



**musawah**

For Equality in the Family

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

**IRAQ**

**74th CEDAW Session  
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## 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 Iraq, reporting before the 74<sup>th</sup> CEDAW Session in November 2019.

In particular, this report examines Iraqi laws and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: discriminatory legal framework, child marriage, forced marriage, temporary marriage, polygamy and violence against women.

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 women's rights advocates and lawyers into this report.

## B. LEGAL BACKGROUND

Iraq has a mixed legal system that draws on both Sunni and Shi'ite *fiqh* for the law applied in *Shari'ah* courts. The legal system as a whole also includes constitutional law, legislation and statutory provisions, usage and custom, judicial precedent and authoritative juridical opinion.

Matters regarding marriage and family relations of the Muslim majority population in Iraq are mainly governed by the Iraqi Personal Status Law No. 188/1959 (IPSL).<sup>1</sup> The Kurdistan Region has its own Personal Status Law – Act No. 15/2008.<sup>2 3</sup>

The IPSL, which was drawn from both the rules of Hanafi and Jafari jurisprudence (*fiqh*),<sup>4</sup> applies to all Iraqi Muslims regardless of sect.<sup>5</sup> The IPSL confers many rights for women in marriage, divorce, custody and inheritance. However, after 2003,<sup>6</sup> due to the fragile security situation in Iraq, the weaknesses in law enforcement and the dominance of tribal customs and religious edicts, women's organisations have documented breaches of the law.<sup>7</sup>

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<sup>1</sup> Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>2</sup> Personal Status Law in Iraq Kurdistan Region (2008), [http://www.ekrg.org/files/pdf/personal\\_status\\_law.pdf](http://www.ekrg.org/files/pdf/personal_status_law.pdf); Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 234-235, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>3</sup> Two major attempts have been made to circumvent the rights available to women under the IPSL. Thus far, they have not been successful - On 29 December 2003, the Iraqi Governing Council (IGC) passed Resolution 137 to abolish the Personal Status Law. The Resolution states that *Shari'ah* principles shall apply to matters relating to marriage and adjudication by the religious authorities of the various sects in Iraq. After a fierce fight by activists, the Resolution was repealed two months later. Kelsey Cherland, "The Development Of Personal Status Law In Jordan & Iraq," CMC Senior Theses, 2014, 89,

<sup>4</sup> [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc_theses)

Kelsey Cherland, "Developments in Personal Status Law: Iraq and Jordan" (CMC Senior Thesis, Paper 865, 2014), p. 71,

<sup>5</sup> [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc_theses)

<sup>6</sup> Article 2 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>7</sup> Iraqi Women Network, Rafidain Women Coalition, Gathering of "No to violence etc., "Iraqi women in armed conflict and post conflict situation" *Submission to the CEDAW Committee for the mid-term review of the Concluding observations issued by the Committee after the 57<sup>th</sup> Session*, 2016, pp. 12-13 [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGS\\_IRQ\\_25070\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGS_IRQ_25070_E.pdf)

<sup>7</sup> Following the repeal of Resolution 137, Article 41 of the Constitution was adopted by referendum in 2005. This is functionally equivalent to Decree 137. Article 41 states that Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.<sup>7</sup> This article makes it possible for Iraq to propose communal based family law such as the Personal Status (Jafari) Bill.

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

### 1. FAMILY LAW BASED ON DISCRIMINATORY FRAMEWORK

Despite the equality guarantees under the Constitution, the IPSL 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 to a certain extent.<sup>8</sup>

Furthermore, Article 25 states that a wife is no longer entitled to financial maintenance if: (i) she leaves her husband's home without his permission and without legitimate reason; (ii) if she refuses to travel or move with her husband; or (iii) if she is convicted and imprisoned for a crime or debt. However, Article 25 also stipulates that: A wife shall not be bound to obey her husband if the husband is arbitrary in his demands for obedience, intending to injure or oppress her. The court must give due consideration in issuing a ruling for the disobedience of the wife before ruling that a wife is disobedient. It must understand the reasons for her refusal to obey her husband and do its utmost to remove the causes of a wife's disobedience.

#### 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.

### 2. CHILD AND FORCED MARRIAGE

The minimum legal age for marriage is 18 for females and males based on Article 7(1) of the IPSL.<sup>9</sup> However, Article 8 provides that a judge may permit girls and boys who are 15 and above to marry if the judge is convinced that: (i) they have reached puberty and are physically capable of being married, and (ii) the marriage is an "urgent necessity". The judge is obligated to obtain the views of the guardian of the girl or boy regarding the marriage.<sup>10</sup> Should the guardian object to the marriage, the judge may nevertheless authorise the marriage if the judge considers the objection unreasonable.<sup>11</sup>

<sup>8</sup> Thus, Article 3 of the IPSL defines marriage as a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to establish a bond for a mutual life and procreate children.<sup>8</sup> Article 23 provides that the wife is entitled to financial maintenance from the husband even if she was staying at her parent's house, unless the husband asks her to move to his place and she abstains unrightfully. Her abstention is considered rightful if the husband did not pay her the immediate dower or as long as he is not spending on her.

<sup>9</sup> Article 7(1) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>10</sup> According to the Iraqi government as well as civil society and media reports, the prevalence of child marriage in Iraq is high due to: (i) customs and tradition, especially in communities still committed to tribal customs; (ii) socio-economic factors such as poverty and lack of education, health and legal awareness; (iii) difficulties in law enforcement, particularly in the rural areas; and (iv) political instability.

<sup>10</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 216, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Girls Not Brides, "Iraq", *Child marriage around the world*, <http://www.girlsnotbrides.org/child-marriage/iraq/>; Zainab Salbi, "Iraqi woman explains why she married off her daughters at ages 15 and 16," *New York Times*, 10 August 2015, <http://nytlive.nytimes.com/womenintheworld/2015/08/10/iraqi-woman-explains-why-she-married-off-her-daughters-at-ages-15-and-16/>; Nizar Latif, "Worry over rise in divorce rate," *The National*, 10 January 2010, <http://www.thenational.ae/news/world/middle-east/worry-over-rise-in-divorce-rate>

<sup>11</sup> Article 8 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

The ages of both parties are verified before a marriage is concluded by the appropriate officer in a competent court. The parties are required to submit a statement showing their age as a condition of marriage of registration.<sup>12</sup> The Personal Status (Jafari) Bill proposed in 2014 threatened to allow for the marriage of girls as young as nine years old in exceptional circumstances.<sup>13</sup>

Women's rights advocates also note that there is still a tribal practice where women are exchanged between tribes as wives. In other cases, where there is a dispute or conflict between clans / tribes women are exchanged between the tribes as compensation (and in some cases as blood money). This occurs without the consent of the women in question.<sup>14</sup>

## 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.**
- ❖ **Improve awareness raising campaigns among tribal and rural communities about forced marriages and related penalties.**

## 4. TEMPORARY MARRIAGES

Temporary marriage is neither legally recognised nor is it socially acceptable.<sup>15</sup> These temporary marriages are not legally codified are mostly take place outside the courts through certain 'clerical offices' set up to arrange such marriages.<sup>16</sup>

The temporary contracts that they obtain do not guarantee the rights of either the wife nor subsequent children because they are informal contracts and are not recognized by law unless ratified by the court. In cases where the couple seeks to get court recognition, the women/girl in many cases faces consequences in the event she married without the consent of her male guardians.<sup>17</sup>

Women from the rural and poor areas are particularly susceptible to unregistered marriages and their adverse impact. Their marriages are conducted by local clerics without the women being aware of the need to go through official channels to register their marriages. The non-registration of their marriages causes complications for themselves and their children, particularly in instances where their husbands travel, die, or initiate a divorce.

<sup>12</sup> Article 10 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>13</sup> Jamie Tarabay, "Iraqi law would legalize marital rape, child marriage for country's Shia", *Aljazeera*, 27 April 2014, <http://america.aljazeera.com/articles/2014/4/27/iraqi-shiites-protestproposedfamilylaw.html>

<sup>14</sup> According to reports by civil society and the media, despite these provisions forced marriage is prevalent in Iraq. Factors that contribute to such marriages include the need (or perceived need) to alleviate the financial difficulties of the family and preserve "family honour" in rape cases.

<sup>15</sup> However, according to women's rights advocates, it is on the rise in recent years, including in universities. Reasons include destitution, increase in the number of widows and young people preferring to be in a temporary as opposed to a permanent marriage.

<sup>16</sup> Iraqi advocates note that majority of marriages outside the courts occur to girls without any age-specific conditions and / or a medical examination with regard to genetic or sexually transmitted diseases.

<sup>17</sup> There have been cases where the woman/girl has faced violence from her family. Since Personal Status Court judges are allocated anywhere from 1,000 – 9,000 cases per year, efforts to register an unregistered marriage may be extremely delayed. Judges have the final decision and significant discretion when it comes to these cases.

## RECOMMENDATIONS

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

- **Ensure that offices and centers that contract temporary marriages are shut down and individuals involved in arranging temporary marriages are heavily penalized. Increase penalties for individuals involved in running such operations.**
- ❖ **Encourage formal registration of temporary marriages by reducing the fees needed to get court certification of the marriage.**

## 5. POLYGAMY

A Muslim man may marry up to four wives at one time. Unless the prospective bride is a widow, Article 3 of the IPSL<sup>18</sup> prohibits a man from marrying more than one woman except with the authorisation of a judge (*qadi*). A judge may only authorise the polygamous marriage if three conditions are met: (i) the husband has financial capacity; (ii) there is a legitimate interest; and (iii) there is no fear of injustice between wives.

Article 3 also provides for a penalty of imprisonment and/or fine if a man concludes a marriage with more than one wife without first seeking the authorisation of the court. Article 26(1) of the Personal Status does not allow a husband to house more than one wife in the same home, unless the wives consent.<sup>19</sup> Article 40(5) provides that a wife may file for divorce if a husband takes a second wife without court permission.<sup>20</sup> Women's rights advocates note an exception in the law where it is permissible for a man to marry more than one woman if the wife he intends to take is a widow, regardless of his present wife's consent.<sup>21</sup>

In the Iraq Kurdistan Region, the Personal Status Law states that marrying more than one woman is not allowed unless authorised by the judge. A judge may only authorise the polygamous marriage if the certain conditions are met. A man who concludes a polygamous marriage without the authorisation of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.<sup>22 23</sup>

<sup>18</sup> Article 3 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>19</sup> Article 26(1) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>20</sup> Personal Status Law No. 188 (1959) of 1959 (as amended), Article 40(5), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>21</sup> According to Iraq's 2011 Multiple Cluster Indicator Survey, about 6% of marriages in Iraq are polygamous.<sup>21</sup> Statistics from 2013 from the Najaf Federal Courts indicate 96 approvals for second marriages. In the same year, 450 polygamous marriages were registered in the Kirkuk Court, and 150 polygamous marriages were registered in the Makhmur Court. It is noteworthy that many marriages, including to successive wives, take place outside the courts, and are therefore unregistered. According to a media reports, polygamy may be increasing in Iraq due to the improved financial situation of many men, and the large number of widows following the war. In addition, many polygamous marriages are being performed outside the jurisdiction of the court in violation of the law.<sup>21</sup> Women's rights advocates note that even when polygamy is done via the court system, judges are biased towards the practices and authorize marriages regardless of whether husbands fulfil conditions.

<sup>22</sup> Article 1 of the Kurdistan Personal Status Law (2008), [http://www.ekrg.org/files/pdf/personal\\_status\\_law.pdf](http://www.ekrg.org/files/pdf/personal_status_law.pdf)

<sup>23</sup> According to a media report, while the amendments to the Kurdish Personal Status Law were intended to significantly reduce polygamy, the practice has been difficult to police and prevent, as some individuals travel across the border to engage in polygamous marriages. The regional government has created a special commission to investigate this issue and consider the potential of punishing those who exploit this loophole. Matt Frazer, "Iraqi Kurdistan enforces the new polygamy law," *Ekurd Daily*, 26 September 2011, <http://ekurd.net/mismas/articles/misc2011/9/state5458.htm>

## RECOMMENDATIONS

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

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

## 6. VIOLENCE AGAINST WOMEN

Article 29(4) of the Constitution prohibits that all forms of violence and abuse in the family.<sup>24</sup> However, Iraq has not yet adopted specific legislation to criminalise acts of domestic violence. In 2016, the Iraqi Parliament was completing its review of the draft Anti-Domestic Violence Law, which was introduced in 2015.<sup>25</sup> Approval of the draft law by Parliament is still pending, as it has been met with stiff resistance from religious political parties and conservative politicians/Ministers.

The Penal Code contains some general prohibitions that are applicable to domestic violence. The Penal Code criminalises and provides for penalties for certain offences involving the family (issuing and obtaining an invalid marriage certificate, etc.) as well as rape, indecent assault, etc.<sup>26</sup>

However, under the Penal Code:<sup>27</sup> Article 41(1) permits a husband to use physical discipline against his wife “within the bounds of what is permissible by *Shari’ah*, law, or custom”.<sup>28</sup>

Marital rape is not specifically criminalized in Iraq.<sup>29</sup> According to women’s rights advocates, even though under the Constitution all forms of violence and abuse in the family are prohibited, the context of Iraq has posed challenges for women with regard to overcoming vulnerable and violence situations. While civil society has advocated for a law to address domestic violence and more than one draft law has been put forward to government, many politicians including religious parties are still against the adoption of this law because they believe in giving the right to husband, father and teacher for using violence under the pretext of discipline as stipulated in Article 41 of the Penal Code.<sup>30</sup>

<sup>24</sup> Article 29(4) of the Iraqi Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)

<sup>25</sup> Human Rights Watch, “Strengthen Domestic Violence Bill”, 19 March 2017, <https://www.hrw.org/news/2017/03/19/iraq-strengthen-domestic-violence-bill>

<sup>26</sup> Penal Code (1969), <http://www.refworld.org/docid/452524304.html>

<sup>27</sup> Articles 41(1), 128, 130-131, 398 of the Penal Code (1969), <http://www.refworld.org/docid/452524304.html>

<sup>28</sup> Article 128 allows for ‘honourable motives’ or extreme provocation to be mitigating factors that can be taken into account to either exempt from or reduce punishment for a crime. Articles 130 and 131 specify the reduced punishments when a mitigating factor exists. For example, Article 131 provides that if a mitigating factor exists for a crime punishable by death, the sentence may be reduced to life imprisonment or imprisonment for a term no less than one year. Article 398 provides that any action against a rapist who marries the victim will become void and any investigation or other procedure is discontinued, and if a sentence has already been passed, the sentence will be quashed.

<sup>29</sup> The Kvinna till Kvinna Foundation, “Violence Against Women in Iraq”, 2014, pp. 1-2 <http://kvinna.tillkvinna.se/en/files/qbank/217b4c71837fac172fabebfc299f755b.pdf>

<sup>30</sup> Furthermore, honor killings continue to be committed and in many cases a man may face up to 6-month suspended prison sentence. Therefore, advocates note that it is easy for perpetrators to get away with murder with impunity for murders, as some honor killings are for especially in the guise of family disputes (eg. Inheritance) or tribal hostility.

## **RECOMMENDATIONS**

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

- ❖ **Expedite the passage of the Anti-Domestic Violence Law with urgency and ensure that the law covers the most prevalent forms of domestic violence including honor-based violence and harmful traditional and customary practices.**

## ANNEXE 1: JUSTIFICATION FOR REFORM

### 1. Equality in marriage

#### CHALLENGING THE MAINTENANCE-FOR-OBEDIENCE FRAMEWORK

This idea of 'complementarity of rights' is a manifestation of male authority (*qiwamah*) and guardianship (*wilayah*) 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.

#### QUR'ANIC PRINCIPLES PROMOTE EQUALITY BETWEEN SEXES

- The concept of male authority (*qiwamah*) and male guardianship (*wilayah*) over women play a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts, and must be challenged.
- The very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understandings of *qiwamah* and *wilayah* 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.
- 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.

#### CONTEMPORARY LIVED REALITIES

- 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.

#### 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. Minimum age of marriage as 18 years

## MUSAWAH JUSTIFICATION FOR REFORM

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.'

<p><b>NEW HISTORICAL EVIDENCE NOW AVAILABLE</b></p>	<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 (<i>source: <a href="http://www.sistersinislam.org.my/news.php?item.997.41">http://www.sistersinislam.org.my/news.php?item.997.41</a></i>).</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>
<p><b>QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE</b></p>	<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>

<p><b>MINIMUM AGE OF MARRIAGE</b></p>	<p><b>POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY</b></p>
<p><b>MINIMUM AGE OF MARRIAGE 18 (OR ABOVE) &amp; NO EXCEPTIONS</b></p>	<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 equal capacity to enter into marriage

<b>MUSAWAH JUSTIFICATION FOR REFORM</b>	
<p>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.</p>	
<b>QUR'AN PROMOTES EQUALITY BETWEEN SEXES</b>	<p>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.</p>

<b>MALE GUARDIAN (WALI)</b>	<b>POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY</b>
<b>CONSENT OF MALE GUARDIAN (WALI) NOT REQUIRED FOR ADULT BRIDE AND GROOMS</b>	<b>TURKEY, TUNISIA, MOROCCO, EGYPT, IRAQ, AFGHANISTAN</b>

### 4. Abolishment of polygamy

<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: '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'.</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>

**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.

## ANNEXE 2:

### 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.

