



musawah

For Equality in the Muslim Family

Musawah Oral Statement

9th Session of the WG on Discrimination against Women in Law and in Practice

Tuesday, 21 January 2014: 10am-1pm

Good morning. I am presenting on behalf of [Musawah](#), the global movement for equality and justice in the Muslim family. We would like to begin by thanking the OHCHR for convening this meeting and providing the space to share preliminary strategic inputs into the Working Group's 2015 thematic priority on discrimination against women in law and in practice in family and cultural life.

Musawah would like to provide the Working Group with information about equality and non-discrimination in marriage and rights and responsibilities in the family, especially in relation to Muslim family laws and practices.

In particular, Musawah urges the Working Group to consider three main points as it develops the framework for its inquiry and report:

(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 concepts inform other 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.

However, this construction of marriage is still applied in many contemporary Muslim laws and practices. It directly or indirectly justifies discrimination against women in a variety of ways, including: men's right to polygamy, sexual access, 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. In addition, it is impossible to sustain such an arrangement 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 Working Group to recognise and examine the structural roots of inequality in Muslim family laws, and the ways in which such inequality informs specific discriminatory laws and practices.

(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:

In particular, there is often a great deal of resistance to the idea of changing Muslim family laws and practices because of the notion that such laws and practices are rooted in religion. However, there are a variety of theories and methods within Islamic jurisprudence that 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 Working Group to consider the possibilities for reform of family laws from within given religious or cultural traditions and to advise Governments that such reform is both necessary and possible.

(3) THIRD, Musawah has specific resources and findings that it can contribute to the inquiry and report for this thematic priority.

Musawah is currently undertaking a long-term Knowledge Building Initiative on the concepts of *qiwamah* and *wilayah*. This Knowledge Building Initiative includes new scholarship from feminist and Islamic perspectives on historical and present-day understandings of *qiwamah* and *wilayah*. In addition, teams in 11 countries (Afghanistan, Bangladesh, Canada, Egypt, Gambia, Indonesia, Iran, Malaysia, Nigeria, Philippines, and the United Kingdom) are engaged in a participatory feminist research project to document women's life stories on how *qiwamah* and *wilayah* impact the lived realities of women and men.

Musawah's International Advocacy programme has also undertaken an extensive review of how equality within the Muslim family is treated at the international level by advocates, Governments and international bodies alike. Musawah's 2010 *CEDAW and Muslim Family Laws Report* analyzes over 40 countries spanning a five year period the study noting the types of arguments put forward by governments to justify discrimination in the name of religion and the ways in which the CEDAW Committee responded. The report offers a comprehensive approach for addressing and responding to these arguments, exposing fallacies and offering alternative interpretations and examples of good practices.

Both these aforementioned initiatives are grounded in the Musawah Framework, a holistic approach that brings together Muslim jurisprudence, universal human rights principles, national laws and constitutional guarantees of equality, and the lived realities of women and men.

Musawah would be happy to share the results of Musawah's Knowledge Building and International Advocacy Initiatives with the Working Group as evidence of the structures and forms of discrimination against women in Muslim family laws and practices; how individual women, communities, and governments are addressing such discrimination; what arguments Governments are using to justify discrimination in the name of religion; and what arguments can be used to effectively respond.

Musawah focuses on Muslim family laws and practices, which are diverse in and of themselves and include both discriminatory practices and aspects of gender equality. However, we recognise that examples from Muslim contexts can be viewed in other cultural and religious contexts as well. Our work is not done until equality within marriage and family life is enjoyed fully, everywhere, and by all.

To this end, Musawah would like to support the Working Group in whatever ways are most needed, and welcome future opportunities to contribute to the inquiry process and report. We wish you the best of luck in this endeavour. Thank you.