



musawah

For Equality in the Family

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

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on concerns related to Muslim women's legal equality in personal status matters for consideration by the CEDAW Committee in its review of the Government of Oman, reporting before the 87th Session of the CEDAW Committee in February 2024. This is the CEDAW Committee's third engagement with Oman. Its last full review (2nd and 3rd reports combined) was in 2017.

Oman ratified the CEDAW Convention in February 2006 and placed reservations on "Article 16, regarding the equality of men and women, and in particular subparagraphs (a), (c), and (f) (regarding adoption)."; on "Article 9, paragraph 2, which provides that States Parties shall grant women equal rights with men with respect to the nationality of their children"; as well as a general reservation on "all provisions of the Convention not in accordance with the provisions of the Islamic sharia and legislation in force in the Sultanate of Oman". Oman had also previously placed a reservation on Article 15 which was withdrawn in 2019.

Despite Oman's noteworthy withdrawal of reservation on Article 15, Musawah remains concerned by its continued non-implementation of the Convention in the context of marriage and family rights of Muslim women. This report highlights key legal inequalities that Muslim women face in Oman in the personal status sphere and their resulting negative impact on women and girls, along with recommendations to address gaps. We encourage the Oman government to continue its efforts in eliminating discrimination against women, particularly in the area of marriage and family relations.

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

Oman lies in the far south-east of the Arabian Peninsula with a total surface area of 309,500 km². As of 2022, Oman's population is estimated at 3.8 million.¹ The population is estimated to be 95 percent Muslim [45 percent Sunni, 45 percent Ibadhi, and 5 percent Shia]. Non-Muslim religious communities include various groups of Jains, Buddhists, Sikhs, Jews, Hindus and Christians, and they comprise the remaining 5 percent; almost all are foreign workers.²

Oman is an Islamic Arab State with its capital in Muscat, and the state religion as Islam, which forms the basis of legislation. In 2021, the (new) Basic Law of the State was promulgated by the Royal Decree No. 6/2021.³ It repeals the Basic Law of the Sultanate of Oman 1996 (promulgated by Royal Decree No. 101/96, and amended by Royal Decree No. 99/2011). The Basic Law 2021 establishes that the Sultanate of Oman is an Arab, Islamic, independent state.⁴

Article 15 of the Basic Law states that the "family is the cornerstone of society, and its pillars are religion, morals and patriotism". It says further that the State "shall endeavour to maintain its cohesion, stability, and the consolidation of its values", and that it shall also "guarantee equality between women and men".⁵ Article 21 of the Basic Law further states that "all citizens are equal before the law...they have equal public rights and duties, and there shall be no discrimination between them on grounds of sex...religion, sect..."⁶

The ordinary judiciary of Oman comprises courts at various levels, divided into courts of first instance and appeal and the Supreme Court. These courts are competent to hear various kinds of cases,

¹ Oman 2022 International Religious Freedom Report, United States Department of State Office of International Religious Freedom, <https://om.usembassy.gov/wp-content/uploads/sites/155/International-Religious-Freedom-Report-2022.pdf>

² Ibid.

³ Fourth periodic report submitted by Oman (Hereinafter referred to as the "State Party Report of Oman 2022"), para 20. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FOMN%2F4&Lang=en

⁴ Article 1, Basic Law of the State, Royal Decree 6/2021 (hereinafter referred to as the "Basic Law 2021")

⁵ Article 15, Basic Law 2021

⁶ Article 21, Basic Law 2021

including civil, criminal, and personal status cases, with the exception being administrative cases falling within the jurisdiction of the Administrative Court.⁷

The Oman Personal Status Law 1997 (hereinafter referred to as “OPSL”) is the main codified law that governs matters relating to marriage and family relations of the Muslim majority population in Oman.

C. KEY ISSUES AND RECOMMENDATIONS

1. SPOUSAL INEQUALITY

ARTICLES 2, 16

Although Article 21 of the Basic Law states that all citizens are equal before the law and there shall be no discrimination between them on grounds of sex or religion, the Oman Personal Status Code provides for a marital framework based on a ‘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. Article 4 of the OPSL defines marriage as “a legal contract between a man and woman, the purpose of which is to establish a stable family under the patronage of the husband”.

Moreover, Article 38 provides that the husband is entitled to: (i) receive the attention and obedience of his wife, as the parent of the family; and (ii) his wife’s duty to be responsible for the home and looking after their children. In addition, Article 54 states that the wife risks losing her financial maintenance if she: (i) prevents her husband from approaching her; (ii) refuses to move to the marital home without a Shari’ah based reason; (iii) leaves the marital home without valid a Shari’ah based reason; (iv) prevents her husband from entering the marital home without a valid reason; (v) refrains from travelling with her husband without a valid reason.

Article 57 requires the wife to live with her husband in the marital home he provides for her. She is also required to move when he does unless she cites a condition in the contract to the contrary or he means to harm her by making her move from the domicile. Article 58(a) provides that the husband has the right to require his wife to live with his parents and children from other wives in the marital home as long as he is able to support them and provided that she would not be harmed by such requirement.

This system of ‘complementary’ rights as opposed to equal rights between the two spouses results in a number of discriminatory provisions for women, some of which are mentioned above. In its “List of Issues”, the CEDAW Committee requested updated information on steps taken towards reviewing all discriminatory provisions of the Personal Status Law and ensuring equal rights between men and women with regard to marriage. In its response, Oman has stated that the woman has absolute control over her money and property, and that the man has responsibility for maintenance of the wife. However, it is important to note that this framework of complementary rights also requires the “attention and obedience” of the wife towards the husband, and places the responsibility “for the home and looking after the children” with the wife, hence being contrary to the CEDAW Committee’s recommendations for the implementation of the CEDAW Convention in line with its object and purpose.

In its previous Concluding Observations, the CEDAW Committee noted that it remained concerned about “the use of the sharia as an explanation for lack of progress on family law reform and the continued application of discriminatory provisions in the Personal Status Law”.⁸

In 2022, Al Jazeera reported that Omani women are now challenging tradition and questioning marriage by demanding ‘equal partnerships’ as divorce rates rose 12% compared to the previous year, with 67% initiated by women.⁹ While one woman stated that “it is not a marriage if the man dictates all the terms in your life and forces you to play by his rules”, another woman reported that she ended her

⁷ Common Core Document, Oman, para 42(a).

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2FCORE%2FOMN%2F2019&Lang=en

⁸ Concluding observations on the combined second and third periodic reports of Oman, 22 November 2017, para 53.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FCO%2F2-3&Lang=en

⁹ “Oman women demand ‘equal partnership’ as divorce rates rise”, 27 Jan 2022, *Al Jazeera*,

<https://www.aljazeera.com/news/2022/1/27/oman-women-demand-equal-partnership-as-divorce-rates-rise#:~:text=Muscat%2C%20Oman%20E2%80%93%20With%20better%20education.compared%20with%20a%20year%20earlier.>

marriage because she found it “stifling and suffocating” because she needed permission from her husband even if she “had to go to a friend’s wedding.”¹⁰ It is important to note that such traditional values and practices can be challenged through a change in the law as well as by challenging the patriarchal model of families often wrongly justified under Islam.

Musawah Justification for Reform: Challenging the husband’s right to authority


The concept of male authority (qiwamah) over women plays a central role in institutionalising, justifying, and sustaining a patriarchal model of families in Muslim contexts; and it justifies and perpetuates numerous specific discriminatory provisions and practices, including key critical issues examined in this report. There is a disconnect between this discriminatory legal framework and women’s lived realities and family life today.

Musawah asserts that several verses in the Qur’an that dwell on the values of love, compassion, closeness, and protection between men and women and the general principles of equality and justice should form the basis of marriage and family in Islam. Repealing the codification of unequal and discriminatory rights and responsibilities within the marriage is not against Islam—it is in fact consistent with Qur’anic principles of justice (‘adl), equality (musawah), dignity (karamah), and love and compassion (mawaddah wa rahmah).

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.



RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Amend the Oman Personal Status Law 1995 to grant and ensure spousal equality between men and women in all their spousal and personal rights in accordance with Oman’s own recently promulgated Basic Law of 2021 (Articles 15 and 21 relating to equality between men and women) and its international human rights obligations.

¹⁰ Ibid.

The Omani Personal Status Law requires the consent of both parties to a marriage. However, the law also requires that the basic tenets of a valid marriage contract include the approval of the guardian (*wali*).¹¹ The guardian must be a Muslim and a male relative of the prospective bride (e.g. grandfather, father, brother, uncle, etc.). The prospective bride must consent to the choice of guardian.¹²

A judge can act as a guardian in the absence of male relatives. In addition, if the guardian opposes the marriage, the prospective bride may seek the authorisation of a judge to get married. The judge may authorise the marriage after providing the guardian with the opportunity to be heard and determining that the prospective bride's guardian's objections are not justifiable.¹³ The Omani government also explained in its 2016 State Party Report to the CEDAW Committee that the Royal Decree No. 55/2010 establishes a woman's right to resort to the judiciary if her guardian objects to her fiancé; and accords a woman the right to appeal a judgment that denies her application to marry to the Sultan in a petition submitted to the Diwan of the Royal Court within 30 days of the issuance of the judgment.¹⁴

RD 55/2010 seemed to have been established to solve the guardian control over woman in selecting her spouse. However, this involves additional steps and obstacles for the woman, who must first file the case in the court and potentially face her guardian in front of a judge to get the court's consent. Data on the number of these cases filed in front of court that have been approved does not seem to be available publicly.

Articles 17 requires a marriage to be contracted by the offer of one party and the consent of another which may be clearly indicated either verbally or in writing. In the event that the prospective bride or groom is not able to speak and write, consent may be indicated in recognisable gestures. Article 18 of the Personal Status Law provides further details on the requirements of a valid consent.

This practice and legal requirement of the consent of the guardian (*wali*) to get married continues to limit a woman's ability to enter into marriage on her own accord.



¹¹ Article 16, Personal Status Law (1997)

¹² Articles 10(a), 11, 19-20, Personal Status Law (1997)

¹³ Articles 13, 10(a)-(c), Personal Status Law (1997)

¹⁴ Oman Combined Second and Third Periodic State Party Report, U.N. Doc. CEDAW/C/OMN/2-3 (2016), para. 174,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FOMN%2F2-3&Lang=en

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Ensure that all women have an equal right to enter into marriage on their own accord without requiring the permission of a male guardian, and without having to resort to court proceedings to obtain this right.

3. POLYGAMY

ARTICLE 16

Article 35(2) of the OPSL allows a man to marry up to four wives at one time, and does not require the consent of the first wife prior to marrying another woman. While Article 37(6) of the law requires that the husband ensure equality between her and the rest of the wives, Article 58(a) provides that the husband has the right to require his wife to live with his parents and children from other wives in the marital home as long as he is able to support them and provided that she would not be harmed by such requirement.

Article 59 prohibits the husband from requiring his wife to live with his other wives in the marital home with others unless she agrees. The wife has the right to change her mind if she deems the presence of the other wives as being detrimental to her interests.

Pursuant to Article 5 of the OSPL, both spouses may stipulate any condition in their marriage contract so long as the conditions: (i) are made in writing; (ii) are not inconsistent with the purposes of marriage; (iii) do not involve anything that is forbidden in Islam (*haram*); and (iv) do not prohibit anything that is allowed in Islam (*halal*). The law does not explicitly specify whether including a condition preventing the husband from marrying a second wife would be considered valid or not. However, Oman's State Party Report has stated that the woman "has the right to dissolve the marriage contract if there is a clause in the contract allowing her to do so", and "a right to request a divorce in the event of harm caused by an action committed by the husband".¹⁵

However, allowing polygamy without the prior consent of the first wife leaves the wife in a vulnerable position with divorce as her only recourse in the event of harm by the husband. While Oman states that "Omani laws guarantee that the right to polygamy is not abused by husbands",¹⁶ the CEDAW Committee has recommended the State Party in its previous Concluding Observations to "prohibit polygamous marriages and enforce such prohibition in practice".

¹⁵ State Party Report of Oman 2022, para 162.

¹⁶ State Party Report of Oman 2022, para 162.

MUSAWAH JUSTIFICATION FOR REFORM

Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa'* 4:3 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>QUR'AN PROMOTES MONOGAMY</p>	<ul style="list-style-type: none"> • 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.
<p>CHALLENGING POLYGAMY</p>	<ul style="list-style-type: none"> • 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.

Polygamy POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

POLYGAMY IS PROHIBITED FOR MUSLIMS:

Tunisia, Turkey

Requirement of court authorisation and consent of existing wives



ALGERIA

- 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.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Prioritize the CEDAW Committee's previous Concluding Observation recommending Oman to "prohibit polygamous marriages and enforce such prohibition in practice, in line with its general recommendation No. 21 (1994) on equality in marriage and family relations and joint general recommendation No. 31 of the Committee/general comment No. 18 of the Committee on the Rights of the Child"
- Amend the Oman Personal Status Law to make provision for prenuptial agreements, in order for the husband and wife to decide whether a subsequent marriage may be contracted by the husband, and giving the option of divorce to the wife.

4. MATRIMONIAL PROPERTY AND DIVORCE

ARTICLE 16


Oman stated in its State Party Report that "there are no discriminatory provisions that would marginalize women legally, economically or socially with respect to independent financial assets."¹⁷ However, Omani law does not recognize a matrimonial property regime. Therefore, in the event of a divorce, each spouse retains his or her property, and none is required to relinquish or divide his or her property.

A woman's unpaid domestic or agricultural work is not taken into consideration in any division of matrimonial assets and would instead be considered as the woman's contribution to establishing and caring for a family.

Financial Rights


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.

¹⁷ State Party Report of Oman 2022, para 165.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Enact legislation to ensure that women have equal rights to property acquired during marriage upon the dissolution of marriage, and that unpaid domestic work be taken into consideration in this regard.

5. CUSTODY AND GUARDIANSHIP OF CHILDREN

ARTICLE 16

Typically, a father has a priority right to guardianship of his children during and after a divorce until the children reach the age of civil majority.¹⁸ Articles 11 and 134 of Oman's Personal Status Law of 1997 restrict the right of the child's custodian (normally the mother) to travel abroad with the child without the approval of the guardian (who is required to be male).¹⁹

With regard to custody, in the event of a divorce, a mother has priority right over the custody of her children (followed by the children's father, maternal grandmother and thereafter, a line of close relatives as stipulated in the law), until her daughter reaches puberty (unless a judge determines otherwise according to her interest), and her son reaches seven.²⁰ However, a mother loses custody of her child if she: (i) is deemed immature, untrustworthy or does not have the ability to care and nurture the child pursuant; (ii) has a contagious disease; (iii) *marries a man who is not a close blood relative of the children (mahram), unless a court decides otherwise*; (iv) *lives in a country where it is difficult for the father to carry out his duties as guardian*; or (v) waives her right for one year without valid excuse.


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.

¹⁸ Articles 139, 159-160, Personal Status Law (1997)

¹⁹ Article 134. The custodian of the child cannot travel abroad with the child without the approval of the guardian. If the guardian refuses, the matter may be submitted to a judge for resolution; Article 11. (B) The guardian must be a male, wise, adult, not forbidden by Hajj or 'Umrah, Muslim if the child is a Muslim.

²⁰ Articles 129-130, Personal Status Law (1997)

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.