

Musawah ('Equality' in Arabic) is a global movement for equality and justice in the Muslim family. Musawah builds on decades of effort to reform Muslim family laws that discriminate against women and to resist regressive amendments demanded by conservative groups within society. Musawah was initiated by Sisters in Islam (Malaysia) and a planning committee of Muslim activists and academics from eleven countries. Musawah is pluralistic and inclusive, bringing together NGOs, activists, scholars, practitioners, policy makers and grassroots women and men from around the world. Participation is based on proven commitment to promoting rights in Muslim families, whether from religious, secular or other perspectives.

Compiled from reports submitted by national level organisations and activists in 30 countries, *Home Truths* provides background information about the family laws and practices in these countries, including details of why equality in the family is necessary and the opportunities available that make equality in the family possible.

Musawah calls for equality, non-discrimination, justice and dignity as the basis of all human relations; full and equal citizenship for every individual; and marriage and family relations based on principles of equality and justice, with men and women sharing equal rights and responsibilities. The time for realising these principles in our laws and in our daily lives is now.



Home Truths:

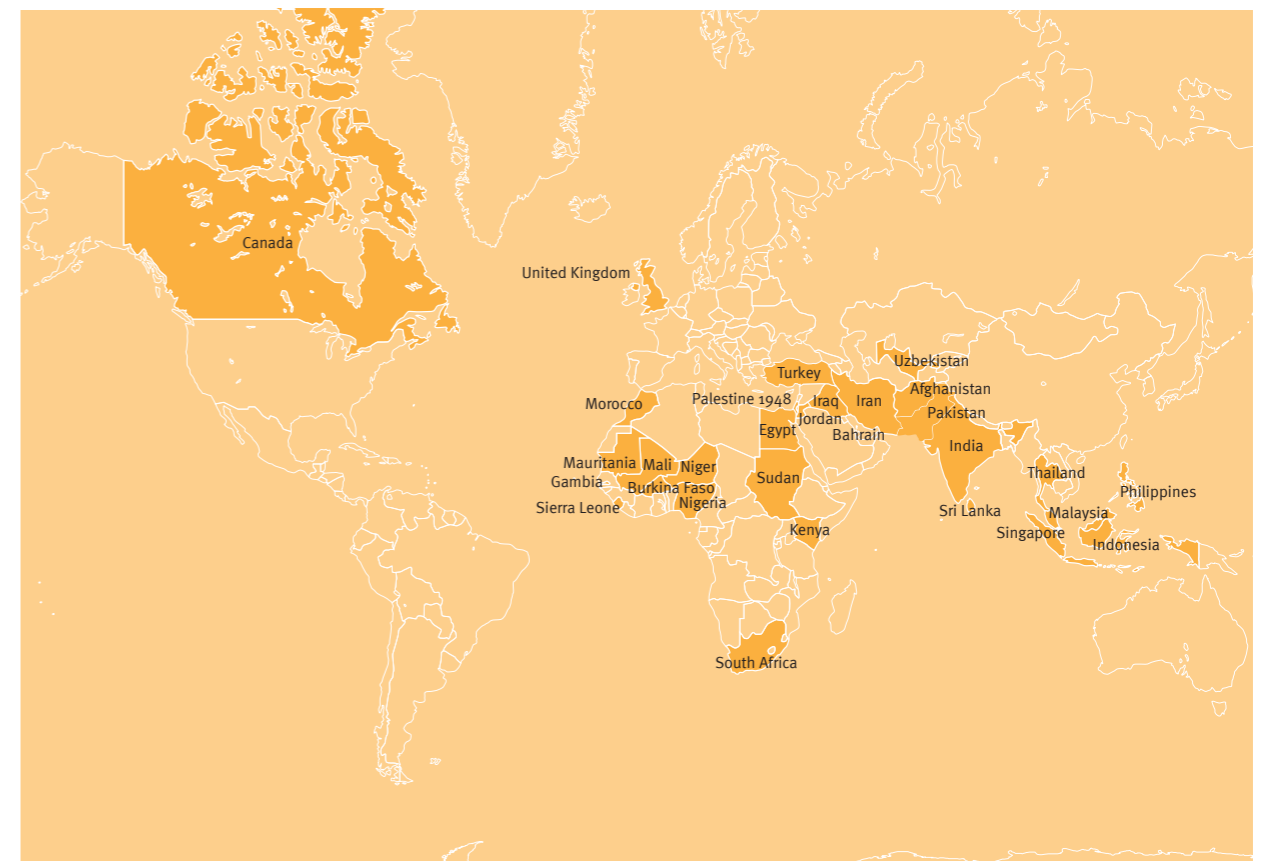
A Global Report on Equality
in the Muslim Family



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Home Truths

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Introduction

Musawah is built on the idea that equality and justice in the family are necessary and possible in all of our communities, regardless of the type of legal system, the status of Muslim family laws and practices, or the nature of courts or tribunals in which the laws or practices operate. Many of the laws and practices that exist in our countries are unjust and do not serve the needs of the people. However, this situation is not unchangeable: the reform of laws and practices for the benefit of society and in the public interest has always been part of the Muslim legal tradition.

With this in mind, Musawah invited national level organisations for their views, based on their experiences, on why equality and justice are necessary and possible in family laws and practices in their countries. Their ideas were sent to Musawah in the form of short reports, sometimes accompanied by longer articles or resources. These national reports and resources can be found on the Musawah website, www.musawah.org.

The information in this Global Report is derived from the contributions submitted by national level organisations and activists. These national profiles are meant to be illustrative of the situations in each country, and are in no way comprehensive. However, taken together, they provide a picture of what needs to be changed in our family laws and practices to ensure equality and justice for all people, and what opportunities are available at the national level to help make this happen. Hopefully, they also depict some of the realities of family life on the ground and why issues relating to family laws and practices are so important.

Musawah would like to thank the women and men from Afghanistan, Bahrain, Burkina Faso, Canada, Egypt, Gambia, India, Indonesia, Iran, Iraq, Jordan, Kenya, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Palestine 1948 (Israel), Philippines, Sierra Leone, Singapore, South Africa, Sri Lanka, Sudan, Thailand, Turkey, the United Kingdom and Uzbekistan who have contributed their ideas, expertise, knowledge and stories. It is through the struggles of these people and organisations that equality and justice in Muslim families will be achieved.

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A Note on Terms

Many of the terms used in Muslim family laws and practices are transliterated and/or translated from Arabic words. Because transliteration styles differ, different spellings for the same term are used in different places. Two common examples are *Shari'ah* / *Sharia* / *Shari'a* / *Shariat* and *qadi* / *kadi* / *Kadhi* / *quazi* / *qadhi*.

For ease of reading, we have opted to use a single transliteration for each term consistently throughout the report (e.g. *Shari'ah*, *qadi*), except in formal usage specific to a particular country or context (e.g. *Syariah* Court, *Kadhis'* Court). This in no way implies that there is a 'correct' way of spelling any given term.

AFGHANISTAN



Equality in the Family is Necessary

- ▶ The 1977 Civil Code has many shortcomings, including: different minimum ages of marriage (16 for girls and 18 for boys); a lack of explicit provisions on consent to marriage; *tamkin* (obedience) of the wife; unequal authority in termination of marriage; ignorance of children's interests and rights; discriminatory articles on inheritance; and limitations to women's constitutional rights through requirements that they seek permission from their husbands to practice such rights.
- ▶ In many instances, women are considered to be legal minors in the Civil Code. Men have the inherent right to be heads of the family and women are supposed to obey them. Men can decide on the marriage of girls, even those who are legally mature. Despite the constitutional emphasis on fundamental rights and compulsory education, the current Civil Code discourages empowerment by limiting women's access to education, work and other fundamental rights. Article 122 of the Civil Code explicitly enables a man to not pay his wife's maintenance 'when she leaves the residence without the permission of the husband or when she goes out for illegal purposes'.
- ▶ The Civil Code and the judiciary allow, to some extent, many customary practices such as forced

marriage, child marriage and challenging women's choice in marriage. In a recent case of a 14-year-old girl who was sold two times for \$2000 and then to another man for \$5000, the judges ruled that the girl should marry the man who paid the money.

- ▶ Access to justice is limited for Afghan women. This cuts across several sectors of the justice system: judges, police, prosecutors, etc.
- ▶ More than 80 per cent of dispute cases are referred to customary resolution mechanisms, which are male-dominated and often biased against women. Such customary mechanisms, for example, have ordered women to be given in compensation for their male relatives' criminal acts. Many women prefer to commit suicide rather than abide by these judgements. Since March 2008, there have been one hundred cases of self-immolation in south-western Afghanistan alone, and one woman who was awaiting the provincial court verdict on her divorce petition set fire to herself in protest against the institution. Despite the increase in female self-immolation since 2001, the government has taken no concrete measures to address the injustices that women suffer and that lead to suicides.

Afghanistan remains in a transition period. The 2004 Constitution and other laws, strategies, policies and programmes are new, and necessary infrastructures are not yet in place. Codified family law, as part of the Civil Code, has not been fully implemented due to weak states. As a result, a parallel customary system has always filled the gap.

Family law was initially codified in the 1920s, with additional principles taking effect in 1961. In 1971, a new marriage law was promulgated that included requirements of consent to marriage and registration of marriage, along with provisions on divorce. The 1977 Civil Code combined this family law with other provisions, but included only minor reforms on child marriage, polygamy and divorce. The code is currently undergoing reform to bring it in line with the new Constitution, which provides for gender equality, emphasises education for women, and calls for protection and health of the family and the elimination of traditions contrary to the principles of Islam.

Equality in the Family is Possible

- ▶ The 2003 Bonn Agreement and the 2006 London Compact helped established the new post-Taliban administration and underlined the main strategic goals of Afghanistan. Both agreements emphasise gender equality and law reforms, as do certain interpretations and understandings of Qur'anic and Islamic laws.
- ▶ Afghanistan ratified CEDAW in 2003 without any reservations. Article 7 of the Constitution says: 'The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights'.
- ▶ The Ministry of Women's Affairs is currently working with the International Center for Human Rights and Democratic Development (Rights &

Democracy) to bring the family law in line with the Constitution, best practices in other Muslim countries, and Afghanistan's obligations under international human rights treaties. A drafting committee comprised of representatives of the Supreme Court, the Ministry of Justice, Family Court, the Ministry of Women's Affairs and civil society has been established. The committee will review the family-related provisions of the Civil Code from a gender equality perspective, draft a separate, specific family code by mid-2009, and hold consultations with other stakeholders. The committee has also reviewed new articles for a Shi'ite Personal Status Law bill and has drafted a Law Concerning Guardians and Wards.

Challenges

- ▶ Many conservative groups oppose reform, mostly based on arguments purported to be *Shari'ah* arguments. Even scientific findings such as increased child and mother mortality due to child marriage are rejected as contradicting the *nass* (*Hadith* texts). Opponents argue that human-made laws, including international human rights instruments, have no value and only divine laws must be followed. They believe in the divine division of roles and emphasise that the roles of mother and wife are sacred for women.
- ▶ A group of conservative Members of Parliament (MPs) and officials admit that amendments are needed, but argue that they will have no effect on women's lives because there are no guarantees that the laws will be implemented. Other MPs reject the issue of family law reform, arguing that Islamic extremists who will introduce a more restrictive law currently control Parliament, so it is better not to include family law on the agenda now. Others argue that issues like security, accessibility and implementation of laws should be prioritised over family law.
- ▶ Mullahs say that they fear that families will collapse if they codify what *Shari'ah* considers to be rights for women. For example, they do not want to introduce divorce due to harm because this may increase the number of divorces.
- ▶ Many Islamist figures, including most of the MPs, believe that Article 3, which says that 'no law can be contrary to the beliefs and provisions of the sacred religion of Islam', has a paramount role in formulating and amending all laws.

BAHRAIN

Although Bahrain does not have a personal status law, there have been ongoing debates over personal status laws for decades and a proposed law was drafted in 2005. In the absence of a law, family matters are regulated by *Shari'ah* courts with judges appointed by the government. These judges base their judgements on their own jurisprudence or interpretations of the *Shari'ah*.

There are two main sects in Bahrain: the Shi'ite Ja'fari and the Sunni. Accordingly, the *Shari'ah* judiciary is classified into two courts, Sunni and Ja'fari. Clerics, especially Ja'faris, oppose the issuance of a personal status law and have led a campaign insisting on the existence of separate laws for each sect; they refuse to have one law for both sects. They have also requested a constitutional guarantee to protect the law from any changes without their approval. Women experience hardship in both types of *Shari'ah* courts mainly due to lengthy litigation proceedings and judgements that are often biased in favour of men.

Equality in the Family is Necessary

- ▶ In the Ja'fari doctrine, the custody of the children moves to the father after the children reach the age of seven, regardless of the best interest of the child and the father's qualifications for holding custody.
- ▶ The father has the right to possess the passports of the children and control their movement, which is usually used against the mother to pressure her in times of disagreements or when she is demanding divorce.
- ▶ Some judges give women the choice to opt for divorce through *khul'* while pushing them to provide large sums of money to obtain the divorce and to waive all of their rights, especially the custody of their children. This has happened in many cases, and has resulted in divorced women finding themselves forced to live with their relatives or even on the street, especially if they are unemployed or of older age.

Challenges to Passing the Law

Even though government officials expressed their understanding of the importance of passing a personal status law, the Personal Status Committee formed in 1982 under the Bahraini Women's Union to advocate for the passing of such a law has faced a lot of resistance from religious leaders. These leaders oppose the legal regulation of family matters and view such a law as unnecessary, since the *Shari'ah* should be used to issue judgements and no other law is needed.

The opposition of *Shi'ah* clerics and their insistence on a constitutional guarantee that the law cannot be changed after it is enacted have been the major obstacles to passing the law. According to these clerics, a constitutional guarantee is necessary so that Members of Parliament cannot change articles in the laws without consulting them, which could lead to the manipulation of the *Shari'ah*. Since clerics have wide authority over Bahraini society, they have managed to freeze the campaign launched by the Supreme Council of Women to support the draft personal status law.

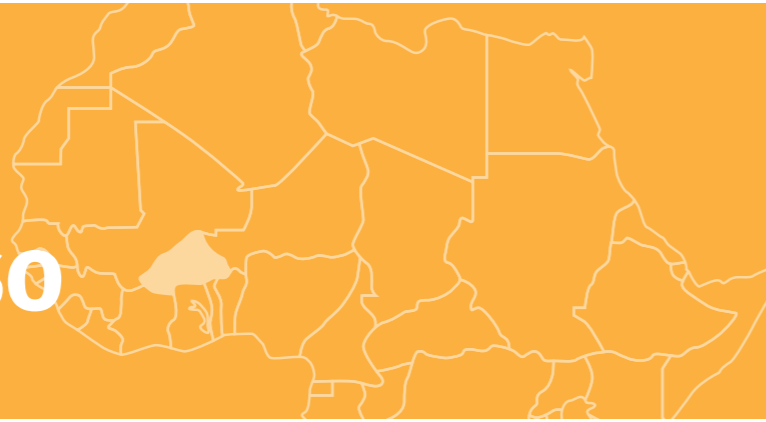
The Bahrain Government recently submitted the same family law proposal that was drafted in 2005 to the Parliament for discussion, which provoked clerics and created large debates in the society.

Equality in the Family is Possible

- ▶ Two women lawyers from the Personal Status Committee of the Bahraini Women's Union were appointed by the King to the committee that was formed by the Minister of the Royal Court in order to review the personal status law. This committee, comprised of judges of the *Shari'ah* courts and legal experts, drafted a family law proposal that resulted in different reactions from the public—some supportive and some opposed. Even though this proposal was not officially adopted, it was successful in bringing personal status issues into the public arena.
- ▶ The committee, which is no longer operational, was successful in gradually gaining support of key players in passing a personal status law. This took the form of numerous meetings with the Minister of Justice and the Minister of Population on matters relating to alimony, family consultation offices and women's rights to share ownership in the matrimonial house.
- ▶ Through advocacy with clerics and religious scholars from both the Shi'ite Ja'fari and the Sunni sects, the Bahraini Women's Union achieved progress with the Sunni religious leaders, who agreed to form a joint committee comprised of judges, Sunni clerics and the Women's Union to review the law proposal drafted in 2005. After weekly meetings that lasted for an entire year, the joint committee offered comments and remarks on the personal status law proposal that was presented to the Minister of the Royal Court in October 2008.
- ▶ The Supreme Council for Women was active in taking some measures to decrease the burden on women in *Shari'ah* courts, such as providing legal advice for women and introducing some changes to the marriage contract, as well as regulating litigation proceedings and organising workshops to raise awareness of the changes.
- ▶ There is increased awareness of the importance of passing a personal status law. A number of lawyers have drafted law proposals, and there is growing support in Parliament, especially from members of the Shuraa Council (a house of representatives with appointed members).
- ▶ Bahrain is a signatory to numerous international conventions and is a member of the United Nations Human Rights Council, which requires it to realise its commitments to protecting the rights of women.

Source: Report submitted to Musawah in Arabic and English by the Personal Status Committee, Bahraini Women's Union.

BURKINA FASO



Burkina Faso is a diverse country with a number of ethnic groups of different religions; approximately 60 percent of the population is Muslim. Because of the multiplicity of customary and religious observances, it has been difficult to establish a unitary state. To safeguard the unity of the state, Burkina Faso instituted a unique law in 1990 providing for equality between the spouses called the Code des Personnes et de la Famille (CPF) (Personal and Family Code). However, many people practise traditional customs instead of contracting legal marriages under the CPF, thus denying women the rights granted by the law.

Equality in the Family is Necessary

- ▶ Muslim family practices include the dowry, forced marriage, polygamy and a perception of the superiority of men over women. Various rights granted to women in the Qur'an do not exist in practice. There is confusion between traditional customs and religion such that men consider certain practices to be religious even though the Qur'an does not mention them.
- ▶ Husbands generally have decision-making power regarding the management of the relationship, the number of children and how to educate them. Women have little or no voice in these decisions.
- ▶ Custody of children is usually given to men for economic reasons, since women are generally poorer than the men. However, nothing prevents the judge from giving custody to a woman and allocating her a living allowance necessary to care for the child.
- ▶ Unmarried mothers have great difficulties attaining maintenance for their children. If an unmarried mother dares to claim a living allowance from the father, he will react by claiming custody of the child, which is allowed under the patriarchal system that regards the child as the property of the father.
- ▶ Local customs permeate all aspects of the marital institution, despite the provisions in the Code des Personnes et de la Famille. A marriage of two persons is considered to be a marriage of two families. In most cases a widow is not allowed the right to remarry, but is obliged to marry a member of her deceased husband's family, who gains control of the deceased husband's estate.

Key Challenges

- ▶ Because men often refuse to get a legal marriage, many marriages are customary, with women having no access to the rights provided in the Code des Personnes et de la Famille (CPF).
- ▶ Men whose marriages are under the monogamist regime in which subsequent marriages are not allowed will change their locality in order to marry again.
- ▶ Some religious leaders convey ideas that are contrary to the CPF, such as claiming that religious marriages have the same status as legal ones under the CPF.
- ▶ Seventy-five percent of women in Burkina Faso are illiterate, and many are not aware of their rights. Even those who are aware will often accept their situations quietly if it seems to be more beneficial for their children's future.

Equality in the Family is Possible

- ▶ The Constitution provides for equality in the rights of all citizens and prohibits any forms of discrimination based on sex.
- ▶ The Code des Personnes et de la Famille (CPF) was promulgated in 1990, in part due to the work of the women's movement and human rights organisations. Many people consider it to be a 'Women's Law'.
 - ▶ The CPF provides for:
 - Full and free consent of the spouses;
 - Equality between the husband and wife in their rights and duties and their legal capacity;
 - Joint management of the family and shared parental power replacing the notion of the husband as the head of household with paternal authority;
 - Both husband and wife can sign a contract on his or her own behalf or on behalf of his or her spouse;
 - Both husband and wife can own a bank account or have a job without the consent of his or her spouse;
- Legal separation and divorce;
- The right to request a living allowance and visits and lodging upon divorce;
- Equality between children, notably with respect to inheritance;
- Automatic guardianship of children by the surviving parent on the death of one parent, without the requirement of a judicial decision to this effect;
- Inheritance rights of widows, including the provision that if there is no other heir, the widow can inherit the entire estate.
- ▶ The government and non-governmental organisations (NGOs) are encouraging couples to contract marriages under the CPF by organising collective weddings with a large number of couples in one town marrying on the same day. These celebrations are shown on television.
- ▶ NGOs are also trying to popularise the law through awareness raising and public education.

Source: Report submitted to Musawah in French by l'association Maïa, based on meetings with L'Action Sociale, Mouvement Burkinabe des Droits de l' Homme et des Peuples (MBDHP), Kebayina : Association pour la promotion des droits des femmes, REVS+ : Association de lutte contre le Sida and Associations de femmes Musulmanes.

CANADA



Canada is a multiracial country ‘founded’ as a nation state by French and English settlers. The treatment of aboriginal people by Europeans has been and continues to be a major issue for all Canadians. This has led to efforts in Canada to celebrate diversity and multiculturalism and support and protect people from all backgrounds.

The first Muslims came to Canada from Scotland in 1863. Others came from Lebanon and Syria in the early 1900s, followed by immigrants from Bosnia and Albania. With the openness of the Canadian immigration system, immigrants have come from all parts of the world over the last 35 years. There are now approximately 600,000 Muslims in Canada. Ninety per cent are foreign born, and most live in urban areas. The ongoing stream of immigration means that issues of adaptation continue.

Equality in the Family is Necessary

- ▶ Equality is essential for women, for without this right all else fails. Equality as provided for in laws does not always translate into action; this requires vigilant monitoring and advocacy.
- ▶ The Canadian Charter of Rights and Freedom (1982) and Canadian laws recognise the equality rights of women. However, the protection under law does not always lead to the implementation of the rights. Some people insist that religious freedoms should supersede women’s equality rights.
- ▶ Although most Canadians now accept multiculturalism as part of the Canadian identity, this value and its implementation are often questioned. Racism and discrimination against Muslims still exist, especially due to the events of 11 September 2001 and the resulting increase in security measures within Canada and between the United States and Canada. This has contributed to a rise in identity-based politics, which often leads to increased conservatism and pressure on Muslim women to embrace religious identities instead of multi-faceted identities.
- ▶ Since 2002, there has been a major public debate about the introduction of religious family laws into the secular legal system, and specifically into family arbitration agreements. The federal and state governments currently say that no religious laws should be applied in family matters, but the issue is continuously raised by some Muslim individuals, scholars and groups who insist that such laws are part of their right to freedom of religion.

Resources from the Canadian Council of Muslim Women

- ▶ The Canadian Council of Muslim Women (CCMW) and a number of other women’s organisations have been developing educational resource materials to help women understand the changes in the family law in the province of Ontario. These materials are geared for women of various faiths, women with disabilities, Francophone women and aboriginal women. The materials include:
 - A book commissioned from an Islamic scholar and a family lawyer entitled *Muslim and Canadian Family Laws: A Comparative Primer*. The information in the book has been simplified and divided into booklets on various aspects of family laws—marriage, domestic contracts, divorce, custody of children, spousal support and inheritance. These booklets have been translated into Arabic, French, Farsi, Somali and Urdu.

Equality in the Family is Possible

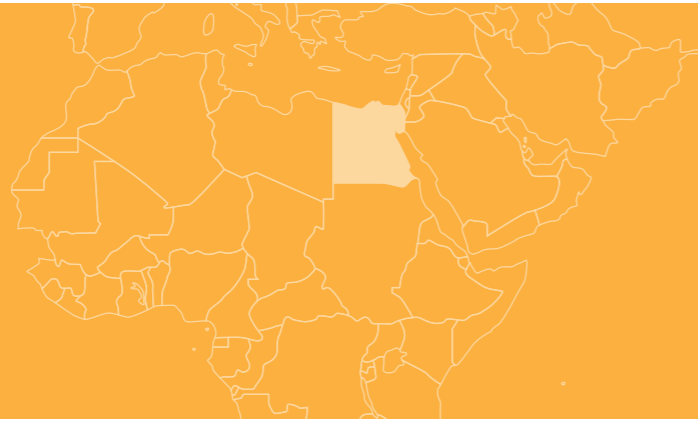
- ▶ Canada has a Charter of Rights and Freedoms that guarantees basic human rights and freedoms for all people. Canada also has a Multiculturalism Act [1985] that articulates the rights of cultural and religious groups within the framework of the Canadian Charter and provides minority groups with protection and permission to develop multiple identities as Canadians, Muslims and varying ethnic origins.
- ▶ A coalition of women’s NGOs, supported by labour groups, came together in 2002 to fight the application of any religious laws—whether derived from Muslim, Jewish, Christian or other religions—in the secular system. The coalition, which is called ‘No Religious Arbitration’, stated that based on guarantees of equality in the Canadian Charter of Rights and Freedoms,

believing women should not be treated differently under the country’s laws. In September 2005, the Premier of Ontario Province announced that no religious laws would be used in family matters.

- Three specific fact sheets on marriage and divorce, including recognition of foreign marriages in Canada; the changes in private, legally binding arbitration; and domestic contracts under the family law.
- A resource package on how prenuptial agreements can be consistent with Muslim family laws as well as Canadian family laws. The package will contain a scholarly analysis of Muslim family laws as well as a sample prenuptial contract.
- ▶ CCMW conducts trainings and workshops for the legal professions, service providers and Muslim women themselves, and has trained CCMW members around Canada so they can do workshops in their local communities.

Source: Report submitted to Musawah in English by the Canadian Council of Muslim Women, a national organisation with chapters across the country that operates through a set of guiding principles based on being Muslim and being Canadian. These principles recognise the Qur’anic message of God’s mercy and justice, the equality of all persons, the universality of human rights, and the diversity of Muslim women’s ideas and experiences.

EGYPT



Equality in the Family is Necessary

- ▶ It sometimes takes women three or four years to obtain a divorce due to lengthy litigation proceedings and judges' stipulations for the availability of witnesses. There are an unimaginable number of cases in the Egyptian courts; some literature reviews state that the number of cases reaches half a million annually.
- ▶ Many judgements, especially those related to alimony, are extremely difficult to enforce due to the widespread corruption amongst the enforcing authorities, lack of adequate training, and the absence of effective punishments against husbands who do not obey court orders.
- ▶ Four years after the establishment of the family courts, the legal provisions and practical implementation of the courts have been a disappointment to all parties who engage with the system (family members, lawyers, NGOs, psychiatrists, social workers, and legal practitioners within family dispute resolution offices). This is due to a number of reasons, including:
 - The majority of family courts do not order temporary alimony for the wife or children, which is in violation of the law and increases hardships for women and children.
 - The lack of specialisation amongst some judges results in conflicting orders and judgements.
 - Psychologists and social workers are mostly recent graduates who are not sufficiently trained.
- The absence of a special enforcement administration for family courts (in violation of the law that created the family court system) creates problems.
- The husband can file an 'obedience warning' against the wife, which she has the right to object to within thirty days of receipt. If she fails to object, she is deprived of maintenance and is legally regarded as a disobedient wife who left the house without her husband's permission.
- Many family courts do not consider a wife's objection in a family court or family dispute resolution office as an adequate objection to an obedience warning.
- The family courts have not yet established adequate facilities to guarantee privacy and safety for the litigants, especially women and children, during family dispute resolution sessions.
- According to the law, family courts should be located within district courts that are close to litigants. However, this provision is not enforced and many litigants have to travel long distances to reach the courts.
- There is limited enforcement of a provision that requires prosecutors to investigate the income of the husband in order to guarantee that women is not left without alimony.
- The family courts do not offer enough publications and documentation to explain the system.

Personal status laws for Muslims in Egypt, as in many other Arab countries, are based on the Islamic *Shari'ah*, which identifies the regulations for marriage, divorce, inheritance, etc. This legal system is distinct from the rest of Egyptian legislation, which is based on the French civil code. The discourse on personal status laws is dominated by Al-Azhar and the Christian Coptic Orthodox Church, the two religious institutions in Egypt that take rather strict and regressive approaches to reform and *ijtihad* within the family law.

In 2000, a Procedural Personal Status Law, Law No. 1 of 2000, was passed that grants women the right of *khul'*. In 2004, a family court system was established to provide specific courts that litigants could use for family-related disputes. Although these law reforms were celebrated by the women's movement, implementation has been challenging and women still face injustices and inequalities.

Equality in the Family is Possible

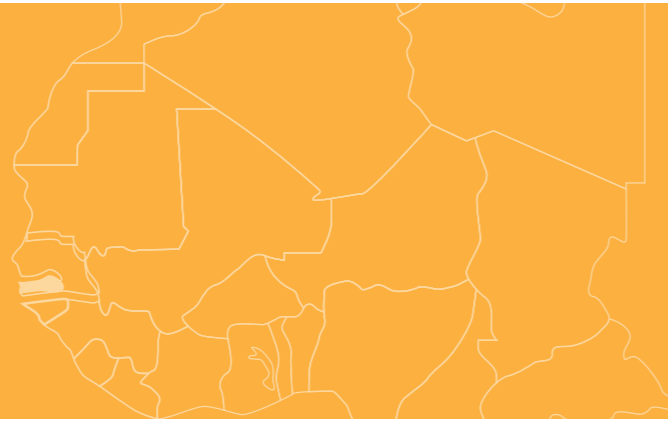
- ▶ In an attempt to lift the hardship on Egyptian women in proving 'harm' as a ground for obtaining divorce, Law No.1 of 2000 introduced *khul'* and focused on presenting mechanisms to solve the problem of lengthy divorce procedures.
- ▶ In 2000, the marriage contract was amended to include a space in which the bride and groom can add some conditions to the contract.
- ▶ The family court system that was established in 2004, which provides specific family courts across Egypt, aims at guaranteeing the best interest of the family through providing various mechanisms to resolve family disputes and achieve justice through specialisation.
- ▶ Law 4 of 2005 introduced an amendment to custody rules. The mother's automatic right to custody ends when the child turns 15, at which time the judge asks the child to choose whether to remain with the custodian mother or not.
- ▶ In the current social, political and economic climate, Egyptian society seems ready for the changes being pushed by both civil society groups and governmental parties. This is further underscored by the existence of enlightened *fiqh* and ongoing dialogue with progressive religious leaders who call for the expansion of textual interpretation in line with the changing societal realities, which they argue can happen without violating the sacred texts.

Opposition from Religious Leaders

- ▶ Pope Shenouda III of Alexandria, the Coptic Pope, stated in 1996 that clear cutting texts govern Orthodox Christians in matters relating to their personal status, including being married only once and divorce being allowed only in cases of adultery. He stated that these are issues that are clearly defined and articulated in the Holy Bible. He also said that verses from the Bible and issues related to marriage contracts should not be the subject of public discussion, even by clerics.
- ▶ Sheikh Gadel Hak Ali Gadel Hak, former Sheikh of Al-Azhar, noted in July 1995 that the notion that equality between men and women requires a change in the traditional roles of men and women in the society and family disregards the nature of men and women. He stated that the texts of the Holy Qur'an and *Sunnah* do not allow these changes. He specifically spoke out against the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its aim to achieve equality between men and women.

Source: Report submitted to Musawah in Arabic by the Center for Egyptian Women's Legal Assistance (CEWLA), a non-governmental organisation that campaigns for the equality of women, with an emphasis on legal equality and the amendment of discriminatory laws.

GAMBIA



Muslims constitute 90 per cent of Gambia's population. The Gambia is seen to be one of the least developed countries in the world, with large areas of poverty in three of the seven administrative regions, and increased urban poverty in recent years. The Constitution of the Gambia guarantees equal dignity and equal treatment between men and women. However, these provisions have been weakened by the fact that the Constitution defines the personal status law as 'the *Sharia*'. A family code exists, but it is not very well known to many women and it is not clear whether the *Qadi* courts even refer to it. Female genital mutilation, early/forced/arranged marriages, wife inheritance (where a relative of the deceased husband inherits the widow), polygamy, maintenance and custody of the child are areas of contention for women in the Muslim family in the Gambia.

Equality in the Family is Necessary

- ▶ Women do not enjoy equal opportunities, leaving them oppressed and in subordinate positions in which they are powerless and voiceless. Injustices against women are maintained using religious interpretations, culture and tradition as justifications.
- ▶ There is a shortage of qualified *qadis* in the *Qadi* Courts, but women scholars are not appointed to such positions because women are not recognised by Gambian Islamic scholars as potential *qadis*. Many of the current *qadis* are not literate in English, thus lean on tradition and practices that have been proven to discriminate against women.
- ▶ Labour laws allow women to work in principle, but most women need permission from their husbands to take on certain forms of work.
- ▶ Young girls are introduced into polygamous marriages as young as 13, 14 or 15 years and the education of these girls is sacrificed in the process. They become disempowered and subservient in their marriage and in public life.
- ▶ Arbitrary divorce based on flimsy excuses is a common practice in the Gambia.
- ▶ Over 13 per cent of Gambian households are female headed. These heads of household are not recognised to hold power in the family, and are discriminated against because they are women.
- ▶ Activists are attacked by some Muslim scholars in radio programmes and in the State House Mosque during Friday prayers. Women activists are described as divorcees, anti-Islam, influenced by the 'West' and receiving funds in order to set women against men.
- ▶ When the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was presented to the National Assembly, there were serious contentions over articles that are supposed to safeguard the bodily integrity and dignity of women (e.g. female genital mutilation, early/forced marriage, inheritance, reproductive health and access to family planning services). The National Assembly Members used religious arguments to place reservations on some of these articles. Women's rights organisations and activists mobilised around the issues, working with progressive religious leaders and their own knowledge of the religion to challenge the reservations. It became clear that the Members' actions were more to maintain patriarchal values and control over women than religious prescriptions.

Life Stories

Fatou: 'When I went to seek for justice in the *Qadi* Court regarding the maintenance of my children, the *Qadi* told me to return home and do like my mother did, that is to be silent and never complain.'

Sarjo: 'When my father died he left a plot of land and I was told that women do not inherit land because they are going to marry in another family. When I went to the *Qadi* and the elders I was told that my brothers were right.'

Equality in the Family is Possible

- ▶ The Gambia has ratified all of the international conventions and protocols that promote women's rights; efforts are being made to implement them. Awareness of women's rights as enshrined in these instruments is forcing Islamic scholars to discuss women's rights within the context of Islam. Women's rights activists are challenging the interpretations based on the realities of women's lived experiences.
- ▶ Women are realising that social and legal structures are not cast in stone and that equality and justice must be achieved to restore the dignity of women in the Qur'an, human rights discourses and international and regional conventions. Women recognise that knowledge of Islam is no longer a male preserve, and that it is necessary for all people to engage with the texts.
- ▶ Women's rights organisations and individual scholars have made efforts to improve the situation, including:
 - Organising community interventions that engaged families, local authorities, legislators and the judiciary to promote the well being of women and facilitate awareness of the need for equality and justice in family laws.
 - Successfully advocating for the ratification of the Maputo Protocol in 2005.
 - At the request of the Law Reform Commission,
- ▶ guiding the law reform process in 2007 with respect to women's issues, including providing information on the conditions of women in their families and recommending actions for effective law reform.
- Pushing for the 2008 tabling of the first draft of a Women's Bill in the National Assembly; efforts are still being made to advocate for adoption of this Bill.
- Using international dates and events to advocate for the ratification of protocols and bills on women's rights.
- ▶ Organisations and activists resist attacks by adopting a strategic consultative process. When groups were denied access on public television, for example, they reached out to the Secretary of State for Information and Technology, which led to their being broadcast on national television.
- ▶ In outreach programmes, participants are challenged to ask local religious leaders about whether it is tradition or Islam that enjoins women to marry by force, denies them their inheritance, or requires female genital mutilation even if it has negative effects on their health and sexuality. In some communities the mosque is used as a meeting place to discuss the work of women's rights activists; the issue of female genital mutilation has been taken up as a topic of *Khutbah*.

Source: Report submitted to Musawah in English by the Gambia Committee on Traditional Practices Affecting the Health of Women and Children (GAMCOTRAP) on behalf of the women's movement of the Gambia. The report was derived from a consultation held on 27 October 2008, as well as insights and evidence from GAMCOTRAP's women's rights work and discussions with women and men who face difficulties in their lives.

INDIA (TAMIL NADU)

Tamil Nadu is a large state in southern India. According to the 2001 census, Muslims constitute approximately 6 per cent of the Tamil Nadu population and approximately 13.4 per cent of the Indian population as a whole. Muslim personal law in India is largely uncodified; existing legislation is piecemeal, fragmentary and does not answer all of the needs pertaining to Muslim familial life. The interpretation of Muslim personal law rests on the courts, except in specific instances related to the dissolution of marriages and the awarding of maintenance. There are province-specific acts that enable registration of marriages, but there is no marriage or divorce law—whatever exists is based on case law. Much of the debate on personal law in India has hinged on legal reform, and has seldom looked at family sociology or cultures of residence and matrimony, many of which owe as much to non-Islamic customs as to Islamic tenets.

Equality in the Family is Necessary

- ▶ In Tamil Nadu, the larger social structures—whether the police, local civil courts, civil society groups or political parties—do not understand the realities of Muslims' existence as a minority. If a Muslim woman approaches a local police station with a complaint of marital abuse, the response is likely to be: 'But you have your own laws, we can't interfere, don't come to us'. This is based on a partial understanding of Articles 25 and 26 of the Constitution of India, which guarantee minorities an unimpeded practice of their faith, customs and laws, as well as on unspecified prejudices against Muslims.
- ▶ It is difficult to find lawyers, civil society groups or political groups who are familiar with Muslim case law as well as the larger debates about personal and family law in the Indian Muslim context. It is even more rare in small towns and villages.
- ▶ The following are often considered acceptable for Muslim marriages in Tamil Nadu:
 - Early marriage, with or without the consent of the bride;
 - Polygamy, with or without the observance of Qur'anic tenets;
 - The practice of the triple *talaq*;
 - Extra-legal settlement of marital disputes in the presence of the local *qazi* or a *hazrat*.
- ▶ Other practices that the community generally refuses to condemn include:
 - The practice of taking and giving dowry (payment by the bride's family to the groom's family);
 - Non-compliance with the *mahr* requirement, except in the most formalistic sense;
 - Ostentatious and expensive marriages;
 - Marriages contracted under false pretences, especially when the groom is mentally unstable or physically challenged.
- ▶ Across classes, Muslim women experience a multitude of problems that are generally not addressed by the community or the legal system:
 - Poverty often results in early marriage, so young girls are forced to endure conjugal and sexual trauma at the hands of older men.
 - Illiteracy forces women into meagre self-employment or work for abysmally low wages, which puts a strain on marriage and family life.
 - Male migration to the Gulf states and South East Asia, in which women are left behind, leads to aspersions being cast on women's marital good faith and/or results in surreptitious extra-marital relationships.
 - Sexual incompatibility is generally not discussed; if it is, women are placed in a negative and dishonourable light.

Equality in the Family is Possible

- ▶ Although the government of India has not taken a position on family law in recent times, judges sometimes strive to define what the Qur'an intended for women, and on that basis order punitive or compensatory measures. In recent times, such judgements by and large have been positive for women. For instance, the Supreme Court has declared triple *talaq* illegal, even in the eyes of Islamic tenets of jurisprudence.
- ▶ Civil society groups in India have come up with alternative pieces of legislation, including a model *nikah namah*.

The Tamil Nadu Muslim Women's Jamaat

- ▶ The Tamil Nadu Muslim Women's Jamaat emerged in response to the several thousand male-headed jamaats attached to major mosques in every village and town which serve as community forums in which all matters pertaining to the *ummah* are discussed. Women are not allowed to take part in these meetings, even if they are petitioners. The Women's Jamaat has become a place where women not only come with petitions, but also arbitrate and decide on the merits of a case collectively. This has proved enormously empowering and, over the last few years, has elicited the support of a few male-headed jamaats as well.
- ▶ Significantly, the very presence of the Women's Jamaat has served to exert pressure on the male-headed jamaats to be sensitive to issues of family discord and women's rights to justice and equality, especially since the Jamaat insists on community guarantees for a fair and just marriage, including the proper giving of *mahr*, seeking the bride's consent, specifying the conditions under which the marriage is taking place, etc.
- ▶ The Women's Jamaat underscores its interest in securing equality and justice for women in the family by pointing to the example of the Prophet's own family and to the role played by his wives, especially Khadija. It has sought to widely publicise positive case law and Supreme Court judgements pertaining to Muslim personal law through public sit-ins and meetings. The Jamaat has also begun to speak of the importance of female education and employment, so that women may be able to assume positions of equality in the family with a measure of autonomy, and is currently enlisting the support of Muslim women lawyers to the cause.

Source: Report submitted to Musawah in English by the Tamil Nadu Muslim Women's Jamaat, a network of over 15,000 women in Tamil Nadu state in southern India, based on the petitions they have received over the last five years.

INDONESIA



More than 80 per cent of Indonesia's 234 million people are Muslim, making it the largest nation of Muslims in the world. Marriage issues are governed by the 1974 Marriage Law, which was at the time considered the best compromise between women's rights advocates and religious groups. In the last decade, Indonesia has been undergoing a historic process of socio-political change after 32 years of dictatorship. In 2004, a Domestic Violence Act was passed, and women's groups are now advocating for reform of the Marriage Law to reflect current values of justice and democracy.

Civil and religious courts operate side-by-side, with religious courts having jurisdiction over cases between Muslims on marriage and divorce matters. The religious courts base their decisions on the *Kompilasi Hukum Islam* (Compilation of Islamic Laws), guidelines compiled in the 1980s and introduced by presidential decree in 1991 to achieve greater consistency in the country's Muslim laws.

Equality in the Family is Necessary

- ▶ The 1974 Marriage Law contains discriminatory stipulations for women in marriage and the family, including:
 - The minimum age of marriage differs for the groom and bride.
 - Registration is only required for administration purposes and often does not occur, leaving women without proof of their marriages.
 - The husband is recognised as head of the family and the wife solely as housewife.
 - Polygamy is allowed through court decisions but many polygamous marriages occur outside of the courts.
 - Children born outside of legal marriages cannot claim relations with their fathers or access inheritance from them.
- ▶ The 1991 Presidential Decree on the *Kompilasi Hukum Islam* puts Muslim women at additional disadvantage, as:
 - Marriage is currently a contract between two males—the groom and the father of the bride or *wali*—and not between the groom and bride.
 - Disobedience (*nusyuz*) to one's husband results in the loss of maintenance and is often used to justify acts of domestic violence.
 - Daughters receive only half the inheritance shares as sons.
- ▶ Growing poverty and socio-economic disparities, as well as recent violent conflicts, put Indonesian

women under more pressure to carry the burden of their families' survival and children's future. Discriminatory marriage and family laws make struggling and poor women more vulnerable to discrimination and abuse.

- ▶ Increasing numbers of Muslim women are becoming heads of families in Indonesia as an outcome of poverty, labour migration and armed conflict. Because the community and the state do not recognise their leadership in the family, these women face obstacles in providing for their families, are denied access to entitlements and cannot conduct legal acts on behalf of their families. Ultimately, an increasing number of families are forced to survive without proper access to legal and social protection.
- ▶ Muslim women are victims of human trafficking and many Muslim men actively utilise religious beliefs and institutions, such as temporary contractual marriages, to legitimise such practices.
- ▶ Many Muslim women are employed as domestic workers who provide services such as childcare, care of the elderly, cleaning and cooking, both within Indonesia and in other countries in Asia and the Middle East. These women contend with discrimination and violence in the context of feudalism and slavery-like practices.

Equality in the Family is Possible

- ▶ There is a strong community of Muslim theologians and academics outside and within the government in Indonesia who are continuously initiating public dialogue on the use of jurisprudential and interpretative principles and methodologies that will lead to the intended objectives of the *Shari'ah* (*maqasid al-Shari'ah*) and will allow for gender justice. Women's NGOs and activists actively engage with them and enlist their support.
- ▶ Muslim women in Indonesia have been organising since the 1920s. During the 1940s and 1950s, Muslim women spoke out against polygamy and trafficking in women. In the past ten years of political reform, more than 300 new organisations were set up to address violence against women and women's rights in the family, including among traditional *pesantren* (Islamic boarding school) communities and mass-based Muslim women's organisations.
- ▶ The 2004 Domestic Violence Act includes protection for domestic workers. Other civil society initiatives affecting Muslim women's rights within marriage and the family include revision of a gender-biased classical text (*uqud al lujain*) on rights and responsibilities of

husbands and wives that is used by almost all *pesantren* in Indonesia and advocacy for a *fatwa* and law on reproductive rights to help address the high maternal mortality rate that is partially due to unsafe abortions.

- ▶ In 2005, the Indonesian Ministry of Religious Affairs attempted to develop an alternative draft of the *Kompilasi Hukum Islam* (Compilation of Islamic Laws). About 15 Muslim scholars from many parts of the country used theological and religious arguments to develop a new idea of marriage based on progressive interpretations of Islamic law and principles of equality and justice. However, widespread resistance from religious conservatives and extremists led the Ministry to withdraw it from consideration.
- ▶ As part of Indonesia's broad-based legal and policy reform agenda during this historic period of democratisation, a number of laws affecting Muslim women's position in marriage and the family have been scheduled for public debate and political decision-making, including revision of the Marriage Law, drafting of a law on procedural reform in the religious courts, and revision of the penal code including stipulations on rape.

Source: Report from two roundtable discussions in November 2007 with activists and Muslim theologians; discussions with Indonesian activists; presentations by Indonesians at the International Consultation on 'Trends in Family Law Reform in Muslim Countries', organised by Sisters in Islam, 18-20 March 2006, Kuala Lumpur, Malaysia.

IRAN



Iran's 1967 Family Protection Law included restrictions on polygamy, the requirement that all divorce requests go through the courts, and an increase in the minimum age of marriage. Immediately following the 1979 Iranian Revolution, many of these provisions were repealed: the minimum age of marriage for girls was reduced to 9 years, temporary marriages were allowed, men's unilateral right to divorce was restored, and restrictions on polygamy were again relaxed. However, Iranian activists have achieved some measures to protect women's rights. Iranian women's expectations and dissatisfaction with their current situation in the family and society have increased in recent decades. This stems from fundamental social and cultural transformations such as increased participation of women in all education levels and throughout the workforce, the rise of women's access to media and familiarisation with the lives of women in other parts of the world, the increase in the actual age of marriage, and rising numbers of single mothers.

Equality in the Family is Necessary

- ▶ Chauvinism and gender-based clichés that consider men to have a higher status still prevail in Iranian society. Such beliefs have been intensified by the government at various stages.
- ▶ Although the structure of Iranian families has undergone some fundamental transformations—traditional families have been largely replaced by modern nuclear families, in which men are rarely the only breadwinners—women still have less access and control of resources and opportunities.
- ▶ Women's educational levels and monetary contributions to the family have increased, yet the law still recognises the man as the head of the household. Legally husbands can prevent their

wives from exercising their rights to education and work; wives are required to obtain the consent of their husbands to travel abroad, and to submit to their husbands' demands for sexual intercourse. They have the right to divorce only in limited instances. Girls and women receive less inheritance than boys and men, and women's blood money is half of men's in the case of injury and murder. Efforts to make changes in these laws and norms have confronted incredible resistance.

- ▶ The system still resists changes and reforms, either through confrontations around reform or the introduction of bills that would exacerbate the inequality of men and women in the family and reinforce traditional ideology.

Political Opportunities

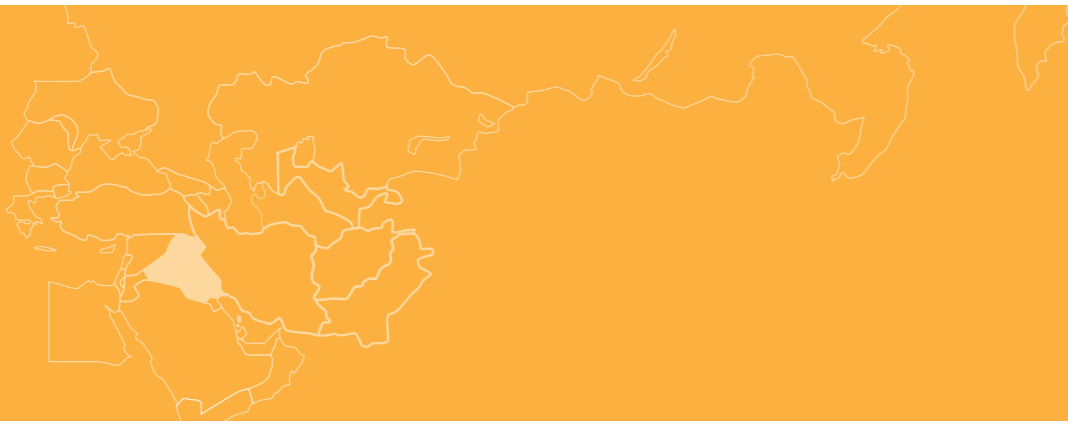
When members of the Government and Parliament have had a reformist approach, there have been major achievements in terms of plans and bills reflecting gender equality. For instance, the reformist Parliament (2000-2004) approved ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), though this has not been allowed by other governmental bodies, in particular the Guardian Council. During Mohammad Khatami's presidency (1997-2005), a Comprehensive Resolution was put together by academic scholars and religious intellectuals to reassess all of the laws pertaining to women, such as the Constitution, sections of the Civil Code pertaining to family law, the Criminal Code, Social Security and Labour Laws, and Civil and Criminal Procedure, based on Islamic jurisprudential resources. This research proposed substantial reforms of the existing laws with the aim of improving the legal condition of women, which could have opened a meaningful and constructive dialogue between the religious authorities, the Government, civil society and women's groups. Based on this Comprehensive Resolution, in May 2005 the Government prepared a bill to reform some laws relating to women, but unfortunately it was never presented to Parliament. In any case, a conservative-dominated Parliament had been elected the previous year; in the unlikely event that it would have passed the bill, the Guardian Council would have rejected it as it had rejected the majority of earlier reform proposals. In June 2005, a conservative president was elected, marking the end of attempts to achieve the equality of women and men in the family and society. This bill and other reformist plans were set aside, and wait to be resurrected when a new reformist government is once again elected.

Equality in the Family is Possible

- ▶ Many individuals and groups emphasise the elimination of gender-based legal and social discrimination. Activists who are committed to change in accordance with Islam have attempted to reinterpret *Shari'ah* law in order to reform discriminatory laws. Groups analyse and critique relevant bills and conduct studies that produce useful data. Activists use new media such as blogs, websites, emails, text messages, etc., to publicise current issues, engage the public and expose realities of women's lives.
- ▶ Women's groups have differences in vision and approach, but they have come together in recent years around similar goals: elevation of the status of women in the family and society, and elimination of discrimination and prejudice against women.
- ▶ In 2008, the conservative administration proposed the 'Family Protection Law', which relaxed restrictions on polygamy, including eliminating the requirement that existing wives consent to a subsequent marriage. This bill met unprecedented opposition by activists, political figures and religious intellectuals. It was covered in the media; signatures were collected and complaint letters sent; activists liaised with Members of Parliament; and some religious officials condemned the bill. As a result, those provisions were eliminated.
- ▶ Limited but significant changes have taken place in favour of women, including:
 - Limitations on divorce, including required referral to court, a report on why the couple cannot live together and proof that a foetus does not exist. Women can live in their husbands' residences during the *iddah* period, and are entitled to a payment for the unpaid work they contributed to their homes and families (*Ojrat-ol Mesl*).
 - Reform of the Custody Law to automatically give custody of children under seven to the mothers.
 - Adjustment of dower (*mahr*) for inflation.
 - Inheritance reform to entitle widows to shares of their husbands' immoveable property (land).
- ▶ Some women protect and provide for themselves in times of crisis by asking for a heavy dower at the time of marriage. This can also serve as a bargaining chip so they can get an education, work, and gain custody of children after divorce. Some women stipulate conditions in their marriage contracts to protect their rights to education and work; others ask for the delegated right to divorce. Some families write wills that give their daughters greater portions of their property than they would be entitled to under the current Inheritance Law.

Source: Report submitted to Musawah in English by a group of Iranian women's rights activists from such groups as Islamic Participation Front's Commission on Women, Women's Human Rights Society, the Association of Women Researchers in History, Women's Magazine, Reformist Women Society, Neo-intellectual Muslim Women, Women's Rights Magazine, the Institute of Journalist Women of Iran, the club of Iran's Political Parties' Committee on the Affairs of Women, Islamic Revolution Women Society, Well Family Center, and the Institute of Women's Studies and Research.

IRAQ



The Iraqi legal system has been in transition since the current conflict began in 2003. Before 1959, personal status issues were not codified. The Personal Status Law No. 188 of 1959 regulated family affairs and all matters relating to marriage, divorce, inheritance, guardianship and custody of children for all Iraqis, regardless of sect. This law has been subjected to amendments over the years, mostly for the benefit of women.

However, article 41 of the Iraqi constitution of 2005 provides that each religion or sect has freedom to manage its affairs and religious institutions, including personal status laws. This would effectively repeal the Personal Status Law and allow each sect to create its own family laws, most likely to the detriment of women's rights. Iraqi women's organisations have been actively campaigning against the approval of this article. Since the constitution is still undergoing a review and amendment process, the Personal Status Law remains in effect.

Equality in the Family is Necessary

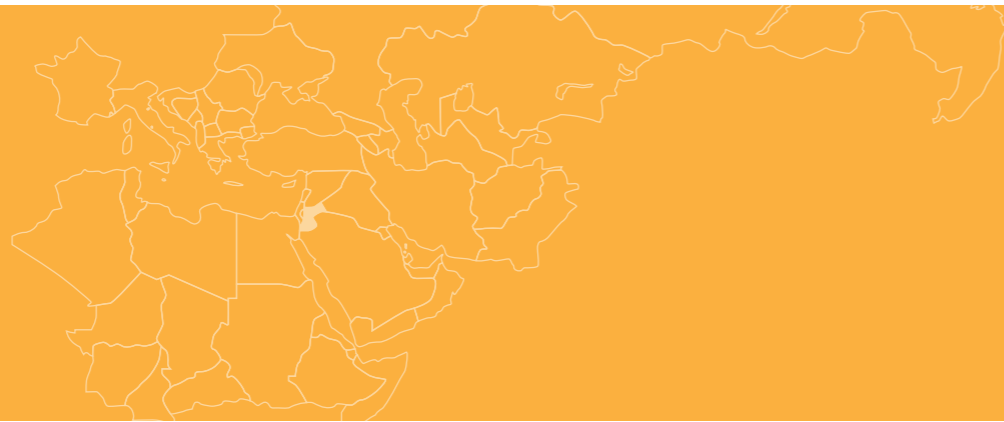
- ▶ The culture prevailing in Iraq is male-dominated, with a clear preference for males over females in all aspects. Girls must obey and serve the needs of their fathers and brothers (and eventually husbands), who have the right to curtail their freedom of movement. All girls are expected to marry. If a girl does not marry before the age of 25, she and her family will worry; if she does not marry by the age of 35-40 years, she is considered to be a problem for her family.
- ▶ While girls have traditionally had good access to education, in bad economic times they are kept home from school while their brothers continue to attend school. In the current deteriorating security situation, some families prefer that girls not continue their education because of personal security and the lack of easy, safe transport to and from school buildings. This has caused a high rate of female dropouts from secondary education in Iraq, particularly in rural areas and slums.
- ▶ There are no labour laws that explicitly prohibit women from working. In times of war, Iraq has relied on the efforts of women in the administration of the country, though upon the return of the men from the fighting fronts women were expected to return home and thus lost their jobs and sources of income.
- ▶ Although women are often the breadwinners of the family, the head of the family in the Iraqi culture is the man. Even though the Iraqi personal status law preserves the rights of women in the event of divorce, application of the law is not guaranteed and women are not always protected from societal customs and religious interpretations.
- ▶ One of most significant current challenges is the adoption of article 41 of the new constitution, which could potentially lead to the removal of the Personal Status Law of 1959. The arguments demanding repeal include that the law arose from the previous political regime and should be abolished as part of the regime change; the law violates the provisions of *Shari'ah*; and the law denies private sectarian rights of Iraqi citizens.
- ▶ Women in Iraq have faced difficulties in creating an independent women's voice, despite the fact that 75 of the 275 deputies in the Iraqi Parliament are women.

Equality in the Family is Possible

- ▶ Girls have been enrolled in educational institutions since the establishment of the Iraqi state in 1921. They entered universities in the 1930s and joined political circles in the 1940s, holding decision-making positions in political parties. In 1958, the first female minister in Iraq and the Arab region was appointed (Dr. Nazeha Al-Dulaimi). Education encouraged women to take on important roles within their families and society and showed the problems that occur because of the economic subordination of women.
- ▶ The Personal Status Law includes numerous progressive provisions that protect women, including the right to retain the marital home for three years after divorce; equal marriage age for females and males; and requiring a husband to prove financial ability to maintain an additional wife before he contracts a polygamous marriage.
- ▶ Throughout the past four decades, there has been opposition from conservative religious forces to the Personal Status Law. However, the progressive forces and the Iraqi women's movement have successfully resisted all attempts to repeal the law.
- ▶ Iraqi women's organisations have been campaigning to retain the Personal Status Law and invalidate article 41 of the new Iraqi constitution. These demands have been supported by many international organisations and non-governmental women's associations. The arguments for keeping the law include:
 - The law is based on an advanced reading of Islamic law and was prepared by a committee of experts and scholars based on the doctrinal texts.
 - The law unifies all Iraqis and encourages social cohesion away from the narrow sectarian tendencies that threaten the Iraqi state.
 - The law is a product of the struggle of Iraqi women and the progressive forces that ruled before the Ba'ath party and Saddam Hussein came into power, thus is not a symbol or a remnant of the previous regime.
 - The abolition of the law would result in significant risks to mixed families, for example where one spouse is Shi'ite and the other is Sunni. Such families constitute a large portion of Iraqi society.
 - The abolition of the law would contribute to the deepening of sectarian tendencies and division of communities and would encourage Iraqi society to return to a state of lawlessness.

Source: Report submitted to Musawah in Arabic and English prepared collaboratively by organisations working in various parts of Iraq, including the Women's Leadership Institute in Baghdad and Basra, Al-Yoser organization in Hilla, the Center for the Development of the Capacities of Women in Erbil, the Iraqi Women's Movement, the Rafidain Women Coalition, Al-Amal Association and Baghdad Women's Association.

JORDAN



The personal status law for Muslims in Jordan, in which the population is 90 per cent Muslim, is based on the Islamic *Shari'ah* as the sole source of legislation. Special religious courts exist with regards to family matters, and Jordanians use these according to their religion and sect. Therefore, there is a multitude of mechanisms and legal references, which can create problems for different populations.

The personal status law discriminates against women in various issues. The underlying basis for this discrimination is the perception that men are the leaders of the family and consequently the guardians and controllers of their wives and daughters. The law supports this perception by stipulating guardianship for women who have not previously been married until they reach the age of 40, despite the fact that the age of majority is 18 years. This is an obstacle to women's independence in making decisions related to areas of their personal lives such as education, marriage and choice of dress.

Equality in the Family is Necessary

- ▶ **Guardianship (*wilaya*):** Women who were not previously married are under the control of a guardian until the age of 40. If a woman acts outside the accepted norms and traditions of the family, for example by trying to live independently, the guardian can ask the authorities to bring her back to the home.
- ▶ **Trusteeship (*wisaya*):** The grandfather has the right of trusteeship over the children of his deceased son. Judges can still grant the mother trusteeship, but she has to prove she is qualified and that the original trustee is not competent.
- ▶ **Custody:** Custody remains with the mother until the children reach the age of puberty, but the father can make decisions with regard to the children's education and can stop paying alimony for a daughter if she is perceived to be rebellious.
- ▶ **Polygamy:** Seven per cent of marriages are polygamous. Recent amendments require the first wife to be informed of subsequent marriages, but this can happen after the marriage has already taken place.
- ▶ **Property rights and inheritance:** Even though the law and Muslim jurisprudence provide for the right of women to keep their finances separate, many women still pass their inheritance to their brothers. It has also become tradition to accord the family property to the husband, leaving women unable to retain their shares in the case of divorce or the husband's death.
- ▶ **Domestic violence:** Violence commonly goes unpunished. In a study conducted by the National Council for Family Affairs, 50.5 per cent of the female interviewees stated that they do not report violence because they feel that institutions such as the police and the courts do not take their claims seriously and that procedures are uncertain, unfair and do not prevent further abuse from occurring.
- ▶ **Choice of domicile:** A woman must live in her husband's domicile and accompany him if he changes domicile, unless she places an exemption to this requirement in her marriage contract. This punishes women victims of violence in particular by binding them to abusive marriages, imposing the threat of relocation away from family and community support, and depriving them of alimony if they choose separation.
- ▶ **Honour Crimes:** If the family of a woman finds out that she was involved in an illegitimate relationship, a person from the family is chosen to kill her. The woman alone carries all the consequences of this act; her partner's role in the relationship is considered only if there was a child and paternity can be ascertained.

Equality in the Family is Possible

- ▶ According to the Jordanian constitution, men and women are equal in rights and duties, though this has not been translated into *de jure* and *de facto* equality in Jordanian society.
- ▶ Not all Jordanian legislation is based on the *Shari'ah*. For instance, the penal code does not incorporate the forms of punishments stated in the Qur'an, but is based on foreign and international jurisprudence. The practice of using other jurisprudence can also be applied to the personal status law, which should be in harmony with other laws and evolving with them.
- ▶ Jordanian women are able to access jobs with decision-making powers, such as positions as ministers, mayors or members of Parliament, but their husbands can still forbid them to leave the house. This aspect of the law must be amended to keep pace with the reality of women's roles in the public sphere.
- ▶ The government is responsive to women's organisations with respect to amendments to the personal status law, yet there is still resistance from the traditional tribal-dominated Parliament and society more broadly.
- ▶ In 2007, the Jordanian Women's Union initiated the formation of a coalition of women's rights organisations that work to examine and advocate for their amendment of articles that discriminate against women, especially in the personal status law for Muslim and Christian women. A campaign was launched that calls for the reform of the personal status law in a form that does not contradict the basic principles of religion, with international conventions, the Jordanian constitution and liberal enlightened *fiqh* interpretations as its reference.
- ▶ The Arab Women Organization of Jordan recently conducted a survey to understand the current situation among women's NGOs with regard to legal reform, especially related to sensitive areas that are being claimed by conservative Islamist groups.
- ▶ Women's NGOs are involved in a national and regional campaign to lift reservations to CEDAW, including those placed on articles relating to the family, nationality, freedom of movement and choice of residence. A local network called Mosawah has been established to call for the implementation of CEDAW; 82 women's NGOs are now part of the network.

Sources: Reports submitted to Musawah in Arabic by the Jordanian Women's Union and the Arab Women Organization of Jordan.

KENYA



Muslims constitute approximately 10 per cent of the Kenyan population. In most ethnic communities in Kenya, men are considered to belong to the public sphere while a woman's place is seen to be in the private domain of the home. Muslim women's rights in the family are thwarted by culture and tradition, including the insistence on women's obedience to their husbands and other male relatives. In the era of HIV/AIDS, it is necessary to address the inequalities and injustices that Muslim women face in the family, since women are more vulnerable to further injustices as a result of this pandemic. Article 66 of the Kenyan Constitution provides for *Kadhis'* Courts, which have been set up based on provisions of the *Kadhis'* Courts Act 1967. Some aspects of the family laws are governed by the *Kadhis'* Courts Act and other statutes; others are governed by classical law.

Equality in the Family is Necessary

- ▶ Marriages are often conducted informally, with a person with knowledge of the Qur'an officiating the contraction of *nikah*, but not submitting documentation to the *Kadhis'* Office. Many Muslim women do not possess copies of their marriage certificate and have no records to show that they are actually married. Some Muslim women in the interior of Kenya have not solemnised their unions.
- ▶ Many women remain silent about their marital problems, including the failure of their husbands to provide maintenance, because of cultural reasons. Few divorced women receive maintenance from their former husbands.
- ▶ The *Kadhis'* Courts, which handle divorce cases, sometimes conclude divorce cases without witnesses appearing in the court. In one case reported to NGOs, a *Kadhi* issued a letter of divorce in the absence of the wife.
- ▶ The certificate of marriage is required in divorce cases to affirm the legality of the marriage and prove the spouses' religious status as Muslims. Since many women don't have marriage certificates, this has brought a lot of injustices on women.
- ▶ *Kadhis* often do not address *iddah* or division of property when they rule on divorce cases. Little attention is paid to *iddah* in widowhood. *Kadhis* often do not address succession of property, so women often are not able to access their shares of inheritance.
- ▶ Boys are generally privileged over girls in terms of education, leaving the girls disadvantaged in various ways. This has in turn led to gender imbalance in positions of leadership and decision-making. Muslim women are still only minimally represented in decision-making forums; since independence there has been only one Muslim woman has been elected to the parliament. In the current sitting of Parliament (2007-2012), two Muslim women were nominated as Members of Parliament.
- ▶ Many Muslim women in Kenya work to support their families because of the economic situation in the country. Husbands allow women to work outside the home only if the women can still ensure smooth running of the house.
- ▶ Many Muslim families are affected and infected by the HIV/AIDS pandemic. Many women have become heads of families after losing their husbands. They face hardships in providing for their families because they are not recognised as heads of families. Some have been denied inheritance and access to the property of their late spouses; seeking legal redress is almost impossible.

Equality in the Family is Possible

- ▶ The government is employing more *Kadhis* in the *Kadhis'* Courts so that women can seek legal redress.
- ▶ The office of the *Kadhi* has always encouraged married couples to register their marriages and to attain marriage certificates if the marriages were conducted over the weekend.
- ▶ The Federation of Women Lawyers (FIDA), Kenya chapter, has female Muslim lawyers who can help to help Muslim women with their legal problems, which has helped in cases of custody and maintenance of children.
- ▶ Labour laws in Kenya provide for equality in the workplace, though Muslim women working as home helpers are mostly underpaid and have no knowledge of how to seek help.
- ▶ Several nongovernmental organisations such as Centre for Law and Research International (CLARION), the Forum for African Women Educationalists (FAWE), and the Federation of Women Lawyers (FIDA), among others, have offered trainings to empower women on their rights and provide them with the necessary skills to participate in public sphere.
- ▶ The realisation of equality and justice are hindered by existing cultural norms, male-based interpretations of the *Shari'ah* and a disregard of current realities. The framework for improving the lot of women is provided for in the formulations of the *Shari'ah*, which can be used to push for equality and justice in the family.

Source: Report submitted to Musawah in English by the Kenyan Muslim Women Family Rights Movement, a group of Muslim women who came together in 2008 to exchange opinions and experiences and to empower Kenyan Muslim women to fully understand their rights through all of the forums available.

MALAYSIA



Malaysia's population is multi-religious; approximately 60 per cent of the population is Muslim. Malaysia has a dual court system, with *Shari'ah*- and *fiqh*-based laws that apply only to Muslims and include matters specified in the Federal Constitution such as matrimonial law, charitable endowments, bequests, inheritance and offences that are not governed by federal law (matrimonial offences, *khalwat* and offences against the precepts of Islam). The power to legislate these matters lies with each state legislature and state Sultan, meaning there are fourteen different sets of Muslim laws in Malaysia.

The Islamic Family Law (Federal Territories) Act of 1984, which was designed to serve as a model for the other Malaysian states, was considered internationally to be among the most progressive codified Muslim family laws in terms of rights and protection for women. Since 1984, however, a series of amendments have effectively rescinded many of the positive provisions for women in the original codification.

Equality in the Family is Necessary

- ▶ The current Islamic Family Law Act contains a number of provisions that discriminate against Muslim women. These include:
 - The minimum age of marriage is lower for women than men.
 - A woman, regardless of her age, can only marry with her guardian's consent, whereas a man does not need the consent of a guardian.
 - A woman is supposed to obey her husband. Her failure to comply with the 'lawful' wishes of her husband constitutes '*nusyuz*' and means she can lose her right to maintenance.
 - A man can divorce his wife at will, outside of the court system, but a woman must go to court and obtain a judicial divorce on one of a number of very specific grounds that require extensive evidence.
 - A woman (but not a man) can lose custody on several grounds, including 'immorality'.
 - A woman is not entitled to guardianship of her children. Even when the woman has custody of the children, the father as the lawful guardian maintains control over matters where the consent of the guardian is required (e.g. obtaining a passport, registering or changing schools, or undergoing surgery). Similar provisions for non-Muslims were amended in 1999 to afford equal guardianship rights for women. Women's groups successfully lobbied

the Cabinet to issue a directive to various Ministries giving Muslim women some guardianship rights, but the Muslim laws themselves have not changed.

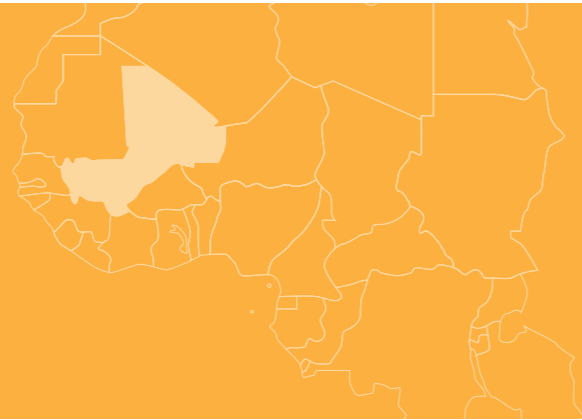
- ▶ In late 2005, regressive amendments to the Islamic Family Law were passed by the Parliament and the Senate. These amendments further discriminated against women by loosening restrictions on polygamy and using gender neutral language to extend a wife's right to *fasakh* divorce to the husband, allow a husband to get a court order to stop his wife from disposing of her property during divorce proceedings, and enable a husband to acquire a share of the matrimonial assets at the time of polygamy. However, because of outcry by women's organisations and the general public, the Prime Minister ordered the Attorney General to redraft the bill. Women's groups were given a seat at the table for this process. A new bill has been finalised and awaits submission to Parliament.

Equality in the Family is Possible

- ▶ In the general elections on 8 March 2008, the opposition parties had their strongest showing since Malaysian independence, winning 36.9 per cent of the parliamentary seats and five of the thirteen state legislatures. This election has led to an opening of the political and social discourse at both state and federal levels.
- ▶ Progressive Muslim women and men and also those from other faiths are engaging in the discourses on Islam and the rights of women.
- ▶ Sisters in Islam (SIS) has been working for approximately twenty years to create a public space to engage with issues relating to Islam and a public voice of Muslim women. SIS uses a multi-pronged strategy to advocate for comprehensive reform of family law in Malaysia. SIS has drafted a model family law bill based on Islamic principles of equality and justice that can be put forward in Parliament. Some of the key reforms include:
 - An equal minimum age of marriage for men and women.
 - Abolition of the requirement that the guardian must consent to the marriage of a woman.
 - A standard form marriage contract in which all marriages contracted are monogamous and polygamy is prohibited. Polygamy would be allowed only in exceptional circumstances and would be governed by a special and separate marriage contract.
- An equal right to divorce and divorce only by judicial decree.
- An equal division of matrimonial assets, instead of the present practice of awarding only one-third of the assets to the wife.
- An equal right to custody and guardianship of children.
- ▶ Following the Maghreb model, SIS is preparing a Guide to support the provisions in this model bill using holistic framework of arguments from religious, social, domestic law and policy, and international human rights perspectives, as well as examples of positive practices from other Muslim countries relating to each provision.
- ▶ SIS has also begun a national public education campaign to build support across a broad constituency of women's and human rights groups and at the grassroots level to sustain the momentum for reform. In 2008, SIS's public education programme trained over 2000 grassroots women in eleven of Malaysia's fourteen states. In addition, a national network of grassroots women's groups, GAHWI (Coalition on Muslim Women's Rights), was founded to speak out on Muslim women's issues.

Sources: Report of Roundtable 'A Discussion on Muslim Women Issues', organised by Sisters In Islam with Muslim women's organisations, 18-19 October 2008, Kuala Lumpur, Malaysia; Report from the National Symposium 'Pembentukan Keluarga Adil, Stabil dan Bahagia', organised by Sisters in Islam with Gabungan Hak Wanita Islam (GAHWI) and the Joint Action Group for Gender Equality (JAG), 4 December 2008, Kuala Lumpur, Malaysia; Sisters in Islam, *Guide to Equality in the Family: A Just and Equitable Muslim Family Law for Malaysia*, unpublished document, December 2006.

MALI



Mali has a multitude of ethnic groups, though 90 per cent of the population is Muslim. Malian society is essentially patriarchal, with clear differentiations of roles and tasks based on gender, ethnicity and religion. Mali has an amalgam of laws derived from the French civil code, traditions and customs and, especially with regard to family law, from Islam. Although the texts of many of the laws guarantee equality between men and women, women experience discrimination in their lived realities. Traditions and customs, including conservative interpretations of religious texts, burden women and have been factors in blocking the realisation of women's rights in general and in the family.

Since October 1998, the Government of Mali and civil society have taken part in a participatory process to reform the family law. The draft Family Code that resulted deals with marriage, the matrimonial regime, parentage, inheritance, gifts and wills, and other matters. The finalised draft code awaits adoption.

Equality in the Family is Necessary

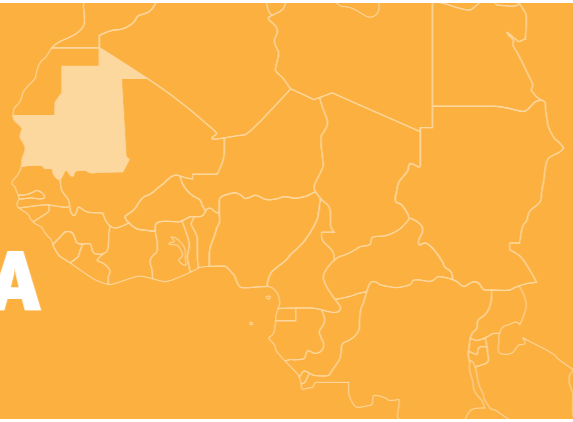
- ▶ Women played an important role in the struggle against colonialism and helping the country gain independence. But after independence women were not allocated political and administrative positions and instead remained confined to domestic tasks and reproductive roles.
- ▶ A 2001 ministerial study showed that most women have been victims of at least one form of violence and that most of the violence suffered by women involves the family. There is no appropriate legislation to curb such violence, with the exception of the Penal Code.
- ▶ Explicit discrimination exists in some laws. In the Code on Marriage and Guardianship, the minimum age of marriage is lower for girls than boys. A married woman must obey her husband, which often reduces her constitutional rights and freedoms. The Nationality Code does not permit a mother to automatically transmit her nationality to her child. The Penal Code does not include the punishment of certain offences such as female genital mutilation, domestic violence and sexual harassment.
- ▶ The realities of women's lives in the family outside the texts of the laws include:
 - Forced and early marriage, which can represent up to 80 per cent of marriages in some localities.
 - Women often have little responsibility for decision-making within the family.
 - Some husbands and parents refuse to allow their wives and daughters to work.
 - Widows sometimes suffer humiliating and degrading practices. Instead of being able to inherit her deceased husband's property, a woman becomes part of her husband's property to be inherited by others.
 - Many women die in childbirth; in 2001, there were 582 deaths per 100,000 live births.
 - Girls and women are forced to undergo the practice of female circumcision.
 - Women are most vulnerable to HIV/AIDS because of related social or economic factors.
- ▶ There is almost universal ignorance of women's human rights and international laws. Legal developments have not been accompanied by changes in societal behaviour. Women are often resigned to their fates, thinking that they cannot change long-established practices. They are reluctant to use the courts to resolve conflicts such as domestic violence and abuse, inheritance, etc.
- ▶ In the Family Code reform process, some religious Muslims have argued that the reforms are not Islamic. This has delayed the final stages of the process, leaving the finalised draft Code in limbo.

Equality in the Family is Possible

- ▶ Mali's Constitution declares all Malians to be free and equal in rights and duties and prohibits discrimination on a number of grounds, including sex. Men and women share the same rights and freedoms under the Constitution. The Preamble to the Constitution states that Mali subscribes to the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights; Mali has ratified most of the major international human rights instruments.
- ▶ Equality exists in many legal texts. For instance, an act related to reproductive health states that men and women are equal in dignity and rights regarding reproduction, and that both members of the couple have the right to information and to decide freely on the number of children and spacing of their births.
- ▶ The Government, private sector and civil society have either separately or jointly taken steps to promote equality in the family:
 - A Ministry for the Promotion of Women, Children and Family was established in 1997 to work with other ministries on promoting the rights of women and children in the family. A recent action plan provides for the adoption of a Family Code, taking into account the international texts ratified by Mali.
 - Several projects aimed at reducing inequalities between men and women have been implemented, including awareness raising for civil society, religious and traditional leaders, and the media.
 - The Department of Justice has established an advisory committee to promote gender equality in all areas relating to access to justice.
 - Companies are working to improve the situation of women in the workplace, recognising the economic role of women and the importance of respecting the rights of women and work-family balance.
- ▶ Under the 1962 Code of Marriage and Guardianship, men and women have equal rights in certain domains. Women are able to choose their husbands. A woman can refuse to be in a polygamous relationship. While the husband is the head of the family, the wife can replace him where he is absent or unable to express his will. A woman can own and manage property. She has a right to seek an annulment of a polygamous marriage contracted by her husband when she was married under a monogamous contract or to seek divorce or separation. Women are protected against repudiation. A woman can be appointed legal guardian of her children upon the death of her husband.

Source: Report submitted to Musawah in French by representatives of Femmes et Droits Humains, a Malian non-governmental organisation.

MAURITANIA



Mauritania's population of 3.4 million people is almost entirely Muslim. The legal system is a mixture of Muslim laws and French-influenced civil law. The Personal Status Code, which was adopted in 2001, sets the minimum age of marriage at 18, requires consent by both parties and registration of marriage, and recognises the right of inheritance of widows and their children. Although the Personal Status Code has some positive aspects for women, it is not always enforced, as local traditions have a strong influence in some communities.

Equality in the Family is Necessary

There are a number of challenges in the Mauritanian laws:

- ▶ **Age of marriage:** Although the minimum age of marriage is 18, child marriage is still practised in Mauritania and girls as young as six years old are married, often in return for compensation given to the family by the older spouses.
- ▶ **Guardianship (*wilaya*):** The Personal Status Code considers women to be minor citizens regardless of their age, educational, cultural or economic backgrounds. Consequently, women do not have the legal capacity to make decisions that concern them, their families or their children. Women must receive the approval of their guardians to contract a marriage.
- ▶ **Trusteeship:** Trusteeship over children of a deceased father is granted to the family of the father instead of the mother. This proves very problematic in cases where the father's family has unfairly used and seized the children's financial rights and properties.
- ▶ **Inheritance:** In cases where the deceased father has only daughters and no sons, part of his inheritance is distributed among his brothers and other members of the family and not to the daughters and the wife only.

- ▶ **Ownership of property:** Women are allowed to use only 25 per cent of their property, which is unacceptable in the current environment where a large number of women have pursued high levels of education, are active players in today's labour market and are thereby creating their own wealth.
- ▶ **Divorce:** Divorce is still perceived as a unilateral decision taken by the man and is regulated accordingly.
- ▶ **Decision-making:** The principle of men's exclusive responsibility to take decisions related to the matrimonial home and the family is enshrined in the Personal Status Code. This is an example of how traditions and Islamic teachings have been mixed, as this practice has no basis in the *Shari'ah*.
- ▶ **Labour:** The labour law discriminates against women in many ways, specifically in matters of retirement. The age of retirement for women is 45, whereas men are allowed to work until the age of 65. Furthermore, the family of a deceased retired woman is not eligible to benefit from her retirement rights, whereas the family of a deceased retired man can.

Equality in the Family is Possible

- ▶ The Association of Women Heads of Households has focused in recent years on detecting manifestations of discrimination against women in Mauritanian law and exposing these to the national public opinion. Working from an innovative religious vision, the Association tries to introduce the conditions necessary to overcome these forms of discrimination. In this context, the Association has organised workshops attended by legal experts, *Shari'ah* scholars and actors who promote women's and family rights, and has prepared studies to legitimise and authenticate its position from a legal perspective.
- ▶ In workshops organised by the Association, agreement has been reached on various points:
 - The Personal Status Code should include the right of women to choose agents they deem appropriate to conclude their marriage contracts and their right to remain the trustees of their children's wealth after the fathers die.

- The estate of the deceased father, if he has no sons, should be distributed among the daughters and wife only, and not to his brothers.
- Divorce should no longer be a unilateral right of the husband only, but rather a joint decision by both parties that also allows women to access divorce through courts.
- ▶ The Association conducted a study on Mauritania's general reservation to article 16 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The study concluded that there is nothing in CEDAW that is incompatible with the *Shari'ah*. The study helped NGOs successfully gain the support of religious leaders who had been opposed to CEDAW. Furthermore, recommendations were drafted and sent to the President of Mauritania, who ordered the formation of a drafting committee to examine whether and how to incorporate these recommendations into Mauritanian law.

Violence against Women in Mauritania

Following Mauritania's report to the Committee on the Elimination of Discrimination against Women in 2007, the concluding comments stated: 'The Committee expresses concern about the lack of implementation of the legislation, as well as the lack of policies and programmes, to address violence against women. The Committee is particularly concerned about occurrences of domestic violence, rape, including marital rape, and all forms of sexual abuse of women, and about the persistence of patriarchal attitudes that consider the physical chastisement of family members, including women, acceptable. While noting the State party's assurance that the occurrence of forced feeding of young girls is declining, the Committee remains concerned about this practice.' Another major concern is the persistence of trafficking against women, including trafficking of Mauritanian girls to Saudi Arabia and other Gulf countries.

Sources: Report submitted to Musawah in Arabic by L'Association des Femmes Chefs de Famille (Association of Women Heads of Household), an NGO with more than 5,000 members that aims to promote the legal, social, and economic empowerment of women in general and particularly of those in rural locations; 'Child marriage tradition turns into trafficking', IRIN News, 9 December 2008, <http://www.irinnews.org/report.aspx?ReportID=81891>; Concluding comments of the Committee on the Elimination of Discrimination against Women, CEDAW/C/MRT/CO/1, 11 June 2007.

MOROCCO



In 2004, Morocco achieved a major reform of the 1958 Code du statut personnel (Personal Status Code), now called the Code de la famille (Family Code) or *Moudawana*. Although the reform did not include all the proposals made by the feminist movement, the new version of the code is an improvement on the past, both symbolically and in terms of actual provisions, and therefore offers possibilities for future amendments.

Morocco is continuing its democratic transition process and looking to a future based on sustainable development and respect for human rights. Tremendous social changes experienced in Morocco during the past few decades have profoundly affected the status of women and created new realities, needs and aspirations. These changes include increases in women's access to education, including higher education (more than 40 per cent of students), participation in paid work (27 per cent of the population) and participation as heads of household (16.5 per cent); increased use of contraception (over 70 per cent); and greater public participation.

Equality in the Family is Necessary

- ▶ Despite the 2004 reform, discrimination and injustices persist, including:
 - **Minimum age of marriage:** The exception to the minimum age does not specify an absolute minimum or conditions. Judges authorised nearly 89 per cent of applications for marriages of minors, of whom 97.5 per cent are girls. Requests for permission for early marriage continue to rise.
 - **Polygamy:** The justifications for polygamy are not specified. There was a small decline in polygamy between 2005 and 2006, but it still affects vulnerable women who do not have resources to support their families.
 - **Divorce:** Judges require large amounts of evidence for certain types of divorce. Statistics show an increase in the number of divorces between 2004 and 2006, including in types that tend to favour the husband.

- **Distribution of property** upon divorce does not take into account women's contributions to the care of the family and home.
- **Custody and guardianship:** A mother may lose custody of children over 7 years old if she remarries. The father retains guardianship even if she has custody; she cannot travel abroad with her children without his written permission.
- **Inheritance** provisions remain discriminatory.

- ▶ There was no comprehensive implementation strategy. This has resulted in lengthy procedures, with insufficient resources to handle demands. Corruption persists in the courts. Female litigants are especially affected, as many are poor, poorly educated and appear without legal assistance. Some judges are reluctant to apply the new provisions, positioning themselves as defenders of morality and the patriarchal family.

Strategies used in the Personal Status Code Campaign:

- ▶ **Networking:** A network was formed in March 2001 by 9 organisations; by 2004, it had grown to 30 organisations. A challenge was developing an internal management system to ensure a common vision, sharing of power and optimisation of efforts towards the agreed-upon goals.
- ▶ **Context analysis:** Research was conducted to ensure a comprehensive, grounded understanding of the goals, opportunities and constraints of the political and social environment, the players and their positions.
- ▶ **Communication strategy:** A variety of advocacy methods were used to target decision-makers, including meetings, memoranda, dinner-debates, mailings, press releases, requests for endorsements of appeals, etc., all accompanied by media outreach. Awareness raising included messages displayed through flyers, advertisements, etc., based on the real cases of four women victims of violence.
- ▶ **Arguments supporting reform:** The campaign built four types of arguments around the slogan 'Reform of the Personal Status Code is Necessary and Possible': sociological arguments regarding societal changes and the new challenges of development; legal arguments drawn from national legislation; universal human rights arguments; and religious doctrinal arguments.

Equality in the Family is Possible

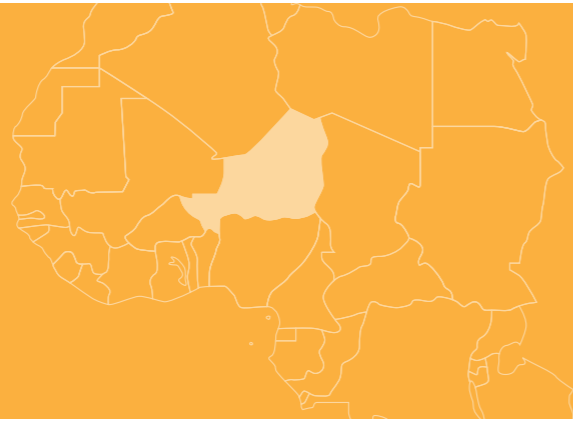
- ▶ Achievements in the 2004 reform included:
 - Recognition of the principle of equality in the family, including joint responsibility and equal rights and duties for both spouses;
 - Equal age of marriage (18 years);
 - The abolition of compulsory guardianship for women and a wife's duty of obedience to her husband;
 - Regulation of polygamy;
 - Divorce proceedings are subject to judicial review. Different types of divorce (mutual consent, discord) were introduced to allow women to initiate divorce;
 - The mother has stronger claims for custody;
 - Spouses can develop separate contracts detailing the management of their property;
 - Recognition of a child's rights to custody, alimony, paternity and legitimacy, even if born outside of marriage;
 - Orphaned grandchildren can inherit from maternal as well as paternal grandparents through obligatory bequests.
- ▶ The women's movement is preparing for a number of new struggles:
 - **Inheritance reform:** Key activities in a new advocacy campaign around inheritance include: (1) preparing doctrinal arguments to show the religious possibility for reform, and sociological arguments on how families

circumvent the current rules of inheritance because the rules are not relevant in the current context; and (2) developing a coalition of organisations through training sessions, discussions, and networking.

- **Land rights:** Collectively-owned land is beginning to be sold, but only men are considered eligible to receive compensation. The plight of women who must leave their land is being publicised through letters, interviews with officials, press conferences and meetings with the media, as well as a large public sit-in before Parliament that was held in November 2008.
- **Lifting of CEDAW reservations:** The King of Morocco officially announced the lifting of all reservations to the CEDAW Convention on International Human Rights Day 2008. This was due in part to a court case on this issue and a major national and regional advocacy campaign called 'Equality Without Reservations'.
- **Women's political participation:** Women's groups are mobilising for the 2009 elections to raise participation from the current level of 0.6 per cent to 12 to 15 per cent.
- **Reform of the Penal Code:** Women's groups are advocating for reform of the Penal Code and a specific law on violence against women.
- ▶ Other reforms in recent years include the labour law (2003), criminal law (2003), nationality code (2007) and the electoral code (2008).

Source: Report submitted to Musawah in French by L'Association Démocratique des Femmes du Maroc, based on their involvement in the 2004 reform process and ongoing attempts at reform. See the Musawah report for more extensive information about the substance of the new law and details of the strategies involved in advocating for reform.

NIGER



In Niger, the sources of law include the Napoleonic Civil Code and modern statutory law, Islamic law and customary law. On certain issues, like female circumcision or rape, there are no laws or policies and the practices are generally ignored or denied by Nigerians. The laws that do exist are limited in their application and call into question the rights of women with regard to inheritance and family matters. A draft family code bill that would protect women's rights in the family and in society was completed in 1993; however, at the beginning of 2009, the bill had still not been adopted.

Equality in the Family is Necessary

- ▶ Gender stereotypes and traditional practices persist in Niger, including:
 - Forced early marriage (almost 48 per cent of Nigerian women are married before the age of 15);
 - Female genital mutilation;
 - Multifaceted forms of domestic violence;
 - Trafficking in women;
 - Polygamy;
 - High levels of obstetric fistula, due to inadequate medical care compounded by the fact that the average age for first pregnancies is 14 years old; and
 - Slavery and the sexual exploitation of women.
- ▶ Information barriers and the lack of education remain problematic. The literacy rate for women is only around 15 per cent; the rate for men is approximately 43 per cent.
- ▶ In the absence of a family code, customary law is supposed to govern marriage, divorce and inheritance. This causes difficulties because customs are oral and differ from community to community. In addition, the customs adopted by

the judicial system are heavily influenced by colonial norms from the Victorian era, which were discriminatory against women and considered men to be superior to women.

- ▶ Judges have a great deal of discretion in applying customary laws in the courts, as they are responsible for identifying the customs, applying them to the facts of the case, and potentially discarding the customs when they don't meet the requirements set by the legislature. However, customs evolve, and have done so more quickly in urban centres than in rural areas, leaving a huge gap between customary laws in different parts of the country. The Court of Niger has developed the notion of 'urban customs', but the Supreme Court has ruled that customs must comply with 'the general development of the country'. Judges, who are often young and male, are not adequately trained. The legislature introduced advisers to help judges understand customary matters, but these advisers are always men.

The Draft Family Code Bill

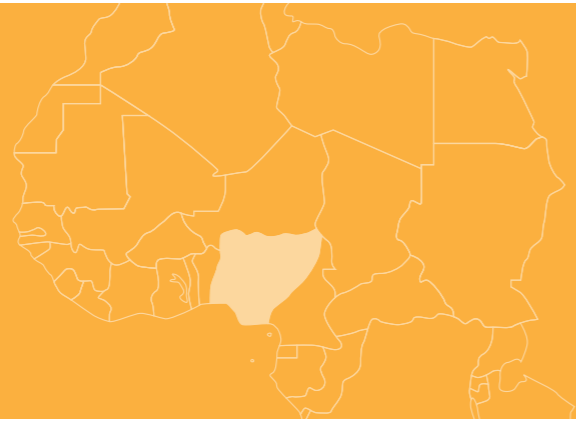
In January 1993, a draft family code bill was completed that was designed to improve the legal status of women. However, sixteen years later, the bill has still not been adopted. The draft code allows Nigerians to choose whether codified law or Islamic law will be applied and prohibits repudiation. The law states that the couple may choose whether the relationship will potentially be polygamous or be monogamous. It significantly improves women's rights related to inheritance. The Family Code would also recognise the woman as the head of the family under certain conditions, provide women equality with their spouses in child custody issues, and recognise the full capacity of women in terms of civil affairs.

Equality in the Family is Possible

- ▶ In 2003, a law that criminalises slavery was adopted. On 27 October 2008, the Court of Justice of the Economic Community of West African States (ECOWAS), in a landmark judgement, found the state of Niger guilty of failing to protect a young girl who was sold into slavery at the age of 12.
- ▶ Niger has ratified a number of human rights instruments on the promotion and protection of women's rights.
- ▶ In 2005, the Ministry for the Advancement of Women and the Protection of Children created an initiative that provides arguments on gender in Islam to be used for awareness and advocacy on issues of human and women's rights in Islam.
- ▶ UNFPA set up a Gender Initiative to support the Ministry of Social Development, Population, the Advancement of Women and the Protection of Children in creating a fair and egalitarian environment relating to gender. The initiative works in the legal and political arenas, but also on strengthening skills and awareness on issues of reproductive health.
- ▶ Mechanisms have been established to facilitate women's access to justice through legal clinics established and led by the Association des femmes juristes du Niger (the Association of Women Lawyers of Niger) and its partners.
- ▶ A local NGO called Le Comité nigérien sur les pratiques traditionnelles néfastes (Nigerian Committee on Harmful Traditional Practices) has proposed amendments to the Penal Code that will punish anyone who attempted to commit an act of genital mutilation with a sentence of six months to three years in prison and a fine of 20,000 to 200,000 CFA francs (USD40 to 400). If the action led to the death of the girl, the prison sentence could be up to 10 to 20 years.
- ▶ The Quota Act was passed in 2000 to increase the representation of women in government bodies. The law was adopted after a long advocacy campaign by women's organisations to correct the unequal treatment between men and women.
- ▶ On 13 May 1991, women's organisations held their first major march for equal rights and against the near absence of women in decision-making bodies. The anniversary of this march is celebrated annually by progressive women's organisations, who consider it the national day for women in Niger. However, 'fundamentalist' women's organisations use the date to organise public demonstrations against human rights conventions and to request repeal of the Family Code.

Source: Report submitted to Musawah in French by Nigerian civil society activists who prepared the report with the assistance of various resource persons, including lawyers, religious activists, academics, administrative authorities and civil society leaders.

NIGERIA



Nigeria has multiple legal systems: common law derived from the British, customary law, a statutory penal code and *Shari'ah* law, introduced in 1999-2002 in twelve out of eighteen states in the north of the country. In *Shari'ah* states, there are separate religious courts that administer and apply personal laws. Nigeria's *Shari'ah* system received international attention in 2001 and 2002 when a 13-year-old girl was flogged within the *Shari'ah* justice system even though the case had been appealed to the Court of Appeal. Death sentences by stoning for two women accused of *zina* were quashed at State Appeal Courts (Sokoto and Katsina). The first was quashed based on the 'sleeping embryo' theory under Maliki jurisprudence, because the courts had rejected the use of a DNA test to prove that the woman had been raped. In the second case, the sentence was overturned on the basis that the act happened before the law was enacted. Women's groups and human rights groups led the defence and succeeded in getting these convictions overturned.

Equality in the Family is Necessary

- ▶ The *ulama* and traditional leaders claim that women are not and cannot be equal in Islam. They insist that Islam guarantees justice, yet use patriarchal and 'biological' arguments that men and women are not equal. Women are seen as impudent if they argue against this position by quoting verses that uphold equality.
- ▶ Women are increasingly becoming breadwinners in their families, but men still feel they have the divine right or privilege to be in charge and make decisions on behalf of the family. This affects women and girls negatively:
 - **Right to work:** Many men believe they have a religious right to stop women from working. Women have been socialised to accept this and believe that they are going against their religion if they disobey their husbands.
 - **Right to education:** Many men believe it is their right to decide whether their daughters and wives can pursue an education. They believe that educated women would challenge the authority of their husbands and fathers, or that education is a waste of time and money because women belong in the home.
 - **Freedom of expression:** Muslim women are often silenced because they are raised to believe that their voices should not be heard by men.
- **Access to justice:** Many women don't know they have a right to access justice or are denied justice because of discrimination in the courts.
- **Ownership of property:** The belief that male relatives can control women's property means that women are effectively denied ownership of assets, especially landed property.
- ▶ Women and girls are assuming economic responsibilities for the family. Because of limited education and skills, some are forced to do housework, sell their bodies, accept jobs that might require submission to sexual advances, or produce small items that their daughters can sell for them.
- ▶ Child and forced marriages are common and are justified as a practice of the Holy Prophet. The provision that the consent of the bride must be sought is ignored unless the girl has the support from a strong family member or NGO.
- ▶ *Qadis* often use conservative interpretations or rationale for their decisions. For instance, when *Shari'ah* was introduced, there were a number of cases in which women were found guilty of committing *zina* because they were pregnant. Although the courts could have used DNA testing to learn the identity of the partners, they refused to do so because DNA testing was not available at the time of the Prophet.

Equality in the Family is Possible

- ▶ Two high profile *zina* cases were fought and won by women's organisations. Women engaged lawyers and experts in Islamic law and jurisprudence, used similar cases in countries such as Pakistan and contacted international links such as the Women Living Under Muslim Laws (WLUML) network to search for relevant information and strategies. Since then, not a single case of *zina* has succeeded in being implemented at the second level of appeal.
- ▶ Women in Muslim communities are part of the larger Nigerian women's movement. In July 2008, organisations such as BAOBAB for Women's Human Rights (BAOBAB), the Centre for Women and Adolescent Empowerment (CWAE), and Women's Rights Advancement and Protection Alternative (WRAPA) joined such networks as the Nigerian Feminist Forum (NFF) to successfully fight against a bill aimed at stopping 'indecent dressing' in public.
- ▶ WRAPA has done extensive work in harmonising eight bills, including those from the previous National Assembly, to produce a bill that a coalition of women's rights organisations believe can lead towards domestication of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Women's Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
- ▶ Research and training efforts are being undertaken within the Muslim communities, including with both conservative and progressive *ulama*, to understand the needs of the community and particularly of Muslim women. A progressive religious leader has made a public challenge on the gross neglect and abuse of the rights of women in the Muslim family. The Jigawa State Government is funding the training of members of judiciary to upgrade and broaden their knowledge to ensure that they meet the contemporary needs of Muslim women.
- ▶ An increasing number of judges and *qadis* are ruling against the norms within their societies. For instance, in a case pursued and won by CWAE, a child marriage was annulled in Yola because the juvenile judge accepted that the consent of the girl was not sought.
- ▶ Although discussion of reform of inheritance laws is not allowed, in some communities fathers give their daughters assets such as land and property or gold and jewellery while they are living to get around the inheritance rules.
- ▶ Women's rights activists are overcoming accusations and antagonism against them and building allies by 'walking the walk': working with both conservative and progressive religious leaders and communities and calling upon the common needs of women.

Source: Report submitted to Musawah in English by the Nigerian National Consultation Committee for Musawah: Equality and Justice Before Allah, in the Muslim Family, the Nigerian national campaign that is part of Musawah. The Committee is made up of five women from five organisations, including Federation of Muslim Women Association in Nigeria (FOMWAN), BAOBAB for Women's Human Rights, Women's Rights Advancement and Protection Alternative (WRAPA), and the Centre for Women and Adolescent Empowerment (CWAE).

PAKISTAN



Muslim jurisprudence was introduced in Pakistan as early as 712 CE; the legal system based on *Shari'ah* and *fiqh* was established at the end of the twelfth century CE. During British rule, Muslim jurisprudence continued to be used for formal administration of justice. At present, family laws are a mixture of codified law and customary law based on religious norms.

Women began demanding law reform in the mid-twentieth century. The Muslim Family Laws Ordinance was promulgated in 1961, based loosely on recommendations of a 1955 Commission on Marriage and Family Laws. The law provided important (though limited) protections, but did not grant women any substantive rights. Commissions in 1975, 1985 and 1994 proposed further recommendations, but no attempt was made to address the issues comprehensively. More positive change came in amendments to the Family Courts Act in 2002, which made it easier for women to get a *khul'* divorce and required courts to complete divorce cases within six months. There are now fifteen laws relating to Muslim family issues.

Equality in the Family is Necessary

- ▶ Laws related to families have highly patriarchal overtones and a discriminatory effect on women and children. Varied verdicts in judgements result in confusion and leave space for manipulation and violation of rights.
- ▶ The husband has a dominating position in the family as the sole provider and head of household. Women are often completely dependent on their husbands, which gives husbands incredible power over them and makes them vulnerable to abuse.
- ▶ Contentious and discriminatory clauses in the laws include:
 - Polygamy remains legal. The sole condition is that the husband must inform and receive consent from the first wife, but failure to do this does not invalidate the marriage and carries only a nominal punishment.
 - Conflicts exist between requirements to apply to the Arbitration Council for divorce certificates and the 90 days *iddat* period. This has resulted in two streams of case law with no final and clear indication as to which should prevail. A Supreme Court judgement on the issue has been delayed for a number of years.
 - Maintenance for the wife lasts only for three months, which is not adequate in a country in which many women cannot attain an education or work outside the home. Unless their families are willing or able to support them, they are left distraught and penniless.
 - A woman's work in the home is not recognised as 'labour' and is not considered measurable for compensation purposes.
 - The right of inheritance, especially regarding agricultural land, depends on the prevailing traditions of the families. Many women are robbed of their rightful inheritance even when they try to follow Muslim procedures.
 - Guardianship is often awarded to the father based on the argument that he has the means to maintain the children, since women often do not work for compensation. If guardianship is awarded to the mother, it is often challenged and given to the father if the mother remarries.
- ▶ Religious political parties and groups supported by conservative religious scholars consistently influence and effectively block attempts for progressive legislation or amendments.

Equality in the Family is Possible

- ▶ The 2002 amendments to the Family Courts Act, which came after years of struggle from the women's movement, represent some positive change.
- ▶ In 2008, the Aurat Foundation re-initiated a movement for reform of family laws. A number of recommendations were developed in national working group meetings held in August and October 2008 with some of the country's most eminent lawyers and jurists. These include:
 - No exclusions for the Tribal Areas in the laws;
 - A quota for women judges in family courts and specific qualifications for family court judges;
 - Provisions for simplifying and combining issues in divorce proceedings;
 - Increased restrictions on polygamy, including that the judge must meet with the existing wife to ensure that her consent has been freely and voluntarily given, right to remain in the residence, financial issues and dower;
 - Increased restrictions on permissions for contracting child marriages; punishment for solemnising a child marriage that was not granted permission and for parents or guardians concerned;
 - Specific provisions regarding maintenance awards, payments and penalties;
 - Women's rights to divorce for cause; and
 - Details on *khul'* procedures.
- ▶ The Council of Islamic Ideology, a constitutional body responsible for giving advice on Islamic issues to the Government and Parliament, published recommendations relating to Muslim family laws in November 2008. These recommendations included: deadlines for issuing divorces in *khul'* cases; compulsory registration of divorce papers; required declaration of assets upon the first and subsequent marriages; addition of a clause in the *nikahnama* by which the husband will assign the right of divorce to the wife; removal of restrictions on women's rights to travel for the Hajj and elsewhere; and recognition of the woman's right of *mata* (maintenance of the wife until re-marriage or death) as an Islamic concept. These recommendations were based on research papers and Islamic texts, though religious parties have claimed that they are un-Islamic.
- ▶ Civil society in Pakistan has made significant headway working with the Government on pro-women bills such as the Family Courts (Amendment) Act 2002, Criminal Law (Amendment) Act 2004, the Honour Killings Act, the Protection of Women Act 2006, and amending the Hudood Ordinances. Although these were not complete successes, women's issues are being recognised and the voice of civil society has created pressure on the Government to act.

PALESTINE 1948 (ISRAEL)

The Ottoman Family Law (1917) is the law applied in the *Shari'ah* courts (religious courts that deal with marriage, divorce and child custody) in Palestine 1948 (Israel). The law was first enacted in the Ottoman Empire in 1917; in 1919 it was endorsed for implementation in historical Palestine. This step was considered revolutionary, as it was the first law that assimilated a Muslim family law into a code. One unique quality of the law is that it was derived through the *takhayyur* (selection) method, in which rules from the four major Sunni schools of law, especially rules that favour women, were selected for use in the code. The code also added rules not based on any of the schools of law, in order to improve the status of women. However, almost one hundred years after the law was adopted, it is no longer revolutionary and does not address all of the needs of the modern Muslim family.

Equality in the Family is Necessary

- ▶ Some of the more challenging provisions of the family law include:
 - According to classical Islamic law, a man has a right to marry up to four women; the Ottoman Family Law currently in force does not limit that right. Though polygamy is against Israeli law, the *Shari'ah* courts have found ways to circumvent the law and allow men to marry more than one wife.
 - Repudiation (unilateral divorce) is accepted by the Ottoman law. Consent of both the man and woman is necessary for marriage, but a man can break the marriage unilaterally, without the woman's consent. Although repudiation is considered valid and legal in the Muslim law, under Israeli law the man could be jailed for up to five years. Therefore, a man can legally divorce his wife through repudiation, but would be committing a crime.
 - There are many expressions that a man can use to divorce his wife. As a result, forced divorce and divorce under the influence of alcohol are both considered acceptable in the Ottoman law. For women initiating divorce, however, it is a long, painful and expensive process.
 - The Civil and *Shari'ah* courts do not take into account the increasing involvement of Muslim women in economic activities.
- ▶ The Muslim community in Israel is not represented by any higher religious body, and does not have a legislative authority like the Druze or the different Christian denominations. Therefore, Muslims do not enjoy any kind of religious autonomy in Israel. The religious courts are formed by the State, and the *qadis* (judges) in these courts are employed according to civil laws.
- ▶ The absence of a legislative body has made it impossible to modify the existing law, meaning the Muslim courts still apply a law that is 90 years old.
- ▶ The Islamist movement says it is impossible to modify the personal status law because there is no higher legislative body. The Islamists consider any change in the law to be a challenge to the Qur'an, and thus to equal '*Kufur*'. They claim that Israel should not interfere with the autonomy of the Muslim community laws, despite the fact that the Israeli Parliament has enacted many civil laws that override the religious law, emptying it of any content.

Equality in the Family is Possible

- ▶ In many Arab countries, e.g. Syria and Jordan, the Ottoman Law has been annulled and replaced by modern laws.
- ▶ Nissa wa Aafaq, a non-governmental organisation, is currently working on a 'New Personal Law project' that aims to propose a draft personal status law that will replace the existing personal law applied in the *Shari'ah* courts in Israel. The proposed reform will derive from the Islamic law, through selecting regulations that suit the spirit of the modern times and the unique situation of the Palestinian families in Israel. The proposed law will select and adapt the most suitable and progressive items from Islamic literature, judicial and legislative practices in Arab and Muslim countries, and modern feminist interpretations of the Qur'an and *Hadith*. Many feminists and heads of organisations among the Palestinian community in Israel have expressed the need for such reform as well as support for an initiative in this direction.
- ▶ A new family law would mean that the community would enjoy some sort of autonomy in creating the law to be applied on family issues. The law would stem from grassroots work, rather than Israeli civil laws.
- ▶ Other feminist organisations have successfully worked to modify civil laws that affect women, such as the Family Court Law. Through hard work and collaboration, the organisations pushed for the law and paralysed any Islamist or conservative resistance.

Source: Report submitted to Musawah in English by Nissa Wa Aafaq – Women and Horizons; Gender Studies Project (GSP), Mada Al-Carmel; Arab Center for Applied Social Research; Assiwar – Arab Feminist Movement in Support of Victims of Sexual Abuse; and several individual feminist activists.

PHILIPPINES

Equality in the Family is Necessary

- ▶ Discriminatory provisions in the Code of Muslim Personal Laws (CMPL) include:
 - A woman of any age or status is required to have a *wali* when she gets married; this is not required for the groom.
 - The minimum age of marriage is 15 for males, and ‘the age of puberty’ for females. A female between 12 and 15 years old can be married upon approval by the *Shari’a* District Court. The majority of girls in the ARMM marry before they reach 18.
 - Arranged marriages still happen, especially among political families making alliances with each other. In some areas, women are abducted by men and then forced to marry under threat of danger to life and limb. Such abductions are seen as an unfortunate but culturally accepted practice.
 - *Mahr* is often given to the parents or guardians of the bride or used for the payment of expenses incurred in the celebration of the marriage, instead of being given to the bride.
 - Mixed marriages between Muslims and non-Muslims are simply considered irregular (*fasid*) and sometimes even valid when the groom is Muslim, but are always void (*batil*) when the bride is Muslim.
 - The rights and obligations of the wife include management of the household; exercise of a profession, with the husband’s consent (though

he can object if his income is sufficient for the needs of the family); retention of ownership and administration of her exclusive property; and enjoyment of equal and just treatment should the husband exercise polygamy.

- Polygamy still exists. The husband must give prior notice to the Clerk of the *Shari’a* Circuit Court, who shall, in turn, notify the wife or wives. Should any of them object, an Agama Arbitration Council can decide whether or not to sustain the objections. However, the marriage is still valid if this procedure is not followed. In general, conditions for polygamy are not observed.
- Four forms of divorce are available to husbands and three to wives. Husbands can more easily divorce their wives, especially through *talaq*. For women, *fasakh* is the most popular, though court procedures and personnel are not always women-friendly. *Khul’* is not readily available, as only those who have the financial means to redeem their freedom can afford it.
- Female Muslim victims of domestic violence may use *fasakh* to divorce their husbands or the Anti-Violence against Women and Children Law to get a protection order and/or to put their husbands in jail.

The ‘Moros’, who comprise 10 per cent of the Philippine population, are made up of about 13 Islamised indigenous peoples. Once proud peoples with at least two Sultanates, the Moros are now concentrated in the five provinces and one city that make up the Autonomous Region of Muslim Mindanao (ARMM) in Mindanao, the southern part of the Philippines. The history of conflict with the Spanish, American and the Philippine regimes has taken its toll. Displaced from their ancestral domains, discriminated against and suffering from the effects of long-standing armed conflict, the Moros are in the bottom of the human development index. Moro women specifically suffer from multiple layers of discrimination and marginalisation as women, as minority peoples and as Muslims.

The Code of Muslim Personal Laws is a special law for Muslims enacted through a Presidential Decree at the height of the Moro rebellion in the 1970s. All of the other national laws, including criminal law, apply to Muslim Filipinos along with the rest of the population.

Equality in the Family is Possible

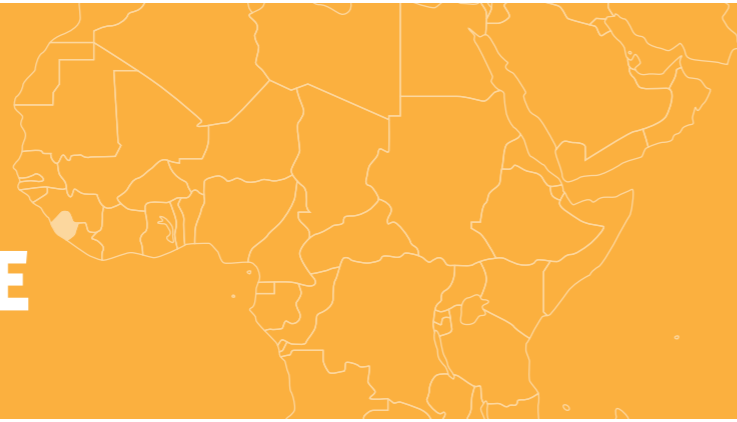
- ▶ Amendments to the Code of Muslim Personal Laws (CMPL) were drafted by Muslim women and submitted to the Lower House of Congress in 2000, though the endeavour was not successful. The proposed amendments included the requirement of pre-marriage counselling to emphasise the rights of women and the obligations of husbands; ante-nuptial agreements that can include an option for monogamy; and an increase in the minimum age of marriage to 18 years.
- ▶ A subset of these Muslim women are now formulating arguments using different disciplines and approaches—religious, rights-based, scientific, and even evidence-based researches on topics such as early marriage. In addition, awareness raising and capacity building are taking place to build a stronger and bigger constituency to push for the amendments.
- ▶ In the 2006 Concluding Comments of the Committee on the Elimination of Discrimination against Women, Muslim women were identified as a subsection of women who need intensified initiatives, including in the area of the Muslim family laws.
- ▶ Some cultural practices are more progressive than the standards laid down by the CMPL. For example, while the Code provides for sisters getting half of what their brothers acquire in inheritance distribution, the actual practice has been to give equal shares to all the siblings, regardless of sex, or to circumvent the provision by giving ante-mortem gifts to the daughters.
- ▶ Women can rely on laws that apply to all of the citizens of the Philippines, such as the Anti-Violence against Women and Children Law. The CMPL is limited in its view of domestic violence; the national law’s inclusion of economic and psychological violence therefore provides remedies.

Setting the Context

The context in which Moro women live is dire. Poverty, banditry, clan feuds (*rido*), kidnapping, the unresolved Moro claim for its right to self-determination, and the continuing decline of agriculture and homegrown industries make life in the region incredibly unstable. Many Moro women are deprived of basic education and serve more frequently than men as labourers, unskilled workers and unpaid family labour, not to mention as migrant workers in the Middle East and elsewhere in Asia. Child labour is visible in rice and cornfields, banana and sugarcane plantations, quarries, bus stations, and the port area. Girls work as dishwashers, waitresses, vendors and domestic help, or in entertainment clubs where they are vulnerable to trafficking into prostitution. Women have been considerably disadvantaged compared to men in terms of life expectancy at birth, educational attainment and standard of living.

Source: Report submitted to Musawah in English by Nisa Ul-Haqq fi Bangsamoro, a group of Muslim women advocating for women’s rights in the context of Islam and culture. The Nisa members are women from the following non-governmental organisations: Alternative Legal Assistance Center (SALIGAN), Bangsamoro Lawyers’ Network (BLN), Neighbors PopDev, Almujaadilah Development Foundation, Inc. (AMDF), Tarbilang Foundation, Inc., and Basilan Muslim Women’s Association. The original report provides extensive background information on the context in which Moro women live.

SIERRA LEONE



Sierra Leone's population is estimated to be 60 to 65 per cent Muslim and 20 to 30 per cent Christian, with the remaining 5 to 10 per cent practising indigenous and other religious beliefs. Freedom of religion is provided for in the 1991 Constitution, which also accommodates religious laws and policies in several areas, including family law. General statutory law, English common law and customary law, which includes Islamic law, operate together. For Muslims, matters relating to marriage and divorce are regulated in part by the Mohammedan Marriage Ordinance of 1905. The country is still recovering from the devastating ten-year conflict that ended in 2001, in which women were particularly affected by loss of family members, displacement, widespread sexual violence and the responsibility of caring for their families.

Equality in the Family is Necessary

- ▶ In Sierra Leone, social and cultural life, especially in the rural areas, is dominated by outdated values in which women are considered to be inferior to men. In the Northern Province, where women suffer the most marginalisation, they are denied status, public roles and positions in society.
- ▶ In the domestic sphere, women are generally voiceless. Their husbands or fathers hold all of the decision-making power for the family. Whatever the husband says is final, despite the Qur'anic command of mutual consultation between women and men. It is taboo for women to state their opinions in family gatherings, let alone to counter anything that had been previously suggested by a male counterpart.
- ▶ Women and girls suffer discrimination and abuse in a number of areas, including:
 - Domestic violence against women is common and is generally accepted in society. A UNICEF study showed that 85 percent of women felt that domestic beating was justified for actions such as going out without telling their husbands, neglecting the children, arguing with their husbands, refusing sex, or burning food. Few women report domestic violence to authorities, the police generally do not intervene even if the violence is reported, and perpetrators are seldom charged and even less seldom convicted of a crime.
 - Early marriage and forced marriage are common for girls under the age of 18.
 - Female genital mutilation is widely practised and is supported by community members.
 - Women are discriminated against in inheritance provisions and orphan girls are not granted inheritance from their deceased fathers.
 - Widows are often ill-treated by their former husbands' families.

Equality in the Family is Possible

- ▶ Sierra Leone has ratified a number of the major international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) without reservations and the Convention on the Rights of the Child.
- ▶ Sierra Leone now has its first female minister. Three important acts relating to women have recently passed in Parliament on the issues of violence against women; registration of customary marriages and divorces to require registration of marriages, prohibit early marriage and protect women's rights in divorce; and equitable property inheritance. In 2007, Parliament passed the Child Rights Act, which prohibits marriage of girls under age 18 and establishes family courts.
- ▶ Due to the work of many civil society and women's organisations, individual activists and advocacy groups, women from the Northern Province can now inherit property from their husbands and fathers.
- ▶ The Sierra Leone Muslim Missionaries Women's Group, which has branches all over the country, holds monthly meetings in Freetown in which they study the Qur'an and different topics related to gender and Islam. They also have a regular 30 minute programme on the Voice of Islam radio station on the theme 'The Role of Women in Islam'.

Concluding Comments of the CEDAW Committee

Sierra Leone first reported to the Committee on the Elimination of Discrimination against Women in 2007 in a combined first, second, third, fourth and fifth periodic report. In its concluding comments, the Committee congratulated the Government on the three new bills relating to women that were then pending before Parliament (registration of customary marriages and divorce, intestate succession and domestic violence), but expressed concern about:

- ▶ 'the high levels of violence against women, including rape and sexual assault';
- ▶ 'the persistence of customary law and cultural practices that consider the physical chastisement of family members, in particular women, acceptable';
- ▶ 'that discriminatory provisions persist in customary law and the Mohammedan Marriage Act'; and
- ▶ 'that local courts, which apply customary law, are not part of the judicial system and consequently their decisions are not subject to appeal'.



SINGAPORE

Equality in the Family is Necessary

Four key areas of apparent discrimination are:

- ▶ **Wali:** Muslim brides require the consent of their *walis* to contract a marriage. However, if a woman's *wali* refuses to give his consent, she can apply for the Registrar to be her *wali hakim*.
- ▶ **Polygamy:** An application for polygamous marriages must be made to the Registry of Muslim Marriages, which will conduct an inquiry on the suitability of the marriage before granting approval or rejecting the application. It is possible for women to restrict polygamous unions through the use of additional *taqliq* (conditions/promises) in the marriage contract, though this is still not well known. Polygamous marriages contracted outside of Singapore remain a major cause for concern.
- ▶ **Rights to Divorce:** Husbands have the right to divorce their wives by pronouncement of *talaq*, while wives have rights to divorce on grounds of *cerai taqliq* (breach of marriage condition), *fasakh* (dissolution of marriage for cause) or *khul'* (divorce by redemption). In almost all cases where women apply for divorce and are unable to prove a case by *fasakh* or *taqliq*, a divorce was granted through a *hakam* procedure. In such cases, the wife does not lose her right to payment of *mutah* (compensation upon divorce) from her husband.

- ▶ **Inheritance:** Inheritance is generally determined according to Muslim rules of inheritance as modified, where applicable, by Malay customs. The following are situations of hardship that have occurred in the distribution of shares:
 - Adopted children who had taken care of their adopted parents receiving nothing.
 - A widow with young children being forced to sell the matrimonial home because the deceased's brother or father insisted on claiming his share.
 - The son who is a prison inmate receiving more shares than a daughter who had looked after their parents.
 - A widow with young female children receiving fewer shares of the deceased husband's estate because *Baitulmal* was granted some shares.
 - The non-Muslim wife and children receiving nothing of the deceased Muslim husband's or father's estate.
 - Muslims wanting to renounce Islam so that they are not governed by Muslim inheritance laws, which they perceive to be unjust and unfair.

In Singapore, the Administration of Muslim Law Act (AMLA) generally governs family matters for Muslims; civil law governs family matters for non-Muslims. In certain areas, civil laws apply to both Muslim and non-Muslim communities, including maintenance of children and wives, domestic violence, adoption of children, and custody, care and control of children where there is no divorce application in the *Syariah* Court. Muslims can choose to go to civil courts or the *Syariah* Court for certain issues, though for a case to appear in the civil court, both parties must agree or the *Syariah* Court must grant leave for the civil court to hear the matter. Personal laws are generally fair and equitable for Muslim women, with Muslim women having many of the same rights as men, although there are still some areas of concern about apparent discrimination.

Equality in the Family is Possible

- ▶ Some of the positive areas in the AMLA include:
 - The minimum age of marriage is 18 years.
 - The consent of both parties is required.
 - All marriages must be registered, and can be solemnised only by authorised persons.
 - In the division of matrimonial assets upon divorce, the *Syariah* Court takes into account non-monetary contributions such as looking after the family, domestic work, etc. All wives are awarded at least 30 per cent, while wives who made some financial contribution receive a higher share. All assets acquired during the marriage are included, regardless of who legally owns them.
 - Muslim wives can apply for maintenance in civil courts. Courts take into account actual incomes, earning capacity, and the needs of both parties. The concept of *nushuz* (a wife's disobedience) does not exist in civil law. Maintenance orders can be enforced upon default, including by imprisoning the respondent or deducting money from his monthly salary.
 - There is a dual responsibility to maintain the children if both parents are working. Fathers of illegitimate children are obliged to maintain their children.
 - In custody and guardianship cases, the guiding principle is the best interest of the

children. The *Syariah* Court increasingly makes joint custody orders; joint custody is the norm and sole custody is the exception in the civil courts.

- ▶ Positive law reform has been achieved, in many cases through the work of NGOs, including:
 - Amendments to the Women's Charter to offer better protection for victims of family violence.
 - Amendments to the AMLA on the distribution of matrimonial assets upon divorce.
 - Constitutional amendments allowing overseas born children of Singaporean mothers and foreign fathers to acquire Singapore citizenship.
 - Amendments to the Penal Code that removed marital immunity in non-consensual sexual intercourse (rape) in cases heading toward divorce.
 - Procedural amendments to eliminate problems with enforcement of *Syariah* Court Orders.
- ▶ The Government adopts a 'non-interference' approach on issues pertaining to Islamic affairs, so for reform to happen, the Muslim community must advise the Government on what should be done, bearing in mind Singapore's secular, multi-racial, multi-religious society. This provides an opportunity for positive reform.

Source: Report submitted to Musawah in English by the Association of Women for Action and Research (AWARE), following a consultation on 11 November 2008 with representatives from eleven organisations, including the Majlis Ugama Islam Singapura, the Association of Muslim Professionals (AMP), Casa Raudha Women's Home, Darul Arqam, Muslim Converts Association, Singapore Council of Women's Organization (SCWO), Young Women Muslim Organization (PPIS) and AWARE.

SOUTH AFRICA



Equality in the Family is Necessary

- ▶ Because Muslim marriages are not recognised, Muslim women are unable to enforce their *Shari'ah* rights, e.g. *mahr* and spousal maintenance. Judicial outcomes in successful cases do not apply to everyone. Each time a woman wishes to enforce a *Shari'ah* right, she must seek recourse in the courts. This is expensive, with no guarantee of success, so it is not an option for many women.
- ▶ Muslim family law is interpreted and applied by the *ulama*, many of whom are conservative, believing that the Qu'ran simply requires equity (not equality) between men and women. Discriminatory rules and practices include:
 - Marriage by proxy for women.
 - Payment of *mahr* carries an expectation that the wife be sexually available to her husband. Payment is often deferred; then men refuse to pay when the marriage is terminated.
 - The husband is expected to maintain his family; the wife must be obedient in return, even when she contributes monetarily to the household.
 - Polygamy is practised; the consent of the first wife is not required.
 - Matrimonial assets are kept separate. Intangible contributions by wives are not recognised by the *ulama* or secular courts.
 - Triple *talaq* is common. Women are often simply informed that their husbands issued *talaq*

against them; the *ulama* tend to confirm the *talaqs* without consulting the wives. While *fasakh* is theoretically available to women, few apply because the process is usually inaccessible. Thus, Muslim women may not be able to obtain divorces.

- Women are expected to observe *iddah*; maintenance is not paid beyond *iddah*.
- Women are expected to observe *hilala*.
- ▶ Muslim women who marry only under Muslim rites cannot access civil law benefits. Neither of the following options that would allow marriages to be legal is utilised by Muslim communities due to historical, political and religious reasons:
 - *Nikah* could be considered a civil marriage if the imam applied for designation as a marriage officer under the Marriage Act 1961. However, imams do not know this or choose not to do this because it will prevent them from officiating polygamous marriages, which are only allowed for African customary marriages.
 - Muslims could contract a civil marriage either before or after *nikah*. But this is not part of the culture and many men do not want to marry civilly because it would strengthen their wives' position in the marriage.

Source: Report submitted to Musawah in English by Waheeda Amien, a legal academic, in consultation with Fatima Seedat, a gender consultant (both of whom are women's rights activists involved in Muslim family law reform processes), as well as representatives of the Muslim Youth Movement and Shura Yabafazi ('Consultation of Women').

South Africa is governed by a secular Constitution with a strong Bill of Rights that entrenches gender equality and freedom of religion. While freedom of religion is accommodated within the South African legal context, legal scholars argue that it could be subordinate to women's right to equality.

Muslims constitute the largest religious minority within the multicultural society. Muslim family law is not legally recognised and/or legally enforceable. Marriages entered into by Muslim rites only are illegal and invalid, which has negative consequences for all parties involved, particularly women. Many progressive and conservative Muslims have been struggling to change this. In June 2008, the Recognition of Muslim Marriages Forum was established to campaign for the recognition of Muslim marriages. The Forum consists of, among others, progressive Muslim and secular organisations, community activists, human rights activists, academics, social workers and attorneys.

Equality in the Family is Possible

- ▶ Civil law provides for formal equality between spouses in marriage; divorce; spousal and child maintenance; and custody, access and guardianship of minor children. It has abolished the marital rape exemption; provides protection against domestic violence; and offers a wide range of constitutional rights. There are, however, still some areas of discrimination, e.g. the law does not recognise unpaid labour of women in the home.
- ▶ The Constitution allows for recognition of religious personal laws if the legislation is consistent with other constitutional provisions, including gender equality.
- ▶ A process has been undertaken to draft legislation for the recognition of Muslim marriages (see box below).
- ▶ Accommodation of cultural diversity has given rise to the legal recognition of polygamy in African customary marriages, creating an expectation that polygamy could also be recognised in Muslim marriages. However, husbands in customary marriages must obtain court approval and prove their ability to support all of the wives, which could be precedent for the Muslim context if polygamy is allowed.

Law Reform for Recognition of Muslim Marriages

In 1999, the South African Law Reform Commission established a Project Committee (PC) comprising mostly male progressive and conservative Muslims to draft legislation for the recognition of Muslim marriages. Following a four year consultative process, the PC drafted legislation entitled the Muslim Marriages Bill (MMB), which is a compromise between progressive and conservative expectations. The MMB is drafted within a *Shari'ah* framework and proposes to recognise *and* regulate Muslim marriages. It recommends that mostly Muslim judges from within the secular judiciary undertake the interpretation of *Shari'ah* and preside over opposed divorce cases with *Shari'ah* experts as assessors. The PC submitted the MMB to the Minister of Justice and Constitutional Development in 2003.

In 2005, the Commission for Gender Equality drafted the Recognition of Religious Marriages Bill and submitted it to the Minister of Home Affairs. This bill purports to recognise all religious marriages, including Muslim marriages, but leaves regulation of the marriages in the hands of the respective religious communities. In this bill, divorce follows civil consequences and polygamy is recognised in an unregulated form.

To date, neither Minister has submitted the draft legislation to Parliament. While both bills would alleviate the problem of recognition of Muslim marriages, each presents gender equality challenges. Both are contested by ultra conservative members of the *ulama* who say that state recognition of marriages will be ineffective for Muslims because it will not result in a 'purely' Islamic system.

SRI LANKA



Many areas of Muslim family law in Sri Lanka are governed by the Muslim Marriage and Divorce Act No. 13 of 1951. Personal law reforms committees were appointed in 1986 and 1990 to consider reforms to the whole gamut of personal laws. The 1986 Committee was dissolved after opposition from Muslim communities over discussions of minimum age of marriage; the recommendations of the 1990 Committee are yet to be acted upon. More recent attempts by Muslim women to reform these laws so as to give justice and equality to women have met with little success. In the face of identity-based politics, a fragile balance of power in Parliament and the ongoing conflict, women in the minority Muslim community have been unable to rely on the State to reform the Muslim personal law in Sri Lanka.

Equality in the Family is Necessary

Several discriminatory provisions of the Muslim Marriage and Divorce Act (the Act) must be reformed if women are to enjoy full equality as guaranteed by the Constitution:

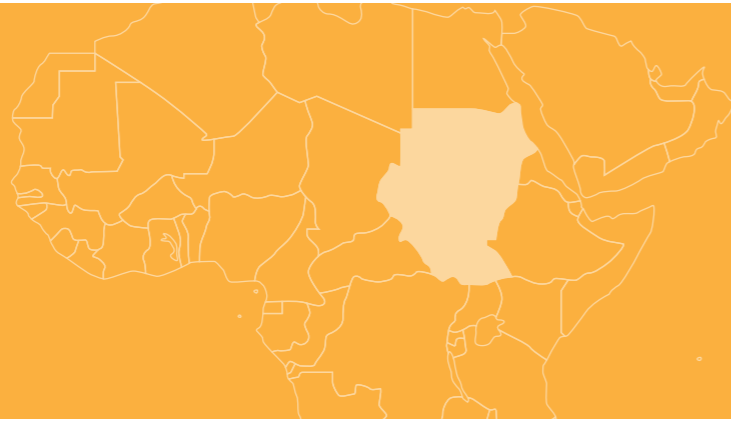
- ▶ **Age of Marriage:** There is no minimum age of marriage for Muslim girls. A *wali* who wishes to give his daughter under the age of 12 in marriage must get the prior permission of the *Quazi*. While child marriage is rare, isolated cases exist. There is evidence that child marriage is being revived within displaced Muslim communities in the North Western Province.
- ▶ **Consent of the Bride:** While the Act recognises that consent of both parties is essential for a valid marriage, there is no space in the marriage register for the signature of the bride.
- ▶ **Polygamy:** In the Act, there is no obligation on the *Quazi* to find out whether husbands are able to treat all of their wives equally and justly. Husbands are only required to give notice of their intention to marry a subsequent wife; they need not obtain existing wives' permission
- ▶ **Prenuptial Contracts:** The possibility of a woman entering into stipulations or conditions to the Muslim marriage contract that will protect her independence and autonomy is not specifically recognised in the Act.
- ▶ **Kaikuli:** *Kaikuli*, or money and gifts given by the bride's parents to the bridegroom to be kept in trust for the bride, has been statutorily recognised and is widely practised, though it is un-Islamic. *Kaikuli* places a heavy financial burden on brides' families, who have been known to go into lifelong debt to find *kaikuli* for their daughters. Most men are unaware of the fact that gifts given as *kaikuli* are to be kept in trust by the bridegroom for the bride, so it is often extremely difficult to retrieve the property on divorce or separation. *Quazi* courts have no jurisdiction in respect of property that has been given to the bridegroom; such property must be recovered from the District Courts.
- ▶ **Divorce by the husband:** A husband who wishes to divorce his wife need not give any reasons for doing so.
- ▶ **Maintenance for divorced women:** Muslim women are only entitled to maintenance for the period of *iddah*, though Qur'anic verses on maintenance convey that they are entitled to that which is equitable or responsible.
- ▶ **Women Quazis and Women Registrars:** Only male Muslims can hold the office of *Quazi* and marriage registrar.

Equality in the Family is Possible

- ▶ A personal law reforms committee appointed in 1990 to examine the Muslim personal law made a number of recommendations that promote equality and justice in the family, though these recommendations have not yet been implemented.
- ▶ There have been some positive developments at the level of implementation in the *Quazi* Court System as a result of engagement by the Muslim Women's Research and Action Forum (MWRAF) with *Quazi* judges. The Board of *Quazis* now recognises the concept of *matah* and *Quazi* judges have been granting *matah* to women.
- ▶ In January 2006, MWRAF initiated an Independent Committee for Muslim Personal Law Reforms, comprised of the Former Chairman of the Board of *Quazis*, a few *Quazi* judges, a representative from the Judicial Service Commission and NGO representatives, to suggest reforms to the present Act. Members of this committee have held several consultative sessions with various sectors of the Muslim community, including mosque trustees and citizens within various jurisdictions, clients of barefoot legal counsellors of MWRAF, the *Quazi* Judges Forum, and a research team that has been studying the issues for a long time. The suggestions and recommendations generated through these consultations have been included in a new draft Muslim Marriage and Divorce Act. Further consultations based on this new draft will take place in the coming months.

Source: Report submitted to Musawah in English by Muslim Women's Research and Action Forum (MWRAF), an NGO registered in 1990 whose members began working on critical issues facing Muslim women in Sri Lanka in 1976 and were involved in the 1986 personal law reforms committee.

SUDAN



Sudan's legal system is inherited from the British colonial system, with 'civil courts' that administered general laws operating side-by-side with 'native courts' that used customary laws. The dual system remained after independence in 1956, but the courts were merged under a 'Sudanisation' policy in 1972. In 1983, some laws were revised in accordance with *Shari'ah* laws and principles. Many provisions that were introduced as '*Shari'ah*' law were overwhelmingly discriminatory, restricting women and crippling their freedom and mobility, including laws relating to labour, nationality, land ownership, personal status and criminal matters.

Sudanese women are severely affected by the ongoing armed conflict, shouldering the burdens of loss of family members, displacement, fragmentation, identity crisis, insecurity, rape and violence, along with increased household responsibility and decreased accessibility to food, shelter, resources, markets and income. Women have largely been sidelined in the Sudan peace talks and negotiations.

Equality in the Family is Necessary

- ▶ The 1991 Family Law Act requires reform:
 - The consent of a male guardian is required for a marriage contract to be valid. The guardian can petition the court for invalidation of a marriage concluded without his permission.
 - The guardian must consider the character and godliness of the potential husband in deciding on his suitability (*kaf'aa*). This impedes marriages across ethnicities and classes.
 - A wife is entitled to maintenance, to visit her relatives, to retain her own property and dispose of it, and not to be physically or psychologically harassed. In turn she must care for and obey her husband, be faithful to him and safeguard his properties. She will be declared disobedient if she leaves the matrimonial home, works outside the home, or refuses to travel with her husband without legitimate justification or permission.
 - The minimum age of marriage is the 'age of discretion', or 10 years old.
 - The law does not provide restrictions on polygamy except for the stipulation of equal treatment of the wives, including separate housing unless they accept shared housing.
- ▶ The Criminal Code 1991 defines rape with reference to adultery and requires *Shari'ah* evidentiary requirements, thus disadvantaging the victims of rape and sexual violence.

Sentences are often minimal, and in some cases amnesty is granted to the perpetrator. Judges are sometimes influenced by customary or religious norms. Sudanese legislation falls short of international standards for addressing violence against women.

- ▶ Under the 1991 Nationality Act, children born to Sudanese mothers and foreign fathers do not have a right to Sudanese nationality.
- ▶ Passport and emigrations regulations from 1995 forbid women (with limited exceptions) from travelling outside the country without the consent of their male guardians. This rule is often perceived to apply to travel within Sudan.
- ▶ The 1996 Public Orders Law for Khartoum state forbids mixed dance; requires one door and ten seats for women in public transportation; specifies that women managing hair dressing shops must be at least 35 years of age; and prohibits men from tailoring women's clothing without approval from local authorities.
- ▶ In the Public Service Regulations 1995 for government employees, the family is defined as 'The worker's wife (not exceeding four) and his dependent children'.
- ▶ Women belonging to religions other than Islam must adopt an Islamic dress code, including covering their heads with a veil.

Equality in the Family is Possible

- ▶ There have been a number of constitutions throughout the years. The early constitutions (1956, amended in 1964; 1973 Permanent Constitution; 1985 Transitional Constitution) all granted equality, though equality provisions were not used to strike down discriminatory legislation. In the 1998 Constitution, women are only recognised as having legal status when they are married or are mothers, and are only referred to in one article, in a very general manner. The July 2005 Interim Constitution, dictated by the Comprehensive Peace Agreement between the Sudan government and the Sudanese People's Liberation Movement, includes a bill of rights for the first time in Sudanese history. The Constitution deems all of the international instruments signed and ratified by Sudan as an integral part of the constitution and requires that all laws and regulations be amended to comply with the constitution.
- ▶ Sudanese women first enrolled in educational institutions in 1907. Urban women developed gender awareness and have strived for women's rights since the early 1940s, when the Sudanese Women's Union called for equal pay for equal work, advocated against harmful practices and fought for amendment of the family law, specifically the provision that

coerced a wife to return to her husband's house against her will (*bayt al-ta'a*). There are dynamic civil society organisations and networks active on women's rights, gender equality and eradication of all forms of discrimination against women that have been increasingly involved in advocacy and legislative reform for more than two decades.

- ▶ Sufism is the predominant religious affiliation, so the traditional Sudanese Islamic thinking tends to be tolerant towards indigenous traditions and customs. Sudan is also the origin of some modern schools of Islamic thought that have shaped new interpretations regarding equal rights between men and women. However, though prominent political and religious leaders in Sudan advocate for equal rights in public life and political participation, there is more ambiguity in the area of family and personal affairs, as it is based on a combination of *Shari'ah*, *urf* and traditions.
- ▶ Women's rights groups have made some achievements in law reform by harmonising Sudanese legislation with international instruments and changing the negative attitudes towards women of the judiciary, attorneys, police, prisons and all others concerned, including the public at large.

Source: Report submitted to Musawah in Arabic and English as the result of consultations held with representatives of Sudanese Organization for Research and Development (SORD), Motive (Partnership against VAW), Legal Forum, Mutawinat Group Khartoum, Gender Centre for Research and Training, Salmah Centre, and Asmaa Development Association, as well as a number of activists and specialists.

THAILAND



Muslims comprise up to 10 per cent of the Thai population and are concentrated mostly in the southernmost provinces near the Malaysian border. Although the state religion of Thailand is, in effect, Theravada Buddhism, it is not officially designated as such because of a fear that naming a national religion could inflame tensions in the southern provinces, which have seen a resurgence in separatist violence since 2004. Islamic ideas, rituals and practices are relatively pluralistic in character. In the southern provinces of Pattani, Yala, Narathiwat and Satun, Muslims have been governed by Islamic family and inheritance laws since 1946, while the rest of the country is governed by the civil law. The Central Islamic Committee of Thailand, the 48 Provincial Islamic Committees, and the country's 3,295 mosque committees have the official authority to rule on Islamic family law and inheritance. Because the state supports this system, it is able to ensure that mainstream Muslim scholars' interpretations are part of the legal culture and traditional practices related to marriage, family and divorce.

Equality in the Family is Necessary

- ▶ The UN Committee on the Elimination of Discrimination against Women, in its 2006 review of Thailand's CEDAW State party report, expressed its concern about Muslim women's access to health care, social security, economic resources and opportunities for education and skills training to enable them to rebuild their lives after the upsurge in violence.
- ▶ Islamic law as practised in the southern states permits girls to marry as soon as they reach puberty. Arrangements for marriage are usually made between the two families concerned. Although the minimum marriage age is 17, the family courts can give approval for younger girls to marry in exceptional circumstances, such as when the girl is pregnant.
- ▶ Women actively work outside the home in markets, businesses and in the educational arena.

At the same time, they are often concerned that this makes them 'imperfect Muslim women' or that they cannot be '*Muslimah Salihah*' ('good Muslim women') in character. The groups of active religious activists with orthodox and conservative orientations do not encourage women to work outside their homes.

- ▶ Women who do work outside the home are still responsible for managing the household and household chores, with little support or assistance from their husbands and sons.
- ▶ Sexual negotiation, reproductive health and sexually transmitted diseases are problems that have not been properly addressed. The few studies available on Muslim women and HIV/STDs mention that Muslim women and Muslim communities in Thailand have a high infection rate compared to Buddhists.

Ethnicity and Religion

A distinction is made between 'assimilated' and 'unassimilated' Muslims, with the former constituting a diversity of ethnic groups such as the Arabs, the Pathans, the Thai-Malays, etc., and the latter predominantly Malays. This is influenced by rising levels of ethno-religious identity and nationalism among Malays in Southeast Asia, along with the close associations between Buddhism and Thai culture and identity. The influences of Islamic resurgence at the global level have also pushed Muslims to struggle and define a space in a non-Muslim majority state.

The Central Thai government has attempted to culturally assimilate its minorities, including Muslims in the South. The ongoing practice of Muslim and non-Muslim marriage in Thailand has led the authorities and institutions to call for the implementation of Islamic education in the Muslim community. The religious authorities have made it obligatory for a non-Muslim partner who plans to marry a Muslim and who must therefore convert to have basic knowledge of Islam before marriage. Those who do not want to go for the course are sanctioned. For example, Muslim committee members will not conduct a funeral or other rituals for the non-converts and their family members.

Equality in the Family is Possible

- ▶ There are small groups of Muslim women who share their problems with both secular and religious scholars to explore the possibility of better understanding what Islam has said and the capacity of the Muslim community to ensure equality according to Islam.

Islamisation in Daily Life

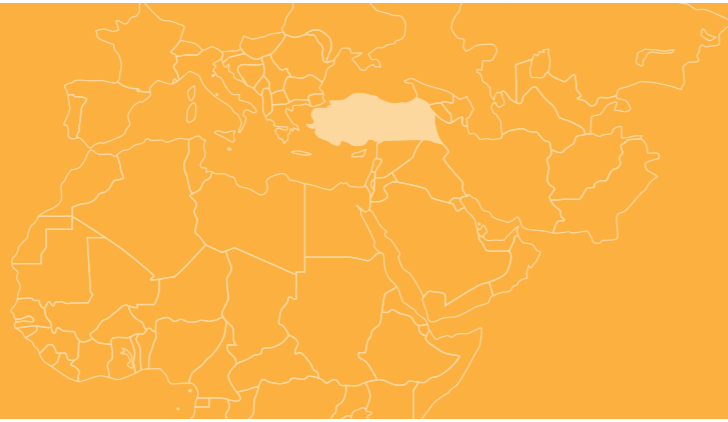
Adherence to Islamic customs and beliefs among Muslims in southern Thailand has increased in their daily activities. Increasing attention is given to Islamic Studies in both the traditional Islamic school system and national schools. While in the past, women wore *hijab* only during the time of prayer, festivals, or when they were older, it is now common to see women from all walks of life wearing *hijab*.

The global Islamic revival has awakened a vast number of Thais, especially young Muslims, to strive to adopt new forms of pure Islam within their lifestyles in the modern era. The resurgence emphasises Islamic identity and adherence to Islamic beliefs and practices, with some movement towards cleansing the non-Islamic elements from customs and cultures. This process has witnessed an increase in the use of Arabic religious terminology, segregation between genders, and wearing Arabic, Pakistani and Malay dresses as well as head scarves.

A growing number of Muslim groups and movements represent both traditionalist Islam, which is more syncretist in nature, as well as reformist Islam, which is more puritanical and associated with Salafi-Wahabi reformism. Some of these movements have rather rigid gender segregation and people have misunderstandings of the value, dynamics and positions on gender relations in Islam. Others are empowering for women and allow them seek knowledge while practising their faith.

Sources: Report submitted to Musawah in English by Amporn Marddent, a Thai women's rights activist and scholar, in consultation with a number of Thai groups and individuals, including Young Muslim Women of Thailand, Friends of Thai Muslim Women, Muslim women scholars at Yala Islamic University and Prince of Songkla University, Muslim sisters and brothers in Bangkok, and the mid-south groups and religious institutes; Concluding comments of the Committee on the Elimination of Discrimination against Women, CEDAW/C/THA/CO/5, 3 February 2006.

TURKEY



Equality in the Family is Necessary

- ▶ Many women's lives are shaped by customary practices and patriarchal traditions rather than official laws. Those patriarchal practices do not take into consideration the needs and the expectations of women, including sexual and reproductive rights, and usually consider women as second class citizens whose bodily autonomy, relations and sexuality should be controlled by society. The constitutional principle of equality between men and women and the Civil Code guarantee of equality of spouses in a marriage do not apply to women's everyday lives.
- ▶ Although primary education has been mandatory since 1924, 20 per cent of women living in Turkey are still illiterate. The percentage of paid women workers is only 24 per cent, and women make up only 10 per cent of Parliament.
- ▶ Research by Women for Women's Human Rights - NEW WAYS revealed that in southeastern Turkey, 51 per cent of women were married against their will and 52 per cent had been subject to marital rape.
- ▶ Implementation of law reform on the ground has been limited, largely because a majority of women (and men) do not have knowledge regarding the existence of these legal mechanisms and lack the skills to enforce their implementation.
- ▶ The existing laws also need to be reformed further to fully comply with international standards.
- ▶ In October 2007, it was revealed that the clause affirming gender equality between men and women, which was added to the Constitution in 2004, would be removed from the draft Constitution under an initiative by the religious right Justice and Development Party to rewrite the Constitution. The women's movement immediately declared this action unacceptable and insisted on a new, more comprehensive gender equality article. This prompt response made the Government stop the process, shelve the draft law and abolish the working group.
- ▶ Despite the overall success of the campaign for reform of the Penal Code, four demands of the women's groups were not accepted, including the definition of honour crimes (and not just the so-called 'customary crimes') as aggravated homicide; the penalisation of discrimination based on sexual orientation; the criminalisation of virginity testing under all circumstances; and the extension of the legal abortion period from 10 to 12 weeks. Moreover, two new regressive articles were added to the Penal Code: criminalisation of consensual sexual relations of youth aged 15-18 upon complaint and publication of 'obscene' material.

Following the founding of the Turkish Republic in 1923, revolutionary reforms were introduced. However, those relating to gender equality were restricted to reforming the Islamic way of life, rather than actually liberating women. The Turkish Civil Code, modelled upon the Swiss code, banned polygamy and granted women equal rights in matters of divorce. However, it still reduced women to a subordinate position in the family by defining the husband as the head of the union with final say over the domicile and children. The Penal Code, adopted from the Italian code in 1926, included several articles that aimed to protect men's honour and so-called moral values.

Since 2000, major legal reforms towards gender equality have taken place as a result of successful campaigns led by the women's movement. These include reform of the Civil Code in 2001, reform of the Penal Code in 2004, and the addition of the clauses 'Men and women have equal rights. The State is responsible for ensuring this equality' to the Constitution in 2004.

Equality in the Family is Possible

- ▶ The campaign for the 2001 reform of the Civil Code brought together more than 120 women's groups. The new Code defines marriage as a union based on equal partnership instead of as a subordinate wife and authoritative husband. The terms 'the wife' and 'the husband' are replaced by 'the spouses'. The legal language has been simplified and modernised so the law is more accessible. Specific changes include:
 - The husband is no longer the head of the family; spouses are equal partners, jointly running the family with equal decision-making powers;
 - Spouses have equal rights over the family abode;
 - Spouses have equal rights over property acquired during marriage;
 - Spouses have equal representative powers;
 - The concept of 'illegitimate children' has been abolished; the custody of children born outside marriage belongs to their mothers.
- ▶ In October 2001, Article 41 of the Constitution was amended, redefining the family as an entity that is 'based on equality between spouses'.
- ▶ The new Penal Code, reformed in 2004 after a three year campaign, contains more than thirty amendments towards gender equality and protection of women's human rights. These include:
 - Sexual crimes regulated as crimes against individuals and the inviolability of sexual integrity, rather than crimes against society, family or public morality;
 - Elimination of references to chastity, morality, shame, public customs and decency, and definitions of such crimes against women brought in line with human rights norms;
 - Progressive definitions and higher sentences for sexual crimes;
 - Criminalisation of marital rape;
 - Prevention of sentence reductions for perpetrators of honour killings;
 - Elimination of discrimination against non-virgin and unmarried women;
 - Criminalisation of sexual harassment at work;
 - Classification of sexual assaults by security forces as aggravated offences;
 - Explicit definitions of sexual abuse of children and removal of the notion of 'consent of the child';
 - Abolition of provisions legitimising rape and abduction when the perpetrator marries the victim;
 - Removal of sentence reduction for mothers who kill newborn children born out of wedlock;
 - Change in 'indecent behaviour' to include only exhibitionism and sexual intercourse in public.
- ▶ The law reform campaigns led to the development of sustainable networks and cooperation among women's groups. The network that coordinated the Penal Code campaign is continuing work on implementation of the new law and other legal reforms.

Sources: Report submitted to Musawah in English by Women for Women's Human Rights - NEW WAYS, an NGO that played a leading role in the Civil Code and Penal Code reform processes; WWHR - NEW WAYS, 'Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns' (2005), available at <http://www.wwhr.org/files/CivilandPenalCodeReforms.pdf>; Pinar Ilkcaracan, 'Re/Forming the Penal Code in Turkey from a Gender Perspective: The Case of a Successful Campaign', Web Version (2007), available at <http://www.ids.ac.uk/ids/Part/proj/pnp.html>.

UNITED KINGDOM



About 3 per cent of the population in Britain is Muslim. Most trace their origins to Bangladesh, India and Pakistan, but there are sizeable Somali, Turkish and Kurdish communities and converts to Islam. Civil marriage is the only legally recognised form of marriage. The same procedural laws and common law principles regarding maintenance, divorce, child custody and property apply to everyone in a legally recognised marriage. There is no bar to religious marriage; Muslim couples have the same rights and responsibilities as all other couples if the marriage is conducted in a mosque registered as a place of civil ceremony.

However, probably many thousands of women are in unregistered *nikahs*—‘Muslim marriages’ conducted in Britain. Contrary to popular perception about ‘common law marriages’, these women have few legal rights. Husbands may convince a woman to conduct the *nikah* and go through the civil process later—which then never happens—and imams may assist by not demanding the couple’s civil marriage certificate.

Equality in the Family is Necessary

- ▶ **No marriage records:** Commonly *nikahs* are unwritten or record minimal details, and mosques keep poor records. Wives in Muslim marriages often have trouble proving their status and lack protection upon divorce.
- ▶ **Polygamy:** In the case of *nikahs*, a husband often already has or acquires another legal wife. Women in *nikahs* have no protection because legally, they are not married. Women’s groups regularly handle cases in which men have several recognised and unrecognised wives, but community leaders and the state make little effort to tackle this abuse.
- ▶ **Forced marriages:** The official Forced Marriages Unit sees about 400 cases a year, many involving Muslims, mostly women. Forced marriages can entail abduction abroad, rape, unwanted pregnancy, and have high rates of domestic violence, divorce or abandonment. They usually take place to prevent a young woman from marrying someone ‘unsuitable’ (in terms of class, race, ethnicity, religion or sect); to fulfil a betrothal to a relative; to ‘fix’ sexual orientation (where either of the spouses is not heterosexual); or to provide a carer for a disabled husband. Girls are being sent at an ever younger age to the family’s ‘home country’ and only returned to Britain once they have been married and become pregnant.
- ▶ **Divorce:** Women are increasingly approaching self-appointed ‘*Sharia* councils’ to seek a ‘religious divorce’, even though this is not a requirement for civil marriages and may not be recognised by Muslim laws in other countries. ‘*Sharia* councils’ have extremely conservative views about divorce. The process is lengthy, distressing and disempowering for women. Men often withhold a ‘religious divorce’ to secure concessions from a wife in the civil process, or as a means of emotional harassment.
- ▶ **Inequality in the family and marital breakdown:** Young Muslim women consistently outperform their male peers in education and are rapidly becoming visible in professional employment and business. This has not been matched by a change in patriarchal attitudes among men and older women, who continue to expect the husband to be the ‘head of household’. Increasingly in British society women’s unpaid domestic labour is valued and men share domestic responsibilities, but this has not been matched by a change in attitudes in the Muslim community. The result is increasing levels of marital breakdown in the Muslim community and growing numbers of young women who are unable to find a suitable match.

Equality in the Family is Possible

- ▶ Women and men have equal rights and responsibilities in marriage and divorce under British law. Polygamy is illegal, custody is based on the welfare of the child, and division of property upon divorce recognises women’s unpaid contributions to the family. Legally, women in Muslim families can have all the same rights as other women.
- ▶ In 2008 a proposed model Muslim marriage contract was launched that provides space to record any negotiated conditions to the marriage; requires details designed to protect the rights of both spouses in the event of disputes; confirms that the marriage will not be polygamous; does not require a *wali’s* approval; and makes *talaq-i-tafwid/esma* the default form of divorce for women.
- ▶ The Forced Marriage (Civil Protection) Act 2007, which came into force in November 2008, enables courts to prevent forced marriages and order those responsible for forcing another into marriage to change their behaviour or face jail. It also provides recourse for those already forced into marriage.
- ▶ A women’s movement is emerging in the Muslim community which is increasingly linked with women’s movements in Muslim contexts abroad. Women’s groups are demanding recognition of rights in Islam and changes in the attitudes of ‘*Sharia* councils’ and families in line with present-day realities. This call is supported by some male scholars and community leaders.

Key Challenges

- ▶ The influence of conservative religious groups and women’s lack of knowledge mean that many believe that an unregistered *nikah* is more ‘Islamic’. Greater knowledge about Muslim and British laws and contact with women’s movements in other Muslim contexts is needed.
- ▶ Out of thousands of working mosques in Britain, less than a dozen are registered to conduct civil marriage ceremonies. A campaign to register more mosques is underway, but most mosques lack the capacity or interest to get registered.
- ▶ The Government tends to prioritise the views of conservative male community leaders and is keen to save state resources by privatising family disputes. Religious arbitration is possible under the 1996 Arbitration Act, but it is very difficult to challenge exploitative arbitrated agreements that women may have agreed to due to social pressure and ignorance of their rights.
- ▶ Many Muslims in Britain are potentially governed by the Muslim laws of another country because they have dual nationality or were married abroad. There are many possible conflicts of laws, including ‘limping marriages’ (marriage/divorce recognised under one system but not the other). British officials and lawyers are ignorant about the problems; nothing is being done to find solutions.



UZBEKISTAN

Uzbekistan's population is more than 60 per cent rural, and the rural way of life influences family relations and relations in society. Despite 70 years of Soviet modernisation, the society and family life remain traditional and patriarchal. Marriage is regarded as a means of procreation and a person's religious duty. Many families have hierarchical structures, with specific roles for each member of the family. The head of the family is the husband or father; the wife manages the household and cares for her husband, children and for elder members of the family. The nature of interpersonal family relations is defined by *adat* (custom). Though modernisation occurred during the Soviet time, leading to increases in women working outside the home and freer relations within families, there has been increasing backlash against modernisation and a fallback to traditional relationships in the family since the end of the Soviet era.

Equality in the Family is Necessary

- ▶ Boys and girls are taught different family roles, values, behaviours and goals. Girls are limited in their choices and life goals, and are punished for protesting against these restrictions. Since they are afraid of being alienated by their families, women agree to their situations and accept obligations that limit their freedom and their rights.
- ▶ Younger children are under the control of elders, and girls are under the control of their brothers. Uzbek marriages are mostly arranged with families of similar economic and social status. Boys may have sexual relations before marriage, but even meeting boys in a public place without permission from parents is shameful for girls. Once the marriage has been arranged, it is difficult for a woman to postpone the wedding, so many girls drop out of secondary or higher education for marriage.
- ▶ Young married couples generally live with the husband's parents for a time, though the girl's family provides a dowry of all of the goods required for their room or house. A bride follows the orders of her mother-in-law, looking after the younger members of family, cooking, cleaning, meeting guests, washing, and caring for the animals or agricultural plot, etc. Young wives have no time for their education, healthcare, or nurturing their own development.
- ▶ Families try to keep domestic violence cases secret; society does not recognise violence as a violation of women's rights. Men believe that their wives should be absolutely submissive to their orders, and that wives and children are their property. Women do not leave relationships because they are afraid to lose their status as married women and worry about the future of their children. Despite the existence of legislation on domestic violence, there are only a few cases in which the perpetrator has been punished.
- ▶ Divorce is difficult because women who seek divorces are stigmatised by their families and neighbourhoods and do not receive any support.
- ▶ The practice of polygamy has increased since 1991. It has been proclaimed as a national tradition and a means to support single women. Civil legislation forbids polygamy, but it exists as *adat* (custom). Polygamy is especially widespread in the new upper classes and the clergy. Girls younger than 18 years are married as subsequent wives, but because polygamy is illegal they have no legal status. If their husbands divorce them, they have no legal protection, and often limited education and professional opportunities. Many become victims of trafficking.

Equality in the Family is Possible

- ▶ During the Soviet era, Uzbek society was modernised and secularised, at least superficially. Women were able to pursue education and work outside of the home.
- ▶ Many women were actively involved with civil society organisations until 2005, at which time many NGOs were closed. Although the NGOs that continue their activities now work under the strict control of the government and in limited public space, they are still courageously struggling for change. If the restrictions lift, these NGOs will be prepared to continue their work.
- ▶ Previously, neighbourhood councils encouraged women suffering from domestic violence to return to their husbands for the sake of their children and to accept a subordinate and submissive role. After NGO advocacy on domestic violence, women can appeal to a court for a divorce without first getting permission from their neighbourhood councils.
- ▶ Uzbekistan has ratified many of the major human rights instruments, and has reported before several of the human rights treaty bodies (Committee Against Torture in 2007, Committee on the Elimination of Racial Discrimination in 2006, Committee on the Rights of the Child in 2006, Committee on Economic, Social and Cultural Rights in 2006, Committee on the Elimination of Discrimination Against Women in 2006, and the Human Rights Committee in 2005).

Sources: Report submitted to Musawah in English by Dr. Marfua Tokhtakhodjaeva; Uzbekistan website of the United Nations Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org/EN/countries/ENACARRegion/Pages/UZIndex.aspx>.

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