

The Musawah research project on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) examined States parties' justifications for their failure to implement CEDAW with regard to family laws and practices that discriminate against Muslim women. The research reviewed documents for 44 Muslim majority and minority countries that reported to the CEDAW Committee from 2005-2010.

This report documents the trends identified in the review, and presents Musawah's responses to these justifications based on its holistic Framework for Action. It includes recommendations to the CEDAW Committee for a deeper engagement and more meaningful dialogue on the connections between Muslim family laws and practices and international human rights standards.

Musawah is a global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible. In the 21st century there cannot be justice without equality; the time for equality and justice is now!

Equality in the family is the foundation for equality in society. Families in all their multiple forms are central to our lives, and should be a safe and happy space, equally empowering for all.

Musawah builds on centuries of effort to promote and protect equality and justice in the family and in society.

Musawah is led by Muslim women who seek to publicly reclaim Islam's spirit of justice for all.

Musawah acts together with individuals and groups to grow the movement, build knowledge and advocate for change on multiple levels.

Musawah uses a holistic framework that integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men.

Musawah was launched in February 2009 at a Global Meeting in Kuala Lumpur, Malaysia, attended by over 250 women and men from 47 countries of Africa, Asia, Europe, the Middle East, North America and the Pacific. For details see www.musawah.org

CEDAW and MUSLIM FAMILY LAWS

In Search of Common Ground



CEDAW and Muslim Family Laws

CEDAW and Muslim Family Laws

In Search of Common Ground



musawah
For Equality in the Family

© Sisters in Islam, 2011

Published in Malaysia by:

Musawah

an initiative of Sisters in Islam (SIS Forum Malaysia)

7 Jalan 6/10, 46000 Petaling Jaya, Selangor, Malaysia

Tel: +603 7785 6121

Fax: +603 7785 8737

Email: musawah@musawah.org

Web: <http://www.musawah.org>

Project Leader: Zainah Anwar

Advisory Team: Amira Sonbol, Ziba Mir-Hosseini, Cassandra Balchin, Shanthi Dairiam

Writing Team: Jana Rumminger, Janine Moussa, Zainah Anwar

Research Team: Janine Moussa (chief researcher), supported by Yasmin Masidi, Sujatha Rangaswami, Jessica D'Cruz, Magdalena Piskunowicz and Esra Esenlik.

Thanks also to Vijay Nagaraj for his support to the Geneva-based researchers.

Editing Team: Janine Moussa, Jana Rumminger, Zainah Anwar, Cassandra Balchin and other members of the advisory team.

Cover Design: Gerakbudaya Enterprise

Layout: Gerakbudaya Enterprise

Printer: Vinlin Press Sdn Bhd
2, Jalan Meranti Permai 1,
Meranti Permai Industrial Park,
Batu 15, Jalan Puchong,
47100 Puchong, Selangor, Malaysia.

Any part of this publication may be copied, reproduced, adapted, stored in a retrieval system or transmitted in any form or by any means to meet local needs, without permission from Musawah, provided that there is no intention of gaining material profits and that all copies, reproductions, adaptation and translation through mechanical, electrical or electronic means acknowledge Musawah and the authors as the sources. A copy of any reproduction, adaptation or translation should be sent to Musawah at the above address.

CONTENTS

1. INTRODUCTION	1
1.1 About Musawah	1
1.2 The Musawah CEDAW Project	2
2. APPROACHES TO CEDAW AND MUSLIM FAMILY LAWS AND PRACTICES	5
2.1 Methodology	5
2.2 CEDAW Committee approaches	6
2.2.1 Statements on reservations to the Convention	6
2.2.2 Legal systems and conflicts of laws	7
2.2.3 Specific issues related to marriage and family matters	7
2.2.4 Suggestions and recommendations to States parties	9
2.3 State party approaches and justifications for non-compliance	11
2.3.1 Complying or in the process of complying	11
2.3.2 <i>Shari'ah</i> is the principal source of law defining rights, duties, and responsibilities of men and women	12
2.3.3 Cannot implement if inconsistent or in conflict with Islam/ <i>Shari'ah</i>	12
2.3.4 Islam provides sufficient or superior justice for women or complementarity of rights and duties between men and women	13
2.3.5 Culture, customs, or traditions prevent full implementation	14
2.3.6 Respect for minority rights prevents full implementation	15
2.3.7 Other obstacles to implementation	16
2.3.8 Constructive engagement	16
2.4 NGO approaches and strategies	18
3. APPLYING THE MUSAWAH FRAMEWORK IN THE CONTEXT OF CEDAW	21
3.1 General application of the Musawah Framework	22
3.2 Responses to common State party justifications for non-implementation of CEDAW	24
3.2.1 <i>Shari'ah</i> is the principal source of law defining rights, duties, and responsibilities of men and women	24
3.2.2 Cannot implement if inconsistent or in conflict with Islam/ <i>Shari'ah</i>	25
3.2.3 Islam provides superior or sufficient justice for women or complementarity of rights and duties between men and women	26
3.2.4 Culture, customs, or traditions, including minority rights, prevent full implementation	28
3.3 Responses to specific issues	29
3.3.1 Child marriage	30
3.3.2 Freedom to choose if, when, and whom to marry	32
3.3.3 Polygamy	33
3.3.4 Financial issues and obedience	36
3.3.5 Inheritance	38

4. CONCLUSION AND RECOMMENDATIONS	41
ANNEXES	43
ANNEX 1: GLOSSARY OF KEY TERMS	43
ANNEX 2: TABLE OF RIGHTS-BASED LAWS IN THE MUSLIM WORLD	45
ANNEX 3: OIC COUNTRIES AND THE CEDAW CONVENTION	49
ANNEX 4: SELECTED READINGS ON LAW AND FEMINISM IN MUSLIM CONTEXTS	65
NOTES	67

1. INTRODUCTION

This report is based on a Musawah research project on the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW' or 'the Convention') that examined States parties' justifications for their failure to implement CEDAW with regard to family laws and practices that discriminate against Muslim women. The research project reviewed documents for 44 countries with Muslim majority or significant Muslim minority populations that reported to the Committee on the Elimination of Discrimination against Women ('CEDAW Committee' or 'the Committee') from 2005 to 2010. This report documents the trends identified in this review, along with responses from Musawah based on its holistic Framework for Action and recommendations to the CEDAW Committee for a deeper engagement and more meaningful dialogue on the connections between Muslim family laws and practices and international human rights law.¹

1.1 About Musawah

Musawah is a global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible. Musawah, which means 'Equality' in Arabic, builds on centuries of effort to promote and protect equality and justice in the family and in society. Musawah is led by Muslim women, who seek publicly to reclaim Islam's spirit of justice for all. Musawah acts together with individuals and groups to grow the movement, build knowledge and advocate for change on multiple levels. Its launch at a Global Meeting in Kuala Lumpur, Malaysia, in February 2009 brought together over 250 participants — women and men, activists, scholars, and policy makers — from 47 countries, including 32 countries that are members of the Organisation of the Islamic Conference (OIC). For details, visit the Musawah website at: <http://www.musawah.org>.

Musawah uses a holistic framework that integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and lived realities of women and men. What makes Musawah different is that it brings Islamic and human rights frameworks together and argues for equality within the Islamic legal tradition. As such, Musawah recognises the compatibility between concepts of equality and justice in Islam and in international human rights standards, including the CEDAW Convention. Musawah also recognises the critical importance of such human rights standards, which guarantee all women a voice in defining their culture. Although women in most cultures and other religions also suffer discrimination, it is troubling the extent to which women's roles within the Muslim family have become politicised, with women and family laws becoming symbols of cultural authenticity and carriers of religious tradition. Because Muslim family laws are regarded by many Muslims to be derived directly from the teachings of the religion, this makes reform particularly difficult. Those determined to preserve the status quo conflate human understanding of God's message with the divine word itself, thus interpreting women's demands for reform towards equality and justice as demands to change the divine message.

Musawah intends to bring the following to the larger women's and human rights movement:

- An assertion that Islam can be a source of empowerment, not a source of oppression and discrimination;
- An effort to open new horizons for rethinking the relationship between human rights, equality and justice, and Islam;
- An offer to open a new constructive dialogue where religion is no longer an obstacle to equality for women, but a source for liberation;

- A collective strength of conviction and courage to stop governments, patriarchal authorities, and ideological non-state actors from the convenience of using religion and the word of God to silence our demands for equality, and
- A space where activists, scholars, and decision makers, those working within the human rights or the Islamic framework or both, can interact and mutually strengthen our common pursuit of equality and justice for Muslim women.

Musawah focuses both on family laws and family practices. Musawah categorises Muslim family laws as inclusive of the following: (1) all family codes in countries where the majority is Muslim, whether the code is derived from Islam or not (e.g., all OIC-countries, including Turkey and the Central Asian Republics even though their family laws are explicitly secular); (2) all family codes that are specific to Muslims, even where the Muslim community is a minority (e.g., Singapore, Sri Lanka); and (3) all uncodified or part-codified minority/majority Muslim family laws where the constitution explicitly permits Muslims or religious minorities to govern themselves through separate personal status laws (e.g., India, Kenya, Nigeria, South Africa). In addition, many Muslim communities, including in Muslim-minority settings, follow a variety of practices relating to family rights, responsibilities, and obligations.

1.2 The Musawah CEDAW Project

The Musawah CEDAW project is the first activity conducted under the Musawah key area of work in international advocacy. It was chosen because of the priority that the Musawah International Advisory Group and Musawah Advocates all over the Muslim world and in minority Muslim contexts place on the CEDAW Convention and its processes to advance the rights of women. However, Musawah Advocates are troubled by the fact that many States parties to the CEDAW Convention assert that they cannot fully implement CEDAW because it is in conflict with *Shari'ah*, or that laws or practices

cannot be changed because they are divine or based on the Qur'an.

Musawah submits that full implementation of CEDAW is possible, as the principles of equality, fairness, and justice within CEDAW and Islam are fully compatible, and reform of laws and practices for the benefit of society and the public interest (*maslahah*) has always been part of the Muslim legal tradition.

The CEDAW research project looks at the approaches of the CEDAW Committee, States parties, and NGOs in addressing family laws in Muslim contexts. There were three main goals of the project:

1. To better understand States parties' justifications for their inability to promote equal rights, implement existing rights-based family laws, and/or reform family laws that discriminate against Muslim women, and the CEDAW Committee's responses to such justifications;
2. To demystify religious-based objections and constructs based on Islamic teachings, human rights, constitutional guarantees of equality, and social realities in a dynamic and evolving process; and
3. To offer a vision and an understanding of the Islamic legal tradition in a holistic framework that can enable the CEDAW Committee, States parties to the Convention, and NGOs to explore alternative approaches to the direct and indirect use of Islam and *Shari'ah* to justify reservations and non-compliance with the Convention with regard to family laws in Muslim contexts.

This report outlines the results of the research and Musawah's responses to these results. Chapter 2 explains the findings from the research in terms of approaches taken to addressing family laws and practices by the CEDAW Committee itself, States parties, and NGOs. Chapter 3 summarises how the Musawah Framework for Action can be applied to respond to State party justifications for non-compliance and open possibilities for more just and equal Muslim family laws and practices. An understanding

of such possibilities can assist in the constructive dialogues between the CEDAW Committee, reporting States parties, and NGOs and their explorations of the links between Islam and human rights law. The

report closes with recommendations to the CEDAW Committee for engaging with States parties during the CEDAW review process on issues related to family laws and practices in Muslim contexts.

2. APPROACHES TO CEDAW AND MUSLIM FAMILY LAWS AND PRACTICES

2.1 Methodology

Of the fifty-seven OIC member countries, all but Iran, Sudan and Somalia have ratified the CEDAW Convention. Twenty-nine ratified without reservations, mostly African and Central Asian countries. Yemen and Indonesia are the only two countries outside of Africa and Central Asia that ratified without reservations. Turkey removed all its reservations later. Mauritania and Niger are the only two sub-Saharan African countries which ratified with reservations.

This research reviewed all OIC member countries that reported to the CEDAW Committee between the years 2005 and 2010, namely: Algeria; Azerbaijan; Bahrain; Benin; Burkina Faso; Cameroon; Chad; Egypt; Gabon; Gambia; Guinea; Guinea Bissau; Guyana; Jordan; Kazakhstan; Lebanon; Libya; Indonesia; Malaysia; Mali; Maldives; Mauritania; Morocco; Mozambique; Niger; Nigeria; Pakistan; Saudi Arabia; Sierra Leone; Suriname; Syria; Tajikistan; Togo; Tunisia; Turkey; Turkmenistan; Uganda; United Arab Emirates; Uzbekistan; and Yemen. Some of these countries reported twice during this five-year period.² India, the Philippines, Singapore, and Thailand — four non-OIC countries with significant Muslim minority communities who are governed by Muslim family laws — were also selected for analysis.³ The study was limited to these countries and the five-year period because of resource limitations and because most OIC countries that are States parties to the CEDAW Convention, along with these select countries with significant Muslim populations, had reported during this period. For each country included in the study, the main documents related to the CEDAW process were reviewed for approaches, language, arguments, and justifications used by the three main entities involved in the reporting process (i.e., the CEDAW Committee, States parties, and NGOs). The documents reviewed are the State party's initial and/or periodic report; the CEDAW Committee's list of issues and questions and the State party's

responses to this list; the summary records of the constructive dialogue between the CEDAW Committee and the State party; the Committee's Concluding Observations; non-governmental (NGO) shadow/alternative reports; and NGO oral statements. The researchers also read a number of articles and reports related to CEDAW and Islam⁴ to familiarise themselves with ideas and issues identified by other researchers in this area.

For each of the forty OIC and four non-OIC countries reviewed, the researchers identified and excerpted language relating to marriage and family relations in Muslim contexts. This language was then categorised into topics for the CEDAW Committee, States parties, and NGOs based on the principal arguments and terminology used. Because of the mechanics of the CEDAW review process, in which the CEDAW Committee and States parties issue official documents and also hold a constructive dialogue during which individual CEDAW experts and State party delegates speak, in some cases the language highlighted was that of the State party or the Committee as a whole, and in some cases it was language used by an individual expert or delegate. The researchers then identified and analysed trends in the approaches, language, arguments, and justifications used by each of the three entities.

The main issues examined within these documents included, but were not limited to: dower (sometimes used interchangeably with dowry);⁵ child marriage, forced marriage, and choice of marriage; divorce; property rights within marriage and its dissolution; inheritance; violence against women within the family (e.g., marital rape); obedience; guardianship; custody; levirate (practice of requiring a man to marry his brother's widow); and the ability to pass nationality to foreign spouses and/or children. These topics are derived from the rights and obligations related to marriage and family relations contained in the CEDAW Convention⁶ and its related

documents, namely article 16 of the CEDAW Convention and its corresponding General Recommendation number 21 on equality and family relations (1994).⁷ While the rights and obligations related to family laws and practices under the CEDAW Convention are primarily articulated in this article and general recommendation, Musawah recognises that the holistic nature of the CEDAW Convention means that other articles (e.g., article 1 (discrimination); article 2 (state obligation); article 5 (customs and stereotypes); article 9 (nationality); article 15 (equality before the law), as well as general recommendations and statements by the CEDAW Committee (e.g., the 1998 statement on reservations⁸), also relate to family laws and practices.

The following three sections present the findings from this review and analysis. Section 2.2 shares trends in how the CEDAW Committee has approached the issue of family laws and practices in relation to Islam and Muslim laws both in its official documents (general recommendations, statements on various issues, lists of issues and questions, and concluding observations) and by individual CEDAW experts in constructive dialogues. Section 2.3, which comprises the bulk of the output and analysis from the research project, outlines justifications and arguments used by States parties as to their implementation of or failure to implement CEDAW with regard to Muslim family laws and practices. This covers State party official documents (initial and periodic reports and responses to the CEDAW Committee lists of issues and questions) as well as statements by State party delegates during constructive dialogues. Section 2.4 describes general approaches used by NGOs in their alternative/shadow reports and oral statements in highlighting the situation of Muslim women in their country with regard to family laws and practices.

2.2 CEDAW Committee approaches

The review of documents provided insight into how the CEDAW Committee approaches issues related to Muslim family laws and practices, including general reservations to or justifications for non-compliance with

the Convention based on religion, culture, tradition, or custom, as well as specific topics like polygamy, child marriage, inheritance, etc. The documents show that the Committee generally addresses three categories or topics, namely reservations, general legal systems, and various specific issues related to family law. These interventions are described below. Several trends also emerged in terms of recommendations or suggestions made by the Committee in its constructive dialogues or Concluding Observations for how States parties should approach situations of non-compliance with the Convention, which are also described below.

2.2.1 Statements on reservations to the Convention

The CEDAW Committee has written and commented extensively on reservations to the Convention in both its 1998 statement on reservations,⁹ as well as in numerous references in its Concluding Observations. In its 1998 statement on reservations, the Committee noted that reservations affect the efficacy of the Convention, limit the application of human rights norms at the national level, and 'ensure that women's inequality with men will be entrenched at the national level'.¹⁰ The statement continues: 'Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.'¹¹

The Committee's stand is based, *inter alia*, on the Vienna Convention on the Law of Treaties, which clearly sets out that a treaty 'is binding upon the parties to it and must be performed by them in good faith',¹² and that a State may not make any reservation that 'is incompatible with the object and purpose of the treaty'.¹³

Hence when reviewing countries with reservations to the CEDAW Convention, the Committee has consistently urged

governments to withdraw their reservations, particularly with respect to reservations to article 16. For example, in the case of the United Arab Emirates (UAE), the Committee 'call[ed] upon the State party to withdraw its reservation to article 16 of the Convention and to introduce legislative reforms to provide women with equal rights in marriage, divorce, property relations, the custody of children and inheritance'.¹⁴ Furthermore, the Committee has emphasised that these reservations should be lifted in a speedy manner (e.g., Jordan,¹⁵ Syria¹⁶). In several instances, the Committee has asked governments for indicators of progress towards the lifting of their reservations (e.g., Algeria,¹⁷ Maldives,¹⁸ Mauritania¹⁹) and in the case of Saudi Arabia, the Committee urged the government to consider withdrawing its general reservation which stated that it was under no obligation to observe any terms of the Convention that were deemed contrary to Islamic law, 'particularly in light of the fact that the delegation assured that there is no contradiction in substance between the Convention and Islamic Sharia'.²⁰

Increasingly, the CEDAW Committee has been noting in its Concluding Observations that reservations to article 16 go against the very object and purpose of the Convention (e.g., Algeria,²¹ Bahrain,²² Libya,²³ Maldives,²⁴ Mauritania,²⁵ UAE²⁶). For example, in its Concluding Observations to the Maldives, the Committee 'call[ed] upon the State party to make the necessary revisions to law in the area of marriage and family relations without delay in order to facilitate the withdrawal of the reservation to article 16, which is contrary to the object and purpose of the Convention'.²⁷

The Committee has commented on reservations made ostensibly on the basis of protecting the rights of Muslim minorities, noting its concern about such reservations and recommending withdrawal (e.g., India,²⁸ Singapore²⁹). For example, the Committee reiterated to Singapore 'that it considers reservations to articles 2 and 16 to be contrary to the object and purpose of the Convention'. It 'encourage[d] the State party to engage in a multi-stakeholder consultation, with women fully represented in each group, on the extent and scope of its reservations and their impact on all women's

enjoyment of the rights enshrined in the Convention', and requested analysis on the scope and impact of the reservations.³⁰

2.2.2 Legal systems and conflicts of laws

In its review of several States parties, the CEDAW Committee noted with concern discrepancies between *Shari'ah* law and the CEDAW Convention. The Committee asked how the legal system addressed any inconsistencies (e.g., Egypt³¹) or which system would prevail in the case of conflict of laws (e.g., Benin,³² Cameroon,³³ Maldives³⁴). For example, the delegation from the Maldives was asked to 'clarify the precise status of the Convention in the domestic legal system and specify which provisions would prevail in instances of conflict between provisions of the Convention, the Constitution and Islamic jurisprudence'.³⁵ The Committee has also asked what is being done to reconcile and harmonise a State party's obligations under the CEDAW Convention and the requirements under *Shari'ah* (e.g., Nigeria,³⁶ Pakistan³⁷) and has recommended that governments bring all of their laws into full compliance with the CEDAW Convention.

On a few occasions, the Committee has expressed concern about the existence of plural legal systems (e.g., Singapore,³⁸ Malaysia³⁹). In the case of Malaysia, the Committee noted that 'the dual legal system of civil law and multiple versions of Syariah law, [...] results in continuing discrimination against women, particularly in the field of marriage and family relations'.⁴⁰ These questions have especially been asked in relation to which legal system governs Muslim and 'non-Muslim' marriages (e.g., Egypt,⁴¹ Malaysia,⁴² Syria⁴³). The Committee has recommended that State parties 'consider issuing a unified family law on personal status covering both Muslims and Christians' (Egypt⁴⁴).

2.2.3 Specific issues related to marriage and family matters

The CEDAW Committee regularly makes inquiries and recommendations on issues related to marriage and family matters in

Muslim contexts, urging States parties to end discrimination against women, in law and practice. Very often these issues are addressed together in one question from the Committee in either the list of issues and questions or during the constructive dialogue. In a typical question, for example, the Committee may ask a State party to 'provide information on steps taken to ensure equality between women and men in respect to personal status with respect to marriage, divorce, child guardianship, custody, as well as inheritance' (UAE⁴⁵). Similarly, these various issues are often addressed together in one paragraph of the Concluding Observations, such as in the case of Yemen, in which the Committee called upon the State party 'to ensure equal rights between women and men with regard to personal status, especially in marriage, divorce, testimony, property, nationality, child custody and inheritance'.⁴⁶ The Committee has also addressed these various issues separately, as noted below:

- **Polygamy:** The Committee regularly expresses its concern over the persistence of polygamy (e.g., Azerbaijan,⁴⁷ Burkina Faso,⁴⁸ Gambia,⁴⁹ Guinea Bissau,⁵⁰ Indonesia,⁵¹ Kazakhstan,⁵² Libya,⁵³ Maldives,⁵⁴ Mali,⁵⁵ Morocco,⁵⁶ Sierra Leone,⁵⁷ Tajikistan,⁵⁸ Togo,⁵⁹ Turkmenistan,⁶⁰ Uzbekistan,⁶¹ Yemen⁶²). The Committee has recalled its General Recommendation number 21 on equality and family relations, which states that polygamous marriage contravenes a woman's right to equality with men (e.g., Maldives,⁶³ Yemen⁶⁴), and has asserted that polygamy is inherently discriminatory against women and brings with it many problems, including the distribution of property and the custody of children, both during and after marriage (Burkina Faso⁶⁵). It regularly asks governments in both the lists of issues and questions and during the constructive dialogues what action is being taken to abolish the practice. A number of questions have been directed at the incidence of unregistered religious and traditional marriages (e.g., Kazakhstan,⁶⁶ Tajikistan,⁶⁷ Uzbekistan⁶⁸). In Concluding Observations, the Committee regularly urges governments to abolish, penalise, and prohibit the practice of polygamy in line with General Recommendation
- number 21. The Committee has also recommended that States parties adopt measures aimed at bringing religious and traditional marriages in line with the Convention (e.g., Kazakhstan⁶⁹).
- **Child Marriage:** The Committee has raised a large number of questions, concerns, and recommendations on the issue of child marriage (e.g., Azerbaijan,⁷⁰ Bahrain,⁷¹ Benin,⁷² Burkina Faso,⁷³ Cameroon,⁷⁴ Gabon,⁷⁵ Guinea,⁷⁶ Guinea Bissau,⁷⁷ Indonesia,⁷⁸ Jordan,⁷⁹ Kazakhstan,⁸⁰ Malaysia,⁸¹ Nigeria,⁸² Pakistan,⁸³ Saudi Arabia,⁸⁴ Turkmenistan,⁸⁵ Yemen⁸⁶). The Committee increasingly asks governments for concrete timetables and actions taken to eliminate the practice (e.g., Bahrain,⁸⁷ Indonesia,⁸⁸ Nigeria⁸⁹). In a few cases, Committee members have pointed out the detrimental effect child marriage has on girls, e.g., 'marriage at such a young age would mean the end of schooling for a girl and would rob her of the chance to improve the conditions of her life in the future' (Togo⁹⁰). State parties are regularly urged to set a minimum age for marriage of 18 years for both women and men in accordance with article 16 of the Convention, General Recommendation number 21, and the Convention on the Rights of the Child (e.g., Azerbaijan,⁹¹ Jordan,⁹² Nigeria,⁹³ Pakistan,⁹⁴ Saudi Arabia,⁹⁵ Turkmenistan,⁹⁶ Yemen⁹⁷).
- **Inheritance:** The Committee and individual Committee experts have noted with concern discriminatory inheritance laws in a number of countries (e.g., Burkina Faso,⁹⁸ Cameroon,⁹⁹ Guinea Bissau,¹⁰⁰ Syria¹⁰¹) and have called these laws 'inherently discriminatory against women' (Syria¹⁰²). The Committee has urged governments to bring these laws in line with the Convention and General Recommendation number 21. It has also raised questions about discriminatory property rights within marriage and its dissolution, and has urged governments to take action to eliminate such discrimination (e.g., Bahrain,¹⁰³ Burkina Faso,¹⁰⁴ Guyana,¹⁰⁵ Lebanon¹⁰⁶).
- **Other issues:** The Committee has also raised a number of other issues related

to marriage and family relations, though with less frequency. These include questions and recommendations related to nationality issues (e.g., Lebanon,¹⁰⁷ Suriname,¹⁰⁸ Yemen¹⁰⁹); marital rape (e.g., Malaysia¹¹⁰); obedience (e.g., Gabon,¹¹¹ Turkmenistan¹¹²); guardianship (e.g., Libya,¹¹³ Saudi Arabia¹¹⁴); the practice of levirate (e.g., Burkina Faso,¹¹⁵ Cameroon,¹¹⁶ Togo¹¹⁷); and the number and spacing of children (e.g., Turkmenistan¹¹⁸).

2.2.4 Suggestions and recommendations to States parties

The review of documents revealed that in both Concluding Observations and constructive dialogues, the CEDAW Committee and individual CEDAW experts have adopted a number of positive suggestions and recommendations for addressing issues related to discriminatory family laws and practices, including:

- **Modify sociocultural religious customs/traditions:** The Committee has frequently urged governments to modify sociocultural and religious, customary, and traditional practices that discriminate against women (e.g., Azerbaijan,¹¹⁹ Gabon,¹²⁰ Gambia,¹²¹ Guinea,¹²² Lebanon,¹²³ Mali,¹²⁴ Mauritania,¹²⁵ Pakistan,¹²⁶ Sierra Leone,¹²⁷ Syria,¹²⁸ Togo,¹²⁹ Uzbekistan¹³⁰). Most of these recommendations have been issued in the context of articles 2(f) and 5(a) of the Convention. A typical recommendation, for example, 'urges the State party to introduce measures without delay to modify or eliminate negative harmful cultural practices and stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention' (Gambia¹³¹) and states that measures to eliminate discrimination against women 'should include awareness-raising and educational campaigns addressing women and men, girls and boys, of all religious affiliations with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2(f) and 5(a) of the Convention'

(Syria¹³²). Sometimes, though less frequently, these recommendations are mentioned in the context of article 16 of the Convention. In the case of Togo, for example, the Committee urged 'the State party to address practices such as forced and early marriages, discriminatory widowhood practices, levirate, bondage and female genital mutilation, which constitute violations of the Convention'.¹³³

- **Engage religious/traditional leaders:** On several occasions, the Committee has urged governments to engage with religious leaders in pursuing efforts towards equality in the family (e.g., Azerbaijan,¹³⁴ Burkina Faso,¹³⁵ Guinea Bissau,¹³⁶ Indonesia,¹³⁷ Nigeria,¹³⁸ Togo,¹³⁹ Uzbekistan,¹⁴⁰ Yemen¹⁴¹). A typical question would be to '[p]lease inform the Committee of the specific measures being taken to raise awareness of opinion leaders, religious and traditional chiefs ... with regard to marriage, divorce, child custody, and inheritance and rights between spouses during marriage' (Burkina Faso¹⁴²). A standard recommendation, like the one issued to Azerbaijan, is 'to implement awareness raising campaigns and work with religious authorities in order to prevent early marriages and to ensure that all marriages are properly registered'.¹⁴³ This recommendation to engage with religious leaders has also been mentioned in the context of article 5: 'such measures [to eliminate stereotypes] should include awareness-raising and educational campaigns addressing women and girls, but in particular men and boys, and community, spiritual and religious leaders, with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2(f) and 5(a) of the Convention' (Uzbekistan¹⁴⁴).
- **Examine comparative Muslim jurisprudence:** The Committee has urged governments to look at positive/progressive examples from other Muslim countries in the area of family law and has pointed out that other Muslim countries have lifted their reservations,

including to articles 2, 5, and 16 of the CEDAW Convention (e.g., Jordan,¹⁴⁵ Lebanon,¹⁴⁶ Singapore,¹⁴⁷ UAE¹⁴⁸). In its Concluding observations to the UAE, for example, the Committee urged the government to take into consideration 'the experiences of countries with similar religious backgrounds and legal systems that have successfully accommodated domestic legislation to commitments emanating from international legally binding instruments, with a view to its withdrawal of the reservation'.¹⁴⁹ The Committee has also suggested on a number of occasions that governments model their personal status/family laws on those of other Muslim countries, such as Algeria, Tunisia, and Morocco (e.g., Maldives,¹⁵⁰ UAE,¹⁵¹ Singapore¹⁵²), obtain information on comparative jurisprudence (e.g., Jordan,¹⁵³ Indonesia,¹⁵⁴ Maldives¹⁵⁵) where more progressive interpretations of Islamic law have been codified in legislative reforms (Jordan,¹⁵⁶ Malaysia¹⁵⁷), and/or seek to interpret Islamic law in harmony with international human rights standards (e.g., Maldives¹⁵⁸) in order to give women equal rights in marriage, divorce, and custody of children.

- **Explore different interpretations of the Qur'an/Shari'ah:** Committee members have, on occasion, underscored that several different interpretations and schools of interpretation related to Islam/Shari'ah exist (e.g., Cameroon,¹⁵⁹ Egypt,¹⁶⁰ Gambia,¹⁶¹ Mali,¹⁶² Maldives,¹⁶³ Pakistan,¹⁶⁴ UAE¹⁶⁵). Members have also, on occasion, directly engaged State party delegates, correcting them on interpretations related to Muslim laws. To the Government of Pakistan, for example, a Committee member pointed out that 'Islamic law did not prohibit joint custody agreements'.¹⁶⁶ In the constructive dialogues with Cameroon¹⁶⁷ and Maldives,¹⁶⁸ members highlighted that neither the Qur'an nor Islamic law permitted polygamy. In the Maldives review, a Committee member clarified that 'the institution of the wali, or guardian of the bride, was not based upon the Koran and should be abolished'.¹⁶⁹ In some constructive dialogues, State party delegates have

stated directly or indirectly that various interpretations exist and there is no one monolithic interpretation (e.g., Egypt,¹⁷⁰ Mali,¹⁷¹ Mauritania,¹⁷² Pakistan¹⁷³).

- **Balance minority rights with women's rights:** The CEDAW Committee recommended ensuring a balance between minority rights and women's rights for the non-OIC countries reviewed in the Musawah study. During the India constructive dialogue, for example, several CEDAW experts challenged the Indian delegation on the policy of non-interference in the personal laws of communities and the balance between freedom of religion and women's rights to equality.¹⁷⁴ One CEDAW expert stated that '[d]espite what the Constitution said, there was a discrepancy between the right to freedom of religion, on the one hand, and the right of women to enjoy the same human rights as men, on the other. She urged the Government to find ways of engaging in discussion and dialogue to promote women's rights'.¹⁷⁵ Both the Indian and Singapore Concluding observations contained powerful language on the minority Muslim communities. For India, the Committee noted its concern about the policy of non-interference, which 'stand[s] in contradiction not only to the overall spirit and aim of the Convention but also to the State party's existing constitutional guarantees of equality and non-discrimination' and urged the State party 'to proactively initiate and encourage debate within the relevant communities on gender equality and the human rights of women and, in particular, work with and support women's groups as members of these communities so as to ... review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention'.¹⁷⁶ For Singapore, the Committee stated its concern 'about the existence of the dual legal system of civil law and sharia law in regard to personal status, which results in continuing discrimination against Muslim women in the fields of marriage, divorce and inheritance' and urged the State party to 'undertake a process of law reform'.¹⁷⁷

2.3 State party approaches and justifications for non-compliance

A major focus of the research project was to uncover how States parties to the CEDAW Convention view their progress in implementing the Convention with regard to Muslim family laws and practices, and how they justify non-compliance in such implementation. The language and arguments used by States parties were excerpted from the relevant CEDAW documents and categorised into types of arguments, which are presented in this section.

The arguments used by States parties, either in their official documents or in statements made by individual delegates during the constructive dialogues, range from statements that they are complying with the Convention, to blanket declarations or reservations that implementation cannot happen where CEDAW provisions are inconsistent with *Shari'ah*, to justifications that Islam provides a different type of equality or superior justice for women, to excuses that social customs, traditions, cultures, respect for minority rights, or the political situation is to blame. However, some States parties have made rights-based statements about addressing discrimination against women, acknowledging that such discrimination does exist, citing various interpretations of the Qur'an or Islamic teachings, and noting actions that have been taken to address injustices relating to Muslim laws such as engaging with religious leaders or studying progressive jurisprudence from other Muslim countries.

The following subsections describe each of these types of argument in more detail.

2.3.1 Complying or in the process of complying

A number of countries claimed compliance with the CEDAW Convention generally, and fulfilment of rights related to marriage and family relations in particular. Kazakhstan claimed that its Constitution reflected the principles of the Universal Declaration of Human Rights,¹⁷⁸ and countries such as

Gabon,¹⁷⁹ Guinea Bissau,¹⁸⁰ Lebanon,¹⁸¹ and Tajikistan¹⁸² claimed full equality under the law between men and women, generally. A number of countries said they guaranteed equality between spouses (e.g., Azerbaijan,¹⁸³ Turkey¹⁸⁴) including the right to choose a spouse (e.g., Azerbaijan,¹⁸⁵ Malaysia¹⁸⁶) and rights related to the dissolution of the marriage (e.g., Kazakhstan¹⁸⁷). Tajikistan claimed that other marriage and family-related rights, such as inheritance, property rights, and the right to use the family name were all protected under the law.¹⁸⁸ Several countries, including Turkey¹⁸⁹ and Tajikistan,¹⁹⁰ stated that polygamy was illegal under their criminal codes and in some instances subject to criminal sanctions and fines.

A significant number of countries cited recent, ongoing, and future reform processes geared towards achieving equality between men and women in the family. Several countries, including Nigeria¹⁹¹ and Syria,¹⁹² referred to general reform efforts. Algeria¹⁹³ and Suriname¹⁹⁴ cited efforts underway to raise the marriage age to eighteen for both boys and girls. Mali stated it was in the process of abolishing polygamy and discrimination in inheritance laws.¹⁹⁵ Algeria specifically mentioned the need for mutual consent to marriage and the need to abolish guardianship for adult women when marriage is contracted.¹⁹⁶ Indonesia stated that its Ministry for Women Empowerment had proposed revisions to its laws 'focussing on the age of marriage, polygamy, marriage based on different religious beliefs, as well as the status and roles of husband and wife'.¹⁹⁷ Several countries, including Guinea¹⁹⁸ and Nigeria,¹⁹⁹ referred to generalised efforts to bring their national laws in compliance with international human rights standards. With regard to polygamy, new laws had been drafted (e.g., Nigeria²⁰⁰) and roundtables and workshops had been organised (e.g., Tajikistan,²⁰¹ Togo²⁰²). With regard to child marriage, Cameroon mounted campaigns 'to make parents aware of the need to send girls to school, and [organised] educational chats ... with girls to encourage them to report any such cases to the relevant services'.²⁰³ Two of the minority non-OIC Muslim countries studied, namely the Philippines and Thailand, also stated

that they were undertaking reform efforts to amend discriminatory provisions related to marriage and family relations. Thailand recounted its ongoing efforts to amend its laws permitting women to choose their last name and marital designation,²⁰⁴ and the Philippines said that it hoped that there would be progress in its efforts to reform its Code of Muslim Personal Laws by the end of the current legislative term.²⁰⁵

2.3.2 *Shari'ah* is the principal source of law defining rights, duties, and responsibilities of men and women

The States parties reviewed in this research project tended to define themselves in one of three ways: (1) Muslim countries, following the norms and customs of Islam and Muslim laws (often referred to as '*Shari'ah/Sharia law*'); (2) countries with rich cultures, customs, and traditions; and (3) secular countries. The arguments and justifications used by governments for failing to comply with their CEDAW obligations related to marriage and family relations are correlated to the categories in which they defined themselves. For example, those countries defining themselves as 'Muslim' were more likely to claim that they are unable to implement CEDAW-related rights perceived to be contrary to Islam/*Shari'ah*. The countries that defined themselves according to 'tradition and culture' were more likely to cite tradition and culture as impediments to full implementation. 'Secular' countries were more likely to cite compliance with the CEDAW Convention while more readily conceding that increased efforts are needed.

The countries that defined themselves as 'Muslim countries' often made a blanket statement, often at the beginning of the State party report, that 'Islamic law' or '*Shari'ah*' is the principal source of law for the national legislation and that it defines rights, duties, and responsibilities of men and women. For instance, Syria stated that 'matters relating to marriage and family relationships, starting with betrothal and continuing on to marriage and all matters relating to birth, divorce, wills and legacies ...

are based on the Islamic Shariah'.²⁰⁶ Bahrain stated, 'Article 2 of Bahrain's Constitution states, "The religion of the State is Islam. The Islamic Shariah is a principal source for legislation"',²⁰⁷ and the United Arab Emirates stated, 'Islam is the official religion of the Federation, in which the Islamic Sharia is the principal source of legislation'.²⁰⁸ The first sentence of the Libyan State party report reads, 'As a Muslim society, the Libyan Arab Jamahiriya has the Holy Quran as its social code. As such, it is the Islamic faith which defines relationships and establishes rights, duties and the methods of interaction between individuals, both male and female, in every sphere of life'.²⁰⁹

Many of the States parties explicitly or implicitly view 'Islamic law' or '*Shari'ah*' as unitary and fixed in its content. Several referred to a single 'the Islamic Shariah' or 'the Islamic law' (e.g., Syria,²¹⁰ Mauritania,²¹¹ Bahrain,²¹² UAE²¹³). An Egyptian delegate stated that Islamic law 'is a settled matter'.²¹⁴ A Syrian delegate stated that 'with regard to inheritance law, even though some of its provisions were discriminatory, they could not be easily abolished or even amended because they stemmed from the Islamic sharia'.²¹⁵

2.3.3 Cannot implement if inconsistent or in conflict with Islam/*Shari'ah*

A number of countries entered reservations on the basis of *Shari'ah* or religion generally, including Jordan, Lebanon, Libya, Mauritania, Saudi Arabia, Malaysia, and Syria. For example, Jordan stated, '[n]o action has been taken to withdraw the reservations to any article of Convention that contradicts the Islamic sharia'.²¹⁶ Malaysia stated in its combined initial and periodic State party report that its remaining reservations 'are because [the CEDAW articles] are in conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia'.²¹⁷

Some countries, such as Pakistan²¹⁸ and Saudi Arabia,²¹⁹ stated that no law would stand if it were found to be inconsistent with the Islam and/or the Qur'an. Saudi Arabia went on to say that, '[t]o talk about the philosophy of domestic and international law and the application thereof in the Kingdom

of Saudi Arabia in isolation from the Islamic shariah is inconceivable' and that '[a]s such the country's laws cannot transgress the framework of the Islamic shariah and, consequently, may not be changed or developed by the legislative authority in the Kingdom in a manner which would lead to the creation of new principles, inconsistent with the bases of the Islamic Shariah, in letter and spirit'.²²⁰ Malaysia concluded after thorough consideration that marital rape could not be an offence 'as that would be inconsistent with sharia law'.²²¹ Egypt²²² and Syria²²³ stated that their inheritance laws could not be amended as they were based on *Shari'ah*.

2.3.4 Islam provides sufficient or superior justice for women or complementarity of rights and duties between men and women

Several countries asserted that Islam provided for equality between men and women (e.g., Bahrain,²²⁴ Egypt,²²⁵ Libya,²²⁶ Malaysia,²²⁷ Mauritania,²²⁸ Nigeria,²²⁹ Saudi Arabia²³⁰). Bahrain stated that, 'the Islamic Shariah, which is an integral system, achieves true equality between women and men based on justice that transcends the demand for formal or numerical equality',²³¹ and Malaysia noted that 'Islam is the key to women's emancipation and liberation'.²³² Saudi Arabia noted that the 'Holy Koran and Immaculate Sunna ... contain unequivocal rulings in favour of non-discrimination between men and women, desiring that women enjoy the same rights and duties on a basis of equality'.²³³

Specifically related to marriage and family matters, Libya stated that Islam 'prescribes that a woman should have an inheritance portion and the right to choose her husband, retain her name after marriage and receive an exclusive dower. In addition, it accords her the right to enjoy financial independence, dispose of her assets as she wishes and engage in any of the legitimate activities pursued by men during the course of their lives'.²³⁴ A few countries even pointed out that Islam provides superior justice and equality for women. With regard to inheritance, Pakistan noted that 'Islamic

law provided even more effective protection of women's rights than the Convention'²³⁵ and Egypt stated that to withdraw its article 16 reservations would actually 'diminish the rights of women under Islamic law and Egyptian law'.²³⁶

Several countries justified differential treatment of women and men under their interpretations of *Shari'ah* by pointing to the reciprocal obligations expected of men. A number pointed to the responsibility of a man to support his family, whereas a woman is under no such obligation (e.g., Egypt,²³⁷ Malaysia,²³⁸ Pakistan,²³⁹ UAE²⁴⁰). '[T]he sharia honours women and makes the man responsible for the financial support of the woman, whether his wife, daughter, mother or sister, not requiring the wife to support either herself or her family, even if she is wealthy', noted the UAE.²⁴¹ With regard to alimony, Egypt argued that a man is obligated to pay alimony for up to one year, whereas '[t]here is no corresponding requirement for the woman'.²⁴² A Bahraini delegate stated that even if a brother and sister divided their inheritance from their father equally, the brother would still be financially responsible for supporting his sister, and it stood to reason that the person who was obliged to provide support should have greater financial resources at his disposal. In awarding the man a greater share of the inheritance, *Shari'ah* law was in fact providing for the fair treatment of men and women.²⁴³

With regard to polygamy, Saudi Arabia reasoned, '[a]s everyone knew, some men had stronger desires than their wives could meet; they must be able to take additional wives so that they would not be tempted to satisfy their needs outside of marriage, which was prohibited under Islamic law'.²⁴⁴ It went on to add that '[p]olygamy had also provided a solution at times when many men had died in wartime; it had allowed women who would otherwise have been left without husbands to have the status of wives in society and to be provided for financially'.

Interestingly, few countries raised the fact that legally, the reciprocity between husband and wife is based on a relationship founded on inequality between the spouses. In return for maintenance, the wife is duty-bound to

obey her husband. She loses her right to maintenance if she fails to obey. One country that did describe this situation is Gabon, in pointing out 'certain inconsistencies that violate the principle of equality of the spouses'.²⁴⁵ Gabon stated, '[b]y marrying, a woman makes a commitment to obey her husband (article 252 of the Civil Code), who is empowered as the head of the family (article 253). The husband thus decides on the domicile (articles 114 and 254) where the wife is obliged to live and where the husband is obliged to provide for her, for the duration of the marriage. The wife may avoid this arrangement only through court authorization.'²⁴⁶

2.3.5 Culture, customs, or traditions prevent full implementation

Another type of argument frequently used by many States parties attempts to take the responsibility for implementation of the Convention away from the government by pointing to the role of culture, customs, traditions, and the patriarchal society in discriminating against women. The States parties argue that in the face of these powerful local customs and traditions, which often are intertwined with religion, change is difficult and takes time. In many cases, the people are not ready or women themselves are preventing the change from occurring. Governments also cite situations in which the law permits a practice, which is often justified because of tradition or culture, but the practice is rare.

A large number of countries cited local customs and traditions, which Syria describes as 'more powerful than the law', as the reason that discrimination in the family persists.²⁴⁷ With regard to polygamy, several countries pointed to the acceptance of this practice by society and women in particular (e.g., Burkina Faso,²⁴⁸ Mali,²⁴⁹ Pakistan,²⁵⁰ Tajikistan²⁵¹). Burkina Faso pointed out that some women entered polygamous marriages because they enjoy living in larger families,²⁵² and Mali stated that the persistence of polygamy was due in part 'to tolerance on the part of women, who were not sufficiently independent to make their own choices'.²⁵³ Others pointed out that women were driven

to such arrangements due to poverty (e.g., Indonesia²⁵⁴) or to rectify 'the demographic imbalance that resulted from, for example, civil war' (Tajikistan²⁵⁵). Indonesia cited 'the prevailing sociocultural norms of society which encourage the belief that marriage at a later age amounts to shameful conduct and therefore should be prevented' as the most significant reason for child marriage.²⁵⁶

One of the main arguments evoked by governments for the inequality that exists between men and women in their country was that change took time (e.g., Benin,²⁵⁷ Lebanon,²⁵⁸ Mali,²⁵⁹ Togo²⁶⁰). Some blamed it on 'age-old traditions' (Pakistan²⁶¹) that came from 'bygone times' (Benin²⁶²). Several countries underscored the challenges and time required to change these stereotypical notions of equality. Pakistan noted that 'society's attitudes, preferences, biases and prejudices develop over centuries and are the product of a complex mix of culture, history, custom and religion' and that '[c]hanging these is a difficult task'.²⁶³ Turkey stated that 'mentalities would not change overnight'²⁶⁴ and Algeria also felt that ending 'discrimination behind people's behaviour and mentality was a long term task'.²⁶⁵ Several delegations assured the Committee that progress, though slow in coming, was nonetheless taking place. The UAE pointed out that '[t]he very presence of the delegation before the Committee was something that could hardly have been imagined a decade or two earlier'.²⁶⁶ Gabon also pointed out that 'progressively, a gender perspective was being introduced in the educational system and in the thinking of families'.²⁶⁷

A number of countries argued that although a practice was not banned per se, it was not widely exercised within the local culture. With regard to child marriage, Turkmenistan noted that '[a]lthough girls were permitted to marry at sixteen, most did not do so until they were 18'.²⁶⁸ Algeria stated that polygamy was legal, but 'in fact virtually all men chose to divorce their first wife before taking a second'.²⁶⁹ UAE shared that 'what appeared to be strict interpretations of the Shariah in theory were applied flexibly in practice'.²⁷⁰ Legal practices were also limited by restrictions and preconditions set out by law. Several countries, for example,

pointed to preconditions for entering into a polygamous marriage (e.g., Algeria,²⁷¹ Malaysia,²⁷² Maldives,²⁷³ Mauritania,²⁷⁴ Morocco,²⁷⁵ Syria,²⁷⁶ Togo,²⁷⁷ Yemen²⁷⁸). Mauritania explained, for example, that '[a] man was allowed to take another wife provided that both the first wife and the prospective second wife consented to a polygamous marriage and provided that the husband treated both wives equally. The difficulties inherent in fulfilling the latter condition effectively served as an indirect ban on polygamy.'²⁷⁹ Togo also noted that by 'subjecting polygamous marriage to strict conditions of express prior consent of the first two spouses who have chosen the polygamous option' it would be 'promot[ing] monogamy as the preferred form of marriage'.²⁸⁰ Syria observed that 'Shariah law required men to be financially and physically capable of managing a second wife'.²⁸¹ Malaysia shared the Court would only grant permission for a polygamous marriage if 'it is satisfied that the proposed marriage is just and necessary, having regard to such circumstances as sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights or insanity on the part of the existing wife or wives'.²⁸² With regard to child marriage, Jordan argued that 'the authority granted to judges under the Personal Status Act to marry underage girls could be used only in extreme circumstances'.²⁸³

2.3.6 Respect for minority rights prevents full implementation

Some States parties with Muslim minorities justify their failure to amend discriminatory provisions in family laws that apply only to Muslims because they recognise and respect cultural and religious diversity and the rights of minorities to their own cultures or customs. Both India and Singapore, two of the non-OIC countries reviewed in the Musawah study, hold reservations or declarations to the Convention related to its minority communities. India declared in relation to articles 5(a) and 16(1) 'that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent', and with

regard to article 16(2) on registration of marriages that 'it is not practical in a vast country like India with its variety of customs, religions and level of literacy'.²⁸⁴ Singapore's first reservation states, 'In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws'.²⁸⁵ This is an implicit reference to the Muslim minority community in Singapore.

Singapore noted that the admittedly discriminatory provisions relating to Muslim women within the family 'were essential in order to preserve the harmony of Singapore's multiracial, multireligious and multicultural society'.²⁸⁶ Thus no change is possible because '[t]he current view of the Muslim community was that the application of Sharia law in matters of marriage, divorce and inheritance — the only areas in which [Sharia] was applied — continued to be relevant'.²⁸⁷

India, which has a significant Muslim minority, stated in its periodic report that 'India is a secular country, having diverse cultures and religions and it respects the views of all the different communities based on religion, language and geographical locations'.²⁸⁸ During the constructive dialogue between the CEDAW Committee and the Indian delegation, a Committee member asked about India's policy of non-interference in the personal affairs of any Community without its initiative and consent, which she said 'undermined the Convention'.²⁸⁹ A delegate from India defended the non-interference policy, stating that 'secularism and religious freedom were basic aspects of the country's Constitution which had been drafted in 1950 against a backdrop of religious violence. India's unity in diversity was non-negotiable and communities enjoyed the right to minister their own institutions. The Government, for its part, could not impose change without evidence of a movement from within the community'.²⁹⁰

The Philippines, another minority non-OIC country reviewed in the study, does

not have any reservations to article 16 of the Convention. When questioned about the discriminatory provisions contained in its Muslim Personal Law, however, the Philippines recognised that although all norms relating to personal and family relations should be in line with the Convention, 'there was also a need for cultural sensitivity towards the country's large Muslim population'.²⁹¹

2.3.7 Other obstacles to implementation

In addition to specifically pointing to culture, tradition, and custom, many States parties tried to minimise the fact that they were not fully complying with the Convention or cited other obstacles to implementation. Some countries stated that *Shari'ah* law only affected family matters (e.g., Bahrain,²⁹² Gambia,²⁹³ Libya,²⁹⁴ Singapore²⁹⁵), implying that family matters are not very important and that women are not discriminated against in other areas of their lives. Bahrain noted that its reservations concerned 'only the status of women in the family with respect to guardianship, the financial rights of women, inheritance, etc.'²⁹⁶ and Libya's 'applied only to inheritance, on which there were clear and incontrovertible provisions in the sharia'.²⁹⁷ Gambia explained that *Shari'ah* law was 'restricted to matters like marriage, divorce, and inheritance'.²⁹⁸ Singapore explained that '[o]nly the Muslim community was affected by sharia law, which in fact applied only in three areas: marriage, divorce and inheritance'.²⁹⁹ Azerbaijan explained that the rights within the family could be restricted 'only on the basis of the law for the purpose of protecting the morals, health, rights and legitimate interests of other family members and other citizens'.³⁰⁰ Guinea explained that 'customary laws were only invoked within families and in certain communities where women were possibly discouraged from taking matters to court'.³⁰¹

Another frequent argument cited by States for non-compliance was the politically sensitive nature of issues related to marriage and family relations (e.g., Mali,³⁰² Jordan,³⁰³ Lebanon,³⁰⁴ Thailand³⁰⁵). A delegate from Jordan noted that '[w]ithdrawal of the

reservations ... was a politically charged issue and could happen only in the right environment and with a favourable Parliament'.³⁰⁶ A delegate from Thailand stated that '[t]he issue of Islamic law was a sensitive one. The situation was unique because Islam was considered to be not only a religion but a way of life, and the laws related to marriage were considered to be the laws of God, which could not be replaced by the laws of man'.³⁰⁷ Several countries pointed to the political instability in their region/country as reasons for non-compliance (e.g., Algeria,³⁰⁸ Jordan,³⁰⁹ Lebanon,³¹⁰ Mali³¹¹). A delegate from Algeria stated that 'only when the underlying conflict had been dealt with could a reservation be withdrawn'.³¹² With regard to granting nationality to the children of Lebanese women married to non-Lebanese, Lebanon noted that '[i]n view of the critical political situation in Lebanon since the war of July 2006 and the repercussions of that war, there has been no opportunity for the achievement of ... progress'.

2.3.8 Constructive engagement

In some cases, States parties acknowledged discriminatory practices, stated that more action is needed, provided Islamic jurisprudence to support equality, or shared methods they are using to engage with Islam. Examples include:

- **Acknowledging gap between de jure and de facto:** Gambia admitted that 'even though women are accorded full and equal rights with men under the 1997 constitution; in practice women do experience discrimination and inequality'.³¹⁴ Togo attributed this gap to the practical obstacles that exist preventing women from fully enjoying their rights, such as 'practices detrimental to a woman's dignity in the event of her husband's death, the fact that women are regarded as ineligible to inherit, difficulty in obtaining access to credit and owning property, early marriage and the like'.³¹⁵ Several countries pointed to the occurrence of polygamy in their communities, even though the practice is not legally recognised (e.g., Guinea Bissau,³¹⁶ Kazakhstan,³¹⁷ Turkmenistan³¹⁸). The same was true

with regard to rights related to marriage (e.g., Benin,³¹⁹ Guinea,³²⁰ Mali³²¹). Mali stated that '[t]he Marriage and Guardianship Code allows the possibility of a monogamous marriage being converted into a polygamous marriage with the wife's consent. In practice, it is common for the wife's consent to such a conversion to be obtained through abuse, threats and intimidation'.³²² Benin noted that although women had the right to choose their spouse, 'there exist survivals of traditional practices whereby a daughter's husband is chosen without her consent'.³²³ Guinea noted that this gap was 'particularly true in the case of child marriages and forced marriages'.³²⁴ Gabon stated that although the law prohibited dowry, the practice continued.³²⁵

- **More action needed:** A number of countries proffered that more action must be taken with regard to achieving equality for women within the family (e.g., Algeria,³²⁶ Gabon,³²⁷ Gambia,³²⁸ Guinea Bissau,³²⁹ Maldives³³⁰). Gambia noted that it was important that 'customary laws and practices that are discriminatory against and harmful to women are thoroughly reviewed'.³³¹ Guinea Bissau noted that it needed a new civil code,³³² and Gabon stated that 'most of the legal texts in Gabon needed to be strengthened to ensure that there were no differences between legal texts and practices', such as in the case of dowry.³³³ The Maldives noted that 'rapid behaviour change existed and must be explored'.³³⁴
- **Various interpretations exist:** Some States parties admitted that several interpretations of the Qur'an and/or Islamic practices exist and there is no one monolithic interpretation (e.g., Egypt,³³⁵ Mali,³³⁶ Mauritania,³³⁷ Pakistan³³⁸). Syria, for example, stated that 'the Islamic countries did not all have the same positions on the various articles of the Convention'³³⁹ and Mauritania noted that several of society's problems 'were often further impeded by erroneous interpretations of religious texts that opposed the empowerment of women'.³⁴⁰ A delegate from Mali conceded that 'there was indeed room for interpretation

in Islamic jurisprudence'.³⁴¹ Egypt even admitted that '[p]olygamy is a matter of dispute among Islamic jurists: one group interprets the Koranic verses as permitting polygamy while another group interprets them as being conditional and not general. Some people call for a careful reading of the texts, claiming that they do not indicate support for polygamy but on the contrary forbid it'.³⁴² Delegations acknowledged ongoing debates surrounding these various interpretations, such as 'lively debates' in Pakistan particularly on the Hudood laws.³⁴³

- **Engaging religious leaders:** A number of countries spoke of engaging with religious leaders in their efforts towards equality between men and women in the family (e.g., Azerbaijan,³⁴⁴ Burkina Faso,³⁴⁵ Gambia,³⁴⁶ Indonesia,³⁴⁷ Maldives,³⁴⁸ Pakistan³⁴⁹). Gambia, for example, said that it 'maintained an ongoing dialogue with religious and community leaders, seeking their interpretation of religious laws on relevant issues and consulting them on legislation'.³⁵⁰ Indonesia shared that a 'gender sensitivity training had been conducted for religious leaders in the area of marriage and family'.³⁵¹ With regard to early marriage, Azerbaijan shared that '[t]he Government was very concerned about the question, and a committee was working with religious groupings to address it'.³⁵² The Moroccan Ministry of Habbous and Islamic Affairs 'issue[d] guidelines for devoting Friday sermons in mosques to respect for women's rights and equality between men and women'.³⁵³
- **Looking at positive examples from other Muslim countries:** A few countries shared that they were looking to other Muslim countries for examples on how to more progressively interpret *Shari'ah* in the context of family relations. 'Singapore had organised seminars attended by forward-looking scholars from other Muslim countries on the progressive interpretation of sharia law' and '[f]requent exchanges and visits by Muslim leaders had been arranged with other Muslim countries that were often interested in how Singapore's Muslim

community had managed to reconcile full integration in Singaporean society with its strong Islamic values'.³⁵⁴ Maldives shared that it was developing a project with the UNFPA whose specific objective was 'reviewing the existing laws and customs to identify gender sensitivity and do a comparative study with the legal system of other Muslim countries'.³⁵⁵ The delegation from Indonesia stated that the suggestion 'to study the approach of other Muslim countries would be considered'.³⁵⁶

2.4 NGO approaches and strategies

Analysis of non-governmental organisation shadow reports and oral statements revealed that family and marriage relations were priority issues for most non-governmental organisations located within Muslim-majority countries. The most commonly raised issues were polygamy, child marriage, plural legal systems, marital rape, inheritance, guardianship, and the right to pass one's nationality to one's spouse. Various strategies and methods were employed by NGOs when articulating and advocating these issues:

- **Highlighting the gap between *de jure* and *de facto* discrimination:** Virtually all of the NGOs who provided submissions to the CEDAW Committee highlighted the gap between *de jure* and *de facto* discrimination in their country. For example, where the right to divorce existed, several obstacles towards its practical realisation were cited such as: cost,³⁵⁷ having to first return the dower (*mahr*),³⁵⁸ having to forfeit custody of children,³⁵⁹ having to prove cause,³⁶⁰ and requiring prior approval of informal/alternate dispute mechanism.³⁶¹ Where polygamy was prohibited, NGOs provided data and statistics proving its continued existence, especially in rural and traditional communities.³⁶² Where polygamy was restricted, with strict prior conditions to be fulfilled before permission can be granted by a judge, the NGOs tell of how rarely this permission is ever denied and/or serves as an impediment.³⁶³ Where it is
- only granted with the consent of the wife, they showed how in reality this consent is rarely sought. NGOs also cited the continued persistence of child marriage for a number of reasons including adherence to customs, traditions, and religious teachings as well as poverty, family and community pressure.³⁶⁴
- **Making recommendations:** Virtually all of the NGOs listed recommendations they would like their governments to take in order to correct the discrimination cited. In some instances these recommendations were quite vague, for example, calling for their government to ban polygamy,³⁶⁵ child marriage,³⁶⁶ forced marriage,³⁶⁷ lift reservations.³⁶⁸ In other instances, however, recommendations were quite specific, such as dictating how to harmonise civil laws with religious laws on, for example, marriage, divorce, alimony, nationality, guardianship, and custody,³⁶⁹ suggesting a series of specific actions that must be taken to change cultural and religious discriminatory beliefs and practices, engaging with religious organisations,³⁷⁰ such as awareness raising campaigns, workshops, and roundtables,³⁷¹ and identifying specific laws and/or sections of laws that must be repealed.³⁷²
- **Describing sociopolitical contexts:** Several NGOs described the socio-political context within which discrimination is taking place, such as the place of Islam in their country,³⁷³ and its use for justification for religious practices such as polygamy.³⁷⁴ A country's political situation, such as upcoming elections or political conflict, was sometimes cited as an explanation for increasingly restrictive policies and interpretations of Islam. Poverty was given as the reason that certain practices, such as bride price, dowry, and child marriage, are occurring and/or are on the rise.³⁷⁵
- **Recalling previous Concluding Observations:** Where applicable, NGOs cited points of concern and recommendations issued by the CEDAW Committee in previous CEDAW Committee Concluding Observations to enhance their points of advocacy. In several instances, for example, the NGOs were able to recall

previous recommendations issued by the Committee to lift reservations, abolish polygamy, raise the minimum age of marriage, and so forth.

- **Documenting the effects of discrimination:** NGOs cited the effects that *de jure* or *de facto* discrimination has on women. For example, in the case of polygamous marriages, NGOs described the discrimination felt by the first, second, third, and fourth wives and the effect it has on perceived gender roles and power structures.³⁷⁶ In the case of child marriage, reproductive health effects on the girl child were described as well the obstacles towards her continuing her education and hence being able to earn a living.³⁷⁷ They also described how forced marriage was more likely to lead to incidences of domestic violence.
- **Citing positive Muslim examples and progressive scholars:** A number of NGOs cited examples of more progressive interpretations of Islam in other Muslim countries, including family laws in

which polygamy is banned and Muslim countries that had lifted reservations to the Convention on the grounds of religion.³⁷⁸ A few NGOs cited progressive Islamic scholars or the Qur'an to refute stringent interpretations proffered by their governments or suggest progressive interpretations on issues including guardianship, polygamy, child marriages, and inheritance.³⁷⁹

- **Case studies:** NGOs used case studies to illustrate discrimination faced by women in family and marriage matters, such as the story of a little girl forced into marriage or a second wife in a polygamous marriage.

This marks the end of Chapter 2, which describes the various approaches taken by the CEDAW Committee, States parties, and non-governmental organisations on family matters. The next chapter focuses on how the Musawah Framework for Action can be applied in responding to some of these approaches and arguments.

3. APPLYING THE MUSAWAH FRAMEWORK IN THE CONTEXT OF CEDAW

This chapter provides information about Musawah's approach to issues of equality in the family, based on the Musawah Framework for Action. It outlines Musawah's holistic Framework, which integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and lived realities of women and men. The Framework was conceptualised and developed through a series of meetings and discussions with Islamic scholars, academics, activists and legal practitioners from approximately thirty countries.

The Framework for Action contains a preamble and three main sections 'Equality and Justice in the Family are Necessary', 'Equality and Justice in the Family are Possible', and three 'Principles on Equality and Justice in the Family':

Principle 1: The universal and Islamic values of equality, non-discrimination, justice and dignity are the basis of all human relations.

Principle 2: Full and equal citizenship, including full participation in all aspects of society, is the right of every individual.

Principle 3: Equality between men and women requires equality in the family.

The Framework states that realisation of these three principles entails laws and practices that ensure:

- The family as a place of security, harmony, support and personal growth for all its members;
- Marriage as a partnership of equals, with mutual respect, affection, communication and decision-making authority between the partners;
- The equal right to choose a spouse or choose not to marry, and to enter into marriage only with free and full consent; and the equal right to dissolve the marriage, as well as equal rights upon its dissolution;

- Equal rights and responsibilities with respect to property, including acquisition, ownership, enjoyment, management, administration, disposition and inheritance, bearing in mind the need to ensure the financial security of all members of the family; and
- Equal rights and responsibilities of parents in matters relating to their children.

Musawah believes that Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible, and that both are dynamic and constantly evolving.

Based on the Qur'anic teachings, justice is integral to the philosophy of law in Islam; but justice is also an extra-religious value. Our notions of justice and injustice are influenced by other factors, including our lived realities. They thus change with time and context. This, too, is reflected in the Islamic legal tradition. Musawah holds that in our time and in our context, there can be no justice without gender equality. Many aspects of Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do they fail to fulfil the *Shari'ah* requirement of justice, but they are now being used to deny women dignified choices and rights in life. This disconnect between outmoded notions of justice and outmoded laws and customs and present-day realities lie at the root of continued discrimination against women in the Muslim family.

In the twenty-first century, the provisions of the CEDAW Convention — which stands for justice and equality for women in the family and society — are more in line with the *Shari'ah* than family law provisions in many Muslim countries and communities. As such, the rights outlined in the CEDAW Convention, particularly in article 16, should be incorporated into Muslim family laws and practices.

This chapter provides an overview of the general approach of the Musawah Framework, including an explanation of why equality and justice in Muslim family laws and practices are necessary and are possible. Next, it provides responses to several of the common arguments or justifications made by States parties about why they fail to fully implement the provisions of CEDAW. It then provides support for equality on specific family law issues, based on the holistic Framework that combines Islamic teachings, international human rights standards, constitutional guarantees, and lived realities. Together, this general and specific information can be used to strengthen the discussion in the CEDAW process about family law issues.

3.1 General application of the Musawah Framework

The main assertion of the Musawah Framework is that equality and justice in Muslim families — both *de jure* and *de facto* — are both necessary and possible. The Framework provides a historical, jurisprudential, and sociological outline to support this assertion.

Equality and justice in the family are necessary

Most family laws and practices in today's Muslim countries and communities are based on theories and concepts that were developed by medieval/classical jurists (*fuqaha*) in vastly different historical, social and economic contexts. In interpreting the Qur'an and the *Sunnah* of the Prophet, classical jurists were guided by the social and political realities of their age and a set of assumptions about law, society and gender that reflected the state of knowledge, normative values and patriarchal institutions of their time. The idea of gender equality had no place in, and little relevance to, their conceptions of justice. It was not part of their social experience. The concept of marriage itself was one of domination by the husband and submission by the wife. Men were deemed to be protectors of women and the sole providers for the household,

such that their wives were not obliged to do housework or even suckle their babies. Women, in turn, were required to obey their husbands completely.

It was within this context that Muslim jurists read and interpreted the Qur'anic verses, defined marriage as a civil contract that places a woman under the protection of the husband, and assigned rights and duties that supposedly complement the different and separate roles of the man and woman. This is the source of the dominant idea that persists today that men and women cannot be equal in marriage because 'Islam' has assigned them complementary and reciprocal roles and responsibilities.

By the early twentieth century, the idea that equality is intrinsic to conceptions of justice began to take root. The world inhabited by the authors of classical jurisprudential texts had begun to disappear. Until the nineteenth century, *fiqh*, the jurisprudential science of understanding *Shari'ah* was dynamic, in line with the values and practices of its own time. But because of the new political context, including the colonial occupation of Muslim lands and the rise of Muslim nation states, the relationship between Islamic legal tradition, the state, and social practice began to change. Women and Islamic law became symbols and carriers of cultural tradition, a battleground between the forces of traditionalism and modernity. The state put aside *fiqh* in all areas except marriage and the family, and then began to codify *fiqh* concepts and rulings as part of the process of nation formation and identity politics, taking the *fiqh* concepts out of context and selectively reforming, codifying and grafting them onto legal systems inspired by Western models.

Most of the current Muslim family laws and personal status codes were created through this process, based on assumptions and concepts that have become irrelevant to the needs, experiences and values of Muslims today. The administration of these hybrid statutes shifted from classical scholars, who became increasingly out of touch with changing political and social realities, to executive and legislative bodies that usually

had neither the legitimacy nor the inclination to challenge pre-modern interpretations of the *Shari'ah*. Even in Muslim communities where classical juristic concepts have not been codified into law, the centuries-old *fiqh* rules and colonial and local norms have, in many cases, been invoked to sustain inequality between women and men within the family and wider society. Injustices resulting from this disconnect between outdated laws and customs and present-day realities abound in many Muslim countries and communities.

Consequently, *fiqh* does not take into account nor reflect present-day realities like the necessity for women and men to seek employment as migrant workers, which has changed the dynamics of the Muslim family.

Equality and justice in the family are possible

Governments of countries that have Muslim family law systems often argue that the laws cannot be amended to allow equality between men and women because the law is divine Islamic law (or *Shari'ah*), and therefore unchangeable, or that practices cannot be changed because they are part of the Islamic tradition. As outlined above in the findings from the Musawah research project, such statements can be seen in the justifications used by governments that have reported to the CEDAW Committee.

Musawah's Framework for Action refutes this argument, declaring that equality in Muslim family laws is possible, and that such laws must change to ensure equality, fairness, justice and dignity for men, women and children within family relationships.

Several basic concepts in Islamic legal theory lay the foundation for this claim:³⁸⁰

- There is a distinction between *Shari'ah*, the revealed way, and *fiqh*, the science of Islamic jurisprudence. In Islamic theology, *Shari'ah* (lit. the way, the path to a water source) is the sum total of religious values and principles as revealed to the Prophet Muhammad to direct human life. *Fiqh* (lit. understanding) is the process by which humans attempt to derive concrete legal rules from the two primary sources of Islamic thought and practice: the Qur'an and the *Sunnah*

of the Prophet. As a concept, *Shari'ah* cannot be reduced to a set of laws — it is closer to ethics than law. It embodies ethical values and principles that guide humans in the direction of justice and correct conduct. What many commonly assert to be *Shari'ah* laws, and therefore divine, are, in fact, often the result of *fiqh*, juristic activity, hence human, fallible and changeable.

- There are two main categories of legal rulings: *'ibadat* (devotional/spiritual acts) and *mu'amalat* (transactional/contractual acts). Rulings in the *'ibadat* category regulate relations between God and the believer, and therefore offer limited scope for change. Rulings in the *mu'amalat* category, however, regulate relations between humans, and therefore remain open to change. Since human affairs constantly evolve, there is always a need for new rulings that use new interpretations of the religious texts to bring outdated laws in line with the changing realities of time and place (this is a concept recognised in Islamic jurisprudence known as *zaman wa makan*). This is the rationale for *ijtihad* (lit. endeavour, self-exertion), which is a method in Muslim jurisprudence for finding solutions to new issues in light of the guidance of revelation. Rulings concerning the family and gender relations belong to the realm of *mu'amalat*, which means that Muslim jurists have always considered them as social and contractual matters that are open to rational consideration and change.
- Diversity of opinion (*ikhtilaf*) is a basic concept that has always been a part of *fiqh*, even after the formal establishment of schools of law. There is not now, nor has there ever been, a single, unitary 'Islamic law'. It is commonly recognised that there are multiple schools of Islamic law, and family laws in different countries vary widely, with individual provisions on every aspect of family life that differ considerably from country to country. Such diversity has been acknowledged by several States parties during the CEDAW review process.³⁸¹ The very existence of multiple schools of law, along with the huge variety in Muslim family law

provisions, attests to the fact that no one person, group or country can claim there is a unified, monolithic, divine Islamic law over which they have ownership. Within the context of the modern state, we must recognise and engage with this diversity of opinions to determine how best to serve the public interest (*maslahah*) and meet the demands of equality and justice.

- Justice is inherent to the philosophy of law in Islam, thus laws or legal amendments introduced in the name of *Shari'ah* and Islam should reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These are values and principles on which Muslims agree and which Muslim jurists hold to be among the indisputable objectives of the *Shari'ah*, and are also consistent with universal human rights principles and values.

In addition, historical events support the idea of equality between men and women in terms of economic circumstances in marriage and family relations. The Qur'an introduced numerous reforms to existing cultural practices relating to financial provisions for women, including guaranteeing women's right to own, inherit, and dispose property. The Prophet Muhammad supported the activities of his first wife, Khadijah, as an independent businesswoman, showing respect for women who served as equals in the financial aspects of a marriage. While the Islamic tradition recognised women's right to property in or outside marriage, English common law recognised married women's rights to own property only in 1882 under the Married Women's Property Act.

The above arguments show that contemporary family laws, whether codified or uncodified, are not divine, but are based on centuries-old, human-made *fiqh* interpretations that were enacted into law by colonial powers and national governments. Almost every Muslim country has a different family or personal law, enacted by a legislative body, and these laws can and have been amended multiple times in different countries.

Since these interpretations and laws are human-made and concern relations

between humans, they can change within the framework of Islamic principles, in conjunction with international human rights standards and constitutional guarantees of equality, and in accordance with the changing realities of time and place. Positive reforms in Muslim family laws and evolutions in practices provide support for this possibility of change. For instance, as the injustices of slavery became increasingly recognised and the conditions emerged for its abolishment, laws and practices related to slavery were reconsidered and the classical *fiqh* rulings that recognised slavery became obsolete.

Thus the teachings of Islam provided a trajectory of reform that, carried forward 1400 years later to match the time and context, should lead to equality between men and women.

3.2 Responses to common State party justifications for non-implementation of CEDAW

As seen from the results of the Musawah research project on CEDAW described above, States parties from OIC countries provide a variety of justifications for why they cannot fully implement some or all of the provisions of CEDAW. Below are responses from Musawah to the main arguments that relate to Islam or Muslim laws, and to point the way to the possibilities of equality and justice in Islam.

3.2.1 *Shari'ah* is the principal source of law defining rights, duties, and responsibilities of men and women

Many of the States parties that identify as 'Muslim' or 'Islamic' countries expressly state that '*Shari'ah*' is the primary source of legislation and/or is the principal source for defining men and women's rights, duties and responsibilities. They view *Shari'ah* as divine law that is monolithic, unitary, fixed, and unchangeable.

Musawah takes the position that while *Shari'ah* is the revealed law, *fiqh* is the human attempt to understand the *Shari'ah*, which can take the form of positive laws, legal rulings, and jurisprudence. Under the holistic Musawah Framework, while *Shari'ah* may be a principal source of law, the human attempts to understand it and articulate it as positive laws must be grounded in universal human rights standards (which Musawah sees as consistent with human rights standards in Islam), constitutional guarantees of equality and non-discrimination, and the lived realities of men and women today.

The confusion today lies in the misuse and misunderstanding of terminologies. Much of what is today called Islamic law or *Shari'ah* law is actually *fiqh*, the product of human engagement with the revealed text. This man-made production of knowledge led to the development of diverse schools of law, or *mazhab*, within Islam. The multiplicity of positions and opinions between and even within the different schools of law constitutes the rich body of what should more accurately be called the 'Islamic legal tradition', rather than 'Islamic law'. The various positions and opinions were developed by jurists, independent of states, and were not defined by or applied through state mechanisms.

Because Islamic law is *fiqh*, or the ongoing human understanding of the *Shari'ah*, it can never be fixed or, as Egypt said regarding inheritance laws, 'a settled matter'.³⁸² A respected fourteenth-century Muslim jurist, Ibn Qayyim al-Jawziyyah, wrote, 'The fundamentals of the *Shari'ah* are rooted in wisdom and promotion of the welfare of human beings in this life and the Hereafter. *Shari'ah* embraces justice, kindness, the common good and wisdom. Any rule that departs from justice to injustice, from kindness to harshness, from the common good to harm, or from rationality to absurdity cannot be part of *Shari'ah*, even if it is arrived at through individual interpretation.'³⁸³

Muslim laws should never be considered fixed, especially if they promote injustice, harshness, or harm. The values and principles of equality, justice, love, compassion, and mutual respect, which are

the primary objectives within the *Shari'ah*, should drive the development of all Muslim laws and practices.

3.2.2 Cannot implement if inconsistent or in conflict with Islam/*Shari'ah*

Many of the statements made by States parties can be distilled into the simple argument that they cannot implement some or all of the CEDAW provisions if those provisions are inconsistent with 'Islam' or '*Shari'ah*'. In many cases, States parties identify specific issues – such as polygamy, inheritance, age of marriage, etc. – for which they argue that laws or practices cannot be changed because of specific verses in the Qur'an or specific *hadith* that relate to that issue. In some cases, the State party will enter a reservation; in others, the State party will simply say that the CEDAW provision related to that issue cannot be implemented because it conflicts with or is inconsistent with *Shari'ah*. For instance, the United Arab Emirates placed a reservation on article 2(f) because it 'believes that this paragraph conflicts with the provisions of the Islamic sharia concerning inheritance ... and does not find it possible to comply with it'.³⁸⁴ The Malaysian delegation stated that Malaysia 'had concluded that marital rape could not be made an offence, as that would be inconsistent with sharia law'.³⁸⁵

As outlined in the general overview of the Musawah Framework, Islam and Islamic law are not monolithic – there are and always have been multiple understandings and interpretations of Islamic law. *Ikhtilaf*, which means disagreement, difference of opinion and diversity of views, especially among the experts of Islamic law, is widely recognised and respected in the Islamic tradition.³⁸⁶ Islamic jurisprudence has been developed through multiple schools of law (*mazhab*), with different views in every school. A key principle of such jurisprudence is that each jurist can go back to the texts, examine the knowledge that has been developed, consider the new experiences and problems that arise, and develop new rulings based on sound application of the juristic methods.

However, *fiqh* rulings on the family became literal expressions of the classical jurists' understanding of Islam's revealed text and their notions of justice, gender relations, and legal theories, which reflected the social and political realities of their age. In that world, patriarchy and slavery were part of the fabric of society, seen as the natural order of things and a way to regulate social relations. The concepts of gender equality and human rights — as we mean them today — had no place and little relevance to the classical jurists' conceptions of justice. They were, in Arkoun's terms, 'unthinkable' for pre-modern Muslim jurists, and thus remained 'unthought' in Islamic legal thought.³⁸⁷

The ideas of human rights and gender equality belong to the modern world. As the pre-modern notions of marriage in Islamic legal theory lose their theological validity and their power to convince, the discourses of feminism and human rights have combined to bring a new consciousness and a new point of reference for Muslim women and reformist thinkers. The ideas of equal rights for women and equality in the family are among, to use the *fiqh* idiom, the 'newly created issues' (*masa'il mustahdatha*) that pose a challenge to Islamic legal thought.

Modern scholars of Islamic jurisprudence are reviving the traditional tools and methodologies in order to re-read and understand Islamic sources and use classical juristic principles such as *ikhtilaf* (diversity within Islamic law and *fiqh*), *istihsan* (adopting the idea or principle that is better, more useful), *maslahah* (choosing that which benefits the public interest or common good), *ijtihad* (exerting effort to form an independent judgment on a legal question), and *maqasid al-Shari'ah* (the objectives of the *Shari'ah*) to develop solutions for the 'newly created issues'. Working with progressive scholars to better understand these tools and the possibilities they entail is one way to open the dialogue about equality in Muslim laws and practices, instead of simply stating that change is impossible. If 'Islam is the solution', if Islam is relevant for all times, and if Islam is supposed to bring justice, then it is legitimate and imperative for governments to engage with women's rights activists and scholars to search for new solutions to the conflicts and tensions

that arise as a result of the disconnect between women's lived realities and Islamic law as traditionally defined. The trajectory for reform and the possibilities for equality and justice exist within Islamic legal thought. But this effort towards a more just society through a more just understanding of Islam must be an inclusive effort that represents the needs and interests, in particular, of those who suffer the injustices and effects of discrimination. Leaving it as the exclusive preserve of the traditionalists in religious authority has only sustained unjust patriarchal understandings of Islam.

Musawah approaches for specific issues like minimum age of marriage, guardianship and consent to marriage, polygamy, and financial issues, are outlined in the following section of this report to demonstrate how a holistic approach can provide solutions that uphold Islamic principles of equality and justice, consistent with human rights obligations.

3.2.3 Islam provides superior or sufficient justice for women or complementarity of rights and duties between men and women

On a historical level, Islam was incredibly advanced in providing revolutionary rights for women and uplifting women's status in the seventh century. Many of the revelations in the Qur'an were by nature reform-oriented, transforming key aspects of pre-Islamic customary laws and practices in progressive ways in order to eliminate injustice and suffering. The Prophet Muhammad received a series of revelations, each building on or superseding customary laws. Sometimes later revelations advanced earlier revelations, providing guidance to the new community as new challenges and problems arose.

The reforms that took place in the early years of Islam are clearly progressive, changing with the needs of the society. However, the more detailed rules that were laid out by the classical jurists allowed many pre-Islamic customs to continue, and also reflected the needs, customs and expectations of the society in which they

lived instead of continuing the progressive reform that was started during the time of the Prophet. The trajectory of reform begun at the time of the Prophet was thus halted in the medieval period through the further elaboration of *fiqh*, which was then selectively codified in the nineteenth and twentieth centuries. The modern world is incredibly different than it was during the early centuries of Islam and the medieval era. The example of progressive reform from the beginning of Islam must be used to address the needs of the people today. Islam did provide superior justice for women, but the trajectory was halted.

Many States parties justify inequality between men and women in laws and practices, especially those relating to financial rights, stating that men and women have complementarity or reciprocity in terms of their rights and obligations, especially in marriage. The argument is that husbands have a duty to give a dower to the wife upon marriage and to provide maintenance for the wife and children during their marriage, while women have no legal obligation to support their husbands or families even if they are wealthy. Therefore, the laws are constructed to give men additional rights — double shares of inheritance, unilateral right to divorce — in relation to their additional responsibilities, while women have additional responsibilities — full obedience to their husbands — in return for the financial benefits they receive. Many authorities in Muslim societies do not consider this discrimination, but rather reciprocal or complementary obligations.

For instance, the United Arab Emirates State party report stated, 'The United Arab Emirates considers that the payment of a dower and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property.... As for the question of equality of rights and responsibilities during marriage and its dissolution, the sharia honours women and makes the man responsible for the financial support of the woman, whether his wife, daughter, mother

or sister, not requiring the wife to support either herself or her family, even if she is wealthy. All the property she owns is for her alone and she is not required to provide for anyone.'³⁸⁸ Saudi Arabia stated, 'For example, a man's inheritance is twice that of a woman. However, he is responsible for supporting his family regardless of his wife's financial situation; she is not obliged to spend on her family, even if she is wealthy or works.'³⁸⁹

There is a huge disconnect between the law and the practice, however, and the logic of reciprocity does not reflect reality for most men and women today. Thus, the argument about reciprocal arrangements is a legal fiction grounded in medieval *fiqh* thinking that remains rigid in spite of the changed realities. Today Muslim women are engaged in the public sphere, are economically active, and there is greater acknowledgement of the value of their unpaid domestic labour. Men do not lose their privileges/rights and are not punished when they do not carry out their responsibilities. For example, it is common to hear of family stories where it is the daughter who financially, physically, and emotionally takes care of ageing parents until their deaths, and yet it is the irresponsible son who still receives double the shares of inheritance. Even though he contributed nothing to the parents' care and well-being, he remains privileged over his responsible, care-giving sister. Since privilege is linked to responsibility, shouldn't the irresponsible man lose his privilege when he fails to carry out his duties?

Women often bear the burden of maintaining the household simply out of necessity, but cannot receive greater inheritance shares to reflect these greater responsibilities that are supposedly men's burdens. Malaysia stated that '[a] married woman who possesses means of her own is under no obligation to pay towards the upkeep of the household although many married women with independent means do so',³⁹⁰ thereby highlighting that women contribute to the household but ignoring the fact that women sometimes do so out of necessity for ensuring financial stability in the household because the husband is not fulfilling his legal obligation.

In traditional Muslim societies, men had greater rights but were expected to shoulder greater responsibilities, while women had fewer rights but were expected to shoulder fewer responsibilities. Today, while men's traditional responsibilities are reduced, their traditional rights have not changed; and while women's responsibilities have increased, their traditional rights have not changed. This is largely due to the tendency to regard men's traditional rights as immutable and unquestionable, instead of as the result of the development of *fiqh* rules by human juristic interpretations and understandings in accordance with the sociocultural conditions of those times. In today's societies, wives are told not to expect their husbands to shoulder the responsibility of providing full maintenance for them and their children, but husbands are not told that it is unreasonable for them to continue to expect full obedience from their wives. It therefore appears that Muslim women are expected to shoulder new responsibilities while enduring traditional restrictions on rights, while Muslim men are allowed to enjoy their full traditional rights although their traditional responsibilities have been reduced. The concept of reciprocity of rights is thus a legal fiction that has lost its logic over time.

Furthermore, complementarity cannot be confused with true equality. States must respond to biological and socially created differences between men and women that result in women's asymmetrical experience of disparity and disadvantage in a way that achieves true equality of opportunity and equality of results.³⁹¹

Understandings of justice and injustice change over time. The Qur'anic teachings on women are part of its efforts to strengthen and ameliorate the conditions of the weaker segments of society in pre-Islamic Arabia — orphans, slaves, the poor and women — segments that were abused by the stronger elements in society. The specific legal rules of the Qur'an, be they on maintenance or inheritance, are conditioned by the socio-historical background of their enactment. Given a different time and context, what was once considered just may today be considered unjust. What is eternal is the social objectives and moral principles

explicitly stated or strongly implied in the message. The challenge today is how to ensure that the eternal principles of justice and equality remain the outcome of our laws and practices.

3.2.4 Culture, customs, or traditions, including minority rights, prevent full implementation

In both Muslim majority and Muslim minority contexts, culture, customs, or traditions are often used as an excuse for not fulfilling international obligations. In majority contexts, States claim change is difficult and takes time in the face of such traditions. In minority contexts, States justify non-interference and lack of reform out of respect for the community. The consequence of such arguments is that women's rights are sacrificed in favour of a vague notion of 'culture'. This fuels a false dichotomisation of culture and women's rights, and often results in discrimination and inequality before the law. In the majority of cases, what lies behind the State's refusal to act are political considerations rather than regard for religious principles, and there is actually room for recognition of women's rights within the culture and tradition. This can be seen in the fact that a number of countries hold reservations to article 16 of CEDAW but not to similar articles in other human rights treaties, such as article 23(4) of the ICCPR.

Addressing women's rights in a context where cultural rights are also being articulated (such as rights to religion, minority rights, indigenous peoples' rights) seems to present international human rights actors with a number of challenges.³⁹² At times, it can appear that the only choices are between an understanding of universalism that has little room for cultural diversities on the one hand, and a view that sees cultural rights as trumping women's rights on the other hand; this can also be reflected as a debate between collective and individual rights. While acknowledging that human rights are universal, there is nevertheless scope within the existing standards for a more nuanced understanding of the rights and culture debate.³⁹³ However, these approaches need

to be applied more consistently, including in addressing Muslim family laws.

It is important to recognise that Islam and Muslim culture and practices are not isolated, but exist within contexts where there are multiple cultures and multiple rights demands from different social groupings. Islam is interpreted differently according to locally prevailing customs. However, the fact that customs are dynamic, together with the principles discussed above that *fiqh* can change in accordance with the changing realities of time and place, provides an opportunity for change in laws and practices towards greater fulfilment of rights.

The Musawah Framework clearly argues that a multi-pronged approach is the most effective way to ensure equality and justice. It is essential to see religion, human rights standards, constitutional guarantees, and lived realities as complementary, rather than separate. It is not acceptable to reject CEDAW principles based on a patriarchal understanding of a verse from the Qur'an, or to ignore the devastating effects resulting from a modern social phenomenon using respect for a traditional practice as a justification. One needs to approach these issues holistically, integrating human rights and Islamic principles in a dynamic and constantly evolving process.

It is therefore important for the CEDAW Committee to continue to recommend broad-based consultation among all those who have a stake in and influence on the development of national laws and policies. In each context, this will include a variety of actors such as women's rights advocates, sociologists, counsellors, lawyers and constitutional experts, religious and traditional leaders, and women on the ground. In this way, the State party can gather information not only on religion and culture, but also on constitutional guarantees and lived realities, and determine how all of these interact with the CEDAW and other international human rights standards.

The issue of representation is crucial, as Muslim governments very often tend to regard only those in religious authority as having the right to engage on matters of religion. Musawah asserts that in any country that uses religion as a source of law

and public policy, every citizen has the right to engage in the discourse and in the search for solutions towards a more fair, just, and compassionate society. Not only must active steps be taken to include women's voices in this engagement, such engagement must be made in a manner that addresses power imbalances that have historically excluded women's voices so they can take part in dialogue on an equal footing with men.

3.3 Responses to specific issues

In addition to general justifications for non-compliance with CEDAW provisions, States parties often argue that they cannot comply with regard to specific issues, such as polygamy, early age of marriage, financial provisions, etc. because the issue is mentioned in the Qur'an and is thus considered 'fixed'.

Musawah's Framework provides support for equality and justice for such specific family law issues from four interrelated approaches:

- Islamic sources and Muslim jurisprudence;
- International human rights;
- National laws and constitutional guarantees of equality; and
- Lived realities.

This report outlines support from these sources for each of several different key issues in family life, as well as rights-based laws related to that issue from a variety of countries.³⁹⁴

Because constitutions, laws, and policies differ dramatically between and are specific to individual countries, this report will not outline laws and constitutional guarantees of equality. It bears noting, however, that although many countries included in the Musawah study have constitutions that provide a framework for rights claims, in some cases the rights specified do not include gender equality and non-discrimination. Where equality and non-discrimination are guaranteed, very often it is specifically stated that personal laws are excluded from guarantee. Thus, in Muslim

countries and minority Muslim contexts where family laws are based on religion and custom, such constitutional guarantees of equality and non-discrimination often do not apply to the area of personal status.

However, constitutions may similarly provide for the domestication of international law including treaties as well as fundamental rights such as rights to a family. These may be useful tools in expanding the understanding of States parties obligations regarding equality and non-discrimination within their constitutional framework. Even in countries where constitutional provisions provide that Islam is a source of law or the supreme source of law, Musawah argues that any apparent contradiction with guarantees of equality and non-discrimination can be resolved through rights-based interpretations of Islamic principles.

Thus the constitutional and legal frameworks guaranteeing equality should be considered on a country-by-country basis for each of the following issues.

3.3.1 Child marriage

While most States parties reviewed in the Musawah CEDAW research cited efforts to combat child marriage, a few stated that it is a problem (e.g., Indonesia,³⁹⁵ Guinea,³⁹⁶ Maldives,³⁹⁷ Togo³⁹⁸). In some cases, this was blamed on prevailing socio-cultural patterns (e.g., Indonesia,³⁹⁹ Bahrain⁴⁰⁰) or an increase in Islamic extremism (Maldives⁴⁰¹). Saudi Arabia stated that 'There is no minimum legal age of marriage for men or women, however, it is preferable that both spouses are of the age of majority. The Committee, when considering this matter, should bear in mind that each country has environmental and physiological particularities, and it is known that the age of majority in the hot Eastern countries is lower than it is in the cold Western countries.'⁴⁰²

Musawah's response to the problem of child marriage combines analysis of the Islamic legal tradition on minimum age of marriage, norms set forth in international human rights documents, and sociological and medical data about the realities of early marriage and its detrimental effects on girls and young women.

The Qur'an does not provide any specification for age of marriage. Surah an-Nisa' 4:6 requires that orphans reach the age of marriage and be found to be of sound judgement before they marry and their property handed over to them. This indicates that a person must have sufficient judgement and maturity to marry, and attaining the age of majority alone is not sufficient. Imam Abu Hanifah, the founder of the Hanafi school of *fiqh*, stated that in the absence of other evidence, a boy will be considered to have reached the age of majority at eighteen and a girl at sixteen.

However, attempts by governments to set a minimum age of marriage at eighteen for both men and women have often met with resistance from conservative religious authorities, claiming that this is 'un-Islamic'. Some governments have even lowered the minimum age of majority for girls to below sixteen. Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. Reportedly, Aishah was six years old when she was betrothed and nine when the marriage was consummated. However, the question arises as to why the Prophet's marriage to Aishah is used as model while his marriage to Khadijah, a widow fifteen years older than him, or his marriage to other widows and divorcees ignored as exemplary practices. There are also new studies to assert that Aishah was more likely to have been nineteen at the time of her marriage, rather than six.⁴⁰³

It is well understood that universal human rights standards guard against marriage for children under the age of eighteen. States have a duty to protect children, who are generally defined as persons below the age of eighteen.⁴⁰⁴ Several committees view eighteen as a minimum age of marriage, and state that the minimum age should be the same for boys and girls.⁴⁰⁵ Children have a right to education, and early marriage can be a major impediment to this.⁴⁰⁶ The Beijing Platform for Action (BPFA) and CEDAW General Recommendation number 21 outline the negative consequences in terms of education, employment, and health that early marriage can have on women, their families, and their communities.⁴⁰⁷

Research based on social realities supports an equal minimum age of marriage by identifying the many negative health, educational, and economic consequences of early marriage for girls. The Beijing Statement and Platform for Action states, 'More than 15 million girls aged 15 to 19 give birth each year. Motherhood at a very young age entails complications during pregnancy and delivery and a risk of maternal death that is much greater than average. The children of young mothers have higher levels of morbidity and mortality. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world'. Early marriage forces girls into sexual relations, which can have serious psychological and physical health consequences. Furthermore, younger women often have less knowledge of their own bodies and less strength to stand up to their husbands if they are sick, hurt, or face domestic violence.

Girls who marry later are more easily able and expected to complete a high school education and pursue higher education, which accords with the fundamental right to education and the idea that seeking knowledge is a right and a responsibility of every Muslim. This also translates into a better-educated society and gives women a better chance to pursue professional goals and contribute to a nation's economy. When girls marry young, they often decide to leave school, leading to poorer employment opportunities. Because they are not able to secure well-paying jobs, they are often more vulnerable to economic dependence and have weaker bargaining powers within marriage.

Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, fixes adulthood at too young an age. The concepts of adulthood, maturity, and the roles of husband or wife are dramatically different today than they were during the classical era when the rules of *fiqh* were solidified. Hundreds of years ago, it was usual for boys and girls to marry young because life spans were shorter, education was not as necessary, and family production units as opposed to nuclear families predominated in order to ensure

enough workers. Socially, the role of wife/mother/parent/adult was vastly different to what it is today, what with changes in education, careers, the structure of the family, etc. as well as the psychological, economic, social and biological functions of being a wife and mother. Household structures are changing, with a gradual increase in nuclear families and decline of extended families living together. This translates into a decrease in family support for young brides as they try to cope with the challenges of married life. In addition, the onset of puberty is no indication of sufficient maturity for marriage.

Early marriage of girls under the age of eighteen is a form of violence. They are deprived of their childhood and forced to take up heavy household and family responsibilities, sometimes on top of their educational or economic responsibilities. Such heavy burdens on young girls often lead to marital problems and subsequent marital breakdown and/or divorce.

A few examples of rights-based laws from various OIC countries regarding equal minimum age of marriage include:

- **Algeria:** The minimum age of marriage is nineteen for both males and females after the February 2005 reform. The judge can grant an exception on the grounds of benefit or necessity.
- **Bangladesh:** Under the Child Marriage Restraint Act (1929, amended in 1984), the minimum age is eighteen for females and twenty-one for males; exceptions are not permitted.
- **Morocco:** Under the 2004 revision of the *Moudawana*, the minimum age is eighteen for both males and females. A judge may grant an exception to the minimum age with the assistance of medical expertise or after having conducted a social enquiry.
- **Sierra Leone:** In June 2007, the Sierra Leone Parliament passed three 'Gender Acts' which benefit women. When fully implemented, the Registration of Customary Marriage and Divorce Act will set the minimum marriage age at eighteen.

- **Turkey:** Under the 2001 amended Civil Code, the minimum age has been raised from fifteen to eighteen for females. Under exceptional circumstances, the minimum age can be lowered to sixteen with the court's permission.

3.3.2 Freedom to choose if, when, and whom to marry

The issue of consent in marriage relates both to whether the two parties to the marriage must give their consent to be married and whether anyone else must give consent for the marriage to take place. Under many Muslim family laws, a woman is required to have a legal guardian (*wali*) who has the authority to contract a marriage on her behalf. Thus, adult women do not have the legal capacity to contract their own marriages. In most countries, the consent of the bride is required in addition to the consent and authority of the guardian. However, silence is often considered a form of acceptance. At one point in Muslim history, the requirement of a *wali* applied to both boys and girls, and in some schools of law, both the mother and the father could hold guardianship.⁴⁰⁸ Today, however, it is applied only to girls and held only by men.

There are no verses in the Qur'an or evidence in the *Sunnah* of the Prophet that explicitly stipulate guardianship as a condition for the marriage contract. Ibn Rushd (d. 1198 C.E.), a well-respected classical Muslim jurist, stated that 'it is well-known that during the lifetime of the Prophet there were many people without a guardian, but no one has reported the Prophet to have acted as guardian to conclude a marriage on their behalf, nor has he, in fact, authorised others to represent him in that capacity'.⁴⁰⁹ There are also many court cases from pre-colonial Egypt in which women were able to represent themselves in contracting a marriage.

In the absence of injunctions or evidence in the Qur'an or the *Sunnah*, the Hanafi position on guardianship, which states that the *wali* is required only for marriages involving minor boys and girls, and that no *wali* is needed for the marriage of a competent adult woman, is the most acceptable in present-day society.

The doctrine of *ijbar*, under which the guardian has the right to determine a spouse and compel a ward to marry, is still practised in some countries. There is no authority in the Qur'an or the *Sunnah* of the Prophet for the doctrine of *ijbar*. As Mohammad Hashim Kamali states in his book, *Islamic Law in Malaysia*, 'A perusal of the relevant evidence suggests that the power of constraint in marriage, known as *wilāyat al-ijbār*, has little support in the Qur'an and Sunna and it is most likely to be rooted in social customs of the Arab society that survived and were eventually adopted by the [classical] jurists'.⁴¹⁰ In other words, it is a pre-Islamic custom that was incorporated into *fiqh* by humans.

In April 2005, Saudi Arabia's top religious authorities banned the practice of forcing women to marry against their will, stating that the practice contravenes the provisions of *Shari'ah*. The clerics said that whoever forces a woman to marry against her will is disobeying God and His Prophet, and that coercing women into marriage is 'a major injustice' and 'un-Islamic'. The kingdom's mufti even recommended imprisoning fathers who insist that their daughters marry men against their will.

A number of human rights instruments, including the Universal Declaration of Human Rights,⁴¹¹ the CEDAW Convention,⁴¹² and the Beijing Platform for Action,⁴¹³ guarantee both the right to enter into marriage after free and full consent by both parties and the right to freely choose a spouse. These are often considered the right to decide if, when, and whom to marry.⁴¹⁴ Article 15(2) of CEDAW requires States Parties to the Convention to 'accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity'. Taking away a woman's ability to contract her marriage and giving it to a *wali* prevents a woman from exercising her legal capacity at all, let alone on the same level as a man. In addition, international human rights instruments validate a woman's right to freely choose her spouse, not just consent to the spouse chosen for her. Giving women both the ability to choose her spouse and the ability to consent are essential for equality between men and women.

In terms of social realities supporting freedom to choose if, when, and whom to marry, requiring the consent of a *wali* has a negative impact on a woman's autonomy, independence and self-esteem. This is out of tune with women's increasing levels of education and their greater participation in economic, political, and social spheres. It is consistent with today's realities that women are enabled to act as independent, rational, and capable human beings, equal before the law.

Requiring a guardian to grant his consent to a marriage even for women who are legal adults in all other aspects of their lives makes women perpetual minors. This is derived from the concept of 'protecting' women as they enter into marriage, which is paternalistic and does not recognise the present-day circumstances of women who are educated and earning their own living.

Requiring a male guardian also devalues a woman's ability to actively and powerfully participate in public and political life. Women should not be forced to ask for a guardian's permission to marry or a guardian to negotiate their marriage contracts when they can hold executive roles in multinational corporations or ministerial positions in Government.

Guardianship does not protect women from difficulties in marriage, including divorce, domestic violence, and health risks such as HIV/AIDS. If women are required to grant free and full consent to their marriages and are able to commit themselves to marriage without needing a guardian's protection and permission, they might be better able to choose compatible spouses.

Some examples of rights-based laws from various OIC countries regarding guardianship and freedom to choose who, when, and if to marry include:

- **Algeria:** It is forbidden for the *wali* to compel a woman to marry; he may not give her in marriage without her consent.
- **Bangladesh, Pakistan, Sri Lanka:** A *wali* is not required for Hanafi women who have reached puberty. In Pakistan, case law provides that marriage without the consent of the spouses is void (*Mst. Humera Mehmood v The State and others*, PLD 1999 Lahore 494).

- **Kyrgyz Republic, Turkey, Uzbekistan:** A *wali* is not required.
- **Morocco:** Couples may not be coerced into marriage under any circumstances. A woman gains the capacity to contract her own marriage upon reaching the age of majority. She may contract her marriage herself or delegate this power to her father or one of her relatives.
- **Nigeria:** For Maliki communities (the majority of Nigerian Muslims), a biological father has the power of *ijbar* (courts may refer to Bulugul Marami, *Figlus Sunnah* Vol. II, p. 260). However, the *wali* cannot compel his daughter to marry a man suffering from contagious diseases (such as leprosy), insanity, or reproductive problems. Case law is clear that *ijbar* cannot be enforced for adult women, and the courts generally accept a variety of circumstances that overrule the possibility of *ijbar*, including where the woman earns some money herself.
- **Saudi Arabia:** In April 2005, the top religious authorities banned the practice of forcing women to marry against their will, stating that it contravenes the provisions of the *Shari'ah*. The clerics said that whoever forces a woman to marry against her will is disobeying God and His Prophet, and that coercing women into marriage is 'a major injustice' and 'un-Islamic'.
- **Tunisia:** The code states there is no marriage without the consent of both spouses. A marriage contracted without such consent is declared null and void. Both husband and wife have the right to contract their marriage themselves or appoint proxies. The consent of a *wali* is not required, provided that the man and woman are of the legal age of consent.

3.3.3 Polygamy

One of the main issues that arises in CEDAW reviews of countries with Muslim family laws is that of polygamy. A number of States parties argued that polygamy is clearly stated in the Qur'an or the *Shari'ah*. For example, Libya stated that its reservation related to polygamy because it was a matter 'on which there [was] clear and

incontrovertible provisions in the sharia',⁴¹⁵ or Algeria, which stated that 'for religious reasons it had not been possible to include complete abrogation of provisions relating to polygamy in the proposed New Family Code'.⁴¹⁶ In some cases, States parties stated that polygamy remains legal, but is not widely practised (e.g. Algeria,⁴¹⁷ Syria⁴¹⁸) or is subject to numerous restrictions (e.g., Algeria,⁴¹⁹ Morocco,⁴²⁰ Malaysia,⁴²¹ Maldives⁴²²). Many States parties blamed the continuation of polygamy on culture, custom, and tradition (e.g., Togo,⁴²³ Burkina Faso⁴²⁴) or stated that women are supportive of the institution (e.g., Gambia,⁴²⁵ Mali,⁴²⁶ Tajikistan⁴²⁷).

Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa'* 4:3 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'. 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 many 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.

Even in that post-war situation, the Qur'an discontinued the then-existing practice of unlimited polygamy and mandated that monogamy be the norm unless the man could deal justly with all of his wives. In the present day, it is extremely difficult if not impossible for one person to treat multiple wives equally and justly. In fact, Tunisia has forbidden polygamy altogether on the ground that it is impossible for a man to be able 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.

Those who support polygamy often refer to the *Sunnah* (practice) of the Prophet, who had multiple wives in his later years, but selectively ignore the fact that the Prophet was monogamous for more than twenty-five years, i.e. throughout the lifetime of his first wife, Khadijah. His polygamous marriages after her death were to widowed or divorced women for political and tribal reasons. The only virgin he married was his second wife, Aishah. There is also an authentic *hadith* that the Prophet forbade his son-in-law, Ali ibn Abi Talib from marrying another woman unless Ali first divorced the Prophet's daughter, Fatimah, his existing wife. A great-granddaughter of the Prophet, Sakinah binti Hussayn, a granddaughter of Ali and Fatimah, put various conditions into her marriage contract, including the condition that her husband would have no right to take another wife during their marriage.

One possibility for limiting polygamy is to allow the existing wife an option for obtaining a divorce on the ground of the husband's polygamy. This is not a new interpretation or innovation. On the contrary, it is supported by traditional practices from the early days of Islam, is recognised by the Hanbali school of law, which is often regarded as the most conservative school among the four schools in Sunni Islam, and is accepted today in various Muslim countries, including among Muslim communities who are not followers of the Hanbali school, e.g., Jordan, Morocco, Egypt, Iran, and some countries in South Asia.

In terms of human rights standards, polygamy is incompatible with the fundamental human rights principle of equality between men and women,⁴²⁸ contravenes the CEDAW article 1 definition of discrimination, and violates a woman's right to dignity. The fact that women can be coerced into entering polygamous relationships or existing wives can be coerced into consenting to additional wives violates the 'free and full consent to marriage' provisions of numerous human rights instruments. Since a husband can choose to marry multiple women, which can affect the household finances, women in polygamous relationships are denied their equal rights with regard to property under CEDAW article 16(1)(h).

Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe. In fact, it was an institution that existed in various civilisations, religions and cultures in many parts of the world, including among Jews, Chinese, Indians and Mormon Christians, until it was abolished by law as governments realised the injustices it inflicted on women. Polygamous cultural practices have been reformed through legislation in many times and situations, including in the time of the Prophet and in recent decades, in Muslim countries around the world.

Polygamy as practised today is largely harmful to women and children, even if it is not widely practised in many Muslim societies. Polygamy disadvantages and discriminates against both the existing and the subsequent wives. Essentially, polygamy makes the wife an object of the marriage, giving the husband complete autonomy and the wife no power in what is an emotionally-charged shift in the terms of the marriage contract. Furthermore, polygamy can often result in inequality between the multiple wives, as one wife will have more seniority and power, both economic and psychological, or be favoured by the husband within the household. For these reasons and more, being in a polygamous relationship also violates a woman's right to dignity. She has no power or authority to overturn her husband's decisions, she cannot make decisions about the course of her own life, and she might feel degraded or belittled by the husband marrying an additional wife. If women are financially dependent on husbands and husbands are allowed to marry again without strict oversight of their finances, it leads to economic difficulties for the existing and subsequent wives. The idea itself of a man legally sanctioned to take another wife can be used as a powerful threat and a means for the husband to control his wife.

A Malaysian non-governmental organisation, Sisters in Islam, in collaboration with academics from three universities, has undertaken a groundbreaking research project on the impact of polygamy on the family in Malaysia. This project included surveys and in-depth interviews with polygamous husbands, first and second wives, and the children of first and second wives. Interim findings include:⁴²⁹

- Nearly sixty-five per cent of first wives in the study were unaware of their husbands' intentions to marry another woman.
- While eighty per cent of husbands thought they could be fair to all their wives and children, only thirty per cent of first wives agreed this was possible.
- While thirty-one per cent of husbands were 'very satisfied' with their marriages to both first and second wives, only seven per cent of first wives reported they were 'very satisfied' and thirteen per cent of second wives reported to being 'very satisfied'.
- Forty-four per cent of first wives had to take on additional jobs in order to support the family after their husbands took second wives. About forty per cent of them 'always' or 'often' felt financially insecure since their husbands' second marriage.
- While sixty-three per cent of husbands thought they 'always' or 'often' shared their financial obligations fairly among their wives, over sixty per cent of first wives did not think so.
- Over ninety per cent of children of both the first and second wives said they would not recommend polygamy as a form of marriage or family institution.

Polygamy can also have detrimental effects on children, as additional wives often result in more children who must share limited amounts of their father's resources and time. This also can lead to conflicts within the families if the wives and children feel forced to compete with one another for the finite amount of resources and attention provided by the husband. It can also promote low social and economic status among the women, especially if they are financially dependent on the husband in the first place.

While monogamy does not guarantee a happy family life, the absence of a third party and additional children and obligations to extra sets of family would help provide women with greater security and allow the family unit to better grow and develop in a healthier environment. Currently,

existing wives, especially those financially dependent, often agree to another wife in the family because they are afraid the husband will divorce them if they do not consent.

Finally, it is no longer necessary for men to marry widows or orphans to protect them, since women in the twenty-first century are able to provide and care for themselves or seek assistance from the State and other bodies.

Some examples of rights-based laws from various OIC countries regarding polygamy include:

- **Bahrain:** In May 2009 a new Family Law that applies only to Sunnis was enacted that allows women to prohibit their husbands from taking second wives.
- **Kyrgyz Republic, Tajikistan, Turkey, Uzbekistan:** Polygamy is prohibited.
- **Tunisia:** Polygamy was prohibited under the 1956 law based on the understanding of *Surah* 4:129 ('You are never able to be fair and just as between women, even if it is your ardent desire ...') that no husband can treat multiple wives equally. It is a criminal offence, rendering a man who contracts a polygamous marriage liable to a year of imprisonment or a fine of 240,000 Tunisian Dinars or both and a woman who knowingly enters a polygamous marriage liable to the same.
- In **countries where marriage contracts are negotiated**, which is common throughout the Muslim world, women can stipulate in the marriage contract that the husband cannot take another wife. If the husband breaches this term of the marriage contract, the woman has the right to divorce.

3.3.4 Financial issues and obedience

Several of the countries reviewed in the Musawah CEDAW study (e.g. Bahrain,⁴³⁰ UAE,⁴³¹ Saudi Arabia,⁴³² Egypt⁴³³) stated that inequalities in certain laws were not discrimination, but rather reflected complementary obligations and rights under the *Shari'ah*, namely that the husband is required to maintain his wife, while the wife

can keep any income or wealth for herself. They regarded this as a form of justice for women. For instance, Egypt stated that it did not want to lift reservations to article 16 because 'doing so would diminish the rights of women under Islamic law and Egyptian law, which provide rights for woman and relieve women of responsibilities which men alone are required to bear'.⁴³⁴

This argument sidesteps the reciprocal aspect that a woman is required to be obedient to their husbands in return for maintenance, such that her failure to obey (*nushuz*) could lead to her losing maintenance or not receiving backdated maintenance in divorce proceedings. It also overlooks the fact that many men do not fulfil the obligation to maintain the household, leaving women to fill in the gap while not removing their obligation of obedience. Where the arguments raise a link between a man's duty to provide maintenance and his privileged share of inheritance, they neglect to mention that his failure to provide maintenance does not disqualify him from double the share of inheritance.

Although many laws do not recognise the possibility of a matrimonial regime in which there is common ownership of resources in marriage, in practice marriage is based on sharing and partnership. The logic of the law — maintenance in return for obedience, and strict division of property in which the man provides and the woman holds onto her own property — no longer holds in practice. It is a legal fiction maintained to keep women under control and in positions of obedience. The logic behind the law needs to be reconsidered, and the Qur'an and the *Sunnah* provide concepts to do this.

The Qur'an introduced numerous reforms to existing cultural practices relating to financial provisions for women, including allowing women to keep their own property and giving women shares of inheritance. This was the beginning of a trajectory of reform that, carried forward 1400 years later to match the time and context, should lead to the elimination of the legal logic of maintenance in exchange for obedience and to the introduction of equality between men and women in all areas, including financial matters.

The Prophet's first wife, Khadijah, was a successful, independent businesswoman. The Prophet supported his wife's business activities, showing respect for women who serve as equals in the financial aspects of a marriage.

In the Qur'an, the term *nushuz*, or disobedience, is used both for women (*Surah an-Nisa'* 4:34) and for men (*Surah an-Nisa'* 4:128). It is therefore more appropriate to define *nushuz* as the disruption of marital harmony by either spouse rather than a woman's disobedience to her husband.

Human rights standards, especially under CEDAW, both explicitly and implicitly provide for equality between men and women in terms of financial issues. These include that men and women should have the 'same rights and responsibilities during marriage and at its dissolution',⁴³⁵ and the same rights 'in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property'.⁴³⁶ The CEDAW Committee has emphasised the importance of women being able to earn an income as well as recognition of both financial and non-financial contributions to a marriage.⁴³⁷

In terms of social realities, women throughout the world, including in various Muslim countries, are increasingly better educated and employed and are contributing toward the family financially as well as in more traditional roles. This is not properly acknowledged in actual laws and understandings of reciprocity within family laws, which are based on the old logic that the husband supports the family financially and the wife obeys the husband entirely.

When both partners in a marriage do not have equal capacity and responsibility to contribute to and make decisions about the union, it can lead to adverse effects for the party who has less power in the relationship, generally the wife.

Examples of rights-based laws from various countries regarding financial issues include:

- **Malaysia:** The court may order the division of *harta sepencarian* (matrimonial assets) 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 to 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.

- **Singapore:** The Syariah Courts may take into account a wide variety of factors, including the wife's contributions to the household like domestic labour and primary responsibility for raising children. The lower courts may enforce decrees, facilitating actual recovery of the assets. Where a wife has made no direct financial contribution in the acquisition of the matrimonial home, she is entitled to thirty-fifty per cent of the net proceeds of its sale. Where she has made financial contributions, she is entitled to a share that is higher than her contribution.
- **Turkey:** The revisions to the Civil Code stipulate that equal division of property and assets acquired during the marriage is the default property regime for marriages solemnised under the new law.
- **Indonesia:** Women's equal rights to matrimonial assets/properties is recognised by Indonesia even though there is a division in roles whereby the women are regarded as working in the domestic sphere whereas men are heads of households and are the breadwinners. The role of the women as the housewife does not prevent her from getting rights over the assets/properties obtained by the husband. Therefore, if divorce takes place, the wife is entitled to half of the matrimonial assets/properties.

3.3.5 Inheritance

Inheritance is frequently cited by States parties to CEDAW as one area of law that cannot be changed because it is based on Islamic law or *Shari'ah* (e.g., Egypt,⁴³⁸ Libya,⁴³⁹ Syria⁴⁴⁰). For example, Egypt stated that Islamic law regarding inheritance is a 'settled matter'.⁴⁴¹ Several States parties explicitly note that their reservations to CEDAW relate to inheritance laws (e.g., Bahrain,⁴⁴² Libya,⁴⁴³ Gambia,⁴⁴⁴ Singapore⁴⁴⁵). For example, Libya stated that its reservations 'applied only to inheritance, on which there were clear and incontrovertible provisions in the sharia'.⁴⁴⁶

Inheritance rights are crucial for Muslim women because distribution and control of property and assets significantly affect their ability to enjoy stable and fulfilling lives and to exercise other rights. Without assets derived from inheritance, women are disadvantaged, cannot lead independent lives, and cannot even ensure that they and their families can support themselves. Because inheritance distribution is closely tied up with many other provisions in Muslim family laws, the rules must be conceived from a just and equitable perspective in order to ensure there is fairness and justice in other aspects of family life.

In current inheritance laws in many countries, which are based on traditional inheritance rules developed by classical Muslim jurists, the provisions are unequal on the basis of gender. Under one aspect of the traditional inheritance rules, sons receive double the share of inheritance of daughters. The underlying assumption and rationale for such provisions is that men have the duty and responsibility of providing for the family. For instance, a Bahraini delegate stated that even if a brother and sister divided their inheritance from their father equally, the brother would still be financially responsible for supporting his sister. The delegate reasoned that the person who was obliged to provide support should have greater financial resources at his disposal, so the law was in fact providing for the fair treatment of men and women.⁴⁴⁷

This creates a cyclical argument, however: men have greater inheritance rights because

they need to provide for the family; men need to provide for the family because they have greater inheritance rights.

Many States parties argue that the inheritance laws are stipulated in the Qur'an, and thus cannot be changed or reformed. However, the traditional Muslim rules of inheritance, though derived from the basic structure set out in the Qur'an, were then elaborated and systematised by the various schools of law through jurisprudential methods and interpretations. Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shi'ite schools of law, have combined rules from two or more different schools, or have created modern inheritance laws based loosely on traditional jurisprudence but suited for modern realities. Because human interpretations have played such a key role in shaping both the traditional inheritance rules and the modern codifications of inheritance laws, the standard articulation of these rules cannot be considered divinely revealed *Shari'ah*, but rather man-made *fiqh*.

Defenders of the traditional inheritance rules often state that the rules are much less discriminatory than those of the pre-Islamic era. It is true that revelations relating to inheritance improved the status of women, and that the Islamic position on inheritance was the most progressive and comprehensive in the world for hundreds of years. However, the trajectory of reform begun during the time of the Prophet has not continued, and these rules have not evolved over time. In addition, a number of aspects of the Sunni rules (e.g., the primacy of agnatic heirs) are actually derived from pre-Islamic inheritance rules, not the revelations as laid out in the Qur'an. These have not been reformed, just incorporated into the man-made system that was formalised by the classical jurists one thousand years ago based on the needs, customs, and expectations of the society in which they lived.

But the world has changed dramatically, and the inheritance laws must be reformed to continue the trajectory of progressive reform that began in the time of the Prophet and meet the needs of modern society.

In terms of universal human rights standards, States parties to the CEDAW Convention are responsible for ensuring that men and women enjoy equal inheritance rights in law and that women are able to enjoy these rights in fact — that they actually receive the property they have inherited, that they are not compelled to give up their rights by other members of their families, etc. The CEDAW Committee commented extensively on inheritance in General Recommendation number 21, addressing the fact that women often hold responsibility to support their families.⁴⁴⁸ A number of other international human rights bodies also address the issue of inheritance, such as the Human Rights Committee in General Comment number 28,⁴⁴⁹ the Committee on Economic, Social and Cultural Rights in General Comment Number 16,⁴⁵⁰ and the Beijing Platform for Action.⁴⁵¹

In terms of the lived realities of women and men, family structures in modern times have vastly changed. Whereas hundreds of years ago, extended families spent their lives in close proximity and women might have relied on male heirs to support them, the rise of the nuclear family and decline of close relations with extended family networks means that extended families can no longer serve as reliable support mechanisms. In addition, the idea that male family members will fulfil their responsibilities to take care of women is only theoretical. This idea has no grounding in reality, since the men often do not support those who are given lesser shares of inheritance and there is no accountability in laws or in practice to ensure that the men fulfil their responsibilities.

While men are technically obligated under traditional Muslim law concepts to provide

for their wives, sisters, and children, in reality women today often contribute to family expenses and support their husbands and children, and even extended family members. With an increase in the percentage of women who are educated, earning more, and fulfilling the role of head of household, women are increasingly contributing to or providing for all of the family expenses. These changing norms also mean that the arguments about men supporting their families, and thus being entitled to larger shares of inheritance than their sisters or other female relatives, hold little weight in the modern era.

Ulama and the defenders of traditional inheritance rules often advise families that they can use gifts during their lifetime as more fair and equal ways to distribute property. This indicates that these religious leaders believe that the rules of inheritance are not fair and equal for sons and daughters. It is inconceivable that religious scholars will go to great lengths and advise others to do the same to circumvent the traditional rules, yet those rules remain unchanged. Many governments also allow heirs to change the inheritance rules to suit their own circumstances, provided that all heirs agree. Families thus circumvent the rules by reaching agreement that all the assets should be divided equally between brothers and sisters or all of it should go to the mother, or more should go to the sister who sacrificed a career to take care of an ageing parent.

Such diverse practices to ensure that justice is done in the division of inheritance demonstrate a need to reform the traditional rules to make them consistent with Islamic legal, religious and ethical sensibilities.

4. CONCLUSION AND RECOMMENDATIONS

The Musawah CEDAW project was designed to provide an understanding of how Muslim countries and countries with significant Muslim minorities engage with the CEDAW process and how the CEDAW Committee addresses issues of Muslim family laws and practices. The research revealed a number of trends in how States parties justify their non-implementation of CEDAW provisions with regard to family issues and how the Committee approaches the topic. Many of the State party justifications rely on the simplistic excuse that the laws and practices are based on 'Shari'ah' and are therefore immutable, or that customs, traditions, and culture prevent any immediate change.

The Musawah Framework for Action provides a more holistic way of viewing equality within the family by integrating Islamic teachings, universal human rights, national constitutional guarantees of equality and non-discrimination, and the lived realities of women and men in a dynamic and evolving process. The second half of this report presents an overview of how the Musawah Framework can be applied in the context of CEDAW in response to general government justifications for non-compliance and specific family law issues.

In addition to these responses to States parties' justifications and key issues, Musawah proposes a number of recommendations for the CEDAW Committee to promote stronger, more in-depth engagement and dialogue in search of common ground between Muslim family laws and CEDAW on the basis of equality and justice:

- **Promote human rights standards as intrinsic to Islamic teachings, national guarantees of equality and non-discrimination, and lived realities of men and women today.**
 - **Encourage States parties to incorporate and reflect international human rights norms and standards namely CEDAW's notion of equality and non-discrimination in their programmes, policies, and laws.** This includes ensuring the necessary enabling environment for the promotion of an empowering notion of women's role in and contribution to society, in line with article 5 of the CEDAW Convention. This also includes encouraging States parties to withdraw reservations, within a fixed timeline, that go against the object and purpose of the CEDAW Convention such as article 16 on marriage and family relations.
 - **Recognise that resistance to reform of Muslim family laws often stems from reasons beyond ostensible religious grounds, such as patriarchy disguised as religion or political pressure within a country.** Culture and religion are plural and contested. Therefore the obstacles are not 'culture' or 'religion' per se, but perspectives that privilege particular interpretations based on the political interests and power-relations of the moment.
 - **Recognise and examine the links between discriminatory family laws and violence against women (VAW) and expand the violence against women discourse to include family law reform.** International standards on VAW are now well-developed and are a regular focus of recommendations by the Treaty Bodies and special mechanisms. In comparison, the standards on family law are relatively under-developed, and as an issue comparatively less visible within the international human rights system. Ending VAW and discrimination within the family
- **Emphasise that family laws that perpetuate inequality in the family cannot be justified on religious grounds.** Highlight that the laws themselves are not divine because they are based on human interpretations and codifications of religious texts, and that the laws can and must comply with religious and universal human rights standards of equality and justice.

would both be advanced if the links between these two areas were made explicit. If women suffer inequality in the family due to discriminatory family laws, their likely exposure to domestic violence is greater. For instance, forced and early marriage are forms of VAW; family laws that confirm a husband or father's right to control females in the family can restrict women's mobility and economic autonomy and thus their ability to leave violent homes.

- **Encourage open and inclusive public debate with States parties, within Muslim societies, and within the international human rights system regarding diversity of opinion and interpretations of religious laws and principles relating to family laws and practices.** In furtherance of this, to encourage States to provide for the full participation of historically marginalised and otherwise silenced voices, including those of women.
- **Encourage the international human rights community, including States parties, Treaty Body experts, community leaders and members of civil society to establish precedents and space for a nuanced understanding of culture, within a more expansive understanding of universal human rights.**
- **Recognise and support the women and men who are engaging in processes of reform of family laws and protection of existing rights in ways that take into account religious values and universal human rights and that move the family towards relationships of equality, justice, dignity and mutual respect.**
- **Recognise and respect the importance of international human rights standards to Muslim women, because such standards guarantee women a voice in defining their culture.**

- **Incorporate procedural changes to prioritise issues of Muslim family law during the CEDAW review process, including:**

- Where family law issues have been identified as a priority in previous reviews or by NGOs, address these issues earlier in the constructive dialogue to ensure sufficient time for thorough questions and answers. Alternatively, ensure that an adequate block of time is reserved for these priority issues at the end of the constructive dialogue day to enable article 16 to be dealt with comprehensively;
- When chairing constructive dialogue with States parties, ensure that CEDAW experts' questions are directly answered and that the limited time available is used as efficiently as possible;
- When family law issues are identified as priority areas for follow-up, provide the State party with specific information and directions on how to address the issues and facilitate contact with outside resources who can provide suggestions on how to promote equality in those laws;
- Be specific in lists of issues, constructive dialogues, and Concluding Observations on how to address discriminatory Muslim family laws and practices, why it is necessary to do so, and provide examples, best practices, or resources to aid the States parties in their implementation of the recommendation.

Musawah would like to thank the Committee for its interest in discussing these issues and would like to offer to provide more input and detailed information about Muslim marriage laws and practices at the Committee's request.

ANNEXES

ANNEX 1: GLOSSARY OF KEY TERMS

fasakh: The dissolution of a marriage for cause.

fatwa: The considered legal opinion of a mufti. Essentially fatwa is advice which is not legally binding. Often, fatwa means citation from an authoritative legal text. Political use of fatwa in modern times has given it a sense of religious call or edict.

fiqh: (lit. understanding, knowledge) The science of understanding *Shari'ah*; also used to refer to the huge amount of literature produced by Muslim jurists. For further details, see discussion in section 3.1 in this report.

hadanah: Physical care and custody

Hadith: *Hadith* is distinguished from *Sunnah*, which means normative practice. A *hadith* is a report about what Prophet Muhammad said about something, practised or approved, or did not disapprove a certain thing. A science of *hadith* criticism was developed to examine the normative value of a *hadith* and about the reliability of a *hadith*. A *hadith* report consists of two parts; first gives a list of narrators of the *hadith* and the second part the text. The jurists and the collectors of *hadith* differed in their criteria about the normativity of a *hadith*.

'iddah: (lit. counting) Waiting period of about three menstrual cycles that a divorced woman must observe or 4 months 10 days that a widowed woman must observe.

ijbar: The power to compel an unmarried woman (of any age) to marry someone of equal status, as recognised by certain schools of law; the power usually resides in the father or paternal grandfather.

ijtihad: (lit. effort, endeavour, diligence) Independent reasoning to arrive at a legal principle. *Ijtihad* is an essential process of legal reasoning, responsible for the growth of Islamic law. After the establishment of the various schools of law, the Sunnis understand *ijtihad* as an opposite of *taqlid*. Since no new schools appeared after the third century, it was wrongly assumed that the door of *ijtihad* was closed. The necessary qualifications for the exercise of *ijtihad* are: knowledge of the sources, legal methods, and scholarly integrity. The person who is qualified to exercise *ijtihad* is called *mujtahid*. The Shi'a, on the other hand do not regard the door of *ijtihad* closed, but they also require the lay person to follow a *mujtahid*.

ikhtilaf: Diversity in opinion, including in divergent legal rulings

istihsan: (lit. to regard something 'good', approval, consent) A method of legal reasoning in which a discretionary opinion is taken in breach of strict analogy. It is often attributed to the Hanafi school. The Hanafis describe it as a method of *qiyas*, when a jurist prefers one analogical conclusion to the other in view of the common good.

istislah: A method of taking public interest into account, which is attributed to the Maliki school. The principle is also called *maslahah*, common good, and public interest.

khul': Divorce by redemption, generally through payment or compensation to the husband, initiated by the wife.

mazhab/madhab: A particular 'school' of religious law or thought. In the second and third century, groups of jurists appeared in different Islamic cities, which later came to be known as *madhhabs* or schools of law. Out of more than nineteen, eight schools have survived: Hanafi, Hanbali, Maliki, Shafi'i, Ja'afari, Zaydi, Ibadhi and Zahiri.

mahr: Dower, or the goods and/or cash due from the groom to the bride as part of the marriage contract. It may be given at the time of the marriage ceremony, or promised to be paid at a later date or to be paid upon divorce or the death of the husband, or divided into prompt and deferred portions.

maqasid al-Shari'ah: The basic objectives of *Shari'ah*; the five main objectives are considered to be life, faith, reason, property, family. Others mentioned include justice, human dignity, and economic development. This doctrine stressed that the primary objective of the *Shari'ah* is human welfare. The fourteenth century Spanish Maliki jurist, Abu Ishaq al-Shatibi, who expounded this doctrine has been very popular in modern Islamic legal thought.

maslahah: (lit. matter, affair, benefit, interest) Public interest. *Maslahah* is the basic principle of Maliki method of *istislah*. Fourteenth-century jurist Abu Ishaq al-Shatibi defined it as the primary objective of *Shari'ah*. According to him, *maslahah* relates to the five basic needs that the law aims to protect: life, faith, reason, property, family.

mata'a: Compensatory payment by the husband to the wife, paid on divorce through *talaq* or where the 'fault' lies with the husband.

mubara'at: Divorce by mutual consent

mufti: A specialist in religious law who is qualified to give an authoritative religious opinion (*fatwa*).

nafaqah: Maintenance of wife during marriage, and, if she is divorced, throughout the *'iddah* period, including shelter, food and clothing.

nikah: Marriage

nushuz: Disruption of marital harmony by either spouse

qadi/kadi: An Islamic judge. A *qadi* is distinguished from a *mufti*, the former being a legal authority who is appointed by the state and thus represents the state. The ruling of a *qadi* is binding for the parties and is enforceable; the *mufti* only gives an advice, which is not enforceable in a court of law.

qiyas: (lit. measurement, comparison) Analogical reasoning in Islamic law that is constructed on the pattern of formal logic: premises and conclusion. Major premise is the injunction from the *Usul*, i.e. the Qur'an, *Sunnah* and *ijma'*, the minor premise is the case in question, reconstructed as minor premise, namely to contain the middle term include in the major premise. The conclusion is the *hukum*, the method of deduction is called *qiyas*.

Shari'ah: (lit. water source, the way, the path) The path or way given by God to human beings, the path by which human beings search God's Will. Commonly misinterpreted as 'Islamic law',

Shari'ah is not restricted to positive law per se but includes moral and ethical values and the jurisprudential process itself.

Sunnah: (lit., the way or course or conduct of life): The example of the Prophet embodied in his statement, actions and those matters that he silently approved or disapproved as reported in *hadith* literature. *Sunnah* is acknowledged as a primary source of Islamic law after the Qur'an.

talaq-i-tafwid: A delegated right of divorce exercised by the wife.

takhayyur: The process of selection (from a range of juristic opinions).

talaq: Repudiation of marriage by the husband.

ta'liq: Divorce for breach of condition in marriage contract or any subsequent written agreement between the husband and wife.

taqlid: (lit. imitation, copying, custom) Taqlid as a doctrine requires a person to follow a particular school of law. It was a legal device to systematise the schools of law and to establishing their authority.

ulama: Scholars

ummah: Community of believers.

'urf: (lit. beneficence, kindness) Custom. Local customs play a very important role in the understanding and growth of Islamic law. *'Urf* and *Ada* often interchangeably refer to customs, local and common, and social practices.

wali: Guardian (for marriage); regarded by some schools of law as the father or paternal grandfather who has authority to contract marriage on behalf of the bride.

ANNEX 2: TABLE OF RIGHTS-BASED LAWS IN THE MUSLIM WORLD

Family Law Issue	Rights-Based Laws in the Muslim World*
<p>Equality of spouses</p>	<p>Kyrgyz Republic: Article 22 of the Family Code stipulates that women and men have the same rights and duties in marriage, and spouses should care for each other and develop their own abilities.</p> <p>Morocco: The Moudawana specifies the 'mutual rights and duties between spouses', including both the wife and the husband assuming the responsibility of managing and protecting household affairs and the children's education and consultation on decisions.</p> <p>Turkey: Under the constitution, the family is based on equality between spouses.</p> <p>Uzbekistan: The Family Law Code envisages family relations based on mutuality and equality, with mutual support and responsibility of all family members and the unhindered enjoyment by family members of their rights.</p>
<p>Minimum age of marriage</p>	<p>Algeria: The minimum age of marriage is 19 for both males and females after the February 2005 reform. The judge can grant an exception on the grounds of benefit or necessity.</p> <p>Bangladesh: Under the Child Marriage Restraint Act (1929, amended in 1984), the minimum age is 18 for females and 21 for males; exceptions are not permitted.</p> <p>Morocco: Under the 2004 revision of the <i>Moudawana</i>, the minimum age is 18 for both males and females. A judge may grant an exception to the minimum age with the assistance of medical expertise or after having conducted a social enquiry.</p> <p>Sierra Leone: In June 2007 the Sierra Leone Parliament passed three 'Gender Acts' which benefit women. When fully implemented, the Registration of Customary Marriage and Divorce Act will set the minimum marriage age at 18.</p> <p>Turkey: Under the 2001 amended Civil Code, the minimum age has been raised from 15 to 18 for females. Under exceptional circumstances, the minimum age can be lowered to 16 with the court's permission.</p>

* This material is compiled primarily from *Knowing Our Rights: Women, family, laws and customs in the Muslim World*, London: Women Living Under Muslim Laws (2003), available at www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor_2006_en.pdf

Family Law Issue	Rights-Based Laws in the Muslim World*
<p>Consent to marriage (Is a marriage valid without the woman's consent?)</p>	<p>Algeria: It is forbidden for the <i>wali</i> to compel a woman to marry; he may not give her in marriage without her consent.</p> <p>Morocco: Couples may not be coerced into marriage under any circumstances.</p> <p>Nigeria: For Maliki communities (the majority of Nigerian Muslims), a biological father has the power of <i>ijbar</i> (courts may refer to Bulugul Marami, Fighus Sunnah Vol. II, p.260). However, the <i>wali</i> cannot compel his daughter to marry a man suffering from contagious diseases (such as leprosy), insanity, or reproductive problems. Case law is clear that <i>ijbar</i> cannot be enforced for adult women, and the courts generally accept a variety of circumstances that overrule the possibility of <i>ijbar</i>, including where the woman earns some money herself.</p> <p>Pakistan: Case law provides that marriage without the consent of the spouses is void (<i>Mst. Humera Mehmood v The State and others</i>, PLD 1999 Lahore 494).</p> <p>Saudi Arabia: In April 2005, the top religious authorities banned the practice of forcing women to marry against their will, stating that it contravenes the provisions of the shari'ah. The clerics said that whoever forces a woman to marry against her will is disobeying God and His Prophet, and that coercing women into marriage is 'a major injustice' and 'un-Islamic'.</p> <p>Tunisia: There is no marriage without the consent of both spouses. A marriage contracted without such consent is declared null and void.</p>
<p>Women's capacity for marriage (Is consent of a <i>wali</i> required?)</p>	<p>Bangladesh, Pakistan, Sri Lanka: A <i>wali</i> is not required for Hanafi women who have reached puberty.</p> <p>Kyrgyz Republic, Turkey, Uzbekistan: A <i>wali</i> is not required.</p> <p>Morocco: Under the revised <i>Moudawana</i>, a woman gains the capacity to contract her own marriage upon reaching the age of majority. She may contract her marriage herself or delegate this power to her father or one of her relatives.</p> <p>Tunisia: Both husband and wife have the right to contract their marriage themselves or appoint proxies. The consent of a <i>wali</i> is not required, provided that the man and woman are of the legal age of consent.</p>
<p>Monogamy / Polygamy</p>	<p>Bahrain: In May 2009 a new Family Law that applies only to Sunnis was enacted that allows women to prohibit their husbands from taking second wives.</p> <p>Kyrgyz Republic, Tajikistan, Turkey, Uzbekistan: Polygamy is prohibited.</p> <p>Tunisia: Polygamy was prohibited under the 1956 law based on the understanding of Surah 4:129 ('You are never able to be fair and just as between women, even if it is your ardent desire ...') that no husband can treat multiple wives equally. It is a criminal offence, rendering a man who contracts a polygamous marriage liable to a year of imprisonment or a fine of 240,000 Tunisian Dinars or both and a woman who knowingly enters a polygamous marriage liable to the same.</p> <p>In countries where marriage contracts are negotiated, which is common throughout the Muslim world, women can stipulate in the marriage contract that the husband cannot take another wife. If the husband breaches this term of the marriage contract, the woman has the right to divorce. Countries such as Saudi Arabia, Syria, Jordan, Egypt, and Lebanon allow for such stipulations in the marriage contract.</p>

Rights-Based Laws in the Muslim World*	
Family Law Issue	
Divorce	<p>Algeria: Divorce at 'the will of the husband' can be established only through the court.</p> <p>Bangladesh and Pakistan: the standard marriage contract form includes provision for delegated right of divorce (<i>talaq-e-tafwid/esma</i>). If granted this right, the wife can initiate divorce without grounds and without going to court, while retaining relevant financial rights.</p> <p>Indonesia: All divorces must go through the court. For Muslims, a husband must provide the religious court with a written notification of his intention to divorce. The six grounds for divorce are available to both husbands and wives. Reconciliation meetings are called separately, failing which the court calls the parties to witness the divorce. Revocable divorce is not recognised.</p> <p>Iran: All divorces must go through the court. The Registrar can only register the divorce after permission has been issued from the court and after related financial matters have been settled.</p> <p>Morocco: Dissolution of marriage is a prerogative that may be exercised by both husband and wife, based on legal conditions established for each party. Repudiation requires judicial permission, and the wife and children must have received all of their vested rights before it is authorised. Irregular pronouncements of repudiation are not valid. A wife has access to assigned repudiation sometimes known as <i>talaq-e-tafweed</i> or 'esma), <i>Khul</i> and divorce for cause, and there are several forms of divorce that may be pursued by both husband and wife (irreconcilable differences, mutual consent).</p> <p>Tunisia: Divorce shall only take place in court. There are equal grounds for divorce for husband and wife, including mutual consent, on the grounds of harm (the failure to fulfil rights and responsibilities as laid out in the law), or 'at the will of the husband or at the request of the wife'. Unilateral <i>talaq</i> is not recognised.</p>
Division of Matrimonial Assets	<p>Malaysia: The court may order the division of <i>harta sepencarian</i> (matrimonial assets) 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 to 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.</p> <p>Singapore: The Shariah Courts may take into account a wide variety of factors, including the wife's contributions to the household like domestic labour and primary responsibility for raising children. The lower courts may enforce decrees, facilitating actual recovery of the assets. Where a wife has made no direct financial contribution in the acquisition of the matrimonial home, she is entitled to 30-50% of the net proceeds of its sale. Where she has made financial contributions, she is entitled to a share that is higher than her contribution.</p> <p>Turkey: The revisions to the Civil Code stipulate that equal division of property and assets acquired during the marriage is the default property regime for marriages solemnised under the new law.</p>

Rights-Based Laws in the Muslim World*	
Family Law Issue	
Custody	<p>Several countries, e.g. Bangladesh, Central Asian Republics, Gambia, India, Pakistan, Senegal, Sri Lanka, Turkey, decide custody through the courts on the basis of the best interests of the child. This has led to an expansion of mothers' rights as compared to conservative interpretations of Muslim laws.</p>
Guardianship	<p>Central Asian Republics: Custody and guardianship can be given to either parent, with the best interests of the child as the paramount consideration.</p> <p>Tunisia: Both parents have equal rights in custody and guardianship during marriage. Upon divorce, the court decides custody on the basis of the best interests of the child. If custody is awarded to the mother, she also has guardianship rights as regards travel, schooling, and management of finances. The court may award full guardianship to the mother if the father is deceased or unable to exercise his duties. Regardless, the mother has an equal right to supervise the child's affairs.</p> <p>Turkey: In the event of separation or divorce, the rules regarding custody and guardianship do not discriminate between the father and the mother.</p>

ANNEX 3: OIC COUNTRIES AND THE CEDAW CONVENTION⁴⁵²

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
1.	Afghanistan	2003	No reservations		None
2.	Albania	1994	No reservations		2003 2010
3.	Algeria	1996	<p>Reservations:</p> <p>Article 2: [D]eclares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code.</p> <p>[E]xpress its reservations concerning the provisions of article 9, paragraph 2, which are incompatible with the provisions of the Algerian Nationality code and the Algerian Family Code. The Algerian Nationality code allows a child to take the nationality of the mother only when:</p> <ul style="list-style-type: none"> - the father is either unknown or stateless; - the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; - moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object. <p>Article 41 of the Algerian Family Code states that a child is affiliated to its father through legal marriage. Article 43 of that Code states that ` the child is affiliated to its father if it is born in the 10 months following the date of separation or death.</p> <p>Article 15, paragraph 4: [D]eclares that the provisions of article 15, paragraph 4, concerning the right of women to choose their residence and domicile should not be interpreted in such a manner as to contradict the provisions of chapter 4 (art. 37) of the Algerian Family Code.</p> <p>Article 16: [D]eclares that the provisions of article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code.</p>	On 15 July 2009, the Government of Algeria notified the Secretary-General that it had decided to withdraw the reservation in respect to article 9 (2) made upon accession.	

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
4.	Azerbaijan	1995	No reservations		1998 2007 2009
5.	Bahrain	2002	Reservations: [M]akes reservations with respect to the following ... Article 2 , in order to ensure its implementation within the bounds of the provisions of the Islamic Shariah; Article 9, paragraph 2; Article 15, paragraph 4; Article 16 , in so far as it is incompatible with the provisions of the Islamic Shariah...		2008
6.	Bangladesh	1984	[D]oes not consider as binding upon itself the provisions of articles 2, 13 (a) and 16 (1) (c) and (f) as they conflict with <i>Sharia</i> law based on Holy Quran and Sunna.	On 23 July 1997, the Government of Bangladesh notified the Secretary-General that it had decided to withdraw the reservation relating to articles 13 (a) and 16 (1) (f) made upon accession.	
7.	Benin	1992	No reservations		2005
8.	Brunei	2006	Reservations: [E]xpresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam and, without prejudice to the generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 ...		None
9.	Burkina Faso	1987	No reservations		2000 2005 2010
10.	Cameroon	1994	No reservations		2000 2009
11.	Chad	1995	No reservations		2010
12.	Comoros	1994	No reservations		None

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
13.	Cote d'Ivoire	1995	No reservations		None
14.	Djibouti	1998	No reservations		2011
15.	Egypt	1981	<p>Reservations made upon signature and confirmed upon ratification:</p> <p>Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic <i>Sharia's</i> provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the <i>Sharia</i> lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The <i>Sharia</i> therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.</p> <p>Reservations made upon ratification:</p> <p><i>General reservation on article 2</i></p> <p>[W]illing to comply with the content of this article, provided that such compliance does not run counter to the Islamic <i>Sharia</i>.</p> <p><i>[R]eservation to article 9 (2)</i></p> <p>[C]oncerning the granting to women of equal rights with men with respect to the nationality of their children, without prejudice to the acquisition by a child born of a marriage of the nationality of his father. This is in order to prevent a child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality.</p>		

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
16.	Gabon	1983	No reservations		1989 2005
17.	Gambia	1994	No reservations		2005
18.	Guinea	1982	No reservations		2001 2007
19.	Guinea Bissau	1985	No reservations		2009
20.	Guyana	1980	No reservation		1994 2001 2005
21.	Indonesia	1984	No reservation		1998 2007
22.	Iran	Not a signatory	Not a signatory		Not a signatory
23.	Iraq	1986	Reservations: Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic <i>Shariah</i> according women rights equivalent to the rights of their spouses so as to ensure a just balance between them.		2000
24.	Jordan	1992	Declaration made upon signature and confirmed upon ratification: Jordan does not consider itself bound by the following provisions: 1. Article 9, paragraph 2; 2. ... 3. Article 16, paragraph (1) (c), relating to the rights arising upon the dissolution of marriage with regard to maintenance and compensation; 4. Article 16, paragraph (1) (d) and (g).	On 5 May 2009, the Government of Jordan informed the Secretary-General that it had decided to withdraw the reservation made upon ratification with regard to article 15 (4) of the Convention. The text of the reservation withdrawn reads as follows: ... a woman's residence and domicile are with her husband.	2000 2007

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
25.	Kazakhstan	1998	No reservations		2001 2007
26.	Kuwait	1994	<p>Reservations: [E]nters a reservation regarding article 7 (a), inasmuch as the provision contained in that paragraph conflicts with the Kuwaiti Electoral Act, under which the right to be eligible for election and to vote is restricted to males. Article 9, paragraph 2 [R]eserves its right not to implement the provision contained in article 9, paragraph 2, of the Convention, inasmuch as it runs counter to the Kuwaiti Nationality Act, which stipulates that a child's nationality shall be determined by that of his father. Article 16 (f) [D]eclares that it does not consider itself bound by the provision contained in article 16 (f) inasmuch as it conflicts with the provisions of the <i>Islamic Shariah</i>, Islam being the official religion of the State.</p>	The Government of Kuwait informed the Secretary-General, by a notification received on 9 December 2005, of its decision to withdraw the following reservation in respect of article 7 (a) , made upon accession to the Convention...	2004
27.	Kyrgyzstan	1997	No reservations		1999 2004 2008
28.	Lebanon	1997	<p>Reservations: [E]nters reservations regarding article 9 (2), and article 16 (1) (c) (d) (f) and (g) (regarding the right to choose a family name).</p>		2005 2008
29.	Libya	1989	<p>Reservation: Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the <i>Islamic Shariah</i> relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the <i>Islamic Shariah</i>.</p>	On 5 July 1995, the Government of the Socialist People's Libyan Arab Republic notified the Secretary-General of the "new formulation of its reservation to the Convention, which replaces the formulation contained in the instrument of accession" which read as follows: [Accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the <i>Islamic Shariah</i> .	1994 2009

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
30.	Malaysia	1995	<p>[A]ccession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. With regard thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 9(2), 16(1)(a), (f), (g) of the aforesaid Convention. (as of 2010)</p> <p>In relation to article 11, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only.</p>	<p>On 6 February 1998, the Government of Malaysia notified the Secretary-General of a partial withdrawal as follows:</p> <p>The Government of Malaysia withdraws its reservation in respect of article 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h).</p> <p>The same date, the Government of Malaysia notified the Secretary-General that it had decided to modify its reservation made upon accession as follows:</p> <p>With respect to article 5 (a) of the Convention, the Government of Malaysia declares that the provision is subject to</p> <p>the <i>Syariah</i> law on the division of inherited property.</p> <p>With respect to article 7 (b) of the Convention, the Government of Malaysia declares that the application of said article 7 (b) shall not affect appointment to certain public offices like the Mufti <i>Syariah</i> Court Judges, and the Imam which is in accordance with the provisions of the Islamic <i>Shariah</i> law.</p> <p>With respect to article 9, paragraph 2 of the Convention, the Government of Malaysia declares that its reservation will be reviewed if the Government amends the relevant law.</p> <p>With respect to article 16.1 (a) and paragraph 2, the Government of Malaysia declares that under the <i>Syariah</i> law and the laws of Malaysia the age limit for marriage for women is sixteen and men is eighteen.</p> <p>On 19 July 2010, the Government of Malaysia notifies the Secretary General that it further "withdraws its reservations in respect of articles 5(a), 7(b), and 16 (2) of the Convention.</p>	2006

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
31.	Maldives	1993	<p>Reservations:</p> <p>[E]xpresses its reservation to article 7 (a) of the Convention, to the extent that the provision contained in the said paragraph conflicts with the provision of article 34 of the Constitution of the Republic of Maldives ... (withdrawn 2010)</p> <p>[R]eserves its right to apply article 16 of the Convention concerning the equality of men and women in all matters relating to marriage and family relations without prejudice to the provisions of the Islamic Sharia, which govern all marital and family relations of the 100 percent Muslim population of the Maldives.</p>	<p>On 29 January 1999, the Government of Maldives notified the Secretary-General of a modification of its reservation made upon accession...</p> <p>[W]ill comply with the provisions of the Convention, except those which the Government may consider contradictory to the principles of the Islamic Sharia upon which the laws and traditions of the Maldives is founded.</p> <p>Furthermore, the Republic of Maldives does not see itself bound by any provisions of the Convention which obliges to change its Constitution and laws in any manner.</p> <p>On 31 March 2010, the Government of the Republic of Maldives notified the Secretary-General of its decision to withdraw its reservation regarding article 7(a).</p>	2001 2007
32.	Mali	1985	No reservations		1988 2006
33.	Mauritania	2001	[H]ave approved and do approve it in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution.		2007

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession / accession (including reservations made related to marriage and family relations).	Reservations revoked /modified	Year(s) Reported
34.	Morocco	1993	<p>Declarations:</p> <p>[A]rticle 2: [E]xpress its readiness to apply the provisions of this article provided that: - They are without prejudice to the constitutional requirement that regulate the rules of succession to the throne of the Kingdom of Morocco;</p> <p>- They do not conflict with the provisions of the Islamic Shariah. It should be noted that certain of the provisions contained in the Moroccan Code of Personal Status according women rights that differ from the rights conferred on men may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah, which strives, among its other objectives, to strike a balance between the spouses in order to preserve the coherence of family life.</p> <p>[A]rticle 15, paragraph 4: [D]eclares that it can only be bound by the provisions of this paragraph, in particular those relating to the right of women to choose their residence and domicile, to the extent that they are not incompatible with articles 34 and 36 of the Moroccan Code of Personal Status.</p> <p>Reservations:</p> <p>[A]rticle 9, paragraph 2 [M]akes a reservation with regard to this article in view of the fact that the Law of Moroccan Nationality permits a child to bear the nationality of its mother only in the cases where it is born to an unknown father, regardless of place of birth, or to a stateless father, when born in Morocco, and it does so in order to guarantee to each child its right to a nationality. Further, a child born in Morocco of a Moroccan mother and a foreign father may acquire the nationality of its mother by declaring, within two years of reaching the age of majority, its desire to acquire that nationality, provided that, on making such declaration, its customary and regular residence is in Morocco.</p> <p>[A]rticle 16: [M]akes a reservation with regard to the provisions of this article, particularly those relating to the equality of men and women, in respect of rights and responsibilities on entry into and at dissolution of marriage. Equality of this kind is considered incompatible with the Islamic Shariah, which guarantees to each of the spouses rights and responsibilities within a framework of equilibrium and complementary in order to preserve the sacred bond of matrimony.</p> <p>The provisions of the Islamic Shariah oblige the husband to provide a nuptial gift upon marriage and to support his family, while the wife is not required by law to support the family.</p> <p>Further, at dissolution of marriage, the husband is obliged to pay maintenance. In contrast, the wife enjoys complete freedom of disposition of her property during the marriage and upon its dissolution without supervision by the husband, the husband having no jurisdiction over his wife's property.</p> <p>For these reasons, the Islamic Shariah confers the right of divorce on a woman only by decision of a Shariah judge.</p>		1997 2003 2008

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
35.	Mozambique	1997	No reservations		2007
36.	Niger	1999	<p>Declaration:</p> <p>[D]eclares that the term "family education" which appears in article 5, paragraph (b), of the Convention should be interpreted as referring to public education concerning the family, and that in any event, article 5 would be applied in compliance with article 17 of the International Covenant on Civil and Political Rights.</p> <p>Reservations:</p> <p>[D]eclares that the provisions of article 2, paragraphs (d) and (f), article 5, paragraphs (a) and (b), article 15, paragraph 4, and article 16, paragraph 1 (c), (e) and (g), concerning family relations, cannot be applied immediately, as they are contrary to existing customs and practices which, by their nature, can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority.</p> <p>Article 2, paragraphs (d) and (f) [E]xpresses reservations with regard to article 2, paragraphs (d) and (f), concerning the taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession.</p> <p>Article 5, paragraph (a) [E]xpresses reservations with regard to the modification of social and cultural patterns of conduct of men and women.</p> <p>Article 15, paragraph 4 [D]eclares that it can be bound by the provisions of this paragraph, particularly those concerning the right of women to choose their residence and domicile, only to the extent that these provisions refer only to unmarried women.</p> <p>Article 16, paragraph 1 (c), (e) and (g) [E]xpresses reservations concerning the above-referenced provisions of article 16, particularly those concerning the same rights and responsibilities during marriage and at its dissolution, the same rights to decide freely and responsibly on the number and spacing of their children, and the right to choose a family name.</p>		2007

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
37.	Nigeria	1985	No reservations		1998 2004 2008
38.	Oman	2006	<p>Reservations: All provisions of the Convention not in accordance with the provisions of the Islamic Sharia and legislation in force in the Sultanate of Oman;</p> <p>Article 9, paragraph 2, which provides that States Parties shall grant women equal rights with men with respect to the nationality of their children;</p> <p>Article 15, paragraph 4, which provides that States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile;</p> <p>Article 16, regarding the equality of men and women, and in particular subparagraphs (a), (c), and (f) (regarding adoption).</p>		None
39.	Palestinian Authority				
40.	Pakistan	1996	<p>Declaration: The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.</p>		2007

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
41.	Qatar	2009	<p>Declaration: [A]ccepts the text of article 1 of the Convention provided that, in accordance with the provisions of Islamic law and Qatari legislation, the phrase "irrespective of their marital status" is not intended to encourage family relationships outside legitimate marriage. It reserves the right to implement the Convention in accordance with this understanding.</p> <p>[D]eclares that the question of the modification of "patterns" referred to in article 5 (a) must not be understood as encouraging women to abandon their role as mothers and their role in child-rearing, thereby undermining the structure of the family.</p> <p>Reservations: Article 2 (a) in connection with the rules of the hereditary transmission of authority, as it is inconsistent with the provisions of article 8 of the Constitution. Article 9, paragraph 2, as it is inconsistent with Qatar's law on citizenship. Article 15, paragraph 1, in connection with matters of inheritance and testimony, as it is inconsistent with the provisions of Islamic law. Article 15, paragraph 4, as it is inconsistent with the provisions of family law and established practice. Article 16, paragraph 1 (a) and (c), as they are inconsistent with the provisions of Islamic law. Article 16, paragraph 1 (f), as it is inconsistent with the provisions of Islamic law and family law. The State of Qatar declares that all of its relevant national legislation is conducive to the interest of promoting social solidarity.</p>		

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
42.	Saudi Arabia	2000	Reservations: In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention. [D]oes not consider itself bound by paragraph 2 of article 9 of the Convention...		2008
43.	Senegal	1985	No reservations		1994
44.	Sierra Leone	1988	No reservations		2007
45.	Sudan	Not a signatory	Not a signatory		Not a signatory
46.	Somalia	Not a signatory	Not a signatory		Not a signatory
47.	Suriname	1993	No reservations		2002 2007
48.	Syria	2003	Reservation: [S]ubject to reservations to article 2; article 9, paragraph 2, concerning the grant of a woman's nationality to her children; article 15, paragraph 4, concerning freedom of movement and of residence and domicile; article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child, inasmuch as this provision is incompatible with the provisions of the Islamic Shariah...		2007
49.	Tajikistan	1993	No reservations		2007
50.	Togo	1983	No reservations		2006

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
51.	Tunisia	1985	<p>Declaration: [D]eclares that it shall not take any organisational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution.</p> <p>[A]rticle 15, paragraph 4: In accordance with the provisions of the Vienna Convention on the Law of Treaties, dated 23 May 1969, the Tunisian Government emphasizes that the requirements of article 15, paragraph 4, of the Convention on the Elimination of All forms of Discrimination against Women, and particularly that part relating to the right of women to choose their residence and domicile, must not be interpreted in a manner which conflicts with the provisions of the Personal Status Code on this subject, as set forth in chapters 23 and 61 of the Code.</p> <p>Reservation: [C]oncerning article 9, paragraph 2: [E]xpresses its reservation with regard to the provisions in article 9, paragraph 2 of the Convention, which must not conflict with the provisions of chapter VI of the Tunisian Nationality Code.</p> <p>[C]oncerning article 16, paragraphs (c), (d), (f), (g) and (h): [C]onsiders itself not bound by article 16, paragraphs (c), (d) and (f) of the Convention and declares that paragraphs (g) and (h) of that article must not conflict with the provisions of the Personal Status Code concerning the granting of family names to children and the acquisition of property through inheritance.</p>		1995 2002 2010

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
52.	Turkey	1985	"Reservations of the Government of the Republic of Turkey with regard to the articles of the Convention dealing with family relations which are not completely compatible with the provisions of the Turkish Civil Code, in particular, article 15, paragraphs 2 and 4, and article 16, paragraphs 1 (c), (d), (f) and (g), ... " (All withdrawn by 2008)	<p>On 20 September 1999, the Government of Turkey notified the Secretary-General of a partial withdrawal as follows:</p> <p>"[...] the Government of the Republic of Turkey has decided to withdraw its reservations made upon [accession to] the Convention on the Elimination of All Forms of Discrimination Against Women with regard to article 15, paragraphs 2 and 4, and article 16, paragraphs 1 (c), (d), (f) and (g).</p> <p>On 29 January 2008, the Government of the Republic of Turkey notified the Secretary-General that it had decided to withdraw the following declaration in respect to article 9 (1) made upon accession:</p> <p>"Article 9, paragraph 1 of the Convention is not in conflict with the provisions of article 5, paragraph 1, and article 15 and 17 of the Turkish Law on Nationality, relating to the acquisition of citizenship, since the intent of those provisions regulating acquisition of citizenship through marriage is to prevent statelessness."</p>	
53.	Turkmenistan	1997	No reservations		2006
54.	Uganda	1985	No reservations		1995 2002 2010

No.	Country	Year Ratified	Declaration made upon signature / ratification / accession (including reservations made related to marriage and family relations).	Reservations revoked / modified	Year(s) Reported
55.	United Arab Emirates	2004	<p>Reservations: [M]akes reservations to articles 2 (f), 9, 15 (2), 16 ... of the Convention, as follows: Article 2 (f) [B]eing of the opinion that this paragraph violates the rules of inheritance established in accordance with the precepts of the Shariah, makes a reservation thereto and does not consider itself bound by the provisions thereof. Article 9 [C]onsidering the acquisition of nationality an internal matter which is governed, and the conditions and controls of which are established, by national legislation makes a reservation to this article and does not consider itself bound by the provisions thereof. Article 15 (2) [C]onsidering this paragraph in conflict with the precepts of the Shariah regarding legal capacity, testimony and the right to conclude contracts, makes a reservation to the said paragraph of the said article and does not consider itself bound by the provisions thereof. Article 16 [W]ill abide by the provisions of this article insofar as they are not in conflict with the principles of the Shariah. The United Arab Emirates considers that the payment of a dower and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property. The Shariah makes a woman's right to divorce conditional on a judicial decision, in a case in which she has been harmed.</p>		2010
56.	Uzbekistan	1995	No reservations		2001 2006 2010
57.	Yemen	1984	No reservations		2002 2008

ANNEX 4: SELECTED READINGS ON LAW AND FEMINISM IN MUSLIM CONTEXTS

BY AUTHOR

- Abu-Odeh, Lama, 'Lecture Commentary on Islam and International Law: Toward a Positive Mutual Engagement to Realize Shared Ideals', *American Society of International Law Proceedings*, Vol. 98, (2004(c)), pp. 167-8.
- Afshar, Haleh, *Islam and Feminisms: An Iranian Case Study* (New York: St. Martin's Press, 1998).
- Ahmed, Leila, *Women and Gender in Islam* (New Haven: Yale University Press, 1992).
- Al-Hirbi, Azizah, 'A Study of Islamic Herstory: Or How Did We Ever Get Into This Mess?', *Women's Studies International Forum* 5 (2) (1982), pp. 207-19.
- , 'Islam, Law and Custom: Redefining Muslim Women's Rights', *International Law and Policy*, Vol. 1 (1997).
- Ali, Kecia, 'Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement With Marriage and Divorce Law', in *Progressive Muslims: On Justice, Gender and Pluralism* (Omid Safi, ed., Oxford: Oneworld Publications, 2003).
- , *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oxford: Oneworld Publications, 2006).
- An-Naim, Abdullahi, 'A Kinder, Gentler Islam?', *Transition*, No. 52 (1991).
- , *Islamic Family Law in a Changing World: A Global Resource Book* (New York: Zed Books, 2002).
- , 'The Dichotomy Between Religious and Secular Discourse in Islamic Societies', in *Faith and Freedom: Women's Human Rights in the Muslim World* (Mahnaz Afkhami, ed., London: I.B. Tauris, 1995).
- Badran, Margot, *Feminism in Islam: Secular and Religious Convergences* (Oxford: Oneworld Publications, 2009).
- Barlas, Asma, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, Texas: University of Texas Press, 2002).
- Shaaban, Bouthaina, 'Muted Voices of Women Interpreters', in *Faith and Freedom: Women's Human Rights in the Muslim World* (Mahnaz Afkhami, ed., London & New York: I B Tauris, 1995), pp. 61-77.
- Connors, Jane, 'The Woman's Convention in the Muslim World', in *Feminism and Islam: Legal and Literary Perspectives* (Mai Yamani, ed., Reading: Ithaca Press for the Centre of Islamic and Middle Eastern Law, School of Oriental and African Studies, University of London, 1996).
- Hashim, Iman, 'Reconciling Islam and Feminism', *Gender and Development*, Vol. 7, No. 1- (1999).
- Hassan, Riffat, 'Feminism in Islam', in *Feminism and World Religions* (Arvind Sharma & Kate Young, eds., SUNY Press, 1999), pp. 248-78.
- Majid, Anouar, 'The Politics of Feminism in Islam', *Signs*, Vol. 23, No. 2 (Winter 1998).
- Marin, Manuela, 'Disciplining Wives: A Historical Reading of Qur'an 4:34', *Studia Islamica* 98 (2003), pp. 5-10.
- Mashhour, Amira, 'Islamic Law and Gender Equality - Could There Be a Common Ground: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt', *Human Rights Quarterly*, 27 (2005), pp. 562-96.
- Mayer, Ann Elizabeth, 'Reform of Personal Status Laws', in *North Africa: A Problem of Islamic or Mediterranean Laws?* (Women Living Under Muslim Laws, Occasional Paper No. 8, 1996).
- , *Internationalizing the Conversation on Women's Rights: Arab Countries Face the CEDAW Committee*, in *Islamic Law and the Challenges of Modernity* (Yvonne Yazbeck Haddad and Barbara Stowasser, eds., Oxford: Altamira Press, 2004).
- Mernissi, Fatima, *Women and Islam: An Historical and Theological Inquiry* (Oxford: Blackwell, 1999).
- Mernissi, Fatima, et al., *Women's Rebellion and Islamic Memory* (London: Zed Books, 1996).

- Mir-Hosseini, Ziba, *Islam and Gender: The Religious Debate in Contemporary Iran* (New Jersey: Princeton University Press, 1999).
- , 'The Construction of Gender in Islamic Legal Thought: Strategies for Reform', *Hawwa: Journal of Women in the Middle East and the Islamic World*, 1/1 (2003), pp. 1–28.
- , 'Muslim Women's Quest for Equality: Between Islamic Law and Feminism', *Critical Inquiry* 32, 4 (Summer 2006).
- Moors, Annelies, 'Debating Islamic Family Law: Legal Texts and Social Practices', in *A Social History of Women and Gender* (Margaret L. Meriwether and Judith E. Tucker, eds., Westview, 1999).
- Peters, Ruud, 'Islamic Law and Human Rights: a Contribution to an Ongoing Debate', *Islam and Christian-Muslim Relations*, Vol. 10, No. 1 (1999).
- Rahman, Fazlur, 'The Status of Women in Islam: A Modernist Interpretation', in *Separate Worlds: A Study of Purdah in South Asia* (Hanna Papanek and Gail Minault, eds., New Delhi: Chanakya Publications, 1982).
- Shaheed, Farida, 'The Cultural Articulation of Patriarchy: Legal Systems, Islam and Women' in *Women and Islam: Critical Concepts in Sociology* (Haideh Moghissi, ed., London: Routledge, 2005), pp. 224–43.
- Shaikh, Sa'diyya, 'Transforming Feminism: Islam, Women, and Gender Justice', in *Progressive Muslims* (Omid Safi, ed., Oxford: Oneworld, 2003), pp. 147–62.
- , 'Exegetical Violence: Nushuz in Quranic Gender Ideology', *Journal for Islamic Studies* 17 (1997), pp. 49–73.
- Singerman, Diane, 'Re-writing Divorce in Egypt: Reclaiming Islam, Legal Activism, and Coalition Politics', in *Remaking Muslim Politics: Pluralism, Contestation, Democratization* (Robert Hefner, ed., New Jersey: Princeton University Press, 2005).
- Sonbol, Amira El-Azhary, *Women, the Family, and Divorce Laws in Islamic History* (Syracuse, N.Y.: Syracuse University Press, 1996).
- , 'Ta'a and Modern Legal Reform: A Rereading', *Islam and Christian-Muslim Relations*, Vol. 9, No. 3 (1998).
- , 'Women in Shari'ah Courts: A Historical and Methodological Discussion', *Fordham International Law Journal*, 27 (2003–2004), pp. 225–53.
- Souaiaia, Ahmed E., *Contesting Justice: Women, Islam, Law, and Society* (New York: State University of New York Press, 2008).
- Wadud, Amina, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1999).
- , *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld, 2006).
- Welchman, Lynn, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

BY TITLE OF EDITED COLLECTION

- Feminism and Islam: Legal and Literary Perspectives* (Mai Yamani, ed., Reading: Ithaca Press for the Centre of Islamic and Middle Eastern Law, School of Oriental and African Studies, University of London, 1996).
- Islamic Law and the Challenge of Modernity* (Yvonne Yazbeck Haddad and Barbara Stowasser, eds., Oxford: Altamira Press, 2004)
- Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World* (Women Living Under Muslim Laws, Third ed., 2006).
- Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia* (Gavin Jones, Chee Heng Leng, and Mohamad, Maznah, eds., Singapore: Institute of Southeast Asian Studies, 2009).
- New Directions in Islamic Thought: Exploring Reform and Muslim Tradition* (Kari Vogt, Lena Larsen, and Christian Moe, eds., London: I.B. Taurus, 2009).
- Wanted: Equality and Justice in the Muslim Family* (Zainah Anwar, ed., Kuala Lumpur: Musawah, 2009).
- Windows of Faith: Muslim Women Scholar-Activists in North America* (Gisela Webb, ed., Syracuse University Press, 2000).

NOTES

1. Musawah would like to thank the members of the CEDAW Project Team:
Project Leader: Zainah Anwar
Advisory Team: Amira Sonbol, Ziba Mir-Hosseini, Cassandra Balchin, Shanthi Dairiam
Writing Team: Jana Rumminger, Janine Moussa, Zainah Anwar
Research Team: Janine Moussa (chief researcher), supported by Yasmin Masidi, Sujatha Rangaswami, Jessica D'Cruz, Magdalena Piskunowicz, and Esra Esenlik. Thanks also to Vijay Nagaraj for his support to the Geneva-based researchers.
Editing Team: Janine Moussa, Jana Rumminger, Zainah Anwar, Cassandra Balchin and other members of the advisory team.
2. Azerbaijan, Burkina Faso, Lebanon, and Uzbekistan.
3. It is important to note that several members of the OIC are themselves majority non-Muslim, with significant Muslim minority populations. These countries of those reviewed in the study include Benin, Cameroon, Gabon, Guinea Bissau, Guyana, Mozambique, Suriname, Togo, and Uganda. See 'Mapping the Global Muslim Population: a report on the size and distribution of the World's Muslim population', Pew Research Center (2009), available at <http://pewforum.org/Muslim/Mapping-the-Global-Muslim-Population.aspx>.
4. E.g., Frances Raday, 'Culture, Religion, and CEDAW's Article 5(a)', in Hanna Beate Schöpp-Schilling and Cees Flinterman (eds.), *The Circle of Empowerment: Twenty-Five Years of the Committee on the Elimination of Discrimination against Women*, New York: Feminist Press (2007), pp. 68–85; Collectif 95 Maghreb Égalité, *Guide to Equality in the Family in the Maghreb* (2005); UNIFEM Western Asia Regional Office, 'Report of the Round Table Workshop: CEDAW and Islam and the Human Rights of Women', Amman, Jordan, 18–19 October 1999; International Women's Rights Action Watch Asia Pacific, Occasional Paper No. 1, *The Status of CEDAW Implementation in ASEAN Countries and Selected Muslim Countries* (2004), available at <http://www.iwraw-ap.org/aboutus/pdf/OPSI.pdf>; International Council on Human Rights Policy, *When Legal Worlds Overlap: Human Rights, State and Non-State Law*, available at http://www.ichrp.org/en/zoom-in/when_legal_worlds_overlap; Shaheen Sardar Ali, *Conceptualizing Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan*, available at <http://www.unifem.org.in/cedaw.html>; Association démocratique des femmes du Maroc, *Report on the Application of CEDAW in the Arab World* (May 2009), available at <http://cedaw.wordpress.com/2009/07/15/report-on-the-application-of-cedaw-in-the-arab-world/>.
5. Dower, or *mahr*, is a key concept in Muslim Family laws. Dowry, or the goods that a bride takes with her to the marital home, is not a concept recognised in Muslim jurisprudence. Most non-English speaking Muslim communities have completely distinct terms for the two practices and the tendency to confuse dower and dowry or use them interchangeably in English is a matter of language.
6. Available at <http://www2.ohchr.org/english/law/cedaw.htm>.
7. Available at <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>.
8. Report of the Committee on the Elimination of Discrimination against Women, Eighteenth and Nineteenth CEDAW Sessions, A/53/38/Rev.1 (1998), available at <http://un.org/womenwatch/daw/cedaw/reports/18report.pdf>, pp. 47–50.
9. See 'Report of the Committee on the Elimination of Discrimination Against Women (Eighteenth and nineteenth sessions)', A/53/38/Rev.1 (1998), pp. 47–50, available at www.un.org/womenwatch/daw/cedaw/reports/18report.pdf [hereinafter 'CEDAW Committee Statement on reservations']; CEDAW General Recommendation number 21: Equality in marriage and family relations (1994), para. 44, available at www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21; Concluding observations where States parties continue to hold reservations to the Convention.
10. 'CEDAW Committee Statement on reservations', p. 49, para. 15.
11. *Ibid.*, paras. 16–17.
12. See Vienna Convention on the Law of Treaties (1969), article 26.
13. *Ibid.*, article 19(c).

14. United Arab Emirates Concluding observations, U.N. Doc. CEDAW/C/ARE/CO/1 (2010), para. 48.
15. Jordan Concluding observations, U.N. Doc. CEDAW/C/JOR/CO/4 (2007), para. 12.
16. Syrian Arab Republic Concluding observations, U.N. Doc. CEDAW/C/SYR/CO/1 (2007), para. 12.
17. Algeria List of issues and questions, U.N. Doc. CEDAW/PSWG/2005/I/CRP.1/Add.1 (2004), para. 1.
18. Maldives List of issues and questions, U.N. Doc. CEDAW/C/MDV/Q/3 (2006), para. 4.
19. Mauritania List of issues and questions, U.N. Doc. CEDAW/C/MRT/Q/1 (2006), para. 4.
20. Saudi Arabia Concluding observations, U.N. Doc. CEDAW/C/SAU/CO/2 (2008), para. 10.
21. Algeria Concluding observations, U.N. Doc. CEDAW/C/DZA/CC/2 (2005), para. 23.
22. Bahrain Concluding observations, U.N. Doc. CEDAW/C/BHR/CO/2 (2008), para. 16.
23. Libya Summary record, U.N. Doc. CEDAW/C/SR.878 (2009), para. 16.
24. Maldives Concluding observations, U.N. Doc. CEDAW/C/MDV/CO/3 (2007), para. 11.
25. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.787 (2007), para. 8.
26. United Arab Emirates Summary record, U.N. Doc. CEDAW/C/SR.914 (2010), para. 21.
27. Maldives Concluding observations, U.N. Doc. CEDAW/C/MDV/CO/3 (2007), para. 11.
28. India Concluding observations, U.N. Doc. CEDAW/C/INC/CO/3 (2007), para. 10, 11.
29. Singapore Concluding observations, U.N. Doc. CEDAW/C/SGP/CO/3 (2007), para. 11, 12.
30. Ibid.
31. Egypt Summary record, U.N. Doc. CEDAW/C/SR.918 (2010), para. 22.
32. Benin Summary record, U.N. Doc. CEDAW/C/SR.688 (2005), para. 21.
33. Cameroon Summary record, U.N. Doc. CEDAW/C/SR.876 (2009), para. 38.
34. Maldives List of issues and questions, U.N. Doc. CEDAW/C/MDV/Q/3 (2006), para. 3.
35. Ibid.
36. Nigeria List of issues and questions, U.N. Doc. CEDAW/C/NGA/Q/6 (2007), para. 25.
37. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.781 (2007), para. 14.
38. Singapore Concluding observations, U.N. Doc. CEDAW/C/SGP/CO/3 (2007), para. 15.
39. Malaysia Concluding observations, U.N. Doc. CEDAW/C/MYS/CO/2 (2006), para. 13.
40. Ibid.
41. Egypt Concluding observations, U.N. Doc. CEDAW/C/EGY/CO/7 (2010), para. 47.
42. Malaysia Concluding observations, U.N. Doc. CEDAW/C/MYS/CO/2 (2006), para. 13.
43. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 47.
44. Egypt Concluding observations, U.N. Doc. CEDAW/C/EGY/CO/7 (2010), para. 48.
45. United Arab Emirates List of issues and questions, U.N. Doc. CEDAW/C/ARE/Q/1 (2009), para. 29.
46. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008), para. 390.
47. Azerbaijan Concluding observations, U.N. Doc. CEDAW/C/AZE/CO/4 (2009), para. 39.
48. Burkina Faso Summary record, U.N. Doc. CEDAW/C/SR.696 (2005), para. 33.
49. Gambia Concluding observations, U.N. Doc. CEDAW/C/GMB/CO/1-3 (2005), para. 20.
50. Guinea Bissau List of issues and questions, U.N. Doc. CEDAW/C/GNB/Q/6/Rev.1 (2009), para. 28.
51. Indonesia List of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5 (2007), para. 29.
52. Kazakhstan Concluding observations, U.N. Doc. CEDAW/C/KAZ/CO/2 (2007), para. 29.
53. Libya List of issues and questions, U.N. Doc. CEDAW/C/LBY/Q/2 (2008), para. 24.
54. Maldives List of issues and questions, U.N. Doc. CEDAW/C/MDV/Q/3 (2006), para. 30.
55. Mali Concluding observations, U.N. Doc. CEDAW/C/MLI/CO/5 (2006), para. 11.
56. Morocco List of issues and questions, U.N. Doc. CEDAW/C/MAR/Q/4 (2007), para. 27.
57. Sierra Leone Summary record, U.N. Doc. CEDAW/C/SR.778 (2007), para. 38.
58. Tajikistan List of issues and questions, U.N. Doc. CEDAW/C/TJK/Q/3 (2006), para. 27.
59. Togo List of issues and questions, U.N. Doc. CEDAW/C/TGO/Q/1-5 (2005), para. 29.
60. Turkmenistan Concluding observations, U.N. Doc. CEDAW/C/TKM/CO/2 (2006), para. 40.
61. Uzbekistan List of issues and questions, CEDAW/C/UZB/Q/4 (2009), para. 23.

62. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008) para. 388.
63. Maldives List of issues and questions, U.N. Doc. CEDAW/C/MDV/Q/3 (2006), para. 30.
64. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008), para. 388.
65. Burkina Faso Summary record, U.N. Doc. CEDAW/C/SR.696 (2005), para. 33.
66. Kazakhstan Concluding observations, U.N. Doc. CEDAW/C/KAZ/CO/2 (2007), para. 29.
67. Tajikistan List of issues and questions, U.N. Doc. CEDAW/C/TJK/Q/3 (2006), para. 27.
68. Uzbekistan Summary record, U.N. Doc. CEDAW/C/SR.908 (2010), para. 44.
69. Kazakhstan Concluding observations, U.N. Doc. CEDAW/C/KAZ/CO/2 (2007), para. 29.
70. Azerbaijan Concluding observations, U.N. Doc. CEDAW/C/AZE/CO/4 (2009), para. 15, 16.
71. Bahrain List of issues and questions, U.N. Doc. CEDAW/C/BHR/Q/2 (2008), para. 27; Bahrain Concluding observations, U.N. Doc. CEDAW/C/BHR/CO/2 (2008), para. 38, 39.
72. Benin List of issues and questions, U.N. Doc. CEDAW/PSWG/2005/II/CRP.1/Add.1 (2005), para. 30.
73. Burkina Faso Concluding observations, U.N. Doc. CEDAW/C/BFA/CO/4-5 (2005), para. 25, 26.
74. Cameroon List of issues and questions, U.N. Doc. CEDAW/C/CMR/Q/3, para. 27.
75. Gabon List of issues and questions, U.N. Doc. CEDAW/PSWG/2005/I/CRP.1/Add.3 (2004), para. 27.
76. Guinea List of issues and questions, U.N. Doc. CEDAW/C/GIN/Q/6 (2007), para. 23.
77. Guinea Bissau List of issues and questions, U.N. Doc. CEDAW/C/GNB/Q/6/Rev.1 (2009), para. 29.
78. Indonesia List of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5 (2007), para. 27.
79. Jordan Concluding observations, U.N. Doc. CEDAW/C/JOR/CO/4 (2007), para. 35, 36.
80. Kazakhstan Concluding observations, U.N. Doc. CEDAW/C/KAZ/CO/2 (2007), para. 29, 30.
81. Malaysia List of issues and questions, U.N. Doc. CEDAW/C/SR.732 (2006), para. 39.
82. Nigeria List of issues and questions, U.N. Doc. CEDAW/C/NGA/Q/6 (2007), para. 26.
83. Pakistan Concluding observations, U.N. Doc. CEDAW/C/PAK/CO/3 (2007), para. 44, 45.
84. Saudi Arabia Concluding observations, U.N. Doc. CEDAW/C/SAU/CO/2 (2008), para. 35, 36.
85. Turkmenistan Concluding observations, U.N. Doc. CEDAW/C/TKM/CO/2 (2006), para. 41, 40.
86. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008), para. 380.
87. Bahrain Concluding observations, U.N. Doc. CEDAW/C/BHR/CO/2 (2008), para. 39.
88. Indonesia List of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5 (2007), para. 28.
89. Nigeria List of issues and questions, CEDAW/C/NGA/Q/6 (2007), para. 26.
90. Togo Summary record, U.N. Doc. CEDAW/C/SR.704 (2006), para. 80.
91. Azerbaijan Concluding observations, U.N. Doc. CEDAW/C/AZE/CO/3 (2007), para. 30.
92. Jordan Concluding observations, U.N. Doc. CEDAW/C/JOR/CO/4 (2007), para. 36.
93. Nigeria List of issues and questions, U.N. Doc. CEDAW/C/NGA/Q/6 (2007), para. 26.
94. Pakistan Concluding observations, U.N. Doc. CEDAW/C/PAK/CO/3 (2007), para. 45.
95. Saudi Arabia Concluding observations, U.N. Doc. CEDAW/C/SAU/CO/2 (2008), para. 36.
96. Turkmenistan Concluding observations, U.N. Doc. CEDAW/C/TKM/CO/2 (2006), para. 81.
97. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008), para. 380.
98. Burkina Faso List of issues and questions, U.N. Doc. CEDAW/PSWG/2005/II/CRP.1/Add.2 (2005), para. 27.
99. Cameroon List of issues and questions, U.N. Doc. CEDAW/C/CMR/Q/3 (2008), para. 25.
100. Guinea Bissau Summary record, U.N. Doc. CEDAW/C/SR.904 (2009), para. 59.
101. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 43; Syrian Arab Republic Concluding observations, CEDAW/C/SYR/CO/1 (2007), para. 33, 34.
102. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 43.
103. Bahrain List of issues and questions, U.N. Doc. CEDAW/C/BHR/Q/2 (2008), para. 26.
104. Burkina Faso List of issues and questions, U.N. Doc. CEDAW/PSWG/2005/II/CRP.1/Add.2 (2005), para. 27.

105. Guyana List of issues and questions, U.N. Doc. CEDAW/PSWG/2005/II/CRP.1/Add.5 (2005), para. 26.
106. Lebanon Summary record, U.N. Doc. CEDAW/C/SR.821 (2008), para. 49.
107. Lebanon List of issues and questions, U.N. Doc. CEDAW/C/LBN/Q/3 (2007), para. 28.
108. Suriname Concluding observations, U.N. Doc. CEDAW/C/SUR/CO/3 (2007), para. 11.
109. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008), para. 390.
110. Malaysia Concluding observations, U.N. Doc. CEDAW/C/MYS/CO/2 (2006), para. 21, 22.
111. Gabon State party report, U.N. Doc. CEDAW/C/GAB/2-5 (2003), p. 27.
112. Turkmenistan Summary record, U.N. Doc. CEDAW/C/SR.723 (2006), para. 54.
113. Libya Concluding observations, U.N. Doc. CEDAW/C/LBY/CO/5 (2009), para. 37, 38.
114. Saudi Arabia List of issues and questions, U.N. Doc. CEDAW/C/SAU/Q/2 (2007), article 30.
115. Burkina Faso Summary record, U.N. Doc. CEDAW/C/SR.696 (2005), para. 34.
116. Cameroon List of issues and questions, U.N. Doc. CEDAW/C/CMR/Q/3, para. 27.
117. Togo Concluding observations, U.N. Doc. CEDAW/C/TGO/CO/5 (2006), para. 15.
118. Turkmenistan List of issues and questions, U.N. Doc. CEDAW/C/TKM/Q/2 (2006), para. 30.
119. Azerbaijan Concluding observations, U.N. Doc. CEDAW/C/AZE/CO/3 (2007), para. 16.
120. Gabon Concluding observations, U.N. Doc. CEDAW/C/GAB/CC/2-5 (2005), para. 31.
121. Gambia Concluding observations, U.N. Doc. CEDAW/C/GMB/CO/1-3 (2005), para. 22.
122. Guinea Concluding observations, U.N. Doc. CEDAW/C/GIN/CO/6 (2007), para. 23.
123. Lebanon Concluding observations, U.N. Doc. CEDAW/C/LBN/CO/2 (2005), para. 30.
124. Mali Concluding observations, U.N. Doc. CEDAW/C/MLI/CO/5 (2006), para. 18.
125. Mauritania Concluding observations, U.N. Doc. CEDAW/C/MRT/CO/1 (2007), para. 22.
126. Pakistan List of issues and questions, U.N. Doc. CEDAW/C/PAK/Q/3 (2006), para. 9.
127. Sierra Leone Concluding observations, U.N. Doc. CEDAW/C/SLE/CO/5 (2007), para. 21.
128. Syrian Arab Republic Concluding observations, U.N. Doc. CEDAW/C/SYR/CO/1 (2007), para. 18.
129. Togo Concluding observations, U.N. Doc. CEDAW/C/TGO/CO/5 (2006), para. 15.
130. Uzbekistan Concluding observations, U.N. Doc. CEDAW/C/UZB/CO/3 (2006), para. 20.
131. Gambia Concluding observations, U.N. Doc. CEDAW/C/GMB/CO/1-3 (2005), para. 22.
132. Syrian Arab Republic Concluding observations, U.N. Doc. CEDAW/C/SYR/CO/1 (2007), para. 18.
133. Togo Concluding observations, U.N. Doc. CEDAW/C/TGO/CO/5 (2006), para. 15.
134. Azerbaijan Concluding observations, U.N. Doc. CEDAW/C/AZE/CO/4 (2009), para. 40.
135. Burkina Faso List of issues and questions, U.N. Doc. CEDAW/C/BFA/Q/6 (2010), para. 36.
136. Guinea Bissau Concluding observations, U.N. Doc. CEDAW/C/GNB/CO/6 (2009), para. 26.
137. Indonesia Concluding observations, U.N. Doc. CEDAW/C/IDN/CO/5 (2007), para. 13.
138. Nigeria Concluding observations, U.N. Doc. CEDAW/C/NGA/CO/6 (2008), para. 323.
139. Togo Concluding observations, U.N. Doc. CEDAW/C/TGO/CO (2006), para. 15.
140. Uzbekistan Concluding observations, U.N. Doc. CEDAW/C/UZB/CO/3 (2006), para. 20.
141. Yemen Concluding observations, U.N. Doc. CEDAW/C/YEM/CO/6 (2008), para. 364.
142. Burkina Faso List of issues and questions, U.N. Doc. CEDAW/C/BFA/Q/6 (2010), para. 36.
143. Azerbaijan Concluding observations, U.N. Doc. CEDAW/C/AZE/CO/4 (2009), para. 40.
144. Uzbekistan Concluding observations, U.N. Doc. CEDAW/C/UZB/CO/3 (2006), para. 20.
145. Jordan Concluding observations, U.N. Doc. CEDAW/C/JOR/CO/4 (2007), para. 12.
146. Lebanon Summary record, U.N. Doc. CEDAW/C/SR.820 (2008), para. 68.
147. Singapore Summary record, U.N. Doc. CEDAW/C/SR.803 (A) (2007), para. 17.
148. United Arab Emirates Concluding observations, U.N. Doc. CEDAW/C/ARE/CO/1 (2010), para. 46.
149. *Ibid.*

150. Maldives Summary record, U.N. Doc. CEDAW/C/SR.764 (B) (2007), para. 57.
151. United Arab Emirates Summary record, U.N. Doc. CEDAW/C/SR.915 (2010), para. 37.
152. Singapore Summary record, U.N. Doc. CEDAW/C/SR.803 (A) (2007), para. 17.
153. Jordan Concluding observations, U.N. Doc. CEDAW/C/JOR/CO/4 (2007), para. 12.
154. Indonesia Concluding observations, U.N. Doc. CEDAW/C/IDN/CO/5 (2007), para. 13.
155. Maldives Concluding observations, U.N. Doc. CEDAW/C/MDV/CO/3 (2007), para. 37.
156. Jordan Concluding observations, U.N. Doc. CEDAW/C/JOR/CO/4 (2007), para. 11, 12.
157. Malaysia Concluding observations, U.N. Doc. CEDAW/C/MYS/CO/2 (2007), para. 14.
158. Maldives Concluding observations, U.N. Doc. CEDAW/C/MDV/CO/3 (2007), para. 37.
159. Cameroon Summary record, U.N. Doc. CEDAW/C/SR.877 (2009), para. 55.
160. Egypt Responses to list of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
161. Gambia Summary record, U.N. Doc. CEDAW/C/SR.697 (2005), para. 12.
162. Mali Summary record, U.N. Doc. CEDAW/C/SR.717 (2006), para. 36.
163. Maldives Summary record, U.N. Doc. CEDAW/C/SR.764 (2007).
164. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.781 (2007), para. 42.
165. United Arab Emirates Concluding observations, U.N. Doc. CEDAW/C/ARE/CO/1 (2010), para. 45.
166. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.782 (2007), para. 47.
167. Cameroon Summary record, U.N. Doc. CEDAW/C/SR.877 (2009), para. 55.
168. Maldives Summary record, U.N. Doc. CEDAW/C/SR.764 (2007).
169. *Ibid.*
170. Egypt Responses to list of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
171. Mali Summary record, U.N. Doc. CEDAW/C/SR.717 (2006), para. 36.
172. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.787 (2007), para. 4.
173. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.781 (2007), para. 42.
174. India Summary record, U.N. Doc. CEDAW/C/SR.761(A) (2007), para. 17; U.N. Doc. CEDAW/C/SR.762(A) (2007), para. 31, 33, 38.
175. India Summary record, U.N. Doc. CEDAW/C/SR.762(A) (2007), para. 38.
176. India Concluding observations, U.N. Doc. CEDAW/C/IND/CO/3 (2007), para. 10, 11.
177. Singapore Concluding observations, U.N. Doc. CEDAW/C/SGP/CO/3 (2007), para. 15-16.
178. Kazakhstan State party report, U.N. Doc. CEDAW/C/KAZ/2 (2005), p. 8.
179. Gabon State party report, U.N. Doc. CEDAW/C/GAB/2-5 (2003), p. 5.
180. Guinea Bissau List of issues and questions, U.N. Doc. CEDAW/C/GNB/Q/6/Add.1 (2009), para. 144.
181. Lebanon State party report, U.N. Doc. CEDAW/C/LBN/3 (2006), para. 5.
182. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 159.
183. Azerbaijan State party report, U.N. Doc. CEDAW/C/AZE/2-3 (2005), p. 83.
184. Turkey State party report, U.N. Doc. CEDAW/C/TUR/4-5 (2003) p. 4.
185. Azerbaijan State party report, U.N. Doc. CEDAW/C/AZE/2-3 (2005), p. 83.
186. Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 390.
187. Kazakhstan State party report, U.N. Doc. CEDAW/C/KAZ/2 (2005), p. 8.
188. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 159.
189. Turkey Summary record, U.N. Doc. CEDAW/C/SR.678 (2005), para. 57.
190. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 159.
191. Nigeria Responses to list of issues and questions, U.N. Doc. CEDAW/C/NGA/Q/6/Add.1 (2008), para. 25.
192. Syria State party report, U.N. Doc. CEDAW/C/SYR/1 (2005), p. 15.
193. Algeria Responses to list of issues and questions, U.N. doc. CEDAW/PSWG/2005/I/CRP.2 (2004), p. 4.
194. Suriname Summary record, U.N. Doc. CEDAW/C/SR.770 (2007).

195. Mali State party report, U.N. Doc. CEDAW/C/MLI/2-5 (2004), p. 15. See also
196. Algeria Responses to list of issues and questions, U.N. doc. CEDAW/PSWG/2005/I/CRP.2 (2004), p. 4.
197. Indonesia Response to the list of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5/Add.1 (2007), para. 26.
198. Guinea State party report, U.N. Doc. CEDAW/C/GIN/4-6 (2005), p. 12.
199. Nigeria Responses to list of issues and questions, U.N. Doc. CEDAW/C/NGA/Q/6/Add.1 (2008), para. 25.
200. Ibid.
201. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 159.
202. Togo Responses to list of issues and questions, U.N. Doc. CEDAW/C/TGO/Q/1-5/Add.1 (2006), p. 38.
203. Cameroon Responses to list of issues and questions, U.N. Doc. CEDAW/C/CMR/Q/3/Add.1 (2008), para. 27.
204. Thailand State party report, U.N. Doc. CEDAW/C/THA/4-5, (2004), para. 22.
205. Philippines Summary record, U.N. Doc. CEDAW/C/SR.748 (A) (2006), para. 49.
206. Syrian Arab Republic State party report, U.N. Doc. CEDAW/C/SYR/1 (2005), p. 15.
207. Bahrain State Party Report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 10.
208. United Arab Emirates State party report, U.N. Doc. CEDAW/C/ARE/1 (2008), p. 5.
209. Libya State party report, U.N. Doc. CEDAW/C/LBY/2 (1999), p. 2.
210. Syrian Arab Republic State Party Report, U.N. Doc. CEDAW/C/SYR/1 (2005).
211. Mauritania Responses to list of issues and questions, U.N. Doc. CEDAW/C/MRT/Q/1/Add.1 (2007).
212. Bahrain State Party Report, U.N. Doc. CEDAW/C/BHR/2 (2007).
213. United Arab Emirates State party report, U.N. Doc. CEDAW/C/ARE/1 (2008).
214. Egypt Responses to list of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
215. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 49.
216. Jordan Responses to list of issues and questions, U.N. Doc. CEDAW/C/JOR/Q/4/Add.1 (2007), para. 6.
217. Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 69.
218. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.781 (2007), para. 19.
219. Saudi Arabia State party report, U.N. Doc. CEDAW/C/SAU/2 (2007), p. 10.
220. Ibid.
221. Malaysia Summary record, U.N. Doc. CEDAW/C/SR.732 (2006), para. 54.
222. Egypt List of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
223. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2005), para. 49.
224. Bahrain State party report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 32.
225. Egypt State party report, U.N. Doc. CEDAW/C/EGY/7 (2008), p. 74.
226. Libya State party report, U.N. Doc. CEDAW/C/LBY/2 (1999), p. 2.
227. Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 92.
228. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.787 (2007), para. 11.
229. Nigeria State party report, U.N. Doc. CEDAW/C/NGA/6 (2006), p. 98.
230. Saudi Arabia State party report, U.N. Doc. CEDAW/C/SAU/2 (2007), p. 7.
231. Bahrain State party report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 32.
232. Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 92.
233. Ibid.
234. Libya State party report, U.N. Doc. CEDAW/C/LBY/2 (1999), p. 2.
235. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.781 (2007), para. 23.
236. Egypt State party report, U.N. Doc. CEDAW/C/EGY/7 (2008), p. 74.
237. Ibid.
238. Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 410.
239. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.782 (2007), para. 52.
240. United Arab Emirates State party report, U.N. Doc. CEDAW/C/ARE/1 (2008), p. 58.
241. Ibid.
242. Egypt State party report, U.N. Doc. CEDAW/C/EGY/7 (2008), p. 75.

243. Bahrain Summary record, U.N. Doc. CEDAW/C/SR.861 (2009), para 66.
244. Saudi Arabia Summary record, U.N. Doc. CEDAW/C/SR.816 (2008), para. 17.
245. Gabon State party report, U.N. Doc. CEDAW/C/GAB/2-5 (2003), p. 26.
246. *Ibid.*, p. 27.
247. For example, Gabon, Guinea, Guinea Bissau, Kazakhstan, Lebanon, Nigeria, Turkey and Uganda.
248. Burkina Faso State party report, U.N. Doc. CEDAW/C/BFA/6 (2009), para. 58.
249. Mali Summary record, U.N. Doc. CEDAW/C/SR.718 (2006), para. 56.
250. Pakistan State party report, U.N. Doc. CEDAW/C/PAK/1-3 (2005), para. 478.
251. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 11.
252. Burkina Faso Summary record, U.N. Doc. CEDAW/C/SR.696 (2005), para. 46.
253. Mali Summary record, U.N. Doc. CEDAW/C/SR.718 (2006), para. 56.
254. Indonesia List of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5/Add.1 (2007) p. 25.
255. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 11.
256. Indonesia List of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5/Add.1 (2007), p. 25.
257. Benin State party report, U.N. Doc. CEDAW/C/BEN/1-3 (2002), p. 22.
258. Lebanon Summary record, U.N. Doc. CEDAW/C/SR.821 (2008), para. 64.
259. Mali Summary record, U.N. Doc. CEDAW/C/SR.717 (2006), para. 27.
260. Togo Summary record, U.N. Doc. CEDAW/C/SR.704 (2006), para. 67.
261. Pakistan Summary record, U.N. Doc. CEDAW/C/SR.781 (2007), para. 44.
262. Benin State party report, U.N. Doc. CEDAW/C/BEN/1-3 (2002), p. 22.
263. Pakistan State party report, U.N. Doc. CEDAW/C/PAK/1-3 (2005), para. 90.
264. Turkey Summary record, U.N. Doc. CEDAW/C/SR.677 (2005), para. 31.
265. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 15.
266. United Arab Emirates Summary record, U.N. Doc. CEDAW/C/SR.915 (2010), para. 36.
267. Gabon Summary record, U.N. Doc. CEDAW/C/SR.670 (2005), para. 42.
268. Turkmenistan Summary record, U.N. Doc. CEDAW/C/SR.724 (2006), para. 57.
269. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 35.
270. United Arab Emirates Summary record, U.N. Doc. CEDAW/C/SR.915 (2010), para. 35.
271. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 35.
272. Malaysia Summary record, U.N. Doc. CEDAW/C/SR.732 (2006), para. 43.
273. Maldives State party report, U.N. Doc. CEDAW/C/MDV/2-3 (2005), para. 41.
274. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.788 (2007), para. 54.
275. Morocco State party report, U.N. Doc. CEDAW/C/MAR/4 (2006), para. 367.
276. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 51.
277. Togo List of issues and questions, U.N. Doc. CEDAW/C/TGO/Q/1-5/Add.1 (2006), p. 38.
278. Yemen Summary record, U.N. Doc. CEDAW/C/SR.833 (2008), para. 50.
279. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.788 (2007), para. 54.
280. Syrian Arab Republic List of issues and questions, U.N. Doc. CEDAW/C/TGO/Q/1-5/Add.1 (2006), p. 38.
281. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 51.
282. Malaysia Summary record, U.N. Doc. CEDAW/C/SR.732 (2006), para. 43.
283. Jordan Summary record, U.N. Doc. CEDAW/C/SR.806 (A) (2007), para. 31.
284. 'Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women', U.N. Doc. CEDAW/SP/2010/2, 1 March 2010, p. 21.
285. *Ibid.*, p. 48.
286. Singapore Summary record, U.N. Doc. CEDAW/C/SR.803 (A) (2007), para. 52.
287. *Ibid.*
288. India State party report, U.N. Doc. CEDAW/C/IND/2-3 (2005), para.4.
289. India Summary record, U.N. Doc. CEDAW/C/SR.761(A) (2007), para. 17.

290. *Ibid.*, para. 30.
291. Philippines Summary record, U.N. Doc. CEDAW/C/SR.747 (A) (2006), para. 24.
292. Bahrain State party report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 32.
293. Gambia State party report, U.N. Doc. CEDAW/C/GMB/1-3 (2003), p. 13.
294. Libya Summary record, U.N. Doc. CEDAW/C/SR.879 (2009), para. 37.
295. Singapore Summary record, U.N. Doc. CEDAW/C/SR.803 (A) (2007), para. 39 and 52.
296. Bahrain State party report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 32.
297. Libya Summary record, U.N. Doc. CEDAW/C/SR.879 (2009), para. 38.
298. Gambia State party report, U.N. Doc. CEDAW/C/GMB/1-3 (2003), p. 13.
299. Singapore Summary record, U.N. Doc. CEDAW/C/SR.803 (A) (2007), para. 52.
300. Azerbaijan State party report, U.N. Doc. CEDAW/C/AZE/2-3 (2007), p. 83.
301. Guinea Summary record, U.N. Doc. CEDAW/C/SR.796 (A) (2007), para. 23.
302. Mali Summary record, U.N. Doc. CEDAW/C/SR.718 (2006), para. 55.
303. Jordan Summary record, U.N. Doc. CEDAW/C/SR.806 (A) (2007), para. 29.
304. Lebanon Responses to list of issues and questions, U.N. Doc. CEDAW/C/LBN/Q/3/Add.1 (2007), p. 12.
305. Thailand Summary record, U.N. Doc. CEDAW/SR.708 (2006), para. 54.
306. Jordan Summary record, U.N. Doc. CEDAW/C/SR.806 (A) (2007), para. 29.
307. Thailand Summary record, U.N. Doc. CEDAW/SR.708 (2006), para. 54.
308. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 15.
309. Jordan Summary record, U.N. Doc. CEDAW/C/SR.806 (A) (2007), para. 29.
310. Lebanon Responses to list of issues and questions, U.N. Doc. CEDAW/C/LBN/Q/3/Add.1 (2007), p. 12.
311. Mali Summary record, U.N. Doc. CEDAW/C/SR.718 (2006), para. 55.
312. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 15.
313. Lebanon Responses to list of issues and questions, U.N. Doc. CEDAW/C/LBN/Q/3/Add.1 (2007), p. 12.
314. Gambia State party report, U.N. Doc. CEDAW/C/GMB/1-3 (2003), p. 14.
315. Togo State party report, U.N. Doc. CEDAW/C/TGO/1-5 (2004), p. 39.
316. Guinea Bissau Responses to list of issues and questions, U.N. Doc. CEDAW/C/GNB/Q/6/Add.1 (2009), para. 170.
317. Kazakhstan Summary record, U.N. Doc. CEDAW/C/SR.758 (2007).
318. Turkmenistan Summary record, U.N. Doc. CEDAW/C/SR.724 (2006), para. 58.
319. Benin State party report, U.N. Doc. CEDAW/C/BEN/1-3 (2002), p. 88.
320. Guinea State party report, U.N. Doc. CEDAW/C/GIN/4-6 (2005), p. 19.
321. Mali State party report, U.N. Doc. CEDAW/C/MLI/2-5 (2004), p. 63.
322. *Ibid.*
323. Benin State party report, U.N. Doc. CEDAW/C/BEN/1-3 (2002), p. 88.
324. Guinea State party report, U.N. Doc. CEDAW/C/GIN/4-6 (2005), p. 19.
325. Gabon Responses to the list of issues and questions, U.N. Doc. CEDAW/PSWG/2005/I/CRP.2/Add.2 (2004), p. 5.
326. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 42.
327. Gabon Summary record, U.N. Doc. CEDAW/C/SR.669 (2005), para. 25.
328. Gambia State party report, U.N. Doc. CEDAW/C/GMB/1-3 (2003), p. 17.
329. Guinea Bissau Summary record, U.N. Doc. CEDAW/C/SR.904 (2009), para. 64.
330. Maldives Summary record, U.N. Doc. CEDAW/C/SR.763 (B) (2007).
331. Gambia State party report, U.N. Doc. CEDAW/C/GMB/1-3 (2003), p. 17.
332. Guinea Bissau Summary record, U.N. Doc. CEDAW/C/SR.904 (2009), para. 64.
333. Gabon Summary record, U.N. Doc. CEDAW/C/SR.669 (2005), para. 25.
334. Maldives Summary record, U.N. Doc. CEDAW/C/SR.763 (B) (2007).
335. Egypt State party report, U.N. Doc. CEDAW/C/EGY/7 (2008).

336. Mali Summary record, U.N. Doc. CEDAW/C/SR.717 (2006), para. 40.
337. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.787 (2007), para. 4.
338. Pakistan State party report, U.N. Doc. CEDAW/C/PAK/1-3 (2005), para. 481.
339. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 51.
340. Mauritania Summary record, U.N. Doc. CEDAW/C/SR.787 (2007), para. 4.
341. Mali Summary record, U.N. Doc. CEDAW/C/SR.717 (2006), para. 40.
342. Egypt State party report, U.N. Doc. CEDAW/C/EGY/7 (2008).
343. Pakistan State party report, U.N. Doc. CEDAW/C/PAK/1-3 (2005), para. 481.
344. Azerbaijan Summary record, U.N. Doc. CEDAW/C/SR.766 (2007).
345. Burkina Faso List of issues and questions, U.N. Doc. CEDAW/C/BFA/Q/6/Add.1 (2010), p. 7.
346. Gambia Summary record, U.N. Doc. CEDAW/C/SR.697 (2005), para. 58.
347. Indonesia Summary record, U.N. Doc. CEDAW/C/SR.800 (A) (2007), para. 37.
348. Maldives Responses to list of issues and questions, U.N. Doc. CEDAW/C/NAM/Q/3/Add.1 (2006), para. 27.
349. Pakistan Responses to list of issues and questions, U.N. Doc. CEDAW/C/PAK/Q/3/Add.1 (2007), para. 41.
350. Gambia Summary record, U.N. Doc. CEDAW/C/SR.697 (2005), para. 58.
351. Indonesia Summary record, U.N. Doc. CEDAW/C/SR.800 (A) (2007), para. 37.
352. Azerbaijan Summary record, U.N. Doc. CEDAW/C/SR.766 (2007).
353. Morocco Responses to list of issues and questions, U.N. Doc. CEDAW/C/MAR/Q/4/Add.1 (2007), p. 19.
354. Singapore Summary record, U.N. Doc. CEDAW/C/SR.804 (A) (2007), para. 34.
355. Maldives State party report, U.N. Doc. CEDAW/C/MDV/2-3 (2005), para. 5.2.1.
356. Indonesia Summary record, U.N. Doc. CEDAW/C/SR.800 (A) (2007), para. 38.
357. Pakistan Shadow report submitted by the National Commission for Justice and Peace, 38th session (2007), p. 51, available at <http://www.iwraw-ap.org/resources/pdf/Pakistan%20SR%20%28NCJP%29.pdf>.
358. See, for example, the shadow report by the Center for Egyptian Women's Legal Assistance, 45th CEDAW session (2010), p. 2. See also the shadow report submitted by Mafiwasta (United Arab Emirates), 45th CEDAW session (2010), p. 13, available at http://www2.ohchr.org/english/bodies/cedaw/docs/Mafiwasta_E.pdf.
359. Ibid. See also the shadow report prepared by the Committee for the Follow-Up on Women's Issues (Lebanon), 40th CEDAW session (2008), p.7, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CommitteeFollowuponWomen.pdf>.
360. See, for example, the shadow report submitted by the Association of Women for Action and Research (Singapore), 39th CEDAW session (2007), para. 16.40, available at <http://www.iwraw-ap.org/resources/pdf/Singapore%20SR%20final.pdf>.
361. See, for example, the shadow report submitted by the CEDAW Working Group Initiative (Indonesia), 39th CEDAW Session (2007), para. 155, available at <http://www.iwraw-ap.org/resources/pdf/Indonesian%20SR%20Final.pdf>.
362. See, for example, the alternative report submitted by the Human Rights Center of Azerbaijan, 44th CEDAW session (2009), p. 16, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HRCA_Azerbaijan44.pdf. See also the shadow report prepared by the CEDAW Working Report Initiative (Indonesia), 39th CEDAW session (2007), para. 191.
363. See, for example, the shadow report submitted by Sisters Arab Forum (Yemen), 41st CEDAW session (2008), p.7, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/SAFHRYemen41.pdf>.
364. See, for example, the alternative report on CEDAW for the Gambia, 33rd CEDAW session (2005), p.3 and 8, available at <http://www.iwraw-ap.org/resources/pdf/Gambia.pdf>.
365. See, for example, the shadow report submitted by the CEDAW Working Group Initiative (Indonesia), 39th CEDAW session (2007), para.200(1), available at <http://www.iwraw-ap.org/resources/pdf/Indonesian%20SR%20Final.pdf>.
366. See, for example, the alternative report submitted by the Partners Network for the Promotion and Protection Human Rights in Mauritania, 38th CEDAW session (2007), p. 12, available at http://www.iwraw-ap.org/resources/pdf/38_shadow_reports/Mauritania_Alternative_Report_English.

pdf. See also the shadow report submitted by various Niger NGOs, 38th CEDAW session (2007), p. 4, available at <http://www.iwraw-ap.org/resources/pdf/Niger%20SR%20%28updated%29.pdf>.

- ^{367.} See, for example, the alternative report submitted by the Working Group of the Nongovernmental Female Organisations of Kazakhstan, 37th CEDAW session (2007), p. 45, available at <http://www.iwraw-ap.org/resources/pdf/Kazakhstan%20Shadow%20Report.pdf>.
- ^{368.} See, for example, the shadow report submitted by the Association of Women for Action and Research (Singapore), 39th CEDAW session (2007), p. vi, vii, available at <http://www.iwraw-ap.org/resources/pdf/Singapore%20SR%20final.pdf>. See also the shadow report coordinated by Karama Network of Jordan, 39th CEDAW session (2007), p. 16, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEWLAEgypt_45.pdf.
- ^{369.} See, for example, the shadow report submitted by the National Commission for Justice and Peace (Pakistan), 38th CEDAW session (2007), p. 54, available at <http://www.iwraw-ap.org/resources/pdf/Pakistan%20SR%20%28NCJP%29.pdf>.
- ^{370.} Ibid.
- ^{371.} See, for example, the shadow report submitted by the Center for Egyptian Women's Legal Assistance (Egypt), 45th CEDAW session (2010), p. 12, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEWLAEgypt_45.pdf. See also the shadow report submitted by Mozambique non-governmental organisations, 38th CEDAW session (2007), p. 9, available at <http://www.iwraw-ap.org/resources/pdf/Mozambique.pdf>.
- ^{372.} See, for example, the shadow report submitted by the CEDAW Working Group Initiative (Indonesia), 39th CEDAW session (2007), para. 200(2). See also the shadow report submitted by Women for Women's Human Rights – New Ways (Turkey), 32nd CEDAW session (2005), p.4 and p.12 available at http://www.iwraw-ap.org/resources/turkey_WWHR-New_Ways%28Eng%29.pdf.
- ^{373.} See, for example, the alternative report submitted by 'Monitoring the Implementation of CEDAW in Azerbaijan', 44th CEDAW session (2009), p. 23. See also 'Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia', submitted by Human Rights Watch, 40th CEDAW session (2008), available at http://www.iwraw-ap.org/resources/pdf/40_shadow_reports/Saudi_Arabia_Report_by_HRW.pdf.
- ^{374.} See, for example, the shadow report submitted by non-governmental organisations of Tajikistan, 37th CEDAW session (2007), p. 62, available at <http://www.iwraw-ap.org/resources/pdf/Tajikistan%20final%20report%20English.pdf>.
- ^{375.} See, for example, the alternative report submitted by the Partners Network for the Promotion and Protection Human Rights in Mauritania, 38th CEDAW session (2007), p. 11, available at http://www.iwraw-ap.org/resources/pdf/38_shadow_reports/Mauritania_Alternative_Report_English.pdf. See also the shadow report compiled by the Nigeria NGO Coalition on CEDAW, 41st CEDAW session (2008), p. 64, available at http://www.iwraw-ap.org/resources/pdf/41_shadow_reports/Nigeria_SR_by_WACOL_NGO_Coalition.pdf.
- ^{376.} See, for example, the alternative report submitted by Le Collectif 95 Maghreb Egalite (Algeria), 20th CEDAW session (2005), para. 11, available at http://www.iwraw-ap.org/resources/algeria_%28french%29.pdf.
- ^{377.} See, for example, the shadow report submitted by the Center for Reproductive Rights, on Nigeria, 41st CEDAW session (2008), p. 63.
- ^{378.} See, for example, the shadow report submitted by Le Collectif 95 Maghreb Egalite (Algeria), 20th CEDAW session (2005), para. 11, available at http://www.iwraw-ap.org/resources/algeria_%28french%29.pdf.
- ^{379.} See, for example, the shadow report submitted by the Association of Women for Action and Research (Singapore), 39th CEDAW session (2007), paras.16.22-24 and 16.45, available at <http://www.iwraw-ap.org/resources/pdf/Singapore%20SR%20final.pdf>.
- ^{380.} For more detailed discussions and references, see the following chapters in *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar, Musawah (2009): Ziba Mir-Hosseini, 'Towards Gender Equality: Muslim Family Laws and the *Shari'ah*'; Muhammad Khalid Masud, '*Ikhtilaf al-Fuqaha*: Diversity in *Fiqh* as a Social Construction'; and Khaled Abou El Fadl, 'The Human Rights Commitment in Modern Islam'.
- ^{381.} In fact, several States parties to the CEDAW Convention have acknowledged the diversity of interpretations. A delegate from the United Arab Emirates, for instance, 'said that there

- was indeed room for interpretation in Islamic jurisprudence', United Arab Emirates Summary record, U.N. Doc. CEDAW/C/SR.915 (2010), para. 35, while a Syrian delegate said that 'people tended to confuse the traditional with the religious, as shown by the fact that the Islamic countries did not all have the same positions on the various articles of the Convention'. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 51.
382. Egypt Responses to list of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
383. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, vol. 3, 1st edition, Cairo: Sa'ada, 1955, p. 1.
384. United Arab Emirates Responses to list of issues and questions, U.N. Doc. CEDAW/C/ARE/Q/1/Add.1 (2009), p. 4.
385. Malaysia Summary record, U.N. Doc. CEDAW/C/SR.732 (2006), para. 54.
386. For more information on *ikhtilaf*, see Muhammad Khalid Masud, 'Ikhtilaf al-Fuqaha: Diversity in *Fiqh* as a Social Construction', in *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar, Kuala Lumpur: Musawah (2009), available at <http://www.musawah.org/docs/pubs/wanted/Wanted-MKM-EN.pdf>.
387. For more detailed information, see Ziba Mir-Hosseini, 'Towards Gender Equality: Muslim Family Laws and the *Shari'ah*', in *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar, Kuala Lumpur: Musawah (2009), available at <http://www.musawah.org/docs/pubs/wanted/Wanted-ZMH-EN.pdf>.
388. United Arab Emirates State party report, U.N. Doc. CEDAW/C/ARE/1 (2008), p. 17.
389. Saudi Arabia Responses to the list of issues and questions, U.N. Doc. CEDAW/C/SAU/Q/2/Add.1 (2007), p. 29.
390. Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 410.
391. IRAW Asia Pacific, CEDAW Knowledge Center, 'The Principle of Equality', available at <http://www.irow-ap.org/convention/equality.htm>.
392. For a detailed discussion on this, see International Council on Human Rights Policy, *When Legal Worlds Overlap: Human Rights, State and Non-State Law*, Geneva: International Council on Human Rights Policy (2009).
393. *Ibid.*, pp. 135-7.
394. In addition, a chart outlining rights-based laws in the Muslim world can be found in Annex 2.
395. Indonesia Responses to list of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5/Add.1 (2007), p. 25.
396. Guinea State party report, U.N. Doc. CEDAW/C/GIN/4-6 (2005), p. 19.
397. Maldives Summary record, U.N. Doc. CEDAW/C/SR.764 (B) (2007), para. 60, 62, 63.
398. Togo State party report, U.N. Doc. CEDAW/C/TGO/1-5 (2004), p. 16.
399. Indonesia Responses to list of issues and questions, U.N. Doc. CEDAW/C/IDN/Q/5/Add.1 (2007), p. 25.
400. Bahrain State Party Report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 108.
401. Maldives Summary record, U.N. Doc. CEDAW/C/SR.764 (B) (2007), para. 62.
402. Saudi Arabia Responses to the list of issues and questions, U.N. Doc. CEDAW/C/SAU/Q/2/Add.1 (2007), p. 30.
403. 'Early Marriage', available at http://www.sistersinislam.org.my/index.php?option=com_content&task=view&id=575&Itemid=298.
404. Convention on the Rights of the Child, Article 1: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.
405. Paragraphs 36 and 38 of CEDAW General Recommendation number 21 state that 'the minimum age for marriage should be 18 years for both man and woman', and that provisions for different ages of marriage for men and women should be abolished. The Committee on the Rights of the Child has stated that different ages for boys and girls violates the Convention and that States parties to the CRC must ensure that boys and girls are treated equally with respect to minimum age of marriage and also recommends that 18 be the minimum age for both boys and girls. See Rea A. Chiongson, *The Right to Decide If, When and Whom to Marry: Obligations of the State under CEDAW and Other International Human Rights Instruments*, International Women's Rights Action Watch Asia Pacific Occasional Papers Series No.6 (2005), p. 20. In addition, the Human Rights Committee and Committee on Economic, Social and Cultural Rights have stated that a difference in ages violates the instrument, that the legal minimum age should be 18 for both boys and girls, and

that early marriage has harmful effects on children. Ibid. The Universal Declaration of Human Rights and CEDAW require equal rights for men and women in marriage, during marriage, and at its dissolution.

- ⁴⁰⁶. Paragraph 275(b) of the BPFA specifies that among the actions to be taken by Governments and international and non-governmental organisations with regard to girls is to '[g]enerate social support for the enforcement of laws on the minimum legal age for marriage, in particular by providing educational opportunities for girls'. The Putrajaya Declaration from the Ministerial Meeting of the Non-Aligned Movement in May 2005 not only stresses the importance of education for girls and women, but the member countries committed themselves to ensuring girls and women can obtain education through at least the secondary level. The Declaration reads: 'We hereby commit ourselves to: ... (c) Take all appropriate measures to enforce compulsory education to 12th grade instead of 9th grade; (d) Take all appropriate measures to ensure that women and girls have equal opportunity and access at all levels to formal, informal and non-formal education as well as technical and vocational trainings....'
- ⁴⁰⁷. Paragraph 268 of the Beijing Platform for Action states, 'Overall, early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term adverse impact on their and their children's quality of life', and paragraph 274(e) calls on Governments to 'enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary ...'. CEDAW General Recommendation No. 21 states: 'According to the World Health Organisation, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities'.
- ⁴⁰⁸. Amira El-Azhary Sonbol, *Adults and Minors in Ottoman Shari`a Courts and Modern Law in Sonbol, Women, the Family and Divorce Laws in Islamic History*. Syracuse University Press (1996), pp. 236-59.
- ⁴⁰⁹. Mohammad Hashim Kamali, *Islamic Law in Malaysia: Issues and Developments*, Kuala Lumpur: Ilmiah Publishers (2000), pp. 112-13.
- ⁴¹⁰. Ibid., p. 109.
- ⁴¹¹. UDHR, Article 16(2): 'Marriage shall be entered into only with the free and full consent of the intending spouses'.
- ⁴¹². Article 16(1)(b) of CEDAW calls for the elimination of discrimination against women in matters relating to marriage and family relations and equality between men and women by giving them 'the same right freely to choose a spouse and to enter into marriage only with their free and full consent'. The CEDAW Committee stated in paragraph 16 of General Recommendation number 21, 'A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being'.
- ⁴¹³. Paragraph 274(e) of the BPFA requires governments to take action to '[e]nact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses'.
- ⁴¹⁴. See International Women's Rights Action Watch Asia Pacific, *The Right to Decide If, When and Whom to Marry: Obligations of the State under CEDAW and Other International Human Rights Instruments*, Occasional Papers Series No. 6 (2005), available at http://www.iwraw-ap.org/aboutus/pdf/OPS_VI.pdf.
- ⁴¹⁵. Libya Summary record, U.N. Doc. CEDAW/C/SR.879 (2009), para. 38.
- ⁴¹⁶. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 35.
- ⁴¹⁷. Ibid.
- ⁴¹⁸. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2007), para. 51.
- ⁴¹⁹. Algeria Summary record, U.N. Doc. CEDAW/C/SR.668 (2005), para. 35.
- ⁴²⁰. Morocco State party report, U.N. Doc. CEDAW/C/MAR/4 (2006), para. 367-370.
- ⁴²¹. Malaysia State party report, U.N. Doc. CEDAW/C/ MYS/1-2 (2004), para. 405-6.
- ⁴²². Maldives State party report, U.N. Doc. CEDAW/C/ MDV/2-3 (2005), para. 41.
- ⁴²³. Togo Summary record, U.N. Doc. CEDAW/C/SR.704 (2006), para. 67.
- ⁴²⁴. Burkina Faso Summary record, U.N. Doc. CEDAW/C/SR.696 (2005), para. 46.

425. Gambia Summary record, U.N. Doc. CEDAW/C/SR.698 (2005), para. 48.
426. Mali Summary record, U.N. Doc. CEDAW/C/SR.718 (2006), para. 56.
427. Tajikistan State party report, U.N. Doc. CEDAW/C/TJK/1-3 (2005), p. 11.
428. Article 16(1)(a) of the Universal Declaration of Human Rights, which is echoed in article 16(1)(a) and (c) of CEDAW, states: '[Men and women] are entitled to equal rights as to marriage, during marriage and at its dissolution'. Paragraph 14 of CEDAW General Recommendation number 21 states: 'Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited'.
429. This Malaysian national level research interviewed over 1,400 first wives, second wives, husbands and children to examine the emotional, financial and social impact of polygamy on different members of the family, and whether the legal framework protects the interest of family members. The findings are still being analysed. Final findings will be presented in 2011. For further information on the project, please contact sistersinislam@pd.jaring.my.
430. Bahrain Summary record, U.N. Doc. CEDAW/C/SR.861 (2009), para 66.
431. United Arab Emirates State party report, U.N. Doc. CEDAW/C/ARE/1 (2008), p. 58.
432. Saudi Arabia Responses to the list of issues and questions, U.N. Doc. CEDAW/C/SAU/Q/2/Add.1 (2007), p. 29.
433. Egypt State party report, U.N. Doc. CEDAW/C/EGY/7 (2008), pp. 75-6.
434. *Ibid.*
435. CEDAW Article 16(1)(c).
436. CEDAW Article 16(1)(h).
437. CEDAW General Recommendation number 21 stipulates, 'The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.... In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight'.
438. Egypt List of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
439. Libya Summary record, U.N. Doc. CEDAW/C/SR.879 (2009), para. 38.
440. Syrian Arab Republic Summary record, U.N. Doc. CEDAW/C/SR.786 (2005), para. 49.
441. Egypt Responses to list of issues and questions, U.N. Doc. CEDAW/C/EGY/Q/7/Add.1 (2009), p. 8.
442. Bahrain State party report, U.N. Doc. CEDAW/C/BHR/2 (2007), p. 32.
443. Libya Summary record, U.N. Doc. CEDAW/C/SR.879 (2009), para. 38.
444. Gambia State party report, U.N. Doc. CEDAW/C/GMB/1-3 (2003), p. 13.
445. Singapore Summary record, U.N. Doc. CEDAW/C/SR.803 (A) (2007), para. 52.
446. Libya Summary record, U.N. Doc. CEDAW/C/SR.879 (2009), para. 38.
447. Bahrain Summary record, U.N. Doc. CEDAW/C/SR.861 (2009), para 66.
448. Paragraph 28 of General Recommendation number 21 states: 'In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person'. Paragraph 35 states: 'There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from

the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished'.

⁴⁴⁹. Human Rights Committee General Comment Number 28, paragraph 26: 'Women should have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses'.

⁴⁵⁰. The Committee on Economic, Social and Cultural Rights, General Comment Number 16, paragraph 27: 'Implementing article 3, in relation to article 10, requires States parties

... to ensure that women have equal rights to marital property and inheritance upon their husband's death'.

⁴⁵¹. In the Beijing Platform for Action paragraph 60(f), governments agreed to 'mobilize to protect women's rights to full and equal access to economic resources, including the right of inheritance and to ownership of land and other property'.

⁴⁵². Taken from the website of the Office of the United Nations High Commissioner of Human Rights, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en, as at 31 December 2010.