



musawah

For Equality in the Muslim Family

Musawah Thematic Report on Article 16 & Muslim Family Law: United Arab Emirates (UAE)

**62nd CEDAW Session
Geneva, Switzerland
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Musawah Thematic Report on Article 16 & Muslim Family Law: United Arab Emirates (UAE) 62nd CEDAW Session

I. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits its 13th Thematic Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of United Arab Emirates (UAE), reporting before the 62nd Session of the CEDAW Committee.¹

This is the CEDAW Committee's second engagement with the Government of the UAE, which acceded to the CEDAW Convention on 6 October 2004, and entered **reservations to Articles 2(f), 9, 15(2), 16, and 29(1)**.²

Musawah's issues of concern and supplementary research take a critical look at the status of marriage and family relations, as largely 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; penal provisions that constitute discrimination against women*), Article 5 (*gender stereotypes; harmful practices*), 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 Emirati laws and practices that enforce *de jure* (direct) and *de facto* (indirect) discrimination against women in the following areas, discussed in order to relevant CEDAW Articles: **equal rights & responsibilities in marriage (gender stereotypes); violence against women; right to confer nationality to children; male guardianship; early and forced marriage; polygamy; access to divorce; custody & guardianship of children; 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 of its international human rights treaty obligations; and (3) suggesting recommendations for reform based on good practices in Muslim contexts.³

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.

¹ Musawah: <http://www.musawah.org/>.

² United Nations Treaty Collection: *CEDAW Declarations and Reservations*, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

³ Musawah uses the term 'good' or 'promising' rather than 'best' practices to take into account the complex contextual framework of practices located in the wide spectrum of 'bad' to 'good.' Musawah also seeks to look at good practices that have been transformative in relation to eliminating discrimination against women in law and in practice in different contexts, and in the light of the different realities that women face. This use of terminology and definition builds on existing work on this issue by special procedure mandate holders, including the UN Working Group on the issue of discrimination against women in law and in practice. See: Human Right Council 20th Session, Annual Report of the Working Group on the issue of discrimination against women in law and in practice (April 2012), U.N. Doc. A/HRC/20/28, p. 5, available at: http://www.ohchr.org/Documents/Issues/Women/A-HRC-20-28_en.pdf.

II. LEGAL BACKGROUND

1. UAE Constitution (1971)

- ❖ The Constitution defines the goals and basic structure of the federation. **Islam is the official religion of the federation.**⁴
- ❖ The State notes that ‘the Constitution guarantees equal rights for men and women.’⁵ Although the UAE’s Constitution provides the principle of equal treatment of all citizens, **it addresses neither equality between women, nor a definition of discrimination on the basis of sex specifically;**^{6 7} it further contains references that identify women primarily as wives and mothers, therefore reinforcing traditional gender roles.⁸
- ❖ The Constitution articulates the **family as ‘the basis of society’**: ‘Its foundations are religion, morality and patriotism. The law shall guarantee its existence, safeguard it and protect it from corruption.’⁹

2. UAE Federal Personal Status Act, no. 28 (2005)

- ❖ The Act regulates a number of **matters related to the family including marriage, divorce and child custody.**
- ❖ The Act is based **the Maliki school of law in Sunni Islam,**^{10 11} and influenced by Egyptian code and French civil law.¹²
- ❖ **Muslims have no option to seek adjudication pursuant to a civil code,**¹³ and rules on marriage apply only to marriages between Muslims, or between a Muslim man and a Jewish or Christian woman.^{14 15}

⁴ CEDAW 62nd Session, UAE State party report (3 December 2014), U.N. Doc. CEDAW/C/ARE/2-3, [hereinafter UAE State party Rport 2014], para. 7, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fARE%2f2-3&Lang=en.

⁵ *Ibid*, para. 65.

⁶ CEDAW 45th Session, UAE Concluding observations (5 February 2010), U.N. Doc. CEDAW/C/ARE/CO/1, [hereinafter UAE Concluding observations 2010] para. 15, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fARE%2fCO%2f1&Lang=en.

⁷ The Government uses Articles 14 and 25 of the Constitution to claim equality between men and women are enshrined in law. *Article 14*: ‘Equality, social justice, the provisions of safety and security, and equality of opportunity for all citizens shall be pillars of society, and mutual assistance and compassion shall be a strong bond between them. *Article 24*: ‘All persons are equal before the law, without distinction between citizens of the Federation on grounds of race, nationality, religious belief or social status.’ CEDAW 62nd Session, UAE Responses to the list of issues and questions (29 July 2015), U. N. Doc. CEDAW/C/ARE/Q/2-3/Add.1 [hereinafter UAE Responses to the list of issues and questions 2015], pp. 2., available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fARE%2fQ%2f2-3%2fAdd.1&Lang=en.

⁸ Social Institutions & Gender Index (SIGI): United Arab Emirates (2014), Organisation for Economic Co-operation and Development (OECD) Development Centre, available at: <http://genderindex.org/country/united-arab-emirates>.

⁹ UAE Responses to the list of issues and questions 2015, *supra* note 7, response to para. 1.

¹⁰ Al Nowais, S., “Divorcees, widows concerned about receiving ‘permission’ before remarrying”, *The National UAE*, August 7, 2014, available at: <http://www.thenational.ae/uae/courts/divorcees-widows-concerned-about-receiving-permission-before-remarrying>.

¹¹ The National UAE, “UAE remarriage law deserves to be reviewed”, August 7, 2014, available at:

<http://www.thenational.ae/opinion/editorial/uae-remarriage-law-deserves-to-be-reviewed>

¹² UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p. 1, available at:

<http://www.unicef.org/gender/files/UAE-Gender-Eqauality-Profile-2011.pdf>.

- ❖ Article 1 establishes that the law applies to all citizens of the UAE, unless non-Muslims have special provisions applicable to their sect or confession. The law also applies to non-citizens unless they request the application of their own law.¹⁶
- ❖ Many heralded the codification of personal status law in 2005 as an advancement in Emirati women's rights, as **codification ensured that decisions relating to personal status were no longer determined by the interpretation of *Shari'ah* law by individual judges.**^{17 18}

3. The UAE Office of the Family Law Prosecutor

- ❖ The office maintains jurisdiction to investigate and address juvenile offences and criminal offences occurring within a single family; it further is authorised to provide opinions in cases concerning families and the welfare of minors before the various courts in the situations set out in the law.¹⁹

4. UAE's International Obligations

- ❖ The UAE has ratified the Convention on the Rights of the Child (CRC) and the International Convention on the Elimination of All forms of Racial Discrimination, in addition to CEDAW.²⁰

5. UAE's Reservations to CEDAW²¹

- ❖ **Article 2 (f):** 'The United Arab Emirates, being of the opinion that this paragraph **violates the rules of inheritance established in accordance with the precepts of the *Sharia***, makes a reservation thereto and does not consider itself bound by the provisions thereof.'
- ❖ **Article 9:** 'The United Arab Emirates, **considering the acquisition of nationality an internal matter**, which is governed, and the conditions and controls of which are established, by national legislation makes a reservation to this article and does not consider itself bound by the provisions thereof.'
- ❖ **Article 15 (2):** 'The United Arab Emirates, considering this paragraph **in conflict with the precepts of the *Sharia*** regarding legal capacity, testimony and the right to conclude contracts, makes a reservation to the said paragraph of the said article and does not consider itself bound by the provisions thereof.'

¹³ Human Rights Watch, World Report 2013: United Arab Emirates, available at: <https://www.hrw.org/world-report/2013/country-chapters/united-arab-emirates>.

¹⁴ SIGI: UAE (2014), *supra* note 8.

¹⁵ Kirdar, S. "United Arab Emirates", in Kelly, S. and Breslin, J. (ed. by), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010, p. 518. Book chapter available online at:

https://freedomhouse.org/sites/default/files/inline_images/United%20Arab%20Emirates.pdf.

¹⁶ UAE Responses to the list of issues and questions 2015, *supra* note 7, response to para. 20.

¹⁷ SIGI: UAE (2014) *supra* note 8.

¹⁸ Kirdar 2010, *supra* note 15, pp. 522-523.

¹⁹ UAE State party report 2015, *supra* note 4, para. 26.8.

²⁰ *Ibid*, para. 21.

²¹ The State of the UAE has also entered a reservation to Article 29 (1) of the Convention, regarding dispute between two or ore State Parties concerning the interpretation or application of the Convention. However, this article is outside the ambit of this report. *Supra* note 2.

- ❖ **Article 16:** ‘The United Arab Emirates will abide by the provisions of this article **insofar as they are not in conflict with the principles of the *Sharia***. The United Arab Emirates considers that the payment of a dower and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property. The ***Sharia*** makes a woman's right to divorce conditional on a judicial decision, in a case in which she has been harmed.’

III. RHETORICAL MAP: HOW THE STATE ENGAGES WITH ISLAM

1. *The UAE claims it is committed to upholding human rights, including women's rights.*²²

- ❖ On the national context: **'Legislation is a key foundation for protecting women. Lawmakers in the UAE have periodically reviewed legislation to ensure that it is consistent with women's needs and enables them to obtain their rights.'**²³
- ❖ On Article 12: **'The State is committed to strengthening the position of woman.'**²⁴
- ❖ On implementation of CEDAW: **'[The UAE] is among the leading states of the world in respect of the empowerment of women.'**²⁵
- ❖ On human rights defenders and women activists: **'The UAE judiciary is just. It respects humanity and human rights.'**²⁶

2. *The UAE argues that Shari'ah treats women without discrimination.*

- ❖ On Article 16: **'[...] certain matters concerning the regulation of marriage and inheritance are based on the Islamic sharia, which treats women without discrimination.'**²⁷
- ❖ On Article 16: **'Generally, Emirati personal status law guarantees the rights of women based on the sharia, which treats women without discrimination.'**²⁸
- ❖ On violence against women: **'[...] Safeguarding the freedoms, rights and dignity of the members of society, as guaranteed by the State Constitution, laws and legislation derived from our values and the teachings of our true religion.'**²⁹

3. *The UAE argues that Shari'ah is absolute, and thus cannot be changed.*

- ❖ On reservation to Article 2 (f): **'[The] reservation concerns a few issues that deviate from social customs, traditions and practices and violate the immutable provisions of the Islamic sharia.'**³⁰

4. *However, the UAE also argues that culture is fluid, and thus changeable.*

- ❖ On reservation to Article 2 (f): **'[The] state endeavors assiduously to change any cultural patterns that discriminate against women in society.'**³¹
- ❖ On Article 5: **'[The Emirati people] are open to the cultures of the world as a result of the diversity of foreign nationals residing in the country.'**³²
- ❖ On Article 5: The Government is nevertheless working to preserve the gains made by women by **strengthening the appropriate cultural patterns** for future generations.³³

²² See also UAE State party report 2015, *supra* note 4, paras. 11-12.

²³ *Ibid*, para. 14.

²⁴ *Ibid*, para. 65.

²⁵ *Ibid*, para. 92.

²⁶ UAE Responses to the list of issues and questions 2015, *supra* note 7, response to para. 6.

²⁷ UAE State party report 2015, *supra* note 4, para. 90.

²⁸ *Ibid*, para. 91.

²⁹ UAE Responses to the list of issues and questions 2015, *supra* note 7, response to para. 9.

³⁰ UAE State party report 2015, *supra* note 4, para. 19.

³¹ *Ibid*.

³² *Ibid*, para. 23.

- ❖ On Article 5: '[Civil society institutions] have developed and implemented programmes to [...] **change the stereotypical roles of men and women** in accordance with socially acceptable concepts.'³⁴

³³ *Ibid*, para. 24.

³⁴ *Ibid*, para. 25.

IV. KEY ISSUES: LIVED REALITIES, ISLAMIC JURISPRUDENCE, & REFORM

This section identifies critical issues of discrimination against women within the Muslim family law and under Articles 2, 5, 9, 15, and 16. The section also presents research from secondary sources, 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) EQUAL RIGHTS & RESPONSIBILITIES

(1) CRITICAL INFORMATION:

- ❖ **Complementary rights and responsibilities codified in law: Husbands are heads of household with the right to demand their wives' obedience.** The 2005 Personal Status Law provides that a husband has the right to obedience from his wife 'in accordance with custom.'³⁵ ³⁶This provision outlines a relationship between husband and wife based on complementary rights and responsibilities, along the maintenance-obedience formula of the classical legal framework in Muslim family law: In return for the husband's duty to protect and provide, his wife must obey him (including through her sexual availability) with some exceptions (see below). Although the law considers the forcible implementation of rulings for obedience in violation of a woman's dignity, noting that coercion cannot be the basis of marital life,³⁷ a relationship of complementary rights and responsibilities justifies and perpetuates other forms of discrimination in law and practice, including the normalization of various forms of physical, emotional, and financial abuse.³⁸ ³⁹
- ❖ **Consequently, women's freedom of movement is severely restricted, and wives cannot work freely outside the home.** As the legal head of household, husbands and fathers have the right to restrict women's movement outside the home. Travel bans are commonplace in the UAE, and men (regardless of their nationality) can easily impose them

³⁵ SIGI (2014), *supra* note 8.

³⁶ Kirdar 2010, *supra* note 15.

³⁷ Welchman, L., "Gulf Women and the Codification of Muslim Family Law", pp. 367-406, in Sonbol, A. (edited by), *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, p. 388; Welchman, L., "Qiwamah and Wilayah as Legal Postulates in Muslim Family Law", pp. 132-162, in (eds.) Mir-Hosseini, Z, Al-Sharmani, M., Rumminger, J. *Men in charge? Rethinking Authority in Muslim Legal Tradition*, London: Oneworld Publications, 2014, pp. 142-143.

³⁸ See below, Annex 1, Section (3): 'Complementary Rights and Responsibilities: Structural Roots in Inequality in MFL.' Musawah is currently undertaking a long-term knowledge building initiative, including a participatory feminist research project, 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>; and Musawah's latest publication, *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (eds. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger), London: Oneworld, 2015; see: <http://www.musawah.org/men-charge-rethinking-authority-muslim-legal-tradition>. Finally, see Musawah's Oral Statement presented at the 9th 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>.

³⁹ Welchman, 2014, *supra* note 38, pp. 142-143.

on women and children.^{40 41 42} Wives have the right to leave the marriage home only ‘in circumstances that allow her this according to law or custom or the exigencies of necessity.’^{43 44} A wife can only work outside the home if she was already working before the marriage, if she has the husband’s consent, or if this is stipulated in the marriage contract.⁴⁵ Although women are active participants in the UAE workforce, a woman who takes work without her husband’s consent can be legally deemed “disobedient”: A court found that a woman victim of domestic violence had breached the law by working without her husband’s permission.⁴⁶

❖ **Complementary rights and responsibilities justified with harmful gender stereotypes.**

The explanatory memorandum to the 2005 Personal Status law provides a detailed jurisprudential explanation for the husband’s right to lead his household: A man is ‘more able to allow reason to rule and to control his emotions;’ and ‘all laws—civil or religious [grant] men a degree over women.’^{47 48 49} These harmful gender stereotypes are codified in other bodies of UAE law, including the Constitution, which does not specifically address gender-based discrimination, and further contains references that identify women primarily as wives and mothers.⁵⁰ In both its last Concluding Observations (2010) and List of Issues and Questions (2015), the CEDAW Committee was deeply concerned by the State party’s socially defined roles for women and men based on patriarchy.^{51 52}

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging the husband’s right to authority.**⁵³ The concept of male authority (*qiwamah*) 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.

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

⁴⁰ Roberts, E., “British mother convicted of kidnapping young son in Dubai”, *The Telegraph*, February 14, 2014, available at: <http://www.telegraph.co.uk/expat/expatnews/10639292/British-mother-convicted-of-kidnapping-young-son-in-Dubai.html>.

⁴¹ Roberts, E., “Human Rights Watch warns expat women about the UAE”, *The Telegraph*, August 5, 2014, available at: <http://www.telegraph.co.uk/expat/expatnews/11012631/Human-Rights-Watch-warns-expat-women-about-the-UAE.html>.

⁴² Yahiya, R., “My mother is trapped by the UAE’s nightmarish legal system”, *The Guardian*, February 15, 2014, available at: <http://www.theguardian.com/commentisfree/2014/feb/15/my-mother-trapped-uae-nightmarish-legal-system>.

⁴³ Welchman, 2014, *supra* note 38, pp. 141-142.

Gulf Women, Doha: Bloomsbury Qatar Foundation Publishing, 2012, pp. 387-388.

⁴⁴ Welchman, 2012, *supra* note 39, pp. 367-406.

⁴⁵ *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, pp. 387-388.

⁴⁶ Human Rights Watch (Begum, R.), “Time to Take Action for Women in the United Arab Emirates”, March 8, 2015, available at: <https://www.hrw.org/news/2015/03/08/time-take-action-women-united-arab-emirates>.

⁴⁷ Welchman, 2014, *supra* note 38, pp. 132-162.

⁴⁸ Welchman, 2012, *supra* note 39, pp. 367-406.

⁴⁹ *Gulf Women*, 2012, *supra* note 45, pp. 387-388.

⁵⁰ SIGI, 2014, *supra* note 8.

⁵¹ UAE List of issues and questions 2015, *supra* note 7, para 8. In particular, the Committee expressed its concern about the focus given to the role of women as mothers in school curricula and media.

⁵² UAE Concluding observations 2010, *supra* note 6, para 24.

⁵³ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, pp. 26-28.

(‘*adl*’), equality (*musawah*), dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*).⁵⁴

- ❖ **Challenging the maintenance-obedience legal framework.**⁵⁵ 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 reflect changing times and contexts, should lead to the elimination of the legal logic of maintenance in exchange for obedience, and to the introduction of equality between men and women in all areas, 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.⁵⁶

- ❖ **Addressing the disconnect between law and reality:** The Government of the UAE is proud of and has actively encouraged women’s active participation in the workforce. The UAE notes the importance of ‘harnessing [women’s] potential for the advancement of sustainable development, and ‘employ[ing] women’s human energy to drive the future,’ and has thus worked to increase the active participation of women in education and the workforce towards its 2021 vision and development goals.^{57 58 59} Indeed, the State notes that it has worked to create employment environments that attract women by enabling them to reconcile their family and employment responsibilities,⁶⁰ and Emirati legislation guarantees the right to equal remuneration.⁶¹ Available data indicates that the UAE has the highest female labour force participation rate in the MENA region, at 47%, and is the highest ranked MENA country in the World Economic Forum Gender Gap Index.⁶² Likewise, more than 70% of students in Emirati government universities are women, and the female literacy rate is at 90%.⁶³

There is a deep disconnect between the logic of the 2005 Personal Status Law and the reality of women’s work and lives on the ground, as well as between the logic of the law and the Government’s own rhetoric and initiatives regarding women’s access to education and employment.

⁵⁴ Musawah, *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, 2014, *supra* note 38.

⁵⁵ 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.

⁵⁶ *Supra* note 38..

⁵⁷ UAE State party report 2015, *supra* note 4, paras. 7(f) and (i), 12, 48, 50-52, 60, 79-80, 83.

⁵⁸ UAE Responses to list of issues and questions 2015, *supra* note 7, response to para. 4.

⁵⁹ For more on how the State views women’s employment as vital to its development agenda, see also: UAE State party report 2015, *supra* note 4, paras. 9, 12, and 48.

⁶⁰ *Ibid*, para. 48.

⁶¹ *Ibid*, paras. 50-52.

⁶² *Ibid*, para. 5 a-b.

⁶³ *Ibid*.

(3) RECOMMENDATIONS:

- ❖ Accord husband and wife equal rights and responsibilities in marriage, within a legal framework that recognises marriage as a partnership of equals.
- ❖ Adopt a national strategic plan aimed at bringing about a change in the widely accepted stereotypical roles of women and men, by promoting equal sharing of family responsibilities.⁶⁴
- ❖ Initiate awareness-raising campaigns through the media to eliminate gender-role stereotypes, and encourage partnerships based on equal—not complementary—rights and responsibilities.
- ❖ Enhance the training of teaching staff with regard to gender equality issues and the revision of school curricula to eliminate gender-role stereotypes.

(4) GOOD PRACTICES:⁶⁵

- ❖ **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.

(B) CAPACITY TO ENTER INTO MARRIAGE

(1) CRITICAL INFORMATION:

- ❖ **Men and women do not have the same rights to enter marriage.** Muslim men can freely choose their spouse, but Muslim women are prohibited from marrying non-Muslim men unless they convert.⁶⁶ Muslim men are also granted the right to have up to four spouses (See *Section 4.C* below for more on polygamy).⁶⁷
- ❖ **Male guardian (*wali*) required for women to enter marriage.** The institution of male guardianship (*wali*) poses another critical obstacle to a woman’s capacity to marry. The UAE declares that a woman is entitled to choose her husband under *Shari’ah*, and that thus the Personal Status Law (2005) does not discriminate against women.⁶⁸ However, although a woman’s signature is required at time of entry into marriage, the marriage contract is concluded between the prospective husband and the woman’s guardian (*wali*).^{69 70} If the *wali* objects, a woman can appeal to the judge to act as her guardian.⁷¹ If the father is deceased or otherwise unavailable, the responsibility to act as a woman’s guardian transfers to her son, then to her brother; if no potential guardian is available in the UAE, consent can be granted from a male guardian abroad; and if a woman has no

⁶⁴ UAE Concluding observations, *supra* note 6, para 25.

⁶⁵ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 45.

⁶⁶ SIGI, 2014, *supra* note 8; KIRDAR, 2010, *supra* note 15, p. 524.

⁶⁷ Human Rights Watch, 2013: *supra* note 13.

⁶⁸ UAE State party report, *supra* note 4, paras 87-88.

⁶⁹ UNICEF, 2011, *supra* note 12, p. 2.

⁷⁰ SIGI, 2014, *supra* note 8; KIRDAR, 2010, *supra* note 15, p. 524.

⁷¹ Human Rights Watch, 2015, *supra* note 13.

potential guardian, the judge assumes the responsibility.⁷² There are several cases of guardianship passing from fathers to sons for adult women who attempt to remarry—a practice that women find humiliating and insulting. In one case, the woman's son was 11-years-old, and could not understand the judge's questions on puberty; he was then asked to reveal his armpits to the court, to see if he had hair there as a marker of puberty [See ANNEX 2 for more case studies]. The CEDAW Committee notes with concern that the acceptance of male guardianship do not provide for equal rights of women.⁷³

- ❖ **Male guardians can prevent women from getting married.** There are numerous cases of legal guardians preventing women from getting married, most often due to the prospective husband's lower social status or lack of UAE nationality.⁷⁴ Lawyers are often reluctant to take up these cases due to social sanction.⁷⁵ In these situations, many Emirati women go to Bahrain, Egypt and Syria to get married due to the lack of consent from their guardians, or simply because they do not want to suffer the humiliation of asking consent from their sons to remarry. These women then return to the UAE to register their marriages—an option not afforded to women without the means to travel abroad.
- ❖ **Male guardianship justified with harmful gender stereotypes.** The Personal status Law (2005) justifies the *wali* requirement based on the majority juristic view of the 'potential hazards' of a woman who undertakes her own marriage.⁷⁶ This reveals the problematic logic and protective intention behind the institution of guardianship, suggesting that women are prone to being swayed by emotional factors, and are thus in need of the rational guidance from male relatives.^{77 78 79}
- ❖ **SEE ANNEX 2.A FOR CASE STUDIES.**

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging guardianship (*wali*):**⁸⁰ 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. Given the changing status of women in Emirati society, both in education and in the

⁷² Al Nowais, S., *supra* note 10.

⁷³ UAE Concluding Observations 2010, para. 47.

⁷⁴ Al Nowais, S., *supra* note 10.

⁷⁵ *Ibid.*

⁷⁶ Welchman, *supra* note 38, pp. 132-162.

⁷⁷ *Ibid.*

⁷⁸ Human Rights Watch, "Time to Take Action for Women in the United Arab Emirates", March 8 2015: <https://www.hrw.org/news/2015/03/08/time-take-action-women-united-arab-emirates>.

⁷⁹ Many insist that the guardian system is in the best interests of women. Dr Shakir Al Marzouqi, from Dr Shakir Matouq Advocate and Legal Consults, notes that "men know better," and that "In the bigger picture it is the men who know more and a woman's father, brother or son cares for her interest more than her own self." AL NOWAIS, S., "Divorcees, widows concerned about receiving 'permission' before remarrying", *The National UAE*, August 7, 2014: <http://www.thenational.ae/uae/courts/divorcees-widows-concerned-about-receiving-permission-before-remarrying>. See also: THE NATIONAL UAE, "UAE remarriage law deserves to be reviewed", August 7, 2014: <http://www.thenational.ae/opinion/editorial/uae-remarriage-law-deserves-to-be-reviewed>.

⁸⁰ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, pp. 32-33.

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 enjoy the same right to enter marriage, including repealing discriminatory laws, regulations, and practices requiring for a guardian's consent, approval, or presence.

(4) GOOD PRACTICES:⁸¹

- ❖ **Bangladesh, Pakistan, Sri Lanka:** A *wali* (guardian) is not required for 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.

(C) EARLY & CHILD MARRIAGE

(1) CRITICAL INFORMATION:

- ❖ **The legal minimum age of marriage is 18 for both men and women.**⁸² Indeed, the UAE is often held as a standard for other countries for setting the minimum age for marriage at the internationally-recognized age of adulthood.⁸³ This law is based on the presumption of puberty at eighteen lunar years for both parties.⁸⁴
- ❖ **However, two legal exceptions allow for child marriage.** Boys and girls under the age of 18 may seek the judge's permission to marry, and the judge must seek approval from the Ruler's Court.⁸⁵ Early entry into marriage is further permitted as early as the attainment of actual puberty of both parties, along with the permission of both the judge and guardian (*wali*).⁸⁶ These exceptions allow for child marriage.
- ❖ **Child marriage is prevalent.** Although the State party claims that most Emirati women delay marriage till 25, after they have completed their university education and entered employment,⁸⁷ this is not corroborated by available data. Reports reveal that child marriage is still widespread:⁸⁸ In 2001, 55% of girls and women under 20 were married; in 2005,

⁸¹ *Ibid*, p. 46.

⁸² UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p. 2: <http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>.

⁸³ MALIK, A. AND HANIF, M., "A nine-year-old is a child, not a bride and needs to be in school", *Gulf News*, May 31, 2012: <http://gulfnews.com/opinion/thinkers/a-nine-year-old-is-a-child-not-a-bride-and-needs-to-be-in-school-1.1030345>.

⁸⁴ *Ibid*.

⁸⁵ ISMAIL, M., "Brides should be at least 21 years old: survey", *The National UAE*, September 10, 2011: <http://www.thenational.ae/news/uae-news/brides-should-be-at-least-21-years-old-survey>.

⁸⁶ WELCHMAN, L., "Gulf Women and the Codification of Muslim Family Law", pp. 367-406, in SONBOL, A. (edited by), *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, p. 382.

⁸⁷ UAE Responses to the list of issues and questions 2015, *supra* note 7, response to para. 8.

⁸⁸ UAE List of issues and Questions 2015, *supra* note 7, para. 8.

6.8% of girls and women between the ages of 15-19 were married, divorced or widowed;⁸⁹ and in 2011, the birth rate was 22 births per 1,000 adolescent girls (ages 15-19).⁹⁰ A quarter of respondents (26%) from a 2011 survey claimed that marriage before the age of 18 still happened frequently, while another third (35%) noted that it happened sometimes.⁹¹ Scholars have noted that the exception to the legal minimum age of marriage has led, in part, to this persistence of child marriage.⁹²

- ❖ **Child marriage is often unregistered.** Two in five (43%) respondents of a 2011 survey believe early marriage continues to occur because of deeply entrenched cultural and tribal traditions that are unresponsive to legal reforms, noting that these marriages are often unregistered.⁹³
- ❖ **Early 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.^{94 95} 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.⁹⁶
- ❖ **Early marriage limits women and girls' right to education, employment, and financial independence.**⁹⁷ This contradicts the State party's own emphasis on women's fundamental rights to education and employment. A woman's financial independence affects both her decision-making powers within the family,^{98 99 100} 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.^{101 102}
- ❖ **Early 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.¹⁰³
- ❖ **SEE ANNEX 2.B FOR CASE STUDIES.**

⁸⁹ SIGI: <http://genderindex.org/country/united-arab-emirates>.

⁹⁰ UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p.4: <http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>.

⁹¹ ISMAIL, M., "Brides should be at least 21 years old: survey", *The National UAE*, September 10, 2011:

<http://www.thenational.ae/news/uae-news/brides-should-be-at-least-21-years-old-survey>.

⁹² WELCHMAN, L., "Gulf Women and the Codification of Muslim Family Law", pp. 367-406, in SONBOL, A. (edited by), *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, p. 382.

⁹³ ISMAIL, M., "Brides should be at least 21 years old: survey", *The National UAE*, September 10, 2011:

<http://www.thenational.ae/news/uae-news/brides-should-be-at-least-21-years-old-survey>.

⁹⁴ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

⁹⁵ 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>.

⁹⁶ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

⁹⁷ The Beijing Platform for Action (BPFA), *supra* note 17; and CEDAW Committee General Recommendation No. 21, *supra* note 42.

⁹⁸ 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>.

⁹⁹ CEDAW Committee General Recommendation No. 21, *supra* note 17.

¹⁰⁰ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

¹⁰¹ *Ibid.*

¹⁰² CEDAW Committee General Recommendation No. 21, *supra* note 17.

¹⁰³ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, pp. 32-33.

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging arguments for early marriage:**¹⁰⁴ Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.' 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.¹⁰⁵ 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.

(3) RECOMMENDATIONS:

- ❖ Ensure that the law of minimum age of marriage is strictly enforced. (*This is important, as the UAE is often highlighted as a model Muslim country in setting the minimum age of marriage at 18.)
- ❖ Amend the law to disallow all legal exceptions to the minimum age of marriage. (*Recent national surveys indicating changing attitudes towards early marriage can be used to support the amendment.¹⁰⁶)
- ❖ Exercise due diligence to prevent, investigate, and punish acts that are aimed at coercing children into early marriage.
- ❖ Provide reparation to victims and survivors of early marriage, including allowing girls and women forced into marriage the retroactive right to invalidate the marriage, or the right to divorce.
- ❖ Enforce mandatory registration of marriage, and improve existing registration mechanisms.

(4) BETTER PRACTICES:

- ❖ Available information shows while many OIC countries have established minimum age of marriage, none has made it illegal for children to be married under the age of 18. Some countries that allow exceptions have also set an absolute minimum age. Examples:
- ❖ **Uzbekistan & Kyrgyz Republic:** The minimum age of marriage is 18, but the court may authorise marriage at 17 for exceptional reasons, with parental permission.
- ❖ **Turkey:** Minimum age of marriage is 18. It can be lowered to 16 under exceptional circumstances and with court permission.

¹⁰⁴ *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>.

¹⁰⁵ 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>.

¹⁰⁶ A 2011 survey indicates that two-thirds of UAE residents do not want their daughters to marry before the age of 21, illustrating perhaps that society is moving away from early marriage.¹⁰⁶

D. POLYGAMY & TEMPORARY MARRIAGE

(1) CRITICAL INFORMATION:

- ❖ **Polygamy is permissible.** Men may marry up to four wives, provided that they obtain permission from all existing wives, and are able to financially support all spouses.^{107 108}
- ❖ **However, conditions for polygamy are rarely met.** A host of surveys and local media stories from the UAE illustrate that conditions for polygamy are rarely enforced and met, and that men themselves become burdened trying to meet the demands and needs of multiple families; both Emirati husbands and wives in polygamous marriages note that the conditions are perhaps impossible to meet.^{109 110 111 112}
- ❖ **Polygamy poses significant emotional, financial, and physical harm to women and families.** Polygamy often results in inequality between wives; harmful emotional consequences for first and successive wives, as well as their children; economic difficulties; and greater levels of conflict and violence within families.^{113 114} Furthermore, the threat of polygamy can be used as a powerful means of control of the wife by the husband.¹¹⁵ Indeed, a range of surveys, local media stories and research studies document the negative consequences of the practice in the UAE. Evidence finds that many women in polygamous marriages ‘experience feelings of neglect and jealousy’ (among other harmful effects),^{116 117 118 119} while in another study, researchers found that fewer than half of respondents from the Northern Emirates are in favor of polygamy, given its negative effects.¹²⁰ The CEDAW Committee has raised polygamy as a serious concern in the UAE, in both its last Concluding Observations and List of Issues & Questions, arguing that the

¹⁰⁷ SIGI: <http://genderindex.org/country/united-arab-emirates>; HUMAN RIGHTS WATCH – BEGUM, R., “Time to Take Action for Women in the United Arab Emirates”, March 8, 2015: <https://www.hrw.org/news/2015/03/08/time-take-action-women-united-arab-emirates>

¹⁰⁸ UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p. 2: <http://www.unicef.org/gender/files/UAE-Gender-Equality-Profile-2011.pdf>.

¹⁰⁹ AL NOWAIS, S., “Poligamy with equality is ‘impossible’, says Emirati spouse, *The National UAE*, May 27, 2015: <http://www.thenational.ae/uae/polygamy-with-equality-is-impossible-says-emirati-spouse>.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² 7 DAYS UAE, “I would never be a second wife : UAE women slam ‘spinster’ comment”, April 10, 2014: <http://7days.ae/never-second-wife-uae-women-slam-spinster-comment/33010>.

¹¹³ CEDAW Committee General Recommendation No. 21, *supra* note 17.

¹¹⁴ The serious emotional and financial consequences of polygamy have been documented in ground-breaking 5-year research project conducted by the NGO Sisters in Islam (Malaysia) and partner universities, between 2008 and 2010 (Musawah, *CEDAW and Muslim Family Laws*, *supra* note 6, p. 35). For one of the outputs of the project documenting the myths and realities of polygamy for women and children, see this 6-minute short video produced by Sisters in Islam: <https://www.youtube.com/watch?v=kTbg3d9OSYo> (Malay with English subtitles).

¹¹⁵ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 6, p. 35.

¹¹⁶ One such study was conducted of 100 Arab women, by Rana Raddawi, Associate Professor in the department of English at the American University of Sharjah. Available at: THE NATIONAL UAE, “Polygamy can negatively affect women, study finds”, September 26, 2014: <http://www.thenational.ae/uae/polygamy-can-negatively-affect-women-study-finds>.

¹¹⁷ AL NOWAIS, S., “Poligamy with equality is ‘impossible’, says Emirati spouse, *The National UAE*, May 27, 2015: <http://www.thenational.ae/uae/polygamy-with-equality-is-impossible-says-emirati-spouse>.

¹¹⁸ *Ibid.*

¹¹⁹ 7 DAYS UAE, “I would never be a second wife : UAE women slam ‘spinster’ comment”, April 10, 2014: <http://7days.ae/never-second-wife-uae-women-slam-spinster-comment/33010>.

¹²⁰ In this study, Zayed University student Mariam Al Zaabi spoke to 70 men and 130 women. Available at: AL NOWAIS, S., “Poligamy with equality is ‘impossible’, says Emirati spouse, *The National UAE*, May 27, 2015: <http://www.thenational.ae/uae/polygamy-with-equality-is-impossible-says-emirati-spouse>.

practice is a 'direct infringement of women's rights.'^{121 122}

- ❖ **Temporary (*misyar*) marriage is permissible.** The practice of temporary marriage in the UAE is usually done in secret, to conceal a man's additional partnerships from his existing wife/wives and family. A *misyar* marriage is a form of 'ambulant' marriage, in which the wife waives her right to maintenance, accommodation and cohabitation, and any compensation upon termination of the marriage contract. The wife also generally accepts a condition requiring discretion; the husband 'visits' her by day or night, without setting up household. This form of marriage not only renders it open to abuse, but also results in harm for women in the temporary marriage and any children of the marriage, as well as other existing wives and children. Women's rights activists in the Gulf have been vocal in their opposition to *misyar* marriage as compromising the rights of the wife, and more broadly, the institution of marriage.¹²³

- ❖ **SEE ANNEX 2.C FOR CASE STUDIES.**

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging polygamy.**¹²⁴ 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 polygamy could constitute grounds for divorce. We recommend that this clause becomes a 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 was practiced in most parts of the world at one time, and continues to exist in many African, Asian, and Middle Eastern countries and among Mormon Christians in the USA.

(3) RECOMMENDATIONS:

- ❖ **Abolish polygamy and temporary marriage in law and in practice.**

¹²¹ Paras 47 and 48 of its COBs.

¹²² UAE List of Issues and Questions, *supra* note 7, para. 20.

¹²³ WELCHMAN, L., "Gulf Women and the Codification of Muslim Family Law", pp. 367-406, in SONBOL, A. (edited by), *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, pp. 390-391.

¹²⁴ *Ibid*, pp. 33-36.

(4) GOOD PRACTICES:¹²⁵

- ❖ **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) DIVORCE

(1) CRITICAL INFORMATION:

- ❖ **Unequal access to divorce: Men have right to unilateral divorce; women must bear the burden of evidence.** A man has the right to unilateral divorce, for any reason. On the other hand, a woman must apply for a court order, and can ask for divorce under specific circumstances only, by proving: (1) physical harm; (2) that she has been abandoned for at least 3 months; or (3) that her husband has neglected his financial obligations to her or her children).^{126 127 128} In its List of Issues and Questions (2015), the Committee specifically asks the State party to explain the rationale behind maintaining discriminatory provisions that grant a man the right to unilateral divorce, while a woman must apply for a court order.¹²⁹ The State party does not address this question in its reply.¹³⁰
- ❖ **Woman-initiated divorce (*khula*) is often difficult.** Women also have the option of requesting *khula* divorce, which allows her divorce without the burden of evidence, through the return of her dowry (*mahr*). The State party claims that the introduction of *khula* divorce to the Personal Status Law in 2005 is evidence that the Personal Status Law does not discriminate against women.¹³¹ Although dowry is legally limited to a maximum of approximately USD13,700, at the time of marriage, many grooms exceed this limit, thus making it difficult for many women to initiate *khula* divorce and repay the dowry.^{132 133 134}

¹²⁵ *Ibid*, p. 47.

¹²⁶ UAE List of Issues and Questions 2015, *supra* note 7 para. 20.

¹²⁷ UAE initial State party Report, 2008.

¹²⁸ UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p. 2: <http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>; SIGI: <http://genderindex.org/country/United-arab-emirates>; KIRDAR, S., "United Arab Emirates", in KELLY, S. AND BRESLIN, J. (ed. by), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010, p. 519, 524. The book chapter is available online at https://freedomhouse.org/sites/default/files/inline_images/United%20Arab%20Emirates.pdf; HUMAN RIGHTS WATCH, World Report 2013: United Arab Emirates: <https://www.hrw.org/world-report/2013/country-chapters/united-arab-emirates>; HUMAN RIGHTS WATCH – BEGUM, R., "Time to Take Action for Women in the United Arab Emirates", March 8 2015: <https://www.hrw.org/news/2015/03/08/time-take-action-women-united-arab-emirates>.

¹²⁹ UAE List of issues and questions, para. 20.

¹³⁰ UAE Responses to List of Issues and Questions, *supra* note 7, response to para 20.

¹³¹ UAE State party report, paras. 87-88.

¹³² UAE List of issues and questions, para 20.

¹³³ UAE initial State party report, 2008.

¹³⁴ UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p. 2: <http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>; SIGI: <http://genderindex.org/country/United-arab-emirates>; KIRDAR, S., "United Arab Emirates", in KELLY, S. AND BRESLIN, J. (ed. by), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010, p. 519, 524. The book chapter is available online at https://freedomhouse.org/sites/default/files/inline_images/United%20Arab%20Emirates.pdf; HUMAN RIGHTS WATCH, World Report 2013: United Arab Emirates: <https://www.hrw.org/world-report/2013/country-chapters/united-arab-emirates>; HUMAN RIGHTS WATCH – BEGUM, R., "Time to Take Action for Women in the United Arab Emirates", March 8 2015: <https://www.hrw.org/news/2015/03/08/time-take-action-women-united-arab-emirates>.

- ❖ **Alimony granted to women is often insufficient.** There is a host of cases documenting that men often do not pay enough financial compensation to women upon divorce, leaving women and children in an economically vulnerable position. Alimony is specified by judges in the Personal Affairs Courts, based on the husband's salary, assets, and social status. However, many women note that the specification of alimony does not take into account the woman's situation, and her need to take care of her children.¹³⁵ Although women have the right to ask courts to review and change the amount, judges often refuse a woman's plea to increase alimony.¹³⁶ (See **ANNEX 2, CASE STUDIES: Fathima's Story** and **Umm Saeed's Story**.)

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **On equal right to divorce.** The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (*ma'ruf*), or separate with kindness (*ihsan*)' (*Surah al-Baqarah* 2:229). The proceedings for arbitration and mediation in *Surah an-Nisa* 4:35 place both spouses on an equal footing: 'If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.'

The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness and equality.

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.
- ❖ Ensure that legal limit to dowry at the time of marriage is enforced, enabling women to initiate *khula* divorce.
- ❖ Ensure that alimony granted to women after divorce is sufficient and reviewable, and based on her and her children's needs.

(4) GOOD PRACTICES:¹³⁷

- ❖ **Indonesia:** The six grounds for divorce are available to both husbands and wives. All divorces must go through the court.
- ❖ **Morocco:** Dissolution of marriage is a prerogative that may be exercised equally by both husband and wife.

¹³⁵ AL KHOORI, A., "Divorced mothers hit out at low alimony payments that have family living on the breadline", *The National UAE*, August 22, 2014: <http://www.thenational.ae/uae/courts/divorced-mothers-hit-out-at-low-alimony-payments-that-have-families-living-on-the-breadline>.

¹³⁶ *Ibid.*

¹³⁷ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 47.

- ❖ **Tunisia:** There are equal grounds for divorce for husband and wife. Divorce shall only take place in court.
- ❖ **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.

(F) CUSTODY & GUARDIANSHIP OF CHILDREN

(1) CRITICAL INFORMATION:

- ❖ **Mothers' right to custody based on children's age.** Courts divide the rights and responsibilities of parents over their children into physical care and custody, and guardianship; generally women are granted custody of young children, while men are granted guardianship rights. However, a woman's right to custody of her children ends at pre-determined ages (13 for girls, 11 for boys; a mother's custody continues indefinitely if the child is disabled),¹³⁸ although the concept of the 'best interest of the child' is increasingly considered by courts.¹³⁹ The justification for the transfer of custody is based on harmful gender stereotypes—After a certain age, boys must be with their fathers to 'learn the bases of masculinity and men's counsel,' and girls must be with their fathers to 'enable him to maintain better control over them.'¹⁴⁰
- ❖ **Mothers can lose right to custody upon remarriage.** When a woman consummates a new marriage with a man who is not a close relative of the child, the courts review the custody agreement.¹⁴¹ Although the concept of the 'best interest of the child' is increasingly considered by courts, many women lose the right to raise their children upon remarriage.¹⁴²
- ❖ **Mothers can lose right to custody following domestic violence.** There are cases of women losing their custody of young children after reporting domestic violence, allegedly? without sufficient evidence. In these situations, incorrect or incomplete information resulting from police failure to properly investigate allegations of violence can lead to court decisions that are not in the best interests of the child.¹⁴³ (See **ANNEX 2, CASE STUDIES**)
- ❖ **Only fathers have the right to guardianship.** Mothers with custody of their children do not have guardianship rights which remain with the fathers who retain supervisory rights over the person and property of the children. While there are grounds when a woman can lose custody of her children, men retain their guardianship rights even when they neglect their responsibilities as legal guardian.

(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'

¹³⁸ WELCHMAN, L., "Gulf Women and the Codification of Muslim Family Law", pp. 367-406, in SONBOL, A. (edited by), *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, p. 399.

¹³⁹ *IBID*, p. 398.

¹⁴⁰ Welchman, 2014, p. 150.

¹⁴¹ WELCHMAN, L., "Gulf Women and the Codification of Muslim Family Law", pp. 367-406, in SONBOL, A. (edited by), *Gulf Women*, Doha: Bloomsbury Qatar Foundation Publishing, 2012, p. 399.

¹⁴² *IBID*, p. 398.

¹⁴³ HUMAN RIGHTS WATCH, "UAE: Weak Protection Against Domestic Violence: Victims Rebuffed, Prosecuted, Lose Cases over Children", August 4, 2014: <http://www.hrw.org/news/2014/08/04/uae-weak-protection-against-domestic-violence>.

(*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.

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.

The practice of automatically providing men with permanent guardianship of children stems from the concept of male authority over women and children (*qiwamah* and *wilayah*). In practice, many *Shari'ah* courts in pre-modern times have granted mothers the guardianship of their children, in marriage and upon death of fathers.

(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 both custody and guardianship proceedings are decided based on the 'best interests of the child.'

(4) GOOD PRACTICES:¹⁴⁴

- ❖ **Algeria:** Overall guardianship is transferred to the parent to whom custody of the child is granted.¹⁴⁵
- ❖ **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.
- ❖ **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.

¹⁴⁴ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 48.

¹⁴⁵ Welchman, 2014, p.149.

(G) RIGHT TO CONFER NATIONALITY

(1) CRITICAL INFORMATION:

- ❖ **Male citizens have the right to confer their nationality to foreign spouses; female citizens do not.**
- ❖ **Male citizens with foreign spouses automatically confer their citizenship to their children; female citizens with foreign spouses cannot.** Children of citizen mothers and non-citizen fathers do not acquire Emirati citizenship automatically at birth, as nationality is legally derived from fathers. However, mothers can ensure their children have the same rights as citizens after submitting an application.¹⁴⁶ Women nationals can confer their nationality to their children only in certain circumstances, including when fathers are unknown, stateless, of unknown nationality or do not establish filiation.¹⁴⁷ As non-citizens, children of Emirati women and foreign fathers cannot avail of benefits such as government subsidised health care, education and social benefits; they are also ineligible for scholarships and employment aimed at Emiratis, increasing their opportunities in academia and industry.¹⁴⁸ UAE nationals make up only 17% of the population—this affects the likelihood of marriages between citizens and foreigners: In 2011, there was a rise in the number of Emirati women marrying foreigners. According to the National Bureau of Statistics, the numbers rose 15% from 643 to 737 cases in the period between 2009 and 2010.¹⁴⁹
- ❖ **Proposed bill amending the Nationality and Passport Law.** The UAE is currently in the process of a study on the transfer of nationality by women to foreign husbands and children. However, there is little information available on when the State party will actually amend the law.
- ❖ **Available alternative mechanisms.** Other states that do not recognise dual nationality address this question through a variety of mechanisms, including by requiring children to choose one of the nationalities at the age of 18.¹⁵⁰

(2) 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.

¹⁴⁶ UNICEF - Regional Office for the Middle East and North Africa, *United Arab Emirates, Mena Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, October 2011, p. 2:
<http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>.

¹⁴⁷ UNHCR, *Background note on Gender Equality, Nationality Laws and Statelessness* 2014, March 7, 2014:
<http://www.unhcr.org/4f5886306.html>.

¹⁴⁸ HUMAN RIGHTS WATCH, *World Report 2013: United Arab Emirates*: <https://www.hrw.org/world-report/2013/country-chapters/united-arab-emirates>.

¹⁴⁹ SAJWANI, H., "Citizenship law for Emirati women sets good example", *The National*, December 23, 2011:

<http://www.thenational.ae/thenationalconversation/comment/citizenship-law-for-emirati-women-sets-good-example>.

¹⁵⁰ Women's Refugee Commission & Tilburg University, *supra* note 98, p. 6.

(3) RECOMMENDATIONS:

- ❖ Allow Emirati women to transfer their nationality to their children, without discrimination, and ensure that children born to Emirati 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 Emirati women who would otherwise be stateless, have access to citizenship.
- ❖ Take all necessary steps to expedite the adoption of the amendment of the Nationality and Passports Law to grant women equal rights with regard to acquisition, change and retention of nationality and its conferral.¹⁵¹

(4) GOOD PRACTICES:¹⁵²

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

¹⁵¹ UAE Concluding Observations 2010, para. 33.

¹⁵² <http://www.learningpartnership.org/citizenship>.

III. CONCLUSION

In the UN Human Development Report, the UAE ranks second in the Arab world and 41st out of 187 countries, while the Gender Equality Index (published by the World Economic Forum in 2013) ranks the UAE first in the Arab world.¹⁵³ The UAE notes repeatedly in its engagement with the CEDAW Committee that it is committed to justice and human rights, including women's human rights.¹⁵⁴ Likewise, its Constitution articulates the family as 'the basis of society' ('The law shall guarantee its existence, safeguard it and protect it from corruption.'¹⁵⁵).

The UAE's ranking in international indices, and its own publicized initiatives on women's rights reveal a deep disconnect between the identity the nation is invested in building globally, and the reality of discrimination that the country's female population faces. The CEDAW Committee and civil society must hold the State of the UAE accountable to its own international obligations, Constitutional guarantees, and public rhetoric.

Musawah notes that the full and sustainable implementation of the CEDAW Convention in the State of the UAE is linked to the process of democratization. This process in the Arab and Muslim world at large must necessarily include the democratization of how Islam is understood, practiced, and codified into law. Increasingly today, Muslim women are claiming for themselves the right to shape the interpretations, norms, and laws that affect their lives. The intersection of Islam, politics, law, and gender in Muslim societies demands that a public culture of debate on these complex issues take place in order to transform discriminatory laws, practices, and discourses.

The fear or reluctance to engage with religion has left the field of interpretation open to the most conservative forces within Islam to define, dominate, and set the parameters of what Islam is and what it is not. It is important that women's rights activists in the Federation acquire the knowledge and courage not just to challenge the use of Islam to discriminate against women, but to offer an alternative vision that reconciles religion with human rights and women's rights. In countries where Islam is a source of law and public policy and shape culture and tradition, this is an imperative.

¹⁵³ UAE State party report 2015, para. 5 a-b.

¹⁵⁴ *Ibid*, paras. 11, 13, 14, 65, 92; RLIQA 2015, responses to paras. 6.

¹⁵⁵ UAE Responses to List of issues and questions, response to para. 1.

III. 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.¹⁵⁶

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.¹⁵⁷

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.

¹⁵⁶ *Musawah Framework for Action*, *supra* note 3.

¹⁵⁷ *Ibid.*

ANNEX 1: RESEARCH METHODOLOGY

This report draws on three methods of analysis that outline and challenge the structure of discrimination in Muslim family laws (MFL) and practices, and in this report, Islamic Criminal Law. 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 the lived realities of communities.¹⁵⁸

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 communities, 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) Lived realities: Documenting evidence of discrimination and harm

Discriminatory laws and practices cause harm to women, families, and communities; and thus must be challenged 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.¹⁵⁹ 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 is based on a close review of the UAE's engagement with the CEDAW Committee.

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 to the CEDAW Committee for its 62nd Session. Every effort was made to find credible, varied and balanced information, and to use full citations throughout.

The seriously limited space for free association, expression, and assembly, including the monitoring of discussion of Government law and policy in person, print and online spaces, imposed significant obstacles on the researchers and authors of this report.

(2) Islamic Jurisprudence: Challenging discrimination justified in the name of religion

Discriminatory laws and practices cause harm to women, families, and communities; and thus—according to theories and methods within Islamic jurisprudence—must be challenged to ensure equality and justice for women.

¹⁵⁸ *Musawah Framework for Action*, available at: http://www.musawah.org/framework_action.asp.

¹⁵⁹ 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.

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.¹⁶⁰

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:¹⁶¹

- ❖ 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.¹⁶²
- ❖ 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 realities of time and place. Positive reforms in Muslim family laws and practices provide support for this possibility of change.

Reform of family laws from within Islamic traditions is both necessary and possible.

¹⁶⁰ 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.

¹⁶¹ For more information, see *Musawah Framework for Action*, *supra* note 7.

¹⁶² 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 7.

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

Specific discriminatory laws and practices are rooted within a greater structure of discrimination that 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*).¹⁶³

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.

¹⁶³ Musawah is currently undertaking a long-term knowledge building initiative, including a participatory feminist research project, 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>; and Musawah’s latest publication, *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (eds. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumming), London: Oneworld, 2015; see: <http://www.musawah.org/men-charge-rethinking-authority-muslim-legal-tradition>. Finally, see Musawah’s Oral Statement presented at the 9th 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>.

ANNEX 2: SUPPLEMENTARY CASE STUDIES

(A) EQUAL RIGHTS & RESPONSIBILITIES: CASE STUDIES

❖ The story of Afsana Lachaux

She moved from London, where she was a senior civil servant at the Department of Work and Pensions to Dubai in 2010 after marrying her ex-husband, French (not Emirati!). She has been accused of kidnapping her son, Luois, after winning a custody battle against her former husband. She was accused by her husband when she failed to take him to a court-ordered access meeting. Mrs Lachaux said she did not turn up because her husband had threatened her, a claim he denied. She complained that the police dismissed her allegations of domestic violence and that the court that heard the case refused to listen to her evidence and witnesses.

Mrs. Lachaux, 46, alleges that her ex-husband, who is Christian, exploited Dubai's legal system to gain custody of the boy and have criminal charges brought against her. "You can be a non-Muslim man and use sharia and he stipulated he wanted to use sharia".

"Women like me can be divorced without you knowing and sharia law can be used against you even if your husband, like mine, is not Emirati and you married in England. Basically, you're stuffed," she said.

She warned women to think carefully about the implications of living in the UAE in the event that their marriage breaks down. "I want the Foreign Office to warn women that Dubai is a dangerous place for them. You don't get protection from the police and from the courts. I made one mistake and that was going to the UAE. If I knew what I know now, I never would have left Britain."

"The judge dismissed my witnesses and my defence and there has been a consistent pattern of dismissing anything I have to say. My word as a woman and a victim of domestic violence is worthless."

Mrs. Lachaux's son from a previous marriage, Rabbhi Yahiya, 26, has written to officials at the Foreign Office in London and set up a website to campaign on her behalf.

He told the Telegraph: "All my mum's attempts to explain, and produce her own evidence against this charge, met with a wall of indifference."

He urged the British government to intervene so that she can regain custody of Louis and leave Dubai.

A Foreign Office spokesman said: "We recognise that Mrs Lachaux is understandably distressed at being separated from her son. Consular officials have been providing assistance to Mrs Lachaux since 2011."

He said this included attending court hearings with her.

"Consular officials have approached the UAE authorities about this case and we will continue to work closely with them," he added.

"However we cannot interfere in the judicial process of another country. We must respect their systems just as we expect them to respect the UK's laws and legal processes."

Her eldest son also reports of a travel ban imposed on her mother. He says: “instead of helping her, the authorities imposed a travel ban on her and my little brother and confiscated her passport at the request of her ex-husband, leaving her in limbo and exposing the shocking inequities of the UAE legal system. Travel bans are commonplace in the UAE and can be easily imposed on women and children at the request of a man – regardless of his nationality. It is something the British Foreign Office is fully aware of, yet fails to mention in any of its UAE guidance. My mother discovered this to her cost when she decided to flee from her husband in April 2011 and found she was treated as a criminal”.¹⁶⁴

(B) CAPACITY TO ENTER INTO MARRIAGE (GUARDIANSHIP): CASE STUDIES

When the guardian is your son:

- ❖ **One Emirati divorcee**, 51, is considering to travel abroad after being told she required the consent of her son, who is 26 years old, to remarry. “My son has agreed,” she said, “but I don’t want to bring him to court to sign the marriage contract. “I’m a grown woman and his mother. How can I have my son come to court and marry me off?”¹⁶⁵
- ❖ **A Palestinian-Canadian woman**, 40, says she went to court to get married and the judge told her she was not allowed to without her father. She says: “When I told him I had no one in the country he asked me if I had a son. I told him I did but he was only 11 years old.” The boy will be eligible to be a guardian when he comes of age. “My son didn’t understand what was happening and came with me the next day. The judge asked him in Arabic if he hit puberty. He didn’t understand and asked him what the word meant.” Her son was asked to raise his arm to see if he had any underarm hair as an indication that he had reached puberty. “He didn’t know what was happening and it was embarrassing and humiliating. This law is a disgrace. I’m a grown woman and should be allowed to make my own decisions.” The woman was previously an administrator at the Ministry of Social Affairs. “The system is all tied together,” she said. “When you get married the information is shared between three different government departments. I used to see my colleagues access the system and gossip about who recently remarried and who got divorced. I don’t want this to happen to me”. “Everyone I know has got married secretly abroad, in Bahrain, Syria or Egypt, where only two witnesses are required. They then bring the contract here and it is registered by the embassy and authenticated by the court.”¹⁶⁶
- ❖ **The story of Fatima**: Fatima’s parents told her she could not marry the man she wanted to marry because he was of a different tribe and considered him to be ‘beneath them’. “They refused the man I wanted because he had a different last name. He was rejected because of his tribe. I am a pure Bedouin while he is not a pure Arab. They came up with a [different] marriage proposal and they were threatening to force me into it,” the 28-year-old said. After asking her family several times for permission to marry the man of her choice, Fatima decided to take her case to court. “When the man I

¹⁶⁴ ROBERTS, E., “British mother convicted of kidnapping young son in Dubai”, *The Telegraph*, February 14, 2014: <http://www.telegraph.co.uk/expat/expatnews/10639292/British-mother-convicted-of-kidnapping-young-son-in-Dubai.html>; ROBERTS, E., “Human Rights Watch warns expat women about the UAE”, *The Telegraph*, August 5, 2014: <http://www.telegraph.co.uk/expat/expatnews/11012631/Human-Rights-Watch-warns-expat-women-about-the-UAE.html>; YAHYA, R., “My mother is trapped by the UAE’s nightmarish legal system”, *The Guardian*, February 15, 2014: <http://www.theguardian.com/commentisfree/2014/feb/15/my-mother-trapped-uae-nightmarish-legal-system>.

¹⁶⁵ AL NOWAIS, S., “Divorcees, widows concerned about receiving ‘permission’ before remarrying”, *The National UAE*, August 7, 2014: <http://www.thenational.ae/uae/courts/divorcees-widows-concerned-about-receiving-permission-before-remarrying>.

¹⁶⁶ *IBID.*.

wanted came to propose for the third time, my father knew that we knew each other". "My father said I was disrespectful and that is when I decided to leave the house to file a complaint, especially as he was threatening to wed me to a stranger." In October 2014, Fatima issued the court with a legal request to get married. "I headed immediately to Abu Dhabi Guidance Division. It was the only way," she said. The man respected my decision and was willing to wait longer, be more patient to try to propose again. My family tried their best to stop me from raising the case in court". "They made it worse and never allowed me to continue the court case or even contact my lawyer." She said that many lawyers she talked to did not deal with her case professionally, considering traditions as more important than her rights. She said that "a woman must be respected and supported by the laws, staying away from the societal barriers that protect the males and creates pressure on the women under the pretext of protection".¹⁶⁷

(C) EARLY & CHILD MARRIAGE: CASE STUDIES

❖ The story of Mervat Ardoumi

Mervat, from Syria, was forced to marry a family friend when she was 18. Today she says that she would not want a daughter to marry so young "I would prefer that she finished her education first", Mrs Ardoumi said. "Twenty-two or 23 would be a more reasonable age. Even if she does not work, that education would be valuable when raising her children."¹⁶⁸

(D) POLYGAMY & TEMPORARY MARRIAGE: CASE STUDIES

❖ The story of Samia Saeed

She has been married for seven years and has three children with a man who at the time of their marriage already had a second wife for 10 years and 4 children with her. She says that the demands for equality spelled out in the Quran are almost impossible to meet. "It's a difficult life, and no man or woman who is in a polygamous relationship will say that they are fine with the situation," said the Emirati woman. "All men in the beginning think it's exciting to have a second wife, and many women don't mind at the start. As soon as the marriage happens, the woman starts making demands and wanting her husband to treat both wives equally." She even affirms: "As hurt as I am, I feel sorry for my husband and I see the huge burden on him. He's become a lost man with no life. If he takes me out one day then his first wife will want to go out the next."¹⁶⁹

❖ The story of Ahmed

There are also men that cannot afford the economic burden of having more than one wife, like Ahmed M, a 30-year-old Emirati from Dubai, said: "I divorced my second wife. I couldn't do it." Ahmed is a government employee and could not afford another house that his second wife asked him because she wanted to have a house of her own like his first wife

¹⁶⁷ AL KHOORI, A., "UAE women's legal fight to marry man of choice", *The National UAE*, March 17, 2015: <http://www.thenational.ae/uae/courts/uae-womens-legal-fight-to-marry-man-of-choice>.

¹⁶⁸ ISMAIL, M., "Brides should be at least 21 years old: survey", *The National UAE*, September 10, 2011: <http://www.thenational.ae/news/uae-news/brides-should-be-at-least-21-years-old-survey>.

¹⁶⁹ AL NOWAIS, S., "Polygamy with equality is 'impossible', says Emirati spouse", *The National UAE*, May 27, 2015: <http://www.thenational.ae/uae/polygamy-with-equality-is-impossible-says-emirati-spouse>.

and not live in a rented apartment. On the other side, his first wife was hurt that he had married again and “She always made me feel guilty and I was always trying to please her,” Ahmed said. “The more I did that, the more my second wife got angry.” Ahmed divorced his second wife a year after the birth of their first child and advises his friends to remain monogamous.¹⁷⁰

❖ H.S story

H. S., 31, marries to her husband while he was separated from his first wife, the he divorced. She says polygamy is not for everyone: “Rich men can afford such a relationship, but with all the expenses and high cost of living it’s impossible for an average Emirati to be able to maintain two houses.” And she underlines that the trend in Abu Dhabi and Dubai is to have a second wife purely for pleasure, H S said.¹⁷¹

(E) DIVORCE: CASE STUDIES

❖ The story of Fatima

Fatima, mother of 4 children, claims that since her divorce in 2010 **her husband is not paying her enough alimony**: between Dh200 and Dh500 each month. She finds herself in a very difficult economic situation.¹⁷²

❖ The story of Umm Saeed

Umm Saeed Can barely support her 3 children. Umm Saeed says her lawyer asked the court to increase her alimony, but it did not accept her arguments. **“We divorced mothers need more support, especially financially. The alimony given should be more than Dh10,000, at least for three children,”** she says. “The Government is working hard at looking after our needs, but I ask the judges who handle such cases to look at both sides of the issue. **“They look at the husband’s salary and assets and neglect the mother’s need to care for her children.”**¹⁷³

(F) CUSTODY & GUARDIANSHIP OF CHILDREN: CASE STUDIES

❖ The story of Tess Lorrigan

School teacher from Britain, she warns women to think twice about moving to the UAE if they are experiencing problems with their marriage.

¹⁷⁰ AL NOWAIS, S., “Polygamy with equality is ‘impossible’, says Emirati spouse, *The National UAE*, May 27, 2015: <http://www.thenational.ae/uae/polygamy-with-equality-is-impossible-says-emirati-spouse>.

¹⁷¹ AL NOWAIS, S., “Polygamy with equality is ‘impossible’, says Emirati spouse, *The National UAE*, May 27, 2015: <http://www.thenational.ae/uae/polygamy-with-equality-is-impossible-says-emirati-spouse>

¹⁷² AL KHOORI, A., “Divorced mothers hit out at low alimony payments that have family living on the breadline”, *The National UAE*, August 22, 2014: <http://www.thenational.ae/uae/courts/divorced-mothers-hit-out-at-low-alimony-payments-that-have-families-living-on-the-breadline>.

¹⁷³ AL KHOORI, A., “Divorced mothers hit out at low alimony payments that have family living on the breadline”, *The National UAE*, August 22, 2014: <http://www.thenational.ae/uae/courts/divorced-mothers-hit-out-at-low-alimony-payments-that-have-families-living-on-the-breadline>.

She was deported from Dubai in 2011 because she was working without her estranged husband's permission. She was forced to leave behind Olliane, the daughter they adopted from Nepal before their marriage broke down.¹⁷⁴

- ❖ **Human Rights Watch highlights that women may lose custody of their children, following domestic violence cases.** A woman lost a case concerning the residence of her 3 year old son in August 2012 because she didn't have any evident of the domestic violence complaints she made to the police. Another woman lost a case concerning the residence of her 8 year old son in August 2012 after making the first of three complaints of domestic violence to the police.

HRW also underlines that incorrect or incomplete information that resulted from police failure to properly investigate allegations of domestic violence may have led to court decisions that were not in the best interest of the children.¹⁷⁵

¹⁷⁴ ROBERTS, E., "Human Rights Watch warns expat women about the UAE", *The Telegraph*, August 5, 2014: <http://www.telegraph.co.uk/expat/expatnews/11012631/Human-Rights-Watch-warns-expat-women-about-the-UAE.html>.

¹⁷⁵ HUMAN RIGHTS WATCH, "UAE: Weak Protection Against Domestic Violence: Victims Rebuffed, Prosecuted, Lose Cases over Children", August 4, 2014: <http://www.hrw.org/news/2014/08/04/uae-weak-protection-against-domestic-violence>.

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.

¹⁷⁶ 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>.

A Note on Terms

Many of the terms used in Muslim family laws and practices are transliterated and/or translated from Arabic words. Because transliteration styles differ, different spellings for the same term are used in different places. For ease of reading, we have opted to use a single transliteration for each term consistently throughout the report (e.g. Shari’ah, qadi), except in formal usual specific to a particular country or context (e.g. Syariah Court, Kadhis’ Court). This in no way implies that there is a ‘correct’ way of spelling any given term.