

MUSAWAH ORAL STATEMENT ON OMAN

50th Session of the CEDAW Committee, October 2011

Thank you, Madam Chair for giving Musawah the opportunity to address the Committee on the situation of Article 16 in Oman, specifically with regards to Muslim Family Laws.

My name is Zainah Anwar and I am the Director of Musawah, the global movement for equality and justice in the Muslim family. This is Musawah's first thematic report on Article 16, and the second by Musawah on the CEDAW Convention. The first report on the Convention, *CEDAW and Muslim Family Laws: In Search of Common Ground*, was submitted to the CEDAW Committee in January, this year.

In the absence of a shadow report from civil society activists in Oman, it is our hope that this thematic report, covering both Oman and Kuwait, will provide critical information, analysis and recommendations that can be used as a resource during the constructive engagements with States parties and in follow-up activities on the Concluding Observations.

This report was prepared based on secondary sources only. It is regrettable that we were not able to get in touch with any activist or NGO in Oman, despite our many efforts, to provide us with primary data on issues of concern under Article 16.

OBERVATIONS AND RECOMMENDATIONS:

The family law of Oman, as in many other Muslim countries, assume male authority and privilege over women, and assign unequal rights and responsibilities, in areas such as capacity to marry, polygamy, right to divorce, guardianship of children, and right to inheritance. (For more information on the specific forms of discrimination in these areas, I refer you to the thematic report.)

Reform of Muslim family laws in compliance with Article 16 remain problematic to many States parties with family laws based on Islam. Common arguments put forth by these States justifying why reform is not possible include:

1. Muslim Family law is based on *Shari'ah*, regarded as divine law and therefore unchangeable;
2. Islam provides for complementarity or reciprocity of rights. Therefore, the differences in the rights and responsibilities of men and women do not constitute discrimination; and/or
3. Culture, customs or tradition prevent full enforcement of rights.

In response, Musawah would like to make the following points that we hope will open up the possibilities for reform and bring the Personal Status law of Oman in line with Article 16 of the CEDAW Convention:

1. **Even though the Basic Law of Oman is based on *Shari'ah*, the Basic Law also provides for equality of all rights and obligations for men and women.** Thus any understanding, interpretation, codification based on the teachings of Islam must be grounded in the Omani constitutional guarantees of equality and non-discrimination, in line with the Government's commitment to CEDAW and other international human rights treaties and obligations, and in response to the changing realities of Omani women and family life today.
2. **Change is possible because even though Personal Status Law in Oman is ostensibly based on *Shari'ah* law, *Shari'ah* law is not divine.** It is based on centuries-old, human-made rules, called *fiqh* (Islamic jurisprudence), which themselves are founded on realities of a vastly different historical, social and economic contexts.
3. **Change is also possible because the Muslim Personal Status law of Oman falls under what is called the *mu'amalat* category of legal rulings in Islamic jurisprudence (*fiqh*).** The *mu'amalat* rules regulate relations among humans, and according to *fiqh* principles, such laws remain open to 'rational consideration and change'.
4. **Change is possible because diversity of opinion (*ikhtilaf*) in the *fiqh* tradition enables diverse provisions in Muslim family laws today.** If these laws are indeed divine and the word of God, such diversity and differences would not exist.

Where there are areas of discrimination in the Omani Code, examples of rights-based practices in other Muslim countries exist. Thus, for e.g.:

- Bangladesh, Pakistan, Sri Lanka, Morocco and Tunisia do not require a **wali**, a male guardian, for a woman to get married.
- Tunisia and Turkey have banned **polygamy**, while other countries such as Saudi Arabia, Jordan, and Egypt allow a woman to stipulate in the marriage contract that polygamy can be a ground for divorce.
- In Indonesia, Morocco and Tunisia, **divorce** can only take place in court and on equal grounds to both husbands and wife.

Hence, given the above, it is our hope that the CEDAW Committee will encourage the Government of Oman to undertake steps to reform the discriminatory provisions in its Personal Status law by:

- Recognising Omani women as full and equal citizens with full and equal claims on the state;
- Recognising the diversity of opinions, laws and practices in the Muslim world, and the growing scholarship in Islam that recognises equality and justice, and thus the possibility and necessity for reform of Muslim family laws today;
- Promoting human rights standards as intrinsic to the teachings of Islam, Oman's Constitutional guarantees of equality and non-discrimination, and the lived realities of Omani men and women today;
- Encouraging open and inclusive public discussion regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices; and
- Enabling independent women's groups to take up these critical issues of discrimination against women, by raising public awareness on women's rights and offering alternative ideas for reform to move the family towards relationships of equality, justice, dignity and mutual respect.

Thank you, Madam Chair for the opportunity to present this statement.