



Musawah Oral Statement: Bahrain and Qatar
57th Session of the CEDAW Committee
Monday, 10 February 2014

Thank you, Madam Chair.

My name is NATASHA DAR and I represent [Musawah](#), the global movement for equality and justice in the Muslim Family. We are honoured to address the CEDAW Committee today about the implementation of Article 16 in Bahrain and Qatar, specifically with regards to Muslim Family Laws.

We are disappointed that there are no civil society activists here from Qatar. We hope that the thematic report we have prepared for Qatar, as well as those for Bahrain and Iraq, can help provide critical information, analysis, and recommendations during the constructive engagement with State parties, and in the follow-up thereafter.

First, I will highlight three areas of discrimination in marriage and family relations, as well as make recommendations for reform, and point out good practices from other OIC countries where available.

Next, my colleague ROZANA ISA will end by providing the CEDAW Committee with information on understanding and challenging the structure of discrimination in Muslim family laws and practices.

I. OBSERVATIONS AND RECOMMENDATIONS:

Our research shows that numerous similar areas of inequalities between women and men exist in Bahrain and Qatar, on issues related to marriage and family relations. I will briefly examine and challenge the minimum age of marriage, which is set at 16 for females and 18 for males; the husband's legal role as head of household; and recent codification efforts of Muslim family law, which still require effective implementation mechanisms. (*For more information on the specific forms of discrimination in these areas and others, please see our respective thematic reports.*)

- (a) **First, on minimum age of marriage:** Commonly, the example of the Prophet Muhammad's marriage to a purported 9-year old Aishah, and the belief that a girl reaches maturity upon menstruation and is therefore ready for marriage, is used to justify child marriage. However, Musawah notes that the onset of puberty is no indication of sufficient maturity for marriage. We also highlight the Prophet's marriage to his first wife Khadijah—who was 15 years older than him—and ask for the logical reason for why States rarely choose to this relationship as justification for common practice.

Given the evidence of harm of early marriage on women and girls' physical and mental integrity, as well as on family peace and wellbeing, ***we urge the Committee to recommend that the Governments of Bahrain and Qatar set an equal marriage age for both men and women at 18, the age of majority (in accordance with the priority follow-up issues in the Committee's 2008 Concluding observations on Bahrain). Algeria, Bangladesh, Morocco, Sierra Leone, and Turkey offer positive examples of this.***

- (b) **Second, on equal rights and responsibilities:** Both Governments establish marriage as legal contract of 'complementary' rights and responsibilities, which include the wife's duty to 'care for and obey' her husband as head of the family. If the wife is recalcitrant (*nushuz*), she risks losing her right to alimony, and the dowry paid to her by her husband in the case of divorce. In Bahrain and Qatar,

husbands often leverage women's legally-mandated obedience (*referred to as 'House of Obedience'*) to humiliate their wives, and cause moral and material harm. As legal heads of household, men are further given the exclusive right to determine the place of their wives' residence, and in Qatar, men have the right to restrict women's movement outside the home.

Repealing the codification of unequal and discriminatory rights and responsibilities within the marriage is consistent with Qur'anic principles of justice (*'adl*), equality (*musawah*), dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*).

We urge the Committee to recommend that the Governments recognise marriage as a partnership of equals. We raise the Kyrgyz Republic, Morocco, Turkey, and Uzbekistan as positive examples.

- (c) **Third, on codification and implementation of New Family Laws:** In 2006 and 2009, codified family laws were passed in Qatar and for Bahrain's Sunni minority community, respectively. Codification has enabled litigants, judges, and lawyers to understand and implement legal provisions consistently. However, there is still discrepancy between legal rights that exist and discriminatory practice, due to the lack of effective implementation mechanisms, including women's awareness of the new family laws.

Furthermore, Shiite personal status law remains uncoded for Bahrain's majority Shiite community. Thus, family matters are regulated within religious courts by government-appointed judges, who base judgments on their own interpretation of the *Shari'ah*, often in discriminatory ways, on issues of divorce, child custody, alimony, and inheritance.

We urge the Committee to recommend that both Governments increase awareness of new family laws among all sectors of society, and that the

Bahraini Government clearly define executive steps to include the Shiite majority in the New Family Law, and towards an eventual unified law.

The above examples of continuing inequalities between women and men in the Muslim Family Laws of Bahrain and Qatar are violations against the fundamental rights of women and children. Given the gravity of harm, and the ways the Bahraini and Qatari Governments routinely justify discrimination on the grounds of religion, Musawah urges the CEDAW Committee to highlight Article 16 as a follow-up priority issue for both States.

II. INFORMATION ON UNDERSTANDING AND CHALLENGING THE STRUCTURE OF DISCRIMINATION IN MUSLIM FAMILY LAWS AND PRACTICES:

Thank you, Madam Chair. My name is ROZANA ISA, and I am the Coordinator of Musawah.

I continue by urging the Committee to consider two main points as it engages with states like Bahrain and Qatar, which use religion and culture as justification for discriminatory laws and practices, including reservations and non-implementation of key articles of the CEDAW Convention:

(1) FIRST, structural discrimination against women within the overall legal framework informs specific discriminatory laws and practices:

Many contemporary Muslim family laws and practices are structured around ideas and concepts that are inherently discriminatory against women. Because these general concepts inform many laws and practices, discrimination permeates throughout the family law system.

Two such concepts are *qiwamah*, which is commonly interpreted as male authority over women, and *wilayah*, which can be understood as guardianship in a variety of forms. These concepts were developed by Muslim jurists centuries ago but are still maintained today.

According to classical Muslim jurists, a husband had a duty to protect and provide maintenance for his wife in the form of housing, clothing, food, etc. In exchange, a wife had a duty to be obedient or submissive to her husband. While these concepts have loose roots in the Qur'an and *hadith*, the details of the marital roles and responsibilities were developed through a process of human interpretation based on particular jurists' cultural norms and understandings.

This construction of marriage is still directly or indirectly justifies discrimination against women in a variety of ways, including: men's right to polygamy, sexual access, domestic violence, unilateral divorce (*talaq*), and greater shares of inheritance over female siblings; women's lack of decision-making power in the family, financial security, right to guardianship of children, and choice and consent in marriage; and women's inability to transmit nationality to children.

This model of male authority and female submission contradicts universally accepted human rights norms, and is impossible to sustain in present day economic and social realities. Many men are unable or unwilling to protect and provide for their families. Women often serve as the protectors of their families, provide essential income for their families, and contribute through unpaid labour.

Musawah urges the CEDAW Committee to recognise the structural roots of inequality in Muslim family laws, to call on the governments of Bahrain and Qatar to examine these roots of discrimination and recognise the possibility and necessity of equality in marriage and family life.

(2) SECOND, discriminatory laws, even those justified in the name of religion and culture, can and should be changed to ensure equality and justice for women:

There is often resistance to the idea of changing Muslim family laws and practices because of the notion that they are rooted in religion. This is clearly demonstrated in the reservations expressed by Bahrain and Qatar. However, theories and methods within Islamic jurisprudence can be used to reform Muslim laws:

- a. 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.
- b. 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.
- c. 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.
- d. 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.

Musawah urges the CEDAW Committee to consider the possibilities for reform of family laws from within given religious or cultural traditions and to advise Governments of Bahrain and Qatar that such reform is both necessary and possible. Other Muslim countries have reformed their laws to comply with their CEDAW obligations.

Finally, 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:

- a. Recognise the diversity of opinions, laws, and practices in the Muslim world;
- b. Promote human rights standards as *intrinsic* to the teachings of Islam;
- c. Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim family laws and practices; and
- d. Support civil society groups and individuals engaged in family law reform campaigns.

We thank you for this opportunity, Madame Chair.
