

ANNEXE 1: MUSAWAH JUSTIFICATIONS FOR REFORM

CODIFICATION AND REFORM OF MUSLIM FAMILY LAWS MUST BE BASED ON EQUALITY

Musawah believes it is necessary and possible for the State party to codify a Muslim family law that complies with international treaty obligations.

Musawah uses a four-pronged **Framework for Action** to develop Muslim family laws based on the principles of equality and justice. The Framework grounds all arguments in: (1) diversity of Muslim jurisprudence and legal concepts; (2) international human rights standards; (3) national laws and constitutional guarantees of equality; and (4) contemporary lived realities.

Juristic tools and concepts exist within Islamic legal theory that can be used to formulate equality-based Muslim family laws:

- **First**, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh*, jurisprudence or human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practised in Saudi courts today, are in fact, *fiqh* – jurisprudence. It is not divine law. It is human-made, fallible and changeable.
- **Second**, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, given changing times and circumstances.
- **Third**, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law. Principles such as *maslahah* (public interest), and *istihsan* (choosing the best opinion among many) must be used to meet the demands of equality and justice today.
- **Fourth**, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These values exist in the Qur'an and Muslim legal tradition, and they correspond with contemporary human rights principles.

These rights-based principles and scholarship that exist within Islam, the State party constitutional provision that recognizes equality and non-discrimination, and most importantly, the changing realities of women's and men's lives today in Saudi Arabia, necessitate the urgent need for an egalitarian family law based on equality between spouses.

