



MUSAWAH ORAL STATEMENT ON KUWAIT

50th Session of the CEDAW Committee, October 2011

Thank you, Madam Chair.

My name is Janine Moussa, speaking on behalf of Musawah, a global movement for equality and justice in the Muslim Family. I am honored to be here today to address the CEDAW Committee about the situation of Article 16 in Kuwait, specifically with regards to Muslim Family Laws.

It is our hope that the thematic report, which we have prepared on this issue for both Oman and Kuwait, can help provide critical information that can be used as a resource during the constructive dialogue with Governments and in the follow-up thereafter. Regrettably, the report is based on secondary sources only as we had great difficulty getting in touch with activists or NGOs on the ground who would be able to provide us their first hand perspectives.

DISCRIMINATORY PROVISIONS:

Our research has revealed that numerous areas of inequalities exist between women and men in Kuwait on issues related to marriage and family relations. I highlight four of these areas below, as well as make recommendations for reform, and point out good practices from other OIC countries where available. I refer you to the thematic report for more information.

1. Reservations

Kuwait currently holds reservations to Article 9(2), which grants women equal rights with men with respect to passing on their nationality, and Article 16(f), which grants women the same rights and responsibilities as men on issues such as guardianship and custody of children, inasmuch as it conflicts with the provisions of the Islamic *Shari'ah*.

We urge the Committee to recommend to the Government of Kuwait that these reservations be lifted without delay, and recall the Committee's own statement on reservations which says that reservations to Article 16 'are incompatible with the Convention and therefore impermissible and should be reviewed and withdrawn'.

2. Marriage

The minimum age of marriage in Kuwait is 15 for women and 17 for men; Sunni Muslim women require the consent of their *walis* (guardians) to marry; and polygamy is still permitted and practiced.

On child marriage, we urge the Committee to recommend to the Government of Kuwait to set an equal marriage age for both men and women at 18, the age of majority. We also turn to Algeria, Morocco, Sierra Leone, and Turkey for positive examples of such.

On guardianship, we urge the Committee to recommend the elimination of this requirement, and turn to the examples of the Kyrgyz Republic, Turkey, and Uzbekistan where no such requirement exists.

With regards to polygamy, we urge the Committee to recommend that this practice be abolished, in law and in practice, and turn once again to the Committee's own findings, in its GR 21, that '[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited'. We also look to the Kyrgyz Republic, Tajikistan, Tunisia, Turkey, and Uzbekistan as examples of OIC countries where polygamy has been banned outright.

3. Violence against women

We note with dismay that marital rape remains an unrecognized crime in Kuwait. We urge the Committee to recommend to the Government of Kuwait to criminalize marital rape at once. We turn

to Tunisia and Turkey as examples of countries that have criminalised marital rape under their Penal Code.

4. Inheritance

Kuwaiti women are still unable to inherit equal shares of property as their male counterparts. We urge the Committee to recommend that Kuwait enact inheritance laws where women are able to inherit equally with men.

We also urge the Committee to reject any justifications for such inequality based on notions of reciprocity (where men are entitled to a larger share of inheritance but are then expected to maintain the family) for several reasons including the rise of women-headed households and dual income families. We turn to examples of Egypt, Iraq, Morocco, Tunisia, and the Sudan which have more favorable inheritance laws and provisions for women.

THE MUSAWAH FRAMEWORK

In closing, Musawah firmly believes that equality in the Muslim family is both necessary and possible:

- **It is possible because Shari'ah law is not divine.** It is based on centuries-old, human-made rules, called *fiqh* (Islamic jurisprudence), which themselves are founded on realities of a vastly different historical, social and economic contexts;
- **It is possible because diversity of opinion in the *fiqh* tradition enables diverse provisions in Muslim family laws today,** which again reinforces the notion that *fiqh* is human made, and open to various interpretations; and
- It is possible because the particular rules of *fiqh* which govern relations among humans and therefore govern the Muslim Personal Status Laws, **the *mu'amalat* rules of *fiqh*, require that they remain open to 'rational consideration and change'.**



Finally, Madame Chair, it is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam, to:

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

I thank you, Madam Chair.