



musawah

For Equality in the Muslim Family

Musawah Thematic Report on Article 16 & Muslim Family Law: Mali

**64th CEDAW Session
Geneva, Switzerland
July 2016**

Musawah

c/o Sisters in Islam [SIS Forum (Malaysia)]

No. 4, Lorong 11/8E, 46200 Petaling Jaya

Selangor, Malaysia

Tel: +603 7960 5121

Fax: +603 7960 8737

Email: musawah@musawah.org

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

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Musawah Thematic Report on Article 16 & Muslim Family Law: Mali 64th CEDAW Session July 2016

I. INTRODUCTION

Musawah,¹ the global movement for equality and justice in the Muslim family, submits its 16th Thematic Report on Article 16² and related concerns for consideration by the CEDAW Committee in its review of the Government of Mali, reporting before the 64th Session of the CEDAW Committee.

This is the CEDAW Committee's third engagement with Mali, which signed the CEDAW Convention on 5 February 1985, and ratified it on 10 September 1985. Since its ratification, with no reservations.³

Despite the State party's noteworthy history of reservation-withdrawal, Musawah is concerned by its **continued non-implementation of the Convention in areas concerning marriage and family relations**. Musawah's issues of concern and supplementary research take a critical look at the status of marriage and family relations, **specifically with regards to the use of religion, culture, and tradition (RCT) to justify discriminatory law and practice**.

In particular, this report examines Malian laws and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: *equal rights & responsibilities in marriage; early, child & forced marriage; polygamy; access to divorce; and violence against women*.⁴

Musawah hopes that the research, analysis, and recommendations in this report will provide critical information in (1) highlighting key concerns and identifying gaps in the State party report and the State party's reply to the list of issues; (2) providing alternative arguments *within* Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation of its international human rights treaty obligations; and (3) suggesting recommendations for reform based on good practices in Muslim contexts.⁵

Musawah hopes that the CEDAW Committee will utilise the content of this report as a key resource during its Constructive engagement with the State party, and in follow-up activities on the Concluding observations.

¹ Musawah: <http://www.musawah.org/>.

² Since the concerns of equality and justice in the family are crosscutting, issues in Article 2 (*implementation of non-discrimination; penal provisions that constitute discrimination against women*), Article 5 (*gender stereotypes; harmful practices*), and Article 15 (*equality before the law; freedom of movement and residence*) are also covered.

³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec.

⁴ We note that the order of the sections below emphasise the logic and patterns of discrimination in many Muslim Family Laws (MFLs), rather than the order of CEDAW Articles. Musawah hopes that this will support the Committee in identifying the necessary patterns, so as to formulate stronger questions towards productive engagement with the State party.

⁵ Musawah uses the term 'good' or 'promising' rather than 'best' practices to take into account the complex contextual framework of practices located in the wide spectrum of 'bad' to 'good.' Musawah also seeks to look at good practices that have been transformative in relation to eliminating discrimination against women in law and in practice in different contexts, and in the light of the different realities that women face. This use of terminology and definition builds on existing work on this issue by special procedure mandate holders, including the UN Working Group on the issue of discrimination against women in law and in practice. See: Human Right Council 20th Session, Annual Report of the Working Group on the issue of discrimination against women in law and in practice (April 2012), U.N. Doc. A/HRC/20/28, p. 5, available at: http://www.ohchr.org/Documents/Issues/Women/A-HRC-20-28_en.pdf.

II. LEGAL BACKGROUND

Code of Marriage & Family (2012)

- ❖ In 2009 women's groups efforts that had been pushing for change for 10 years led to a **new Family Code**, provisions of which included raising the minimum legal age of marriage for girls, improving women's inheritance and property rights and removing the clause demanding a wife's obedience to her husband. This law was adopted by the National Assembly in August 2009 but was later withdrawn because of uproar from conservative Muslim groups.⁶
- ❖ The reception of the law was controversial, and tens of thousands of people protested in Mali's capital, Bamako:
 - *Hadja Sapiato Dembele of the National Union of Muslim Women's Associations said the law goes against Islamic principles: "We have to stick to the Qur'an [...] A man must protect his wife, a wife must obey her husband [...] It's a tiny minority of women here that wants this new law - the intellectuals. The poor and illiterate women of this country - the real Muslims - are against it." She also said: "There are passages of this code that are incompatible with Islam, and that's why we oppose it. We will never leave our religion for this code".*⁷
 - *The secretary of Mali's highest ruling Islamic council, Mohamed Kimbiri said: "This code is a shame, treason [for Muslims]. We are not against the spirit of the code, but we want a code appropriate for Mali that is adapted to its societal values. We will fight with all our resources so that this code is not promulgated or enacted." He added that parliament members ignored religious leaders' suggestions. "We do not want a code imported from donors, notably the European Union, which conditions its aid on certain social reforms, including the adoption of this code."*⁸
 - *The president of a Muslim youth group, Amadou Bah, asked followers to "curse government officials who voted yes to the family code", calling them "anti-Islamists" who "will be sanctioned by the All-Powerful".*⁹
 - *One of five parliament members who voted against the code, Abdoulaye Dembélé, said he could not risk upsetting his constituents. "I cannot go before my voters and tell them that religious marriages are not legal... that a woman should no longer obey her husband and that they should respect one another equally... If I do this, voters will punish me in the next elections."*¹⁰
- ❖ The protests forced President Amadou Toumani Toure to send the law back to parliament for 'the sake of national unity: "**After extensive consultations with the various state**

⁶ DIARRA, S. T., "Women's rights in Mali 'set back 50 years' by new 'Family Code' law", *The Guardian*, May 1, 2012: <http://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>.

⁷ BBC NEWS, "Mali protest against women's law", August 23, 2009: <http://news.bbc.co.uk/2/hi/africa/8216568.stm>;

STEWART, R., "Mali battles over women's rights", *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>.

⁸ IRIN, "Threats of violence greet new family code", August 11, 2009: <http://www.irinnews.org/report/85676/mali-threats-of-violence-greet-new-family-code>.

⁹ IRIN, "Threats of violence greet new family code", August 11, 2009: <http://www.irinnews.org/report/85676/mali-threats-of-violence-greet-new-family-code>.

¹⁰ IRIN, "Threats of violence greet new family code", August 11, 2009: <http://www.irinnews.org/report/85676/mali-threats-of-violence-greet-new-family-code>.

institutions, with civil society, with the religious community and the legal profession, I have taken this decision to send the family code for a second reading to ensure calm and a peaceful society, and to obtain the support and understanding of our fellow citizens.”¹¹

- ❖ **A new code has been issued in 2011 and enshrined in law in earlier 2012.** Campaigners say that the code perpetuates discrimination instead of protecting women’s rights and according to Safiatou Doumbia, a member of the Malian Association for Care and Assistance to Women and Children, the new law has set women back: “The new law brings women’s rights back to more than 50 years ago because some rights women had in the former law have been banned. Before, a woman would automatically keep her children if her husband died. This is not the case with the new law, which allows a family counsel to decide who should keep the children.” Among the contentious issues in the law: under the new Family Code, as in the original 1962 law, a woman must obey her husband, men are considered the head of the family and the legal age for marriage is 16 for girls, and 18 for boys. The 2009 bill would have made secular authorities the only ones allowed to perform marriages. Whereas now religious ceremonies are also now recognised as legally binding.¹²

IV. KEY ISSUES: LIVED REALITIES, ISLAMIC JURISPRUDENCE, & REFORM

This section identifies critical issues of discrimination against women within the Muslim family law and under Articles 2, 5, and 16. The section also presents research from secondary sources, to assist the CEDAW Committee’s Constructive Engagement process with the State party. In addition, each section provides justification for reform based on arguments that affirm the possibility and necessity of change within Muslim contexts. The section further provides recommendations and a listing of good practices in member countries of the OIC to illustrate that reform is possible in Muslim contexts.

(A) EQUAL RIGHTS & RESPONSIBILITIES

(1) CRITICAL INFORMATION:

- ❖ The 2012 Family Code provides that **husbands are the heads of families** and the Civil Code grants them **sole family and parental authority;**¹³ women **must obey** their husbands.¹⁴

¹¹ Mahmud Dicko, the head of Mali’s High Islamic Council says he was pleased with the president’s decision. He says: “This code has no respect for the inherent values of our society”. “It’s just the way our society is organised. The head of the family is the man, and everyone in the family has to obey him.” Whereas, this was a strong defeat for women’s groups that have been trying for more than 10 years to get the law changed. VOGL, M., “Mali women’s rights bill blocked”, BBC News, August 27, 2009: <http://news.bbc.co.uk/2/hi/8223736.stm>; STEWART, R., “Mali battles over women’s rights”, *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>.

¹² DIARRA, S. T., “Women’s rights in Mali ‘set back 50 years’ by new ‘Family Code’ law”, *The Guardian*, May 1, 2012: <http://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>.

¹³ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015): <http://genderindex.org/country/mali>; WORLD BANK, *Women, Business and the Law. Creating Economic Opportunities for Women*, 2013: <http://wbl.worldbank.org/data/exploreconomies/mali/2013#protecting-women-from-violence>.

¹⁴ STEWART, R., “Mali battles over women’s rights”, *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>; IRIN, “Mali: ‘Reality check’ needed in proposed changes to family code”, February 26, 2010: <http://www.irinnews.org/report/88251/mali-reality-check-needed-in-proposed-changes-to-family-code>.

- ❖ Under the Family Code, a man can appoint a legal guardian to look after the interests of his children in the event of his death: in such cases, **the mother must consult the guardian in all legal matters pertaining to her children, and may lose custody of them if she remarries**.¹⁵
- ❖ According to the law husbands decide where the family will live and their wives are obliged to obey.¹⁶
- ❖ “A married woman must obey her husband, which often reduces her constitutional rights and freedoms (...). Women often have **little responsibility for decision-making** within the family. **Some husbands and parents refuse to allow their wives and daughters to work**.”¹⁷
- ❖ The husband’s approval is required for a husband and wife to keep separate homes. The head of the group within the council created to propose changes to the family code, Mamadou Diamouténé, said that while Qur’anic law allowed spouses to keep separate homes, **“it is not that anyone can go wherever she wishes without her husband’s approval, because we cannot forget that the man is the head of the family”**.¹⁸
- ❖ “...in polygamous marriages, the husband is only considered to be the head of the family that he establishes with his first wife; subsequent wives are considered to be the heads of their respective households”.¹⁹
- ❖ “Overall, **women head 12.3% of households** in Mali”.²⁰
- ❖ In terms of decision-making, 2006 Demographic and Health Survey (DHS) report that women surveyed said that it is **primarily their husband or partner who make decisions regarding both large household purchases (68.0%) and daily household purchases**. Nevertheless, it is reported that 86.9% of women said they primarily decide the use of the money they earn.²¹

¹⁵ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; WORLD BANK, *Women, Business and the Law. Creating Economic Opportunities for Women*, 2013: <http://wbl.worldbank.org/data/exploreeconomies/mali/2013#protecting-women-from-violence>.

¹⁶ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; WORLD BANK, *Women, Business and the Law. Creating Economic Opportunities for Women*, 2013: <http://wbl.worldbank.org/data/exploreeconomies/mali/2013#protecting-women-from-violence>

¹⁷ MUSAWAH, “Mali”, pp. 28-29, in *Home Truths: A Global Report on Equality in the Muslim Family*, Musawah, Sisters in Islam, 2009, p. 28.

¹⁸ IRIN, “Mali: ‘Reality check’ needed in proposed changes to family code”, February 26, 2010:

<http://www.irinnews.org/report/88251/mali-reality-check-needed-in-proposed-changes-to-family-code>

¹⁹ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L’INFORMATIQUE DU MINISTERE DE L’ÉCONOMIE, DE L’INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA: CPS/DNSI et Macro International Inc., 2007, , p. 15:

<http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>

²⁰ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L’INFORMATIQUE DU MINISTERE DE L’ÉCONOMIE, DE L’INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA: CPS/DNSI et Macro International Inc., 2007, p. 16:

<http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>

²¹ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L’INFORMATIQUE DU MINISTERE DE L’ÉCONOMIE, DE L’INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA: CPS/DNSI et Macro International Inc., 2007, pp. 276, 279:

<http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>.

Case Studies:

- ❖ **The story of Farima and her daughter Wassa:** Farima is a widow living in the village of Gwelekoru, in the south of Mali. Because the law dictates that a woman must obey her husband, **she could not oppose when her husband forced their daughter, Wassa, to drop the school to take care of her younger brother.** She says: “Now she is married in another village not far from here. I think our decision has been an injury to her because if she had studied her life could have been different”. “In all the villages of this region, girls get married at 15 or 16, even if they go to school,” she says. “Their parents must ask the husband to let their daughter attend school once she is married.” Wassa has 8 children and her husband has 3 wives.²²
- ❖ **The story of Binta**” Binta, another widow living in the village of Gwelekoru, says: “**We are different from men; we don’t have the power of decision and things have been like that since God made this world.**” She adds: “Now I don't have to ask my husband for permission to fetch the firewood I sell to earn money”. “[When he was alive] I could not travel without his authorisation or go out somewhere else in the village when he was absent.”²³
- ❖ **The story of Zina:** Zina, 17-year-old at the time of the writing of this article (now 22), from the town of Gao, who can be defined as one the of the luckier Malian women (she is among the 33% who can read and write) says: “I hope to be a doctor when I finish my studies”. “I’m not sure if I’ll get married before my studies or afterwards,” she adds “but inshallah, I’ll find a good husband.” She adds: “Your parents chose your husband and you must obey him. It is in the Qu’ran and it is in the law.” **When the journalist asks her about equality among spouses (maybe she’ll become a doctor and marry another doctor), she says “we won’t be equal”. “I will always be inferior to my husband. That’s how it is in Islam. I never want to be equal to my husband.”**²⁴

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging the husband’s right to authority.**²⁵ The concept of male authority (*qiwamah*) over women plays a central role in institutionalising, justifying, and sustaining a patriarchal model of families in Muslim contexts. In the context of Mali, it justifies and perpetuates numerous discriminatory laws practices, including key critical issues examined in this report.

Musawah believes that several verses in the Qur’an that dwell on the values of love, compassion, closeness, and protection between men and women and the general principles of equality and justice should form the basis of marriage and family in Islam.

These values are compatible with the equitable provisions in the Civil Code which recognise equality and non-discrimination. Thus the use of religion and tradition to justify women’s subordinate role in the family must be challenged.

²² DIARRA, S. T., “Women’s rights in Mali ‘set back 50 years’ by new ‘Family Code’ law”, *The Guardian*, May 1, 2012: <http://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>.

²³ DIARRA, S. T., “Women’s rights in Mali ‘set back 50 years’ by new ‘Family Code’ law”, *The Guardian*, May 1, 2012: <http://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>.

²⁴ STEWART, R., “Mali battles over women’s rights”, *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>.

²⁵ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, pp. 26-28.

- ❖ **Challenging the maintenance-obedience legal framework.**²⁶ In Muslim legal tradition, the husband's duty to maintain his wife and children comes with a corollary condition—that the wife is required to be obedient to him. Her failure to obey (*nushuz*) could lead to her losing her right to maintenance. In reality today, many men fail to fulfill their duty to provide, and yet do not lose their right to demand obedience from their wives. This idea of 'complementarity' does not in practice lead to equity in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women. While women who financially provide for the family do not enjoy corollary rights and privileges.

Musawah argues that the logic of such a law, maintenance in return for obedience, is discriminatory in practice. The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own and inherit property. This was the beginning of a trajectory of reform which, if carried forward 1400 years later to reflect changing times and contexts, should lead to the elimination of the legal logic of maintenance in exchange for obedience, and to the introduction of equality between men and women in all areas, including financial matters. The idea that 'complementarity' or 'reciprocity' of rights and obligations do not constitute discrimination in the Muslim Personal Status laws must be challenged.²⁷

- ❖ **Addressing the disconnect between law and reality:** The State party is proud of and has actively encouraged women's active participation in the workforce. Indeed, the State notes that it has worked to create employment environments that enable women to reconcile their family and employment responsibilities. ***There is a deep disconnect between the logic of the rhetoric of political leadership and the reality of women's changing role and status, as well as the Government's own initiatives regarding women's participation in the work-force.***

(3) RECOMMENDATIONS:

- ❖ *Accord husband and wife equal rights and responsibilities in marriage, within a legal framework that recognises marriage as a partnership of equals.*
- ❖ *Adopt a national strategic plan aimed at bringing about a change in the widely accepted stereotypical roles of women and men, by promoting equal sharing of family responsibilities.*²⁸
- ❖ *Initiate awareness-raising campaigns through the media to eliminate gender-role stereotypes, and encourage partnerships based on equal—not complementary—rights and responsibilities.*
- ❖ *Enhance the training of teaching staff with regard to gender equality issues and the revision of school curricula to eliminate gender-role stereotypes.*

²⁶ Musawah, *CEDAW and Muslim Family Laws: In Search of Common Ground* (2011), available at: http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws_0.pdf.

²⁷ *Supra* note 38..

²⁸ TANZANIA Concluding observations, *supra* note 6, para 25.

(4) GOOD PRACTICES:²⁹

- ❖ **Kyrgyz Republic:** Article 22 of the Family Code stipulates that women and men have the same rights and duties in marriage, and spouses should care for each other and develop their own abilities.
- ❖ **Morocco:** The *Moudawana* specifies the ‘mutual rights and duties’ between spouses, including both the wife and the husband assuming the responsibility of managing and protecting household affairs, and the children’s education and consultation on decisions.
- ❖ **Turkey:** Under the Constitution, the family is based on equality between spouses.
- ❖ **Uzbekistan:** The Family Law Code envisages family relations based on mutuality and equality, with mutual support and responsibility of all family members, and the unhindered enjoyment by family members of their rights.

(B) EARLY, CHILD, & FORCED MARRIAGE

(1) CRITICAL INFORMATION:

- ❖ In Mali the **legal age of marriage is 18 years for males and 16 for females**. In certain cases, marriage can be authorised from 15 years with a judge’s permission and consent of the parents.³⁰ “Explicit discrimination exists in some laws. In the Code on Marriage and Guardianship, the minimum age of marriage is lower for girls than boys.”³¹
- ❖ In rural Mali **15% of girls are married by the time they are 15 years old.**³² In region of Kayes (in the west of Mali) **83 percent of girls are married by the age of 18.**³³
- ❖ Amnesty International estimated in 2005 that more than **60 percent of young women in Mali married before the age of 18.**³⁴ SIGI notes that women tend to marry at relatively early ages. The following data from DHS are reported: **“Of adult women aged 25-49 questioned for the 2006 Demographic and Health Survey (DHS), 23% were married before the age of 15, 66% before the age of 18, and 95% before the age of 25.** The 2006 DHS also indicates that **52.6% of girls aged between 15 and 19 years were married, divorced or widowed**”³⁵ UNICEF reveals that **55% of women between the ages**

²⁹ Musawah, *CEDAW and Muslim Family Laws*, supra note 55, p. 45.

³⁰ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; WORLD BANK, *Women, Business and the Law. Creating Economic Opportunities for Women*, 2013: <http://wbi.worldbank.org/data/exploreconomies/mali/2013#protecting-women-from-violence>; IRIN, “Mali: ‘Reality check’ needed in proposed changes to family code”, February 26, 2010:

<http://www.irinnews.org/report/88251/mali-reality-check-needed-in-proposed-changes-to-family-code>; STEWART, R., “Mali battles over women’s rights”, *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>.

³¹ MUSAWAH, “Mali”, pp. 28-29, in *Home Truths: A Global Report on Equality in the Muslim Family*, Musawah, Sisters in Islam, 2009, p. 28.

³² *Lifting Stones: Ending Child Marriage in Mali*, YouTube, uploaded by Tostan International, July 2, 2015:

<https://www.youtube.com/watch?v=rQskDAWJvjk>.

³³ IRIN, “Mali: Child marriage a neglected problem”, August 30, 2007: <http://www.irinnews.org/report/74027/mali-child-marriage-a-neglected-problem>.

³⁴ IRIN, “Threats of violence greet new family code”, August 11, 2009: <http://www.irinnews.org/report/85676/mali-threats-of-violence-greet-new-family-code>.

³⁵ CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L’INFORMATIQUE DU MINISTERE DE L’ÉCONOMIE, DE L’INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA:

of 20 and 24 were married or in union before they were 18 years old and 15% by the age of 15, ranking Mali 15th country in the world, within the 20th highest-prevalence countries.³⁶ The president of a national women's association of NGOs, Oumou Touré, said that “**Many girls married at 10, 11 or 12 have died in recent years in the region of Kayes [500km northeast of Bamako]... The new code will put the brakes [on this] because the guilty will from now on be punished and fined.**”³⁷ A research by **CAFO** (Coordination of Women's Associations and Non-governmental organisations) of Niore du Sahel shows that in Kayes, between 2005 and May 2007, **at least 10 girls - many not yet teenagers - lost their lives because of complications after their wedding nights**, sometimes due to haemorrhaging after forced intercourse.³⁸

- ❖ It is noted that **although it is a criminal offence to abduct a woman or a girl to force her into marriage, which is punishable by up to ten years in prison, the law is not effectively enforced.**³⁹
- ❖ Forced and early marriage, can represent up to **80 per cent of marriages in some localities.**⁴⁰ It is noted that the present context of political and economic instability, and recent intense military conflict, has led to an increase in forced marriages.⁴¹ Particularly, the rate of forced marriage is said to be **increased with the arrival of the Tuareg fighters** from the movement for the liberation of Awazad (MNLA).⁴²
- ❖ Forced marriage and marriage at a very young age are in the list of harmful practices that the country says to be fighting.⁴³

On secondary effects of early marriage:

- ❖ **Early marriage infringes on women and girls' physical and mental integrity.** Research indicates that early and forced marriage often leads to physical, sexual, and mental violence; and increased reproductive health risks, including maternal and other pregnancy-related complications.⁴⁴ ⁴⁵ Younger women often have less knowledge of their bodies and rights, and are in a weaker position to stand up to their husbands if they are sick, hurt, or face domestic violence.⁴⁶

CPS/DNSI et Macro International Inc., 2007, p. 85: <http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>, p. 85; SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015): <http://genderindex.org/country/mali>.

³⁶ UNICEF, *The State of the World's Children: Children in an Urban World*, 2012:

http://www.unicef.org/sowc2012/pdfs/SOWC%202012-Main%20Report_EN_13Mar2012.pdf.

³⁷ IRIN, “Threats of violence greet new family code”, August 11, 2009: <http://www.irinnews.org/report/85676/mali-threats-of-violence-greet-new-family-code>.

³⁸ IRIN, “Mali: Child marriage a neglected problem”, August 30, 2007: <http://www.irinnews.org/report/74027/mali-child-marriage-a-neglected-problem>.

³⁹ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; IRIN, “Mali: ‘Reality check’ needed in proposed changes to family code”, February 26, 2010: <http://www.irinnews.org/report/88251/mali-reality-check-needed-in-proposed-changes-to-family-code>.

⁴⁰ MUSAWAH, “Mali”, pp. 28-29, in *Home Truths: A Global Report on Equality in the Muslim Family*, Musawah, Sisters in Islam, 2009, p. 28.

⁴¹ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>;

⁴² THOMAS, K., “Malian women raped, stoned, lashed and forced to marry amid intense fighting”, *Thomson Reuters Foundation*, February 11, 2013: <http://www.trust.org/item/?map=malian-women-raped-stoned-lashed-and-forced-to-marry-amid-intense-fighting/>

⁴³ SPR paras. 133-134

⁴⁴ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

⁴⁵ The Beijing Platform for Action (BPFA), available at: <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>; and CEDAW Committee General Recommendation No. 21: Equality in marriage and family relations (1994), available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

⁴⁶ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

- ❖ **Early marriage limits women and girls' right to education, employment, and financial independence.**⁴⁷ This contradicts the State party's own emphasis on women's fundamental rights to education and employment. A woman's financial independence affects both her decision-making powers within the family,^{48 49 50} her decision and ability to divorce, and her financial and physical vulnerability in the case of divorce. Furthermore, women's access to education and employment affects the well-being of communities and society.^{51 52}
- ❖ **Early marriage challenges family peace and well-being.** Research indicates that early and forced marriage often leads to difficulties in marriage—including divorce and health risks, such as HIV/AIDS—and has greater impact on the general level of violence in families.⁵³

Case Studies:

- ❖ **The story of Farima and her daughter Wassa:** Farima is a widow living in the village of Gwelekor, in the south of Mali. Because the law dictates that a woman must obey her husband, she could not oppose when her husband forced their daughter, Wassa, to drop the school to take care of her younger brother. She says: **“Now she is married in another village not far from here. I think our decision has been an injury to her because if she had studied her life could have been different”.** **“In all the villages of this region, girls get married at 15 or 16, even if they go to school,”** she says. “Their parents must ask the husband to let their daughter attend school once she is married.” **Wassa has 8 children** and her husband has 3 wives.⁵⁴
- ❖ **The story of Zina:** Zina, 17-year-old at the time of the writing of this article (now 22), from the town of Gao, who can be defined as one of the luckier Malian women (she is among the 33% who can read and write) says: “I hope to be a doctor when I finish my studies”. **“I’m not sure if I’ll get married before my studies or afterwards,” she adds “but inshallah, I’ll find a good husband.”** She adds: “Your parents chose your husband and you must obey him. It is in the Qu’ran and it is in the law.” When the journalist asks her about equality among spouses (maybe she’ll become a doctor and marry another doctor), she says “we won’t be equal”. “I will always be inferior to my husband. That’s how it is in Islam. I never want to be equal to my husband.”⁵⁵
- ❖ **The story of Aminata and her sister** (extract from the ‘Equality for now’ study): “Born in France to Malian parents, Aminata went to school in Paris and had never visited Mali until her father sent her and her elder sister to a village in the Kayes region during the school holidays. She was 14 years old and her sister 16. **It was not until the girls arrived at the village that they learned Aminata was to be married to her father’s cousin and her sister to the local imam.** Her father had taken away Aminata’s passport and she was

⁴⁷ The Beijing Platform for Action (BPFA), *supra* note 17; and CEDAW Committee General Recommendation No. 21, *supra* note 42.

⁴⁸ Ziba Mir-Hosseini and Zainah Anwar, “Decoding the ‘DNA of Patriarchy’ in Muslim family laws” (21 May 2012), available at: <http://opendemocracy.net/print/65974>.

⁴⁹ CEDAW Committee General Recommendation No. 21, *supra* note 17.

⁵⁰ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

⁵¹ *Ibid.*

⁵² CEDAW Committee General Recommendation No. 21, *supra* note 17.

⁵³ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, pp. 32-33.

⁵⁴ DIARRA, S. T., “Women’s rights in Mali ‘set back 50 years’ by new ‘Family Code’ law”, *The Guardian*, May 1, 2012: <http://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>.

⁵⁵ STEWART, R., “Mali battles over women’s rights”, *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>.

stranded in an unfamiliar place without support. Female genital mutilation was a prerequisite for marriage, which both girls had managed to avoid in France, but were now subjected to. Aminata objected to the marriage so her husband bound her hands and feet in order that he could consummate their wedding, despite her resistance. She managed to escape that night, but was caught near the village and returned to her husband. She tried a second time the next day, but was again found and brought back. She then pretended for a while to accept her lot, including accompanying the women of the village to the market. On one such trip, she told her story to a policeman who helped her call schoolfriends in Paris. They contacted Groupe pour l'abolition des mutilations sexuelles (GAMS) who in turn contacted Malian NGO l'Association Malienne pour le Suivi et l'Orientation des Pratiques Traditionnelles (AMSOPT). With the help of the policeman, Aminata was able to contact AMSOPT and escape to Bamako. AMSOPT was contacted by a French television station which in turn offered support with the French ambassador to get Aminata travel documents back to France. At the airport, the police and customs helped hide Aminata when it was discovered some of her family members and a close friend of Aminata's new "husband" were on the same flight. Once she reached Paris, Aminata was taken by social services. She eventually got a job and got married. Her sister remains in Mali. It is not known whether any charges were brought against her father or if the authorities investigated any potential risk to any other daughters of child marriage."⁵⁶

- ❖ **The story of Sira, Korotoumou and Fatoumata and the Tostan program:** Thanks to the **Tostan program**, the family of Sira, 13 years old, Korotoumou, 15 years old and Fatoumata, 15 years old, decided to say **no to child marriage and keep their daughters in school.**⁵⁷
- ❖ It is reported that in 2005 in the western Malian village of **Korera-Kore**, a **13-year-old girl was forced into marriage during her school summer holiday. She died after complications during sex on her wedding night.**⁵⁸

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging arguments for early marriage:**⁵⁹ Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.' Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. Reportedly, Aishah was six years old when she was betrothed, and nine when the marriage was consummated. However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage.⁶⁰ More importantly, the question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices. The justification for child marriage quoting the precedent of Aishah's marriage to the Prophet must be challenged.

⁵⁶ EQUALITY NOW, *Protecting The Girl Child, Using the law to end child, early and forced marriage and related human rights violations*, January 2014: http://www.equalitynow.org/sites/default/files/Protecting_the_Girl_Child.pdf.

⁵⁷ *Lifting Stones: Ending Child Marriage in Mali*, YouTube, uploaded by Tostan International, July 2, 2015: <https://www.youtube.com/watch?v=rQskDAWljk>.

⁵⁸ IRIN, "Mali: Child marriage a neglected problem", August 30, 2007: <http://www.irinnews.org/report/74027/mali-child-marriage-a-neglected-problem>.

⁵⁹ *Ibid*, pp. 30-31. Also see *Musawah Statement to OHCHR on Child, Early and Forced Marriage*, available at: <http://www.musawah.org/musawah-to-OHCHR-child-marriage>.

⁶⁰ Muhammad Khalid Masud (trans), 'Prophet Muhammad's wife A'isha: How Old was she at the Time of her Marriage?' available at: <http://www.sistersinislam.org.my/news.php?item.997.41>.

While the Qur'an does not provide any specification for the age of marriage, *Surah an-Nisa'* 4:6 requires that orphans should be of sound judgment before they marry. This indicates that a person must have sufficient judgment and maturity to marry. Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, fixes adulthood on children under 18, even onto those who start menstruating at the age of nine or ten. The onset of puberty is no indication of sufficient maturity for marriage.

(3) RECOMMENDATIONS:

- ❖ *Set the minimum age of marriage to 18 for both males and females.*
- ❖ *Amend the law to disallow all legal exceptions to the minimum age of marriage.*
- ❖ *Exercise due diligence to prevent, investigate, and punish acts that are aimed at coercing children into early marriage.*
- ❖ *Provide reparation to victims and survivors of early marriage, including allowing girls and women forced into marriage the retroactive right to invalidate the marriage, or the right to divorce.*
- ❖ *Enforce mandatory registration of marriage, and improve existing registration mechanisms.*

(4) GOOD PRACTICES:

Available information shows while many OIC countries have established minimum age of marriage, none has made it illegal for children to be married under the age of 18. Some countries that allow exceptions have also set an absolute minimum age. Examples:

- ❖ **Uzbekistan & Kyrgyz Republic:** The minimum age of marriage is 18, but the court may authorise marriage at 17 for exceptional reasons, with parental permission.

(C) POLYGAMY

(1) CRITICAL INFORMATION:

- ❖ **Polygamy is provided for in the marriage code of Mali.** There are disparities in the areas of management and decision-making within the household, inheritance, divorce especially with regard to causes and effects, parental authority — all important considerations with regard to women's rights.⁶¹
- ❖ "...in polygamous marriages, the husband is only considered to be the head of the family that he establishes with his first wife; subsequent wives are considered to be the heads of their respective households".⁶²
- ❖ It has been estimated that **39% of women are in polygamous marriages, including 20% of married girls aged 15-19.**⁶³

⁶¹ SPR Para 215.

⁶² SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L'INFORMATIQUE DU MINISTERE DE L'ÉCONOMIE, DE L'INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA: CPS/DNSI et Macro International Inc., 2007, p. 15: <http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>.

Secondary effects of discrimination:

- ❖ **Polygamy poses significant emotional, financial, and physical harm to women and families.** Polygamy often results in inequality between wives; harmful emotional consequences for first and successive wives, as well as their children; economic difficulties; and greater levels of conflict and violence within families.⁶⁴ ⁶⁵ Furthermore, the threat of polygamy can be used as a powerful means of control of the wife by the husband.⁶⁶

Case Studies:

- ❖ **The story of Farima and her daughter Wassa:** Farima is a widow living in the village of Gwelekoru, in the south of Mali. Because the law dictates that a woman must obey her husband, she could not oppose when her husband forced their daughter, Wassa, to drop the school to take care of her younger brother. She says: “Now she is married in another village not far from here. I think our decision has been an injury to her because if she had studied her life could have been different”. “In all the villages of this region, girls get married at 15 or 16, even if they go to school,” she says. “Their parents must ask the husband to let their daughter attend school once she is married.” Wassa has 8 children and **her husband has 3 wives.**⁶⁷
- ❖ **“It’s difficult, but one accepts it because it’s our religion.” “Our mothers accepted it. Our grandmothers accepted it. Why not us?”** said Doussou Traoré, the president of an association of Malian women in New York, who married an older man with two other wives who remained in Mali.⁶⁸

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging polygamy.**⁶⁹ Musawah maintains that Islam promotes monogamy, as can be seen in *Surah an-Nisa’* 4:3: ‘If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, three or four; but if you fear that you shall not be able to deal justly [with your wives], then marry only one [...] That will be more suitable, to prevent you from doing injustice.’ Some Muslim countries have also prohibited polygamy. In other countries, women are entitled to add a stipulation in their marriage contracts that their husbands cannot take other wives without their permission, and that polygamy could constitute grounds for divorce. We recommend that this clause becomes a standard

⁶³SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015): <http://genderindex.org/country/mali>; CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L’INFORMATIQUE DU MINISTERE DE L’ÉCONOMIE, DE L’INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA: CPS/DNSI et Macro International Inc., 2007, p. 82: <http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>.

⁶⁴ CEDAW Committee General Recommendation No. 21, *supra* note 17.

⁶⁵ The serious emotional and financial consequences of polygamy have been documented in ground-breaking 5-year research project conducted by the NGO Sisters in Islam (Malaysia) and partner universities, between 2008 and 2010 (Musawah, *CEDAW and Muslim Family Laws*, *supra* note 6, p. 35). For one of the outputs of the project documenting the myths and realities of polygamy for women and children, see this 6-minute short video produced by Sisters in Islam: <https://www.youtube.com/watch?v=kTbg3d9OSYo> (Malay with English subtitles).

⁶⁶ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 6, p. 35.

⁶⁷ DIARRA, S. T., “Women’s rights in Mali ‘set back 50 years’ by new ‘Family Code’ law”, *The Guardian*, May 1, 2012: <http://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>.

⁶⁸ BERNSTEIN, N., “In Secret, Polygamy follows African to N.Y.”, *New York Times*, March 23, 2007: http://www.nytimes.com/2007/03/23/nyregion/23polygamy.html?pagewanted=all&_r=1&_.

⁶⁹ *Ibid*, pp. 33-36.

stipulation in marriage contracts. In this manner, States may discourage or prohibit polygamy, as recommended by the CEDAW Committee under General Recommendation number 21.

Although the Prophet had multiple wives, he was monogamous for more than 25 years—i.e. throughout the lifetime of his first wife, Khadijah. This practice could be used as a source to emulate. There is also an authentic Tradition that the Prophet forbade his son-in-law, Ali ibn Abi Talib, from marrying another woman, unless Ali first divorced the Prophet's daughter, Fatimah, his existing wife. A great-granddaughter of the Prophet, Sakinah binti Hussayn, the granddaughter of Ali and Fatimah, included the condition in her marriage contract that her husband would have no right to take another wife during their marriage.

Polygamy is not intrinsically 'Islamic.' It was an institution that was practiced in most parts of the world at one time, and continues to exist in many African, Asian, and Middle Eastern countries and among Mormon Christians in the USA.

(3) RECOMMENDATIONS:

- ❖ Abolish polygamy in law and in practice.

(4) GOOD PRACTICES:⁷⁰

- ❖ **Tunisia, Turkey, Kyrgyz Republic, Tajikistan, Uzbekistan:** Polygamy is prohibited.
- ❖ **Saudi Arabia, Syria, Jordan, Egypt, Lebanon:** A woman can stipulate in the marriage contract that her husband cannot take another wife. If the husband breaches this term of the marriage contract, the woman has the right to divorce.

(D) DIVORCE

(1) CRITICAL INFORMATION:

- ❖ **Women in Mali can be divorced for anything** from burning the dinner to refusing to have sex.⁷¹
- ❖ Under the Family Code, a man can appoint a legal guardian to look after the interests of his children in the event of his death: in such cases, **the mother must consult the guardian in all legal matters pertaining to her children, and may lose custody of them if she remarries.**⁷²

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **On equal right to divorce.** The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (*ma'ruf*), or separate with kindness (*ihsan*)' (*Surah al-Baqarah* 2:229). The proceedings for arbitration and mediation in *Surah an-Nisa*' 4:35 place both spouses on an equal footing: 'If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.'

⁷⁰ *Ibid*, p. 47.

⁷¹ STEWART, R., "Mali battles over women's rights", *The Guardian*, September 1, 2010: <http://www.theguardian.com/world/2010/sep/07/mali-women-human-rights-islam>.

⁷² SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; WORLD BANK, *Women, Business and the Law. Creating Economic Opportunities for Women*, 2013: <http://wbl.worldbank.org/data/exploreeconomies/mali/2013#protecting-women-from-violence>.

The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness and equality.

Various *fiqh* schools have provided for more egalitarian access to divorce, such as delegated divorce (*talaq-i-tafwid* as commonly practiced in South Asia, in which the marriage contract may stipulate that the husband has delegated to his wife the right for her to unilaterally repudiate the marriage without cause), divorce for cause with no return of dower (*fasakh*), and divorce for breach of stipulations as contracted by the spouses (*ta'liq*). It is thus possible for states to formulate divorce laws that provide equal rights at the dissolution of marriage. Many OIC member countries have also provided that divorce can only take place in the courts.

(3) RECOMMENDATIONS:

- ❖ *Abolish the husband's right to unilateral divorce, to ensure that both parties in a marriage are fully aware of its dissolution and its consequences.*
- ❖ *All divorces must take place in court, with both parties present.*
- ❖ *Equal rights and access for both men and women to matters related to the dissolution of marriage, including the grounds for divorce and standards of proof.*
- ❖ *Ensure that legal limit to dowry at the time of marriage is enforced, enabling women to initiate khula divorce.*
- ❖ *Ensure that alimony granted to women after divorce is sufficient and reviewable, and based on her and her children's needs.*

(4) GOOD PRACTICES:⁷³

- ❖ **Indonesia:** The six grounds for divorce are available to both husbands and wives. All divorces must go through the court.
- ❖ **Morocco:** Dissolution of marriage is a prerogative that may be exercised equally by both husband and wife.
- ❖ **Tunisia:** There are equal grounds for divorce for husband and wife. Divorce shall only take place in court.
- ❖ **Bangladesh, Pakistan, Iraq, Jordan, Morocco, Syria:** A husband may delegate his unilateral right to divorce his wife, permitting her to pronounce *talaq* upon herself (*talaq-i-tafwid* or *'esma*). The wife's right to financial entitlements remains preserved.

⁷³ Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 47.

(E) VIOLENCE AGAINST WOMEN (VAW)

- ❖ In Mali there is **no specific law addressing domestic violence** neither spousal rape, as well as there is a high level of tolerance for violence against women in Malian society.⁷⁴
- ❖ “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. (...) The Penal Code does not include the punishment of certain offences such as female genital mutilation, domestic violence and sexual harassment”.⁷⁵
- ❖ Generally public opinion thinks that **men have a ‘right’ to beat their wives** as shown by the figure in the 2006 DHS: 75.2% of women questioned agreed with at least one of 5 ‘reasons’ for a man to beat his wife.⁷⁶
- ❖ Domestic violence and spousal rape are **widespread** but there are no specific data available on prevalence.⁷⁷
- ❖ “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.”⁷⁸

Case Studies:

- ❖ **The story of Aminata and her sister** (extract from the ‘Equality for now’ study): “Born in France to Malian parents, Aminata went to school in Paris and had never visited Mali until her father sent her and her elder sister to a village in the Kayes region during the school holidays. She was 14 years old and her sister 16. It was not until the girls arrived at the village that they learned Aminata was to be married to her father’s cousin and her sister to the local imam. Her father had taken away Aminata’s passport and she was stranded in an unfamiliar place without support.

Female genital mutilation was a prerequisite for marriage, which both girls had managed to avoid in France, but were now subjected to. Aminata objected to the marriage so her husband bound her hands and feet in order that he could consummate their wedding, despite her resistance. She managed to escape that night, but was caught near the village and returned to her husband. She tried a second time the next day, but was again found and brought back. She then pretended for a while to accept

⁷⁴ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>.

⁷⁵ MUSAWAH, “Mali”, pp. 28-29, in *Home Truths: A Global Report on Equality in the Muslim Family*, Musawah, Sisters in Islam, 2009, p. 28.

⁷⁶ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>; WORLD BANK, *Women, Business and the Law. Creating Economic Opportunities for Women*, 2013: <http://wbi.worldbank.org/data/exploreconomies/mali/2013#protecting-women-from-violence>; CELLULE DE PLANIFICATION ET DE STATISTIQUE DU MINISTERE DE LA SANTE (CPS/MS), DIRECTION NATIONALE DE LA STATISTIQUE ET DE L’INFORMATIQUE DU MINISTERE DE L’ÉCONOMIE, DE L’INDUSTRIE ET DU COMMERCE (DNSI/MEIC) ET MACRO INTERNATIONAL INC., *Enquête Démographique et de Santé du Mali 2006 (DHS 2006)*, Calverton, Maryland, USA: CPS/DNSI et Macro International Inc., 2007, p. 282: <http://www.measuredhs.com/pubs/pdf/FR199/FR199.pdf>; MARMOT, M., “Why do some people still think domestic violence is justified?”, *The Guardian*, January 21, 2015:

<http://www.theguardian.com/healthcare-network/2015/jan/21/domestic-violence-damages-health-shortens-lives>

⁷⁷ SIGI (Social Institutions & Gender Index) – Mali (accessed on September 14, 2015):

<http://genderindex.org/country/mali>

⁷⁸ MUSAWAH, “Mali”, pp. 28-29, in *Home Truths: A Global Report on Equality in the Muslim Family*, Musawah, Sisters in Islam, 2009, p. 28.

her lot, including accompanying the women of the village to the market. On one such trip, she told her story to a policeman who helped her call schoolfriends in Paris. They contacted Groupe pour l'abolition des mutilations sexuelles (GAMS) who in turn contacted Malian NGO l'Association Malienne pour le Suivi et l'Orientation des Pratiques Traditionnelles (AMSOPT). With the help of the policeman, Aminata was able to contact AMSOPT and escape to Bamako. AMSOPT was contacted by a French television station which in turn offered support with the French ambassador to get Aminata travel documents back to France. At the airport, the police and customs helped hide Aminata when it was discovered some of her family members and a close friend of Aminata's new "husband" were on the same flight. Once she reached Paris, Aminata was taken by social services. She eventually got a job and got married. Her sister remains in Mali. It is not known whether any charges were brought against her father or if the authorities investigated any potential risk to any other daughters of child marriage."⁷⁹

(2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **The idea that the family unit is inherently pure, and thus cannot and should not change, is flawed.** However, if a culture recognizes the family as a safe space that protects and grows the full human potential of its members, then it should also recognize the necessity of ending abuse and relationships that cause unhappiness to ensure that this occurs. Indeed, the sanctity of the family as a unit depends on the sanctity of the bodies and minds of all its members.
- ❖ **Cultural attitudes can and do change: The heavy involvement of both government and civil society in social efforts to end violence against women illustrate the potential for meaningful cultural change through widespread mobilization.**

⁷⁹ EQUALITY NOW, *Protecting The Girl Child, Using the law to end child, early and forced marriage and related human rights violations*, January 2014: http://www.equalitynow.org/sites/default/files/Protecting_the_Girl_Child.pdf.

IV. MUSAWAH VISION

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do they fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic teachings which encompass the principles of justice, equality, dignity, and love and compassion lay out a path towards reform of Muslim family laws and practices, in line with contemporary notions of justice, which includes equality between the sexes and equality before the law.⁸⁰

Musawah believes that Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible, and that both are dynamic and constantly evolving, based on changing times and circumstances.⁸¹

It is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam, to:

- ❖ Recognise the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognises equality and justice and the possibility and necessity for reform of Muslim family laws today.
- ❖ Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- ❖ Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.
- ❖ Support civil society groups and individuals engaged in family law reform campaigns, moving the family towards relationships of equality, justice, dignity and mutual respect.

⁸⁰ *Musawah Framework for Action*, supra note 3.

⁸¹ *Ibid.*

About Musawah

Musawah is a global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible. Musawah, which means 'Equality' in Arabic, builds on centuries of effort to promote and protect equality and justice in the family and in society. For details, visit the Musawah website at <http://www.musawah.org>.