



musawah

For Equality in the Muslim Family

Musawah Oral Statement: The Gambia

61st Session of the CEDAW Committee

Monday, 6 July 2015

Thank you, Madam Chair.

My name is Zainah Anwar, and I am the Director of [Musawah](#), the global movement for equality and justice in the Muslim family. We are honoured to address the CEDAW Committee today about the implementation of Articles 2 and 16 in the Gambia.

We hope that the thematic report we have prepared on this issue, as well as on concerns related to Muslim Family Laws, can help provide critical information, analysis, and recommendations during the constructive engagement with State parties, and in the follow-up thereafter.

Musawah asserts that discriminatory laws and practices, even those justified in the name of religion, can and should be changed to ensure equality and justice for women.

There is often a great deal of resistance to the idea of reforming Muslim family laws and practices because of the notion that they are rooted in Islam. States parties, such as the Gambia, which use Islam as a source of law and public policy cannot continue to hide behind the shield that these laws are divine, and therefore perfect and unchangeable.

The fact is there are juristic tools and concepts that exist within Islamic legal theory that can be used to reform discriminatory Muslim laws:

- ❖ **First**, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh*, jurisprudence – human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practised in its Khadi's Courts today are in fact, *fiqh* – jurisprudence. It is not divine law. It is human-made, fallible and changeable.
- ❖ **Second**, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, given changing times and circumstances.
- ❖ **Third**, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law, with the Gambia following the Maliki school.

Principles such as *maslaha* (public interest), and *istihsan* (choosing the best opinion among many) must be used to meet the demands of equality and justice today.

- ❖ **Fourth**, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These values exist in the Qur'an and the Muslim legal tradition, and they correspond with contemporary human rights principles.

These rights-based principles and scholarship that exist within Islam, the State party ratification of the CEDAW Convention without reservations, its constitutional provision that recognizes equality, and most importantly, the changing realities of women's lives today, necessitate the urgent need for reform.

The issue here is not about Islam or *Shariah*, but whether the State Party has the political will to end discrimination against women, and its convenient use of Islam to justify discrimination; and whether it chooses to legitimize the voice of traditional patriarchs among those in religious authority over the voice of women who suffer discrimination and injustice on a daily basis.

Musawah recommends the CEDAW Committee to urge the State party of the Gambia to take steps to:

- ❖ ***First, recognise and examine the structural roots of inequality in Muslim family laws, and recognise the possibility and necessity of equality in marriage and family life.***
- ❖ ***Second, recognise and promote the possibility of reconciling Islam with women's rights.***
- ❖ ***Third, recognise therefore the possibility of amending Section 33 (5) of the 1997 Constitution so that Muslim women can enjoy the right to equality in marriage and family relations under Article 16.***

We thank you for this opportunity, Madame Chair.