

THEMATIC REPORT ON FAMILY LAW AND MUSLIM WOMEN'S RIGHTS IN

MAURITANIA

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, and **Voix des Femmes (Women's Voices)**, jointly submit this Thematic Report on concerns related to Muslim women's legal equality in personal status matters, child marriage and nationality rights for consideration by the CEDAW Committee in its review of the Government of Mauritania, reporting before the 84th Session of the CEDAW Committee in February 2023. This is the CEDAW Committee's fourth periodic engagement with Mauritania. Its last full review was in 2014. Mauritania acceded to CEDAW in May 2001 with reservations on Articles 13(a) and 16 of the Convention.

This report highlights key legal inequalities that Muslim women face in Mauritania in the personal status sphere and their resulting negative impact on women and girls, along with recommendations to address gaps. We encourage the Mauritanian government to continue its efforts in eliminating discrimination against women, particularly in the areas discussed subsequently.

We hope that the CEDAW Committee will utilize this report as a key resource during its constructive engagement with the State Party and use the recommendations to identify follow-up issues in its Concluding Observations.

B. BACKGROUND, LEGAL FRAMEWORK AND CONTEXT

The Islamic Republic of Mauritania is situated in northwest Africa on the Atlantic coast. Its population is 4.775 million (2.4 million males and 2.48 females), and average life expectancy is 63.24 years according to 2016 statistics. Mauritania is a republic, and the president is elected by popular vote for a term of five years. The official religion is Islam, as stated in the Constitution, and the Islamic Sharia is the foundation of legislations.

The Mauritanian Personal Status Code (PSC) is the main codified law that governs matters relating to marriage and family relations of the predominantly Muslim population in Mauritania.¹ In the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, generally, the rules of Maliki jurisprudence (fiqh) apply.²

Mauritania has made a reservation on Article 16 of CEDAW relating to marriage and family relations as well as Article 13(1) regarding the right to family benefits, by stating that Mauritania "approves it in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution."³

Women in Mauritania struggle against the traditional social system (patriarchy) and the Islamic system. Islamist movements started since the nineties, and succeeded in creating a parallel social system to the existing traditional one. The Mauritanian community is multiethnic and culturally diverse, where the social hierarchy enables privileged persons with power and authority to escape legal penalties for crimes like rape, assault, robbery. These persons are able to secure high profile jobs and better opportunities. Marginalized segments of society, however, including black people and other marginalized communities, are left vulnerable due to absence of protection and strong social networks.

Women in Mauritania acquire their value from their position in the social order in which they have grown up. Mauritaniens are either Arab Berbers, or Maures, (Moors) who are further divided into Beydan (Bithan), or White Maure, and their former slaves, Haratine, who are black, and non-Arabs who are Wolof, Bambara and Fulas. It is noteworthy that Haratine are facing a complex situation being former slaves, and intersecting with other women in other forms of oppression. Therefore, Mauritania has women of varied and diverse backgrounds, each with her own story, due to which we cannot be all generalized as a part of a singular narrative, one law, one type of pain or suffering, one kind of violence, one expression, or one symbol. Nevertheless, women still intersect in their roles and the ruling system, and the patriarchal authority practiced on all.

Most anti-women practices are culturally and socially rooted, because the social system manipulates the religious and political systems to its advantage, and sometimes, seeks protection and justification

¹ Personal Status Code (2001).

² Article 311 of the Personal Status Code (2001).

³ Ratification Status, CEDAW, UN.org, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsq_no=IV-8&chapter=4&clang=en

of religion to legalize more restrictions on women. For example, in one of the ethnicities: women do not usually attend family gatherings; men are prioritized in education, and Female Genital Mutilation/Cutting (FGM) is a must-do tradition.

Another example of such manipulation of religion occurred during the drafting of a law on Gender Based Violence (GBV), presented by the government to the parliament in 2016. The parliament rejected the law on the grounds that it is against *Sharia* (Islamic law). In this regard, Voix des Femmes (Women's Voices) conducted several interviews with parliament members on the issue, where most of them stated they had not read the draft and only voted against it because of the word "gender", or after they listened to others' comments. The same draft has been presented again to the Islamic Affairs Committee, affiliated with the parliament since 2017, that advised to modify the draft, put reservations on articles of marriage and divorce as being against Sharia (Islamic law), and recommended it to be presented again to the National Assembly for voting. However, it has not yet been passed.

Although the government mobilized to pass the draft to meet its international commitments and recurrent recommendations on violence, and made use of the official media to support it, the social system resulted in its failure, where the 'Islamic' and traditional systems became allies in countering the draft law.

C. KEY ISSUES AND RECOMMENDATIONS

1. SPOUSAL INEQUALITY AND CONSENT TO MARRIAGE

ARTICLES 2, 16

Article 1 of the Constitution states that all citizens are equal before the law and prohibits discrimination on the several basis including sex.⁴ The Preamble to the Constitution declares the family as a basic unit of Islamic society. Article 16 of the Constitution obligates the State to protect the family.⁵

However, despite the equality guarantee under Article 1 of the Constitution, the Personal Status Code provides for a marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses that in turn is based on the concept of male guardianship over women and children.⁶

Article 56 of PSC provides that the husband is the head of the family while the wife is to assist him in the management of the family.⁷ This typically includes house chores and care for the children. In reality, this relationship of guardianship, granting the husband absolute authority within the family, often results in penalization for the wife for going out without a reason or not obeying her husband who is her 'guardian'.

The PSC also restricts the personal rights of married women in Mauritania as a result of the inherent concept of male guardianship over women and children that is built into the law. Article 57 of the Personal Status Law states that a married woman has the right to choose their own profession, "within the bounds permitted by Shari'ah" (without further explaining what these bounds are).⁸ This has opened the door for fatwas that discriminate against women, many fatwas have been issued to prohibit women from joining the army, judiciary or presidency. Moreover, Article 58 of the PSC gives a married woman the right to manage her property, but her husband can intervene if she decides to give away more than 1/3 of her assets.⁹ There are no corresponding restrictions on the personal rights of married husbands.

Regarding women's consent to marriage, Article 5 of the PSC states that a woman cannot marry without the consent of her guardian (*wali*). Article 9 provides that a woman who has reached the age of majority may not be married without her consent and the consent of her guardian, but instead of requiring explicit verbal consent from the woman, it states that "the silence of a young girl equates

⁴ Article 1 of Mauritania's Constitution (1991), https://www.constituteproject.org/constitution/Mauritania_2012.pdf

⁵ Preamble; Article 16 of Mauritania's Constitution (1991).

⁶ Articles 1, 55, 56 of the Personal Status Code (2001), <http://www.iustice.gov.mr/IMG/pdf/statutpersonnelarabe.pdf>

⁷ Musawah Country Table: Mauritania (2017), <https://www.musawah.org/resources/country-table-mauritania/>

⁸ Article 57 of the Personal Status Code (2001).

⁹ Article 58 of the Personal Status Code (2001).

consent.”¹⁰ If the guardian insists on withholding his consent without legitimate reason, the prospective bride may seek the authorisation of a judge to get married.¹¹

Culturally, the space women are given to choose their husbands is still limited to within the family or the tribe circles, but may extend to other tribes too. Women usually are not able to express the desire to get married to someone from outside those circles since it could likely lead to oppression from their families. Usually, once the family agrees, the guardian of the woman (typically the father) pursues all proceedings of the marriage.

Equality of spouses in marriage

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

ALGERIA



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.

TURKEY



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



CAPACITY TO ENTER MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES

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

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

BANGLADESH, PAKISTAN, SRI LANKA:

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

ALGERIA, BAHRAIN, BRUNEI, INDONESIA, IRAQ, JORDAN, LEBANON, MALAYSIA, MOROCCO, OMAN, PAKISTAN, PALESTINE, QATAR, SINGAPORE, TUNISIA, TURKEY, UNITED ARAB EMIRATES:

Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, forced marriages are prohibited.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

¹⁰ Article 9 of the Personal Status Code (2001).

¹¹ Articles 8, 13 of the Personal Status Code (2001).

- Amend the Personal Status Code and other relevant legislations, policies and development programs to grant and ensure spousal equality between men and women in all their spousal and personal rights in accordance with Mauritania's international human rights obligations.
- Amend the Personal Status Code to give adult women equal rights to enter marriage on their own accord without requiring the permission of a male guardian or judge.
- Enforce penalties on those who conduct, enable, or fail to prevent forced marriages.

2. CHILD MARRIAGE

ARTICLE 16

According to Article 6 of the Personal Status Code, the minimum age of marriage is 18 for both men and women. However, Article 6 also permits a guardian to effect the marriage of a minor (or one who lacks capacity) under his guardianship, if he determines that it is in the minor's interest. This is the legal gap that is used to continue the practice of child marriage in the country. Article 7 of the PSC provides that if a guardian authorised the marriage of the minor (or incapacitated person) purely in the interest of the guardian and not in the interest of the minor, the guardian would be subject to the penalties provided in the Penal Code.

Mauritania does not explicitly criminalize the practice of child marriage, which is especially common in rural and isolated places as well as in conservative families. Families get their girls married as children often to 'preserve their honor', due to fear of any illicit relationships. Child marriages often result in girls dropping out from schools, premature motherhood, and the pressure of shouldering complex social responsibilities.

Also, grown up women are sometimes forced to marry men they do not know to achieve specific social interests. This pressure can often be indirect, but many women end up acquiescing to the marriage only to escape the community's negative outlook of women who do not get early wed. Women's personality and presence in the public space is dependent on her marriage, so many women get married in order to have more freedom within the existing social system.

A woman cannot get married in case a man claimed he married her, even without any proof, till the marriage is over, according to Article 81 of the PSC.

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.'	
NEW HISTORICAL EVIDENCE NOW AVAILABLE	<ul style="list-style-type: none"> • 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. • However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (source: http://www.sistersinislam.org.my/news.php?item.997.41). • 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.
QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE	<ul style="list-style-type: none"> • 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. • This indicates that a person must have sufficient judgment and maturity to marry. • 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. • The onset of puberty is no indication of sufficient maturity for marriage.

MINIMUM AGE OF MARRIAGE	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
MINIMUM AGE OF MARRIAGE 18 WITH NO EXCEPTIONS	EGYPT 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.
	KENYA The minimum age for marriage is 18 for both females and males regardless of religion. 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).
	PAKISTAN (Sindh Province): 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.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Repeal Article 5 of the PSC to prohibit child marriage of any person under the age of 18 without exception.
- Criminalize child marriage through specific legal provisions and deterrent penalties, and introduce penalties for guardians and marriage officiators who contract the marriage of a child.
- Provide targeted training programs to law enforcement officials, the judiciary, healthcare workers, and social workers to respond to reports of child marriage, and provide adequate support to victims.

3. DIVORCE AND MATRIMONIAL PROPERTY

ARTICLE 16

The PSC provides for three different mechanisms for divorce: (i) unilateral repudiation (*talāq*); (ii) judicial divorce; and (iii) redemptive divorce (*khul'*). The marriage may also be annulled. In the case of unilateral repudiation (*talaq*), the divorce remains valid even if the wife objects or is not consulted for it.

The wife has the right to alimony during Iddat waiting period according to Article 84 of the PSC, but in reality, in many cases, husbands do not pay alimony. Women often decide to not resort to court proceedings for their alimony and their children's maintenance due to prolonged legal proceedings. Moreover, women going to court are perceived as dissidents of the patriarchy. The amount for alimony is required to be identified according to the income of the husband and the status of the wife and children according to Article 144. However, the husbands often conceal their private properties and do not provide accurate details to escape paying family dues.

A woman may seek a redemptive divorce (*khul'*) by petitioning a court and pledging to pay compensation to the husband or forfeiting her financial rights. A judge can confirm *khul'* but returns to a woman the amount she paid if he determines that she asked for *khul'* due to harm or mistreatment by the husband. Following a divorce, the father is responsible for the financial maintenance of his children if the children do not have funds of their own.

In practice, divorce, similar to marriage, is restricted by traditions and customs, and in the case of divorce, the wife typically leaves the house immediately after divorce if the husband owns/rents the property, even if they have children. Consequently, the wife's family often ends up having to bear the children's expenses (including accommodation, education, health etc.) following the woman's divorce.

There is no legal concept of matrimonial assets, but Article 73 provides that in the case of a dispute on assets and a lack of evidence regarding individual ownership, the wife's claim shall be accepted with respect to assets 'typically belonging to women', without specifying what such goods include. Due to the lack of financial independence of most women in the country, they are left with very little financial stability upon divorce when they leave their husband's house with their children, and become dependent on their own family for the financial support of themselves and their children.



POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

Division of matrimonial assets after divorce:

Malaysia



The court may order the division of matrimonial assets (*harta sepencarian*) acquired through the parties' joint efforts, having regard to the extent of contributions made by each party towards acquiring the assets, debts owed by the parties and the needs of minor children to the marriage.

For assets acquired by the sole efforts of a party, the court may order division of the assets having regard to the other party's contributions towards looking after the home or caring for the family, though the party by whose efforts they were acquired shall receive a greater proportion.

Even though a woman may not have contributed financially to the acquisition of the marital assets, her role as wife and mother are considered as indirect contributions and she is usually granted at least a third of the share of assets.

Indonesia:



- Property acquired during the marriage are considered joint property of the husband and wife.
- Matrimonial assets may be tangible or intangible.
- Upon divorce, each party has the right to receive half of the matrimonial assets unless they had agree otherwise in the marriage contract.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Amend the Personal Status Code to allow men and women the same right to divorce.
- Put in place deterrent penalties and legal provisions to ensure in practice the responsibility of financial maintenance of the husband's children following divorce.
- Ensure an expedited adjudication/settlement of family dispute cases.


A Muslim man may marry up to four wives at one time. He is not required by law to seek the permission of the court or his existing wife or wives to enter into a polygamous marriage.¹²

Articles 28 and 29 of the PSC provides that a woman may stipulate in the marriage contract that her husband cannot take another wife. If the husband breaches this term of the marriage contract, the woman has the right to petition for divorce and is entitled to the amount of mut'ah (compensation) that the judge determines.¹³

However, polygamy in Mauritania is carried out mostly in secret, and the husbands do not document or register the marriage, leaving women in the marriage vulnerable and without any legal remedy available to them, since the previous wives are unable to prove the marriage, and the newer ones are unable to register their children with their husband. These women end up becoming single mothers with no legal recognition of their children, and are additionally at the risk of contracting sexually transmitted diseases from their husbands.

Polygamy
POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS


POLYGAMY IS PROHIBITED FOR MUSLIMS:



ALGERIA

Requirement of court authorisation and consent of existing wives

- Polygamous marriages must be authorised 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.



IRAQ (KURDISTAN)

Polygamous marriages must be authorised by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met:

- (i) the first wife has to agree before the court to her husband marrying a second wife;
- (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile;
- (iii) the man has the financial capacity to support more than one wife;
- (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations;
- (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife.
- 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.

¹² Article 45 of the Personal Status Code (2001)

¹³ Articles 28-29 of the Personal Status Code (2001)

MUSAWAH JUSTIFICATION FOR REFORM

QUR'AN PROMOTES MONOGAMY

- When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy.
- The verse in Surah an-Nisa' 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.
- 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.

CHALLENGING POLYGAMY

- Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe.
- 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.
- 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.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Introduce conditions in the Personal Status Law to restrict the practice of polygamy to minimize harm and injustice done to the wives and children, and in particular:
 - Require marriage officiators to notify a man's existing wife at the time of contracting as subsequent marriage and to seek her consent; and
 - Include polygamy as a valid cause for judicial divorce.

5. CUSTODY, GUARDIANSHIP AND NATIONALITY

ARTICLES 9, 16

In the event of a divorce, a mother has priority over the custody of her daughter until she is married and her son until he reaches the age of majority. A judge may, however, award the father custody of the son as early as when he reaches seven if it is in the son's best interest to do so.¹⁴ However, a mother immediately loses custody of her child if she remarries another man and her new husband is not closely related to the child.¹⁵

A father has priority right over the guardianship of his children. As guardian, he is responsible for the child's education and discipline in addition to the child's property.¹⁶ Consequently, the wife cannot travel with her children abroad without the permission of their father/guardian, while the father can do so without any restrictions.

A Mauritanian man may pass his nationality to his non-Mauritanian wife upon marriage. However, the law does not specifically provide for a Mauritanian woman to confer her nationality to her foreign husband. Her foreign husband may obtain Mauritanian citizenship through naturalisation.¹⁷

A Mauritanian father passes his citizenship to his children wherever they are born. A Mauritanian mother may only confer her citizenship on her child if: (i) the child was born in Mauritania; or (ii) the father's nationality is unknown.¹⁸

¹⁴ Article 123, 126 of the Personal Status Code (2001).

¹⁵ Articles 122, 129-130 of the Personal Status Code (2001).

¹⁶ Articles 133, 178 of the Personal Status Code (2001).

¹⁷ Article 16 of the Nationality Code (1961), <http://www.refworld.org/country,...MRT,,3ae6b5304,0.html>

¹⁸ Articles 32, 72 of the Nationality Code (1961).

The Government of Mauritania in its 2013 report to the CEDAW Committee acknowledged the unequal nationality rights between women and men noting that with respect to children born abroad to a Mauritanian mother and a non-Mauritanian father, under Article 13 of the Nationality Code, Mauritanian nationality is not acquired by the child automatically, but on request. Moreover, Mauritania also acknowledged that non-Mauritanian husbands of Mauritanian women acquire Mauritanian nationality only after 10 years of marriage.¹⁹

Custody & Guardianship

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

Equal right to child custody:

Bangladesh, The Gambia, India, Indonesia, Iraq, Kenya, Pakistan, Qatar, Senegal, Singapore, Sri Lanka, Tunisia, Turkey:

Child custody is determined by the courts on the basis of the best interests of the child. This has led to an expansion of mothers' rights, as compared to more conservative interpretations of Muslim laws.



Equal right to guardianship of children:

Indonesia, Turkey, Kenya, Singapore:

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

NATIONALITY

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

TRANSMISSION OF CITIZENSHIP FROM MOTHER TO CHILD

AFGHANISTAN, ALGERIA, BANGLADESH, INDONESIA, EGYPT, KENYA, MALI, MOROCCO, PAKISTAN, PALESTINE, SINGAPORE, SOUTH AFRICA, TURKEY, YEMEN:

Mothers may pass their citizenship to their children regardless of where their children are born.

EGYPT, INDONESIA, MALI, PAKISTAN:

Laws or procedures specifically confer women married to foreign-born husbands with the right to transmit their citizenship to their children.

TRANSMISSION OF CITIZENSHIP TO FOREIGN-BORN HUSBANDS

AFGHANISTAN, ALGERIA, INDONESIA, IRAQ, KENYA, SINGAPORE, SENEGAL, SOUTH AFRICA, SRI LANKA, TURKEY:

A woman married to foreign-born husband can transmit her citizenship to him.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Amend the Personal Status Code to grant equal rights to both the mother and father for guardianship and custody of children, to be determined according to the best interests of the child.
- Amend the Personal Status Code to not deprive the woman of the right of custody upon remarriage.

¹⁹ Mauritania State party report, U.N. Doc. CEDAW/C/MRT/2-3 (2013), paras. 77, 78, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

- Grant equal nationality rights to both men and women with respect to passing citizenship to one's spouse or children.