

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

Family Matter	Muslim Family Laws Currently in Force ¹
<p>Equality of spouses in marriage</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>Algeria: The Family Code requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.</p> <p>Morocco: The Family Code (<i>Moudawana</i>) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.</p> <p>Turkey: Under the Constitution and the Civil Code, the family is based on equality between spouses.</p>
<p>Minimum and equal age of marriage</p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p><i>Minimum age for marriage is 18 with no exceptions (preferred law):</i></p> <p>Egypt: The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalised.</p> <p>Kenya: The minimum age for marriage is 18 for both females and males. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).</p>

This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For individual country tables visit www.musawah.org.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

Pakistan (Sindh Province): The minimum age for marriage is 18 for both females and males. The law criminalises and penalises the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.

Minimum age for marriage is 18 with judicial exceptions and with an absolute minimum age:

Iraq: The minimum age for marriage is 18 for both females and males. A judge may authorise the marriage of females and males below 18 if convinced that the person is physically capable of being married and the marriage is of urgent necessity. A marriage cannot be authorised for persons below 15.

Jordan: The minimum age for marriage is 18 for both females and males. A judge may authorise the marriage of females and males below 18 if it is deemed to be in their interest. A marriage cannot be authorised for persons below 15.

Minimum age for marriage is 18 with judicial exceptions:

Algeria: The minimum age for marriage is 19 for both females and males. A judge may authorise the marriage of females and males below 19 on the ground of benefit or necessity and upon verification of each side's capacity for marriage.

Morocco: The minimum age for marriage is 18 for both females and males. A judge may authorise the marriage of females and males below 18 in a well-substantiated decision explaining the justifications for the marriage, after having heard the parents or legal guardian of the minor and obtaining the assistance of medical expertise or after having conducted a social enquiry.

Oman: The minimum age for marriage is 18 for both females and males. A judge may authorise the marriage of females and males below 18 after verifying that the marriage would be beneficial.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>Sierra Leone: The Registration of Customary Marriage and Divorce Act sets the minimum marriage age at 18. However, persons below 18 can get married with the permission of their parents/guardian, or with the consent of the Court, if such permission is unreasonably withheld.</p> <p>Singapore: The minimum age for marriage is 18 for both females and males. A state appointed official (<i>kadi</i>) may authorise the marriage of females and males below 18 under special circumstances. Despite a provision for a <i>kadi</i> to authorise such marriages, marriages for females below 18 are rare based on official statistics.</p> <p>Tunisia: The minimum age for marriage is 18 for both females and males. A judge may authorise the marriage of females and males below 18 for serious reasons and if it is in the best interest of both prospective spouses.</p> <p>United Arab Emirates: The minimum age for marriage is 18 for both females and males. A judge may authorise the marriage of females and males below 18 if it is deemed to be in their interest.</p>
<p>Consent to marriage / Forced marriage</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p><u>Consent to marry:</u></p> <p>Algeria, Bahrain, Brunei, Indonesia, Iraq, Jordan, Lebanon, Morocco, Oman, Pakistan, Palestine, Qatar, Singapore, Tunisia, Turkey, United Arab Emirates: Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Algeria: The law specifically prohibits a guardian (<i>wali</i>) from compelling a minor under his guardianship to marry nor may he give her in marriage to anyone without her consent.</p> <p>Bahrain (Sunni): The law specifically forbids a woman's <i>wali</i> to compel her to marry.</p> <p>Brunei: The law specifically provides that the <i>wali</i> may only conclude a woman's marriage with her consent and makes it an offence for any person to use force to compel a person to marry.</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>Iraq: The law specifically prohibits relatives and non-relatives from forcing any person, whether female or male, to marry.</p> <p>Malaysia, Pakistan: It is an offence for any person to use force to coerce or compel a person to marry.</p> <p>Morocco: The law specifically requires a minor to consent to a marriage.</p> <p>Oman, Qatar: The law specifically provides that the <i>wali</i> may only conclude a woman's marriage with her consent.</p> <p><u>Mandatory registration of marriage:</u></p> <p>Algeria, Bahrain, Bangladesh, Brunei, Indonesia, Iraq, Jordan, Kenya, Lebanon, Malaysia, Oman, Pakistan, Palestine, Qatar, Singapore, Tunisia, Turkey, United Arab Emirates: The official registration of marriages is mandatory.</p>
<p>Women's capacity to enter into marriage</p> <p>Applicable CEDAW Provision Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p><u>Capacity of adult women to enter into marriage:</u></p> <p>Afghanistan, Bahrain (Shia), Egypt, Iraq, Morocco, Tunisia, Turkey: The consent of a marital guardian (<i>wali</i>) is not required for adult brides and grooms.</p> <p>Bangladesh, Pakistan, Sri Lanka: The consent of a <i>wali</i> is not required for Hanafi women who have reached puberty.</p> <p><u>Capacity of adult women to enter into subsequent marriages:</u></p> <p>Bahrain (Sunni), Indonesia, Jordan, Lebanon (Shia), Palestine (West Bank): The consent of the <i>wali</i> is not required for the subsequent marriages of an adult woman who has been previously married.</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>Palestine (Gaza), Syria: The marriage of an adult woman who enters into a marriage contract without the consent of a <i>wali</i> is considered valid unless the husband is found to be incompatible.</p>
<p>Polygamous marriage</p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p><u>Prohibition of polygamy by law:</u></p> <p>Kyrgyzstan, Tajikistan, Tunisia, Turkey, Uzbekistan: Polygamy is prohibited.</p> <p><u>Requirement for court authorisation and agreement of existing wives to enter into a polygamous marriage:</u></p> <p>Algeria: Polygamous marriages must be authorised by the court and may only be concluded with the agreement of existing wives. Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.</p> <p>Indonesia: Polygamous marriages must be authorised by the court and may only be concluded with the agreement of existing wives. Court permission is only be granted if the husband's existing wife: (i) is unable to perform her conjugal duties; (ii) suffers from a physical infirmity or an incurable disease; or (iii) cannot bear children.</p> <p>Iraq (Kurdistan region): Polygamous marriages must be authorised by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met: (i) the first wife has to agree before the court to her husband marrying a second wife; (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile; (iii) the man has the financial capacity to support more than one wife; (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations; (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife. A man who concludes a polygamous marriage without the authorisation of a judge will be subject to a penalty of</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>imprisonment and fine and judges are prohibited from suspending the penalties.</p> <p><i>Requirement for official (court, etc.) authorisation to enter into a polygamous marriage:</i></p> <p>Bangladesh, Pakistan: Polygamous marriages are only permitted with the written permission of an Arbitration Council consisting of a Chairman and one representative each of the husband and wife or wives. The Arbitration Council may only permit a new marriage if it is satisfied that the proposed marriage is necessary and just, subject to such conditions (if any) as may be deemed fit.</p> <p>Iraq: Unless the prospective bride is a widow, polygamous marriages must be authorised by a judge (<i>qadi</i>). A judge may only authorise a polygamous marriage if: (i) the husband has financial capacity; (ii) there is a legitimate interest for multiple marriages; and (iii) there is no fear of injustice between wives.</p> <p>Jordan: Polygamous marriages must be authorised by a judge. A judge may only authorise a polygamous marriage if the man can afford paying a dower (<i>mahr</i>) and is capable of financially supporting all those for whom he is responsible.</p> <p>Morocco: Polygamous marriages must be authorised by the court. A court may only authorise a polygamous marriage if an exceptional and objective justification for entering into multiple marriages is proven and the man is able to that he is financially capable of supporting multiple wives. The first wife must be present before the judge and be consulted before authorisation is granted.</p> <p>Singapore: Polygamous marriages must be authorised by a state appointed official (<i>kadi</i>). The <i>kadi</i> may only authorise a polygamous marriage if he is satisfied that: (i) The husband has the capacity to provide a life that is balanced in regard to the financial, physical and emotional well-being of his wives; (ii) The husband currently has a good marriage and is not seeking to take on additional wives because his existing marriage is not going well; and (iii) The new marriage will be beneficial to all parties.</p> <p>Syria: Polygamous marriages must be authorised by the court. A court may only authorise a polygamous</p>
--	--

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

marriage if: (i) the husband has the financial capacity to support multiple wives and families; and (ii) there is a legitimate reason for the multiple marriages.

Requirement for official (court, etc.) authorisation to enter into a polygamous marriage with exceptions:

Brunei: Polygamous marriages must be authorised by a judge. A judge can only authorise a polygamous marriage upon being satisfied that the marriage is concluded in accordance with *Shari'ah* principles. A polygamous marriage entered into without a judge's permission can still be officially registered but subject to a penalty (imprisonment, fine or both).

Malaysia: Polygamous marriages must be authorised by the court. The court may only authorise a polygamous marriage if it is satisfied that: (i) the propose marriage is just or necessary, having regard to the sterility, physical infirmity, physical unfitness for the conjugal relations, wilful avoidance of an order for restitution of conjugal rights or insanity of the existing wife or wives; (ii) the husband has the financial means to support all his wives and dependants, including those who would be his dependants as a result of the proposed marriage; (iii) the husband would be able to accord equal treatment to all his wives as required by *Shari'ah* principles; and (iv) the proposed marriage would not cause harm to the existing wife or wives. However, a marriage that is otherwise valid, but entered into without the court's permission, can be officially registered later through the payment of a penalty.

Wife's right to seek divorce following a polygamous marriage by her husband

Afghanistan (Shia), Algeria, Bahrain, Egypt, Jordan, Lebanon, Mauritania, Morocco, Palestine: A woman can stipulate in the marriage contract that her husband cannot take another wife. If her husband breaches this term of the marriage contract, the woman has the right divorce.

Algeria: A woman may petition the court for a divorce if she is able to show that her husband has failed to

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>meet the requirements that he must meet under the law with regard to polygamous marriages.</p> <p>Afghanistan (Sunni), Egypt: A woman may petition the court for a divorce if she is able to show that her husband's polygamous marriage is causing her harm.</p> <p>Bangladesh, Pakistan: A wife may seek a divorce if her husband has taken an additional wife in contravention with the requirements of the law.</p> <p><u>Conversion of a potentially polygamous marriage to a monogamous marriage:</u></p> <p>Kenya: The law provides for a couple to declare their intention to convert their potentially polygamous marriage to a monogamous marriage under the following conditions: (i) each spouse must voluntarily declare their intent to convert the potentially polygamous marriage to a monogamous one; and (ii) at the time the declaration is made, the husband must only have one wife. The declaration must: (i) be made before a marriage officer and must be recorded in writing and signed by each spouse; and (ii) registered with the Registrar of Marriage.</p> <p>Mali: The law provides for a couple to opt for either a monogamous or polygamous matrimonial regime when the marriage is concluded. The choice of matrimonial regime is recorded in the marriage certificate.</p>
<p>Divorce rights</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p><u>Equal right to divorce:</u></p> <p>Turkey, Tunisia: All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (<i>talaq</i>) by the husband is not recognised.</p> <p>Singapore: A wife will inevitably get a divorce whether the husband agrees to the divorce or not and even in instances where the wife is unable to prove a breach of the marriage vows (<i>taklik</i>) or one of the grounds for judicial divorce. The reconciliation process (<i>hakam</i>) will end up with either: (i) the husband voluntarily pronouncing <i>talaq</i>; or (ii) the husband delegating the right to divorce to his wife (<i>talaq-e-tafwid</i> or <i>'esma</i>); or</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

(iii) if the husband refuses to do either (i) or (ii), the court will direct the husband's arbitrator during the reconciliation process to pronounce *talaq* on the husband's behalf.

Judicial divorce due to irreconcilable differences:

Jordan, Morocco: A wife may petition the court for a divorce on the ground of "irreconcilable differences" or irretrievable breakdown of the marriage (*shiqaq wa niza*).

Divorce through repudiation by the husband (talaq):

Algeria, Mauritania: A divorce by way of repudiation by the husband can only be effectuated through the court.

Bangladesh, Pakistan: The standard marriage form includes a provision on the curtailment of a husband's right to divorce.

Bahrain (Shia): A divorce by way of the repudiation by the husband cannot be finalised unless both parties appear before the court to register the divorce.

Brunei, Malaysia: *Talaq* must be pronounced in court and it is an offence to pronounce *talaq* outside the court. If a husband pronounces *talaq* outside the court, he is required to report the pronouncement within seven days and will be subject to a penalty (imprisonment, fine or both).

Indonesia: A divorce by way of repudiation by the husband (*cerai talak*) must be effectuated through the court. The husband must make a request to the court where his wife resides to hold a court proceeding to witness his pronouncement. His application must contain the reasons for his request.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

Morocco: Divorce by way of repudiation which can only be effectuated under judicial supervision. The wife and children must have received all their vested rights before it is authorised.

Palestine (West Bank): A husband must register a divorce by way of repudiation before a judge. In case he divorced his wife outside the court and did not register it, he must report to the religious court for the registration of the divorce within 15 days. Failure to register the repudiation is penalised. The court must notify the wife who is absent within one week from its registration.

Singapore: Both the husband and wife must personally appear before the court within seven days of the pronouncement of *talaq* to apply for divorce. Failure to do so is an offence.

Egypt: A husband must register his divorce by way of repudiation within 30 days for its pronouncement. If the wife is not present at the registry office, the civil registrar (*ma'dhun*) is tasked with the responsibility of notifying the wife of her divorce.

Delegated right of divorce to the wife (talaq-e-tafwid or 'esma):

Afghanistan, Bangladesh, Bahrain, Egypt, Iraq, Jordan, Lebanon (Sunni), Mauritania, Morocco, Oman, Pakistan, Palestine (West Bank), Qatar, Syria, United Arab Emirates, Yemen: A husband may delegate his unilateral right of divorce to his wife through the marriage contract, thus permitting her to pronounce *talaq* upon herself (*talaq-e-tafwid/esma*). The wife's right to financial entitlements remains preserved.

Bangladesh, Pakistan: The standard marriage contract form includes a provision for the delegated right of divorce (*talaq-e-tafwid/esma*). If granted this right, the wife can initiate divorce without grounds and without going to court, while retaining relevant financial rights.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

Divorce by redemption (*khul'*):

Algeria: A wife can obtain a *khul'* divorce in court without the consent of the husband upon payment of compensation to the husband. If the parties cannot agree on the amount of compensation, a judge is mandated to determine the sum to be paid, provided that it does not exceed one third of the dower (*mahr*).

Bahrain (Sunni): A wife can obtain a *khul'* divorce through mutual agreement and payment of compensation to the husband. A judge is mandated to rule for *khul'* if the husband's objection is unreasonable.

Brunei: A wife can obtain a *khul'* divorce (or *cerai tebus talak*) through mutual agreement and payment of compensation to the husband. If both parties are unable to reach a mutual agreement on the amount of compensation to be paid by the wife, a court is mandated to assess the amount in accordance with *Shari'ah* principles and having regard to the status and financial means of the spouses and to the dower (*mas kahwin*). Once the amount of compensation has been fixed and the husband still refuses to the divorce, the court is mandated to grant the divorce.

Egypt: A wife can negotiate with her husband for an *ibra'* divorce by relinquishing some or all of her financial rights. If both parties are unable to reach a mutual agreement on an *ibra'* divorce, a wife may bring a court case to seek a *khul'* divorce, where she needs to: (i) declare in court that she detests life with her husband, the continuation of married life between them is impossible and she fears that she will transgress against the 'limits of God' due to this detestation; (iii) pledge to return her *mahr*; and (iv) renounce all her financial rights. In such a case, the court must order a reconciliation process, and if it fails it must then rule for divorce.

Jordan: A wife can obtain a *khul'* divorce through mutual agreement and payment of compensation to the husband. If the parties are unable to reach a mutual agreement on a *khul'* divorce, a wife may bring a court case for an *iftida* divorce, where she needs to: (i) declare in court that she detests life with her husband, the continuation of married life between them is impossible and she fears that she will transgress against the

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

'limits of God' due to this detestation; (ii) pledge to return her *mahr*; and (iii) renounce all her financial rights. In such a case, the court must order a 30-day reconciliation process, and if it fails, the court must then rule for divorce.

Malaysia: A wife can obtain a *khul'* divorce (or *cera i tebus talak*) through mutual agreement and payment of compensation to the husband. If the husband agrees to the *khul'* divorce but the parties are unable to reach a mutual agreement on the amount of compensation to be paid by the wife, the court may assess the amount in accordance with *Shari'ah* principles, having regard to the status and the means of the parties. If the husband does not agree to the *khul'* divorce, the court will order a reconciliation and if needed, an arbitration process. Should the reconciliation and arbitration processes fail, a wife will be granted a divorce.

Mauritania: A wife can petition a court for a *khul'* divorce by pledging to pay compensation to the husband or forfeiting her financial rights. If a judge determines that the wife had asked for a *khul'* due to harm or mistreatment by her husband, the judge can confirm the *khul'* divorce without payment of compensation by the wife and restore her financial rights.

Bangladesh, Pakistan: A wife can apply to dissolve her marriage through *khul'* by filing suit in the Family Court. This can be done without the consent of the husband if she foregoes her financial rights.

Qatar: A wife can obtain a *khul'* divorce through mutual agreement and payment of compensation to the husband. If the parties are unable to reach a mutual agreement on a *khul'* divorce, a wife may bring a court case where the court will attempt to reconcile the couple by appointing two arbitrators to conduct the reconciliation within six months. If reconciliation is impossible, the Court must grant the divorce on condition that the wife: (i) returns her *mahr*; and (ii) renounces all her financial rights.

Singapore: A wife can obtain a *khul'* divorce through mutual agreement and payment of compensation to the husband. If the husband agrees to the *khul'* divorce but both parties are unable to reach a mutual agreement on the amount of compensation to be paid by the wife, the court may assess the amount of compensation to be paid by the wife, having regard to the status and the means of the parties. If the

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>husband does not agree to the <i>khul'</i> divorce, the court will order a reconciliation process. Should the reconciliation process fail, a wife will be granted a divorce.</p> <p>United Arab Emirates: A wife can obtain a <i>khul'</i> divorce through mutual agreement and payment of compensation to the husband. If the husband persistently opposes the divorce, and if it is feared that the spouses will transgress the limits of God, the court will rule for divorce (<i>mukhala'a</i>) and determine the 'appropriate consideration' (<i>badal munasib</i>) owed by the wife to the husband.</p> <p>Nigeria, Morocco: A wife can obtain a <i>khul'</i> divorce through mutual agreement and payment of compensation to the husband. If the parties agree to the <i>khul'</i> divorce but disagree on the amount of compensation, the court may determine the appropriate amount of compensation to be paid by the wife to the husband.</p>
<p>Women's financial rights after divorce</p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p><u>'Wages' for household chores:</u></p> <p>Afghanistan (Shia): A woman can claim that she is entitled to a share of her former husband's property because the household chores she conducted while married to him were not for free but instead, she had desired the wages for them.</p> <p><u>Division of matrimonial assets:</u></p> <p>Brunei: The court may order any assets acquired by the parties during the marriage (<i>harta sepencarian</i>) either through their joint efforts or by the sole efforts of one party to the marriage to be divided between them or any such assets to be sold and the proceeds of the sale be divided between the parties</p> <ul style="list-style-type: none"> • Where the assets were acquired by the joint efforts of the parties, the court must have regard to: (i) the extent of the contributions made by each party by way of money, property or labour to-wards acquiring the assets; (ii) any debts owed by either party that were contracted for their joint benefit; and (iii) the needs of any minor children of the marriage. Subject to these considerations, the Court will order equal division;

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

- Where the assets were acquired by the sole efforts of one party to the marriage, the court must have regard to: (i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or family; and (ii) the needs of any minor children of the marriage. Subject to these two considerations, the court may divide the assets or the proceeds of sale in such proportions that the Court thinks reasonable, but the party by whose efforts the assets were acquired will receive a greater proportion of the assets.

Malaysia: The court may order the division of matrimonial assets (*harta sepencarian*) acquired through the parties' joint efforts, having regard to the extent of contributions made by each party towards acquiring the assets, debts owed by the parties and the needs of minor children to the marriage. For assets acquired by the sole efforts of a party, the court may order division of the assets having regard to the other party's contributions towards looking after the home or caring for the family, though the party by whose efforts they were acquired shall receive a greater proportion. Even though a woman may not have contributed financially to the acquisition of the marital assets, her role as wife and mother are considered as indirect contributions and she is usually granted at least a third of the share of assets.

Singapore: The *Shari'ah* court may order any matrimonial assets to be divided between the parties or any such asset to be sold and the proceeds of any such sale to be divided between the parties. When making such an order, the court is obliged to consider what is "just and equitable" and take into account all considerations including the extent of the contributions made by each party to the welfare of the family, including: (i) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the property; (ii) any debt owing by either party for their joint benefit or for the benefit of any child of the marriage; (iii) the needs of the children, if any, of the marriage; (iv) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

“Matrimonial assets” is defined widely to include: (i) the matrimonial home; (ii) business assets, including commercial properties used for business or investments; (iii) savings and other investments, including cash in bank, share portfolio, the state managed compulsory retirement savings plan known as the Central Provident Fund (CPF) and pensions; (iv) employment benefits such as pension, gratuity, stock options, insurance policies; (v) vehicles; and (vi) jewellery other than what may be of insignificant value or possessing only sentimental value.

Matrimonial asset property regimes:

Indonesia: Property acquired during the marriage are considered joint property of the husband and wife. Matrimonial assets may be tangible or intangible. Upon divorce, each party has the right to receive half of the matrimonial assets unless they had agree otherwise in the marriage contract.

Turkey: Equal division of property and assets acquired during the marriage is the default property regime.

Tunisia: Spouses have the option of choosing a matrimonial asset regime that ensures that they have joint ownership of assets which are specifically intended for the family’s use.

Consolatory gift or compensation (mu’tah):

Brunei, Egypt, Indonesia, Jordan, Kenya, Malaysia, Mauritania, Morocco, Oman, Qatar, Singapore, United Arab Emirates: The court has the power to order a man to pay his former wife a consolatory gift or compensation’ (*mut’ah*) in addition to the financial maintenance he has to pay her during the waiting period after the divorce (*iddah*). The amount of compensation varies in each country and may be based on a multiple of the *iddah* maintenance or what the court deems as fair and just.

Singapore: Wives will almost always receive *mut’ah* payment even if she is the party petitioning for the divorce or she has “misconducted” herself. Arguments that a wife is “disobedient” (*nusyuz*) have generally not been accepted by the court to disqualify a wife from being entitled to *mu’tah* payment.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p><u>Compensation for unreasonable divorce:</u></p> <p>Algeria, Iraq, Kenya, Palestine (West Bank), Syria: If the court finds that a man has divorced his wife in an arbitrary, unfair or unreasonable manner, the court can order him to pay his former wife compensation for the divorce in addition to the financial maintenance he has to pay her during the <i>iddah</i> period.</p> <p><u>Compensation for harm suffered by the wife:</u></p> <p>Algeria: If a judge finds that a wife has suffered harm during her marriage, the judge can order her former husband to compensate her for the harm she suffered in addition to the financial maintenance he has to pay her during the <i>iddah</i> period.</p> <p>Tunisia: If the court finds that a wife has suffered harm during her marriage, it will proceed to determine the appropriate level of maintenance and compensation due to her upon the pronouncement of the divorce. The level of maintenance and compensation is determined based on the standard of living that the former wife was accustomed to during her marriage. The maintenance and compensation takes the form of regular monthly payments that continue until the former wife's remarriage, death or she no longer requires them.</p> <p>Turkey: A spouse who claims to have suffered material or moral damage can make a request to the court for an order that compensation be paid by the other party to him/her for the damage suffered.</p> <p><u>Housing post-divorce:</u></p> <p>Saudi Arabia: Fathers must provide housing for the mothers with custody of the children. It is considered shameful if fathers do not provide mothers with housing.</p>
--	--

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

Enforcement of court-ordered maintenance:

Singapore: The country has a number of mechanisms to effectively enforce court-ordered maintenance including:

- The establishment of a specialised court to solely handle maintenance concerns, thus expediting claims and enforcement;
- Empowering the court to impose a wide range of measures against defaulters, including: (i) imposing penalties such as fines or imprisonment; (ii) making garnishee orders against the defaulter's earnings; (iii) ordering the defaulter to post a banker's guarantee against future defaults, attend financial counselling and/or perform community service; and (iv) requesting access to the employment information of the defaulter from the CPF in order to facilitate the direct deduction of maintenance payments from the defaulter's wages;
- Empowering the *Shari'ah* court to sign on behalf of a party who, without good reason, refuses to sign the necessary documents to sell or transfer ownership of a property to the other party despite a prior court order for the party to do so;
- Providing women with the ability to report the court-ordered maintenance amount owed to designated credit bureau(s). This measure is aimed at discouraging defaults in the payment of court-ordered maintenance as such defaults would affect the credit standing of the defaulter; and
- Obligating men to declare to their prospective wives (prior to remarriage), their maintenance debts and obligations towards their former wives and/or children. This ensures that their prospective wives are aware of their prospective husband's maintenance before marrying them.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>Bahrain, Palestine, Tunisia: These countries have established a fund that assumes responsibility for payment of court-ordered maintenance if a former husband or father is delinquent in his maintenance payment.</p>
<p>Custody of children</p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>Bangladesh, The Gambia, India, Indonesia, Iraq, Kenya, Pakistan, Qatar, Senegal, Singapore, Sri Lanka, Tunisia, Turkey: Ultimately, child custody is determined by the courts on the basis of the best interests of the child. This has led to an expansion of mothers' rights, as compared to more conservative interpretations of Muslim laws.</p>
<p>Guardianship of children</p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p><u>Equal right to guardianship:</u></p> <p>Indonesia, Kenya, Singapore, Turkey: Ultimately, guardianship of children is determined by the courts on the basis of the best interest of the child.</p> <p><u>Custodian's guardianship rights:</u></p> <p>Algeria: Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child.</p> <p>Brunei: A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to what-ever conditions that the court thinks fit to impose.</p> <p>Morocco: A mother may manage urgent affairs of the children in the event the father is prevented from doing so. She may also assume guardianship of her children if: (i) she is over 18; and (ii) the father is not present due to his death, absence or incapacity.</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>Saudi Arabia: Mothers who have custody of their children after divorce can obtain documents and conduct government business for their children. Mothers are thus able to register their children in schools, take them to health centers, and obtain identity documents for them.</p> <p>Tunisia: Mothers who have custody of their children also has guardianship rights as regards travel, schooling, and management of finances. The court may award full guardianship to the mother if the father is deceased or unable to exercise his duties. Regardless, the mother has an equal right to supervise the child's affairs.</p> <p><u>Children's travel documents:</u></p> <p>Malaysia: Passport application forms allow either the mother, father or guardian to sign the form when applying for a child's passport.</p>
<p>Inheritance rights</p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p><u>Equal right to inheritance:</u></p> <p>Turkey: Inheritance laws do not discriminate based on gender.</p> <p><u>Right of daughters to inherit:</u></p> <p>Afghanistan, Kuwait: Sunni daughters and sons from the same mother inherit equally from their mother's estate.</p> <p>Bahrain, Kuwait, Lebanon: Shia daughters can inherit the entire property in the absence of sons, thus excluding male agnates.</p> <p>Iraq, Tunisia: Sunni schools of law adopt the Shia practice where daughters can inherit an entire property</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p>in the absence of sons, thus excluding male agnates.</p> <p><i>Right of orphaned grandchildren to inherit:</i></p> <p>Algeria, Egypt, Morocco, Palestine (West Bank), Tunisia: The children of a parent who has predeceased their own parent (i.e. the children's grandparent) can inherit from their grandparent through an obligatory bequest.</p> <p>Pakistan: The children of a parent who has predeceased their own parent (i.e. the children's grandparent) receive the share of inheritance from the grandparent's estate which the predeceased parent would have received had they been alive at the time of the death of their own parent (i.e. the children's grandparent).</p> <p><i>Divisions of property through bequests, agreement, etc.:</i></p> <p>Jordan, Tunisia: Bequests can be made in favour of an heir and beyond the one-third limit if other heirs agree to it.</p> <p>Malaysia: Division of the deceased's property can be changed in whatever manner if all heirs agree to such division.</p> <p>Singapore: The Islamic Religious Council of Singapore has issued the following three religious rulings (<i>fatwas</i>) to protect the financial welfare of Muslim women and their dependants:</p> <ul style="list-style-type: none"> • The 2008 <i>fatwa</i> on joint tenancy recognises the surviving spouse (or co-owner) as the legal owner of a jointly held property upon the death of the other spouse (or co-owner); • The 2010 <i>fatwa</i> on CPF nominations recognises that when Muslim CPF account holders make a nomination of their CPF savings in favour of their spouse or children upon their death, it is considered a valid gift;
--	---

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<ul style="list-style-type: none"> The 2012 <i>fatwa</i> on revocable insurance nominations allows Muslim policy holders to nominate their spouse or dependants to receive the full payout from the insurance company as a valid gift. <p><i>Procedures addressing inequities faced by women in the exercise of their inheritance rights:</i></p> <p>Palestine: A court circular: (i) forbids women from renouncing their inheritance until four months after the death of the estate holder; and (ii) provides for a procedure whereby all heirs receive a detailed statement of the estate left by the deceased which is signed by all of them.</p>
<p>Violence against women in the family</p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p><i>Adoption of specific domestic violence legislation:</i></p> <p>Afghanistan, Bahrain, Bangladesh, Chad, Indonesia, Lebanon, Kenya, Kyrgyzstan, Malaysia, Saudi Arabia: Specific legislation that criminalises acts of domestic violence have been adopted.</p> <p><i>Marital rape:</i></p> <p>South Africa, Turkey: Marital rape is criminalised.</p>
<p>Nationality</p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p><i>Transmission of citizenship to foreign-born husbands:</i></p> <p>Afghanistan, Algeria, Indonesia, Iraq, Kenya, Singapore, Senegal, South Africa, Sri Lanka, Turkey: A woman married to foreign-born husband can transmit her citizenship to him.</p> <p><i>Transmission of citizenship from mother to child:</i></p> <p>Afghanistan, Algeria, Bangladesh, Indonesia, Egypt, Kenya, Mali, Morocco, Pakistan, Palestine, Singapore, South Africa, Turkey, Yemen: Mothers may pass their citizenship to their children regardless of where their children are born.</p>

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*

	<p><i>Transmission of citizenship from a mother to a child where the father is a foreigner:</i></p> <p>Egypt, Indonesia, Mali, Pakistan: Laws or procedures specifically confer women married to foreign-born husbands with the right to transmit their citizenship to their children.</p>
--	--

