



CEDAW

and Muslim Family Laws

The United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW' or 'the Convention') is a human rights treaty ratified by almost all UN member states that aims to end discrimination that women face in all areas of their lives.

Despite their participation in the drafting of the Convention, some governments argue that CEDAW or certain CEDAW provisions cannot be implemented in their countries for a variety of reasons that relate to Islam and Muslim laws. For instance, they may claim that CEDAW is incompatible with *Shari'ah* and that laws or practices cannot be changed because they are divine. But Islam cannot be used to justify discrimination against women.

Musawah submits that full implementation of CEDAW is possible in Muslim contexts, as core principles and values of Islam and CEDAW — including equality, fairness, and justice — are fully compatible. Laws and practices governing Muslims can and are being reformed to reflect these values. The reform of laws and practices for the benefit of society and the public interest has always been a part of Muslim legal tradition.

What is CEDAW?



What is the history of CEDAW?

CEDAW was adopted by the United Nations General Assembly in December 1979, and took effect in September 1981 after it had been ratified by 20 countries.

Some claim that CEDAW was drafted by 'Western' powers and imposed upon countries of the Global South, including Muslim-majority countries. In reality, representatives of Muslim-majority states were active participants in the CEDAW drafting process. CEDAW was drafted over a number of years by working groups and committees composed of representatives of different countries and regions. About one-third of delegates on any given committee were from Muslim-majority countries.

Records of the drafting process demonstrate that Muslim delegates from Egypt, Indonesia, India, Iran, Pakistan, and Senegal in particular played key roles in drafting CEDAW.

In fact, records show collaboration of delegates across religions and global divides. All delegates – and not just those from Muslim-majority countries – were concerned about ensuring compatibility between the Convention and their countries' constitutions and national laws (whether religious or not). Drafts of the articles were put before governments for their approval at various stages of the process, and there were few objections from Muslim-majority governments.

The human rights system in general and CEDAW in particular were created with the involvement of Muslim-majority countries and representatives, taking their contexts and concerns into account.

Who is involved in CEDAW?

CEDAW has been ratified by **189 countries** – all of the UN member states except Iran, Palau, Somalia, Sudan, Tonga, and the United States. Once a country ratifies CEDAW, it is obligated to work towards implementation of CEDAW's provisions in its constitution, laws, policies, and practices to ensure that discrimination against women is redressed.

The **Committee on the Elimination of Discrimination against Women** ('Committee') is made up of 23 women's rights experts from around the world. The Committee oversees implementation of CEDAW and provides interpretations of the terms of the Convention in periodic General Recommendations. It also hears individual cases and conducts inquiries into systemic violations of women's rights for those countries that have ratified the Optional Protocol to CEDAW.

Non-governmental organisations (NGOs) can provide information when governments report to the Committee through shadow or alternative reports and oral statements during CEDAW Sessions. **NGOs or individuals** can also submit communications or evidence of systemic rights violations under the Optional Protocol to CEDAW.

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States that ratify the CEDAW Convention commit to work towards full implementation of its provisions. This is monitored by the CEDAW Committee, a body of women's rights experts. NGOs may provide information to the Committee about how States are fulfilling their obligations.

What are reservations to the Convention?

When States ratify the Convention, they may enter 'reservations' or make declarations that they will not be bound to specific articles or provisions. Reservations that are against the 'object and purpose of the Convention' are not allowed.

Of the 57 Organization of Islamic Cooperation (OIC) countries, 32 ratified without reservations to the substantive articles (articles 1-16) or have since removed such reservations. Sixteen OIC countries referred to Islam, Islamic law, or *Shari'ah* as a reason for reservations on substantive provisions.

32 OIC COUNTRIES

have no reservations to the substantive articles

Even though reservations are permitted, the CEDAW Committee has stated: 'Neither traditional, religious or cultural practice nor incompatible domestic laws and policies' can justify violations of the Convention. The Committee has also stated that 'reservations to reservations to article 16 [on marriage and family life], whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn'.



What are the core principles and provisions of CEDAW?

The core principles of CEDAW are **non-discrimination**, **State obligation**, and **substantive equality**:

◆ Non-discrimination

CEDAW takes a **broad view of discrimination** that includes both actions and failure to act, whether the action or omission has the intent or purpose to discriminate or simply has the effect of discriminating against women.

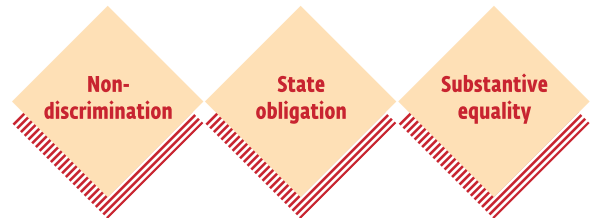
◆ State obligation

CEDAW requires that States **actively condemn discrimination** against women and **work to eliminate discrimination** in laws, policies, and practices, whether committed by state or private actors; **actively promote equality** between men and women; and **put in place 'temporary special measures'** that can help address historical discrimination and accelerate actual equality.

◆ Substantive equality

CEDAW's vision of equality goes beyond the formal approach, which treats all people identically regardless of their background. CEDAW advocates both **equality**

of opportunity – where women are given equal opportunities and access to those opportunities, and this is ensured by laws, policies, and institutions – and **equality of results** – where women can actually experience equality with men in their private and public lives.



CEDAW **Articles 1–6** cover these core principles and the general obligations of States to achieve non-discrimination and substantive equality. **Articles 7–16** cover specific issues related to areas of public and private life where women face discrimination. **Articles 17–30** establish the CEDAW Committee and outline the mechanisms through which the Convention operates.

The core principles of CEDAW are non-discrimination, State obligation, and substantive equality. CEDAW specifically addresses issues of gender stereotyping, sex trafficking, political and public life, nationality laws, education, employment, health care, women's participation in economic and social life, rural women, equality before the law, and marriage and family relations.

ARTICLES 1–6

CORE PRINCIPLES AND GENERAL OBLIGATIONS

- ◆ Discrimination (*Article 1*)
- ◆ Policy Measures (*Article 2*)
- ◆ Guarantee of Basic Human Rights and Fundamental Freedoms (*Article 3*)
- ◆ Special Measures (*Article 4*)
- ◆ Sex Role Stereotyping and Prejudice (*Article 5*)
- ◆ Prostitution (*Article 6*)

ARTICLES 7–16

SPECIFIC ISSUES

- ◆ Political and Public Life (*Article 7*)
- ◆ Representation (*Article 8*)
- ◆ Nationality (*Article 9*)
- ◆ Education (*Article 10*)
- ◆ Employment (*Article 11*)
- ◆ Health (*Article 12*)
- ◆ Economic and Social Benefits (*Article 13*)
- ◆ Rural Women (*Article 14*)
- ◆ Law (*Article 15*)
- ◆ Marriage and Family Life (*Article 16*)

ARTICLES 17–22

COMMITTEE AND REPORTING PROCEDURE

ARTICLES 23–24

EFFECTS ON STATES PARTIES

ARTICLES 25–30

ADMINISTRATION OF CONVENTION



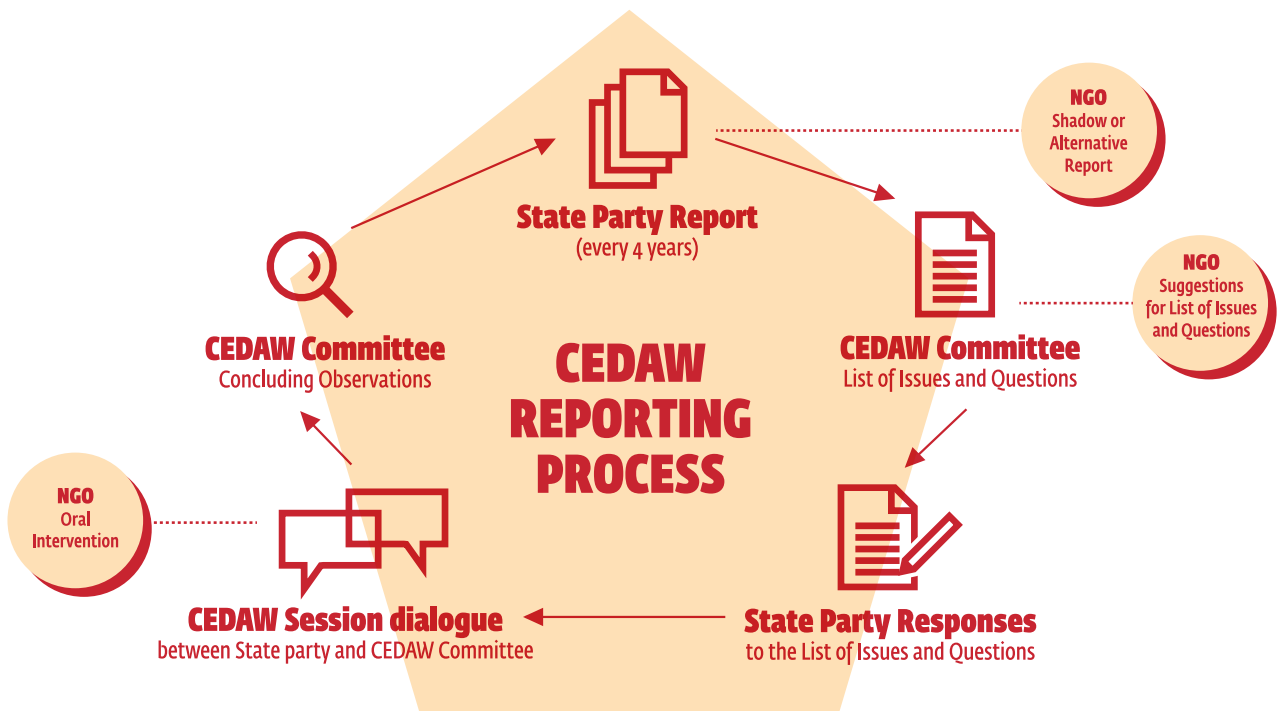
How does the CEDAW reporting process work?

Once a State ratifies the Convention, it must provide a **State party report** to the CEDAW Committee **within one year** and an updated report **every four years** after that. A working group of the Committee reviews the written report and asks the State party to provide additional responses to a **List of Issues and Questions**.

The Committee then meets with representatives of the State party in Geneva during a **CEDAW Session** to discuss the situation in the country and clarify the report and

responses. The Committee issues a set of **Concluding Observations** with comments and recommendations for action over the next four years.

Non-governmental organisations (NGOs) can provide input into this process by submitting a **shadow report** or **alternative report** that comments on the State party report; making suggestions for what the Committee could include in its List of Issues and Questions; and giving an NGO Oral Intervention during the CEDAW Session.



CEDAW and Muslim Family Laws

Article 16 of CEDAW, which addresses marriage and family life, is one of the articles that has received the greatest number of reservations from OIC governments. States parties often argue that they cannot implement the Convention for specific issues related to marriage and families because the issue relates to Muslim laws or *Shari'ah*, or because they do not want to interfere with the cultural rights of Muslim-minority communities.

However, several Muslim-majority countries and countries with Muslim-minority communities have reformed part or all of their Muslim family laws in ways that are more in harmony with the Convention.

Several have also lifted reservations on selected articles. This in itself demonstrates that it is possible to reform laws that are based on Muslim legal tradition, and that such laws and policies can evolve over time.

In 2011, Musawah published *CEDAW and Muslim Family Laws: In Search of Common Ground*. This publication documents the ways governments use Islam to justify non-compliance with CEDAW provisions, offers responses based on Islamic teachings, human rights standards, and lived realities, and provides examples of rights-based laws and policies in Muslim-majority countries.

Musawah believes that Islamic teachings and universal human rights standards, including CEDAW, are fully compatible, and that both are dynamic and constantly evolving.

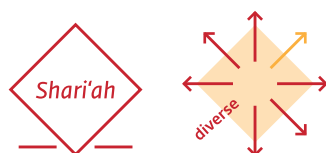
EXAMPLES:

Responses to State Party Reasons for Non-compliance

How do States parties justify non-compliance with CEDAW provisions, and how does Musawah respond?

State party argument:

Shari'ah or 'Islamic law' is the primary source of legislation or principal source for defining the rights, duties, and responsibilities of men and women. The State cannot implement CEDAW provisions if they are inconsistent or in conflict with Islam or the *Shari'ah*.



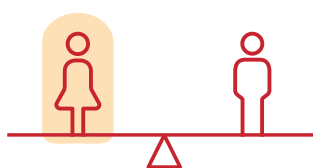
Musawah response:

Much of what is today called 'Islamic law' or '*Shari'ah* law' is actually *fiqh* – interpretations of *Shari'ah* made by Muslim scholars. In classical Muslim legal tradition, there were many different schools of law (*madhahib*) that reflected the many different positions of classical scholars. Such diversity (*ikhtilaf*) was recognized, respected, and celebrated in Muslim legal tradition, which is a rich body of jurisprudence. There has never been a fixed and unitary version of what is called 'Islamic law'.

Current Muslim family laws and policies are human interpretations of the divine revelation, drafted by legal experts and adopted as law by legislators. As human interpretations, these laws and policies are fallible, and therefore can and have been frequently changed – especially if they promote injustice, harshness, or harm. Equality, justice, compassion, and mutual respect, which are primary objectives within *Shari'ah* and also core values in CEDAW, should drive the development of all Muslim laws and practices.

State party argument:

Islam provides sufficient or even superior justice for women or complementary rights and duties between men and women.

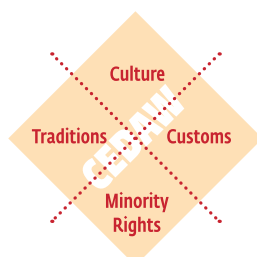


Musawah response:

Islam provided revolutionary rights for women and uplifted women's status at the time of revelation in the 7th century (CE). Many of the revelations in the Qur'an were reform-oriented, transforming pre-Islamic customary laws and practices to eliminate injustice and suffering. But this trajectory was halted over the next 300 years when *fiqh* schools emerged and solidified. Classical jurists interpreted the texts in light of the values and norms of their own time and contexts. But these centuries-old *fiqh* interpretations do not reflect the original Qur'anic view of marriage, nor do they reflect reality for most men and women today. The trajectory towards justice that began at the time of the Prophet (pbuh) must begin again, given the changing realities on the ground.

State party argument:

Culture, customs, or traditions, including respect for minority rights, prevent full implementation.

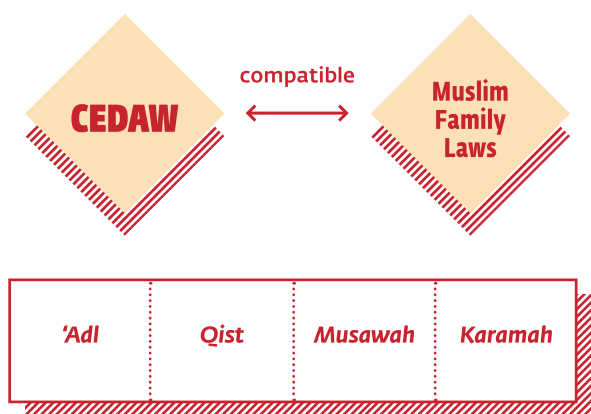


Musawah response:

Governments frequently claim, especially Muslim-minority contexts, that: 'The community is not ready for change'. This occurs even when laws for the majority population recognize equality between women and men. But equality can usually be fully recognized within cultures and traditions. Culture and customs – including Muslim legal tradition – are rich, flexible, and dynamic, providing tools that can be used for reform. States parties must work towards justice and equal rights for all of their citizens.

THE WAY FORWARD: Engaging with CEDAW

Musawah holds that in our time and our context, there cannot be justice without gender equality. CEDAW can provide a useful mechanism for countries on their path towards justice. Some Muslim-majority governments have resisted implementing CEDAW based on religious arguments; Musawah asserts that CEDAW and Muslim family laws can be compatible.



All governments, including Muslim-majority governments, should be able to fully implement CEDAW because:

- ♦ Justice and fairness (*'adl, qist*), equality (*musawah*), and dignity (*karamah*) are intrinsic to Islamic teachings. These values must be reflected in laws made in the name of Islam.
- ♦ The Qur'an sets Muslims on a trajectory of justice for all people, and this trajectory needs to be resumed by governments today. A great number of tools exist within Muslim legal tradition that allow for change.
- ♦ Family laws that perpetuate inequality in the family cannot be justified on religious grounds. State laws are not divine – they are based on human interpretations and selective codifications of religious texts and therefore can be changed.
- ♦ When religion is used as a source of law and public policy, every citizen has the right to engage in open discourse and a search for solutions towards a more just, fair, and compassionate society.

If 'Islam is the solution', if Islam is relevant for all times, and if Islam is to bring justice, then it is imperative for governments to search for new solutions to the problems that women and men face in the modern world. Laws and practices can and have changed in numerous Muslim contexts to be more equal and just. This is possible because of the compatibility and harmony of Qur'anic principles, reformist Islamic jurisprudence, and human rights.

How can we work together to build egalitarian Muslim societies?



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