otherwise be left stateless.²⁰ The State report (para. 159) mentions ongoing efforts to amend the Nationality Law.

Please provide data from the past 5 years on the number of non-citizen children and stateless children of Bahraini mothers. Please also provide data on how many foreign men divorce or leave Bahraini women, thus leaving Bahraini women alone with non-citizen children in Bahrain.

Finally, please provide more details on the proposed amendment to the Nationality Law, including the text of the amendment, and an update on the amendment process and expected timeline for adoption and entry into force.

²⁰ Nationality Law (No. 8 of 1963), as amended, Arts. 4, 5, <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2197#.W9hKKC2ZMuw>.