

CEDAW

IN THE ARAB WORLD

Out of the twenty-two members of the League of Arab States, only eleven have ratified the Convention on the Elimination of all Forms of Discrimination Against Women. They are: Algeria, Comoros, Egypt, Iraq, Jordan, Kuwait,

Lebanon, Libya, Morocco, Tunisia and Yemen.

Article 28 of CEDAW allows member states to express reservations upon the signature, ratification or accession to the Convention. However, a reservation incompatible with the purpose and object of the Convention shall not be permitted.

Upon reviewing the implementation of CEDAW provisions in the Arab Countries, the following need to be taken into consideration:

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Article (29): On Arbitration between States and Referral of Disputes to the International Court of Justice.

THE FULL TEXTS OF THE ARTICLES ARE CITED BELOW:

The Islamic countries which have ratified CEDAW are: Bangladesh, Indonesia, Malaysia, Pakistan and Turkey.

a. The degree to which the ratification of the Convention has impacted on women's overall situation and status in these countries.

b. The conformity or non-conformity of CEDAW articles to which reservations have been expressed with the national laws and legislation,

on one hand, and with the provisions of the Islamic *Shari'a* laws on the other.

c. The positive impact resulting from the ratifying countries' commitment to submission of periodic reports on implementation of the Convention (in accordance with Article 18).

A review of the reservations to CEDAW by Arab countries indicates that these were made on two grounds: the first is the incompatibility of these articles with the Islamic *Sharia*, and the second is their non-conformity with national laws and legislation.

Article (2): On Elimination of Discrimination Against Women in National Legislation

States Parties condemn discrimination against women in all its forms, and agree to pursue by all appropriate means and without any delay a policy of eliminating discrimination against women and, to this end, states parties are committed:

a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

e. To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

f. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

g. To delete all national penal provisions which constitute discrimination against women.

The Governments that expressed reservations to Article (2) or to some of its paragraphs were those of Algeria, Egypt, Iraq and Morocco. It is noteworthy to point out that states' reservations to Article (2) is considered serious because it is incompatible with the object and purpose of the Convention.

Article (7): On Political and Public Life

States Parties shall take all appropriate measures to eliminate

Article (2): On Elimination of Discrimination Against Women in National Legislation

Article (7): On Political and Public Life

Article (9): On Nationality Law

Article (15): On Equality before the Law and in Civil Matters

Article (16): On Equality in Marriage and Family Life

discrimination against women in the political and public life of the country and, in particular shall ensure to women, on equal terms with men, the right:

- a. To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.
- b. To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c. To participate in non-governmental organizations and associations concerned with the public and political life of the country;

The State of Kuwait is the only Arab State Party that has expressed reservations regarding Article (7).

Article (9): On Nationality Laws

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

The Governments that have expressed reservations to Article (9) are those of Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco and Tunisia. No reservations were entered by the Governments of Comoros, Libya and Yemen.

Article (15): On Equality before the Law and in Civil Matters

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men, and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

The Governments of Algeria, Jordan, Morocco and Tunisia expressed reservations regarding Article (15) or some of its paragraphs.

Article (16): On Equality in Marriage and Family Life

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- a. The same rights to enter a marriage;
- b. The same right to choose freely a spouse and 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, irrespective 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 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;
- h. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

The Governments of Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco and Tunisia expressed reservations to Article (16) or to some of its paragraphs. No reservations were entered by the Governments of Comoros and Yemen.

Article (29): On Arbitration between States and Referral of Disputes to the International Court of Justice.

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

Any State Party which had made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

The Governments of Algeria, Egypt, Iraq, Kuwait, Lebanon, Morocco, Tunisia and Yemen have expressed their reservations to Article (29) or to one of its paragraphs.

It is worth noting that no single article of CEDAW has been subject to reservations by all the eleven ratifying Arab countries.

DISCUSSION OF RESERVATIONS TO CEDAW IN THE ARAB WORLD BY COUNTRY

In an attempt to understand the reasons for reservation of some Arab countries to CEDAW, it is useful to shed light on each Arab country individually and to analyze the expected impact of these reservations:

ALGERIA

The Government of Algeria ratified CEDAW on 22 May 1996. The Algerian Government made reservations to the following five articles:

1. Article (2): On Elimination of Discrimination Against Women in National Legislation

The Government of Algeria declared that it is ready to apply the provisions of this article only if they do not conflict with the provisions of the Algerian Family Code.

2. Article (9) Paragraph "2": On Nationality Laws

The reason for this reservation is that this article is in conflict with the provisions of the Algerian law on nationality, which stipulates that children acquire the nationality of their father. Nevertheless, there are provisions in that same law that allow children to obtain their mother's nationality based on the approval of the Ministry of Justice.

3. Article (15) Paragraph "4": On Equality before the Law and in Civil Matters

The reservations indicate that this article of CEDAW should not be interpreted to contradict the provisions of article 37, chapter 4 of the Algerian Family Code.

4. Article (16): On Equality in Marriage and Family Life

The provisions of article 16 concerning equal rights for men and women in all matters related to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code.

5. Article (29): On Arbitration between States and Referral of Disputes to the International Court of Justice

The Algerian reservation states that such dispute cannot be submitted to arbitration or to the Court of International Justice except with the consent of all the parties to the dispute.

COMOROS

The Government of Comoros ratified CEDAW on 31 October 1994 with no reservations.

EGYPT

The Government of Egypt signed the Convention on 16 July 1980 and ratified it on 18 September 1981. The Egyptian Government made reservations to the following four articles:

1. Article (2) On Elimination of Discrimination Against Women in National Legislation

The Government of Egypt made reservations on Article (2) declaring that it is willing to comply with the contents of this article provided that this does not contradict Islamic *Shari'a*.

2. Article (9) Paragraph "2": On Nationality Laws

Egypt justified this reservation by arguing that holding two nationalities may jeopardize the best interest of the child and its future. The Egyptian Government does not consider this reservation against child rights, since it is customary for children to acquire their father's nationality.

3. Article (16): On Equality in Marriage and Family Life

This is based on the ground that Islamic *Shari'a* has determined balanced rights and obligations between spouses at marriage and divorce. It has also guaranteed the right of the wife to property, and divorce to be granted only in the presence of a judge.

4. Article (29) Paragraph 1: On Arbitration between States and Referral of Disputes to the International Court of Justice

The reservation is expressed in order to avoid being bound by the system of arbitration with respect to all reservations expressed on CEDAW.

IRAQ

The Government of Iraq ratified CEDAW on 13 August 1986, expressing reservations to the following four articles:

1. Article (2) Paragraph c and Paragraph g

2. Article (9) Paragraph 1 Paragraph 2

3. Article 16

4. Article (29)

The reasons for the reservations are non-compliance with Islamic *Shari'a*. The Republic of Iraq added that the ratification of the Convention does not imply in any way enacting any relations with Israel.

JORDAN

The Government of Jordan signed CEDAW on 3 December 1980, and ratified it on 1 July 1992. Upon signing the Convention, Jordan made reservations to the following three articles, which were reaffirmed upon ratification.

1. Article (9) Paragraph 2: On Nationality Laws

The Jordanian Nationality Law stipulates in Article 9, Paragraph 2, that the child of Jordanian father shall be considered a Jordanian citizen, even if his/her mother is a non-Jordanian. However, a child of a Jordanian mother married to a non-Jordanian shall not be considered a Jordanian unless he/she claims the Jordanian Nationality.

Moreover, Jordanian official sources have declared that the reservation on this article is based on political considerations and circumstances. In addition, Jordan is a party to an Arab League Convention which forbids for Arab citizen to acquire a dual Arab nationality.

2. Article (15) Paragraph 4: On Equality before the Law and in Civil Matters

This paragraph contravenes the teachings of Islam "the Religion of the State", which do not permit women to travel on their own even to perform the religious duty of pilgrimage. In

addition, women cannot be granted the freedom to choose their place of residence, since they are subordinates to their husbands, and as such, cannot select their dwelling alone be they married or single.

However, a number of Islamic scholars such as His Eminence Dr. Abdul-Aziz Khayyat, do not view the right to mobility and dwelling as a violation of the Islamic *Shari'a* provisions, especially if this is spelled out in the marriage certificate beforehand.

3. Article (16): On Equality in Marriage and Family Life
Paragraph c

This paragraph contravenes the teachings of Islam which stipulate that men are "in charge of women", thus are entitled to deny the wife the freedom to act on her own.

Paragraph d
Islam has given "Custody Rights" to the man, as he is considered more capable of facing life's circumstances. However, this does not thoroughly rule out the woman's rights to custody of her children.

Paragraph g
Islam permits a woman to have an honorable occupation, subject to the approval of her husband, and provided that it does not contravene with her duties and obligations as housewife and mother.

Most of the laws that have been cited above as the basis for making reservations to CEDAW are set out in the Jordanian Personal Status Law which is derived from the Islamic Jurisdiction and its applications.

KUWAIT

The Government of the State of Kuwait ratified CEDAW on 2 September 1994, expressing its reservations on the four following articles:

1. Article (7) Paragraph a: On Political and Public Life
The provision contained in that paragraph conflicts with the Kuwaiti Electoral Act, according to which the right to be eligible for election and to vote is restricted to males.

2. Article (9) Paragraph 2: On Nationality Laws
Since this paragraph runs counter to the Kuwaiti Nationality Act, which stipulates that a child's nationality shall be determined by that of his father.

3. Article (16) Paragraph f: On Equality in Marriage and Family Life

Kuwait does not consider itself bound by the provisions contained in Article 16(f) in as much as this paragraph conflicts with the provisions of the Islamic *Shari'a*, Islam being the official religion of the State.

4. Article (29) Paragraph 1: On Arbitration between States and Referral of Disputes to the International Court of Justice.

The Government of the State of Kuwait declares that it is not bound by the provision contained in Article 29, paragraph 1.

LEBANON

The Government of Lebanon ratified CEDAW on 21 April 1997. The Lebanese Government declared that it shall not be

bound by the following three articles:

1. Article (9) Paragraph 2: On Nationality Laws
2. Article (16) Paragraph c, d, f, and g: On Equality in Marriage and Family Life
3. Article (29) Paragraph 1: On Arbitration between States and Referral of Disputes to the International Court of Justice.

LIBYA

The Libyan Arab Jamahiriya ratified CEDAW on 16 May 1989, and expressed reservations regarding the following two articles:

1. Article (2): On Elimination of Discrimination against Women in National Legislation

Article 2 of the Convention would be implemented with due regard to the peremptory norms of the Islamic *Shari'a* relating to the determination of the inheritance portions of the estate of a deceased person, whether female or male.

2. Article (16) Paragraph c and d: On Equality in marriage and Family Life

The implementation of Article 16, paragraphs (c) and (d) shall be without prejudice to any of the rights guaranteed to women by the Islamic *Shari'a*.

MOROCCO

The Government of the Kingdom of Morocco ratified CEDAW on 21 June 1993 and expressed reservations on the following four articles:

1. Article (2): On Elimination of Discrimination Against Women in National Legislation

The Government of Morocco expressed its readiness to apply the provisions of this article provided that a) they are without prejudice to the constitutional requirement that regulates the rules of succession to the throne of the Kingdom of Morocco and b) that these provisions do not conflict with the provisions of the Islamic *Shari'a* contained in the Moroccan Code of Personal Status.

2. Article (9) Paragraph 2: On Nationality Law

This is in view of the fact that the Law of Moroccan Nationality permits a child to bear the nationality of its mother only when a child is born to an unknown father, regardless of the place of birth, or to a stateless father. Further, a child born in Morocco of a Moroccan mother and a foreign father may acquire the nationality of its mother by declaring within two years of reaching the age of maturity, its desire to acquire that nationality, provided that its customary and regular residence is in Morocco.

3. Article (15) Paragraph 4: On Equality before the Law and in Civil Matters

The Government of Morocco declares that it can only be bound by the provisions of this paragraph, in particular those relating to the rights of women to choose their residence and domicile, to the extent that these are compatible with articles 34 and 36 of the Moroccan Code of Personal Status.

4. Article (16): On Equality in Marriage and Family Life
Equality of kind provided for in the provisions of this article is

considered incompatible with the Islamic *Shari'a*, which guarantees for each of the spouses rights and responsibilities within a framework of equilibrium and complementarity in order to preserve the sacred bond of matrimony. The provisions of Islamic *Shari'a* oblige the husband to provide a nuptial gift for his wife upon marriage, while the wife enjoys the complete freedom of disposition of her property during marriage and at its dissolution.

5. Article (29): On Arbitration between States and Referral of Disputes to the International Court of Justice.

The Government of Morocco does not consider itself bound by the provisions of paragraph 1 of this article, as it is of the view that any dispute of this kind can only be referred to arbitration by agreement of all parties to the dispute.

TUNISIA

The Government of Tunisia signed CEDAW on 24 July 1980, and ratified it on 20 September 1985. Upon ratification, the Tunisian Government made a General Declaration stating that it shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of the Tunisian Constitution.

The Tunisian Government additionally expressed reservations regarding the four following articles:

1. Article (9) Paragraph 2: On Nationality Laws

The Tunisian Government expresses its reservation regarding Article 9, paragraph 2, which must not conflict with the provisions of Chapter VI of the Tunisian Constitution.

2. Article (16) Paragraphs c, d, f, g, h: On Equality in Marriage and Family Life

The Tunisian Government considers itself not bound by article 16, paragraphs (c), (d) and (f) and declares that paragraphs (g) and (h) of that article must not conflict with the provisions of the Personal Status Code concerning the granting of family names to children and the acquisition of property through inheritance.

3. Article (29) Paragraph 1: On Arbitration between States

The Tunisian Government considers that such disputes should be submitted for arbitration or consideration by the International Court of Justice only with the consent of all parties to the dispute.

4. Article (15) Paragraph 4: On Equality before the Law and in Civil Matters

In accordance with the provisions of the Vienna Convention on the Law of Treaties, dated 23 May 1969, the Tunisian Government emphasizes that the requirements of article 15, paragraph 4 of the Convention, and particularly that part relating to the right of women to choose their residence and domicile, must not be interpreted in a manner which conflicts with the provisions of the Personal Status Code on this subject, as set forth in chapters 23 and 61 of the Code.

YEMEN

The Government of the People's Democratic Republic of

Yemen acceded to CEDAW on 30 May 1984, expressing a reservation only to one article of the Convention as follows:

1. Article (29) Paragraph 1: On Arbitration between States

The Government of the People's Democratic Republic of Yemen declares that it does not consider itself bound by article 29, paragraph 1, of the said Convention, relating to the settlement of disputes which may arise concerning the application or interpretation of the Convention.

GENERAL DISCUSSION

In light of the reservations made by the Arab States Parties to CEDAW regarding a number of its articles, and based on the findings of a study on Arab Women conducted by the International Population Council in Cairo in 1995, one can conclude the following:

1. Arab legislation and laws, particularly those regarding the family, have been enacted in accordance with the provisions of the Islamic *Shari'a*, despite the vast differences in the interpretation and implementation of these provisions among Arab countries. For example, four Arab countries, namely Jordan, Algeria, Morocco and Tunisia entered reservations to Article 15, paragraph 4, based on the pretext that it contravenes with the Islamic *Shari'a*, while the rest of the Arab States Parties to the Convention have not made reservations to the same article.

2. Constitutions of most Arab Countries have unconditionally emphasized the equality of men and women, and reaffirmed the right of both men and women to life without discrimination whatsoever (Article 2). However, none of these Arab Constitutions has specifically referred to gender-based discrimination.

3. Provisions and enactments of the Islamic *Shari'a* acknowledge the right of women to sign contracts, manage property independently without the need for permission from their husbands, and the right to own property without any restrictions or conditions (Article 15/2). National laws in most Arab countries have guaranteed these rights.

4. There are great discrepancies among the Arab Countries in the level of restrictions imposed on the Arab women's right to travel (Article 15/4).

Also, restrictions imposed on travel of a married woman are different from those imposed on that of a single woman. Moreover, some countries make the issuance of a separate passport for the wife contingent on the approval of her husband (Libya, Jordan), whereas Morocco, for example, doesn't stipulate this condition for issuing a passport. As for Sudan, the Sudanese woman must obtain the approval of her male guardian every time she applies for a visa to leave the country, irrespective of her age, marital status or profession, even if this guardian was a teenager.

5. Regarding equality in access to educational opportunities, and compulsory education laws (Article 10), there is no discrimination in most Arab countries, neither in the quality nor in the level of education provided for both sexes. Moreover, there is no legal provision denying Arab woman the right to education.

6. Regarding the right of women for work (Article 11), to hold public office (Article 7), and to receive equal remuneration, as well as benefit from the maternal protection laws (Article II), one can conclude that the Arab labor laws concerning women are generally in line with international standards. Most of these laws provide for equal employment opportunities for women, and do not place any conditions or restrictions regarding equality of labor and employment rights.

7. Nationality Laws in all Arab Countries (Article 9), except Tunisia give the father the exclusive right to confer his nationality on his children, whether his wife is of the same or of a different nationality. Consequently, thousands of women suffer immensely in rearing their children in their own home countries, and in many cases, children may find themselves without a homeland and may therefore lose their rights to free education, and/or to health care and employment.

Although Arab jurists agree that the Arab Nationality Laws are non-constitutional in their discrimination between

men and women, however, it is concluded that nationality laws of Arab countries are generally governed by political decisions.

CONCLUDING REMARKS:

In conclusion, it is inevitable to make the following remarks on the implementation of CEDAW in Arab Countries:

The Arab States Parties to the Convention have not formulated effective mechanisms to ensure its implementation.

These Arab Countries have not made any amendments to, nor any revisions of their national laws and legislation that clearly contravene with the spirit and provisions of the Convention.

There are no remarkable differences in the legal status of women between the Arab States that have ratified the Convention and those who have not yet ratified it.

ARAB COUNTRIES RESERVATIONS TO CEDAW

State	Date of Signature	Date of Ratification and Accession	Reservations					
			Art. 2 Non - Discrimination Measures	Art. 7 Political and Public Life	Art. 9 Nationality	Art. 15 Law	Art. 16 Marriage and Family life	Art. 29 Arbitration
Algeria		22/5/96	X		X 9/2	X 15/4	X	X
Comoros		31/10/94						
Egypt	16/7/80	18/9/81	X		X 9/2		X	X 29/2
Iraq		13/8/86	X 2/c & g		X 9/2		X	X 29/1
Jordan	3/12/80	1/7/92			X 9/2 2	X 15/4	X 16/1 c,d,g	
Kuwait		2/9/94		X 7/a	X 9/2		X 16/f	X 29/1
Lebanon		21/3/93			X 9/2		X 16/1 c,d,f,g	X 29/1
Libya		16/5/89					X 16/c & d	
Morocco		21/6/93	X		X 9/2	X 15/4	X	X
Tunisia	24/7/80	20/9/85			X 9/2	X 15/4	X 16/c, d,f,g,h	X 29/1
Yemen		30/5/84						X 29/1

Source: Prepared by IWSAW