

**THEMATIC REPORT ON MUSLIM FAMILY LAW AND
MUSLIM WOMEN’S RIGHTS IN
EGYPT**

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Submitted by:



Center for Egyptian Women’s Legal Assistance (CEWLA)

Tel: +20 3 7010578

Email: cewla.info2@gmail.com

nnashat.cewla@gmail.com

Website: www.facebook.com/cewla.eg



Musawah

15, Jalan Limau Purut, Bangsar Park, 59000 Kuala Lumpur,
Malaysia

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

Email: musawah@musawah.org

Website: www.musawah.org

I. INTRODUCTION

The **Center for Egyptian Women’s Legal Assistance** (CEWLA) and **Musawah**, the global movement for equality and justice in the Muslim family, submit this joint Thematic Report on Muslim women’s legal equality and personal status for consideration by the CEDAW Committee in its review of the Government of Egypt, reporting before the 80th Session of the CEDAW Committee in October–November 2021.

This is the CEDAW Committee’s 8th, 9th and 10th combined review of Egypt, which last reported in 2010 and has since undergone radical socio-political changes. Egypt currently has reservations on Articles 2 and 16.

This report examines Egypt's legal framework and practices that enforce *de jure* and *de facto* discrimination against Muslim women in the following areas:

- Male guardianship (*Qiwamah* and *Wilayah*)
- Marriage
- Violence against women in the family
- Child marriage
- Divorce rights
- Custody and guardianship of children

II. COVID-19 AND FAMILY LAW

UN Women indicated that the COVID-19 pandemic has caused unimaginable human suffering, and is likely to increase gender inequality around the world. With economic activity stalling, women who face disadvantage in accessing decent work will suffer more than others.¹

The “Women Policy Tracker on Responsive Policies & Programs During the New COVID-19 Pandemic,”² issued by the National Council for Women in Egypt to monitor policies and programs responding to the needs of women during the pandemic, stated that the spread of COVID-19 poses a serious threat to women’s participation in economic activities, especially in the informal sectors where their employment predominates, and will potentially increase gender gaps in livelihoods in Egypt.

In a study conducted by CEWLA, “Stories of women during the days in the pandemic,” 63% of women living with male family members were subjected to violence, 42% for the first time, due to the tightened economic and social situation.³ ESCWA Executive Secretary Rola Dashti warned: “Domestic violence has increased in the world and the Arab region with lockdowns, enforced coexistence due to quarantines, economic stress, perceived and real food insecurity, and fears

¹ <https://data.unwomen.org/resources/covid-19-emerging-gender-data-and-why-it-matters>

² First Edition, Women Policy Tracker on Responsive Policies and Programs during the New COVID-19 Pandemic, ncw.gov.eg

³ https://drive.google.com/drive/folders/1AFpApMTie5wogr_G8cT14vCS6_CpNNN2?usp=sharing

about exposure to the virus. Women survivors of violence will face increased difficulties in accessing help during the pandemic.”⁴

The escalation in violence coupled with the precarious situation of women in the personal status law (PSL) exacerbated the pandemic. 100 years have passed since the first Egyptian family law was issued in 1920; however, the laws are still besieged by polarised and outdated religious interpretations created by mostly male jurists, which collide with the objectives of the religions they try to interpret, such as equality and justice. The laws also draw on the patriarchal authority over women, which is rooted in cultural norms. Furthermore, these laws represent a set of outmoded legislation due to its lack of flexibility, and therefore, inability to keep pace with the changes on a multitude of levels, including technological, that have led to detrimental developments in almost all aspects of life.

Despite some medical reports mentioning that COVID-19 affects more men⁵ than women or children, women and children still bear the brunt of socio-economic vulnerability from this pandemic, at least at double the ratio of men. COVID-19 affects more than just people’s health; its destructive effects extend to social, legal, and economic aspects, and this and past pandemics have shown that poor and marginalised groups are most at risk of negative side effects, including women and children. Accordingly, alternative public policies are needed to cope with and mitigate the negative effects of COVID-19.

The first wave of the pandemic greatly affected implementation of family law, combined with the precautionary measures taken by the state to combat the spread of the virus, causing new challenges to women. For instance, while men have the unilateral and unconditional right to divorce their wives without resorting to court, Egyptian women are still obliged to go to court and thus faced several procedural and substantive challenges during the pandemic. These challenges prolonged women’s journey to fight for their own and their children’s rights, in terms of alimony, custody, and guardianship.

Additionally, family laws contain arbitrary articles that deprioritise men’s right to custody. Consequently, several demands were raised in order to introduce a new conditional visitation system where non-custodial parents are able to have their children staying over for a number of days, whilst mitigating the risk of kidnapping the child.

With the emergence of this crisis, family law signalled the weakness of the legislative system, both at the procedural and substantive levels; CEWLA observed the problems related to family laws especially during the first wave of the pandemic. During this time, the Egyptian government took several measures to face the crisis in order to preserve the health and safety of its citizens, including procedures within the courts. Since 15 March 2020, Chancellor Omar Marwan, Minister of Justice, coordinated with the President of the Supreme Judicial Council, the President of the State Council, the Attorney General, judges, and heads of appeal and first degree courts to take all necessary legal measures to postpone cases filed before courts for two weeks. This order included that the litigants do not have to appear in court and cases will not be dismissed during that time. Administrative work in the courts was the only work allowed during that period in order

⁴ ESCWA & partners warn: violence against women has increased due to COVID-19; Women will lose twice as much as men in terms of jobs." United Nations Economic and Social Commission for Western Asia, 6 April 2020. <https://www.unescwa.org/news/escwa-partners-warn-violence-against-women-has-increased-due-covid-19-women-will-lose-twice>

⁵ “Coronavirus: Why Men are More Vulnerable to Covid-19 Than Women?” NIH: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7271824/>

to meet the requests within the legally prescribed dates. Nonetheless, in reality the implementation of this decision spanned 15 March–15 July 2020, leaving many without access to legal remedy.

Detrimental effects of the Minister of Justice’s orders on women as rights holders and litigants:

- **Adjourning all cases filed in courts** created problems for those awaiting final verdicts or steps after fulfilling all procedures. Some cases were considered critical, either because they were concerned with income (alimony), or they determined women’s social status (divorce or *Khul’*). This decision frustrated women litigants who already suffered from the cumbersome procedures and the sheer number of cases filed; postponing their cases indefinitely was an additional obstacle.
- The **Prime Minister’s decision to reduce the number of employees in public institutions and facilities** led to reduced administrative court work such as completing paperwork relating to final verdicts; for example, verdicts on alimony, which have to be enacted through the husband’s workplace, Bank Nasser, or judicial-enacting authorities in cases of late alimony payments. Delayed issuance of documentation needed by many women prolonged their suffering.
- Additionally, **visitation for non-custodial parents** (usually fathers) was another problem, whether due to inability to file new cases or the delay in scheduling the first session. The biggest problem has been that, even if the non-custodial father has a recent date for visitation order and all his documentation is correct and fulfilled, all public places such as clubs and youth centers where visitation normally takes place have been closed to curb the spread of COVID-19.
- Finally, rates of **domestic violence (violence in the private sphere)** have increased drastically due to the lockdown. Spousal disputes have risen and escalated, in certain cases to the extent that husbands have thrown out their wives and children. For poorer women, their only choice is to go to their families’ houses, but in most cases, their families do not welcome them back because of poverty and suffocating economic conditions. Therefore, many of those women seek legal help to regain access to their houses or file for alimony, yet they are faced with several challenges, such as police stations preoccupied with maintaining lockdown measures, insufficient court staff members, and prolonged delays in determining court hearing dates. Finally, even when women seek out shelters for violence survivors, there are complicated admittance procedures and they may even be rejected as a precautionary measure against the virus.

III. LEGAL FRAMEWORK

Overview

Egypt’s Constitution provides for equality for its women citizens:

- Article 11 commits to achieving equality between women and men in all civil, political, economic, social, and cultural rights;

- Article 53 states that all citizens are equal before the law and prohibits discrimination on several bases including sex.⁶

However, Article 2 provides that the principles of *Shari'ah* are the main source of law, and Article 10 states the family is the basis of society and is based on religion, morality, and patriotism. This allows for discrimination against women when the dominant understandings of religion and morality are based on patriarchal interpretations of Islam and Islamic jurisprudence.

Furthermore, Egypt's codified and uncodified laws provide 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.⁷ For example, Article 1 of Law No. 25/1920 entitles a wife to financial maintenance from her husband regardless of her wealth or religion, but she risks losing said maintenance if she: (i) refrains from giving herself to her husband voluntarily without rightful reason; (ii) leaves the marital home without her husband's permission; or (iii) goes out to work without her husband's consent. Concurrently, the State party has previously emphasised that it has no intention of withdrawing Egypt's reservations to Article 16 of CEDAW "as doing so would diminish the rights of women under Islamic law and Egyptian law, which provide rights for women and relieve women of responsibilities which men alone are required to bear."⁸

This environment whereby discrimination against women is justified in the name of Islam makes it unconvincing and challenging to revise or adopt legislation to eliminate discriminatory aspects of civil or PSL in order to better protect women and enhance their equal rights. Accordingly, the presence of a legal framework that supports women's equality may not be enough if the prevailing social structures and norms treat women as perpetual legal minors and maintain discrimination against women sanctioned by both religious authorities and the state; it becomes necessary to also rely on alternative arguments for reform based on progressive and feminist interpretations of Islamic jurisprudence.

The State party may claim that it cannot implement CEDAW provisions if they are inconsistent or in conflict with Islam or the *Shari'ah*, but much of what is today called '*Shari'ah* law' is actually *fiqh*—interpretations of the *Shari'ah* made by Muslim scholars. In classical Muslim legal tradition, there were many different schools of law (*madhahib*) that reflected the many different positions of classical scholars. Such diversity (*ikhtilaf*) was recognized, respected, and celebrated in Muslim legal tradition, which is a rich body of jurisprudence. There has never been a fixed and unitary version of what is called 'Islamic law.' Current Muslim family laws and policies are human interpretations of the divine revelation, drafted by human legal experts and adopted as law by human legislators. As human interpretations, these laws and policies are fallible, and therefore can and have been frequently changed—especially if they promote injustice, harshness, or harm.⁹

⁶ The Constitution of the Arab Republic of Egypt (2014): https://www.constituteproject.org/constitution/Egypt_2014.pdf.

⁷ Egypt: Overview of Muslim Family Laws & Practices." Musawah, January 2020: <https://www.musawah.org/resources/country-table-egypt/>; "Who Provides? Who Cares? Changing Dynamics in Muslim Families." Musawah, 2018: <https://www.musawah.org/resources/who-provides-who-cares-changing-dynamics-in-muslim-families/>

⁸ Egypt State party report, U.N. Doc. CEDAW/C/EGY/ (2008), p. 76, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹ See "Knowledge Building Brief #4: CEDAW and Muslim Family Laws." Musawah, 2017, p. 5. <https://www.musawah.org/wp-content/uploads/2019/02/KnowledgeBuildingBriefs-4-CEDAW-and-Muslim-Family-Laws-EN.pdf>.

Application of the law remains challenging; culture and customs play an important role in annulling some legal rights for women, such as their right to contract their marriage without a guardian. On the ground, the marriage registrar (*Ma'zoun*) may refuse to allow women to contract their own marriage and demand a male guardian on her behalf. These same registrars may conduct the marriage of a 15- or 16-year-old child even if it is against the law. Also, registrars would not normally explain to women that they have the right to add conditions in the marriage contract, like a right to divorce, pursue education, or other legitimate conditions. Pertaining to FGM, for example, some doctors, religious leaders, and community leaders would encourage such practice despite legislation prohibiting it.

MUSAWAH JUSTIFICATION FOR REFORM	
<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>	
<p>QUR'AN PROMOTES EQUALITY BETWEEN SEXES</p>	<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 context of norms and practices prevalent in their times, where men's superiority and authority over women was the norm.</p>

Recent Personal Status Law Reform

Since Egypt has ratified most international conventions—including CEDAW, and accepted several recommendations issued by the CEDAW Committee in 2010 and issued by states during the universal periodic review (UPR) in 2014 and 2019 regarding reforming PSL—it is necessary to reform the PSL in line with international human and women's rights standards. This necessity and urgency stem not only from the international obligations the state has committed to, but, most importantly, from the current socio-economic realities families suffer. Despite the PSL's long history, it failed to solve the problems seriously affecting Egyptian families. In March 2021, the cabinet submitted a proposal to parliament to amend the PSL. However, the proposal is disappointing in that it still does not address the core of the challenges faced by families; rather, the proposal emphasises the patriarchal perspective and inferior view of women by denying their right to equality before the law in matters of divorce and marriage, as well as denying women the right to guardianship over their children.

The cabinet's proposal lacks a comprehensive philosophy on the principles of equality and justice. It does not take into consideration: any of the recommendations submitted by civil society; the principles of human rights in general, and women and children's rights in particular, as stated in both the Constitution and international conventions that Egypt ratified and signed; progressive interpretation of Islamic Sharia law; or the experiences of other Muslim countries that have amended their family laws to enhance women's, children's, and family's rights.

Specifically, problematic articles in the proposal include:

- A guardian (*wali*) is required to contract the marriage, thereby depriving women of the right to consent to their own marriages.
- Mothers would still lose custody of their children upon remarrying.
- Absence of judicial divorce initiated by women and maintaining verbal divorce initiated by men.
- No mention of matrimonial assets.
- Article 103 stipulates that financial guardianship over a minor is automatically given to the father and then the paternal grandfather. The article does not mention the mother's right in financial guardianship even if she has custody. The proposal should have dealt with financial custody the same way it dealt with educational custody under Article 54 of Law No. 126 of 2008, which is given to the custodian, normally the mother, after divorce. Also, the mother cannot document her newborn without the presence of the father or a male relative from the father's side even if she has an official marriage certificate/contract.

IV. KEY ISSUES AND REFORMS

The Egyptian Personal Status Law has gone through several attempts to reform it, from 1920 until 2005. The PSL no. 25 of 1920 was promulgated in Egypt on maintenance and alimony; it was later amended by Law No. 25 of 1929. Afterwards, the following amendments were issued on specific topics within the PSL: Law No. 100 of 1985, Procedural Law No. 1 of 2000, and finally Law No. 4 of 2005 regarding the amendment of the age of custody.

Despite all these amendments, discriminatory provisions against women are still blatant within the law, including, but not limited to, the following issues:

1. MALE GUARDIANSHIP FRAMEWORK

Articles 5 & 15

- According to Law No. 1 of 2000, the Court may accept requests to examine whether women need the consent of guardians to enter into a marriage contract, which is contrary to Article 11 of the Constitution that recognises women as full citizens. Art. 9, para. 7 of the law states: "The District Courts shall have jurisdiction over matters relating to the guardianship over persons, etc., [...], and the authorization of the marriage for those who don't have guardians."
- Although the full testimony of women is recognized before the Penal Courts, under PSL, the testimonies of two females is equal to one male testimony in the marriage contract, or before the Family Court.

The concept of *qiwamah*, commonly constructed and understood to mean male authority over women, is well-known and widely accepted in Muslim communities. It underpins the legal construction of marriage and is used to justify provisions in Muslim family laws that grant men rights and privileges that women do not enjoy. Contrary to common belief, the term *qiwamah* does not appear in the Qur'an. It is derived from the word *qawwamun* in *Surah an-Nisa'* 4:34, which also appears in *Surah an-Nisa'* 4:135 and *Surah al-Ma'idah* 5:8. In all three cases, the term affirms the Qur'anic ethics of justice.

However, early male jurists interpreted *qawammun* in *Surah an-Nisa'* 4:34 based on patriarchal notions of gender relations from their own time and place. They developed *qiwamah* as a legal principle that justifies unequal spousal roles. In contemporary law and practice, it was used to justify wifely obedience, restrict women's freedom of movement and work based on the husband's permission, limit her legal and financial agency to sign contracts and conduct banking transactions in some instances, and the list goes on. In our contemporary contexts, this legal framework and its repercussion in law and practice no longer reflect the justice of Islam and cause harm to marital and family relations.

Interestingly, many Muslim countries are now moving away from this outdated understanding of the notion of *qiwamah* and are amending many legal provisions that were based on it, heading towards a more egalitarian understanding of the concept. These amendments include issues such as equality and shared responsibility between the spouses, as well as abolishing wifely obedience (Morocco); equality in divorce rights in court (Tunisia); equal guardianship over children (Algeria); criminalising domestic violence (Saudi Arabia); and equal share of matrimonial assets (Malaysia, Indonesia, Singapore). Such developments in law and practices prove that these religious notions are merely constructed patriarchal understandings of the term *qawwamun*, and can and do change depending on context and political will towards gender equality and justice.

2. MARRIAGE

Article 16

- Unregistered/unofficial marriages, including *Urfi* (or customary) marriages, are not legally prohibited, yet women are not guaranteed any financial rights in the marriage or after divorce. Since the law requires official registration of the marriage to issue birth certificates for children, several men would refuse to register the child or the marriage, leaving women seeking judiciary interventions to prove the paternity of the child. This can take years, and the women must bear the full cost of the legal process and of child maintenance in the meantime. This can take years, and the women must bear the full cost of the legal process and of child maintenance in the meantime.
- There are many injustices related to polygamous marriages because the law does not restrict the practice, and does not question the husband's capacity nor rationale for polygamy. There are, however, arguments within the Islamic tradition that support the restriction of polygamy. Some modern Islamic scholars and muftis like early 20th century scholars Muhammed 'Abdu, the late Mufti of Egypt, and Rashid Reda, an Islamic Lebanese reformist, were critical of polygamy, and stated that it creates tension among children and conflict among wives.¹⁰ There is also a Prophetic saying (*hadith*) that states, "There should be neither harming (*darar*) nor reciprocating harm (*dirar*)." Additionally, the Grand Imam of al-Azhar, the foremost authority on Sunni Islam, described polygamy as a distortion to the correct understanding of the Qur'an and an "institution that oppresses women."¹¹

¹⁰ <https://media.neliti.com/media/publications/37033-ID-uu-u-u-u1-u3uu-u-uu-a1-u2ua.pdf>

¹¹ <https://raseef22.net/article/1072490-one-wife-is-enough-al-azhar-grand-imam-calls-for-reform-of-polygamy>

- The Penal Code does not specifically prohibit domestic violence, and marital rape is not prohibited anywhere in the legal framework.
- Article 17 of the Penal Code allows for lower sentences in cases of rape or honour crimes.
- In 2015 the government coordinated a 5-year National Strategy for Combating Violence Against Women (NSVAW) to review and develop measures to address VAW, but without budgetary commitments and force of law to enact its recommendations, the real effect on women's lives remains limited. A compounding problem is the lack of data and necessary infrastructure to assess Egypt's prevalence of VAW, which makes evidence-based policy advocacy difficult.
- Article 60 states that "The provisions of the Penal Code shall not apply to any deed committed in good faith, pursuant to a right determined by virtue of the Shari'a." This article is frequently used to justify domestic violence as it is considered a right to the husband to "discipline" his wife. Despite the fact that such violence can be severe, causing permanent injuries or disabilities, some judges—based on their own interpretation—could still use this article to set perpetrators free.

Article 60 implicitly permits husbands' physical disciplining of wives by relying on patriarchal interpretations of *Surah an-Nisa'* 4:34 that give the husband authority over the wife and allow him to discipline what is seen as a 'disobedient' wife (*naashez*). This perceived duty of wifely obedience extends to the issue of marital rape, whereby marital sex is considered a husband's right and a wife's duty, thus forestalling arguments of harm and right to consent.¹² Yet *Surah an-Nisa'* 4:21 calls marriage a "solemn covenant," and other Quranic verses describe it as a relationship of mercy and kindness. In addition, Prophetic sayings have numerous instances against domestic violence, including "Could any of you beat your wife as he would a slave, and then lie with her in the evening?" Thus, prohibiting domestic violence can be argued as being compatible with Qur'anic values of love and compassion, consultation and mutual consent, and fairness.¹³ The State party can no longer justify discriminatory and harmful provisions against women as permissible under *Shari'ah*, given that they are misusing the term and selecting the more conservative and misogynistic interpretations to uphold their worldview. In addition several Muslim countries have already passed domestic violence laws and laws combatting violence against women.¹⁴

- Law No. 126 of 2016 made the practice of Female Genital Mutilation a felony rather than a misdemeanour and imposed strict punishments of imprisonment for those engaging in the practice. However, Article 61 of the Penal Code has allowed for cases to be dropped as "necessity of protecting self or a third party from grievous harm," with FGM being argued as a medical necessity as protection against harm to women and the family.

¹² Ali, Kecia. 2006. "The Best of You Will Not Strike": Al-Shafi'i on Qur'an, Sunnah, and Wife Beating'. *Comparative Islamic Studies* 2(2), pp. 143–155.

¹³ "Domestic Violence" from "Compilation of Resources Related to Women's Rights in Muslim Family Laws." Musawah, 2016, pp.28-31. <https://www.musawah.org/wp-content/uploads/2018/11/CompilationofResources-2016.pdf>.

¹⁴ Positive Developments Table. Musawah, 2019: https://www.musawah.org/wp-content/uploads/2019/02/Positive-Developments-Table-2019_EN.pdf.

Egypt's rate of FGM is among the top 10 in the world; while FGM rates have declined from 97% in 1995 to 87% in 2014, the state's efforts are still insufficient, and the number of national campaigns against FGM have decreased. Para. 140 of the State report references the amended Law No. 10 of 2021 to increase the punishment on FGM performers. Rather than jail sentences for facility managers and parents, non-custodial penalties would be more conducive towards increasing reporting, especially in cases of their cooperation with authorities or seeking medical help if the girl's health deteriorates. Moreover, the law itself is not enough to eradicate FGM without being accompanied by awareness-raising campaigns in rural and remote areas, with cooperation from the media, and sanctions against social media influencers and religious leaders who promote FGM. Efforts are ongoing from CSOs to raise awareness and push back against the social norms that perpetuate the practice.

MUSAWAH JUSTIFICATION FOR REFORMS	
<p>Female Genital Mutilation/Circumcision (FGM/C) harms women and girls' health and well-being for the rest of their lives. There is consensus among Islamic institutions, health practitioners, advocacy groups, and international human rights mechanisms that female genital mutilation, cutting and circumcision, causes long-lasting harm to girls and women, and is therefore an un-Islamic practice.</p>	
<p>NO EVIDENCE IN SUPPORT OF OF FGM/C IN THE QU'RAN & ISLAMIC TRADITION</p>	<ul style="list-style-type: none"> FGM is a cultural, not religious, practice that predates Islam and Christianity, and in the centuries since it has been proven to be harmful to women and girls. There is no text in the Qur'an or the Sunnah that requires female circumcision; in fact, Prophet Muhammad did not circumcise his own daughters. Based on those facts, institutions of religious scholars including Dar al-Ifta in Egypt have issued strong fatwas condemning FGM, including female circumcision, as harmful to girls and women, and thus forbidding it as an un-Islamic practice.

4. CHILD MARRIAGE	Articles 5 & 16
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- Law No. 126 of 2008 amended the Child Law to raise the age of marriage from 16 to 18 for both girls and boys, and prohibits the registration of marriages if any of the parties are under 18 and states anyone who registers such a marriage will receive disciplinary punishment; however, it does not penalise the adult perpetrator for marrying a person under 18.

According to the Ministry of Health in July 2018, 11% of girls between ages 15–19 years were married before the age of 18. Moreover, according to the Central Agency for Public Mobilization and Statistics (CAPMAS), more than 119,000 girls were married before the age of 18 in 2017. Marrying off young girls has become widespread in recent periods, especially after the revolutions in Egypt, and the spread of chaos, bullying, and lack of educational facilities in certain areas. This led many families to abstain from sending their daughters to schools and rather marry them off at an early age to protect them from abduction, rape, and harassment. Although by different

estimates 18–30% of families' main breadwinners are women, many families in such cases prefer to send their sons to schools thinking that they will become the future breadwinners of the family.

There is a strong cultural norm around the acceptability of child marriage; conservative religious authorities point to Prophet Muhammad's (pbuh) marriage to Aisha as justification for not advocating strongly against child marriage. Many recent studies have now proven that Aisha was at least 19 years of age when she married the Prophet. There is also substantial support from within Islamic jurisprudence to end child marriage, including attaining a level of maturity required to give consent to marriage and manage one's affairs, and the best interest (*maslahah*) of the child and prevention of individual harm—of which there is overwhelming evidence in cases of child marriage.¹⁵ Egypt's own renowned religious establishment Al-Azhar wrote with UNICEF:¹⁶

The international consensus that the procedural definition of childhood should apply to humans up to the age of 18 years... is perfectly compatible with what Islam enjoins. Islam has nothing to do with the custom of child marriage; reference to early marriages can be found nowhere in the Qur'an. Instead of an age limit, we find an unchangeable standard, which is the attainment of maturity. The fact remains that where custom encourages early marriage, the practice stems from nothing but the norms of the people. Sharia has nothing to do with it.

Early and child marriage leads to many problems such as depriving the girl of her right to education, choosing the right partner, and participating in public life and work, as well as increased exposure to gender-based violence. Moreover, because early marriages tend to be unregistered, it entails losing her legal and financial rights after divorce, making her vulnerable to trafficking and illegal work to maintain her family.

5. DIVORCE RIGHTS

Article 16

- According to the amended PSL Law No. 100 of 1985, “a man has the right to verbally divorce his wife up to three times, and such divorce should be documented by the official registrar within 30 days.” However, women are required to resort to the court for divorce and have to prove any of the following reasons:
 - 1) Disease, including mental illness or impotence
 - 2) Absence of financial support
 - 3) Physical absence or imprisonment
 - 4) Malicious behavior such as "physical or psychological abuse" (Articles 7–11).

Problems around verbal divorce arise when the divorce is not documented at the registrar's office. In these cases, women find themselves in a dilemma of being divorced according to religion, yet married before the law. In such situations, women carry the burden of proving divorce while lacking entitlement to any financial rights after divorce. The marital home is considered the property of the husband only, leaving women with little-to-no marital assets or other property, which can lead to exacerbated poverty and financial strain, the threat of which may also lead to

¹⁵ For more Islamic arguments against child marriage, see "Policy Brief 2: Ending Child Marriage in Muslim Family Laws." Musawah, 2020: <https://www.musawah.org/resources/policy-brief-2-ending-child-marriage-in-muslim-family-laws>.

¹⁶ “Children in Islam: Their Care, Upbringing and Protection.” Al-Azhar University in cooperation with the United Nations Children's Fund (UNICEF), Cairo: 2005. https://www.academia.edu/38492161/Children_in_Islam_Their_Care_Upbringing_and_Protection.

staying in unhappy or abusive marriages. Some Egyptian women face the situation where their husbands claim they orally pronounced divorce while they were angry, which mandates the couple to go to the Ifta Council to seek clarification on whether the divorce occurred; this has been used by husbands as a tactic to stall paying wives' financial rights. The challenges mentioned above would be eliminated if divorce were made mandatory in court, like in other Muslim-majority countries such as Saudi Arabia, Morocco, and Tunisia.

- According to Law No. 1 of 2000, women may obtain *khula'* without giving reasons in exchange of returning her *mahr* or dower and waiving all her financial rights.

In cases of domestic violence, women may resort to relinquishing their dower and other financial rights with a *khula'* divorce just to escape the situation as quickly as possible, putting her in a precarious financial position post-divorce. Furthermore, in many instances documented by CEWLA and other Egyptian CSOs, some judges would refuse to grant women *khula'* until they provide reasons for initiating divorce and proof, thereby arbitrarily increasing the evidentiary burden on them.

Alimony:

- Matrimonial assets are not recognised in the law because the law only deals with alimony. Even if the woman contributed to the wealth of the family during the marriage, as long as the assets are not under her name, she is not entitled to own in her own right any of these assets, including the marital home.
- PSL does not state a maximum for alimony, whether spousal or relative, leaving space for the judge's discretionary power. However, the labour law states that all "financial burdens"—referring to alimony—should not exceed 40% of the man's salary. This is considered a loophole in the law: if a man wants to escape paying the full alimony for his ex-wife or children, he would ask his mother or sister to file an alimony case against him; thus, regardless of the total amount of the combined alimony, only 40% total will be deducted from his salary. In this case, his ex-wife will receive less money because she is entitled only to a certain percentage of this 40%.
- Although the resources of the Family Insurance Fund operated by Nasser Social Bank (NSB) were increased by Resolution No. 10515 of 2015¹⁷ by imposing increased fees on identification papers and documents, NSB—which is responsible for paying pensions and alimony—only pays the amount of 500 Egyptian pounds (EGP) as a maximum alimony, even if the full amount of alimony stipulated by a court order is higher.

Such implementation is outdated and results in women's hardship, as it does not take into account rising inflation and cost of living. To illustrate, the established minimum wage is 1200 EGP. CAPMAS reported in the 2017–2018 income and expenditure research that the national poverty line was 8827 EGP per person per year, which is equivalent to about 735.5 EGP per month. This compares to 5787.9 EGP annually, or about 482EGP per month, in the previous research for 2015. Furthermore, the poverty line amount specified by CAPMAS is an amount for only one person, while the alimony decided by the court ruling is for the woman and any children.

¹⁷ <https://nsb.gov.eg/ar/%D8%B5%D9%86%D8%AF%D9%88%D9%82-%D9%86%D8%B8%D8%A7%D9%85-%D8%AA%D8%A3%D9%85%D9%8A%D9%86-%D8%A7%D9%84%D8%A3%D8%B3%D8%B1%D8%A9/%D8%B5%D9%86%D8%AF%D9%88%D9%82-%D8%AA%D8%A3%D9%85%D9%8A%D9%86-%D8%A7%D9%84%D8%A7%D8%B3%D8%B1%D8%A9>

Therefore, the decision of NSB to pay only 500 EGP contradicts the established minimum wage and allows women to fall well below the poverty line, unable to support themselves and their children as prescribed by the court ruling of the divorce.

6. CUSTODY OF CHILDREN

Article 16

- According to Article 20/1 of Decree-Law No. 25 of 1929 as amended by Law 100 of 1985, the mother loses custody of her children if she remarries after divorce. However, the father has the right to remarry and retains custody of his children, which clearly discriminates against women.
- Under the same article, women are granted custody until the child reaches the age of 15 or until the mother remarries; thus many mothers choose not to remarry to keep their children. However, when the child reaches 15 years old, the mother is forced by law to leave the house if it was provided by the father, and she ceases to receive alimony or other maintenance from the ex-husband. In many cases, women do not have the resources nor the shelter to relocate, amounting to a disincentive to divorce in the first place.
- With regard to custody, fathers receive very limited visitation rights, appearing far down the list even after women such as the father's female cousin.

In all Islamic schools of jurisprudence, the father or another male holds guardianship or *wilayah* responsibilities until the child reaches the age of majority. *Hadanah*, or custody, on the other hand, remains the right and duty of both parents during marriage, and upon divorce is decided based on the gender and religion of the parent. Legally separating and dividing *hadanah* and *wilayah* between parents does not make sense or reflect lived realities in all circumstances.¹⁸ A divorced mother with custodial responsibilities but no guardianship rights is restricted in managing the affairs of her children, such as schooling, medical affairs, and travel. Conversely, a mother's exclusive legal claim to *hadanah* can mean the father is not able to spend time with and co-parent their children.

Instead of awarding and removing custody based on gender, marital status, or religion, custody should be awarded based on the best interests of the child. Best interests differ from child to child and change as a child grows—they may include physical, emotional, spiritual, educational, developmental, and social needs. These interests must be considered so children get the care required. In some cases, the father may gain custody, but in many cases it is more appropriate for the mother to retain custody, and she should have financial support to be able to do so. Furthermore, a divorced mother's right to *hadanah* may be lost for a variety of circumstances, including remarriage, but a father's right to *wilayah* is never lost, even if he fails to pay maintenance or maintain regular contact with the child, thus creating a framework discriminatory towards mothers.

¹⁸ See "Policy Brief 6: Upholding the Best Interests of the Child in Custody and Guardianship." Musawah, 2021: <https://www.musawah.org/resources/policy-brief-6-child-custody-guardianship/>

V. RECOMMENDATIONS

We respectfully recommend the CEDAW Committee to urge the State Party to:

- **Review and withdraw reservations to Articles 2 and 16** of the CEDAW Convention.
- **Review and amend the Personal Status Law and the Penal Code** in order to modify or delete all provisions that discriminate against women, in accordance with Egypt's Constitution, principles of equality and justice, and its international obligations, especially CEDAW, the Beijing Platform for Action, and the Sustainable Development Goals. This includes new provisions proposed under upcoming draft bills that would amend the PSL and Penal Code.
- **Amend discriminatory provisions against women in the Personal Status Law and Penal Code** in order to ensure women's equal access to justice as stipulated in the Egyptian Constitution.
- **Ensure stronger and sustained participation of civil society in amending laws related to women**, as the Egyptian president has declared 2022 as the Year of Civil Society, along with the intent to set a National Strategy for Human Rights.¹⁹
- **Abolish men's guardianship over women in all aspects of life**, in current laws and upcoming draft bills, including consent or dissent to their marriage, thereby allowing women to make their own decisions about and during marriage.
- **Refer to progressive religious discourse and arguments that treat spouses equally**, which have been the basis of numerous commendable developments in Muslim family law worldwide.
- Ensure women and men have **equal rights to divorce through the court** and clearly abolish the practice of verbal divorce, which several Muslim countries have implemented.
- **Set a maximum time limit for judgments on divorce cases** to avoid excessive delays that sometimes take years, while women and children await their financial rights.
- **Provide for the fair distribution of property accumulated during marriage** upon death and/or divorce, taking into consideration women's non-financial contributions to the accumulation of marital property.
- **Provide for equal guardianship of children by both parents equally**, allowing mothers to make key decisions for their children, whether during marriage or after its

¹⁹ Dina Ezzat. "New commitment on human rights in Egypt." Ahram Online, 11 September 2021. <https://english.ahram.org.eg/News/422632.aspx> ; Amr Kandil. "Sisi declares 2022 Year of Civil Society as National Strategy for Human Rights launched." Ahram Online, 11 September 2021. <https://english.ahram.org.eg/NewsContent/1/64/422813/Egypt/Politics-/Sisi-declares--Year-of-Civil-Society-as-National-S.aspx>.

dissolution.

- Amend the PSL to **grant women the right to sustain their children's custody even if they remarry**, equal to men whose remarriage does not affect their custody status, and allow women to keep custody of their children past the age of 15 provided that safety and trust are well guaranteed for them.
- Allow for **equal co-parenting by moving up fathers to come in second rank right after mothers** in the custodial list and give them extended visitation hours, with appropriate safeguards put in place to avoid the kidnapping of the child by either parent, thus depriving the other from access to the child.
- Amend, adopt, and effectively **implement legislation to criminalise all forms of violence against women and girls**, including marital rape and sexual violence, in compliance with international human rights laws and harmonised across existing legislation.
- **Effectively implement the National Strategy to Combat Violence Against Women**, particularly urgent actions needed under the pillars of intervention, such as creating a more accessible system of safety and support for survivors, and legal procedures, such as improving reporting mechanisms and reducing judicial red tape. Develop these actions in consultation and partnership with independent civil society organizations working on combating violence against women.
- **Effectively implement and adopt training programs for criminal judges** on women's issues to strictly impose sanctions against perpetrators of violence against women and sexual violence cases.
- **Repeal Penal Code Article 60** to ensure that it cannot be used by perpetrators, law enforcement, or the judiciary to justify or excuse violence against women.
- **Create and train special police departments to deal with cases of violence** against women, marital rape, and sexual harassment.
- **Increase local reporting and response mechanisms for child marriage** at the governorate and district levels, including **follow-up and accountability mechanisms for marriage registrars** to take all necessary measures to reduce and stop child marriage.
- **Conduct awareness-raising campaigns** to stop early marriages, with a special focus on engaging with community and religious leaders about the negative impacts it has on girls and highlighting the Islamic stance of al-Azhar and Dar al-ifta Council about prohibiting child marriage.
- **Ensure protection for women and girls against FGM** by eliminating the legal loophole of Article 61 of the Penal Code and ensuring the implementation of the new law criminalising doctors and relatives involved, and those who encourage the practice.

ANNEX 1: MUSAWAH'S RESOURCES

For more resources on Muslim family law reform, visit Musawah's expanding toolkit, '**From Moment to Movement: A Toolkit to Advocate for Reform.**' (2021, <https://www.musawah.org/advocacy-toolkit>)

Knowledge Building Brief #1: Shari'ah, Fiqh, and State Laws: Clarifying the Terms
[ENGLISH](#) | [ARABIC](#) | [FRENCH](#)

Knowledge Building Brief #2: Muslim Family Laws: What Makes Reform Possible?
[ENGLISH](#) | [ARABIC](#) | [FRENCH](#)

Knowledge Building Brief #3: Islam and the Question of Gender Equality
[ENGLISH](#) | [ARABIC](#) | [FRENCH](#)

Knowledge Building Brief #4: CEDAW and Muslim Family Laws
[ENGLISH](#) | [ARABIC](#) | [FRENCH](#)

Policy Brief 1: Why Muslim Family Law Reform? Why Now?
[ENGLISH](#) | [ARABIC](#)

Policy Brief 2: Ending Child Marriage in Muslim Family Laws
[ENGLISH](#) | [ARABIC](#)

Policy Brief 3: Ending Polygamy in Muslim Marriages
[ENGLISH](#) | [ARABIC](#)

Policy Brief 4: Equal Divorce Rights in Muslim Family Laws
[ENGLISH](#) | [ARABIC](#)

Policy Brief 5: Fair and Just Financial Rights Upon Divorce
[ENGLISH](#) | [ARABIC](#)

Policy Brief 6: Upholding the Best Interests of the Child in Custody and Guardianship
[ENGLISH](#) | [ARABIC](#)