



**musawah**  
For Equality in the Family



# Who Provides?

# Who Cares?

**Changing Dynamics  
in Muslim Families**





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## **Changing Dynamics in Muslim Families**

This paper was compiled using resources and ideas developed through Musawah's Knowledge Building Initiative on *Qiwamah* and *Wilayah* and related Global Life Stories Project, as well as consultations with scholars, activists, lawyers, UN officials, and NGO representatives. The products of the initiative include *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (2015 and 2017) (English and Arabic); *Women's Stories, Women's Lives: Male Authority in Muslim Contexts* (2016 and 2017) (English and Arabic); and *Musawah Vision for the Family* (2016) (English, Arabic, and French). Additional resources related to the topic can be found in Musawah's 'Compilation of Resources Related to Women's Rights in Muslim Family Laws'. In addition, key issues were inspired by Musawah's engagement with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) reporting process, including the 2011 report *CEDAW and Muslim Family Laws: In Search of Common Ground*. These and other resources are available on the Musawah website: <http://www.musawah.org>.

Unless otherwise noted, English translations of Qur'anic verses throughout the paper are by Yusuf Ali.

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## **Musawah Knowledge Building Working Group**

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## **EXECUTIVE SUMMARY**

# **Who Provides? Who Cares? Changing Dynamics in Muslim Families**

## EXECUTIVE SUMMARY

# Who Provides? Who Cares? Changing Dynamics In Muslim Families

**This thematic paper examines economic and parental rights and responsibilities in Muslim families using the holistic Musawah approach, which integrates Islamic teachings, international human rights principles, national guarantees of equality, and realities of women's and men's lives today.**

It builds on a long-term and multi-faceted research project that Musawah has been working on since 2010 on the issue of male authority in Muslim legal tradition.

Musawah ('Equality' in Arabic) is a global movement focused on promoting equality and justice in Muslim families. Launched in 2009, Musawah seeks to link scholarship with activism to bring fresh perspectives on Islamic teachings and to contribute constructively to the reform of Muslim family laws and practices. Musawah believes that equality and justice in the family are true to the Qur'anic ethos, possible within Muslim legal tradition, and necessary given the realities of the twenty-first century.

Drawing on both classical Islamic legal methodology and the latest Muslim feminist reform scholarship, Musawah builds on the crucial distinction in Muslim legal thought between *Shari'ah* and *fiqh*. *Shari'ah* (lit. 'the way') in Muslim belief is God's will as revealed to the Prophet Muhammad. *Fiqh* (lit. 'understanding') is the science of jurisprudence, the process and methodology for discerning and extracting legal rulings from the sacred sources of Islam (the Qur'an and Sunnah – the practice of the Prophet as contained in *ahadith*, Traditions). Musawah maintains that *fiqh*, like any other system of jurisprudence and law, is human, temporal, and local, thus open to change in response to the requirements of time and place.

Musawah's entry point for the topic of spousal and parental rights and responsibilities is the concepts of *qiwamah* and *wilayah*, which are commonly understood to legitimize men's authority over women. These concepts were developed in classical Islamic jurisprudence (*fiqh*) over many centuries. Jurists developed the concept of *qiwamah* as a set of obligations and rights for men and women in marriage: husbands protect and provide; wives in turn obey. Jurists understood *wilayah* to refer to the right and duty of fathers or male family members to exercise guardianship over their dependent wards (female or male).

These two concepts are integral to both religious discourse on family relations as well as contemporary Muslim family laws, since most of these laws draw on rulings from classical *fiqh* schools. In many modern Muslim family laws, for example, the notion that husbands maintain their wives in exchange for their obedience is still at the core of the legal understanding of marriage. Furthermore, *qiwamah* and *wilayah* and the assumptions underlying them continue to be the justifying logic for men's privileged rights to divorce and polygamy, and fathers' and mothers' unequal and gendered parental rights and responsibilities.

**But the rule that 'husbands provide and wives obey' does not work for all families because of current social and economic conditions.** Many men are not able to earn enough to support their families; many women contribute financially and also undertake most of the unpaid labour and caregiving responsibilities at home. Yet often men retain their rights to make decisions and control their wives, even though they cannot undertake their prescribed responsibilities, whereas women take on responsibilities of providing for and protecting the family but are not accorded any additional rights.

**The rule that 'men provide and women obey' is also harmful for the well-being of families, and is unjust for both men and women.** It places the physical, mental, and financial burden of providing for their families on men alone, depriving them of the privilege and joy of caring for their children. It denies women legal recognition for their contributions to their families and an equal say in family decision-making, and may deprive them of opportunities to work outside the home because of household responsibilities. It deprives children of an enabling and harmonious

family structure in which they can learn and develop through active engagement and caregiving from both parents.

Society as a whole would benefit if families were freed from the burden of adhering to a rigid framework for gender roles. Connecting the legal structure and the realities of marital and family life can prevent discord, anxieties, and injustice within families, thus strengthening family stability and influencing the broader society. Properly valuing unpaid labour and equalizing household and caregiving work would allow women increased opportunities in the formal economy, which can boost national and regional economies. Encouraging and enabling men and women to parent children equally can enhance children's physical, intellectual, psychological, and social development.

**This paper argues that states, the private sector, communities and NGOs, faith-based leaders, and individuals and families should work collectively and individually to reform Muslim family laws and reshape family relationships in a way that is consistent with the ethical framework in the Qur'an and Islamic teachings and reflects the needs and realities of today's societies.**

There are four main sections in the paper:

1. An overview of how classical Muslim jurists understood the issues of spousal and parental rights and responsibilities, and how these juristic constructions relate to contemporary family law provisions;
2. A discussion of contemporary realities of Muslim families, including key socio-economic trends and their implications for spousal and parental roles;
3. An overview of some shifts that have taken place at the level of policies, laws, and norms that can help families move towards more egalitarian relationships; and
4. Recommendations for various actors to address concerns regarding spousal and parental rights and responsibilities using a framework that draws on Islamic teachings, universal human rights, national guarantees of equality, and the lived realities of Muslim men and women today.

## I. Classical *Fiqh* and Contemporary Laws: Doctrine and Assumptions

This section outlines the ways in which spousal and parental rights and responsibilities were conceptualized in classical Muslim jurisprudence (*fiqh*), and how these conceptions are retained in a modified form in contemporary family law provisions.

In classical Muslim legal texts (both Sunni and Shi'a), jurists understood and defined marriage not as a sacrament but as a contract that automatically places a woman under the husband's *qiwamah* (authority and protection). While jurists from different schools differed on detailed elements of marriage, they generally shared the same overall view that husbands provide for their wives, and wives in turn must obey their husbands.

The term '*qiwamah*' is derived from the word *qawwamun* in *Surah an-Nisa'* 4:34. This verse has been read and interpreted by Muslim jurists over several centuries to become the main textual basis for male authority and hierarchical gender relations in Muslim societies. In this interpretive process, '*qawwamun*' evolved into '*qiwamah*,' a core construct in Muslim legal tradition that shapes the framework for gender responsibilities and rights in the family. *Qiwamah*, as a juristic construct, is not simply confined to men's responsibility to provide in exchange for their spouses' obedience. It has been used to justify and legitimize men's right to control the mobility of their wives, unilaterally repudiate their wives, take multiple wives (up to four), manage the affairs of their dependents in the family, and inherit double the share of their sisters.

Yet *qiwamah*, both as a term and construct, does not occur in the Qur'an or the Sunnah of the Prophet. In fact, in the two other Quranic verses where the related term *qawwamun/qawwamin* occurs (5:8 and 4:135), the term refers to a Qur'anic call to both women and men to stand firmly for justice. Similarly, in verse 4:34, '*qawwamun*' in the sense of men being providers and protectors of women is part of a broader Qur'anic call for a just allocation of family responsibilities, which was particularly relevant at the time of revelation.

Historical *fiqh* rulings inform many contemporary Muslim family laws. Most of these laws continue to recognize the husband's duty to provide and protect his wife and children, coupled with the wife's duty to

obey; they continue to view the father as the primary guardian and the mother as the primary caregiver of children. Social norms in most countries and communities continually reinforce such gender stereotypes.

## II. Current Realities: Trends and Implications

This section outlines the trends and implications related to several key issues affecting economic and caregiving rights and responsibilities within Muslim families today. Relevant data and anecdotes help illustrate the areas of concern. These can be loosely clustered into three categories:

- ◆ **Changing demographics**, such as population bulges, age of marriage, fertility rates, and household structure. All of these alter the demands and dynamics of earning and caregiving within the family.
- ◆ **Shifts regarding external social and economic forces**, such as shifts in educational opportunities and achievement, paid employment in formal and informal labour markets, and transnational migration. These have an effect on whether individuals have the resources to marry, what financial and non-financial contributions they can bring to the household, and who serves as primary caregivers for family members.
- ◆ **Dynamics related to internal rights and responsibilities within families and homes**, whether or not these are reflected in laws. This includes the distribution of unpaid labour in the home, how resources are spent in households, and anxieties that couples face in trying to cope with dissonances between norms that view men as sole providers and experiences in which both men and women provide for the family in financial and non-financial ways.

The elements within each of these categories are in a constant state of evolution, both individually and in their interactions with one another. Each issue manifests itself differently within different contexts, countries, and communities. In turn, all of these issues relate back to the concepts of *qiwamah* and *wilayah*, and the ways in which set roles, rights, and responsibilities for husbands and wives based on gender

stereotypes fail to make sense within twenty-first century social and economic conditions.

## III. Changes in Norms, Policies, and Laws

This section elaborates on shifts that are occurring at the level of norms, policies, and laws in ways that affect spousal and parental rights and responsibilities. These shifts can be seen as a response to social and economic trends, new religious knowledge and interpretive approaches, and developments in the field of human rights.

One such trend is a new framing of rights and roles within laws, with reforms in Tunisia, Morocco, and Algeria equalizing spouses' and parents' statutory rights and responsibilities. Another is how parents are approaching caregiving responsibilities, with a shift in attitudes regarding how fathers should be involved. In the legal and policy realm, caregiving is increasingly discussed and determined in terms of a standard that focuses on the 'best interests of the child', with emphasis on each individual child's interests instead of gendered and stereotyped ideas about children, fathers, and mothers. Finally, there are examples of existing laws or newer law reforms that shift how property is allocated within marriages and upon divorce to better recognize women's financial contributions and unpaid labour to the matrimonial home.

## IV. Solutions for Our Time and Place

Musawah believes that a transformation of family relationships is necessary in the twenty-first century and possible from within Muslim tradition. We can shift our understanding of spousal and family relationships from one based on a hierarchical understanding of *qiwamah* – understood as men's authority over women – to one based on equal partnerships within families, where both spouses share responsibilities and rights in standing up for their families.

This transformation is possible through the efforts of multiple actors in a variety of sectors.

**States** can promote egalitarian economic and caregiving rights and responsibilities within families through reform of laws and policies, including specific steps such as:

- ◆ Name both spouses as equal partners in the household.
- ◆ Eliminate the link between maintenance and obedience.
- ◆ Promote equitable matrimonial property regimes.
- ◆ Standardize 'best interests of the child' as the principle to determine both guardianship and physical care responsibilities.
- ◆ Promote gender equality through educational systems and materials.
- ◆ Hire, train, and retain women employees, and encourage the private sector to do the same.
- ◆ Better recognize, reduce, and redistribute unpaid care work.
- ◆ Provide training and services related to household and caregiving skills.
- ◆ Address gender stereotypes within the media regarding roles, responsibilities, and capabilities of men and women within families.

**Companies and business leaders in the private sector** can play a role in promoting egalitarian roles for men and women when they take the following measures:

- ◆ Hire more women and reduce the obstacles they face in accessing work opportunities.
- ◆ Address sexual harassment and other forms of violence in the workplace.
- ◆ Provide and promote policies and services that can assist parents or caregivers to succeed in the workplace and at home.
- ◆ Promote egalitarian roles in the workplace and home to counter gender stereotypes.

**Muslim communities, institutions, non-governmental organisations, and faith-based leaders** can work directly with families to promote equality by working to:

- ◆ Address gender stereotypes regarding roles, responsibilities, and capabilities of men and women within their families.
- ◆ Develop curricula and conduct trainings on household and caregiving responsibilities.
- ◆ Provide education on egalitarian relationships and positive role models within Islam.

- ◆ Build cadres of female Muslim preachers and scholars who support and promote gender equality within Islam.

**Individual couples and families** can also promote these values in their daily interactions with one another, drawing on ethical principles that are central to the Qur'an, Prophetic tradition, and universal values:

- ◆ Provide together, protect together.
- ◆ Value each other's bodies and sexual rights.
- ◆ Share decision making.
- ◆ Care and work together.
- ◆ Parent together.
- ◆ Communicate with each other.
- ◆ Resolve conflicts with graciousness.
- ◆ Support one another's full participation in society.

Qur'anic principles and the richness of Muslim legal tradition enable us to formulate Muslim family laws that are egalitarian and reflect the needs and realities of contemporary societies.

**It's time for equality in the family.**

## **INTRODUCTION**

**How can we work  
together to build healthy  
family relationships in  
Muslim societies?**

## This thematic paper examines economic and parental rights and responsibilities in Muslim families using the holistic Musawah approach, which integrates Islamic teachings, international human rights principles, national guarantees of equality, and realities of women's and men's lives today.

It builds on a long-term and multi-faceted research project that Musawah has been working on since 2010 on male authority in Muslim legal tradition.

The paper shows that given current social and economic realities, the basic equation underlying most contemporary Muslim family laws – that husbands are the sole providers and protectors, and wives must in turn obey their husbands – is harmful for families' well-being and is unjust for men, women, and children. It argues that states, the private sector, communities and NGOs, faith-based leaders, and individuals and families should work to reform Muslim family laws and reshape family relationships in a way that is true to the Qur'anic ethos and reflects the needs and realities of today's societies.

### 1. Background

Musawah ('Equality' in Arabic) is a global movement focused on promoting equality and justice in Muslim families. Musawah's entry point for the topic of spousal and parental rights and responsibilities is the concepts of *qiwamah* and *wilayah*, which are commonly understood to place women under male authority. These concepts were developed in classical Islamic jurisprudence (*fiqh*) over many centuries. Classical jurists defined *qiwamah* as a set of obligations and rights for men and women in marriage that presumes an exchange: husbands protect and provide, wives in return obey and submit. Jurists understood *wilayah* to refer to the right and duty of fathers or male family members to exercise guardianship over their dependents (female or male).

Islamic jurisprudence (*fiqh*) developed by classical jurists recognized many rights that the Qur'an granted to women – rights which they were denied in seventh-century Arabia before the Qur'anic revelation.

These include the right to ownership of the dower at the time of marriage, the right to inherit, the right to private property, and the right to autonomy upon the death of a husband (i.e. the right not to be part of his inheritance).

While classical jurists were also undoubtedly familiar with the Qur'an's central ethical principles regarding marital relations, such as *sakinah* (serenity, 30:21), *mawaddah wa rahmah* (love and compassion, 30:21), *ma'ruf* (that which is commonly known to be good, 2:228; 2:229–230; 2:231; 2:233; 2:236; 65:2), *'adl* (justice, 4:3), *qist* (fairness, 4:3), *ihsan* (kindness, 2:229–230; 2:236–237), and *tashawur wa taradi* (consultation and mutual consent, 2:233), they tended to be more influenced by the cultural norms and dominant patriarchal ethos of their times. This is reflected in the two key juristic concepts of *qiwamah* and *wilayah*.

These two concepts still inform many contemporary Muslim family laws. In many countries, the legal understanding of marriage is built around the notion that husbands maintain their wives in exchange for their obedience. The logic of *qiwamah* and *wilayah* have many other implications for men's and women's rights and responsibilities within their families.

**But the idea of men serving as sole providers and women being completely obedient does not work for all families, especially given current economic, social, and political circumstances.** Family relationships and rights and responsibilities held by men and women in their families are being affected by global and regional economic and political factors. For instance, the global Muslim population is disproportionately young, and faces huge rates of unemployment and underemployment. Men are delaying marriage for financial reasons, and those who are married face pressures in trying to earn enough to support their families. Girls and women have better educational and employment opportunities than ever before, and are contributing financially to their families. Yet women also still take on a disproportionate share of the unpaid labour and caregiving at home, and many do not take outside employment opportunities because of these responsibilities or social norms about women's roles.

**This causes problems for men and women, and can affect the well-being of children families.** Men should not have to bear the physical, mental, and financial burden of providing for their families

alone. Women should be recognized socially and legally for their contributions – whether financial or through unpaid labour or caregiving – to their families. Children should be able to engage with and be cared for by both parents.

Families and societies as a whole would benefit from shifting to more realistic and more egalitarian ways of framing family relationships, rights, and responsibilities.

## 2. Musawah's knowledge building approach

The foundation for all of Musawah's publications is its holistic Framework for Action, which integrates **Islamic teachings, international human rights principles, national guarantees of equality, and realities of women's and men's lives today** to argue that equality and justice in Muslim families is necessary and possible.

Since 2010, Musawah has been studying and rethinking these concepts through its **Knowledge Building Initiative on Qiwamah and Wilayah**, and has produced a number of related publications:

- ◆ *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (English 2015; Arabic 2017) is a collection of articles that unpack the concepts of *qiwamah* and *wilayah* and challenge male authority and gender discrimination from within Muslim legal tradition.
- ◆ *Women's Stories, Women's Lives: Male Authority in Muslim Contexts* (English 2016; Arabic 2017) showcases manifestations of *qiwamah* and *wilayah* in the lives of Muslim women in nine countries (Bangladesh, Canada, Egypt, Gambia, Indonesia, Iran, Malaysia, Nigeria, and UK) who shared their life stories with local researchers.
- ◆ *Musawah Vision for the Family* (English, Arabic, French 2016) sets out a vision for how countries can build egalitarian family laws and practices that enable families and their individual members to reach their full potential.

This thematic paper builds on these publications, but focuses directly on two issues that have continually surfaced as significant areas of concern for Muslim

families: spousal economic rights and responsibilities and those of parents during marriage and after divorce.

## 3. Key distinctions and terminology

It is important to clarify some of the key concepts and terminology that are used within Muslim legal tradition and the international human rights discourse.<sup>1</sup>

### a. Shari'ah, fiqh, and state laws

In trying to understand Muslim family laws and legal tradition, it is important to recognize the distinction between *Shari'ah* (the revealed way), *fiqh* (the science of Islamic jurisprudence), and state laws.

In Muslim belief, *Shari'ah* (lit. the way, the path to a water source) is the sum total of God's will as revealed to the Prophet Muhammad (pbuh) to direct human life, as found in the two sacred primary sources, the Qur'an and the Sunnah (the actions and sayings of the Prophet as recorded in the *Ahadith*, Traditions). *Fiqh* (lit. understanding) is the process by which human jurists attempt to derive legal rules from sacred sources. *Shari'ah* cannot be reduced to a set of laws. It is understood to consist of ethical precepts and principles to guide humans in the direction of justice and correct conduct. However, *Shari'ah* and *fiqh* are often conflated: rules or laws asserted to be '*Shari'ah*' may be no more than the result of *fiqh*, and thus human and changeable.

Classical jurists distinguished two main categories of acts. One is *'ibadat*, spiritual or devotional rituals, which concern the relationship between the believer and God. The other is *mu'amalat*, contractual or transactional acts, which are relations among humans. Because they deal with human transactions and relationships, juristic rulings on *mu'amalat* are open to rationalisation and change. Muslim family laws fall under the category of *mu'amalat*, thus are open to change.

Muslim-majority countries today, in their political and legal systems, have followed one of three paths with regard to Muslim family laws:

- ◆ Selectively reforming and codifying parts of *fiqh*, including family laws, and later amending these codes through the same selective process (e.g.

1. For more information on these distinctions, see Musawah, 2017; Musawah, 2009(b); Abou El Fadl, 2014, pp. xl–xlvii; Kamali, 2006.

most Muslim-majority countries);

- ◆ Continuing to use particular versions of classical *fiqh* without codification (e.g. Saudi Arabia); or
- ◆ Setting *fiqh* aside and drawing on a 'Western' legal system (e.g. Turkey and many Central Asian republics).

## **b. Rights, responsibilities, and gender roles**

Islamic jurisprudence and related modern family laws grapple with how rights and responsibilities are interconnected and their implications with regard to gender roles and identities. For instance, men's legal responsibility to be providers and guardians is intertwined with a religious, legal, and social discourse that attributes to men the role of the decision-maker and the rational leader of the family. This leads to their right to unilaterally divorce women, enter into polygamous marriages, and control the mobility of their spouses. Similarly, women's legal rights to spousal maintenance and to child custody are interconnected with their assumed gendered roles primarily as sexual partners to their husbands and caregivers to their children.

Therefore, when tackling the issue of family well-being and gender justice within families as understood in Muslim legal tradition, the question is not simply who has rights and who does not, but rather the impacts of hierarchical rights on different family members, the burdens entailed in the gendered responsibilities, and the implications of gendered identities arising from this legal framework.

## **4. Structure of the paper**

This paper aims to highlight the inextricable but complex connections between rights, responsibilities, and gender roles related to marriage and parenting in Muslim jurisprudence, contemporary Muslim family laws, and socioeconomic and demographic realities in various Muslim contexts. The paper will highlight the challenges of the construction of spousal and parental rights and responsibilities in Muslim legal tradition and how these challenges have been exacerbated by global economic inequalities and rapid socio-economic and political changes in different Muslim contexts. In critiquing this legal construction, the paper is also seeking to reclaim the Qur'anic

ethos of justice, an ethos that is tuned to the changing needs, realities, and worldviews of contemporary Muslims.

There are four main sections:

1. An overview of how classical Muslim jurists understood the issues of spousal and parental rights and responsibilities, alongside contemporary family law provisions related to the two areas;
2. A discussion of contemporary realities of Muslim families, including key socio-economic trends and their implications for spousal and parental roles;
3. An overview of some shifts that have taken place at the level of policies, laws, and norms that can help families move towards more egalitarian relationships; and
4. Recommendations for various actors — states, private sector, communities, faith-based leaders, NGOs, individuals, and families — to meet twenty-first century social and economic demands in a way that is consistent with Islamic teachings.

The paper is intended as a broad overview for activists, policy-makers, and human rights experts. While many issues are covered, some extremely important ones are not, such as violence against women, marital rape, polygyny, and inheritance. These are complex issues that deserve their own separate treatment, which Musawah hopes to attempt in the future. It should also be noted that it is not the goal of this paper to provide comparative analysis of Muslim communities globally. Data necessary for such analysis may be limited for Muslim-majority countries, and available data are often not broken down by religion for Muslim-minority communities. In addition, comparison is difficult because Muslims experience vast social, economic, and legal diversity within their own countries and throughout the world.

## **SECTION I**

# **Classical *Fiqh* and Contemporary Family Laws: Doctrine and Assumptions**

# How do classical Muslim jurisprudence (*fiqh*) and contemporary family laws address issues related to spousal economic roles and care of children? How do responsibilities based on gendered stereotypes relate to rights that men and women enjoy in their families?

This section outlines the ways in which the spousal economic and parental rights and responsibilities were conceptualized in classical Muslim jurisprudence (both Sunni and Shi'a) and how they are structured in various contemporary Muslim family laws.

As discussed in the Introduction, there is a difference between *Shari'ah* (the revealed way), *fiqh* (jurists' attempts to understand and derive rulings from the *Shari'ah*), and contemporary family laws (legislation based on *fiqh* rulings). *Shari'ah* is divine and eternal, while *fiqh* and Islamic law – including contemporary Muslim family laws – are human-made and open to change. Just as there is a diversity of human understandings of *Shari'ah*, there are also significant variations among family laws, whether codified or not, in Muslim contexts today.

## 1. Spousal rights and responsibilities

### a. Classical *fiqh* understandings<sup>2</sup>

In classical Muslim legal (*fiqh*) texts, marriage is understood and defined by jurists not as a sacrament but as a contract of exchange that places a woman under the authority and protection (*qiwamah*) of her husband. The contract, which was modelled by the jurists on the contract of sale (*bay'*), was called '*aqd al-nikah* (the contract of coitus). It has three essential elements: *ijab*, the offer made by the woman or her guardian or the husband or his guardian; *qubul*, acceptance by the second party; and *mahr*, a gift from the husband to the bride.

The marriage contract establishes a set of rights and obligations for each party. A husband is required to pay dower (*mahr*) and to provide financial maintenance (*nafaqah*) to his wife. In return, the wife is required to submit (*tamkin/ta'ah*) to her husband, which includes being sexually available to him in the marital home. *Tamkin* (unhindered sexual access) is a man's right and thus a woman's duty, whereas *nafaqah* (shelter, food, and clothing) is considered a woman's right and a man's duty. A woman becomes entitled to *nafaqah* only after consummation of the marriage, and loses her claim if she is in a state of *nushuz* (disobedience). The husband is considered the sole provider and owner of the matrimonial resources, while the wife possesses her *mahr* (dower) and her own wealth. The husband has the unilateral right to terminate the contract by *talaq* (repudiation), for any reason, at any time or place, and without consent of the wife. In contrast, a wife can only terminate the contract with her husband's consent or through court intervention, assuming she can provide a valid justification.

While the classical schools differed over the meanings of the interrelated concepts of *nafaqah*, *tamkin*, and *nushuz*, both Sunni and Shi'a jurists generally shared the same conception of marriage in which husbands provide for their wives based on the wives' obedience to their husbands. For the classical jurists, this duty of obedience was limited to the wife's sexual availability, as long as it did

It is important to note that this section primarily describes how classical jurists understood and defined marriage, rather than the realities and practices of marriage at that time. The Qur'an endorsed women's full humanity and gave them important rights within the patriarchal culture of seventh century (CE) Arabia. However, Muslim legal tradition – along with other traditions – did not include gender equality in their conceptions of justice. At the same time, women were granted more rights within Muslim legal tradition than any Western legal tradition until the nineteenth century. (Mir-Hosseini, 2012(a), p. 293)

2. This is a brief summary of the legal structure of marriage in classical *fiqh*. It draws on a number of sources that engage with and explain the positions of various classical jurists. Interested readers can consult these sources for more detailed information: Ibn Rushd, 1996, pp.1–120; Ali, 2003, 2007, 2010; Mir-Hosseini, 2002, 2012(b); Abou-Bakr, 2015; Musawah, 2015, 2016(b).

not interfere with her religious duties or health (e.g., he cannot interfere with her fasting during Ramadan, during menstruation, after childbirth, etc.). Under some juristic rulings, a wife had no obligation to do housework or to care for the children – even to breastfeed her babies. She could demand ‘wages’ if she did these tasks. But the requirement that she be available at any time had broader implications.

The classical rulings created by jurists relating to marriage are one aspect of the larger concept that has come to be known as *qiwamah*, which is understood to legitimize men’s authority over women. The term *qiwamah* is derived from the word *qawwamun* in *Surah an-Nisa’* 4:34 – ‘*qiwamah*’ does not occur in the Qur’an. Verse 4:34 continues to be invoked as the main textual basis for male authority and hierarchical gender relations in Muslim societies. *Qiwamah* as constructed by classical jurists includes the idea that husbands have the financial responsibility to provide for their wives and children, but also that men have authority over women in general.

◇ An interpretation of *Surah an-Nisa’* 4:34 reads: ‘Men are **qawwamun** (protectors/maintainers) in relation to women, according to what God has favoured some over others and according to what they spend from their wealth. Righteous women are **qanitat** (obedient), guarding the unseen according to what God has guarded. Those [women] whose **nushuz** (rebellion) you fear, admonish them, and abandon them in bed, and strike them. If they obey you, do not pursue a strategy against them. Indeed, God is Exalted, Great.’ (Translation by Kecia Ali)

Ali does not provide English translations of the three highlighted words because any translation of these key terms amounts to an interpretation. The English translations given for these three terms are the approximate consensus of classical jurists as reflected in juristic rulings that define marriage and marital relations. These human-made rulings rest on a single assumption: that God placed women under male authority. (Mir-Hosseini, 2015, pp. 14–15)

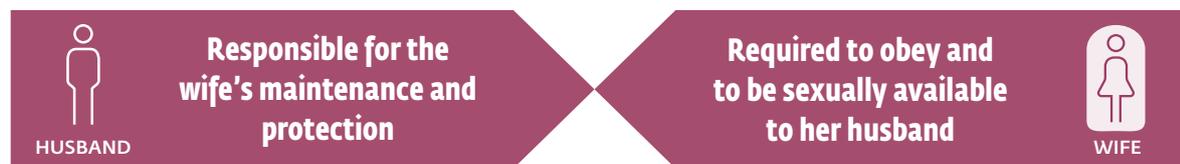
However, the concept of *qiwamah* and the idea that men have authority over women does not exist in the Qur’an or *Sunnah* of the Prophet, but was developed over several centuries by medieval jurists, such as al-Tabari, al-Zamakhshari, al-Razi, al-Baidawi, al-Qurtubi, Ibn Kathir, and more modern jurists such as Muhammad ‘Abduh, Sayyid Qutb, and Shaykh Muhammad Mitwalli al-Sha’rawi (Abou-Bakr, 2015, pp. 46–56). It is premised on underlying assumptions held by jurists – which changed and developed over time – about the ‘innate nature’ or ‘innate abilities’ of men and women. In addition, a set of male and female attributes have been created around the notion of *qiwamah* throughout the development of the concept in the exegetical and juristic tradition and modern Muslim public discourses. These attributes revolve around the perceived notion of male intellectual, moral, and physical superiority versus female intellectual, moral, and physical weaknesses.

The jurists’ conception of *qiwamah* and men and women’s perceived ‘natures’ and ‘abilities’ had numerous other implications for marital rights and responsibilities. The logic, coupled with interpretations of other Qur’anic verses, provided justifications for women’s confinement to the home, men’s right to polygamy and to unilaterally divorce their wives, women’s lesser shares in inheritance, and restrictions on women’s participation in public life.

For instance, classical jurists closely linked their construction of *qiwamah* with men’s right to unilateral repudiation. They laid out a circular argument that men have a right to divorce their wives unilaterally because they have *qiwamah* over them; and husbands have *qiwamah* over their wives because they have been privileged by God with many attributes and rights such as the right to unilateral repudiation (*talaq*). (Abou-Bakr, 2015, p. 50)

It is important to note that the two other times in which the terms *qawwamun/qawwamin* are mentioned in the Qur’an – *Surah an-Nisa’* 4:135 and *Surah al-Ma’idah* 5:8 – refer to the obligation of both believing men and women to stand firmly for justice and fairness in both private and public domains. Similarly, in verse 4:34, ‘*qawwamun*’ in the sense of men being providers and protectors of women is part of a broader Qur’anic call for a just allocation of family responsibilities, which was particularly relevant at the time of revelation.

## Classical *fiqh* model of spousal relations inspired by Qur'anic verses 4:34 and 2:228 and selected *ahadith*



*qiwamah*

*tamkin / ta'ah*

### IMPLICATIONS FOR THE HUSBAND

- ◆ He is the sole owner of the matrimonial resources
- ◆ He has control over his wife's autonomy: his permission is required for travel, work, banking etc.
- ◆ He has control over his wife's body: right to unhampered sexual access to his wife
- ◆ He has the right to physically punish wife if she is in a state of *nushuz* (disobedience)
- ◆ He has the right to polygamy
- ◆ He has the right to *talaq* (unilaterally divorce his wife by repudiation)

### IMPLICATIONS FOR THE WIFE

- ◆ She has the right to *nafaqah* (shelter, food, and clothing provided by the husband)
- ◆ She has the right to *mahr* (dower paid by the husband while contracting the marriage)
- ◆ She only possesses her *mahr* (dower) and her own wealth (no share of matrimonial resources)
- ◆ She has limited access to divorce
- ◆ Her freedom of movement is restricted by her husband's guardianship

## Egalitarian model of spousal roles inspired by Qur'anic ethical principles on gender relations

love and compassion (*mawaddah wa rahmah*), serenity (*sakinah*), what is good (*ma'ruf*), kindness (*ihsan*)



justice ('*adl*), fairness (*qist*), consultation and mutual consent (*tashawur wa taradi*)

### IMPLICATIONS FOR BOTH SPOUSES

- ◆ Family members—spouses, parents and children, siblings—support one another in a mutually respectful, responsible, loving, and caring way
- ◆ Marriage is a partnership of equals, with joint decision-making on all family matters based on open communication, mutual trust, and mutual consultation, rather than the sole authority of one spouse over the other
- ◆ Financial support and protection of the family are based on the skills, experiences, aptitudes, interests, time, and resources—financial and otherwise—that each family member is best able to contribute, rather than on fixed hierarchical divisions or gender stereotypes

The Qur'an speaks of relations between spouses in *Surah ar-Rum* 30:21:

*And among His Signs is this that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.*

According to this verse, the objective of marriage is for spouses to provide for one another *sakinah* (tranquillity and repose), *mawaddah* (affection and love) and *rahmah* (mercy and compassion). Other verses highlight additional core Qur'anic ethical principles in relation to marriage and gender relations, including *'adl* (justice, 4:3), *qist* (fairness, 4:3), *ihsan* (kindness, 2:229-230; 2:236-237), *tashawur wa taradi* (consultation and mutual consent, 2:233), and *ma'ruf* (that which is commonly known to be good, 2:228; 2:229-230; 2:231; 2:233; 2:236; 65:2). These key concepts, which the Qur'an lays out as the foundation and the purpose of marriage, guide us in rethinking pre-modern concepts of marital rights such as *qiwamah*.

### **b. Contemporary laws and policies<sup>3</sup>**

Marital rights and responsibilities today are regulated by contemporary Muslim family laws as enacted in different countries. These laws reflect some of the classical *fiqh* understandings of marriage, of which there was a diversity within the different *fiqh* schools of law. The laws have also been influenced by the customs and cultures of the specific place and people, as well as encounters with colonial powers and the influence of Western legal systems, codes, and norms. Again, Muslim family laws within specific countries are drafted and legislated by humans, just as *fiqh* rulings on family matters are interpretations by jurists. Laws that are inspired by or derived from Islam's sacred sources (the Qur'an and *Sunnah*) are human interpretations. They can be altered so as to reflect the more egalitarian needs and realities of Muslims today, while continuing to embody the justice central to the Qur'anic message.

Codification of personal status issues began with Egypt in the 1920s, which implemented laws related to the family on a piecemeal basis. Beginning in the 1950s, there was a wave of codifications in countries following independence from colonial powers. Some of these laws were subsequently reformed or replaced in the 1990s and 2000s (e.g., Algeria, Egypt, Jordan, Malaysia, Morocco, Tunisia, Turkey), and a new wave of codifications has taken place in the past 15 years, especially in the Gulf countries (e.g., Qatar, UAE, Bahrain).

With regard to marital rights and responsibilities, most Muslim family laws across regions require a husband to provide maintenance to his wife and children. In some cases, like Turkey, both spouses share the obligation to maintain one another. In Senegal, the wife, similar to the husband, has a duty of maintaining the family but has a lesser obligation. Maintenance is also defined differently in different systems, both in terms of what it includes (e.g. housing, food, clothing, medical treatment, etc.) and the amount.

Similarly, most legal systems maintain a link between the husband's provision of maintenance and the wife's obedience. This means a wife may lose her right to maintenance if she is disobedient, often defined legally as leaving the marital home. Under some laws, the wife may be fined if she is disobedient. Under others, disobedience may be a ground for justified male-initiated divorce, which can result in her losing both the legal right to maintenance during the three-month

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3. This is a brief summary and explanation of marital roles and rights in contemporary family laws. It draws on a number of sources, which readers can consult for more detailed information: Sonbol, 1996; WLUML, 2006; Welchman, 2007, 2015; Tucker, 2008; Musawah Muslim Family Law Tables, n.d.; Sait, 2016.

waiting period following divorce (*'iddah*) and compensation money for the unilateral act of divorce (*mut'a*), but not her deferred dower.

Under many laws, a husband's failure to provide maintenance may be a ground for divorce, but divorce proceedings initiated by wives can be long and drawn out and failure to maintain can be difficult for a wife to actually prove. Some family laws formally adopt the language that the man is the 'head of the household' (which some scholars have observed bears resemblance to early twentieth century laws of European colonial powers), while this role is implicit in other systems. Even where the household headship is not specified in the laws, husbands may be considered heads of household by their communities, maintaining power and authority over their wives. This is reinforced by the constructed concept of *qiwamah* and the religious force it holds in many communities.



## Egypt

### On Maintenance and Obedience

Laws governing matters relating to marriage and family relations of the majority Muslim population in Egypt are not codified in one comprehensive piece of legislation. Instead, they are partially codified in a series of laws, including:

- ◆ Law No. 25/1920 on maintenance and other personal status issues;
- ◆ Law No. 71/1946 on testamentary bequests;
- ◆ Law No. 1/2000 on the reorganisation of certain terms and procedures of litigation in matters of personal status;
- ◆ Law No. 10/2004 on the establishment of family courts;
- ◆ Law No. 11/2004 on the establishment of the Family Insurance Fund;
- ◆ Decree Law No. 25/1929 on divorce and other personal status issues as amended by Law No. 100/1985 on personal status and Law No. 4/2005 on child custody;
- ◆ Law No. 12/1996 on the Child Law as amended by Law No. 126/2008.

Article 1 of Law No. 25/1920, provides that **a wife is entitled to financial maintenance from her husband regardless of her wealth or religion.**

The husband's failure to provide maintenance constitutes valid grounds for seeking a judicial divorce.

A wife risks losing her financial maintenance if she:

- ◆ refrains from giving herself to her husband voluntarily without rightful reason;
- ◆ leaves the marital home without her husband's permission;
- ◆ goes out to work without her husband's consent.

However, article 1 provides for exceptions such as in cases provided for by law, custom or of necessity (*darurah*), and if it was for the best interest of the family (*maslahah*).

According to article 11B of Law No. 25/1929, **if a wife refrains from obeying her husband unjustifiably and without any right, her financial maintenance will be discontinued from the date of disobedience.**

The Government of Egypt, in its 2008 report to the CEDAW Committee, asserted that the implementation of equality 'in the way stated in several paragraphs of Article 16 [of CEDAW] would diminish the rights women currently enjoy'.

Among the arguments used by the Egyptian government to illustrate this point are the following arguments based on the husband's duty of maintenance:

- ◆ The man is required to provide for a marital home as a place of residence. The woman is not required to do so.
- ◆ Under Islamic and Egyptian law, a husband must financially maintain his wife throughout the marriage. The wife is not required to do so, even if she works and has an income.

Sources: Egypt State party report, 2008, pp. 74-75; Law No. 25/1920; of Law No. 25/1929; Musawah Muslim family law tables, n.d.

A number of laws maintain lists of rights and responsibilities of the spouses, often in the form of three lists: (1) mutual rights and duties; (2) rights a wife can demand from her husband; and (3) rights a husband can demand from his wife. Mutual rights may include the right to fidelity, cohabitation, and mutual respect. A wife's rights may include maintenance, protection of her personal property, visits from relatives, and rights related to her education. A husband's rights may include the wife's obedience (including control over her mobility, which can restrict her ability to travel and work).



## Mali

The Constitution of the Republic of Mali (1992) guarantees equal rights and duties for its citizens and prohibits any discrimination based on social origin, color, language, race, sex, religion or political opinion (article 2).

Despite the constitutional guarantee of equality, Mali's family laws discriminate against women.

**The Malian Personal and Family Code (PFC)** adopted in 2011, governs matters related to marriage and family relations of all Malians regardless of religion.

To women's rights activists' great disappointment, the new family law, drafted with the assistance of conservative religious groups, perpetuates discrimination against women in terms of legal age for marriage, spousal roles, custody and guardianship of children, and inheritance rights.

### On Maintenance and Obedience

The Personal and Family Code (2011) approach to spousal roles and duties is based on the concept of male guardianship and authority over women.

Although **article 318** gives both spouses 'the obligation to ensure the material and moral direction of the family as well as to nurture and raise children for the future', this joint responsibility is undermined by the following provisions:

- ◆ **article 316** stipulates that **the wife must obey** her husband and **the husband must protect** his wife;
- ◆ **article 319** defines the husband as **the head of the family**:
  - ◇ he is responsible for the **financial maintenance of the family, but the wife with income may contribute to the household expenses**,
  - ◇ the choice of the family residence belongs to him and the wife is obliged to live with him

Mali ratified the Convention on the Elimination of all forms of Discrimination Against Women (**CEDAW**) in 1985 without reservations and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (**Maputo Protocol**) in 2005. Both conventions require that States parties actively condemn discrimination against women and work to eliminate discrimination in laws and policies.

In its Concluding Observations on the 6th and 7th periodic reports of Mali, submitted in July 2016, the CEDAW Committee expresses its concerns about the '**exceptions to non-discrimination in matters of family law and succession**' and recommends that the State party:

- ◆ 'harmonize its legislation in order to eliminate discrimination against women through the repeal of all discriminatory provisions including those in the Personal and Family Code' (b);
- ◆ and 'initiate open and inclusive public debates regarding diversity of opinion and interpretation with regard to Muslim family laws and practices' (c).

Sources: IHRDA, 2017; Malian Personal and Family Code, 2011; Malian Constitution, 1992; CEDAW Committee Concluding Observations Mali, 2016; Musawah Muslim family law tables, n.d.

Reforms in Tunisia in 1993 and Morocco and Algeria in 2004 and 2005 replaced the previously mentioned gendered division of spousal rights and obligations partially or entirely with a list of the spouses' mutual rights and responsibilities. The Tunisia reforms removed the wife's duty of obedience, but retained the husband's responsibility – as 'the head of the household' – to maintain his wife, with contributions from the wife if she has the means (Welchman, 2015).

The new Moroccan law attempted to sever the link between maintenance, obedience, and the wife's duty of sexual availability. Article 51's list of mutual rights and duties includes lawful cohabitation on the basis of good conjugal relations and justice and equality in the case of polygyny; the right of 'mutual respect, love, and affection'; joint responsibility for managing the household affairs and children's education; consultation on decisions related to the management of family affairs, children, and family planning; respect of in-laws; and the right to inherit from each other (albeit based on *fiqh* terms).

In addition to rights and responsibilities for husbands and wives that may be stated in codified laws, spouses in many systems can negotiate spousal rights, responsibilities, and conditions as part of the marriage contract. Such arrangements are sometimes called 'stipulations' to the marriage contract. The extent of such stipulations depends on local customs and laws, but can include a wide range of issues such as right to movement outside the house, ability to work or pursue education, restrictions on polygamy, conditions related to maintenance and standards of living, property regimes, access to divorce, etc. (WLUML, 2006, pp. 167–174). Through this process, spouses can also negotiate how they want to divide household and caregiving responsibilities.

It should be noted, and is discussed further below, that many women do not enjoy the rights listed in the laws either because of social and economic realities or because of conflicts with other



## Morocco

In 2004, Morocco adopted a new Personal Status Code (Moudawana) which was hailed for establishing equal status for women and men within the family, a great step towards state's obligation to protect women's rights domestically.

The reform of Moroccan family laws was drafted by a consultative commission composed of religious scholars, lawyers, experts in human rights, including three women. The members, who were divided into two camps – those promoting a secular approach to human rights and those insisting on using religious arguments – reached a consensus.

**This reform sets an example for reform of Muslim family laws in other countries because it reconciles Islamic principles with human rights values and contemporary lived realities of the Moroccan society.**

The Moudawana reform was supported by King Mohammed VI, who introduced the importance of this new code in a speech that referenced the Qur'an, *fiqh* principles, and *ahadith*.

### On Maintenance and Obedience

Under the 1957 Moroccan Personal Status Code, the husband, as the head of the household had the obligation to maintain his wife, in return for her obedience. The new family code (2004) breaks with the maintenance for obedience equation and instead defines **marriage as a partnership between equals**:

**Article 4** places the family under the supervision of both spouses and defines marriage as a 'legal contract', the purpose of which is 'fidelity, virtue and the creation of a stable family'.

**Article 51** gives both spouses mutual and equal rights and duties:

- ◆ lawful cohabitation on the basis of good conjugal relations, justice, mutual fidelity, virtue, and the preservation of family honour and their children, equality in case of polygamy;
- ◆ conjugal relations based on mutual respect, affection and care; and the preservation of the family interests;
- ◆ the wife is assuming with the husband the responsibility of managing and protecting household affairs and the children's education;
- ◆ consultation on decisions concerning the management of family affairs, children, and family planning; good relations with each other's parents and close relatives, respecting, visiting and hosting them within accepted standards;
- ◆ the right to inherit from each other.

**Maintenance is still a wife's right:** Although the 2004 Moudawana places the family under the supervision of both spouses, the wife's right to maintenance is retained:

- ◆ **Article 194** stipulates that the husband is obligated to pay maintenance to his wife upon the consummation of their marriage.
- ◆ **Article 195** stipulates that if the husband has failed to pay the maintenance, the wife can file a lawsuit; however, the wife loses her right to maintenance if she leaves the conjugal home.
- ◆ Article 98 stipulates that a wife may petition for divorce on the ground of non-maintenance.

In addition, article 201 gives mothers additional maintenance 'for the breastfeeding of the child'.

Sources: *Musawah Muslim family law tables, n.d., Moroccan Moudawana, 2004; El Hajjami, 2015.*

provisions in the law. For instance, many wives have a right to maintenance that they cannot claim. In some cases, husbands cannot fulfil this responsibility because of macroeconomic forces resulting in their unemployment or underemployment and leading to anxiety, frustration, shame, and sometimes abandonment in the face of unrealistic expectations. In other cases, men's challenges to provide may also be exacerbated by their entering into polygamous marriages and having to support other wives and children. The wives, in turn, must provide for the family's survival.

As in classical jurisprudence, men have privileged rights to divorce in many contemporary family laws. In many countries, the male prerogative to *talaq* (repudiation) is allowed, as provided in *fiqh*. In some jurisdictions, men must petition a court for divorce, but can obtain the divorce without grounds or with simpler procedures or fewer justifications than women require. The husband can threaten his wife with the pronouncement of divorce or the prospect of taking another wife. He can unilaterally divorce his wife, deliberately refrain from registering the divorce, or take her back during the waiting period. He can deny his wife divorce, essentially forcing her to give up rights to maintenance and/or her deferred dower if she is able and wants to initiate divorce. These privileged rights to divorce – which are neither fair nor just – can affect a wife's sense of security in the relationship.

In Muslim classical legal thought, and most Muslim family laws, marriage does not create a matrimonial regime of community property. Each spouse is entitled to individual property

acquired before or during the marriage in their individual names. Separate property rules fail to recognize non-material contributions to the acquisition of matrimonial property, which often puts women at a disadvantage in case of divorce or death. For example, the care that a wife provides to her husband that enables him to work and earn income may not be monetarily factored into the assets acquired during the marriage. The mother's multidimensional child care is also often an overlooked contribution.

## Indonesia & Malaysia



Most Muslim countries follow a separation of property regime, where neither spouse has a legal claim to or interest in the property of the other. These countries include Egypt, Jordan, Kuwait, Lebanon, Oman, Saudi Arabia, Syria, United Arab Emirates, Yemen, Bangladesh, India, Pakistan, Sri Lanka, Mali, Mauritania, Nigeria, Senegal and Sudan.

**Indonesia and Malaysia, two Muslim-majority countries, have adopted property regimes in which wives can have a share in the matrimonial assets based on their contributions as wives and as mothers, because such contributions enable their husbands to acquire assets.**

### On Matrimonial Assets

#### Malaysia

Section 122 of Islamic Family Law (Federal Territories) Act (1984) mandates the *Shari'ah* Court, after granting a divorce, to order any assets acquired by the parties during the marriage (*harta sepencarian*) 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 any such sale to be divided between the parties.

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.

#### Indonesia

The 1974 Indonesian Marriage Law formally adopted the concept of co-ownership by husband and wife of property purchased during marriage.

**Article 35** of the Marriage Law provides for a matrimonial assets regime whereby:

- ◆ property acquired during the marriage shall become joint property; and
- ◆ property brought into the marriage by the husband and the wife respectively and
- ◆ property acquired by either of them as a gift or inheritance shall remain under their respective control, unless otherwise decided between the parties.

**Article 97** of the Compilation of Islamic Law in Indonesia (1991), provides that upon divorce, each party has the right to receive half of the marital property unless they had agreed otherwise in the marriage contract.

Sources: *The Compilation of Islamic Law in Indonesia*, 1991; *Islamic Family Law Act*, 1984; *Musawah Muslim family law tables*, n.d. ; Sait, 2016.

## 2. Parental rights and responsibilities

Classical *fiqh* and contemporary laws related to custody and guardianship of children, both during marriage and upon dissolution or death of one of the parents, can be seen as a balance of responsibilities and rights for the parents and rights of the child. While both custody and guardianship are seen as legal rights, both entail responsibilities or burdens that one or both parents must undertake. The decision on how to award the custody and guardianship roles increasingly rests on the rights of the child and a determination of his/her best interests.

### a. Classical *fiqh* understandings<sup>4</sup>

When considering parental responsibilities for the care of children, classical jurists distinguished between '*wilayah*' (defined as guardianship) and '*hadanah*' (defined as physical care and often translated as 'custody'). *Wilayah*, which literally means 'to protect' or 'to defend', includes the responsibility of managing the child's affairs and property and making legal decisions on his or her behalf. *Hadanah*, which literally means to nurture and embrace, includes the responsibility of physically caring for the child and providing for the child's physical and emotional needs.

4. This is a brief summary of parental rights and responsibilities in classical *fiqh*. It draws on a number of sources that engage with and explain the positions of various classical jurists. Interested readers can consult these sources for more detailed information: Yassari et al., 2017; Welchman, 2007; WLUM, 2006; Rafiq, 2014; Zahraa and Malek, 1998; Mir-Hosseini, 2000.

Classical jurists saw men and women – fathers and mothers – as having certain ‘innate’ biological and emotional capabilities, and they made decisions about how parental care should be divided accordingly.

In all schools of law, the father or another male holds the *wilayah* responsibility of financial maintenance (shelter, food, and clothing) and decision-making on behalf of the child. The mother or another female relative generally holds the *hadanah* responsibility for nourishing her children; all Sunni schools of *fiqh* grant the mother this right during the child’s initial years (until approximately the age of seven).

The Sunni schools of *fiqh* differ in terms of *hadanah* rules for boys and girls after the age of seven. According to the Hanafi school, custody is transferred to the father or other male relatives after the age of seven for the boy and after puberty for the girl. For the Shafi’i and Hanbali schools, the mother retains the physical custody of both girls and boys until the age of seven.

After this period, children have the right to choose with whom they want to live. For the Maliki school of law, mothers retain custody of their sons until they reach puberty and until their daughters get married. Non-Muslim mothers usually have more restricted *hadanah* rights.

In classical Shi’a *fiqh*, a mother has the physical custody of her son until he reaches the age of two, and of her daughter until she reaches the age of seven. After this initial period of custody, the children are often handed over to their fathers. In all schools, divorced mothers lose their *hadanah* right to keep their children upon remarriage to a man who is not related to the children.

While these patriarchal norms on parental roles prevail in the legal and social domains, the Qur’an does not distinguish between fathers and mothers where the upbringing of children is concerned. *Surah al-Baqarah* 2:233, for example, states that ‘No mother shall be Treated unfairly on account of her child. Nor father on account of his child ...’ and that parents should exercise ‘mutual consent’ and ‘due consultation’ with each other regarding the upbringing of their children.

In addition, during the Ottoman times guardianship was usually awarded to men, but sometimes awarded to women, even in competition with male relatives, based on the father’s wishes or the court’s decision. In eighteenth and nineteenth century Aleppo, ‘women were awarded as wasi more often than men’ (Welchman, 2007, p. 133, quoting Margaret Meriwether). This demonstrates that guardianship has not always been treated as only a male prerogative. Physical care (*hadanah*), however, has generally always had a gender bias towards women, especially because the word *hadanah* is closely associated with child caring.

## **b. Contemporary laws and policies<sup>5</sup>**

The majority of contemporary Muslim family laws continue to award parental rights and responsibilities based on the gender of the parents and age and gender of the children, as outlined in classical *fiqh*. Contemporary laws generally distinguish between *wilayah* (guardianship) and *hadanah* (care). In many contemporary Muslim laws, the term ‘custody’ is used as a translation of *hadanah*. However, in Muslim laws, *hadanah* excludes legal or financial decision-making on behalf of the child and thus has a different meaning than in other legal traditions.

During a marriage, *hadanah* is generally considered the shared responsibility of both parents. This is explicitly articulated in some but not all Muslim family laws. However, even during marriage fathers alone generally hold the responsibilities of guardianship (*wilayah*) over their children, meaning they are empowered to make decisions related to the children’s education, financial affairs, and

◇—————◇  
Classical jurists distinguished between *wilayah* (guardianship) and *hadanah* (custody or physical care) over children. Most *fiqh* schools granted guardianship and custody based on gender of the parents and gender and age of the children.  
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5. This is a brief summary and explanation of parental rights and responsibilities in contemporary Muslim family laws. It draws on a number of sources, which readers can consult for more detailed information: Yassari et al., 2017; WLUML, 2006; Welchman, 2007; Al Sharmani, 2017.

movements/travel. This combined with gender stereotypes about caregiving means that within marriages mothers generally care for the children and fathers make decisions on their behalf.

After divorce, mothers are generally given physical care and custody (*hadanah*) of both sons and daughters at least until a certain age, depending on what school of *fiqh* is followed in the country. There have been some shifts since the codification of family laws in the mid-twentieth century, which provide more flexibility for children to remain with mothers past the set age, or to choose which parent they would like to live with.



## Jordan

The Jordanian Personal Status Act (JPSA, 2010) is the main codified law that governs matters relating to marriage and family relations of the majority Muslim population in Jordan.

Several practical issues of conflict may arise when mothers with *hadanah* (physical care) rights over their children do not have guardianship rights to make major decisions over their children's well-being.

This includes critical decisions on consent to surgery and medical treatment, registration and transfer of schools and consent to travel.

### On *Hadanah* (Physical Care)

**Article 170** of the Jordanian Personal Status Act gives the **mother priority right over the physical care (*hadanah*)** of her children. After the mother, *hadanah* is transferred to the maternal grandmother, then the mother of the father, and then to the father. After the father, the court decides who is most appropriate to care for the child.

**Article 173** of the Personal Status Act gives the mother this priority right until **her children reach the age of 15**.

- ◆ Thereafter the child is given the option to remain with the mother until reaching the age of civil majority (18).
- ◆ A woman may retain longer if the child is sick and requires care.
- ◆ A mother risks losing *hadanah* if she remarries and her new husband is not a close blood relative of the child. (Article 171)
- ◆ A mother with *hadanah* may not travel or take residence outside Jordan with the children without the consent of the guardian. (Article 176)

### On *Wilayah* (Guardianship)

The Jordanian Personal Status Act distinguishes between two forms of guardianship: the *wilayah* (natural guardianship) and *wisayah* (assigned guardianship in the absence of natural wali).

**Articles 223, 228** of the Personal Status Act give the **father priority right over the guardianship of his children**, followed by the paternal grandfather, then the court.

However, the law also allows the court to deprive a father or grandfather of guardianship, if they are proven to be incompetent. Thus, a mother may obtain guardianship in exceptional cases if she can prove before a court that the father (or grandfather) is incompetent to assume guardianship of his children.

The Jordanian National Council of Women (JNCW) had asked to make the *wilayah* shared between the father and the mother and to make the mother the default *wasī* of her children.

Sources: *The Jordanian Personal Status Act, 2010; Musawah Muslim family law tables, n.d.; Yassari, et al., 2017, pp. 133–134.*

There are some exceptions to the general rule that mothers hold the right to physical care of children at least to a certain age. Some laws, like those in Gambia and Turkey, give both parents equal rights, and the roles are assigned based on the best interests of the child. In some countries, physical care is determined predominantly based on cultural norms. In Nigeria, it is expected that the children will stay with the father; in the Central Asian republics children are expected to stay with the mother, who is stereotyped by communities as the 'natural' caregiver.

Divorced mothers' rights to *hadanah* are lost in most countries that uphold *fiqh*-based family laws if the mother remarries a man who is not related to the children by blood. This practice has relaxed slightly in Pakistan, Bangladesh, and Sri Lanka in cases where courts find it is in the child's best interests to remain with the mother, as well as in some Arab states in certain circumstances, such as when the child will not accept anyone but the mother. The Iraqi law asks the new stepfather to make an official commitment to the new family, affording certain agency to the new

family member to take care of children from the mother's previous marriage. In Iran, there is a new adoption law that allows a single woman to adopt a child, and if she marries then the new husband has to commit himself to the new family.



## Pakistan

Marriage and family relations of the Muslim population in Pakistan are governed by the **Muslim Family Laws Ordinance (MFLO)** promulgated in 1960, and the following codified laws:

- ◆ Dissolution of Muslim Marriages Act (DMMA) (1939)
- ◆ Child Marriage Restraint Act (1929)
- ◆ Dowry and Bridal Gifts (Restriction) Act (1976)
- ◆ Guardians and Wards Act (1890)
- ◆ Family Court Act (1964)
- ◆ Muslim Personal Law (Shariat) Application Act (1973)

Pakistan ratified the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** in 1996 with a reservation to article 29(1) and declaring that the Convention is 'subject to the provisions of the Constitution of the Islamic Republic of Pakistan'.

Pakistan ratified the **Convention on the Rights of the Child (CRC)** in 1990 and withdrew its general reservation in 1997. However, since the CRC has not been incorporated into the national law in Pakistan, the provisions of the Convention cannot be invoked in courts.

### On *Hadanah* (Physical Care)

According to section 17 of the Guardians and Wards Act (1890), mothers and fathers have **equal rights to *hadanah* (physical care)**. In cases of marriage dissolution, death or divorce, *hadanah* is decided by the courts based on **the welfare of the child**.

The concept of joint care does not comply with the *hadanah* rules established by the Hafani school of *fiqh*, which inspires Pakistani religious norms and practices for Muslims. According to the Hanafi *fiqh* principles, in case of divorce, mothers are granted *hadanah* of boys until they reach the age of 7 years old, and of girls until the age of 9 years old. After this age, *hadanah* is transferred to the father.

However, Pakistani courts have reiterated in numerous cases that the principle of the welfare of the child, including **financial and emotional well-being, overrides any other consideration in awarding *hadanah*** to one parent over the other. There have been cases in which physical care was granted to a grandparent when considered best suited to ensure the child's welfare.

### On *Wilayah* (Guardianship)

**Section 4(2)** of the Guardians and Wards Act (1890) defines the guardian as 'a person having the care of the person of a minor or of his property or of both his person and property'. If custodial rights are determined based on the child's welfare, the GWA considers that the **father is the natural guardian of the child under the age of majority (section 19)**.

The court shall appoint a guardian in case

- ◆ of a minor who is married female (cases of early marriage) and whose husband is not, in the opinion of court, unfit to be guardian of her person;
- ◆ or of a minor whose father is living and is not in the opinion of the court, unfit to be guardian of the person of the minor;
- ◆ or of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor. (section 19)

A mother may obtain guardianship rights after a father, unless he has appointed by his will another person as the guardian of the children.

Sources: Ishaque and Khan, 2015; Musawah Muslim family law tables, n.d.; Pakistani Guardian and Wards Act, 1890; Yassari, et al., 2017, pp. 177, 195.

Mothers who are not Muslim or who have renounced Islam, or who are guilty of immorality or adultery, have very restricted *hadanah* rights. Divorced mothers often suffer from inadequate state or institutional procedures for ensuring that fathers pay maintenance for their children. Therefore, besides facing the loss of *hadanah* when their children grow older, mothers can potentially lose physical care of their children because of financial constraints.

Generally, fathers continue to hold guardianship after divorce and are required to financially maintain their dependents. Related to their guardianship rights, fathers also often hold administrative rights and responsibilities, such as being the sole parent who can sign administrative or official forms. This gendered construction of parental roles has been found to have adverse impact on how both mothers and fathers are able to care for their children after divorce, affecting the well-being of both the parents and children. For instance, if a divorced custodial mother dies not have guardianship rights, she will be restricted in managing the affairs of her children, such as with regard to their educational or medical needs. But mothers' exclusive legal claim to *hadanah* translates into very limited legal space for divorced fathers to spend time with their children and co-parent them. This challenge is illustrated in legal disputes over child visitation and custody that are prevalent in Muslim-majority countries.

Despite the longstanding dominance of the classical *fiqh* construction of custody and guardianship in family laws, there have been recently some major shifts towards awarding custody based on the standard of the 'best interests of the child'. In general, this decision is made by courts, sometimes in consultation with psychologists, social workers, other specialists, and, depending on their ages, the children themselves.

There are three main ways in which jurisdictions have adopted the best interests standard (Yassari et al., 2017, p. 327–331):

- ◆ as an overriding principle that must be considered in all decisions concerning parental care (e.g., Tunisia, Pakistan, Algeria);
- ◆ as an exception in selected rules on custody to allow a change from the general rule, such as extending age limits for custody (e.g., Qatar, Bahrain, UAE, Lebanon); and
- ◆ as a justification for reforms without being referenced in regulations (e.g., Egypt, Jordan, Iraq).

In most jurisdictions with codified Muslim family or personal status laws, countries have not adopted the best interests standard in relation to guardianship. Exceptions include Tunisia, Algeria, and Pakistan, in which guardianship and custody are both determined based on the best interests of the child. A number of Muslim-majority countries with uncodified laws or laws based on Western or socialist legal systems (Cameroon, Central Asian Republics, Senegal, Turkey) also give equal rights to both parents after divorce. In addition, some countries (e.g. Egypt) have given custodial mothers some limited guardianship rights, such as the right to manage the educational affairs of children. Other countries (e.g. Malaysia) have altered administrative rules so that mothers can sign documents on behalf of their children in relation to educational and medical matters.



## Tunisia

**The Tunisian Personal Status Code (1956, PSC)**, as amended in 1993, 2007 and 2008, is the main codified law that governs marriage and family relations in Tunisia. Although commonly viewed as secular in nature, the PSC is influenced by Maliki jurisprudence and sets an example of achieving a common ground between Islamic law and gender equality.

**Tunisia ratified CEDAW in 1985** and withdrew all its reservations to the Convention in 2014.

**Tunisia ratified the Convention on the Rights of the Child in 1992.** In 2008, Tunisia withdrew its reservations to the CRC but kept one declaration on the Preamble to and provisions of the Convention.

**In 1995 Tunisia adopted the Child Protection Act** (amended in 2000 and 2002) inspired by the principles and provisions of the CRC.

### On The 'Best Interests of the Child' Standard

Article 4 of the Child Protection Act (1995) states:

**"the best interests of the child must be a major consideration in all actions taken in respect of the child** by the courts, administrative authorities or public or private institutions of social protection. In addition to the emotional, affective and physical needs of the child, must be taken into consideration his age, his state of health, his family environment and the different aspects concerning his situation."

### On Child Custody and Guardianship

During marriage, the PSC (article 57) **gives both parents caregiving and guardianship rights over their children during marriage.**

**Article 23** states that both spouses must cooperate in managing the family's affairs, the proper education of their children, and the conduct of their children's affairs, including education, travel and financial transactions.

In the event of dissolution of marriage:

- ◆ care of the children is entrusted to either the father or mother or a third person; the judge decides according to the interests of the child (**article 67**);
- ◆ **the traditional conception of guardianship prevails**, as the father is given priority right to guardianship over the children (**article 67**).

**Article 67** (amended in 1993) gives the custodial mother:

- ◆ prerogatives of guardianship with regard to the child's travel, studies and management of the child's financial accounts;
- ◆ full guardianship rights, only if the father:
  - (i) exhibits abusive behaviour;
  - (ii) neglects to properly fulfil his guardianship obligations to child;
  - (iii) abandons the home and has no known address (court decision); or
  - (iv) for any reason prejudicing the interests of the child.

Sources: Musawah Muslim family law tables, n.d.; Tunisian Personal Status Code, 1956, amended 2008; Tunisian Child Protection Act, 1995, amended in 2002; Yassari, et al., 2017, pp. 263.

## **SECTION II**

# **Current Realities: Trends and Implications**

## How do classical and contemporary rulings and laws translate into lived experiences? As discussed, historical *fiqh* rulings inform many contemporary Muslim family laws.

Most of these laws continue to recognize the husband's duty to provide and protect his wife and children, coupled with the wife's duty to obey. Many of these laws continue to view the father as the primary guardian and the mother as the primary caregiver of children. And regardless of the laws, social norms in most countries and communities continually reinforce gender stereotypes.

Studies from a variety of disciplines point to several key issues affecting economic and caregiving rights and responsibilities within Muslim families today. These can be loosely clustered into three categories:

1. **Changing demographics**, such as population bulges, age of marriage, fertility rates, and household structure and headship. All of these alter the demands and dynamics of earning and caregiving within the family.
2. **Shifts regarding external social and economic forces and norms**, such as shifts in educational opportunities and achievement, paid employment in formal and informal labour markets, and transnational migration. These social and economic forces may be influenced by pressures to comply with international standards such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).
3. **Dynamics related to internal rights and responsibilities within families and homes**, whether or not these are reflected in laws. This includes the distribution of unpaid labour in the home, how resources are spent in households, and anxieties that couples face in trying to cope with dissonances between norms that view men as sole providers and experiences in which both men and women provide for the family in financial and non-financial ways.

The elements within each of these categories are in a constant state of evolution, both individually and in their interactions with one another. Obviously, each manifests itself differently within different contexts, countries, and communities.

Numerous implications arise from these factors. Individuals may delay marriage because they do not have the financial means required to marry in their culture. Decision-making over finances, including how women's financial contributions are used, may affect a couple's interactions and have social, emotional, psychological, and sometimes physical implications. Women may or not be able to participate in the paid labour force depending on what employment opportunities are available, their other responsibilities at home, and whether and how their husbands and families allow them to work. Individuals' work responsibilities and commitments, along with what child care options are available, can affect who interacts with children on a daily basis. Who is contributing what type of resources to the household may affect what constitutes equitable allocations of intangible and tangible assets from a marriage.

In turn, all of these issues relate back to the concepts of *qiwamah* and *wilayah* and the ways in which set roles and responsibilities for husbands and wives based on gender stereotypes are inconsistent with twenty-first century social and economic conditions.

This section will explore some elements of each of these issues, presenting relevant data and anecdotes to help illustrate the areas of concern and discussing implications of the various trends on spousal economic and parental roles and rights.

## 1. Changing Demographics

In terms of basic demographics, communities and families around the world are changing with the rise of globalisation and urbanisation. It is difficult to generalize regarding Muslim families because of vast diversity throughout Muslim contexts around the world. There are approximately 1.8 billion Muslims in the world, which is about 24 per cent of the global population (Pew Research Center, 2017). While Islam began in the Arab region and the Qur'an was revealed to the Prophet Muhammad (pbuh) in Arabic, as of 2010 only about 20 per cent of Muslims live in the Middle East and North Africa (MENA) region. As of 2010, almost 62 per cent of the global Muslim population are located in the Asia-Pacific region, and 15.5 per cent are located in sub-Saharan Africa. The countries with the largest Muslim populations are all outside of the MENA region: Indonesia, India, Pakistan, Bangladesh, and Nigeria. The next five countries with the highest Muslim populations are all within the MENA region: Egypt, Iran, Turkey, Algeria, and Morocco. (Pew Research Center, 2015)

### Countries with the largest Muslim populations in 2010

COUNTRY	MUSLIM POPULATION	PER CENT OF COUNTRY'S POPULATION THAT IS MUSLIM	PER CENT OF WORLD'S MUSLIM POPULATION
Indonesia	209,120,000	87.2	13.1
India	176,200,000	14.4	11.0
Pakistan	167,410,000	96.4	10.5
Bangladesh	134,430,000	90.4	8.4
Nigeria	77,300,000	48.8	4.8
Egypt	76,990,000	94.9	4.8
Iran	73,570,000	99.5	4.6
Turkey	71,330,000	98.0	4.5
Algeria	34,730,000	97.9	2.2
Morocco	31,930,000	99.9	2.0

Source: *Pew Research Center, 2015*

This geographical spread has led to diversity in ways of life. As Muslims came to the different regions – and eventually countries – over the centuries, they interacted with the local populations, landscapes, cultures, customs, languages, laws, etc., and evolved. Once established, the local Muslim populations and their ways of life were influenced by later waves of imperialism and colonialism.

Given the multitudes of Muslim contexts around the world, families obviously experience a wide variety of situations and settings. There are families living in Muslim-majority countries and others in Muslim-minority countries. There are Muslim communities and individual families within those communities living in extreme poverty, or great wealth, as well as everything in between. Some families are rural, others urban, some suburban, and some living in non-classifiable settings. There are communities that are suffering war, living in conflict-torn areas, while other communities live in highly stable societies. In addition, just as Muslims differ in educational levels and marital statuses, they also differ in their understandings of Islam. In other words, there are

many demographic factors and changes that affect Muslim families on micro or macro levels.

This paper will introduce only few elements that interact with the economic and caregiving roles and rights within marriages as laid out in the *qiwamah* model. These include a bulge in youth populations (particularly in the MENA region), shifts in ages of marriage and fertility rates, and dynamics related to household structure and headship.

### **a. Bulge in youth populations**

In recent decades, countries with high populations of Muslims in the Middle East and North Africa, sub-Saharan Africa, and Asia have been experiencing a youth bulge. In 2010, 34 per cent of Muslims globally were under the age of 15, well above the rate of 27 per cent for the entire global population (Pew Research Center, 2015, p. 10). In the Middle East, in addition to a third of the region's population being below 15, another third is between the ages of 15 and 29, meaning two-thirds of the regional population is young (UNDP, 2016, p. 5). In terms of absolute numbers, Asia holds the majority of the world's youth population, with India having the highest number of 10- to 24-year-olds in the world (356 million), and Indonesia (67 million), Pakistan (59 million), and Bangladesh (48 million) having significant numbers as well (UNFPA, 2014, p. 5).

This youth bulge came about generally because mortality rates began to decline in the early twentieth century, but fertility rates did not begin to decline until the 1960s and 1970s, and even the 1980s in some countries. This led to huge population growths. In the MENA region, there was 'rapid growth in the number of young people ages 15 to 24, increasing from 44.6 million in 1980 to 88.1 million in 2010 – a doubling in 30 years' (Roudi, 2011).

Such demographic shifts have huge implications for countries and regions, as they must cope with the demands of ensuring the young people are healthy, well-fed, educated, etc., and must also work to ensure the development of jobs to employ the huge numbers of youth joining the work force between the ages of 15 and 29. This has been a major issue throughout the MENA region in particular. As discussed in subsequent sections, the economy has not adjusted to the demographic changes, and there are huge youth unemployment rates.

### **b. Decline in fertility rates**

Globally, fertility rates are declining; this has generally been the case across Muslim-majority countries as well, but fertility rates vary from country to country. For instance, total fertility rate estimates from 2009–2013 for Bangladesh, Iran, Nigeria, and Turkey were 2.2, 1.9, 6.0, and 2.1, respectively (Kongar et al., 2014, p. 8).

Several Muslim-majority countries have experienced a decline in fertility rates since the first World Population Conference in 1974. An overview of the 2012 United Nations Department of Economic and Social Affairs' World Population Prospects states that among countries with fertility levels greater or equal to four children per woman in 1975–1980, the fastest reductions occurred in a number of Muslim-majority countries in Asia and Northern Africa, including Algeria, Bangladesh, Iran, Lebanon, Libya, Maldives, Morocco, Oman, Qatar, Saudi Arabia, and United Arab Emirates (UN DESA, 2012, p. 11).

Yet fertility rates are still over replacement rates (2.1) for Muslims globally at an average of 3.1 children born per woman, and are still quite high in several countries in sub-Saharan Africa. This will cause the youth boom in that region to continue. (Pew Research Center, 2017, pp. 9–10)

Lower fertility rates relate in part to government policies aimed at reducing family sizes, as well as to rising ages of marriage and levels of education for girls. Fertility rates have implications for women related to the physical demands of bearing children and nursing. They also affect the amount of unpaid labour that needs to be done at home in terms of household management and caregiving, which can influence the amount and type of paid labour in which a woman can engage.

### c. Age of marriage

In terms of the age at which couples are marrying, two competing trends are evident that both have an effect on economic roles within marriages. The first is that marriage is being delayed in many Muslim-majority countries, with some individuals choosing not to marry at all; the second is the persistence of child marriage, especially in rural and poverty-stricken communities. Data from specific countries show the change over time:

In the Arab region, almost 50 per cent of men aged 25–29 remain unmarried, compared to 23 percent in Asia, 31 per cent in Latin America, 34 per cent in Africa, and 37 per cent of young Arab men a generation ago (UNDP, 2016, p. 33). Delays in marriage occur because of increased education for women, as well as general economic reasons such as high levels of unemployment among youth coupled with high costs of marriage. The Promundo and UN Women MENA IMAGES survey conducted in Egypt, Lebanon, Morocco, and Palestine provided some evidence of how economic concerns, and specifically the high cost of marriage, affect families. The analysis of the Egypt results, which were echoed in Morocco and Palestine, included the fact that 'Men are expected to bear most of the costs when it comes to marriage, from a big wedding onwards. This has become an increasingly heavy load to bear, with more than 70 per cent of men reporting that the cost of their own wedding was a burden on their families'. (El Feki, et al., 2017, p. 69, 119, 224)

Despite a delay in marrying among some populations and countries, the problem of child marriage persists throughout the developing world. The United Nations Population Fund (UNFPA) estimates that between 2000 and 2011, 34 per cent of women ages 20 to 24 in developing regions were married before the age of 18, and that 12 per cent were married before the age of 15. This varies within Muslim-majority countries from two per cent in Algeria to 75 per cent in Niger (UNFPA, 2012, p. 22). The highest regional rates are in South Asia (46 per cent) and sub-Saharan Africa (41 per cent). While regional rates are lower for Arab States (15 per cent) and East Asia and the Pacific (where several Southeast Asian countries have Muslim majorities) (18 per cent),

there are Muslim-majority countries within those regions that have relatively high rates, such as Yemen (32 per cent) and Indonesia (22 per cent) (UNFPA, 2012, p. 27). The practice of child marriage is declining globally. Indonesia and Morocco have reduced child marriage by more than half over the past three decades, and the MENA region has cut child marriage almost in half (UNICEF, 2014). However, this progress may be threatened by instability and conflict in the region (UNFPA, 2017).

Child marriage can have numerous effects on the young bride, such as: abrupt end to education; social isolation; health concerns because of early sexual intercourse and pregnancies; high rates of domestic violence exacerbated by the disparity in power between the couple; loneliness and other emotional difficulties (UNICEF, 2014). Child brides often have little power in a relationship, which can become worse when the wife is already acculturated to the *qiwamah* notion that the husband provides and her duty is to obey. A recent study on the economic impacts of child marriage found that child marriage is likely to have a direct or indirect negative impact on a woman's ability to make decisions within a home (Wodon, et al., 2017).



*Looking back on my life, I would encourage parents not to withdraw their children from school and marry them off to unknown elderly suitors. I would strongly advise all females to be educated to the highest level and let her choose the man she wants to marry. If my husband decides to take any of my children out of school, there will be war in our home.*

**Zainab, 40-year-old mother of seven  
who was married at age 14  
(Nigeria Country Report, 2014, p. 45)**



## Singulate mean age at marriage in select Muslim-majority countries

COUNTRY		1960s–1990s*		2000s–2010s*	
		MEN	WOMEN	MEN	WOMEN
Algeria	1977, 2008	25.3	21.0	32.9	29.1
Bangladesh	1974, 2011	24.0	16.4	25.5	18.6
Egypt	1976, 2014	26.7	21.4	27.5	22.1
Indonesia	1971, 2010	23.8	19.3	25.7	22.3
Iran	1971, 2011	24.4	19.1	26.8	23.5
Jordan	1976, 2012	26.2	21.5	29.8	25.0
Kuwait	1970, 2005	26.5	19.6	28.9	27.5
Lebanon	1997, 2007	31.4	27.9	32.3	28.3
Malaysia	1991, 2010	27.9	24.6	28.0	25.7
Maldives	1977, 2000	22.4	17.5	25.7	21.8
Mali	1961, 2009	26.4	16.2	27.6	19.9
Mauritania	1965, 2001	28.9	19.5	29.4	21.8
Morocco	1971, 2011	25.0	19.1	31.2	26.3
Niger	1977, 2012	22.5	16.2	25.2	17.4
Oman	1993, 2010	24.7	20.7	27.7	25.6
Pakistan	1975, 2007	25.3	19.6	26.4	22.7
Palestine	1967, 2010	25.2	21.9	27.8	23.5
Qatar	1986, 2004	26.6	22.7	27.6	25.8
Saudi Arabia	1987, 2007	25.6	21.7	28.0	24.9
Senegal	1961, 2014	28.0	17.4	30.5	22.4
Sudan	1979, 2008	27.9	21.4	28.4	22.2
Tunisia	1975, 2004	27.1	22.6	32.6	28.7
UAE	1975, 2005	25.9	18.0	26.8	25.3
Yemen	1975, 2013	22.5	18.0	26.1	23.0

Source: UN DESA, 2015

\*Earliest and latest available data used

### d. Household structure and headship

A key element in development work and economic studies relates to household structures and who is considered the 'head' of a household. Statistics from Muslim-majority countries generally show that most households are considered male-headed, though 'female-headed households' exist and may be underreported in some contexts. There appears to be a slight decline in extended-family households, though why and the extent to which this is the case is difficult to understand (Olmsted, 2011).

More importantly, data on household structure and headship may not be helpful for understanding dynamics related to economic roles. There is a huge variety of family and household structures across Muslim communities and contexts, and how these households are categorized is very much dependent on the context, culture, and priorities of those doing the classification.

Does a household consist of everyone living under one roof, in one complex, everyone who is related by blood, everyone who shares common resources? Furthermore, whether a 'household head' is designated and how this is done involves another layer of decision-making. A 'household head' may refer to the main economic provider, the eldest person in the household, the eldest male, the owner or renter of the house, the person who self-identifies as the head, or some other concept. This designation is often given to a male as the stereotypical authority figure, and females are often only named as heads of household if there is no man present. (Budlender, 1997)

Operating under a general assumption that men are heads of households unless they are physically absent can be problematic for men and women. This assumes that men are the main providers for their families, which is not always possible given economic realities. Whether men are present or not, women often contribute financially or in terms of unpaid labour or caregiving, thus either sharing the responsibilities of heading the household or carrying most of the weight. But women are not always given rights and privileges of headship – whether material, such as distribution of food shares in crisis, or symbolic, such as the respect that male heads of household receive.

◇  
*Since the beginning of my marriage, I became the head of the family. You could say I contributed more to the family financially compared to my husband. With my income from tapping rubber, most of it went to paying the electric, water and Astro bills. I also paid for the children's expenses. The children felt more comfortable asking me for money than asking their father. The same goes with my mother. When I was a child, she was the one taking care of the family expenses, more than my father. Mother used her income from tapping rubbers and other village works (planting rice, etc.) for household expenses even though my father was working at the saw-mill. Mother also became the head of the family when my father fell ill.*

**Mawar (40 years old), a married mother of two children from Malaysia (Malaysia Country Report, 2014, p. 16)**

◇

## 2. External social and economic forces

While family relationships primarily take place in the private space of the home, they are shaped and influenced by social and economic forces and events happening around them, whether at the local, national, regional, or global level. This can influence the roles that spouses and parents take on within the family. Of course, these factors may be exacerbated in situations of conflict, natural disaster, and political or economic instability.

For example, in Musawah's Global Life Stories Project, Muslim women in each of the countries shared stories of husbands and other men in their lives who did not fulfil their roles as providers and protectors. Some women were abandoned by men who married additional wives, began to favour other wives, migrated for work, or simply disappeared. More frequently, men struggled to earn enough to support their families, and the women had to find ways to earn additional money for their family to survive. Sometimes the women worked or earned more than their husbands to begin with.

There are a number of interrelated factors that contribute to such dynamics in these life stories and for Muslim families around the world. Some external social and economic factors include shifts in educational enrolment and achievement; labour force participation; and increases in transnational migration. Each of these will be discussed in turn.

### a. Shifts in educational enrolment and achievements

Around the world, the gender gap between Muslim girls and boys in education is closing at the primary, secondary and tertiary levels, as well as in terms of overall years of schooling. Two of the Millennium Development Goals addressed this issue: Goal 2 sought to achieve universal primary level education, and Goal 3 aimed to promote gender equality and empower women. The UNDP 2015 Report on these goals is broken down by region and not religion, so trends for Muslim girls and women can only be assumed from broad regional data information. The report states that primary enrolments increased globally, with particular gains in Southern Asia (from 75 to 95 per cent

from 1990 to 2015) and Northern Africa (from 80 to 99 per cent from 1990 to 2015). Sub-Saharan Africa increased dramatically, but remained far from universal (from 52 to 80 per cent from 1990 to 2015). A UNDP Human Development Report gives more details for Arab States, reporting that eight of the 20 countries with the largest increases in mean years of schooling from 1980 to 2010 were Arab States (UNDP, 2013, p. 93).

A 2016 Pew Research Center survey looks specifically at educational gains across three generations for people of different religions in 151 countries around the world, broken down by religion and sometimes gender. While there are still significant gaps between Muslim men and Muslim women at most educational levels, these gaps have narrowed over the three generations that were part of the study. For instance, 43 per cent of Muslim women and 30 per cent of Muslim men have no formal schooling; 6 per cent of Muslim women and 10 per cent of Muslim men have a tertiary education. In the MENA region, the averages for Muslim men and women are 6.9 and 4.9 years of schooling, but those in the MENA region had the largest gain in years of schooling over three generations, with younger generations (ages 25–34) having 4.5 more years of schooling

◇ Simi, a 35-year-old divorced woman from Bangladesh, witnessed firsthand how educated women do not pursue careers in their fields. Simi's mother had a Master's Degree in Soil Sciences, but was not able to pursue work outside the home as they lived overseas for a long time. (...) While her father was working in the Middle East, there was not much opportunity for her mother to find appropriate jobs in her field. Simi's mother did not seem to mind that her career was on hold as she raised her children since she had a high degree of authority in the family, and assumed that she could pursue her career later when they were older. (Bangladesh Country Report, 2014, p. 57)

than the oldest generations (ages 55–74). The share of Muslims with no formal schooling has decreased from 54 per cent in the oldest generation to 28 per cent in the youngest. (Pew Research Center, 2016, pp. 22–27)

There are significant regional variations in educational attainment, with Muslims globally (men and women ages 25 and older) having an average of 5.6 years of schooling, but Muslims in North America averaging 13.6 years and Muslims in sub-Saharan Africa averaging 2.6 years total (Ibid., p. 22). The gender gap remains, but is narrowing, with the most significant change in the Asia-Pacific region – a difference of only 0.9 years (7.4 for men, 6.5 for women). The gaps in the MENA and sub-Saharan Africa regions are 1.5 and 1.7 years, respectively. (Ibid., pp. 35–36)

In some countries – namely some of the more highly developed MENA countries and Asian countries – Muslim girls and women have begun to surpass boys and men in terms of

achievement rates at the post-secondary level. This means that young women are more likely to earn a university degree than young men. The countries where this is true include Algeria, Bahrain, Indonesia, Iran, Kuwait, Malaysia, Palestine, Qatar, Saudi Arabia, and Tunisia. (Ibid., p. 37)

However, as discussed below, even many of those women who earn degrees and excel in educational environments do not enter the workforce at all or for a long period. Women leave the formal, paid work force to do unpaid work at home on household and caregiving tasks either out of necessity or because of family pressures or social norms.

It should be noted that in some contexts, girls are still deprived of education and/or married at an early age based on a combination of economic and cultural justifications couched as religion. Rates of children not attending school are much higher in rural areas and situations of extreme poverty, and girls are often the first to be held back if families need to choose between education and having extra hands to help at home.

Promoting equal education for girls and boys, women and men, is part of Goal 4 of the 2030 Agenda for Sustainable Development adopted by member states of the United Nations in September 2015, which states: 'Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' (United Nations, 2015). The Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on Economic, Social, and Cultural Rights (CESCR) have also both addressed the need to ensure equal educational opportunities for women

and men, as mandated by the CEDAW and ESCR treaties that the Committees oversee (ESCR-Net, 2016).

## b. Labour force participation

As discussed earlier, youth below the age of 15 make up 34 per cent of the global Muslim population, and percentages of youth ages 15–29 are similar in many countries. Many Muslim-majority countries are facing high unemployment rates generally, and even higher rates among young people ages 15–24. An Arab Youth Survey in early 2017 placed the unemployment rate among this age group in Arab states at 30 per cent (D’Cunha, 2017). National level statistics from the MENA region also demonstrate the large percentages of youth ages 15–29 and high unemployment rates among these populations.

### Youth unemployment rates, MENA region

COUNTRY	PERCENTAGE OF YOUTH (15–29) IN POPULATION (2014)	YOUTH UNEMPLOYMENT RATE (2013)
Egypt	27.3	38.9
Iraq	28.1	34.1
Kuwait	27.2	19.6
Lebanon	29.6	20.6
Libya	26.1	51.2
Morocco	26.9	18.5
Palestine	30.2	38.3
Saudi Arabia	25.4	28.7
Syria	28.5	29.8
Tunisia	25.5	31.2

Source: UNDP, 2015, citing the World Populations Prospect 2012 Revision for the percentage of youth and the International Labour Organisation for the youth employment rate.

Much has been written about the need to engage these youth populations in order to provide development, prosperity, and stability to these countries and to the region. Nonetheless, without employment, youth cannot develop skills, grow into strong leaders, contribute to the economy, become independent, start families, etc. Without jobs, youth may become frustrated, disillusioned, and either strike back at the state or decide to leave for other countries where they can find better opportunities.

The situation for women is even more complex. Women in Muslim-majority countries have made strong gains in education but smaller gains in labour participation in the past 20 years. The women’s rate for Arab countries was only 26 per cent compared to 76 per cent for men. South Asia had similar rates: 32 per cent for women and 81 per cent for men. Sub-Saharan Africa’s participation rates are 64 per cent for women and 76 per cent for men. The global rates are 51 per cent for women and 77 per cent for men. (UN and League of Arab States, 2013, p. 9)

There are a variety of reasons for the gender gap in employment rates. In some Muslim-majority countries, unemployment is high overall, meaning there are few available jobs for women or men. The public sector was formerly one area in which women held more jobs, but more and more services are becoming privatized and these jobs are no longer available at the same rates.

Women sometimes decide not to work once they marry because of household and child care responsibilities. If caregiving of elderly, ill, or disabled relatives is needed, those tasks generally fall to women more than men, and they may not be able to work and still provide proper care. Even when women have domestic workers to help with the caregiving, they may still not enter the workforce due to social norms such as families preferring they remain at home and employers preferring to hire men. In addition, women may not be considered for certain types of jobs – those considered ‘dangerous’, for instance – or may not be permitted (by fathers, husbands, employers, or sometimes the state) to work jobs that require certain hours.

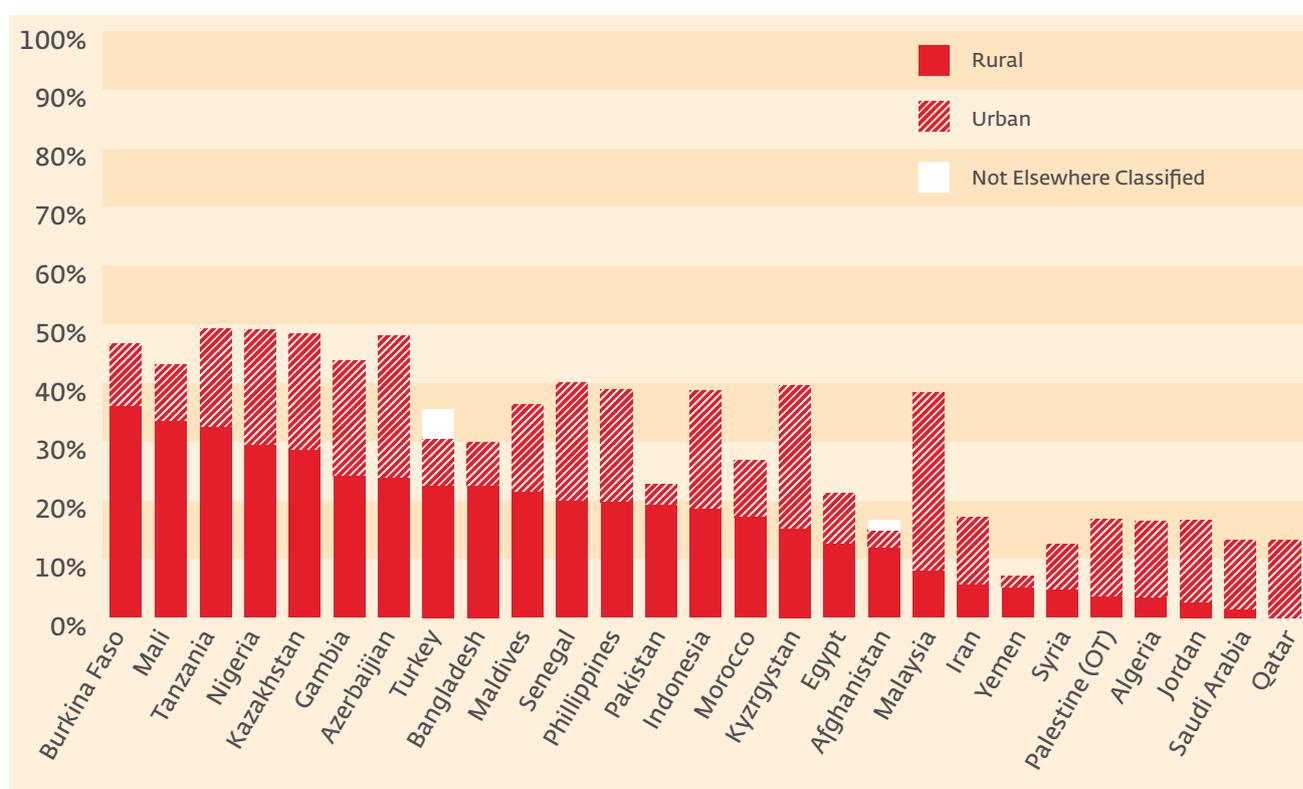
## Women's employment rates in 27 Muslim-majority countries

COUNTRY	AGE	AREA TYPE	SOURCE	YEAR	PERCENTAGE
Tanzania	15+	National	Labour force survey	2015	49.3
Nigeria	15+	National	Other household survey	2013	49.1
Kazakhstan	15+	National	Labour force survey	2015	48.4
Azerbaijan	15+	National	Labour force survey	2016	48.2
Burkina Faso	15+	National	Other household survey	2014	46.8
Gambia	15+	National	Labour force survey	2012	43.9
Mali	15+	National	Labour force survey	2016	43.1
Senegal	15+	National	Labour force survey	2015	40.2
Kyrgyzstan	15+	National	Labour force survey	2016	39.6
Philippines	15+	National	Labour force survey	2016	38.9
Indonesia	15+	National	Labour force survey	2016	38.7
Malaysia	15+	National	Labour force survey	2016	38.4
Maldives	15+	National	Population census	2014	36.3
Turkey	15+	National	Labour force survey	2016	30.6
Bangladesh	15+	National	Labour force survey	2016	29.8
Morocco	15+	National	Labour force survey	2013	26.9
Pakistan	15+	National	Labour force survey	2016	22.6
Egypt	15+	National	Labour force survey	2016	21.1
Iran	15+	National	Labour force survey	2016	17.1
Palestine (OT)	15+	National	Labour force survey	2015	16.8
Afghanistan	15+	National	Other household survey	2011	16.6
Jordan	15+	National	Population census	2004	16.6
Algeria	15+	National	Labour force survey	2011	16.3
Qatar	15+	National	Labour force survey	2015	13.4
Saudi Arabia	15+	National	Labour force survey	2009	13.2
Syria	15+	National	Labour force survey	2011	12.4
Yemen	15+	National	Labour force survey	2014	7.0

Source: International Labour Organization. ILOSTAT. 1996–2017. Employment by sex, age and rural/urban areas.

Statistics from 27 Muslim-majority countries demonstrate a range of female employment rates. Generally, sub-Saharan African countries and Muslim-majority former Soviet Republics have the highest rates of female employment, followed by Southeast Asian and MENA countries. However, women’s labour force participation rates are difficult to measure accurately, in part because many women work in informal sectors or on an ad hoc basis. Women comprise a significant number of workers in ‘vulnerable employment’ who work for themselves or are contributing family members. Such workers ‘are less likely to have formal work arrangements, and are therefore more likely to struggle with inadequate incomes, difficult working conditions that may undermine their fundamental rights, gaps in social security and the lack of voice that comes through effective representation by trade unions and similar organizations’ (UN and League of Arab States, 2013, p. 11).

## Rural and urban female employment rates



Source: International Labour Organization. ILOSTAT. 1996-2017. Employment by sex, age and rural/ urban areas.

The second graphic shows the breakdown between urban and rural female employment rates. Of the 27 countries, 16 countries have more women working in rural than urban areas. For instance, most of the sub-Saharan African countries with the highest female employment rates among the 27 countries are also the ones with the largest portion of rural employment. Compared to their male counterparts, women working in rural areas face greater challenges: long working hours, lower wages, difficult conditions especially given often poor rural infrastructure, and the double burden of household work in addition to the waged work (UN Inter-Agency Task Force on Rural Women, 2012).

However, women working in urban areas are not exempt from precarious working conditions. Many are engaged in low-paid jobs and or in the informal sector with no social protection. Vulnerable employment is highest overall in South Asia, then sub-Saharan Africa, Southeast Asia

and the Pacific, and then the Arab region. However, women in the Arab region represent a much higher share of vulnerable workers than men (UN and League of Arab States, 2013, p. 11–12).

Numerous studies in recent years have reported that women's participation in the labour force can have major economic impacts nationally, regionally, and globally. For example, a 2015 McKinsey Global Institute research study found that advancing women's equality could help add US\$12 trillion, or 11 per cent, to the global GDP by 2025 in the scenario where countries were able to match the country in their region that currently has the highest levels of gender equality, or US\$28 trillion if all countries achieved full gender parity between women and men. In particular, the study reported that the regions with the most to gain are India, the rest of South Asia, and the MENA region, each of which have significant Muslim populations. The study used 15 gender equality indicators, grouped into four categories: 'equality in work, essential services and enablers of economic opportunity, legal protection and political voice, and physical security and autonomy'. In order to advance gender equality at work, it was found that states need to address gender equality in society and attitudes and beliefs about the role of women (McKinsey Global Institute, 2015). This needs to be accomplished by public, private, and social sectors all acting to close imbalances in workplaces and society that are based on gender.

Similarly, UN Women recently published a report laying out reasons why 'women's economic empowerment could make a powerful contribution to economic growth and competitiveness in the Arab States region' (UN Women, 2016, p. 1). The report argues that Arab states are not reaping the benefits of the strong educational gains made by women, and that states, companies, and the MENA region in general – as well as individuals and families – could all benefit from increasing women's participation (p. 1–4).

Promoting women's full participation in the labour force also complies with Goals 8 and 5 of the 2030 Agenda for Sustainable Development, which was adopted by member states of the United Nations in September 2015. Goal 8 states, 'Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'. Goal 5 states, 'Achieve gender equality and empower all women and girls' (United Nations, 2015).

At the same time, it is important to recognize that increasing women's labour participation rates will not automatically lead to gender equality in the workforce, in society, or in families (Olmsted, 2005). There are many other factors at play, both in terms of the external social and legal environment and the internal dynamics and distribution of responsibilities within households.

For instance, working women in certain countries face certain restrictions that do not affect men in terms of labour rights, access to state welfare services, and in the financial sector. Women may not be able to pass on pensions to their beneficiaries in the same way that men's pensions can be passed to their wives. Women may have difficulties applying for loans on their own, despite the fact that they are earning money and/or have assets, because their husbands must be listed on the application. They may face restrictions in mobility, especially given sexual harassment in the streets, public transportation, and in the workplace itself. They may be hindered in their ability to freely conduct transactions that male citizens can conduct.

These arise from the fact that women are still seen as vulnerable beings within society who need to be protected, or because they are viewed as dependents under the financial guardianship of their husbands or fathers and not seen as independent citizens. A number of countries have labour laws that prevent women from working at night as a way to protect the women. Articles 81 and 82 of Oman's Labour Law of 2003, for instance, prohibit women from working between the hours of 9:00 at night and 6:00 in the morning, with exceptions for specific industries or 'exceptional circumstances'. Women are also prohibited from working 'harmful' and 'particularly difficult' jobs.

In addition, as discussed in the next section, women generally must still bear the primary

responsibility for unpaid labour – cooking, cleaning, laundry, etc. – and caregiving within the home regardless of whether they work outside the home. Women who work outside the home by choice or necessity thus take on greater responsibilities and burdens, usually without gaining legal rights or status within the family.

If women's participation in the labour force is beneficial, and if women's income is needed for families to survive, states and companies must make it possible for women to have the same types of jobs, hours of work, and labour and financial rights as men, taking into account needs at different junctures of their lives, and social norms must change to ensure responsibilities are shared within the home.

### **c. Employment-related transnational migration**

With the rise of globalization, there has been an increase in transnational migration for both men and women, primarily from poorer countries to richer ones. Individuals and families may migrate for many reasons, such as to pursue employment opportunities, to join families or friends abroad, or due to displacement caused by war, conflict, or natural disasters. This section focuses on voluntary migration for employment.

In today's global economy, migration for work is often encouraged in the sending countries because it solves some problems related to unemployment and brings in large amounts of remittances that contribute to the national economy. As of 2015, there were 244 million international migrants, of whom 48 per cent are women. Both women and men migrate for work, generally focusing on different job sectors. In some regions, such as the Middle East and North Africa, men are more likely to migrate for work, though increasing numbers of women are migrating in recent years (Killian, et al., 2012, p. 434). In others, such as South and Southeast Asia, women are as likely as men to migrate for work. Despite women migrant workers earning less than men, women sent approximately 50 per cent of the remittance transfers in 2015. Migrant workers can potentially earn more money than they would be able to at home, though they may also be subject to exploitation and abuse at various stages in the process. (Hennebry, et al., 2017)

Indonesia, which has the world's largest Muslim population, provides an example of a sending country that encourages migration by women for employment. About six million Indonesians work abroad, of which about 80 per cent are women, mostly from rural and uneducated backgrounds. The government of Indonesia – like governments in many other countries – encourages such migration as a solution for high unemployment, underemployment, and poverty. It sees migration as a 'win-win-win' situation for Indonesia, the host country, and the migrant workers themselves. It is difficult to get accurate data on how much money is being sent back to families by migrant workers because of the many informal transfers of cash and gifts. A 2014 estimate was that Indonesia received USD 7.4 billion worth of formal remittances in 2013 from the millions of migrant workers abroad (Chan, 2014). In this way, Indonesian migrant workers – the majority of whom are women – are contributing to household incomes. Families are thus dependant on women migrant workers' remittances for their survival and well-being.

Migrant domestic workers also enable women in the host countries to work more freely, as they care for the employers' children, relatives, and homes. This represents a 'global care chain' made up primarily of women who are trying to balance the need to earn a living with

◇ ————— ◇  
'WMWs [women migrant workers] tend to remit a greater share of their income more often than their male counterparts, with many choosing informal remittance transfer channels [...]. Indeed, mounting evidence suggests that WMWs tend to send a higher proportion of their income more regularly and consistently, even though they generally earn less than men migrant workers [...]. Further, it has been argued that WMWs' remittance motivation is partially driven by altruism, strong family ties, concern for the welfare of the household, a sense of obligation for the financial and material support of the family, or the influence of social and traditional norms ...' (Hennebry, et al., 2017, p. 26)  
◇ ————— ◇

family responsibilities (ESCR-Net, 2016). At the same time, the migrant workers may be exposing themselves to vulnerable work situations. The Committee on the Elimination of Discrimination Against Women (CEDAW) has addressed issues related to female migrant workers in its General Recommendation number 26 (2008).

Transnational migration can have a major impact on economic responsibilities of spouses and dynamics within a family both for spouses who travel abroad and for those left at home. The impact may change based on the gender of the migrant, as well as whether they have children. When wives migrate, the role and responsibilities of their husbands generally do not change – the man remains head of household and decision maker. One impact for mothers is that they need to ensure their children will be cared for, whether by the father or someone else. When husbands migrate, however, at least some of the wives who stay home are suddenly freed to make decisions for the family, at least on a day-to-day basis, and simultaneously may be burdened with ensuring the family's day-to-day health and well-being with or without the husband's remittances.

In addition, many Muslim couples and families have migrated together and settled in new environments long term, whether proactively for economic opportunities or as a result of displacement from conflict or natural disasters. Yet connections are retained with the home countries, including economic, familial, and cultural ties. This leads to a negotiation of identities and priorities, as well as roles, for all parties in such relationships (Musawah, 2016(b), pp. 124–128).

### **3. Roles, rights, and relationships within households**

Regardless of who is working for pay, how much, and in what field, and regardless of the type or size of a household, there is always work to be done at home. Such work includes the physical and mental labour involved in running a household and caring for the young, elderly, ill, and people with disabilities, related decision making, and the processes through which such responsibilities and rights are distributed. The majority of this work is undertaken by women.

With bulging youth populations, high unemployment, and political and economic instability throughout several regions, more Muslim men and women are marrying later or remaining single. If they do marry, they may be in more economically precarious positions before and during marriage. This causes strain on relationships, especially because the concept of *qiwamah* influences the expectations of each spouse's responsibilities and rights within the relationship. Men are expected to be the sole providers, but often cannot fulfil this role because of macroeconomic forces. Women are primarily expected to perform unpaid labour and caregiving in the home, but these contributions, as well as any financial contributions they make, are taken for granted and not recognized with increased rights. This results in anxieties of both men and women, and ambivalence about stereotypical gender roles.

This section will unpack issues relating to internal dynamics in the home around spousal and parental rights and responsibilities, specifically relating to unpaid labour and caregiving responsibilities, how resources brought into the home are spent, and anxieties and tensions that arise because of the dissonance between roles prescribed in laws and roles that spouses experience in reality.

#### **a. Unpaid labour within the home**

Unpaid labour within the home includes preparing meals, managing food, household supplies and clothing needs, paying bills, maintaining the home, cleaning, laundry, and caregiving – all of which are essential for a family to function. There are various terms for this type of labour, such as 'unpaid care work' – with specific definitions for 'care' and 'work' – or 'workers with family responsibilities' (Fälth and Blackden, 2009).

Care work is more than the actual tasks of cooking, feeding, bathing, dressing, toileting, etc. It also includes all of the preparatory and logistical planning and thought needed to carry out these tasks. A UN Women paper series on the 'care economy' classifies three components of care as direct care (direct interaction); preconditions for care (tasks that lay out the material conditions that allow for the direct care to take place); and mental management (tasks of coordination, planning and supervision) (UN Women, 2014, p. 11).

Caregiving is generally unpaid and often underappreciated, and caregivers can easily be overburdened. Many studies show that bearing the care workload alone can lead to negative health effects like anxiety and chronic diseases (Khullar, 2017).

*I never ever felt that my Dad carried out his role and responsibilities. My Mum was doing all the shopping and cooking, calling and phoning people when things needed fixing, I don't remember my Dad doing anything apart from maintaining his own car or engaging in his own social activities. To the outside world it definitely would not have appeared this way. People admired my dad, saying how well he managed his home and family and how hard he worked. But he only got there because my Mum held her own and supported us.*

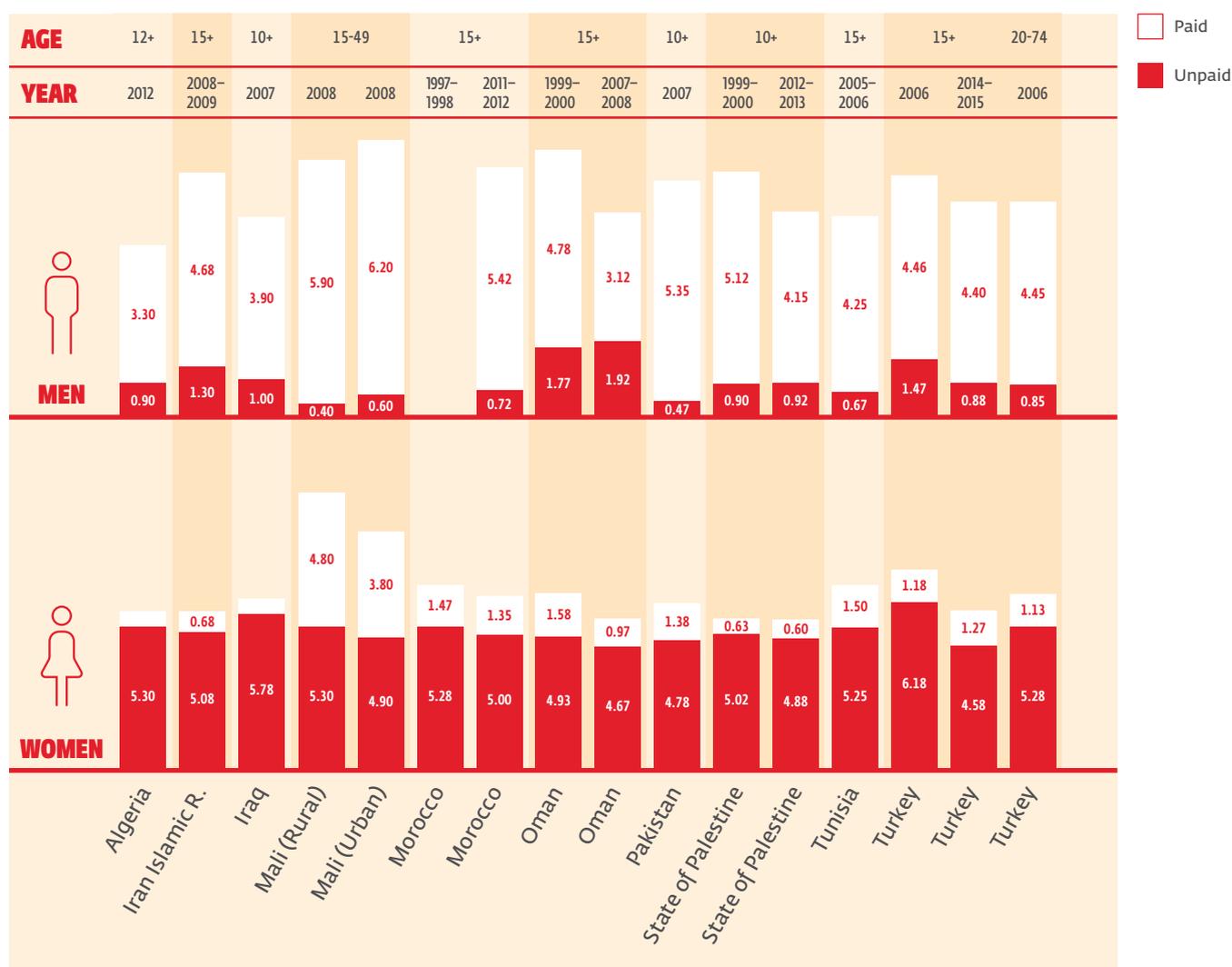
**Nijat, a 32-year-old single woman from the United Kingdom (UK Country Report, 2014, p. 23)**

## Examples of three components of care

	DIRECT CARE	PRECONDITIONS FOR CARE	MENTAL MANAGEMENT
<p>To ensure that a baby is adequately dressed, one must:</p> 	<p>Change the baby's clothing when it is wet or dirty, put on extra layers if it is cold.</p>	<p>Buy baby's clothes/diapers and wash and mend them as needed.</p>	<p>Ensure clothes are the correct size and appropriate for the weather; pack appropriate clothing for when you will be away from home.</p>
<p>To ensure an elderly person who cannot take care of himself is well fed, one must:</p> 	<p>Give him/her food.</p>	<p>Buy the food, cook it and clean afterwards.</p>	<p>Organize a balanced diet, remembering food restrictions.</p>
<p>To assist an adult with a health problem, one must:</p> 	<p>Accompany her/him to the doctor/health centre to support her/him when she/he receives a diagnosis and test results.</p>	<p>Buy and prepare a meal for two people before the outing; make sure person has documents, medicines, and other necessary items for appointment.</p>	<p>Make an appointment with the health centre; ask for permission at work to go with her/him.</p>

Source: Adapted from UN Women, 2014, p. 11

## Average time spent (in hours) on paid and unpaid work, by sex



Source: United Nations Statistics Division Time use data portal. n.d

Unpaid labour is most commonly done by women. Globally women spend two to ten times more time on unpaid care work than men; in the MENA and South Asian regions men performed less than an hour and women performed more than five hours of unpaid labour a day. (Ferrant et al., 2014; Charmes, 2015)

The 2017 Promundo and UN Women IMAGES MENA survey confirmed this for the four countries covered (Egypt, Lebanon, Morocco, and Palestine). Only one-tenth to one-third of the men surveyed reported that they recently performed unpaid labour related to cooking, cleaning, or caregiving in their home (El Feki, et al., 2017, p. 17). In Morocco, only 26 per cent of men who are, or have ever been, married reported ever carrying out household cleaning tasks (p. 146).

The trend of women can also be seen in a May 2016 selection of Muslim-majority countries where time use data is available on the UN Statistics Division Time Use Data Portal (n.d.).

Such disparities have direct consequences for women. Having to shoulder most of the unpaid household and care work traps women between paid and unpaid labour requirements. Shifts in girls' educational levels are implicated as well. Economic studies show that the closing gender gap in education does not automatically lead to an increase in women's participation in the paid

labour market, as women often still need to perform unpaid labour at home so they cannot or do not have time to pursue opportunities in the paid labour market or are limited in the type of opportunities they can undertake.

In addition, women who focus on caregiving and household work are economically vulnerable, as they are dependent on the provider's income stream and would have a hard time entering the work force if he leaves. Providers can always replace the caregiving and household work by hiring someone. This is a tremendous power asymmetry within a marital relationship.

When women do accept positions in the paid labour force – whether the formal or informal sectors – they often carry the 'double burden' of needing to do the unpaid labour at home (Ferrant et al., 2014). In essence, they are taking on an extra family responsibility of earning money, but are not relieved of any responsibilities or given additional rights at home.

Although a number of initiatives on unpaid labour have been launched in recent years, clarity is still needed in how to account for and value unpaid labour within the home. Relatively little data are available about the extent of work performed by women, especially across time and cultures, and it is difficult to assign a wage or value to work that needs to be done throughout the day, every day, without a break. Valuing the work is complicated by the fact that it has generally been held in low esteem and/or considered menial work or a 'burden' in many societies.

But recognising women's contributions to their households and caring for their children is not a completely new concept in Muslim legal tradition. It has already been mentioned that in some classical *fiqh* texts regarding *nafaqah*, a wife had no obligation to do housework or to care for children. She was even entitled to wages for breastfeeding her babies.

This is reflected in some national Muslim family laws. In Morocco, article 201 of the 2004 *Moudawana* gives mothers additional maintenance for the breastfeeding of the child. In Iran, the 1992 Amendment to Divorce Regulations enables the court to place a monetary value on women's housework, and to force the husband to pay her *ujrat al-mithl* ('wages in kind') for her work during marriage, provided that divorce is not initiated by her or caused by any fault of hers. In other areas, the *fiqh* principle

and local customs are combined to recognize women's contributions. In the north and south of Morocco, for example, a Berber custom termed *al kad wa al sa 'ya* ('reward for hard labour') entitles women who contribute labour to the household (e.g., domestic or agricultural) to assets from the husband.

In fact, questions related to unpaid labour are central to the division of matrimonial assets during dissolution of marriage. Some countries, such as Malaysia and Singapore, recognize women's contributions as wives and mothers, saying that those contributions help the husband to acquire assets. Article 49 in Morocco's 2004 *Moudawana* gives the judge discretion to divide the property acquired by the couple during the marriage based on evidence of each spouse's financial and unpaid contributions. A 2013 public survey about changes in Palestinian attitudes towards laws shows that people now expect the law to do justice by compensating women for their contributions to the family upon divorce and widowhood (Johnson and Hammami, 2013).

The key issue regarding labour within the home is that while the women perform the majority of this work for no pay, and sometimes work outside the home and contribute financially as well, their contributions are not recognized in the law. They often are not even able to make decisions within the household. Men are protected legally and socially as heads of households who hold power and make all decisions regardless of the contributions of their wives.

In Musawah's Global Life Stories Project, even when husbands and fathers were not providing



*After giving birth to my twins, I tried to balance between work and my duties as a mother. I could not afford baby care and I did not have family or friends to help me with the twins. ... After a year of working two shifts, one at the hospital and another one at home, I had to leave the twins with my mother in Cairo.*

**Nadia, a divorced mother of three children from Egypt (Egypt Country Report, 2016, p. 13)**



for and protecting their families on their own, they wanted to keep women under their control. This was true across class lines and countries/regions. In addition, communities continued to think of the men as the heads of their households even though the women were contributing to the household income. In other words, men retained their rights even though they could not undertake their prescribed responsibilities, whereas women took on what are perceived to be 'male' roles and responsibilities but were not accorded any additional rights.

## **b. Distribution of resources when women contribute to households**

◇ The Indonesian Life Stories team stated about four life stories: 'All of the husbands expected their wives to take part in providing for the family, to be obedient and submissive wives at the same time and to take care of all domestic chores'. (Indonesia Country Report, 2014, p. 68)

Several trends are apparent for women who make financial contributions to their households. First, income brought into the home by women often primarily goes towards smaller-scale day-to-day items essential for running the household, such as food, household supplies, clothing, school fees, uniforms, or supplies, etc. Women generally do not keep the money for themselves or use it to purchase large-scale joint matrimonial assets. Some women choose to work – or feel compelled to – because they are not receiving enough funds from their husbands to adequately maintain the family. This was the case for many of the women who shared their stories in Musawah's Global Life Stories Project.

Because their contributions are smaller in scale, they can be overlooked or go unnoticed, just as the unpaid labour is often taken for granted. This means the husband's accepted status as the sole provider is not shaken. In addition, because a lot of what they provide consists of consumable goods (food, clothing, oil, school fees), women may have little or no physical evidence or record of their contributions and nothing to claim if the marriage fails.

Second, the fact that women contribute does not necessarily mean they gain decision-making powers within the household, even about financial issues. The Promundo and UN Women MENA IMAGES survey provides interesting data about decision-making within households regarding spending. In each of the four countries, to varying degrees, a majority of the husbands claim to have final or sole decision-making power over such issues as spending on large investments, cloth-

◇ *[I] was basically looking after myself with no support from him ... He did not provide enough food for the house let alone other things, which I heard Islam says he is supposed to do. To survive I was forced to find a way to supplement his contribution, so I started petty trading. ... I went to a micro-finance bank, Hududullah, and borrowed 4000 naira to start trading and saving. ... With the proceeds, I sent my children to school and met other needs of the house. By this time, I had 7 children.*

ing, and food, as well as the woman's movements and activities. However, wives have a slightly different perspective, estimating that they have more power over such decisions than the husband claims. Similarly, in the time-use data, the most common household task that men perform revolves around tasks like shopping, which relate to spending money and being out in public – implicit symbols of his role as the person who is in charge of resources. One situation in which women gain more control over decision-making is when men were absent because of migration, displacement, imprisonment, etc. (El Feki, et al., 2017)

**Safiya, a married mother of nine children from Nigeria**  
(Nigeria Country Report, 2014, p. 38–39)

Third, women contributing does not necessarily lead to the couple rethinking gendered spousal roles, and often the spouses have a sense of anxiety or unease about such contributions because they have not resolved the disconnect between the legal and societal norm and the reality. Sholkamy and Assaad (n.d.)

demonstrate how the increased presence of women in paid work in Egypt has not necessarily increased their power within their families and communities, translated into legal benefits, or increased women's sense of security and choice. Women have to balance their relationship dynamics, family's needs, and social patterns in deciding whether, where, and how much to work. Sometimes, they must decide whether to even share or hide the fact that they are working because

of community pressure to maintain the illusion that the man is the sole provider. This can lead to anxieties on the part of women about working, as well as concerns for men about not fulfilling their socially-prescribed role as sole providers.

### **c. Anxieties and contradictions experienced by spouses**

Men and women hear from many sources – religious interpretations, social norms, policies, and even laws – that men are supposed to be the sole providers. But this is often not possible due to trends such as high unemployment or political and/or economic instability. It is not desirable for many families and national economies where women have valuable educational and vocational skills. And it is definitely not the reality for many families. The gap between what is expected and what is happening in the home leads to anxieties on the part of both men and women about what roles they should play and what rights are connected to those roles.

Several of the demographic shifts affect both whether marriages take place and how healthy and stable the marriages may be. High youth populations, increasing years of education, high unemployment rates and difficult transitions from education to employment can have an influence on whether people marry – more men and women are remaining single – or at what age people marry and who contributes resources to set up and maintain the household. These shifts may affect the self-confidence of the individuals as well as the dynamics between the spouses, giving rise to significant psychological, emotional, and social implications for individuals and couples.

A UNDP Human Development Report for the Arab States notes the levels of anxiety caused by the bulging youth population and high levels of unemployment: 'Many continue to receive an education which does not reflect the needs of labour markets. High numbers of young people, particularly young women, are unemployed and excluded from the formal economy. Young people without livelihoods find it difficult to establish an independent home and form their own family units. The risk for these young people is that instead of exploring opportunities and discovering future prospects, they experience frustration, helplessness, alienation, and dependency.' (UNDP, 2016, p. 5)

Men who are unemployed or underemployed and unable to undertake the role of providers often face pressures that can lead to anxieties and tensions, resulting in family conflicts and sometimes domestic violence. The IMAGES MENA survey in Egypt, Lebanon, Morocco, and Palestine showed that both men

and women feel a great deal of anxiety about family life, with many men reporting shame because of lack of work or income. The report states: 'At least part of this mental stress was a result of men not being able to fulfil their socially prescribed role as financial provider'. More than half of the Egyptian men surveyed reported feeling stress or worries because they did not have enough work and/or were unable to meet their families' daily needs (El Feki, et al., 2017, p. 42).

In Palestine, the ongoing conflict has affected gender roles and responsibilities, with women taking on expanded economic roles because of the economic and political situation. A 2011 report states, 'Armed violence and economic collapse can make it impossible for men to fulfil their previous duties as breadwinners and protectors, while forcing women to take on new and expanded roles in the struggle for household survival. This transition often creates tensions between the new realities of men and women's lives and the gender norms to which they were previously accustomed. Women often carry new burdens without any expansion of their rights, while men are often forced to accept new circumstances that are at odds with their expectations of masculinity.' (UN Women, 2011, p. 17)

◇—————◇  
**'Young people with less education end up working because they have no choice. The young people who are increasingly secondary and university educated end up in what I've been calling "waithood;" a long phase in which they wait for a full state of adulthood. Adulthood eludes them because they are deprived of the building blocks of adulthood: skills, jobs, housing, credit and spouses. Because difficulties in one area of life spill over into the others, youth find themselves in a debilitating state. Jobs require skills; housing and credit demand stable incomes; and marriage requires all of these.'**  
(Dhillon, 2008)  
◇—————◇

Several of the resource persons in Musawah's Global Life Stories Project experienced these effects when their husbands could not find jobs. The women who shared their stories reflected that both they and the men in their lives often expected the men to provide. When they could not, the men felt their sense of identity being threatened and the women felt disillusioned.

Anxieties are not lessened when women regularly contribute to the family because both spouses may worry about not fulfilling personal or societal expectations regarding gender roles. In an Egyptian study, a man named Sayed and his wife decided she should continue her secure government job after they married. While Sayed recognizes the importance of his wife's financial contributions, he also expresses a sense of unease about them, and sees her contributions as her choice to cover household expenses, not something he requires of her. Sayed says, 'We share

◇ *I carry 65 per cent of the household, and he 35 percent. He feels bad about this – I know. ... I think if his financial woes are lifted, he will be in a better place, he will behave better. His ego just can't accept that I bear most of the household expenses.*

**Rafia, a 35-year-old teacher from Bangladesh who was the main breadwinner in her marriage and felt her husband was depressed and treated her poorly because of his situation (Bangladesh Country Report, 2014, p. 23)**

the financial responsibilities. But it is my responsibility. Yes, she spends all her salary on the house. But I do not take her salary.' At the same time, he maintains the belief that housework and taking care of the children is his wife's responsibility, even though she is working. (Al-Sharmani, 2017, pp. 127–128)

Women who work sometimes feel an ambivalence about contributing to the household. They may feel morally obligated to contribute their salaries to the household. At the same time, their salaries are one source of financial security in case they face problems individually or as a family. For instance, in one of the Egyptian cases, the wife contributed to the household, but secretly invested a small portion of her earnings each month as a method of providing back-up funds for the household and making

sure she was never left without any resources (Al-Sharmani, 2017, pp. 128–129).

This ambivalence that women feel about their contributions to their households leads some women to prefer the 'maintenance for obedience' formula. There are a number of reasons for taking this position. Husbands often try to retain authority even when they are not adequately providing for their families. In turn, wives feel that if their husbands insist on being in charge, they should be forced to provide. Often, women who contribute do not gain legal or social rights in return for their contributions, thus feel there is no point in contributing. In addition, men still hold many economic privileges in Muslim societies and under global labour conditions. In Muslim contexts and globally, men disproportionately hold more powerful and higher paid positions within companies, and have higher pay for the same work as women when they hold similar jobs. In addition, Muslim men still have privileged rights to inheritance, which are sometimes justified by the fact that they are supposed to provide for their families. For these reasons, some women feel that it is only fair for men to continue to provide for women until the economic and social playing fields become level.

## **SECTION III**

# **Changes in Norms, Policies, and Laws**

**The ways in which family members relate to one another are based on cultural, religious, legal, and social norms. The trends discussed previously – global, national, local, and in the intimate space of the home – also interact with one another and the various norms in multiple ways, and thus impact families' lives and experiences. Layered underneath is the rich tapestry of Muslim legal tradition, with jurisprudence related to families informed by trends and contexts of the times.**

The juristic concepts of *qiwamah* and *wilayah* are part of this complex web, shaping family relations because of their influence within religious interpretations and Muslim family laws, whether codified or uncodified. Central to such laws, policies, and interpretations – and thus to social norms in Muslim contexts – are assumptions that confine men and women to fixed and gendered societal and family roles.

Interestingly, some shifts have been happening at the level of laws, policies, and social norms. To some extent, these shifts are in response to some of the trends discussed previously, as well as new religious knowledge that has resulted in interpretations of Qur'anic verses and *hadith* that differ from those of the classical jurists. Developments in the field of human rights have also played a role in shaping law and policy reform.

This section elaborates on some of the changes that affect spousal and parental roles and rights, namely in how such roles and rights are framed within laws; how parents are approaching caregiving responsibilities; how courts, laws, and policies use the standard of the best interests of the child in considering custody and guardianship issues; and how property is allocated within marriages and upon divorce.

## **1. Alternate framing of spousal rights and responsibilities**

As discussed in Section I, there have been a number of family law reforms in recent years that aim to dismantle the hierarchical and gendered structure of spousal and parental relations. In particular, reforms in Tunisia in 1993, Morocco in 2004, and Algeria in 2005 sought to equalize spouses' statutory rights and responsibilities, shifting from the idea that men and women should have distinct, gendered roles and rights to the idea that rights and responsibilities should be mutual.

The 2004 reform of the Moroccan *Moudawana* is perhaps the most significant, as it made three major structural shifts in addition to the substantive reforms. First, there was a shift in the philosophy behind the code from 'providing in exchange for obedience' to 'sharing the responsibility' between the spouses. The separate lists of rights and responsibilities for husbands and wives were abolished, and now there is a list of mutual rights and responsibilities. This basic change ruptures the *qiwamah* logic. Second, the language of the code was reformed to become less patriarchal and demeaning, eliminating words that had negative connotations. Finally, the style of the code was changed from a very legalistic document to one that could be understood by common people.

In terms of the substance of the reforms, the new *Moudawana* includes recognition of the principle of equality in the family, including joint responsibility and equal rights and duties for both spouses. The minimum age of marriage has been set at 18 for both men and women. The wife's duty of obedience to her husband was completely abolished. All divorce proceedings are now subject to judicial review, and there are additional types of divorce that women can initiate. In addition, and as discussed further, spouses may now develop contracts that allow for joint ownership of matrimonial property. (Musawah, 2009(c), pp. 32–33)

## 2. Shifts in caregiving responsibilities for children

Parental care can be broadly conceived as how parents work together or separately to take care of and make decisions about children, and how this affects the children. This can relate to guardianship and caregiving within a marriage or after divorce or the death of one parent.

Across Muslim cultures, and in other religious communities as well, caregiving is predominantly done by the mother and female relatives. But sharing caregiving between parents helps build close relationships between family members – spouses, parents and children, and extended family members. Research shows that when fathers are involved with their children, both boys and girls do better intellectually, emotionally, and socially across cultures and at all stages of their childhoods (Heilman, et al., 2017; Al Jaber, 2015). There are numerous proposals across Muslim cultures to involve fathers in caregiving from before the babies are born – starting with attending prenatal visits and supporting the mother during pregnancy (Heilman, et al., 2017; Hossain and Juhari, 2015).

Prevalent attitudes support the notion that Muslim fathers want to be more involved (Heilman, et al., 2017). For instance, in the 2016 IMAGES MENA survey, more than 60 percent of fathers in Egypt said they spend too little time with their children because of work, and almost half would support paid parental leave for fathers (El Feki, et al., 2017, pp. 74–75). Fathers, however, sometimes feel trapped; they want to be more involved in parenting, but feel overburdened by societal expectations that they should be the sole providers for the family (Khan, 2006).

Shared responsibility for caregiving between parents is recognized in Article 18 of the UN Convention on the Rights of the Child, which says, ‘States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. ... The best interests of the child will be their basic concern.’

In Musawah’s Global Life Stories Project, several women shared stories about how they partner with their husbands in caring for their children, or even become the primary breadwinner and allow the partner to become the stay-at-home parent.

◇—————◇  
*In our family, I am the one who goes out to work while my husband stays home to take care of our children. My husband does feel bad that he is not able to support the family but we believe that our nafaqah (maintenance) is God’s blessings. God gave more blessings to me so whatever I have, we share. ... I know how hard it is for him to take care of the kids for eight hours straight. ... I understand my husband needs his time alone too. I try to help by cleaning the kitchen before I go to work and I do what I can when I get home. ... Aside from taking care of the children and cooking, my husband does the laundry. He enjoys spending time with the children. Now the kids like to help him hang the laundry – they do that together every day. We try to lead by example so our children will also learn from us.*

**Nadia, 32-year-old married mother  
of three children from Malaysia  
(Malaysia Country Report, 2014, p. 10)**

◇—————◇

## 3. Increasing focus on best interests of the child<sup>6</sup>

The shift in thinking about parental caregiving is taking place not just at the level of social attitudes and norms, but also in the legal and policy realm. Increasingly, caregiving is discussed and determined at the legal and policy level in terms of a standard that focuses on ‘the best interests of the child’, with emphasis on each individual child’s interests instead of gendered and stereotyped ideas about children, fathers, and mothers.

This is a central principle in the almost universally-ratified UN Convention on the Rights of the Child, which uses the term ‘best interests’ multiple times. Article 3(1) states, ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’. Article 18 uses the best interests standard in relation to parents, stating

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6. This section was primarily compiled from Yassari et al., 2017, and WLUML, 2006.

that the best interests of the child will be the parents' or guardian's basic concern.

As previously mentioned, in classical *fiqh* and codified family laws, fathers are generally awarded *wilayah* and mothers are generally awarded *hadanah* during the child's 'tender years'. Mothers lose this right if they remarry or when the children reach a certain age, which varies according to the gender of the child and the different legal schools.

There have been shifts in these rules in recent years, primarily around *hadanah*. Mothers are now granted *hadanah* for longer periods, and rules around *hadanah* are the same for both boys and girls in a number of countries such as Algeria, Iraq, Mali, Pakistan, and Tunisia. In some countries, such as Indonesia, Jordan, Malaysia, and Morocco, children of a specified age are allowed to choose the parent who will provide physical care. In addition, laws and courts in some countries, such as Algeria, Mali, Morocco, Pakistan, and the UAE, are explicitly introducing the 'best interests of the child' standard as a way to determine *hadanah*.

Introducing this principle requires the courts to distance themselves from gendered stereotypes about parental roles and stereotypes about children themselves based on age, gender, or other attributes. Looking at the best interests of an individual child allows the court to focus on the child, rather than only the parents, and determine who is best suited to raise that particular child. It moves away from gendered assumptions about caregiving and about who is best able to provide for the child. It also allows courts to better balance the child's rights with the parents' rights and responsibilities in the context of the individual child. This is a huge paradigm shift.

In terms of the guardianship element, the paradigm shift has not yet begun for most countries. Guardianship is still generally the prerogative of the father, and fathers are often assumed to be the 'natural' guardians. There are a few exceptions. In Turkey, the Gambia, and Senegal, the laws do not discriminate between the father and the mother for custody or guardianship. In Tunisia, the father holds the prerogative of guardianship during marriage and after divorce, but if the mother is awarded custody then she holds guardianship with regard to the child's travel, education and financial affairs. The 2005 Algerian reform provides that after divorce, guardianship will automatically be awarded to whoever holds custody, which ends the divide between guardianship and custody. A recent legal reform in Egypt grants custodial divorced mothers what is called 'educational guardianship,' which gives them some decision-making rights with regards to their children's educational needs.

These laws have very practical and meaningful implications for both children and parents. If a mother holds custody but not guardianship, she may face obstacles in providing care because she will not be able to enrol the child in school or switch schools, arrange for surgery for the child, travel with the child, etc. The child can become a bargaining chip in the parents' marriage and divorce negotiations. A shift to the 'best interests of the child' principle also shifts the focus away from the parents' roles, responsibilities, and relationship to the rights of the specific child.

#### **4. Changes in matrimonial property regimes<sup>7</sup>**

The way that property is divided between the spouses at the time of divorce relates closely to how financial contributions and unpaid labour are valued within the marriage. Property regimes are not only based on religious sources, but also compiled from colonial law, constitutional law, human rights standards, secular laws, etc., and interact with customs, family structures, and the way property itself is constructed.

Many Muslim-majority countries have separate property regimes, where the spouses each retain ownership over assets they brought into the marriage, inherited during the marriage, and purchased during the marriage. Such countries include Bangladesh, Egypt, India, Jordan, Kuwait,

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7. For expansion of these ideas, see Sait, 2016; WLUML, 2006, pp. 316–318, 324–326.

Lebanon, Mali, Mauritania, Nigeria, Oman, Pakistan, Palestine, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, United Arab Emirates and Yemen.

This is in contrast to joint or community property regimes, where spouses retain assets brought into the marriage and inherited, but equally divide assets acquired during the marriage at its dissolution. Countries with joint property regimes include Indonesia, Malaysia and Singapore.

All countries generally acknowledge the autonomy of spouses to contractually agree on their spousal rights and duties. While in theory this is acceptable in relation to both personal and financial relationships, only a few countries have a codified legal framework that can be used to deviate from the statutory separate property regime. Thus, countries such as Tunisia, Morocco, Algeria, Maldives, and Turkey allow for a choice between joint and separate property regimes that couples must conclude explicitly at the time of marriage or any time they wish. In several countries where Muslims are a sizable minority of the population, they can choose between Islamic, customary, and secular regimes at the time of marriage.

In some countries, courts are allowed to divide the property in equitable terms based on a determination of the spouses' financial and non-financial contributions. This includes several Western and Commonwealth countries. Sometimes this can be complicated by transnational migration of the couple or one or both parties.

If matrimonial property is not divided equally, then the wife is likely to leave the marriage with little or no assets and no stake in the marital home. She does not gain from financial contributions she made that are not recorded in deeds, receipts, etc. – the type of contributions generally made by women (e.g. household expenses, food, clothing, school fees) – or unpaid labour she contributed.

The effects can be especially devastating in cases of unilateral divorce or when the woman is forced to apply for *khul'* divorce and thus lose her financial rights. This can leave women insecure in their marriages with few choices for divorce. For instance, a standardized marriage contract form was issued in Iran in 1982 that included the stipulation that a wife is entitled to half of the wealth acquired during the marriage, provided that the divorce is not initiated by her or caused through her fault, to which the spouse could agree. In practice, men in difficult marriages who did not want to share the marital wealth would refuse to initiate divorce but make life so miserable that the wives would have no choice but to forfeit her financial rights through *khul'* divorce (Mir-Hosseini, 2000).

There are several examples of countries in which property regimes are used to recognize women's small and large financial contributions and unpaid labour. The matrimonial property regime in Singapore and Malaysia is based on community assets of the married couple. The Malaysia and Singapore Muslim family laws state that a woman can have a share in the matrimonial assets based on her contributions as a wife and as a mother, which enable the husband to acquire assets. In both countries, courts implement this. If the woman has not financially contributed, she usually receives a third of the matrimonial assets. She can get more if she contributed financially, though she needs to prove these contributions.

In Indonesia, when people get married (even polygamous marriages), they join their property together as a community – the wife shares the property of the husband and vice versa. However, there is weak law enforcement, so the law is often not implemented. Even women heads of families may not get any property from the marriage when they are divorced.

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Focus groups in a Palestinian study found that most of the female salaried income earners pooled their salaries with their husbands. In these cases, women's salaries were either used towards 'consumption spending' on household needs, so the husband's salary could go towards acquiring household assets in his name, or women's salaries were used towards assets, but the assets were registered in his name. This means that women were contributing to assets implicitly or explicitly, but 'by law, the husband has full legal title to them [and i]n case of the dissolution of the marriage, women would have no legal right to any of the household's wealth that they helped create'. (UN Women, 2011, p. 117)  
◇—————◇

In other countries, couples can join property together through stipulations in the marriage contract. But stipulations are usually used for other purposes – such as the wife’s education or mobility, the wife’s ability to choose a domicile, etc. – and not for this purpose.

Morocco represents a recent shift that could be strengthened and used in other countries because it explicitly provides a way for couples to jointly own matrimonial property. In Article 49 of the 2004 *Moudawana*, each spouse is deemed to hold separate estates, like in many other countries. But Article 49 also provides that the couple may conclude a document separate from the marriage contract in which they agree on a framework for the management, investment, and distribution of assets that are acquired during the marriage. Public notaries must inform couples of this option at the time of the marriage. Upon dissolution, a judge in the absence of such agreement has discretion whether and how to divide the property acquired during the marriage by assessing each spouse’s contribution to the development of the family assets using the general rules of evidence.

The law therefore offers the explicit option for couples to adopt a joint property regime and the possibility that judges can divide matrimonial property evenly between the couple in the absence of an agreement. However, it is weak both in how it is written and in terms of implementation. The separate property regime is the standard, and the joint regime is an exception that must be adopted by the couple or awarded by a judge. A survey in the first years after the law was adopted showed that many couples are embarrassed to discuss finances at the time of contracting the marriage. While notaries are supposed to inform the couple, the survey indicated that this does not always happen and many couples do not know of the option. Although the judge can divide the property evenly, the law states that this division should follow standard rules of evidence, and many women do not have evidence of their contributions, especially regarding housework. In the first few years, judges had difficulties calculating the value of domestic work. (Association marocaine de lutte contre la violence à l’égard des femmes, 2008)

But a 2014 study by the Ministry of Family, Solidarity, Equality, and Social Development reports a shift in how the public views the article. Of the 1200 women and men surveyed, 84.7 per cent had a favourable view of article 49 and the equal distribution of marital assets acquired during the marriage at the time of the dissolution of the conjugal bond (Moroccan Ministry, 2016).

These developments related to matrimonial property regimes can have a significant impact on spousal rights and responsibilities. Implementing joint regimes would provide a way to recognize and value a variety of contributions to the household by either spouse, including large and small financial contributions as well as unpaid labour and caregiving within the household.

## **SECTION IV**

# **Solutions for Our Time and Place**

**Classical *fiqh* rulings and many contemporary family laws are premised on the idea that men are the sole providers and protectors of the women and children in their households. This idea is justified with reference to Qur’anic verse 4:34, and is invoked in relation to marriage.**

But as detailed above, *qiwamah* and *wilayah*, in the sense of male authority over females, are not Qur’anic concepts. Rather, they are human-made constructs that were developed by classical Muslim scholars working in the context of the gender norms and practices that were prevalent in their time. In practice, *qiwamah* and *wilayah* have been used to justify male dominance and to treat many women as perpetual minors. Under these concepts, women lack dignity, are vulnerable and insecure at different stages of their lives, and are deprived of opportunities to reach their full potential.

And as shown, social and economic conditions in the twenty-first century make it unrealistic and unjust to expect men to be sole providers and women obedient to them. It is unsustainable for families when roles are divided such that men bear the responsibilities of providing all financial contributions and making all decisions for the family. Men should not have to bear these physical, mental, and financial burdens alone, especially given that global macroeconomic forces may prevent them from achieving full and fairly paid employment. Women who work outside and inside the home and contribute financially or through unpaid labour should have equal legal recognition, rights, privileges, and an equal say in family decision-making. Women should not be excluded from the paid labour market and forced to squander their educational achievements in order to bear the primary burden of unpaid labour at home unless they choose to do so. Men should be able to enjoy the privilege and fruits of caregiving and connecting with their children. And children should have equal caregiving from both parents.

The disconnect between the laws, expectations, and lived realities of marriage and family life can lead to discord, anxieties, and injustice within families.

Many Muslim men and women, individually and within their families, want to structure their lives according to the teachings of their faith. But what are the basic values and teachings about family relationships within Islam? Many turn to family laws (with their *fiqh*-based construction of marital roles) to guide their understandings of rights and obligations within their family relationships.

But why do our laws and societal expectations centre on *qiwamah* and *wilayah* instead of key Qur’anic principles that the sacred text instructs as the foundation for marriage and gender relations, such as tranquillity (*sakinah*), love and compassion (*mawaddah wa rahmah*), that which is commonly known to be good (*ma’ruf*), justice (*’adl*), fairness (*qist*), kindness (*ihsan*), and consultation and mutual consent (*tashawur wa taradi*)?

**Musawah believes that a transformation of family relationships is necessary in the twenty-first century and possible from within Muslim tradition. We can and must shift our understanding of spousal and family relationships from one based on a hierarchical understanding of *qiwamah* – understood as men’s authority over women – to one based on equal partnership between spouses/parents, where they share responsibilities and rights in standing up for their families.<sup>8</sup>**

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8. Note that diagrams illustrating the shift from a hierarchical to egalitarian model of spousal roles are available in section I on page 19.

This transformation is possible through the efforts of multiple actors in a variety of sectors – public, private, community or not-for-profit, and at the individual and family level. The recommendations below are geared specifically towards these sectors operating in Muslim contexts, and the ways in which they can promote egalitarian relationships related to economics and caregiving within Muslim families.

## 1. Recommendations for states

States can promote egalitarian economic and caregiving roles within families through reform of laws and policies related to the family. Specifically, states can work towards the following:

### ◆ **Name both spouses as equal partners in the household**

Following law reforms in Morocco (2004), Algeria (2005), and Turkey (2001), states can specify that both spouses will be equal partners with equal rights and responsibilities towards each other and the household. States can enact laws and policies that encourage men and women to share unpaid household and care work within the home. The 2004 Moroccan Family Code (*Moudawana*) was reformed to promote a philosophy based on shared responsibilities, replacing the decision-making authority of the head of the family (Moroccan Personal Status Law of 1957). Spouses have mutual duties and rights to cohabitation, fidelity, respect and affection, the preservation of the interests of the family; mutual inheritance; shared responsibility between wife and husband for managing family affairs and children's education; consultation on decision-making regarding family affairs, children, and family planning; and good relations with relatives (article 51). The Algeria reform offers a similar list of mutual rights and responsibilities in article 36. The 2001 reform in Turkey is grounded in the concept of equality between spouses (article 41), with joint decision-making powers regarding the family (article 186).



### ◆ **Eliminate the link between maintenance and obedience**

The formula in which husbands provide maintenance and wives obey has no place in Muslim families of the twenty-first century. States can use the examples of Tunisia (1993), Turkey (2001), Morocco (2004), and Algeria (2005) as models for law reform. All eliminate this link and a wife's codified duty of obedience, even as some retain the husband's duty of maintenance. The 2005 Algeria reforms, for example, repealed the husband's duty of maintenance and the wife's duty of obedience and replaced them with mutual rights and responsibilities of the spouses. Under the Turkish reforms, the spouses both contribute to family financial needs through their labour and possessions. While Tunisia retained husbands' duty of maintenance, it included a provision that wives shall contribute to the household if they have the means. A number of other countries, like Bangladesh and Pakistan, do not codify a wife's duty of obedience.

### ◆ **Promote equitable matrimonial property regimes**

Promoting joint matrimonial property regimes over existing separate property regimes that generally favour husbands can equalize spousal relationships. In separate property regimes, women can easily be stuck with no assets upon divorce because men control the household's financial affairs, assets are predominantly put in men's names, and women's contributions are often invisible because they are the result of unpaid labour or used for consumable items such as food, clothing, household expenses, etc. Joint property regimes, by contrast, view the marriage as a financial partnership in which both spouses

contribute in ways they are best able and jointly own the resulting assets. This can provide more stability within the marriage, as the threat of divorce will not necessarily mean instant financial ruin for the wife. States can follow the lead of Malaysia and Singapore in their methods of dividing matrimonial assets upon divorce by taking into account wives' financial and non-financial contributions to the household. Indonesia and Morocco have potentially positive provisions that need stronger implementation and enforcement.

- ◆ **Standardize 'best interests of the child' as the principle to determine both *wilayah* (guardianship) and *hadanah* (physical care/custody) responsibilities**



States can follow the lead of a number of countries such as Algeria, Tunisia, Turkey, Indonesia, Gambia, and Senegal, which are moving to recognize the best interests of the child in awarding *hadanah* (physical care), and, to a lesser extent, *wilayah* (guardianship). This shifts the focus onto the individual child and his or her rights instead of the rights, needs, and dynamics of the parents. Providing guardianship rights to the primary caregiver – which can happen through laws, policies or even administrative procedures – makes it easier for this parent to care for the child. Ideally, states will follow Tunisia's model of bringing together both elements by determining physical care based on the best interests of the child, then granting guardianship to the primary caregiver assuming it serves the child's best interests.

- ◆ **Promote gender equality and egalitarian gender roles through educational systems and materials**

States can revise educational curricula to ensure that boys and girls learn from early ages that men and women are equally capable of performing all roles and responsibilities within households, and the importance of care work for society. Teachers should receive training to help them convey these messages and use gender-sensitive language within their classrooms. Women and girls can be encouraged to enter fields and professions that are traditionally male-dominated, and should be supported so they can work in those fields after graduation. Girls and boys should be taught throughout their years in school that both men and women can be providers, caregivers, and work within the home.

- ◆ **Hire, train, and retain women employees, and encourage the private sector to do the same**

States must take the lead in hiring more women, and can encourage or require the private sector to also hire women employees through laws, policies, or financial or tax incentives. Banking systems should be urged to put in place gender-sensitive policies that encourage women entrepreneurs. These steps will in turn help grow national and regional economies. Women must be hired at all levels, including decision-making positions. In addition, there must be prohibitions of discrimination against women – there should be no tolerance for violence and harassment in the workplace. Companies should also be encouraged to provide family-friendly policies such as parental leave, prohibitions against firing workers who take such leave, facilitation of breastfeeding of children, and assistance with child care. One example is the Private Sector Kuwait Labour Law (2010), which requires companies to provide paid and unpaid maternity leave, time for mothers to nurse their children when they return to work, and child care facilities if they have more than 50 female or 200 male employees.

- ◆ **Take steps towards better recognition, reduction, and redistribution of unpaid care work**

States should collect statistics on unpaid care work to better understand the distribution based on sex, age, and socioeconomic status and make it more visible. States can encourage families to redistribute unpaid care work within their households through laws or policies that promote flexible work schedules, parental leave for both parents, and affordable child care, and that encourage both men and women to use these benefits. They can work to provide public services such as quality and affordable child care or caregiving for the elderly or ill to help redistribute some of the caregiving work towards society.

- ◆ **Provide training programmes and social services related to household and caregiving skills**

Training both men and women on basic household and caregiving skills – managing the household, budgeting, shopping, cooking, cleaning, sewing and washing clothing, fixing mechanical, electrical, and plumbing problems, caring for babies and young children, etc. – can help couples recognize the variety of household tasks required, equalize the knowledge and skills of men and women within a household, and alter the stereotypical division of unpaid household and caregiving



tasks. Following up trainings with visits from social workers, midwives, or other specialists can help husbands and wives use the skills they have learned and encourage more equitable division of household labour. Such training can also be provided through school curricula, with lessons about the importance of sharing unpaid care work among all family members.

- ◆ **Address gender stereotypes within the media regarding roles, responsibilities, and capabilities of men and women within families**

States should encourage media of all forms, including entertainment, advertising, and information and communications, to promote positive role models of both men and women that are free from gender stereotypes. Media sources can be supported in monitoring themselves to ensure their programs and representatives present material that is free from discrimination and can help to change cultural and social attitudes regarding men's and women's roles, responsibilities, and rights.

## **2. Recommendations for the private sector**

Companies and business leaders have a responsibility to promote a healthy working environment for their employees and ensure the well-being of their employees so they can continue to be productive. Companies are also increasingly recognizing their responsibility to give back to the society and the countries in which they operate, which can provide them with safer and more stable environment for their business. Studies show that by focusing on gender parity, companies can increase their profits – and overall national and regional GDPs – and have a strong influence on societal norms, which in turn impacts communities and individual households.

Companies and business leaders can play a role in promoting egalitarian roles for men and women when they take the following measures:

- ◆ **Hire more women in the workforce and work to reduce the obstacles they face in accessing work opportunities**

While increasing numbers of women are working in Muslim contexts, there is still a large gender gap. Companies can make a commitment to hire more women. This in part requires helping women be able to take up paid employment by ensuring they have access to education and training programs, have knowledge of work opportunities that

are available, and are not overburdened by unpaid care responsibilities within the home. Hiring more women can help the companies as well, since reducing the gender gap in paid employment and increasing numbers of women in leadership roles can promote economic growth.

- ◆ **Address sexual harassment and other forms of violence traveling to/from and in the workplace**

Reducing sexual harassment within the workplace helps address power imbalances that are based on gender. This can have an effect on power imbalances in other parts of society – education, politics, etc. – as well as in the home. In addition to sexual harassment training, companies must promote a workplace culture in which women are respected and represented at all levels, individuals are promptly given feedback for inappropriate behaviour, and employees are encouraged to report incidents. Companies can also work to ensure their employees can safely travel to their workplaces without threats of violence, thus allowing women and their families to be more comfortable with them working outside the home.

- ◆ **Provide and promote policies and services that can assist parents or caregivers to succeed in the workplace and at home**

Policies and services to help families could include parental leave for both fathers and mothers; flexible and/or shorter working hours; on-site affordable child care that can be



accessed by both fathers and mothers. Family-friendly companies promote flexibility in working arrangements where possible and also provide for flexibility in terms of careers, so women can take periods of leave and then return to the workforce or can transfer to other divisions or positions that allow greater flexibility. Policies and services must be accompanied by the creation of a company culture in which employees are encouraged to actually use the benefits and are not disadvantaged if they do so.

- ◆ **Promote egalitarian roles in the workplace and home to counter gender stereotypes**

Companies can employ men and women in a variety of roles to demonstrate gender equality in practice. They can partner with communities and non-profit organisations on media campaigns that address gender stereotypes in the home, portraying men and women engaged in a variety of household and caregiving tasks to demonstrate that both can contribute to their households financially and in terms of unpaid labour.

### **3. Recommendations for communities, NGOs, and faith-based leaders**

Muslim communities, institutions and non-governmental organisations – including mosques, community centres, schools, housing associations, charitable organisations, capacity building and advocacy groups, etc. – and faith-based leaders can play a major role in promoting egalitarian roles, responsibilities, and rights within families. This can include both formal and informal groups and organisations, as well as faith-based leaders operating within traditional institutions and new outlets such as social media. Such groups and individuals have direct contact with individuals and families, and often have a great deal of influence over how community members choose to live their own lives and interact with others.

Communities and community leaders can take the following steps:

- ◆ **Address gender stereotypes regarding roles, responsibilities, and capabilities of men and women within their families**

Even when laws and policies change, practices may remain because of entrenched cultural and customary norms. Communities must work to explicitly address such beliefs and norms regarding roles, responsibilities, and rights in Muslim families. They must educate families on how sharing financial, caregiving, and household responsibilities equally can benefit both spouses and the entire family. This can be done through community events, media campaigns, educational forums, videos, outreach via social media, distribution of information, etc.

- ◆ **Develop curricula and conduct trainings on household and caregiving responsibilities**

Marriage can be stressful for young couples, especially when they are learning to manage their households during the transition. As discussed in the government recommendation section, couples do not always know the variety and scope of household and caregiving responsibilities, and simply assume that certain household responsibilities come naturally to men or women based on gender stereotypes. Community institutions can train both men and women on basic household skills, caregiving skills, and household management techniques, simultaneously emphasising how such responsibilities can be divided equally instead of along gender lines. The curricula can be used in classes and study circles within community centres and non-governmental organisations, and can be promoted for use in schools.

- ◆ **Provide education on egalitarian relationships and positive role models within Islam**

Many mainstream sources of education on Muslim relationships are based on gender stereotypes that promote male superiority and female submissiveness. But there are many other models from within Muslim texts and legal tradition. Community institutions and leaders can educate and promote egalitarian models of family relationships, values of respect, trust, love, compassion, and serenity within families, and peaceful means of resolving conflicts within marriages and upon separation or divorce. This can lead to stronger and more stable family relationships, healthier and happier individuals, reduction in domestic violence, and potentially lower divorce rates. Friday sermons at mosques can be an effective platform to promote these Qur’anic values towards family well-being, as can traditional and new media outlets.



- ◆ **Build cadres of female Muslim preachers and scholars who support and promote gender equality within Islam**

Muslim women have been scholars, teachers, and preachers since the seventh century CE, and should be encouraged and supported in the twenty-first century as well. New policies can be put in place to create more opportunities for women to become trained and work as jurists and to assume leading roles in religious institutions. In addition, systematic collaboration can be planned and encouraged between educational institutions in Islamic religious sciences and university departments in gender studies and family law to train female (and male) preachers and scholars who promote egalitarian readings of the Qur’an and Sunnah.

## **4. Recommendations for families and individuals**

Individual couples and families can also promote these values in their daily interactions with one another. This can facilitate transformation in marital relationships, leading to equality in marriage and a transformation of society.

These issues are addressed in the Qur'an and its view of marriage. In the Qur'an, marriage is defined as a solemn pact (*mithaq ghaliz*), with *mithaq* derived from *thiqa* (trust). This implies that the partners should think of the marital relationship as a serious one built on trust between the partners. In *Surah ar-Rum* 30:21, this partnership is based on affection (*mawwadah*), compassion (*rahmah*), and serenity (*sakinah*) for both spouses. *Surah al-Baqarah* 2:187 describes spouses as each other's garments. This shows how intimate husbands and wives are to each other, and the importance of sharing in the marital relationship.

Many women already recognize and aspire to such values in their marriages. In a study of rural women in Bangladesh, togetherness and peace in the household were found to be women's central goals in marriage, and women believe that having high quality marriages and peace in their households is necessary for a strong society (Ahmed, 2014). Similarly, women who shared their stories in Musawah's Global Life Stories Project spoke of how they and their spouses decided to view marriage as a partnership based on equality and mutual respect. As stated by Nadia from Malaysia,

*My husband and I do not think of our marriage in terms of the 'responsibility of a husband' and the 'responsibility of a wife' – to us, it is the responsibility of a household. We try to break these boundaries – things that a wife should do and things that a husband should do. Marriage is about keeping things in harmony. We decided early on in our relationship not to have this concept of 'your responsibility' versus 'my responsibility'. One cannot have equality in the house if we have this mentality. We are in it together.*

Spouses can take the following steps, drawing on ethical principles that are central to the Qur'an, Prophetic tradition, and universal values:

- ◆ **Provide together, protect together**

In today's increasingly integrated global economy and changing world of work, it can be difficult for one spouse to support the entire family alone. Both spouses are needed to provide for, protect, and care for each other, children, and other family members. Marital responsibilities of maintenance, protection, and care should be shared between spouses to promote the interests of the family as a whole, rather than being assigned on the basis of gender. The Prophet and his first wife Khadija together managed her business and mutually cared for and protected each other during times of hardship. Similarly, *Surah at-Tawbah* 9:71 commands 'the Believers, men and women' to be 'protectors (*awliya*) one of another'.

- ◆ **Value each other's bodies and sexual rights**



A couple is happiest when they are attuned to each other's physical and mental states, recognizing both men's and women's sexual rights and needs. There are many *ahadith* attributed to the Prophet that affirm women's sexual rights and the husband's duty to attend to them (Al-Bukhari 7, 62, 132; Tibb al-Nabawi 183, from Jabir ibn Abd Allah). When *Surah al-Baqarah* 2:187 says 'They are your garments and ye are their garments', it implies intimacy and mutual support between spouses in their sexual relations. In such intimate and caring marital relations, there can be no place for spousal violence.

- ◆ **Share decision making**

Spouses should work to share decision making in all aspects of family life, including matters related to sexual relations, finances, and how to raise and care for children, as demonstrated by the Prophet and taught in the Qur'an. The Qur'an enjoins husbands

and wives to practise reciprocal consultation and mutual consent ('*taradi wa tashawur*', *Surah al-Baqarah* 2:233) and to 'take mutual counsel together, according to what is just and reasonable' ('*wa tamiru baynakum bi ma'rufin*', *Surah al-Talaq* 65:6).

#### ◆ **Care and work together**

In many families, women are expected to bear the physical and mental burden of managing the household and caring for children, the elderly, or ill entirely on their own, even when they also contribute to the household financially. This contradicts *ahadith* about the Prophet's way of living and behaving with his wives, children, in-laws, and aging uncles. For instance, the Prophet's wife Aisha reported that the Prophet used to keep himself 'busy serving his family' and would 'sew his garment, milk his sheep and participate in household chores' (*Sahih al Bukhari*). Caregiving is also about comforting and helping one another to face the trials of life, which the Prophet and his wives did for one another.

Caregiving and managing the household are essential tasks within a family that are underappreciated and undervalued. Sharing caregiving and household tasks helps build close relationships between family members and helps children – both boys and girls – grow up with skills and knowledge to contribute to caregiving when they are older. Caregiving and providing for the family become less significant burdens when everyone mutually supports one another daily and in times of hardship. Family members can listen to each other's needs, ask for help without shame, and share the burden and joy of caring for family members and the household.



#### ◆ **Parent together**

Mothers are often the primary caregivers of children, and are often considered both in social norms and in custody laws to be best suited for this task. But gender equality in parenting and in the household generally has benefits for children as well as their fathers and mothers. Having mothers do most of the caregiving deprives fathers and children of close relationships with each other. Studies show the importance for both boys and girls of fathers being involved in terms of their school performance, social skills, etc. This is consistent with the changing attitudes of fathers who want to be more involved in parenting.

In addition, more countries need to follow the trends in several countries and move towards awarding custody and guardianship based on the best interests of the child. This obviously benefits the children themselves, and can also positively affect divorcing parents since they cannot use custody and guardianship as bargaining chips in their own negotiations.

#### ◆ **Communicate with each other**

Many evidence-based studies have shown that couples who have honest and in-depth discussions are less likely to have breakdowns in their marriages. After the 2004 reform of the Moroccan Personal Status Code, the Moroccan Ministry of Justice published a Practical Guide to the Law of the Family (2005). In explaining article 51 on the mutual rights and duties and spouses, the guide calls for 'building family affairs in a calm discussion and cooperation, solidarity and altruism' (p. 45).

To build healthier and happier relationships, families must talk and listen to each other – wife and husband, children and parents. Families must make space for open, honest,

and safe conversations, where everyone is encouraged to share alternative thoughts and opinions without fearing judgement.

- ◆ **Resolve conflicts with graciousness**

Disagreements and conflicts are a normal part of marital life. How spouses choose to deal with conflicts can determine whether their marriage remains healthy and whether their separation is amicable.

Resolving conflicts can be difficult within the Muslim marriage structure, since husbands hold a great deal of power simply through the threat of unilateral divorce, polygamy, or violence, which is sometimes erroneously justified by invoking some interpretations of Qur'anic verse 4:34. But the Qur'an in *Surah al-Baqarah* 2:229 calls couples to enact the overall ethical principle of *ihsan* (kindness) when severing marriage bonds (*tasrihun bi ihsan*). In disputes that arise from or at the time of divorce, the Qur'an instructs spouses to take ethically-oriented measures that observe justice ('*adl*), forgiveness and graciousness ('*afw* and '*fadl*, *Surah al-Baqarah* 2:237), and the common good (*ma'ruf*, *Surah al-Baqarah* 2:228). Such values can guide couples in their attempts to resolve all of their disagreements.

- ◆ **Support one another's full participation in society**

The Qur'an commands us – male and female, young and old – to read and to seek knowledge.



*Surah at-Tawbah* 9:71 directs both 'men and women' to be 'protectors (*awliya*)' one of another'. It is the responsibility of all humans, men and women, to manage and participate in the society in which they live, and to protect and support each other. God entrusted men and women with the equal responsibility of building human civilization (*Surah al-Baqarah* 2:30). God instructed both men and women to 'firmly stand out for justice' (*Surah an-Nisa* 4:135; *Surah al-Ma'idah* 5:8) and 'to enjoin the good and forbid the bad' (*Surah at-Tawbah* 9:71).

The Prophet is reported to have said that 'All believers are united, generous and forgiving to each other, just like the human body; as soon as one of its organs suffers from any disease, the whole body reacts with fever and pain' (Ibn Kathir, 2003, vol. 2, p. 350). Just like the human body, both men and women's contributions are needed for the smooth functioning of our Muslim societies.

**We can come together to promote these values. Religious leaders can promote them within their communities; policy makers can consider how they can be translated into law and public policy; media can disseminate them to a mass audience; academics can study how they exist within Muslim families; NGOs can incorporate them into trainings and advocacy on marriage as a partnership of equals.**

**Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs and realities of contemporary societies.**

**It's time for equality in the family.**

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# Annex 1: Glossary of Terms

Many of the terms used in Muslim family laws and practices are transliterated and/or translated from Arabic words. Because transliteration styles differ, different spellings for the same term are used in different places. One common example is *Shari'ah* / *Sharia* / *Shari'a* / *Shariat*.

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

**'adl:** Justice.

**'afw:** Forgiveness.

**'aqd al bay':** The contract of sale.

**'aqd al-nikah:** The contract of coitus, literally sexual intercourse. The term is used to refer to marriage contract in some Muslim-majority countries.

**fadl:** Graciousness.

**fiqh:** (lit. understanding, knowledge) The science of understanding *Shari'ah*; also used to refer to the huge amount of literature produced by Muslim jurists.

**hadanah / hadinah:** In the context of this paper it means custody. Mothers or female relatives of the child, are generally assigned the role of the *hadinah*, i.e. the one providing physical custody and care for the child.

**hadith:** (lit., report, account, statement) In the Islamic tradition, a *hadith* is a report about what Prophet Muhammad said, practised, approved or disapproved. According to the Sunni approach, a *hadith* report consists of two parts; the first gives a list of narrators of the report and the second part the text. The jurists and the collectors of *hadith* differed in their criteria about the normativity of a *hadith*.

**'ibadat:** A category of *fiqh* rulings that deals with ritual and spiritual acts.

**'iddah:** (lit. counting) Waiting period that a woman must observe before she can remarry of about three menstrual cycles or three months if she is in menopause, or until she delivers (for a divorced woman), or four months and 10 days (for a widowed woman).

**ihsan:** Kindness.

**ijab:** In the context of marriage contract it means the offer made by the woman or her guardian to the husband, or by the man or his guardian to the wife

**khul':** Divorce by redemption initiated by the wife, generally through payment or compensation to the husband.

**ma'ruf:** A Qur'anic concept that refers to that which is commonly known to be right and just.

**mahr:** Dower, or the goods and/or cash due from the groom to the bride as part of the marriage contract. It may be given at the time of the marriage ceremony or promised to be paid at a later date or be paid upon divorce or the death of the husband, or divided into prompt and deferred portions.

**maslahah:** (lit. benefit or interest) A juristic concept that is used to inductively derive a ruling based on the interest of the individual or the community.

**mawaddah:** Qur'anic concept that means love.

**mithaq ghaliz:** The word *mithaq* is derived from *thiqa* (trust). In the Qur'an, marriage is defined as a solemn pact (*mithaq ghaliz*).

**mu'amalat:** A category of *fiqh* rulings that deals with social and contractual acts.

**nafaqah:** Maintenance of wife during marriage, and, if she is divorced, throughout the *'iddah* period, including shelter, food and clothing.

**nushuz:** Marital discord caused by either spouse.

**qist:** Qur'anic concept that means fairness.

**qiwamah:** Juristic concept that legitimizes men's authority over women. This concept entails a set of obligations for men and women in marriage: men are supposed to provide for and protect women and children; women in turn must obey men.

**qubul:** In the context of marriage contract it means the acceptance by the husband of the bride's offer, or the acceptance by the wife of the groom's offer (see: *ijab*).

**rahmah:** Qur'anic concept that means compassion.

**sakinah:** Qur'anic concept that means serenity.

**Shari'ah:** (lit., water source, the way, the path) The path or way given by God to human beings, the path by which human beings search God's Will. Commonly misinterpreted as 'Islamic law', *Shari'ah* is not restricted to positive law per se but includes moral and ethical values and the jurisprudential process itself.

**Sunnah:** (lit. the way or course or conduct of life) The term refers to the example of the Prophet Muhammad embodied in his statements, actions and those matters that he silently approved or disapproved as reported in *hadith* literature. *Sunnah* is acknowledged as a primary source of Islamic law after the Qur'an.

**ta'ah:** Obedience.

**talaq:** Husband's unilateral and extrajudicial right to terminate the marriage contract.

**tamkin:** Husband's right to unhampered sexual access to his wife.

**tashawur wa taradi:** Qur'anic concept that means consultation and mutual consent.

**wali:** Guardian (for marriage) or the person who has the authority to contract marriage on behalf of the bride; this role is to be undertaken—according to some schools of law—by the father, paternal grandfather or other male relative.

**wilayah:** Juristic concept that refers to the right and duty of male family members to exercise guardianship over their dependent wards (female or male). This often translates into fathers having the right of guardianship over their daughters in contracting their marriages, and the privileging of fathers over mothers in guardianship of their children.





This thematic paper examines economic and parental rights and responsibilities in Muslim families using the holistic Musawah approach, which integrates Islamic teachings, international human rights principles, national guarantees of equality, and realities of women's and men's lives today.

The paper argues that society as a whole would benefit if families did not adhere to a rigid framework for gender roles. Sharing family responsibilities can prevent discord, anxieties, and injustice within families, thus strengthening family stability and influencing the broader society. Properly valuing unpaid labour and equalizing household and caregiving work would allow women increased opportunities in the formal economy, which can boost national and regional economies. Encouraging and enabling men and women to parent children equally can enhance children's physical, intellectual, psychological, and social development.

States, the private sector, communities and NGOs, faith-based leaders, and individuals and families should work collectively and individually to reform Muslim family laws and reshape family relationships in a way that is true to the Qur'anic ethos and reflects the needs and realities of today's societies.

Musawah ('Equality' in Arabic) is a global movement focused on promoting equality and justice in Muslim families. Launched in 2009, Musawah seeks to link scholarship with activism to bring fresh perspectives on Islamic teachings and to contribute constructively to the reform of Muslim family laws and practices. Musawah believes that equality and justice in the family are true to the Qur'anic ethos, possible within Muslim legal tradition, and necessary given the contemporary realities of Muslim women and men.



**musawah**

For Equality in the Family

[www.musawah.org](http://www.musawah.org)