



**Musawah List of Issues and Questions on Article 16:
Bahrain**

**57th CEDAW Session
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Musawah, the global movement for equality and justice in the Muslim family, submits its first contribution to the List of issues and questions for consideration by the CEDAW Committee in its review of Bahrain's third periodic State party report. It is hoped that *Musawah's* issues of concern and list of questions will provide critical information in (1) identifying gaps in the State party report and framing follow-up questions, and (2) determining the direction, tone, and issues for the CEDAW Committee's Constructive engagement with the Bahraini Government, and in follow up activities on the Concluding Observations.

Musawah's issues of concern and list of questions take a critical look at the status of marriage and family relations, as encapsulated in Article 16 of the CEDAW Convention. Issues and questions were formulated based on close review of Bahrain's combined initial and second (2007) and third periodic State party reports (2011), the CEDAW Committee's Concluding Observations (2008), and a review of the reality of critical issues on the ground based on available and credible sources.

I. MUSAWAH'S ISSUES OF CONCERN

A. Addressed in State party reports (2007, 2011)^{1 2}

1. **Reservations: Article 2, Article 9.2, Article 15.4, Article 16**
2. Different minimum age of marriage (16 for females; 18 for males); legal exceptions enable child marriage. (SPR 2011 para. 150)
3. Prevalence of forced marriage. (SPR 2007 para. 327)
4. 'Complementary' rights and responsibilities. (SPR 2011 paras. 81, 93)
5. Women do not have legal right to choose residence. (SPR 2011 para. 148)
6. Marital rape not criminalised. (SPR 2011 para. 138)
7. Women with foreign spouses cannot transmit nationality to children. (SPR 2011 paras. 82, 118-122)
8. Permissibility of polygamy (although women can prohibit in marriage contract). (SPR 2011 para. 150)
9. Female siblings receive one-half the inheritance of male siblings. (SPR 2011 para. 80)
10. New family law (2009) excludes majority Shiite community. (SPR 2011 para. 151)

¹ CEDAW 42nd Session, Bahrain State party report (November 2007), U.N. Doc. CEDAW/C/BHR/2, [hereinafter SPR 2007], available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/600/19/PDF/N0760019.pdf?OpenElement>.

² CEDAW 57th Session, Bahrain State party report (December 2011), U.N. Doc. CEDAW/C/BHR/3, [hereinafter SPR 2011], available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/646/91/PDF/N1164691.pdf?OpenElement>.

B. Not addressed in State party reports (2007, 2011)

1. Guardian (*wali*) required for women to enter marriage.³
2. Men's right to unilateral divorce (*talaq*), including pronouncement outside of court.⁴
3. Maximum one-year compensation for women divorced unilaterally.⁵
4. Men's right to legal guardianship of children.^{6 7}
5. Women forfeit right to children's custody upon remarriage.⁸

II. MUSAWAH'S LIST OF QUESTIONS

A. Marriage

- ◆ **Exceptions to minimum age of marriage:** Paragraph 50 of SPR 2011 indicates that approval of the Shari'ah court and 'urgent need' is required for marriage of girls under 16 and 15, respectively. Please provide data from the past four years (since the adoption of the new family law, Law No. 19, 2009) on how many marriages have been approved for girls under 16 and 15, the ages of the husbands in said marriages, and the specific criteria used to establish 'urgent need.'
- ◆ **Polygamy:** Paragraph 150 of SPR 2011 indicates that women can stipulate in their marriage contract that their husbands cannot take other wives. Please provide data from the past four years on the prevalence of polygamy, the percentage of women who include said stipulation in their marriage contract, and whether the State party is making efforts to either further restrict or prohibit polygamy. (In accordance with Concluding Observation No. 21.)⁹
- ◆ **Forced marriage:** Paragraph 327 of SPR 2007 acknowledges the prevalence of harmful practices such as forced marriage. Please provide data from the past four years on the prevalence of forced marriages. Please also provide information on concrete measures taken to eliminate such harmful practices and to provide adequate support to victims, such as legal advice, provision of shelters, psychological support, and medical treatment. Finally, please also

³ Lynn Welchman, 'Bahrain, Qatar, UAE: First time Family Law Codifications in Three Gulf States,' *International Survey of Family Law*, Bill Atkin, ed. (July 2010), p. 3, available at:

http://eprints.soas.ac.uk/10899/1/Welchman_Bahrain_Qatar_UAE_ISFL_2010.pdf.

⁴ *Ibid.*, p. 7.

⁵ *Ibid.*, p. 9.

⁶ *Ibid.*, p. 10.

⁷ Embassy of the United States, 'Human Rights Report: Bahrain' (2012), available at:

<http://bahrain.usembassy.gov/policy/human-rights-report.html>.

⁸ Welchman, pp. 11-12.

⁹ CEDAW 42nd Session, Bahrain Concluding Observations (November 2008), U.N. Doc.

CEDAW/C/BHR/CO/2 (2008), [hereinafter Concluding Observations], available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/602/30/PDF/N0860230.pdf?OpenElement>.

provide detailed information on measures taken to eliminate discriminatory social and cultural patterns and pervasive patriarchal attitudes in this regard.

B. Divorce

- ◆ ***Khul' divorce***: Reports indicate that although women can obtain divorce through judicial *khul'* (compensated divorce), judges often require women to provide large sums of money and to waive their legal rights, including custody of their children.^{10 11} Taking into consideration the high rate of divorce in the State party territory (Concluding Observation No. 40), please provide information on the criteria used to determine the amount of *khul'* compensation women must pay, as well as data from the past four years on *khul'* compensation amounts paid by women compared to their income, compensation amounts provided by men to women after divorce, and the allocation of children's custody after *khul'* divorce. Please also provide information on measures being taken to limit the amount of *khul'* compensation required by women, and to allow women access to judicial divorce without forfeiting custody rights.
- ◆ ***Custody and guardianship***: Articles 130-131 of the new family law (Law No. 19, 2009) stipulate that mothers lose their right to custody if they remarry men who are not close relatives of the ward.¹² Please provide data from the past four years on how many women with children remarry after divorce, and how often mothers lose custody of their children upon remarriage. Please also provide information, including relevant sociological research, used to justify the assumption that a mother's remarriage sufficiently challenges the 'best interest of the child' (Articles 132-134 of the new family law).¹³ Finally, please provide information on whether the State party is considering granting mothers equal right to legal guardianship of children.

C. Equal rights and responsibilities

- ◆ ***Justification for reservation***: Paragraphs 20 and 21 of SPR 2011 indicate the State party's efforts to increase human resource development of all citizens, while paragraphs 123 and 125 of SPR 2011 indicate that women comprise more than 50% of all levels of education, and that a national project provides additional technical and vocational education for young women. In this regard, please provide justification for continued reservations to Article 2 and 16.1(c) regarding the 'complementary nature' of men's and women's duties within the family, based partly on the assumption that men are sole financial providers (SPR 2011 para. 93, justified in SPR 2007 para. 329).

¹⁰ Bahraini NGOs, 'The Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (September 2008), p. 21, available at:

<http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Bahrainwomenunion42.pdf>.

¹¹ Musawah, *Home Truths: A Global Report on Equality in the Muslim Family* (2009), p. 4, available at:

http://www.musawah.org/sites/default/files/Home%20Truths-EN_0.pdf.

¹² Welchman, pp. 11-12.

¹³ *Ibid.*, p.11.

- ◆ **Stereotypical role of women in the family:** Paragraphs 92-96 of SPR 2011 detail measures to project positive images of women, and convey equal status and responsibilities of women and men in the public sphere. However, there is little presented on similar efforts regarding equal roles and responsibilities *within the family*. Please provide detailed information on measures taken to eliminate discriminatory social and cultural patterns and pervasive patriarchal attitudes regarding roles and responsibilities of women and men in the family. (In accordance with Concluding Observation No. 23.)
- ◆ **Proposed study on women's role within the family:** Paragraph 81 of SPR 2011 indicates that a current study might limit the scope of the State party's reservation to Article 2 to women's position within the family. Please provide information on the current status of the study, its objectives and methodology, and the extent to which women's rights activists are involved in the research design and data collection process.

D. Legal framework and proposed laws

- ◆ **Family law for Shiites:** Recent reports indicate abuses and discriminatory rulings against Shiite women concerning divorce, child custody, and inheritance.^{14 15 16} What measures are being taken to include the 65-75% majority Shiite community in the new family law (Law No. 19, 2009),^{17 18} and in the meantime, to improve access to equality and justice for Shiite women? Please provide information on what concrete steps the State party plans to take to deal with the opposition to a single codified law that applies to both the Sunni and Shiite communities.
- ◆ **Criminalisation of domestic violence and marital rape:** Paragraph 138 of SPR 2011 indicates that a draft domestic violence law is currently under consideration. Please provide more information on the key provisions and status of the draft law. In particular, please provide information on whether all forms of domestic violence, including marital rape, are criminalised, and whether marriage to the victim exempts perpetrators of rape from prosecution. (In accordance with Concluding Observation No. 25.)
- ◆ **Mother's right to confer citizenship:** Paragraphs 121 and 122 of SPR 2011 indicate measures to formulate a draft amendment to the Nationality Act, which

¹⁴ The Bahrain Pulse, 'At Wefaq Islamic Society Rejects Family Law that Protects Women's Rights in Bahrain (22 May 2012), available at: <http://bahrainpulse.com/tag/womens-rights/>.

¹⁵ Human Rights Watch, 'World Report: Bahrain' (2012), available at: <http://www.hrw.org/world-report-2012/world-report-2012-bahrain>.

¹⁶ Embassy of the US, 'Human Rights Report: Bahrain' (2012).

¹⁷ Carnegie Endowment for International Peace, 'Bahrain: Between the United States and Saudi Arabia' (4 April 2011), available at: <http://carnegieendowment.org/2011/04/04/bahrain-between-united-states-and-saudi-arabia/t8>.

¹⁸ Bloomberg, 'Bahrain Shiites May Rally After Funeral for Protester, (16 February 2011), available at: <http://www.bloomberg.com/news/2011-02-15/bahrain-shiites-may-rally-after-funeral-for-second-person-killed-in-unrest.html>.

under specific criteria would grant Bahraini nationality to the children of Bahraini women married to foreign men. Please provide information that ensures that the provisions of the amendment are in full accordance with the Convention, and thus surpass temporary measures outlined in paragraph 119 of SPR 2011, which simply grant children of Bahraini women married to foreign men special privileges, not full citizenship status.

E. Data collection, monitoring, and evaluation

- ◆ ***Effectiveness of family guidance and reconciliation:*** Paragraph 152 of SPR 2011 indicates the establishment of a family guidance and reconciliation section in the Family Courts. What specific methods of data collection, monitoring, and evaluation does the State party undertake to accurately assess the effectiveness of this initiative? Please provide data from the past four years on the number of couples that have been referred to these services, the outcomes of sessions, and the level of satisfaction felt by both women and men with the services provided. Please also provide information on the content and extent of gender-sensitivity training required for all advisors and counsellors.

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.¹⁹

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;*

¹⁹ The Musawah Framework for Action, *supra* note 5, available at: <http://www.musawah.org/about-musawah/framework-action>.

- *Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices; and*
- *Support civil society groups and individuals engaged in family law reform campaigns, moving the family towards relationships of equality, justice, dignity and mutual respect.*