

Lebanon's Reservations to the Convention on the Elimination of all Forms of Discrimination Against Women

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By adopting the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) on January 18, 1979, the United Nations General Assembly made a vital contribution to the promotion of women's rights and their equality with men.

This Convention occupies an important position among other international conventions which aim at safeguarding human rights, particularly women's rights, because it covers all rights and establishes equality of the sexes in the family as well as in the social sphere.

Moreover, and in comparison with other documents, CEDAW accomplished important progress through the inclusion of special unusual articles. It stipulates for the responsibilities of member states to eliminate discrimination against women by measures such as calling on national constitutions and other legislations to embody the principle of equality between men and women through appropriate measures, exceptional measures as well as temporary ones, in order to expedite the process of achieving equality. Foremost among these measures are those that effectuate real changes in social and cultural norms that discriminate against women and prevent them from exercising their rights.

The Convention also stipulates equal rights between men and women in public and political life, namely in education, work, health services, financing, social security, the right to conclude contracts, as well as the equality of men and women before the law and within the family.

Indeed, CEDAW does not merely recognize women's rights and their equality with men. It demands that member states commit to the implementation of all articles, taking necessary steps to eliminate discrimination in all its shapes and forms.

In order to follow up on the commitment of member states, the Convention stipulates in Article 17 the establishment of a Committee for the Elimination of Discrimination against Women. Every four years member states must report to the Committee what legal, legislative, and administrative steps they took towards achieving equality. They must also state the difficulties and obstacles they faced in the process.

In spite of the obvious increase in the number of states which have ratified the Convention, CEDAW remains the Convention with the highest number of reservations, pre-

sented particularly by Arab states. Although in Article 28(a) it allows states, upon ratification or accession, to voice reservations – namely to not abide by one or more of the articles – it nevertheless does not accept any reservations that are incompatible with the object and purpose of the Convention.

Lebanon ratified CEDAW on July 26, 1996. The Lebanese Constitution guarantees equality of the sexes. Paragraph (b) of the introduction added on September 21, 1990 states that, being a founding member of the United Nations, Lebanon is committed to abiding by all its charters, particularly the International Declaration of Human Rights, and that the state must embody the principles of these charters in all fields and domains.

Paragraph (c) of the introduction also stipulates equality among all citizens without discrimination or favoritism.

Nevertheless, Lebanon voiced reservations about some fundamental articles of the Convention: Paragraph 2 of Article 9 dealing with equality in matters of citizenship laws, Paragraphs (c), (d), (f), and (g) of Article 16 dealing with equality in family laws, and the first paragraph of Article 29 dealing with settling disputes between member states.

What follows is an investigation of the reasons that lie behind the reservations Lebanon introduced concerning the Convention, with special emphasis on those related to Articles 9 and 16.

Concerning Nationality

The first paragraph of Article 9 of CEDAW requires all member states to grant women rights equal to those granted to men in matters of citizenship acquisition. Accordingly, women must have the right to change their nationality and preserve, rather than automatically relinquish it, when they marry a foreigner or when their husband changes his nationality.

Also, the second paragraph of Article 9 stipulates securing women equal rights in transferring their nationality to their children.

Citizenship laws in Lebanon follow Decree 15 of January 19, 1925, which was amended by a decree on January 11, 1960. In accordance with Article 6 of this decree, a woman remains Lebanese when she marries a non-Lebanese unless she requests her removal from the census registry in order to acquire the citizenship of her husband.

Meanwhile, Article 7 stipulates that: “having renounced

her nationality upon marrying a non-Lebanese, a woman may upon her request regain the Lebanese nationality once her marriage is terminated.”

Therefore, Lebanon does not comply with the content of Paragraph 1 of Article 9 of the Convention and has entered a reservation to Paragraph 2 of that article since Lebanese law does not allow a Lebanese woman who is married to a non-Lebanese to transfer her nationality to her children.

In accordance with Article 1 of Decree 15 a Lebanese is:

1. Someone born of a Lebanese father.
2. Someone born on the territory of Greater Lebanon and who does not by birth have the right to the citizenship of another country.
3. Someone born of unknown parents on the territory of Greater Lebanon, or whose parents do not possess a known nationality.

Hence, and following this first article, Lebanese law defines kinship exclusively through patrilineage, ignoring the right of the Lebanese woman to grant citizenship to her children, even if their birth occurs on Lebanese soil.

There are two exceptions to this:

In the case of an illegitimate child of Lebanese mother and unknown father (as per Article 2 of Decree 15); and in keeping with Article 4 of Decree 15, a non-Lebanese mother who was naturalized through marriage is allowed to grant her non-Lebanese under-age children from a previous marriage citizenship upon the death of their father. It is important to note here that this article grants this right to Lebanese mothers of non-Lebanese origin only.

In spite of exceptional court rulings, which interpreted Article 4 to include under-age children of mothers of Lebanese origin too, most other rulings persistently prevent mothers of Lebanese origin, under similar circumstances, from granting their children citizenship.

This makes Lebanese law extremely strict in matters of citizenship. Not only does it grant only naturalized Lebanese mothers the right to transfer their citizenship to their children, depriving mothers who are originally Lebanese from having this right, but it also ties the rights of children to laws that discriminate between men and women, impacting them positively if their father is Lebanese, and negatively if their Lebanese parent is the mother. Such discrimination that impacts rights derives from trends of social inequality between men and women.

Moreover, upon marrying a Lebanese, a non-Lebanese woman becomes Lebanese herself one year after the official registering of the marriage, according to Article 5 of Law 15. Her children are granted full civil and political rights whether they reside inside or outside Lebanon, even if they have never visited the country. In comparison, the child of a Lebanese woman married to a non-Lebanese is denied his/her natural rights. He/she is considered a foreigner, without access either to free schooling, free higher education, or free health care, is denied access to employment in high-ranking public positions, and is prevented from running for public office, voting, as well as being able to own property except under strict conditions.

Additionally, a Lebanese mother is not allowed to include her under-age children in her passport even if they reside with her in Lebanon, and has to go through endless bureaucratic procedures that compel non-Lebanese husbands and children to renew their residence card annually.

It is noteworthy that, as of 2003, the directorate-general of General Security has granted long-term residence permits or 'courtesy residencies' to Lebanese women's non-Lebanese husbands and children, regardless of their nationality. However, this was a mere logistical improvement considering the exorbitant fees required for such permits, making most people unable to benefit from them.

Women's disadvantage when it comes to granting their children the nationality can be traced back to inherited traditions and customs which consider the father to be the head of the family. This primacy of the patrilineage prevalent in all regions must be altered now that Lebanon has ratified the Universal Declaration of Human Rights.

Since the certain and unquestionable truth is that maternal blood ties and other ties with the mother are much stronger than those with the father, it is unacceptable to sever the citizenship ties between mother and child.

Lebanese society has witnessed a humanistic and particularly feminist movement to eliminate all forms of discrimination against women that impinge on all social and political strata. However, one issue repeatedly raised in the face of those demanding a change in citizenship laws is that of the Palestinian refugees. The argument goes as follows: if the laws are changed, Palestinian men might seek marriage with Lebanese women with the intention of securing for their offspring the Lebanese citizenship, thereby helping their perma-

nent settlement in Lebanon. This, of course, is a specious argument whose outcome is the withholding of women's rights granted in the Universal Declaration of Human Rights. For, if it were true, then it should cause legislators to be equally wary of the outcome of Lebanese men marrying Palestinian women, whose children would thus acquire the Lebanese citizenship.

No matter what the pretexts are, the inequality in citizenship between men and women is a breach of the Lebanese Constitution, which otherwise guarantees equality among all citizens. The inequality is also a breach of international charters that stipulate the full equality of the sexes.

Therefore, and in accordance with the Constitution and international charters, citizenship laws must be changed to render Lebanese women and men equal in granting their citizenship to their children and non-Lebanese spouses.

Concerning Family Relations

Article 16 of the Convention, concerning equality in the family, is of pivotal importance. It states:

1. All member states shall take all appropriate measures to eliminate discrimination against women in all matters of marriage and family relations so that equality of the sexes is ensured:
 - a. The same right to enter into marriage
 - b. The same right to choose freely a spouse and to enter into marriage only with their free and full consent
 - c. The same rights and responsibilities during marriage and at its dissolution
 - d. The same rights and responsibilities as parents, regardless of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount
 - e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights
 - f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. In all cases the interests of the children shall be paramount
 - g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation. Same rights in owning, care-taking, running and disposing of property

Lebanon has reservations over Paragraphs (c), (d), (f), and (g) of this article.

Lebanon is a country that entrusts its personal status laws to religious legislation. According to the Constitution, which was passed down from the French Mandate and was introduced on May 23, 1926, the Lebanese are divided into religious sects, each with its separate legislature, administrative autonomy, and the right to legislate and deliberate in matters concerning personal status laws. Article 9 of the Constitution states:

Freedom of worship is absolute. The state in its duty towards God almighty respects all religions and sects and safeguards the freedom of religious rituals in as far as they do not disturb public order. The state also safeguards to all people their various sectarian identities and respects personal status laws and religious interests.

The Lebanese are divided into 18 religious sects each having its own set of laws and regulations. This situation contradicts the principle of equality among all Lebanese that figures in other articles of the Constitution, and goes against the general principles stipulated in international charters, especially the Universal Declaration of Human Rights observed in the introduction of the Lebanese Constitution.

While all personal status laws differentiate between the Lebanese based on religion and sex, women remain the weakest and most disenfranchised within each sect. This inequality in personal status between men and women begins with marriage, persists throughout it, and continues even after its dissolution.

What follows is an exposé of the major violations of women's rights found in personal status laws and which are in breach of the principles of equality and of international charters:

- Defining marital age goes against international charters. In the cases of Sunnis and Shiites, this age is set as low as nine years.
- Marriage between persons of different religions is one of the many prohibitions for the Christian Orthodox church, while Muslim sects prohibit the marriage of Muslim women to non-Muslims.
- In matters of marriage contracts, Muslim sects equate one male witness with two female witnesses, while the Druze and Armenian Orthodox sects require that both witnesses be male.
- Most sects base marriage on obedience rather than on mutual respect. The man is considered to be the head of the family with a given right to take all decisions, while wives are required to obey, submit, and care for the household. Some sects even grant the man the right to

control his wife's mobility, keeping her at home and returning her by force if she escapes.

- It is not a woman's right to be custodian of her children. Rather, this is a role delegated to her by her husband who has the right to claim the children when they reach a certain age. Moreover, a woman might lose the right of child custody based on reasons that demean her and greatly restrict her freedom (e.g. a second marriage contract, unfit to raise children, bad behavior).
- Child custody is basically the father's prerogative. In the event of the father's death, custody is relinquished to the mother in only very few sects; in the majority of sects it is passed to the paternal grandfather, uncle or other male patrilineal kin.
- Polygyny is authorized in both Sunni and Shiite sects.
- Sunni and Shiite men are allowed to divorce their wives without recourse to the court. For many sects, men and women are not equal when it comes to reasons for divorce.
- Marriage between persons of different religions is an obstacle to inheritance. Moreover, a woman has an unequal and unfair share of the inheritance in both Sunni and Shiite sects.

It is important to add that discrimination against women inside the family goes as far as legitimizing domestic violence. Not only are perpetrators of the violence spared blame, but usually women themselves are held responsible for the violence they incur.

Lebanese sectarian laws have remained intact for more than 50 years. This is unlike the case in other Arab nations, such as Egypt, Tunisia, and Morocco, which have recently amended their personal status laws in keeping with international charters and by way of remaining in step with modernity.

It must be noted that the belated amendment made by the Greek Orthodox Church in Lebanon remains insufficient. Admittedly, this move included a few principles which uphold equality of men and women, such as the striking off of matrimonial liturgy that was demeaning to women, privileging children's interests in custody matters, granting mothers primary guardianship and raising the custody age of boys to 14 years and that of girls to 15. However, these adjustments remain short of achieving equality of the sexes.

What marks CEDAW is that it requires member states to eliminate discrimination in the private sphere, namely in the family, as a means of achieving total equality of men and women in all other domains.

Lebanon's reservations over Article 16 of CEDAW, concerning equality within the family, constitute a veritable

obstacle to the amendment of personal status laws and go against any attempt at legislating a new personal status law. Further, these reservations reflect the discrepancy between the Convention and local national laws, and hence they point to an absence of political will to eliminate discrimination against women and ensure equality of the sexes.

In any case, reservations ought to be voiced at the time of signing the Convention and not afterwards: Lebanon's reservations about the Convention on the Elimination of all Forms of Discrimination Against Women were made later and are, therefore, considered null and void. Moreover, Lebanon did not voice any reservations about the International Convention on Civil and Political Rights (CCPR). This is particularly significant because CCPR is considered a reiteration and elaboration of the rights stipulated in CEDAW.

Additionally, the Convention states in Paragraph 2 of Article 28 that no reservations that go against its main object and purpose can be voiced. The aim and purpose are to eliminate all forms of discrimination against women in political, social, economical, and cultural domains.

It is, therefore, clear that reservations voiced about Article 16 preempt the Convention of its content and undermine its texts, especially that of Article 5 on the necessity for taking "all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

Lebanon's reservations to Article 16 keep women imprisoned in prevalent social, cultural and traditional norms, and hinder any attempt at renewal or reform within the family. Attempts to justify such reservations that lead to undermining the effects of ratifying the International Bill of Human Rights which Lebanon did, by the restrictions of Islamic law or Christian traditions, are not convincing, since in many Christian as well as Islamic states men and women enjoy total equality in rights.

There are major discrepancies in personal status laws between Arab nations.

For example, the many amendments made by the Tunisian state on July 13, 1956, prohibited polygyny and granted both sexes equal rights to file for divorce before a court of law, bearing in mind that Tunisia is an

Islamic state that follows Islamic teachings, as the introduction to its Constitution clearly states.

In this regard, it is important to mention the work of reformer Taher Al-Haddad who reinterpreted the Qur'an according to contemporary needs. He claimed that the Qur'an restricted polygyny to four wives as a first step towards curbing pre-Islamic customs that allowed marriage to an unlimited number of women. According to Haddad, that was a first step towards monogamy. The second step, he said, was taken in favor of women's rights, with the Qur'an's demand that all four wives be treated equally. Since such equality was unlikely to be achieved, it was advisable not to marry more than one woman.

The main cause for Lebanon's reservations lies in its social and cultural norms and behavioral patterns. These are deeply rooted in Lebanon and will remain so unless the state, obviously reluctant, takes serious measures in order to eliminate discrimination against women in legislative texts and daily practice.

Social development and prosperity are intimately linked to the respect of women's rights and to empowering them in their capacities to act and produce in all fields and domains. The Beijing Convention has clearly emphasized that women's rights are human rights, integral and indivisible.

On these grounds, it is incumbent on all states to implement CEDAW without any reservations, especially those concerning Articles 9 and 16, in order to establish a true equality of men and women within the family and in all domains. This alone will compel religious sects to amend and develop their laws to the extent that will make inevitable our establishment of a modern state with a true conception of citizenry.

Moreover, and in order to avoid unnecessary social tragedies, there must be an optional civil personal status law founded on the principles of equality, freedom of belief, and unity of legislation, which is based on the Bill of Human Rights that does not distinguish between religions, sexes or ethnicities.

On all these grounds, as well as on that of the uncontested fact and belief that the decline of women's status leads to the deterioration and backwardness of society, whereas their advancement leads to the progress and development of the nation, it is important that women achieve their full rights.

Translated by Samar Kanafani