



# **musawah**

For Equality in the Muslim Family

## **Musawah Thematic Report on Article 16: Qatar**

**57<sup>th</sup> CEDAW Session  
Geneva, Switzerland  
February 2014**

**Musawah**

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# Musawah Thematic Report on Article 16: Qatar

## 57<sup>th</sup> CEDAW Session

### February 2014

## I. INTRODUCTION

### A. Objective

Musawah, the global movement for equality and justice in the Muslim family, submits its sixth Thematic Report on Article 16 for consideration by the CEDAW Committee in its review of Qatar, reporting before the 57<sup>th</sup> Session of the CEDAW Committee.<sup>1</sup> This report follows the July 2013 submission of the *Musawah List of Issues and Questions on Article 16: Qatar* to the CEDAW Committee, during its Pre-Sessional Working Group.<sup>2</sup>

Musawah's issues of concern and supplementary research take a critical look at the status of marriage and family relations, as encapsulated in Article 16 of the CEDAW Convention. Since the concerns of equality and justice in the family are crosscutting, issues in Article 2 (*implementation of non-discrimination*), Article 9 (*equal rights with regards to nationality*), and Article 15 (*equality before the law; freedom of movement and residence*) are also covered.

In particular, this report examines Qatari laws and practices that enforce direct and de jure discrimination against women in the following areas: **same right to enter marriage; early and forced marriage; equal rights and responsibilities; polygamy; domestic violence; divorce; custody and guardianship of children; right to confer nationality to children; and inheritance.**

It is hoped 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 Islamic legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation to its international human rights treaty obligations; and (3) suggesting recommendations for reform based on good practices in Muslim contexts.

Musawah hopes that the CEDAW Committee will utilise the content of this report as a key resource during its Constructive engagement with the State party, and in follow-up activities on the Concluding observations.

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<sup>1</sup> Musawah: <http://www.musawah.org/>.

<sup>2</sup> *Musawah List of Issues and Questions on Article 16: Qatar* (July 2013), available at: <http://www.musawah.org/sites/default/files/MusawahListofQuestionsQatar57CEDAW2014.pdf>.

## B. Methodology

This report draws on three methods of analysis that outline and challenge the structure of discrimination in Muslim family laws (MFL) and practices. These methods are derived from the *Musawah Framework for Action*, which advocates for reform from multiple approaches: Islamic sources, including Muslim jurisprudence; international human rights standards; national laws and constitutional guarantees of equality; and lived realities of women and men.<sup>3</sup>

In particular, this report argues for reform of discriminatory law and practice, according to the provisions of the CEDAW Convention, by providing (1) sociological research on the effect of discriminatory law and practice on lived realities of women and families, and (2) Islamic legal analysis that also draws on sociological evidence of harm to advocate for reform.

In this section, Musawah also presents the CEDAW Committee with (3) a useful framework for outlining the structure of discrimination in Muslim family laws and practices.

### (1) Documenting evidence of discrimination and harm in lived realities

*Discriminatory laws and practices cause harm to women and families, and thus must be changed to ensure equality and justice for women.*

This report advocates for reform by first providing sociological research and analysis on the extent of discriminatory law and practice, and its effect on the lived realities of women and families.<sup>4</sup> In doing so, it measures the reality of key issues related to marriage and family relations against what the State party has stated, and against the standards of equality and non-discrimination required by the CEDAW Convention.

Research compiled in this report was conducted based on a close review of Qatar's initial State party report (2012),<sup>5</sup> the CEDAW Committee's list of issues and questions (2013),<sup>6</sup> the State party's reply to list of issues (2013),<sup>7</sup> and an extensive review of the reality of critical issues on the ground based on available and credible primary and secondary sources, including shadow reports submitted by local women's rights organisations to the CEDAW Committee for the 57<sup>th</sup> CEDAW Session. Every effort was made to find credible, varied and balanced information, and to use full citations throughout.

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<sup>3</sup> *Musawah Framework for Action*, available at: [http://www.musawah.org/framework\\_action.asp](http://www.musawah.org/framework_action.asp).

<sup>4</sup> In particular, this report documents three kinds of gender-based discrimination: (1) Provisions of discriminatory laws and regulations; (2) consequences of legal discrimination; and (3) disconnect between existing egalitarian laws and discriminatory realities, as and when relevant.

<sup>5</sup> CEDAW 57<sup>th</sup> Session, Qatar State party report (March 2012), U.N. Doc. CEDAW/C/QAT/1, [hereinafter SPR 2012] available at: <http://daccess-ods.un.org/TMP/8880431.65206909.html>.

<sup>6</sup> CEDAW 57<sup>th</sup> Session, List of issues and questions in relation to the initial report of Qatar, CEDAW/C/QAT/Q/1 (August 2013) [hereinafter CEDAW Committee list of issues], available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2fQ%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2fQ%2f1&Lang=en).

<sup>7</sup> CEDAW 57<sup>th</sup> Session, List of issues and questions in relation to the initial report of Qatar—Addendum: Replies of Qatar, CEDAW/C/QAT/Q/1/Add.1 (December 2013) [hereinafter State party response], available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2fQ%2f1%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2fQ%2f1%2fAdd.1&Lang=en).

## (2) Challenging State religious authority with Islamic legal sources

*Discriminatory laws and practices—even those justified in the name of religion and culture—cause harm to women and families, and thus must be changed to ensure equality and justice for women. Reform of family laws from within Islamic traditions is both necessary and possible.*

Governments of countries with Muslim family law systems often argue that laws cannot be amended to allow for equality between men and women, because the law is ‘divine Islamic law’ (or ‘*Shari’ah*’), and therefore unchangeable.<sup>8</sup>

This report further advocates for reform by drawing on a variety of theories and methods within Islamic jurisprudence that can be used to reform Muslim laws:<sup>9</sup>

- ❖ First, there is a distinction between *Shari’ah*, the revealed way, and *fiqh*, or human interpretation of the *Shari’ah*. Much of what is deemed to be ‘Islamic law’ today is *fiqh* and not divine law, and therefore is human, fallible and changeable.<sup>10</sup>
- ❖ Second, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, rather than spiritual or devotional matters. As such these rulings have always been open to consideration and change.
- ❖ Third, diversity of opinion has always been accepted and celebrated in Islamic jurisprudence, which is why there are multiple schools of law. The fact that different countries have different laws demonstrates that there is no unified, monolithic ‘divine’ law. We must recognise that contemporary codified laws are not God-given, but were adopted by humans serving in legislatures or committees. Humans can thus change the laws to be more just and equal.
- ❖ Fourth, laws or amendments introduced in the name of *Shari’ah* and Islam should reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These values correspond with contemporary human rights principles.

This methodological framework challenges the Islamic basis of discriminatory arguments used by the State party to justify reservations and non-compliance to the CEDAW Convention. Furthermore, it enables stakeholders to address noted discrimination and harm as violations of not only the CEDAW Convention, but the very spirit of equality and justice in Islam that the State party purports to uphold.

Since these interpretations and laws are human-made and concern relations between humans, they can change within the framework of Islamic principles, in conjunction with international human rights standards and constitutional guarantees of equality, and in accordance with the changing

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<sup>8</sup> For greater examination of state parties’ use of Islam and *Shari’ah* to justify reservations and resist demands for legal reform, see Musawah, *CEDAW and Muslim Family Laws: In Search of Common Ground* (2011), available at:

[http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws\\_0.pdf](http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws_0.pdf).

<sup>9</sup> For more information, see *Musawah Framework for Action*, *supra* note 3.

<sup>10</sup> In Islamic theology, *Shari’ah* (lit. the way, the path to a water source) is the sum total of religious values and principles as revealed to the Prophet Muhammad to direct human life. *Fiqh* (lit. understanding) is the process by which humans attempt to derive concrete legal rules from the two primary sources of Islamic thought and practice: the Qur’an and the *Sunnah* of the Prophet. As a concept, *Shari’ah* cannot be reduced to a set of laws—it is closer to ethics than law. It embodies ethical values and principles that guide humans in the direction of justice and correct conduct. *Musawah Framework for Action*, *supra* note 3.

realities of time and place. Positive reforms in Muslim family laws and evolutions in practices provide support for this possibility of change.

### **(3) ‘Complementary’ rights and responsibilities: Structural roots of inequality in MFL**

*Specific discriminatory laws and practices are rooted within a greater structure of discrimination, which Musawah urges the CEDAW Committee to recognise and address.*

Musawah draws the CEDAW Committee’s attention to the classical Muslim marriage contract, which was patterned by classical Muslim jurists on the contract of sale, and establishes the wife’s legal duty of obedience (*tamkin*) to the husband, and the husband’s legal duty of protection and maintenance (*nafaqa*) as the right of the wife, which she loses through disobedience (*nushuz*).<sup>11</sup>

This construction of marriage as a relationship of ‘complementary’ rights and responsibilities forms the structural basis for discrimination, and informs specific discriminatory laws and practices in many Muslim family laws today. The model of male authority and female submission directly or indirectly justifies discrimination against women in a variety of ways, including: men’s right to sexual access, polygamy, unilateral divorce (*talaq*), and greater shares of inheritance over female siblings; women’s lack of choice and consent in marriage, financial security, decision-making power in family and society, and right to guardianship of children; and women’s inability to transmit nationality to children.

Marriage as defined by ‘complementary’ rights is inherently discriminatory, and thus contradicts universally accepted human rights norms. Furthermore, it is impossible to sustain such a marital construction in present day economic and social realities: Many men are unable or unwilling to protect and provide for their families, while women often serve as the protectors of their families, provide essential income for family survival, and contribute through unpaid labour.

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<sup>11</sup> Musawah is currently undertaking a major research building initiative on the concepts of *qiwamah* and *wilayah*, which are commonly understood as male authority and guardianship over women and children. These concepts play a central role in institutionalising, justifying, and sustaining a patriarchal model of families in Muslim contexts, including the relationship of ‘complementary’ rights and responsibilities between men and women. For more information, see *Musawah’s Knowledge Building Initiative on Qiwamah and Wilayah*, at: <http://www.musawah.org/what-we-do/qiwamah-and-wilayah>. Also see Musawah’s Oral Statement presented at the 9<sup>th</sup> Session of the UN Working Group on Discrimination against Women in Law and Practice, available at: <http://www.musawah.org/musawah-oral-statement-discrimination-against-women-law-and-practice>

## II. LEGAL BACKGROUND

This is the CEDAW Committee's first engagement with the State of Qatar, which ratified the CEDAW Convention on April 29, 2009, and entered Reservations to Article 2(a) (*in connection with the rules of the hereditary transmission of authority, as it is inconsistent with the provisions of the Article 8 of the Constitution*), Article 9.2 (*as it is inconsistent with Qatar's law on citizenship*), Article 15.1 (*in connection with matters of inheritance and testimony, as it is inconsistent with the provisions of Islamic law*), Article 15.4 (*as it is inconsistent with the provision of family law and established practice*), Article 16.1(a) and (c) (*as it is inconsistent with the provisions of Islamic law*), and Article 16.1(f) (*as it is inconsistent with the provisions of Islamic law and family law*).<sup>12</sup>

### (1) Legal history

Qatar has a mixed legal system drawing from both civil law and Islamic law. Since independence in 1971 from its status as a British protectorate, a Penal Code, Civil and Criminal Procedure Codes, and Laws on Judicial Organisation have been adopted. *Shari'ah* is one of the sources of Qatari legislation, and is applied to aspects of family law, inheritance, and certain criminal acts. The Hanbali school of *fiqh* is the predominant *madhhab*, and classical Hanbali *fiqh* is applied to personal status matters.<sup>13</sup>

### (2) Codification of personal status law: *Qatari Law of the Family No. 22 (2006)*

In 2006, a codified family law (*Qatari Law No. 22*) was passed.<sup>14</sup> Before this, personal status law was uncoded, and family matters were regulated within *Shari'ah* courts by judges, who based judgments on their own interpretation of the *Shari'ah*, often in arbitrary and discriminatory ways.<sup>15</sup>

### (3) Constitutional status of Islamic law

Article 1 of the Constitution of the State of Qatar (effective June 9, 2005) declares that Islam is the state religion, and provides that, 'the Islamic *Shari'ah* is the main source of its legislation legislation.'<sup>16</sup>

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<sup>12</sup> United Nations Treaty Collection: CEDAW Declarations and Reservations, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en).

<sup>13</sup> Abdullahi A. An-Na'im (ed). *Islamic Family Law in a Changing World: A Global Resource Book* (2002), pp. 134-135.

<sup>14</sup> Lynn Welchman. 'Bahrain, Qatar, UAE: First time Family Law Codifications in Three Gulf States,' *International Survey of Family Law*, Bill Atkin, ed. (July 2010), p. 1, available at: [http://eprints.soas.ac.uk/10899/1/Welchman\\_'Bahrain,\\_Qatar,\\_UAE'\\_ISFL\\_2010.pdf](http://eprints.soas.ac.uk/10899/1/Welchman_'Bahrain,_Qatar,_UAE'_ISFL_2010.pdf).

<sup>15</sup> Musawah. *Home Truths: A Global Report on Equality in the Muslim Family* (2009), pp. 4-5, available at: [http://www.musawah.org/sites/default/files/Home%20Truths-EN\\_0.pdf](http://www.musawah.org/sites/default/files/Home%20Truths-EN_0.pdf).

<sup>16</sup> Articles of the Constitution of Qatar, available at: [http://www.constitution.org/cons/qatar/constit\\_2003.htm](http://www.constitution.org/cons/qatar/constit_2003.htm).



### III. KEY ISSUES RELATED TO MARRIAGE AND FAMILY RELATIONS

This section identifies critical issues of discrimination against women under Article 16 (and Articles 2, 9, and 15, as relevant) raised by key documents in the engagement between the Qatari State party and the CEDAW Committee. The section also presents research from other primary and secondary sources (including Shadow reports submitted by local women's rights organisations to the CEDAW Committee for the current Session), to assist the CEDAW Committee's Constructive engagement process with the State party.

In addition, each section provides justification for reform based on arguments that affirm the possibility and necessity of change within Muslim contexts.

The section further provides recommendations and a listing of good practices in member countries of the OIC to illustrate that reform is possible in Muslim contexts.

#### A. Guardianship

**Reservation to Article 16.1(a):** *The State party claims that Article 16.1(a) (same right to enter into marriage) is inconsistent with the provisions of Islamic law.*<sup>17</sup>

**Reservation to Article 15.4:** *The State party claims that Article 15.4 (equal rights with regard to movement of persons and freedom to choose residence) is inconsistent with the provisions of family law and established practice.*<sup>18</sup>

##### (1) Critical information

- ❖ **Guardian (*wali*) required for women to enter marriage.** Under the codified law, the consent of a woman's male guardian (father, or another male relative) is required for a woman's marriage.<sup>19</sup> This restricts the right of women to freely choose a spouse and to enter into marriage with their free and full consent.
- ❖ **Guardian (*wali*) has legal right to restrict women's movement.** Women must obtain the approval of their husband or male guardian (father, or another male relative) before applying for or renewing a passport<sup>20</sup> and driver's license.<sup>21</sup> All women under 25 years must also obtain their guardian's permission in order to leave Qatar; further, guardians can notify customs and immigrations officials that their prior permission is required before their wife or female relative attempts international travel.<sup>22</sup>

<sup>17</sup> United Nations Treaty Collection, *supra* note 12.

<sup>18</sup> *Ibid.*

<sup>19</sup> Qatar SPR 2012 paras. 419-420, and 451.

<sup>20</sup> Embassy of the US, 'Human Rights Report: Qatar' (2012), available at: <http://www.state.gov/documents/organization/204590.pdf>.

<sup>21</sup> Permission of male guardian required for women to obtain driver's license. [UN Economic and Social Commission for Western Asia (ESCWA), 'Country Profiles: Qatar' (2002), available at: <http://www.escwa.un.org/index.asp>.

<sup>22</sup> Women in this situation may appeal to the National Human Rights Commission. Freedom House, 'Women's Rights in the Middle East and North Africa: Qatar' (2010), p. 10, available at: [http://www.freedomhouse.org/sites/default/files/inline\\_images/Qatar.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/Qatar.pdf).



## (2) Musawah Justification for Reform

- ❖ **On capacity to enter into marriage:**<sup>23</sup> There are neither verses in the Qur'an nor references in *Hadith* that stipulate guardianship as a condition for marriage. Historically, the requirement of *wali* applied to both boys and girls and in some practices, both the mother and the father held guardianship. Court records in Egypt show that in pre-modern times, mothers had the right to oversee marriage of their minor children, and that judges often determined that mothers be guardians over the life and property of orphaned children. However, codification processes in Egypt, based on the French Napoleonic Code in the late 19<sup>th</sup> century, denied mothers the right of guardianship over their children and their children's property.<sup>24</sup> Given the changing position of women in Qatari society, both in education and in the workforce, and historical practice in Muslim contexts, a competent adult woman should be given unrestricted rights to choose if, when and whom to marry as is already the position in the Hanafi school of law.

## (3) Recommendations

- ❖ Ensure men and women the same right to enter marriage, including repealing discriminatory laws, regulations, and practices requiring for a guardian's consent or approval.
- ❖ Ensure men and women the equal rights to freedom of movement, including repealing discriminatory laws, regulations, and practices requiring for a male guardian's consent or approval for travel, and obtaining a driver's licence and passport.

## (4) Good practices<sup>25</sup>

- ❖ **Bangladesh, Pakistan, Sri Lanka:** A *wali* (guardian) is not required for Hanafi women who have reached puberty.
- ❖ **Kyrgyz Republic, Turkey, Uzbekistan:** A *wali* is not required.
- ❖ **Morocco:** A woman gains the capacity to contract her own marriage at the age of majority.
- ❖ **Tunisia:** Both husband and wife have the right to contract their marriage themselves, or to appoint proxies. The consent of a *wali* is not required, provided that both husband and wife are of the legal age of consent.

## B. Early and Forced Marriage

**Reservation to Article 16.1(a):** *The State party claims that Article 16.1(a) (same right to enter into marriage) is inconsistent with the provisions of Islamic law.*<sup>26</sup>

### (1) Critical information

- ❖ **Different minimum age of marriage (16 for females; 18 for males); further legal exceptions enable child marriage.**<sup>27</sup> According to Family Law Article 17, consent of both parties and the girl's guardian, and permission from a competent judge is required for the

<sup>23</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, pp. 32-33.

<sup>24</sup> Musawah, *WANTED: Equality and Justice in the Muslim Family* (2009), pp. 200-201, available at: [http://www.musawah.org/sites/default/files/WANTED-EN-2edition\\_0.pdf](http://www.musawah.org/sites/default/files/WANTED-EN-2edition_0.pdf).

<sup>25</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 46.

<sup>26</sup> United Nations Treaty Collection, *supra* note 12.

<sup>27</sup> Qatar SPR 2012 paras. 126 and 422.

marriage of girls below 16.<sup>28</sup> There is no consistent criteria used to determine a judge's interpretation of 'proper' justification to permit marriage for girls under 16; it is also unclear how a minor might consent to such a marriage.<sup>29</sup> The most recent official data is available from 2009, when a total of 436 marriages (out of a total 3,153) were registered for both Qataris and non-Qataris for women between the ages of 15 and 19.<sup>30</sup> Further information is unavailable on how many marriages have been approved for girls below 16, the ages of husbands in said marriages, and the specific criteria used by judges to validate these marriages.

- ❖ **Early and forced marriage infringes on women and girls' physical and mental integrity.** Research indicates that early and forced marriage often leads to physical, sexual, and mental violence; and increased risk of maternal and other pregnancy-related complications.<sup>31 32</sup> Younger women often have less knowledge of their bodies and rights, and are in a weaker position to stand up to their husbands if they are sick, hurt, or face domestic violence.<sup>33</sup>
- ❖ **Early and forced marriage limits women and girls' right to education, employment, and financial independence.**<sup>34</sup> This contradicts the State party's own emphasis on women's fundamental rights to education and employment.<sup>35</sup> A woman's financial independence affects both her decision-making powers within the family,<sup>36 37 38</sup> her decision and ability to divorce, and her financial and physical vulnerability in the case of divorce. Furthermore, women's access to education and employment affects the well-being of communities and society.<sup>39 40</sup>
- ❖ **Early and forced marriage challenges family peace and well-being.** Research indicates that early and forced marriage often leads to difficulties in marriage—including divorce and health risks, such as HIV/AIDS—and has greater impact on the general level of violence in families.<sup>41</sup>

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<sup>28</sup> Qatar SPR 2012 paras. 126 and 422.

<sup>29</sup> Independent Group of Concerned Citizens, 'Qatar Shadow Report' (2013), p. 13, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_16177\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_16177_E.pdf).

<sup>30</sup> 'Qatar Information Exchange,' statistics provided by Qatar Statistics Authority, available at: [http://www.qix.gov.qa/portal/page/portal/qix/subject\\_area/Statistics?subject\\_area=289](http://www.qix.gov.qa/portal/page/portal/qix/subject_area/Statistics?subject_area=289).

<sup>31</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 31.

<sup>32</sup> The Beijing Platform for Action (BPFA), available at: <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>; and CEDAW Committee General Recommendation No. 21: Equality in marriage and family relations (1994), available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

<sup>33</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 31.

<sup>34</sup> The Beijing Platform for Action (BPFA), *supra* note 42; and CEDAW Committee General Recommendation No. 21, *supra* note 42.

<sup>35</sup> Qatar SPR 2012 paras. 106 and 143, respectively.

<sup>36</sup> Ziba Mir-Hosseini and Zainah Anwar, "Decoding the 'DNA of Patriarchy' in Muslim family laws" (21 May 2012), available at: <http://opendemocracy.net/print/65974>.

<sup>37</sup> CEDAW Committee General Recommendation No. 21, *supra* note 42.

<sup>38</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 31.

<sup>39</sup> *Ibid.*

<sup>40</sup> CEDAW Committee General Recommendation No. 21, *supra* note 42.

<sup>41</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, pp. 32-33.

## (2) Musawah Justification for Reform

- ❖ **On minimum age of marriage:**<sup>42</sup> Attempts to set 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.' Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. Reportedly, Aishah was six years old when she was betrothed, and nine when the marriage was consummated. However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage.<sup>43</sup> More importantly, 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. The justification for child marriage quoting the precedent of Aishah's marriage to the Prophet must be challenged.

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, fixes adulthood on children under 18, even onto those who start menstruating at the age of nine or ten. The onset of puberty is no indication of sufficient maturity for marriage.

- ❖ **On forced marriage:**<sup>44</sup> The power of constraint in marriage, known as *wilayat al-ijbar*, under which the guardian has the right to determine a spouse and compel a ward to marry, is most likely rooted in pre-Islamic Arab social customs, which were incorporated into *fiqh* by [classical] jurists. Most OIC member states have banned *ijbar* marriages, either by law or regulation.

## (3) Recommendations

- ❖ Increase the minimum legal age of marriage to 18 for both men and women, with no legal exceptions.
- ❖ Exercise due diligence to prevent, investigate, and punish acts that are aimed at coercing a child into forced and early marriage. Amend the Penal Code to include penalisation of forced marriage of girls under 18.
- ❖ Provide reparation to victims and survivors of forced and early marriage, including allowing women forced into marriage the retroactive right to invalidate the marriage, or the right to divorce.
- ❖ Enforce mandatory registration of marriage, and improve existing registration mechanisms.
- ❖ Provide detailed court cases that show judges' rational for allowing marriage of girls under 16, and provide statistics on the number of such documented cases in Qatar.

## (4) Good practices

- ❖ **Minimum age of marriage:**<sup>45</sup>
  - **Algeria:** The minimum age of marriage is 19 for both males and females. The judge can grant an exception on the grounds of benefit or necessity.

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<sup>42</sup> *Ibid*, pp. 30-31. Also see *Musawah Statement to OHCHR on Child, Early and Forced Marriage*, available at: <http://www.musawah.org/musawah-to-OHCHR-child-marriage>.

<sup>43</sup> Muhammad Khalid Masud (trans), 'Prophet Muhammad's wife A'isha: How Old was she at the Time of her Marriage?' available at: <http://www.sistersinislam.org.my/news.php?item.997.41>.

<sup>44</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 32.

<sup>45</sup> *Ibid*, p. 45.

- **Bangladesh:** The minimum age of marriage is 18 for females and 21 for males; exceptions are not permitted.
  - **Morocco:** The minimum age is 18 for both males and females. The judge may grant an exception with the assistance of medical expertise, or after having conducted a social enquiry.
  - **Sierra Leone:** The minimum age is 18 for both males and females.
  - **Turkey:** The minimum age is 18 for females. The courts can permit the minimum age to be lowered to 16, under exceptional circumstances.
- ❖ **Forced Marriage**<sup>46</sup>
- **Algeria:** It is forbidden for the *wali* to compel a woman to marry; he may not give her in marriage without her consent.
  - **Malaysia:** Between 2003 and 2005, the Islamic Family Laws of different states were amended, banning *ijbar* marriages.
  - **Morocco:** Couples may not be coerced into marriage under any circumstances.
  - **Nigeria:** For Maliki communities (the majority of Nigerian Muslims), a biological father has the power of *ijbar*. However, the *wali* cannot compel his daughter to marry a man suffering from contagious diseases, insanity, or reproductive problems. Case law is clear that *ijbar* cannot be enforced for adult women, and the courts generally accept a variety of circumstances that overrule of the possibility of *ijbar*, including where the woman has her own financial income.
  - **Pakistan:** Case law provides that marriage without the consent of both spouses is void.
  - **Saudi Arabia:** In April 2005, the top religious authorities banned the practice of forcing women to marry against their will, stating that it contravenes provisions of the *Shari'ah*. The clerics said that whoever forces a woman to marry against her will is disobeying God and His Prophet, and that coercing women into marriage is 'a major injustice' and 'un-Islamic.'
  - **Tunisia:** There is no marriage without the consent of both spouses. A marriage contracted without such consent is declared null and void.

### C. Equal Rights & Responsibilities

**Reservation to Article 16.1(c); Declaration to Article 5(a):** *The State party claims that Article 16.1(c) (same rights and responsibilities during marriage and at its dissolution) is inconsistent with the provisions of Islamic law; and that Article 5(a) (modifying social and cultural patterns based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles), must not be understood as encouraging women to abandon their roles in child-rearing and as mothers, thereby undermining the structure of the family.*<sup>47</sup>

#### (1) Critical information

- ❖ **Husband is legal head of household;<sup>48</sup> Wife's right to maintenance lost if she is 'recalcitrant' (*nushuz*).**<sup>49</sup> 'Complementary' rights and responsibilities within the family is based in large part on the assumption that men are sole financial providers (justified in SPR 2012 paras. 143 and 427), and thus includes the husband's duty to protect and provide for his wife, and the wife's duty to be obedient to her husband as guardian and decision-maker.

<sup>46</sup> *Ibid.*

<sup>47</sup> United Nations Treaty Collection, *supra* note 12.

<sup>48</sup> Qatar SPR 2012 paras. 143, 409, and 426-427.

<sup>49</sup> Qatar SPR 2012 para. 432.

- ❖ **Changing realities: Women as breadwinners.** It is impossible to sustain and continue to justify roles within the family as ‘complementary’ given today’s global economy and social realities. Women often serve as the protectors of their families, provide essential income for their families, and contribute through unpaid labour. 36%-51.8% of Qatari women are in the workforce,<sup>50 51</sup> and research indicates that this percentage will only grow given expanding educational and career opportunities, as well as greater financial pressure for dual-income households. According to the State’s Embassy website, women play various roles in the fields of education, health, law, journalism, aviation, banking, politics, finance, and tourism.<sup>52</sup>

The State party’s own social development goals include promoting women’s participation in economic and political decision-making, and the State party notes that men and women have equal rights and duties in public life.<sup>53</sup> The mandate of the State Women’s Affairs Department further includes raising the education level of women, and proposing policies to provide maternity and child-care services.<sup>54</sup> Additionally, the existence of family-friendly labor laws (working Qatari mothers are entitled 60 days maternity leave within a year, and two breastfeeding hours a day)<sup>55</sup> signals that the State has taken measures to both protect and encourage Qatari women to work outside of the home.

The female fertility rate is also decreasing (the average Qatari woman has 2.4 children, compared to 5.45 children in 1980)<sup>56</sup> reflecting change in family make-up and structure; the Qatari Embassy (London) notes that this change is a reflection of the increase in women seeking higher education and participation in the workforce.<sup>57</sup>

The State’s own specific goals and policies, as well as changing lived realities, contradict the justification used for the State’s continued reservations to Article 16.1(c), and declaration regarding Article 5(a). Furthermore, it is critical to note that while women often financially provide for the family, they do not enjoy corollary rights and privileges, as the legal logic behind ‘complementarity’ would entail.

## (2) Musawah Justification for Reform

- ❖ **On husband’s right to authority.**<sup>58</sup> The concept of male authority over women plays a central role in institutionalising, justifying, and sustaining a patriarchal model of families in Muslim contexts; and it justifies and perpetuates numerous specific discriminatory provisions and practices, including key critical issues examined in this report. There is a disconnect between this discriminatory legal framework and women’s lived realities and family life today.

<sup>50</sup> Gulf news, ‘Qatari women moving forward with more rights, expert says’ (22 December 2011), available at: <http://gulfnews.com/news/gulf/qatar/qatari-women-moving-forward-with-more-rights-expert-says-1.955444>.

<sup>51</sup> Doha News, ‘Report: Qatar ranks among top Arab countries for women’s rights’ (12 November 2013), available: <http://dohanews.co/report-qatar-ranks-among-top-arab-countries-for-womens-rights/>.

<sup>52</sup> Nearly half of females in the professional workforce are teachers; women are also employed in the service industry. Men and women are equally employed in clerical positions, and women have a significant presence as editors in media outlets, and in the legal profession.

Embassy of the State of Qatar, London, ‘Qatari Society’ (2011). available at:

[http://www.qatarempassy.info/index.php?option=com\\_content&view=article&id=23&Itemid=41](http://www.qatarempassy.info/index.php?option=com_content&view=article&id=23&Itemid=41).

<sup>53</sup> Qatar SPR 2012 paras. 106 and 143, respectively.

<sup>54</sup> Embassy of the State of Qatar, London, ‘Qatari Society’ (2011), *supra* note 50.

<sup>55</sup> Gulf news, ‘Qatari women moving forward with more rights,’ (22 December 2011), *supra* note 48.

<sup>56</sup> The Guardian, ‘Qatar’s migrants: How have they changed the country?’ (26 September 2013), available at: <http://www.theguardian.com/news/datablog/2013/sep/26/qatar-migrants-how-changed-the-country>.

<sup>57</sup> Embassy of the State of Qatar, London, ‘Qatari Society’ (2011), *supra* note 50.

<sup>58</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, pp. 26-28.

Musawah believes that several verses in the Qur'an that dwell on the values of love, compassion, closeness, and protection between men and women and the general principles of equality and justice should form the basis of marriage and family in Islam. Repealing the codification of unequal and discriminatory rights and responsibilities within the marriage is not against Islam—it is in fact consistent with Qur'anic principles of justice ('*adl*), equality (*musawah*), dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*).

- ❖ **On husband's duty to financially provide for the family.**<sup>59</sup> In Muslim legal tradition, the husband's duty to maintain his wife and children comes with a corollary condition—that the wife is required to be obedient to him. Her failure to obey (*nushuz*) could lead to her losing her right to maintenance. 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 equity in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women. While women who financially provide for the family do not enjoy corollary rights and privileges.

Musawah argues that the logic of such a law, maintenance in return for obedience, is discriminatory in practice. The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own and inherit property. This was the beginning of a trajectory of reform which, if carried forward 1400 years later to match 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, including financial matters. The idea that 'complementarity' or 'reciprocity' of rights and obligations do not constitute discrimination in the Muslim Personal Status laws must be challenged.<sup>60</sup>

### (3) Recommendations

- ❖ Accord husband and wife equal rights and responsibilities in marriage, within a legal framework that recognises marriage as a partnership of equals.

### (4) Good practices<sup>61</sup>

- ❖ **Kyrgyz Republic:** Article 22 of the Family Code stipulates that women and men have the same rights and duties in marriage, and spouses should care for each other and develop their own abilities.
- ❖ **Morocco:** The *Moudawana* specifies the 'mutual rights and duties' between spouses, including both the wife and the husband assuming the responsibility of managing and protecting household affairs, and the children's education and consultation on decisions.
- ❖ **Turkey:** Under the Constitution, the family is based on equality between spouses.
- ❖ **Uzbekistan:** The Family Law Code envisages family relations based on mutuality and equality, with mutual support and responsibility of all family members, and the unhindered enjoyment by family members of their rights.

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<sup>59</sup> *Ibid.*

<sup>60</sup> For more information, read on *Musawah's Knowledge Building Initiative on Qiawah and Wilayah*, *supra* note 14; also see *Musawah's Oral Statement* presented at the 9<sup>th</sup> Session of the UN Working Group on Discrimination against Women in Law and Practice, *supra* note 14.

<sup>61</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 45.



## D. Polygamy

**Reservation to Article 16.1(c):** *The State party claims that Article 16.1(c) (same rights and responsibilities during marriage and at its dissolution) is inconsistent with the provisions of Islamic law.*<sup>62</sup>

### (1) Critical information

- ❖ **Permissibility of polygamy.** Terms and conditions restricting polygamy are outlined in the Article 14 of the Family Law: The notary must 'ensure that the wife is aware of the husband's financial circumstances if the husband's situation suggests that financial capacity is not fulfilled.' However the notary is 'not permitted to refuse to document the contract if the parties wish to conclude it.' In all cases, wife or wives must be 'informed of this marriage after it has been documented.'<sup>63</sup>

Research indicates that although polygamy is an accepted legal practice—with limited restrictions—it has become less widespread due to changing social and economic realities that place heavy financial burden on the husband; according to official statistics (2010), the percentage of polygamous marriages has dropped from 6.6% to 4%.<sup>64 65</sup>

Musawah notes that these statistics need further verification, and that these figures may not reflect the full complexity of the situation, as many Qatari men marry successive wives outside the country.<sup>66</sup>

- ❖ **Polygamy poses significant emotional, financial, and physical harm to women and families.** Polygamy often results in inequality between wives; negative emotional consequences for both first and successive wives, as well as their respective children; economic difficulties; and greater levels of conflict and violence within families.<sup>67 68</sup> Furthermore, the threat of polygamy can be used as a powerful means of control of the wife by the husband.<sup>69</sup>

### (2) Musawah Justification for Reform

- ❖ **On discouraging or prohibiting polygamy.**<sup>70</sup> Musawah maintains that Islam promotes monogamy, as can be seen in *Surah an-Nisa'* 4:3: 'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, 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.' Some Muslim countries have also prohibited polygamy. In other countries, women are entitled to add a stipulation in their marriage contracts that their husbands cannot take other wives without their permission, and that this could pose grounds for divorce. It is also possible for this clause to become a

<sup>62</sup> United Nations Treaty Collection, *supra* note 12.

<sup>63</sup> Welchman. 'Bahrain, Qatar, UAE: First time Family Law Codifications,' (July 2010), p. 5, *supra* note 14.

<sup>64</sup> Al Arabiya News, 'Polygamy rates decline in Qatar: Study' (8 November 2010), available at: <http://www.alarabiya.net/articles/2010/11/08/125311.html>.

<sup>65</sup> Freedom House, 'Women's Rights in the Middle East and North Africa: Qatar' (2010), p. 10, *supra* note 22.

<sup>66</sup> Sociologist Dr. Mounira al-Remeihi, in Al Arabiya News, 'Polygamy rates decline in Qatar: Study' (8 November 2010, *supra* note 63).

<sup>67</sup> CEDAW Committee General Recommendation No. 21, *supra* note 42.

<sup>68</sup> The serious emotional and financial consequences of polygamy have been documented in research undertaken by the NGO Sisters in Islam (Malaysia) and partner universities, between 2008 and 2010 (Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 35).

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, pp. 33-36.



standard stipulation in marriage contracts. In this manner, States may discourage or prohibit polygamy, as recommended by the CEDAW Committee under General Recommendation number 21.

Although the Prophet had multiple wives, he was monogamous for more than 25 years—i.e. throughout the lifetime of his first wife, Khadijah. This practice could be used as a source to emulate. There is also an authentic Tradition that the Prophet forbade his son-in-law, Ali ibn Abi Talib, from marrying another woman, unless Ali first divorced the Prophet's daughter, Fatimah, his existing wife. A great-granddaughter of the Prophet, Sakinah binti Hussayn, the granddaughter of Ali and Fatimah, included the condition in her marriage contract that her husband would have no right to take another wife during their marriage.

Polygamy is not intrinsically 'Islamic.' It was an institution that existed and continues to exist in various civilizations, religions, and cultures in communities throughout the world, including among Jews, Chinese, Indians, and Mormon Christians.

### (3) Recommendations

- ❖ Abolish polygamy in law and in practice.

### (4) Good practices<sup>71</sup>

- ❖ **Tunisia, Turkey, Kyrgyz Republic, Tajikistan, Uzbekistan:** Polygamy is prohibited.
- ❖ **Saudi Arabia, Syria, Jordan, Egypt, Lebanon:** A woman can stipulate in the marriage contract that her husband cannot take another wife. If the husband breaches this term of the marriage contract, the woman has the right to divorce.

## E. Domestic Violence

### (1) Critical information

- ❖ **Domestic violence and marital rape not criminalized.**<sup>72 73</sup> Police are reluctant to treat violence against women, particularly violence within the family, as a criminal matter. Reports suggest that police reluctance to address the issue using the criminal law deters women from coming forward to report violence within the home.<sup>74</sup>
- ❖ **High prevalence of violence within the family.** In September 2012, the Qatar Foundation for the Protection of Women and Children was quoted as stating that it had provided support to 521 women and 474 children during the first eight and a half months of the year, most of which were reported through the foundation's office at Hamad hospital. In a separate statement in November 2012, the organization also reported a 54 per cent rise between 2011 and 2012 in reports of violence against women. 86% of complaints received related to physical assault, 6% related to sexual violence and 3% to "mental torture". 59% of the women submitting complaints said that their husbands were responsible for the

<sup>71</sup> *Ibid*, p. 47.

<sup>72</sup> Amnesty International, 'Annual State of the World Report (2013): Qatar,' p. 216, available at: [http://files.amnesty.org/air13/AmnestyInternational\\_AnnualReport2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf).

<sup>73</sup> Embassy of the US, 'Human Rights Report: Qatar' (2012).

<sup>74</sup> Amnesty International. 'Annual State of the World Report (2013): Qatar,' *supra* note 72.

violence.<sup>75 76 77</sup>

- ❖ **Violence as ‘disciplinary’.** There are strong links between corporal punishment—violence that may lawfully be inflicted on women and children in the guise of ‘discipline’—and all other forms of violence, including gender-based violence.<sup>78</sup> Other research points to domestic violence as a systemic practice embedded in beliefs of male authority in the family and the right to govern (and thus discipline) women and children.<sup>79</sup> As the Committee on the Rights of the Child (CRC) emphasized in its General Comment No. 8 (2006), addressing corporal punishment is ‘a key strategy for reducing and preventing all forms of violence in societies.’<sup>80</sup>

## (2) Musawah Justification for Reform

- ❖ **On domestic violence, including marital rape:** The Prophet is reported to have said, ‘The most perfect of the believers is the best of you in character, and the best of you are those among you who are best to their wives’.<sup>81</sup> In this regard, marital rape constitutes serious abuse of a wife. Musawah maintains that outlawing marital rape, like domestic violence, is not against Islam, and is in fact consistent with Qur’anic principles of justice (*‘adl*), equality (*musawah*), dignity (*karamah*) and love and compassion (*mawaddah wa rahmah*). Further, international bodies and experts, including the CEDAW Committee itself, have repeatedly underscored their conviction that marital rape is an unlawful form of violence against women and should thus be criminalised.<sup>82</sup>

## (3) Recommendations

- ❖ Issue the Family Protection from Domestic Violence law, and include criminalisation of marital rape.
- ❖ Withdraw exemptions from prosecution from Article 353 of the Penal Code.

## (4) Good practices

- ❖ **Tunisia,<sup>83</sup> Turkey<sup>84</sup>:** Marital rape is criminalised under the Penal Code.

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<sup>75</sup> Reports provided by Qatar Foundation for the Protection of Women and Children (QFPWC), cited in; Human Right Watch, ‘World Report: Qatar’ (2012), available at: <http://www.hrw.org/world-report-2012/world-report-2012-qatar>; and Embassy of the US, ‘Human Rights Report: Qatar’ (2012).

<sup>76</sup> Amnesty International, *supra* note 14, p. 216.

<sup>77</sup> Freedom House, ‘Women’s Rights in the Middle East and North Africa: Qatar’ (2010), *supra* note 22, p. 19.

<sup>78</sup> Global Initiative to End All Corporal Punishment of Children, ‘Briefing on Qatar for the Committee on the Elimination of Discrimination against Women, Pre-sessional Working Group’ (July 2013). Available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_13525\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_13525_E.pdf).

<sup>79</sup> Zarizana Abdul Aziz, ‘Culture, Power and Narratives in Domestic Violence Discourse’ in Maznah Mohamad and Saskia E. Wieringa (eds.): *Family Ambiguity and Domestic Violence in Asia* (2013): Ch. 3, pp. 53-77.

<sup>80</sup> General Comment No. 8 on ‘The right to the child to protection from corporal punishment and other cruel or degrading forms of punishment,’ available at: [www2.ohchr.org/English/bodies/crc/comments.htm](http://www2.ohchr.org/English/bodies/crc/comments.htm).

<sup>81</sup> Hadith from Imam Ghazzali, *Ihya Ulum-Id-Din, Volume II*, p.32.

<sup>82</sup> See e.g., Singapore Concluding Observations (2007), *supra* note 15, para. 28.

<sup>83</sup> Immigration and Refugee Board of Canada, *Tunisia: Domestic violence, legislation and protection available to victims (2007-2009)*, 24 November 2009, available at: <http://www.unhcr.org/refworld/docid/4b20f04a3c.html>.

<sup>84</sup> United Nations Press Release, ‘Anti-Discrimination Committee Takes Up Situation of Women in Turkey’ (21 January 2005), available at: <http://www.unis.unvienna.org/unis/pressrels/2005/wom1480.html>.

- ❖ **Morocco**<sup>85</sup>: Article 475 of the Penal Code, which allowed rapists to escape prosecution through marriage with underage victims, was amended in January 2014 to prohibit this practice.

## F. Divorce

**Reservation to Article 16.1(c):** *The State party claims that Article 16.1(c) (same rights and responsibilities during marriage and at its dissolution) is inconsistent with the provisions of Islamic law.*<sup>86</sup>

### (1) Critical information

- ❖ **Men's right to unilateral divorce (*talaq*), including pronouncement outside of court.**<sup>8788</sup>
- ❖ **Research indicates high rate of divorce—Most divorce is initiated by men, and leaves women in position of economic vulnerability.**<sup>89</sup>

### (2) Musawah Justification for Reform

- ❖ **On equal right to divorce.** The Qur'an calls on parties to the marriage '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 places 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.'

Various *fiqh* schools have provided for more egalitarian access to divorce, such as delegated divorce (*talaq-i-tafwid* as commonly practiced in South Asia, in which the marriage contract may stipulate that the husband has delegated to his wife the right for her to unilaterally repudiate the marriage without cause), divorce for cause with no return of dower (*fasakh*), and divorce for breach of stipulations as contracted by the spouses (*ta'liq*). It is thus possible for states to formulate divorce laws that provide equal rights at the dissolution of marriage. Many OIC member countries have also provided that divorce can only take place in the courts.

### (3) Recommendations

- ❖ Abolish the husband's right to unilateral divorce, to ensure that both parties in a marriage are fully aware of its dissolution and its consequences.
- ❖ All divorces must take place in court, with both parties present.
- ❖ Equal rights and access for both men and women to matters related to the dissolution of marriage, including the grounds for divorce and standards of proof.

<sup>85</sup> Aljazeera, 'Morocco repeals "rape marriage law": Controversial article previously allowed rapists to avoid charges if they married their victims' (23 January 2014), available at: <http://www.aljazeera.com/news/africa/2014/01/morocco-repeals-rape-marriage-law-2014123254643455.html>.

<sup>86</sup> United Nations Treaty Collection, *supra* note 12.

<sup>87</sup> Qatar SPR 2012 paras. 438-439, and 441-443.

<sup>88</sup> Welchman, 'Bahrain, Qatar, UAE' (July 2010), *supra* note 14, p. 7.

<sup>89</sup> Freedom House, 'Women's Rights in the Middle East and North Africa: Qatar' (2010), *supra* note 22, p. 12.

#### (4) Good practices<sup>90</sup>

- ❖ **Indonesia:** All divorces must go through the court. The six grounds for divorce are available to both husbands and wives.
- ❖ **Morocco:** Dissolution of marriage is a prerogative that may be exercised equally by both husband and wife.
- ❖ **Tunisia:** Divorce shall only take place in court. There are equal grounds for divorce for husband and wife.
- ❖ **Bangladesh, Pakistan, Iraq, Jordan, Morocco, Syria:** A husband may delegate his unilateral right to divorce his wife, permitting her to pronounce *talaq* upon herself (*talaq-i-tafwid* or *'esma*). The wife's right to financial entitlements remains preserved.

### G. Custody & Guardianship of Children

**Reservation to Article 16.1(f):** *The State party claims that Article 16.1(f) (same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children) is inconsistent with the provisions of Islamic law and family law.*

#### (1) Critical information

- ❖ **Custody allocated based on age and sex of children; women do not have right to legal guardianship.** Article 173 of Family Act No. 22 (2006) stipulates that mothers lose custody of children at predetermined ages (13 for boys, 15 for girls).<sup>91</sup>
- ❖ **Women forfeit right to children's custody upon remarriage.**<sup>92</sup> Article 168 of Family Act No. 22 (2006) stipulates that mothers lose their right to custody if they remarry men who are not close relatives of the ward.<sup>93</sup> However, Article 170 also allows judges to consider the interests of the child in allowing custody to remain with the mother upon her remarriage.<sup>94</sup> No data is available on how many women with young children remarry after divorce; how often mothers lose custody of their children upon remarriage; how often judges are called to consider the 'best interest' of the child; and whether specific, consistent, and fair criteria is used by judges to determine the 'best interest.' Furthermore, there is no evidence of sound sociological research that justifies the assumption that a mother's remarriage sufficiently challenges the 'best interest' of the child.

#### (2) Musawah Justification for Reform

- ❖ **On equal right to custody and guardianship of children:** The Qur'an does not distinguish between fathers and mothers where the upbringing of children is concerned. Even parents who are divorced should still exercise 'mutual consent and due consultation' (*Surah al-Baqarah* 2:233) with each other regarding the upbringing of their children: '[...] No mother shall be treated unfairly on account of her child. No father on account of his child.'

The classical jurists generally divided the rights and responsibilities of adults over their children into *hadanah* (physical care and custody) and guardianship. It was regarded more suitable to confer *hadanah* to women over men. In practice, many *Shari'ah* courts in pre-modern times granted mothers the guardianship of their orphaned children.

<sup>90</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 47.

<sup>91</sup> Qatar SPR 2012 para. 453.

<sup>92</sup> Welchman, 'Bahrain, Qatar, UAE' (July 2010), *supra* note 14, p. 11-12.

<sup>93</sup> *Ibid.*

<sup>94</sup> Welchman, 'Bahrain, Qatar, UAE' (July 2010), *supra* note 14, p. 10-11.

Loss of custody on the ground of the mother's remarriage is based on a Tradition of the Prophet, where he said to a divorced wife, 'You have the first right to look after [your child] unless you marry.' It is unfortunate that this Tradition has often been interpreted to mean that the mother loses the right to custody upon her remarriage, and that custody reverts to the father, regardless of whether this is in the child's best interest. However, it is possible to interpret this *hadith* as conferring upon the mother a prior right of custody over her young children before her remarriage, and if she remarries, then the mother and the father could have equal right to custody, and the case may be considered on its individual merits.

### (3) Recommendations

- ❖ Ensure that women and men have the same rights and responsibilities as parents in matters relating to their children, and that determinations in custody and guardianship proceedings are decided based on the 'best interests of the child.'

### (4) Good practices<sup>95</sup>

- ❖ **Bangladesh, Central Asian Republics, Gambia, India, Malaysia, Pakistan, Senegal, Sri Lanka, Turkey:** Determine custody through the courts on the basis of the best interests of the child. This has led to an expansion of mothers' rights, as compared to more conservative interpretations of Muslim laws.
- ❖ **Central Asian Republics:** Custody and guardianship of children can be given to either parent, with the best interests of the child as the paramount consideration.
- ❖ **Malaysia:** In the best interest of the child, a mother can retain custody of her children upon remarriage.
- ❖ **Tunisia:** Both parents have equal rights in custody and guardianship during marriage. Upon divorce, the court decides custody on the basis of the best interests of the child. If custody is awarded to the mother, she also has guardianship rights as regards travel, schooling, and management of finances. The court may award full guardianship to the mother if the father is deceased or unable to exercise his duties. Regardless, the mother has an equal right to supervise the child's affairs.
- ❖ **Turkey:** In the event of separation or divorce, the rules regarding custody and guardianship do not discriminate between the father and the mother.

## H. Right to Confer Nationality to Children

**Reservation to Article 9.2:** *The State party claims that Article 9.2 (equal rights with respect to the nationality of children) is inconsistent with Qatar's law on citizenship. Inconsistency with Islamic law is not claimed.*<sup>96</sup>

### (1) Critical information

- ❖ **Women with foreign spouses cannot transmit nationality to spouses or children.**<sup>97</sup> Qatar is the only MENA country that does not allow women to confer nationality to their children or spouse under any circumstance.<sup>98</sup> This is particularly important in the State

<sup>95</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 48.

<sup>96</sup> United Nations Treaty Collection, *supra* note 12.

<sup>97</sup> Article 1 of Qatari Nationality Law (2005), Qatar SPR 2012 paras. 213 and 251.

<sup>98</sup> Women's Refugee Commission & Tilburg University submission. 'Briefing on Qatar, Iraq, and Bahrain for the Committee on the Elimination of Discrimination against Women (CEDAW) 57<sup>th</sup> Pre-session Working Group' (July 2013), p. 4. Available at:

party territory, since the critical elements determining the welfare of children—such as healthcare and elementary to University-level education—is provided for by the Government to citizen children only.<sup>99</sup> No data is available on many non-citizen children of Qatari mothers reside in the State party territory, or on how many foreign men divorce or leave Qatari women alone to raise non-citizen children who are not afforded the same benefits.

- ❖ **High stateless and foreigner (male) population.** Qatar has a rapidly growing foreign labour population, and the highest rate of migrants to citizens in the world (1.2 million migrant workers in a population of 1.95 million).<sup>100 101</sup> Men account for 75% of foreigners,<sup>102</sup> accounting for the state's male-to-female ratio of 3-to-1.<sup>103 104</sup> In addition, Qatar has a large stateless population, comprising of mainly the Bidun (between 1,200 and 1,500 stateless Bidun).<sup>105 106</sup> It is further noteworthy that some of the most restrictive foreigner sponsorship laws in the Gulf region exist in Qatar, which also mandates severe limits to the naturalization of stateless persons.<sup>107</sup> These facts and figures reflect an increased likelihood of children born to Qatari women and non-citizen men, who cannot access their fundamental rights to Qatari nationality.
  
- ❖ **Discriminatory nationality laws expose children to statelessness.** Children of national women and non-national men can be rendered stateless in a variety of circumstances, including when: the father dies before the child's birth; the father is unknown; the father is stateless and has no nationality to confer; the father holds a nationality but is unable to confer it; the child is born aboard or out of wedlock; the father is unable or unwilling to take the necessary steps to secure a nationality for the child. The impact of statelessness on individuals is severe: Stateless persons face restrictions on their access to fundamental rights including formal employment, public healthcare, state education, social welfare,

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[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_14649\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_14649_E.pdf).

<sup>99</sup> Embassy of the United States, 'Human Rights Report: Qatar' (2012), available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154471.htm>.)

<sup>100</sup> In 2012, Qatar's population grew nearly 5%, primarily due to the influx of foreign labour to meet the demands of a booming construction center. The country may recruit up to a million additional workers in the next decade to overhaul its infrastructure and build the stadiums required to host the 2022 World Cup. Human Rights Watch 2013 Report: Qatar, p. 598, available at:

[https://www.hrw.org/sites/default/files/wr2013\\_web.pdf](https://www.hrw.org/sites/default/files/wr2013_web.pdf).

<sup>101</sup> Although the vast majority of migrant labour is employed in the construction industry, foreign workers make up varying percentages of other industries and socio-economic classes as well (namely, the domestic service sector, the hospitality industry, as well as the civil sector and judiciary). National Public Radio, 'As World Cup Looms, Qatar's Migrant Worker System Faces Scrutiny' (24 December 2013), available at: <http://www.npr.org/blogs/parallels/2013/12/23/256599114/as-world-cup-looms-qatars-migrant-worker-system-faces-scrutiny>.

<sup>102</sup> Embassy of the State of Qatar, London, 'Qatari Society' (2011), *supra* note 52.

<sup>103</sup> In the year 2015, there are projected to be 1,797 (thousand) men compared to only 554 (thousand) women. United Nations, World Population Prospects: The 2012 Revision, available at:

[http://esa.un.org/unpd/wpp/unpp/panel\\_indicators.htm](http://esa.un.org/unpd/wpp/unpp/panel_indicators.htm).

<sup>104</sup> The Guardian, 'Qatar's migrants: How have they changed the country?' (26 September 2013), *supra* note 56.

<sup>105</sup> Human Rights Watch 2012 Report: Qatar, available at: <http://www.hrw.org/world-report-2012/world-report-2012-qatar>.

<sup>106</sup> The International Observatory on Statelessness: Qatar, available at: <http://www.nationalityforall.org/qatar>.

<sup>107</sup> The 2005 Nationality Law allows individuals to apply for citizenship after living in Qatar for 25 years, but limits naturalization to only 50 people per year. Furthermore, the Bidun cannot register for health benefits, or legally hold employment, and the State does not register the birth of Bidun children. Human Rights Watch 2012 Report: Qatar, *supra* note 105.



official documents, judicial process, and the right to own and inherit property.<sup>108</sup> Qatar's stateless Bidun and large migrant laborer populations put children at significant risk of becoming stateless.

- ❖ **Discriminatory nationality laws put strain on family unit.** Furthermore, research indicates that statelessness due to gender discrimination in nationality law has a dire effect on family unity in the MENA region. Sources of strain on the family structure include: repeated rejections by potential suitors in marrying or starting a family; threats to physical unification due to increased risk of detention and deportation; threats to financial stability due to lack of property and inheritance rights; and psychological strain due to social and institutional isolation, and at times, pressure to divorce to resolve the situation.<sup>109</sup> These findings undermine the very justification for the discrimination: Rather than protecting the family unit, discriminatory nationality laws can further restrict a family's healthy development and place great strain on its structure.
- ❖ **Available alternative mechanisms.** The State party justifies this discrimination by claiming that it prevents people from holding dual citizenship.<sup>110</sup> However, other states that do not recognise dual nationality address this question through a variety of mechanism, including by requiring children to choose one of the nationalities at the age of 18.<sup>111</sup>

## (2) Recommendations

- ❖ Allow Qatari women to transfer their nationality to their children, without discrimination, and ensure that children born to Qatari women are given access to adequate shelter, food, health care, and education, irrespective of their father's nationality or official marital status.
- ❖ Enforce measures to ensure that children of Qatari women who would otherwise be stateless, have access to citizenship.

## (3) Musawah Justification for Reform

- ❖ The idea of nationality is a modern conceptualisation of statehood. There are no injunctions in the Qur'an or *Hadith* on this and Musawah maintains there are no religious impediments to granting women equal political and legal rights to pass on nationality to their children and foreign spouses, as equal citizens of the nation. Moreover, Constitutions of many Muslim-majority countries recognise the principles of equality before the law, and prohibit discrimination on the basis of gender. Several OIC member countries have already reformed their laws in recent years to extend this equal right to women.

## (4) Good practices<sup>112</sup>

- ❖ **Algeria:** Women married to foreigners can extend citizenship rights to their husbands and children.
- ❖ **Egypt, Morocco:** Women married to foreigners have the right to confer their citizenship to their children.

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<sup>108</sup> Women's Refugee Commission & Tilburg University submission, *supra* note 98, pp.1-2.

<sup>109</sup> Women's Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013, available at:

<http://www.womensrefugeecommission.org/component/content/article/143-misc/1656-the-women-s-refugee-commission-launches-new-report-on-statelessness?highlight=YToxOntpOjA7czoxMzoic3RhdGVsZXNzbnVzcyI7fQ==>.

<sup>110</sup> Qatar SPR 2012 para. 213.

<sup>111</sup> Women's Refugee Commission & Tilburg University submission, *supra* note 98, pp.4-5.

<sup>112</sup> Women's Learning Partnership for Rights, Development, and Peace, 'Claiming Equal Citizenship,' available at: <http://www.learningpartnership.org/citizenship>.



- ❖ **Lebanon:** By decree, foreign husbands and children of Lebanese women can apply for ‘courtesy residency’ permits to remain in Lebanon.

## I. Inheritance

**Reservation to Article 15.1:** *The State party claims that Article 15.1 (equality before the law) is inconsistent with the provisions of Islamic law, in matters of inheritance.*<sup>113</sup>

### (1) Critical information

- ❖ **Female siblings receive one-half the inheritance of male siblings.**<sup>114</sup> The State party has noted that a proposed bill on judicial procedures in family and inheritance cases could limit the difficulties women encounter in family cases.<sup>115</sup> No information is available on the key provisions or status of the bill.

Women who act—sometimes as co- and other times as sole—providers and protectors of their families do not receive greater shares of inheritance to reflect their greater responsibilities. When arguments raise the link between a man’s duty to provide maintenance and his privileged share of inheritance, it is never mentioned that a man’s failure to provide maintenance does not disqualify him from double the share of a woman’s inheritance.

### (2) Musawah Justification for Reform<sup>116</sup>

- ❖ Men’s superior right to inheritance is frequently justified by scholars on the grounds that men have a ‘degree of advantage’ over women (*Surah al-Baqarah* 2:228) and that they are the protectors and providers (*qawwamun*) of the family (*Surah an-Nisa*’ 4:34). Yet, in reality women, too, are providers and protectors. Traditionally, women’s roles as homemaker, primary caregiver of children and elderly parents, and other forms of unpaid work in the home and on the land are crucial to family well-being and survival. But this unpaid contribution is not given recognition. The rise of women-headed households, dual-income families and women migrant workers who are compelled to leave their families to earn better wages mean that today women are also providing financially for their families. Musawah maintains that laws must take into account the socio-economic realities of women’s lives and family life today. Under these circumstances, a right that is given on the assumption that only men provide for the family must be re-evaluated especially when socio-economic realities render the presupposition false.
- ❖ While many States parties argue that the inheritance laws are stipulated in the Qur’an, and thus cannot be changed or reformed, in reality, the traditional Muslim rules of inheritance were elaborated and systematised by the various schools of law through jurisprudential methods and interpretations. Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shiite schools of law, have combined rules from two or more different schools, or have created modern inheritance laws based loosely on traditional jurisprudence but suited for modern realities.
- ❖ An example of how the major schools of Islamic law differ can be seen in the case of the maximum amount of an estate female heirs can inherit. In the Shafi’i and Maliki schools,

<sup>113</sup> United Nations Treaty Collection, *supra* note 12.

<sup>114</sup> Qatar SPR 2012 paras. 102, 404, 406-407, and 446.

<sup>115</sup> *Ibid*, paras. 440 and 456.

<sup>116</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, p. 38-39.

daughters and sisters can inherit a maximum of 2/3 of the estate; the residue would go to agnatic males, and, if there are none, to the public treasury. For the Hanbali and Hanafi schools, if there are no agnatic males, the female heirs can inherit the residue – it would not go to the public treasury. In the Jafari school, one or more daughters can inherit the entire estate outright if there is no son. Agnatic males are excluded. In some countries, bequests can be made to heirs, thus enabling parents to expand the right of daughters to inherit more, a step forward in redressing the discriminatory inheritance rules. Similarly, some countries allow for the estate to be shared in whatever proportion, if all beneficiaries agree.

### (3) Recommendations

- ❖ Ensure that the proposed bill on judicial procedures in family and inheritance cases includes granting female and males siblings equal shares of inheritance.
- ❖ Ensure that women and girls who file complaints under the new law will be provided with legal assistance.
- ❖ Draft measures to raise awareness among different sectors of society on the new law, including sensitization on how to register complaints with competent authorities.

### (4) Good practices

- ❖ **Tunisia<sup>117</sup> and Iraq<sup>118</sup>**: Sunni schools of law adopt the Shiite practice where daughters can inherit an entire property in the absence of sons, thus excluding male agnates.
- ❖ **Egypt, Morocco, Tunisia<sup>119</sup>**: The children of a predeceased son or daughter can inherit through an obligatory bequest.
- ❖ **Malaysia:**<sup>120</sup> Division of the deceased's property can be changed in whatever manner if all heirs agree to such a division.
- ❖ **Tunisia<sup>121</sup>**: Bequests can be made in favour of an heir and beyond the one-third limit if other heirs agree to it.
- ❖ **Egypt, Sudan, Iraq<sup>122</sup>**: Bequests can be made in favour of heirs up to one-third of the estate without the consent of the other heirs.

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<sup>117</sup> Collectif 95 Magheb-Egalité, *Guide to Equality in the Family* (2006), p. 140; John L. Esposito with Natana J. DeLong-Bas, *Women in Muslim Family Law* (2001), p. 109.

<sup>118</sup> Esposito, *supra* note 117, p. 109.

<sup>119</sup> *Ibid*, p. 110.

<sup>120</sup> Section 15 (1), Small Estates (Distribution) Act, 1955 provides an option for all beneficiaries to agree as to the manner in which the estate should be distributed, ...unless it appears to be unjust or inequitable to do

so.

<sup>121</sup> Esposito, *supra* note 117, p. 109.

<sup>122</sup> *Ibid*.

## IV. CONCLUSION

The Qatari State party should be commended for its implementation of the New Family Law (*Family Act No. 22, 2006*).

However, the analysis of key issues related to marriage and family relations, as contained in Articles 2, 9, 15, and 16 of the CEDAW Convention, disclose a daily reality of widespread and systemic discrimination against Qatari women and girls, impairing or nullifying their right to equality and justice, according to both universal human rights standards and Islamic teachings.

Although culture and religion are often used as an excuse for not fulfilling international obligations, there is always room for recognition of women's rights within cultural and religious frameworks. In many cases, what lies behind the State's refusal to act are political considerations, rather than regard for religious principles.

Article 21 of the Qatari Constitution states, '*The family is the basis of society. A Qatari family is founded on religion, ethics, and patriotism. The law shall regulate adequate means to protect the family, support its structure, strengthen its ties, and protect maternity, childhood, and old age.*' Similarly, Article 35 of the Qatari Constitution bans all discrimination '*on the grounds of sex, race, language, or religion.*'

Given the many voices in Qatar that recognise the possibility of reform of discriminatory laws made in the name of Islam, it is imperative that the Qatari State party exercises the political will and leadership required to forge the necessary reform of discriminatory laws and practices, in order to fully comply with its obligations to the CEDAW Convention, uphold its constitutional obligation, and ensure equality and justice in the family.

## V. MUSAWAH VISION

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 they 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 teachings which encompass the principles of justice, equality, dignity, and love and compassion lay out a path towards reform of Muslim family laws and practices, in line with contemporary notions of justice, which includes equality between the sexes and equality before the law.<sup>123</sup>

Musawah believes that Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible, and that both are dynamic and constantly evolving, based on changing times and circumstances.<sup>124</sup>

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, to:

- ❖ Recognise the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognises 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.
- ❖ Support civil society groups and individuals engaged in family law reform campaigns, moving the family towards relationships of equality, justice, dignity and mutual respect.

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<sup>123</sup> *Musawah Framework for Action, supra* note 3.

<sup>124</sup> *Musawah Framework for Action, supra* note 3.

**fasakh:** The dissolution of a marriage for cause.

**fiqh:** (lit. understanding, knowledge) The science of understanding *Shari'ah*; also used to refer to the huge literature produced by Muslim jurists. It began with the opinions and doctrines of the jurists in leading Muslim cities in early Islam. These opinions shaped gradually into schools of law. Jurists never claimed that their doctrines were sacred. They always distinguished between divine and human; *fiqh* was human understanding. The contents of *fiqh* were further divided into two main divisions: *ibadat* (rituals, laws relating to relations between God and humans) and *mu'amalat* (laws relating to relations between humans). Human reasoning and experience plays a vital role in the case of *mu'amalat*, and hence remain open to change as human affairs evolve. Much of what constitute Muslim family laws today are derived from *fiqh* literature, in the category of *mu'amalat* rulings.

**Hadith:** *Hadith* is distinguished from *Sunnah*, which means normative practice. A *hadith* is a report about what Prophet Muhammad said about something, practiced or approved, or did not disapprove a certain thing. A science of *hadith* criticism was developed to examine the normative value of a *hadith* and about the reliability of a *hadith*. A *hadith* report consists of two parts; first gives a list of narrators of the *hadith*, and the second part the text. The jurists and the collectors of *hadith* differed in their criteria about the normativity of a *hadith*.

**ijbar:** The power to compel an unmarried woman (of any age) to marry someone of equal status, as recognised by certain schools of law; the power usually resides in the father or paternal grandfather.

**mufti:** A specialist in religious law who is qualified to give an authoritative religious opinion (*fatwa*).

**mahr:** Dower, or the goods and/or cash due from the groom to the bride as part of the marriage contract. It may be given at the time of the marriage ceremony, or promised to be paid at a later date or to be paid upon divorce or the death of the husband, or divided into prompt and deferred portions.

**nushuz:** Disruption of marital harmony by either spouse.

**Shari'ah:** (lit. water source, the way, the path) The path or way given by God to human beings, the path by which human beings search God's Will. Commonly misinterpreted as 'Islamic law,' *Shari'ah* is not restricted to positive law *per se* but includes moral and ethical values and the jurisprudential process itself.

**Sunnah:** (lit., the way or course or conduct of life) The example of the Prophet embodied in his statement, actions and those matters that he silently approved or disapproved as reported in *hadith* literature. *Sunnah* is acknowledged as a primary source of Islamic law after the Qur'an.

**talaq:** Repudiation of marriage by the husband.

**talaq-i-tafwid (or 'esma):** A delegated right of divorce exercised by the wife.

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<sup>125</sup> Musawah, *CEDAW and Muslim Family Laws*, Annex 1: Glossary of Key Terms, *supra* note 10, p. 43-44.

**ta'liq:** Divorce for breach of condition in marriage contract or any subsequent written agreement between the husband and wife.

**wali:** Guardian (for marriage); regarded by some schools of law as the father or paternal grandfather who has authority to contract marriage on behalf of the bride.

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### **About Musawah**

*Musawah is a global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible. Musawah, which means 'Equality' in Arabic, builds on centuries of effort to promote and protect equality and justice in the family and in society. For details, visit the Musawah website at <http://www.musawah.org>.*

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