



**musawah**

For Equality in the Family

**THEMATIC REPORT ON ARTICLE 16, MUSLIM FAMILY LAW  
AND MUSLIM WOMEN'S RIGHTS IN**

**Qatar**

**73rd CEDAW Session  
Geneva, Switzerland  
July 2019**

**Musawah**

15 Jalan Limau Purut, 59000 Kuala Lumpur, Malaysia

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

Email: [musawah@musawah.org](mailto:musawah@musawah.org)

Website: [www.musawah.org](http://www.musawah.org)

## TABLE OF CONTENTS

A. INTRODUCTION .....	3
B. LEGAL BACKGROUND .....	4
C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE, AND REFORM .....	5
1. FAMILY LAW BASED ON DISCRIMINATORY FRAMEWORK .....	5
RECOMMENDATIONS.....	7
2. EARLY and CHILD MARRIAGE .....	7
RECOMMENDATIONS.....	8
3. WOMEN'S CAPACITY TO ENTER INTO MARRIAGE .....	9
RECOMMENDATIONS.....	10
4. POLYGAMY .....	10
RECOMMENDATIONS.....	11
5. DIVORCE RIGHTS.....	12
RECOMMENDATIONS.....	11
6. GUARDIANSHIP OF CHILDREN.....	15
RECOMMENDATIONS.....	16
Annexe: Musawah Vision for the Family .....	17

## A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of Oman, reporting before the 73<sup>rd</sup> CEDAW Session in July 2019.

This is the CEDAW Committee's second engagement with the State of Qatar, which ratified the CEDAW Convention on April 29, 2009. Qatar entered reservations to multiple articles for reasons outlined below:

- Article 2(a) (*in connection with the rules of the hereditary transmission of authority, as it is inconsistent with the provisions of the Article 8 of the Constitution*),
- Article 9.2 (*as it is inconsistent with Qatar's law on citizenship*),
- Article 15.1 (*in connection with matters of inheritance and testimony, as it is inconsistent with the provisions of Islamic law*),
- Article 15.4 (*as it is inconsistent with the provision of family law and established practice*),
- Article 16.1(a) and (c) (*as it is inconsistent with the provisions of Islamic law*), and
- Article 16.1(f) (*as it is inconsistent with the provisions of Islamic law and family law*).

In particular, this report examines Qatari laws and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: legal framework of the Qatari Family Law, women's equal capacity to enter into marriage, child marriage, polygamy, divorce rights and guardianship of children.

The report also contains sections on **Positive Developments in Muslim Family Laws** with examples of good and better practices from other Muslim contexts based on Musawah's research and comparative analysis of Muslim family laws and practices in 31 countries.

Musawah hopes 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 Muslim 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.

We hope that the CEDAW Committee will utilize this report as a key resource during its Constructive engagement with the State party, and in follow-up activities on the Concluding Observations. Musawah would like to acknowledge the vital input and feedback from national advocates into this report.

## B. LEGAL BACKGROUND

According to 2010 statistics on demographics, 67% of Qatar's 2.3 million population are Muslims. 90% of Qatar's Muslim population are Sunnis, majority of whom follow the Hanbali school of *fiqh* (jurisprudence). 10% of the Muslim population are Shi'as.<sup>1</sup>

According to the 2017 UNDP Human Development Index, Qatar had ranked 37 out of 189 countries and obtained a position in the 'very high human development' category. In terms of the Gender Inequality Index, Qatar ranks 44 out of 160 countries. According to the 2017 UNDP HDI report, 9.8% of parliamentary seats were held by women and a higher percentage (70.9 %) of adult women had reached secondary education compared to men (68%).<sup>2</sup> According to Qatar's 2012 Multiple Cluster Indicator Survey, about 5% of households in Qatar are headed by women.<sup>3</sup>

Qatar obtained independence in 1971 from its status as a British protectorate. The country has a mixed legal system incorporating both civil law and Islamic law. *Shari'ah* is one of the sources of Qatari legislation, and is applied to aspects of family law, inheritance, and certain criminal acts.

In terms of constitutional rights, Article 1 of the Constitution of the State of Qatar (effective June 9, 2005) declares that Islam is the state religion, and provides that, 'the Islamic *Shari'ah* is the main source of its legislations'. Article 21 of the Constitution states that, 'The family is the basis of the society. A Qatari family is founded on religion, ethics, and patriotism. The law shall regulate adequate means to protect the family, support its structure, strengthen its ties, and protect maternity, childhood, and old age.'

### QATARI FAMILY LAW

The Qatari Family Law (QFL) is the main codified law that governs matters relating to marriage and family relations of the Muslim majority population in Qatar.<sup>4</sup> In the absence of codified law that sufficiently address a particular matter of personal status of Muslims, according to Articles 3 and 4 of the QFL, the rules of Hanbali jurisprudence (*fiqh*) apply.<sup>5</sup>

As per Article 4 of the QFL, marriage and family relations of Muslims of other schools of thoughts apart from Hanbali as well as marriage and family relations of Qatar's non-Muslim minority communities are governed by their own laws, unless they request for the QFL to apply to them.<sup>6</sup>

The Qatari government cited the apparent inconsistencies between the provisions of CEDAW it has reservations to and Islamic law, Qatari law (family and citizenship) as well as established practices as the main reason for the reservations.<sup>7</sup>

The Government of Qatar stated in its 2019 Replies to the List of Issues & Questions of the CEDAW Committee that "*The Qatari Family Act (No. 22 of 2006) does not contain any provisions that discriminate against women.*"

<sup>1</sup> World Population Review – Qatar <http://worldpopulationreview.com/countries/qatar-population/>

<sup>2</sup> Human Development Indices and Indicators: 2018 Statistical Update - Qatar. [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/QAT.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/QAT.pdf)

<sup>3</sup> Qatari Ministry of Development Planning & Statistics et. al, "Qatar Multiple indicator Cluster Survey 2012", Table HH.3, p. 38, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Qatar/2012/Final/Qatar%20012%20MICS\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Qatar/2012/Final/Qatar%20012%20MICS_English.pdf)

<sup>4</sup> Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>5</sup> Articles 3, 4 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>6</sup> Article 4 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>7</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

## LACK OF PROGRESS ON REFORM OF QFL

In the 2014 Concluding Observations<sup>8</sup> on marriage and family, the CEDAW Committee recommended to the Qatar government, the following:

*In line with its general recommendations No. 21 and No. 29 on article 16 of the Convention, the Committee recommends that the State party -*

- (a) Finalize the review process of the Family Law (No. 22 of 2006) without further delay and repeal discriminatory provisions in that law and ensure that it protects the equal rights of women and men in all matters relating to marriage and family relations, including with regard to their right to freely enter into marriage, as well as inheritance, divorce and custody of children;*
- (b) Draw on the examples of other countries with similar religious backgrounds and legal systems that have reconciled their national legislation with the legally binding international instruments that they have ratified, specifically regarding equal rights for women and men concerning marriage, divorce, child custody and inheritance;*
- (c) Amend relevant legislation to abolish polygamy and raise the minimum age of marriage for girls to 18 years, so as to be equal to that of boys;*
- (d) Conduct awareness-raising campaigns targeting women to make them aware of their rights with regard to family relations and marriage;*
- (e) Reassess its declarations and reservations to articles 15 (1) and (4) and 16 (1) (a), (c) and (f) of the Convention, with a view to their withdrawal.*

Musawah would like to bring to the attention of the CEDAW Committee that there has been no notable change to the situation of discrimination that Qatari women face under the QFL, from what was last reported in 2014.

In the Qatar State Party report to the CEDAW Committee it was reported that four women have assumed membership in the Shura (Advisory) Council.<sup>9</sup> While this is a positive development, activists note that in practice they have no legislative power and simply approve what is passed onto them. The role therefore is highly limited. Furthermore, the prevailing status quo with regard to unequal rights for women in marriage and family matters is a matter of significant concern which warrants attention.

## C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE, AND REFORM

### 1. FAMILY LAW BASED ON DISCRIMINATORY FRAMEWORK

Article 9 of the QFL defines marriage as a “legitimate contract between a man and woman on the basis of sustainability, and its aim is cohabitation and securing chastity”. Article 56 promotes mutual, respect, kindness and intimacy between spouses to conserve that family’s welfare (including with the parents and relatives of the spouses) and ensure the best possible development of the children.<sup>10</sup>

However, despite these provisions, and despite Article 35 of the Constitution which guarantees equality, the QFL provides for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him.

<sup>8</sup> CEDAW Committee Concluding Observations on Qatar 2014 – CEDAW/C/QAT/CO/1 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2fCO%2f1&Lang=en)

<sup>9</sup> Second periodic State Party report submitted by Qatar to the CEDAW Committee CEDAW/C/QAT/2 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2f2&Lang=en)

<sup>10</sup> Articles 9, 56-58, 61, 69 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

Article 57 provides that a husband must; (i) provide his wife with a dower (*mahr*) as well as permanent financial maintenance (*nafaqa*); and (ii) permit her to visit her parents and relatives. The husband is also not entitled to intervene in his wife’s private property. Article 58 provides that the husband is entitled to: (i) the care and obedience of his wife; (ii) his wife’s duty to be responsible for the household and looking after their children. Article 61 reiterates the husband’s duty to provide his wife with adequate financial maintenance.

The QFL continues to recognize ‘disobedience’ of a wife as grounds for adverse marital consequences. Article 69 states that a “disobedient” wife risks losing her financial maintenance. A wife is deemed “disobedient” if she: (i) refuses to surrender herself to her husband without legitimate reason; (ii) refuses to move to the marital home without legitimate reason; (iii) leaves the marital home without legitimate reasons; (iv) refuses to travel with her husband when moving to another dwelling without legitimate excuse; (v) travels without the permission of her husband; (vi) works outside the home without the permission of her husband, unless he is abusing his right in preventing her from working.

**Changing realities of Qatari women:** According to the Qatar State Party report and response to the List of Issues and Questions, Qatari women have and continue to hold several senior leadership and supervisory positions. They have held ministerial positions as well as served as deputy ministers and department heads at ministries, as well as serve as judges, chief prosecutors and prosecutors. It is encouraging that Qatar wants to see women take up leadership positions and participate in active politics. Qatari women play various roles in the fields of education, health, law, journalism, aviation, banking, finance, and tourism.<sup>11</sup> The Qatari government must ensure that the Qatari family law reflects the shifting realities of Qatari women and their roles in families and society.

<b>CHALLENGING THE MAINTENANCE-FOR-OBEDIENCE FRAMEWORK</b>	
<p>This idea of ‘complementarity of rights’ is a manifestation of male authority (<i>qiwamah</i>) and guardianship (<i>wilayah</i>) over women. It does not in practice lead to equality in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.</p>	
<b>QUR’ANIC PRINCIPLES PROMOTE EQUALITY BETWEEN SEXES</b>	<ul style="list-style-type: none"> <li>The concept of male authority (<i>qiwamah</i>) and male guardianship (<i>wilayah</i>) over women play a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts, and must be challenged.</li> <li>The very notion of male authority and guardianship over women is not in line with Qur’anic principles. The hierarchical understandings of <i>qiwamah</i> and <i>wilayah</i> are juristic (fiqh) constructs that belong to the time and context where patriarchy was part of the social and economic fabric of life, and where men’s superiority and authority over women was theoretically a given.</li> <li>We can and must reconsider these concepts in line with the Qur’anic principles of justice and fairness, to build egalitarian family laws and practices that are based on social justice and enable families and their individual members to reach their full potential.</li> </ul>
<b>CONTEMPORARY LIVED REALITIES</b>	<ul style="list-style-type: none"> <li>Women’s lives and stories reveal that laws based on male authority and guardianship over women are untenable, unjust and discriminatory. Far from creating harmony in marriage, these laws are the main causes of marital breakdown and violence against women and thus there is urgent need for reforms.</li> </ul>

<sup>11</sup> Second periodic State Party report submitted by Qatar to the CEDAW Committee CEDAW/C/QAT/2 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fQAT%2f2&Lang=en)

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Ensure men and women the same right to enter marriage, including repealing discriminatory laws, regulations, and practices requiring for a guardian's consent or approval.
- ❖ Eliminate all provisions that refer to disobedience (nushuz) of women as a grounds by which she risks losing her right to financial maintenance.
- ❖ Consider Family Codes in other Muslim contexts such as Morocco, Algeria and Turkey as examples for reforming QFL to promote equality in the Muslim family.

### EQUALITY OF SPOUSES IN MARRIAGE

## POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

### ALGERIA

Under the Constitution and the Civil Code, the family is based on equality between spouses

### TURKEY

The Family Code requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.

### MOROCCO

The Family Code (Moudawana) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.

## 2. EARLY AND CHILD MARRIAGE

The minimum legal age for marriage is 16 for females and 18 for males as per Article 17 of the QFL. However, Article 17 also provides that girls and boys below 16 and 18 respectively may marry after: (i) the approval of their guardians; (ii) verification of the consent from both parties to the marriage contract; and (iii) the permission of a competent Judge.<sup>12</sup>

There is no consistent criteria used to determine a judge's interpretation of 'proper' justification to permit marriage for girls under 16; it is also unclear how a minor might consent to such a marriage. Further information is unavailable on how many marriages have been approved for girls below 16, the ages of husbands in said marriages, and the specific criteria used by judges to validate these marriages. The law does not stipulate an absolute minimum age below which a marriage may not be authorised. The minimum legal age for marriage is below the legal age of civil majority. Under Article 189 of the QFL, the legal age of civil majority is 18 for both females and males.<sup>13</sup>

According to UNICEF's State of the World's Children 2016 report, 4% of women aged 20- 24 in Qatar were first married by 18.<sup>14</sup> According to a civil society report, issues of concern with regard to child marriages include:<sup>15</sup>

<sup>12</sup> Article 17 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>13</sup> Article 189 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>14</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)

<sup>15</sup> Independent Group of Concerned Citizens, "Qatar Shadow Report", *Submission to the CEDAW Committee for the 57<sup>th</sup> Session*, 2013, p. 13, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_16177\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_16177_E.pdf)

- The difference in the minimum legal age for marriage between girls and boys;
- Authorisation of a marriage below the minimum legal age for marriage is very dependent on each judge and their individual interpretation of what is “proper”;
- The procedure for a minor to consent or object to a marriage is unclear.

<b>MUSAWAH JUSTIFICATION FOR REFORM</b>	
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.’	
<b>NEW HISTORICAL EVIDENCE NOW AVAILABLE</b>	<ul style="list-style-type: none"> <li>• Commonly, the example of the Prophet Muhammad’s marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old.</li> <li>• However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (source: <a href="http://www.sistersinislam.org.my/news.php?item.997.41">http://www.sistersinislam.org.my/news.php?item.997.41</a>).</li> <li>• 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.</li> </ul>
<b>QUR’AN STATES CONDITION OF PERSON FIT FOR MARRIAGE</b>	<ul style="list-style-type: none"> <li>• While the <i>Qur’an</i> 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.</li> <li>• This indicates that a person must have sufficient judgment and maturity to marry.</li> <li>• Equating the age of majority with the age of puberty and/or rationality (<i>baligh</i>), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine.</li> <li>• The onset of puberty is no indication of sufficient maturity for marriage.</li> </ul>

**RECOMMENDATIONS**

We recommend the CEDAW committee to urge the State party to:

❖ Enforce 18 years as the absolute minimum age of marriage for Muslim girls and remove all legal loopholes that allow for exceptions.

MINIMUM AGE OF MARRIAGE	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
<b>MINIMUM AGE OF MARRIAGE 18 (OR ABOVE) &amp; NO EXCEPTIONS</b>	<p><b>EGYPT</b></p> <p>The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalised.</p>
	<p><b>KENYA</b></p> <p>The minimum age for marriage is 18 for both females and males. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).</p>
	<p><b>PAKISTAN (Sindh Province):</b></p> <p>The minimum age for marriage is 18 for both females and males. The law criminalises and penalises the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.</p>

### 3. WOMEN'S CAPACITY TO ENTER INTO MARRIAGE

Regardless of her age, a prospective bride requires the consent of a marital guardian (*wali*) to enter into marriage. The guardian must be Muslim and must be the prospective bride's father followed by the agnate grandfather, son, full brother, paternal half-brother, full uncle and then paternal uncle.<sup>16</sup>

If the guardian opposes the marriage, the prospective bride may seek the authorisation of a judge to get married. The judge may authorise the marriage after considering the suitability of the marriage and determining that the marriage is in the interest of the couple.<sup>17</sup>

Pursuant to Article 53 of the QFL, both spouses may stipulate any condition in their marriage contract so long as the conditions: (i) are not inconsistent with the essence of marriage; and (ii) do not contradict *Shari'ah* or Qatari law. An aggrieved spouse may file for divorce for breach of a condition in the marriage contract.<sup>18</sup>

Conditions that may be stipulated in the marriage contract to include:<sup>19</sup>

- The wife must be allowed to continue to study or work;
- The husband cannot take another wife without the permission of the wife;
- The wife will not be required to accompany her husband on his travels;
- The husband and wife agree to jointly own assets acquired during the marriage;
- The wife is delegated the right to divorce (*isma*).

According to information from Qatari advocates, it is not common for a woman to bring a case to court to obtain permission to marry if her guardian objects to her marriage for fear of family or societal backlash.<sup>20</sup>

MUSAWAH JUSTIFICATION FOR REFORM	
The twin concept of male authority ( <i>qiwamah</i> ) and male guardianship ( <i>wilayah</i> ) over women plays a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts.	
<b>QUR'AN PROMOTES EQUALITY BETWEEN SEXES</b>	Musawah contends that the very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understanding of <i>qiwamah</i> and <i>wilayah</i> are juristic ( <i>fiqh</i> ) constructs shaped by gender ideology of classical Muslim scholars in the in the context of norms and practices prevalent in their times, where men's superiority and authority over women was the norm.

<sup>16</sup> Article 26 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>17</sup> Articles 27, 29 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>18</sup> Article 53 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>19</sup> Qatar State party report, U.N. Doc. CEDAW/C/QAT /1 (2012), paras. 421, 425, 438, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>20</sup> Information obtained from Qatari advocate, April 2017

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Ensure women have an equal right to enter marriage without a guardian's permission.
- Train and educate law enforcement officers, judges and, social workers to receive women's complaints and provide them with required legal and social assistance.

### CAPACITY TO ENTER MARRIAGE

### POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

#### WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES

**AFGHANISTAN, BAHRAIN (Shia), EGYPT, IRAQ, MOROCCO, TUNISIA, TURKEY:**

The consent of a marital guardian (*wali*) is not required for adult brides and grooms.

**BANGLADESH, PAKISTAN, SRI LANKA:**

The consent of a *wali* is not required for Hanafi women who have reached puberty.

## 4. POLYGAMY

A Muslim man may marry up to four wives at one time without much restrictions. Article 14 requires a marriage registration officer (notary) to ensure that the new wife is aware of the husband's financial capabilities before registering the marriage. If the husband and wife agree to proceed, the officer may not refuse to register the marriage. Article 14 also provides that in all cases, existing wives must be informed of the marriage after its conclusion.<sup>21</sup> Article 25(2) prohibits a man from marrying more than four wives at one time.<sup>22</sup> Article 57(6) requires that a husband treat multiple wives fairly.<sup>23</sup>

Article 66 provides that the wife shall have no right to accommodate her children from another husband in her marital home, unless: (i) they have no custodian other than herself or they would be disadvantaged by parting with her; and (ii) the husband has agreed to that expressly or impliedly. However, Article 66 provides that the husband shall have the right to accommodate his parents and his children from other women with his wife in the marital home if he is responsible for their support, provided that she may not be disadvantaged.<sup>24</sup>

Article 67 prohibits a husband from housing a new wife in the home of an existing wife, except with her consent.<sup>25</sup> A woman may stipulate in the marriage contract that her husband may not take another wife. If the husband breaches this term of the marriage contract, the woman may seek judicial divorce.<sup>26</sup> According to Qatar's 2012 Multiple Cluster Indicator Survey, about 4% of marriages in Qatar are polygamous.<sup>27</sup>

<sup>21</sup> Article 14 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>22</sup> Article 25(2) of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>23</sup> Article 57(6) of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>24</sup> Article 66 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>25</sup> Articles 67 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>26</sup> Article 53 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf); Qatar State party report, U.N. Doc. CEDAW/C/QAT/11 (2012), para. 421, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>27</sup> Qatari Ministry of Development Planning & Statistics et. al, "Qatar Multiple indicator Cluster Survey

According to information on the ground, it is not common practice for a woman to stipulate in the marriage contract that her husband may not take another wife because *Shari'ah* allows a man to have up to four wives at one time. This shall not prevent the wife to request divorce if she incurred damages arising out of such polygamous marriage.<sup>28</sup>

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

<b>MUSAWAH JUSTIFICATION FOR REFORM</b>	
<p>Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. <i>Surah an-Nisa' 4:3</i> in the Qur'an states: <i>'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or 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.'</i></p>	
<b>QUR'AN PROMOTES MONOGAMY</b>	<ul style="list-style-type: none"> <li>• When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy.</li> <li>• The verse in <i>Surah an-Nisa'</i> that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans.</li> <li>• As men were breadwinners in that society, the widows found it difficult to provide for their children. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.</li> </ul>
<b>CHALLENGING POLYGAMY</b>	<ul style="list-style-type: none"> <li>• Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe.</li> <li>• Polygamy was a practice that existed in various civilizations, religions, and cultures in many parts of the world until it was abolished by law as governments acknowledged the injustices it inflicted on women and children.</li> <li>• Tunisia has forbidden polygamy on the ground that it is impossible for a man to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the situation discussed in the Qur'an.</li> </ul>

**RECOMMENDATIONS**  
 We recommend the CEDAW committee to urge the State party to:

- ❖ **Amend QFL to prohibit polygamy by Qatari Muslim men, following examples of other Muslim countries which have abolished the practice in the best interest of family well-being.**

2012", Table CP.5, p. 102, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Qatar/2012/Final/Qatar%202012%20MICS\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Qatar/2012/Final/Qatar%202012%20MICS_English.pdf)

<sup>28</sup> Information obtained from Qatari advocate, April 2017

**POLYGAMY  
PROHIBITED****KYRGYZSTAN, TAJIKISTAN, TUNISIA,  
TURKEY, UZBEKISTAN****COURT AUTHORIZATION AND CONSENT OF EXISTING WIVES NEEDED:****ALGERIA**

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.

**INDONESIA**

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only be granted if the husband's existing wife:

- (i) is unable to perform her conjugal duties;
- (ii) suffers from a physical infirmity or an incurable disease; or
- (iii) cannot bear children.

**5. DIVORCE RIGHTS**

The QFL provides for three different mechanisms for divorce: (i) unilateral repudiation by the husband (*talāq*); (ii) judicial divorce; and (iii) redemptive divorce (*khul'*).<sup>29</sup>

**(i) Unilateral repudiation by the husband (*talāq*)**

A husband may unilaterally repudiate a marriage, which may be effectuated: (i) verbally or in writing; (ii) with or without reason; (iii) with or without the presence of the wife; and (iv) inside or outside the court room. If the husband wishes to pronounce the repudiation before a judge, the judge will attempt to reconcile the parties before the husband makes the pronouncement. If the husband pronounces the repudiation outside the court, the repudiation may be proved by evidence or admission and it must be communicated to the wife.<sup>30</sup>

A husband may delegate his unilateral right to divorce to his wife (*isma*) through a stipulation in the marriage contract,<sup>31</sup> thus permitting her to pronounce *talāq* upon herself (*talāq-i-tafwid*).<sup>32</sup>

**(ii) Judicial divorce (*fasah*)**

Valid grounds for seeking a judicial divorce by a wife include a husband's: (i) non-payment of the dower (*mahr*) prior to consummation of the marriage; (ii) failure to provide maintenance; (iii) incurable or severe physical or mental illness; (iv) prolonged absence without reasonable excuse or disappearance; (v) imprisonment of more than two years (wife may seek divorce after one year); (vi) failure to copulate with his wife for more than four months (*ila*); (vii) act of comparing his wife with another woman with whom he is forbidden to marry (*zihar*); (viii) accusation under oath of adultery by wife (*lian*); (vii) failure to convert to Islam should he be non-Muslim.<sup>33</sup>

In addition, a wife may seek divorce on the basis of detriment which makes it impossible for her to

<sup>29</sup> Article 101 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>30</sup> Articles 106-117 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>31</sup> Article 109 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>32</sup> Article 113 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>33</sup> Article 123-128, 137-143-155 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

continue with marital life.<sup>34</sup> In the case of a divorce petition based on detriment, if the claim of harm is proven and reconciliation between the spouses is impossible, the judge will grant a divorce and decide on the amount of compensation due to the wife. If the claim of detriment is not proven and the wife insists on her claim, the judge must appoint two arbitrators (one from the husband's family and one from the wife's family) who will attempt to reconcile the couple. If reconciliation is impossible, the arbitrators will submit a report to the judge on their attempts to reconcile the couple and their opinion on the extent to which each of the spouses contributed to the breakdown in the marriage. The judge will then review the report and either appoint two new arbitrators to start the reconciliation afresh or a third arbitrator to assist the existing two or proceed to make the appropriate ruling.

Generally, if the source of the dispute is:<sup>35</sup>

- The husband, shared or cannot be determined, the judge will grant a divorce without property to be given by one party to another;
- The wife, the judge will grant a divorce with the appropriate value of property to be given by the wife to the husband as determined by the judge.

### (iii) Redemptive divorce (*khul'*)

A wife may seek redemptive divorce (*khul'*), whereby the wife is granted a divorce in exchange for a mutually-agreed compensation to be paid to the husband. Generally, a *khul'* divorce requires the consent of both parties and is not subject to a court ruling. However, if both parties are unable to reach a mutual agreement, a wife may bring a court case where the court will attempt to reconcile the couple by appointing two arbitrators to conduct the reconciliation within six months.

If reconciliation is impossible, the Court must grant the divorce on condition that the wife: (i) returns her *mahr*; and (ii) renounces all her financial rights.<sup>36</sup> Article 120 of the QFL prohibits the waiver of child custody or any of the rights of the children as part of the *khul* compensation.<sup>37</sup>

The registration of divorce is mandatory and a standard procedure must be followed.<sup>38</sup> However, non-registration of a divorce does not necessarily invalidate the divorce. Pursuant to Article 113 of the QFL, a non-registered divorce may be proven by petition to a court and the wife must be informed.<sup>39</sup>

## MUSAWAH JUSTIFICATION FOR REFORM

It is cruel and unjust to continue to allow men the right to divorce their wives at will. Given today's realities and contemporary conceptions of justice, the urgent necessity to provide equal and just grounds for divorce to both men and women must be undertaken.

### QUR'AN PROMOTES JUST & FAIR DIVORCE

- The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness, justice, fairness and to do what is right and good.
- 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.'

<sup>34</sup> Article 129 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>35</sup> Article 129-134 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>36</sup> Article 118-122 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>37</sup> Article 120 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

<sup>38</sup> Information obtained from Qatari advocate, February 2017

<sup>39</sup> Article 113 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Amend the QFL to ensure that men and women have the equal right to divorce, including the grounds for and procedures in obtaining divorce.
- ❖ Procedurally divorce must only be obtained through court authorization.

### EQUAL RIGHT TO DIVORCE

## POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

### EQUAL RIGHT TO DIVORCE

**TUNISIA**



**TURKEY**



All divorces must go through the court. The grounds for divorce are equally available to both spouses.

Divorce through unilateral repudiation (*talaq*) by the husband is not recognised.

**Talaq, with court authorisation and conditions:**

**MOROCCO**



Divorce by way of repudiation which can only be effectuated under judicial supervision. The wife and children must have received all their vested rights before it is authorised.

**INDONESIA**



A divorce by way of repudiation by the husband (*cerai talak*) must be effectuated through the court. The husband must make a request to the court where his wife resides to hold a court proceeding to witness his pronouncement. His application must contain the reasons for his request.

## 6. GUARDIANSHIP OF CHILDREN

The QFL is silent on the person with the priority right to guardianship of the children in a marriage. Nevertheless, it is implied in the QFL that the priority right to guardianship of the children belongs to father through various provisions as follows:<sup>40</sup>

- Article 26 of the QFL provides that the matrimonial guardian shall be the father followed by the paternal grandfather and thereafter a line of male relatives as stipulated in the law;
- Article 75 provides that the father is responsible for child support. Article 178 provides that the mother is entitled to a custody payment upon divorce from the guardian until her custody of a daughter's terminates. The amount of such payment is to be calculated based on the status of the guardian of the child under custody and the custodian;
- Article 170 allows judges to consider the interests of the child in allowing custody to remain with the mother upon her remarriage;
- Article 171 provides that the mother must allow the guardian or agnate to perform his duties as a guardian to supervise the good upbringing of the child and protect him from wrongdoing, and to provide the best medication and education to prepare him for his future;
- Article 176 provides that the guardian of the child may retain the child's passport. However, the mother must be given the passport when she wishes to travel with the child. A judge may order that the mother be granted the right to keep the passport if it is likely that the father may not provide her with the passport in a timely manner when needed;
- Article 180 provides that the child must reside in the country of the guardian, unless the mother is a foreigner;
- Article 183 provide that guardianship will cease if the father or guardian of the child cannot discharge his duties of supervision, education and schooling towards the child under custody by reason of the custodian taking the child, without permission of the guardian, to reside with her in a country which is difficult to reach, unless the court deems the interest of the child requires otherwise.

According to activists, in practice mothers are often granted the right to custody. This demonstrates that the courts have a lot of power and can overcome the laws if they use \*children's welfare\* as a reasoning. However, this may be a reflection of the gender stereotypes that assume mothers will be better caregivers. It is thus important to improve the awareness and knowledge of judges and to have more female judges in courts.

It must be noted that no data is available on how many women with young children remarry after divorce; how often mothers lose custody of their children upon remarriage; how often judges are called to consider the 'best interest' of the child; and whether specific, consistent, and fair criteria is used by judges to determine the 'best interest.' Furthermore, there is no evidence of sound sociological research that justifies the assumption that a mother's remarriage sufficiently challenges the 'best interest' of the child.

---

<sup>40</sup> Articles 26, 75, 171, 176, 178, 180, 183 of the Family Law (2006), [http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law\\_22\\_2006\\_2558.pdf](http://www.rwi.uzh.ch/oe/cimels/law/countries/qatar/Law_22_2006_2558.pdf)

## RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Recognize that both men and women under the *Shari'ah*- based law should have equal rights with respect to their children.
- ❖ Article 26 and 178 of QFL should be amended to grant equal rights of legal guardianship to both mothers and fathers based on the best interest of the child regardless of mother's marital status.
- ❖ Improve gender sensitivity training of judges and implement a scheme for more female judges to enter the judicial profession.

### GUARDIANSHIP OF CHILD

### POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

#### EQUAL RIGHT TO GUARDIANSHIP

#### INDONESIA, KENYA, SINGAPORE, TURKEY

Ultimately, guardianship of children is determined by the courts on the basis of the best interest of the child.

#### ALGERIA

Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child.

#### BRUNEI

A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to what-ever conditions that the court thinks fit to impose.

#### TUNISIA

Mothers who have custody of their children also has guardianship rights as regards travel, schooling, and management of finances. The mother has an equal right to supervise the child's affairs.

#### CUSTODIAN'S GUARDIANSHIP RIGHTS

## ANNEXE 1:

### MUSAWAH VISION FOR THE FAMILY

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 these family laws 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 principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances. Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

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 and Muslim communities, to:

- ❖ Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes 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.

