

REPORT ON THE SITUATION OF CEDAW THE REPUBLIC OF SUDAN*

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THE STATUS OF CEDAW IN SUDAN

Despite changes in the political system of Sudan since 1979, none of the four governments that came to power saw any reason to ratify CEDAW. The reasons are classified as follows:

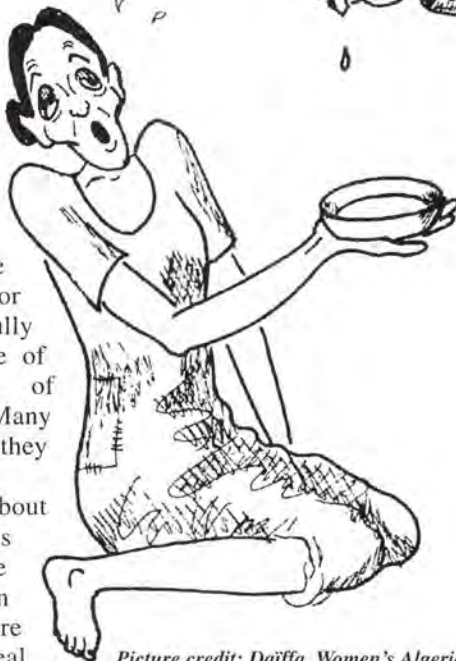
POLITICAL DIMENSION:

All regimes in Sudan that came into power since 1979 have identified their social, economical and political priorities - but women's issues have not been among them. No political leadership has been committed to improving the status of women. Furthermore, there has not been a clear state policy on women. Another reason is that the Nairobi Conference in 1985 did not consider CEDAW as a focus for discussion and monitoring. Hence, the international community did not put enough pressure and funds to encourage states to ratify CEDAW.

DIS-ORIENTATION OF WOMEN IN RELATION TO CEDAW

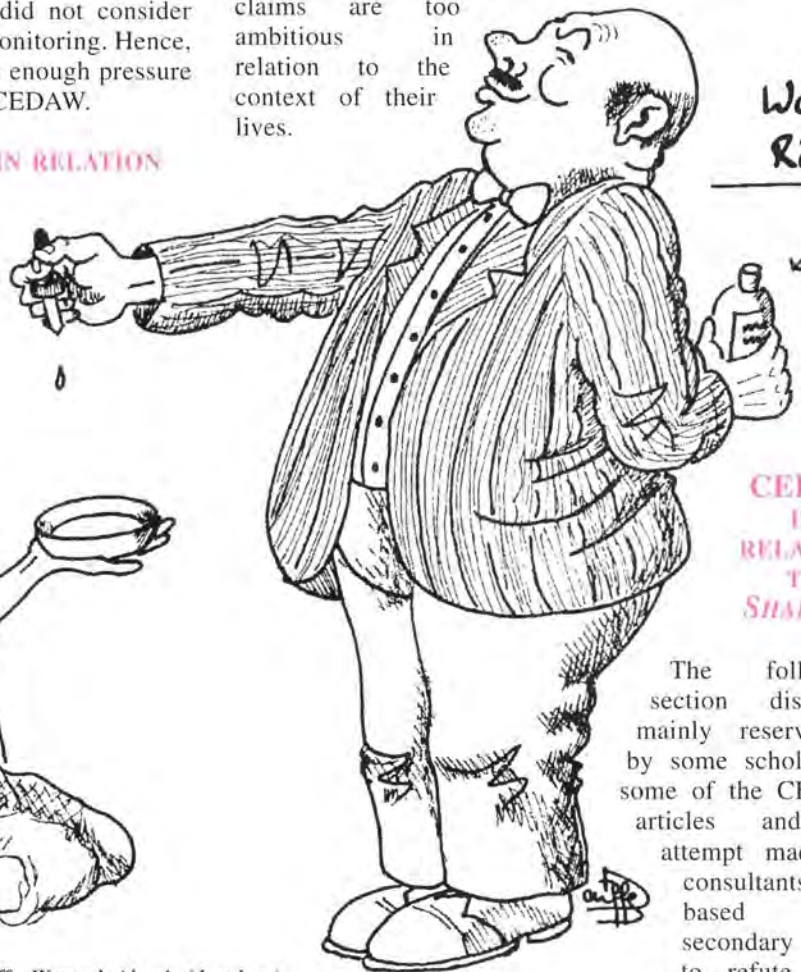
Research conducted by Ahfad University in 1996 showed that most women working in the field of women and

development and in the public sector were not fully knowledgeable of the content of CEDAW. Many felt that they lacked information about the provisions of the Convention; in addition, there was a great deal



Picture credit: Daïffa, Women's Algeria (drawings)

of misinformation regarding CEDAW especially among men in decision making positions. Among the most important misconceptions is that CEDAW reflects Western women's agenda and needs and is, therefore, irrelevant to women of Third World countries. Another aspect of women's disorientation has to do with the sociocultural dimension of women's upbringing. Sudanese women in general have been brought up to accept and follow men's wishes. A study conducted in 1978 on Women's Consciousness of their Legal Rights showed that many educated women were not aware of their legal rights, and those who were, felt that the law is not an effective tool to protect them against male violence. These women relied on male members of their extended family for protection. Overall, Sudanese women living in the conservative patriarchal society of Sudan may feel that CEDAW claims are too ambitious in relation to the context of their lives.



Women's Rights

CEDAW IN RELATION TO SHARI'A

The following section discusses mainly reservations by some scholars to some of the CEDAW articles and an attempt made by consultants, based on secondary data, to refute these

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assumptions. These reservations and views cannot be seen as solid responses basis to Islam or CEDAW. Rather they should be seen as reflecting a common understanding of 'conservative Muslims' to Islam and CEDAW, as well as a common understanding of 'liberal Muslims'. More in-depth studies are needed to come to a solid refutation of CEDAW based on the Quranic text and religious interpretations of Islam.

Many of the writings in relation to the ratification of CEDAW in Muslim countries, focused on

the relation between CEDAW and *Shari'a*. Most, if not all of these writings used the word "contradiction" to describe the relation between articles of CEDAW and the *Shari'a*. However, for the sake of scientific accuracy, the researchers in the present paper would like to use the term "different" in order to explain the relation. Conceptually the word "contradiction" is taken to mean that if something is actually done and/or accepted contrary to what the *Shari'a* supposedly requires of Muslims, it will make you sinful, disobedient to Islam, and punishable according to Islamic laws. However, all CEDAW articles which were opposed by some scholars for being non-Islamic' are articles which are different from what has been interpreted by Islamic jurists or as stated in the 'Quranic' text - not necessarily contradictory.

To clarify this point, article no. (13) of CEDAW relating to equality in terms of "the right to family benefits", which could be interpreted to include equality in terms of inheritance, was seen by some Muslim jurists as against Islamic teaching, since in Islam women are entitled to half the property of a male heir. However, Islamic scholars have forgotten that Islam gives any person the right to make a will dividing his/her wealth or property as one wishes, though not completely ignoring the immediate inheritors. Furthermore, there is no Islamic law that prohibits one from disposing of his/her property before death, referred to in the Quran as the mechanism of selling or donation *hiba* during one's life. Therefore, such distribution of property is not contradictory to Islam but rather, representing only a different way of dealing with property based on the principles of equality and justice, both in the essence of Islamic religion.

Given the above explanation, the following points deal with the articles that are thought to be different from the Islamic Law. The reservations were presented by Sudanese Muslim male and female professionals. The following are the reservations to CEDAW expressed by Sudan on the basis of their contradiction with Islamic *Shari'a*. They are followed by

counter-arguments on these reservations.

MAIN ARTICLES OF CONCERN

ARTICLE (2)

RESERVATION:

The major problem identified by some Sudanese Muslim scholars and politicians in this article is section f. Their main argument is that equality between men and women should take into consideration the teachings of Islam. Some of them went on to explain that the issue of equality has its limitations within the Islamic principle of *Qawamin* and of unequal inheritance.

THE COUNTER POSITION:

The principle of equality is provided in the Sudanese Constitution. The Transitional Constitution of 1985 stipulates that "all Sudanese citizens are equal before the law, irrespective of their sex, origin, religion or geographic affiliation." Hence, objecting to this article is not consistent with the Sudanese Constitution. On the other hand, total equality between men and women is viewed as contradicting specific aspects in Islam such as the right to half the property in inheritance. Nevertheless, few cases should not overrule equality which is well within the teachings of Islam. The essence of Islam is equality among all Muslims irrespective of gender. Consequently, objecting to this general article is not based on Islamic teachings or on the Sudanese Constitution.

ARTICLE 9

RESERVATION:

This article is not congruent with the Sudanese Nationality Act of 1993. For a woman to obtain the Sudanese nationality, she has to be the wife of a Sudanese, whether he acquired the Sudanese nationality by birth, or by descent or through a naturalisation certificate. The act does not guarantee the same right in case of a 'foreign' husband. This is also the case with children from a non-Sudanese father.

THE COUNTER POSITION:

In fact, this article does not contradict Islam since nationality is different from parenthood and having a second nationality does not de-claim one's fatherhood rights. In other words, descent claims following the father's line would not be affected by having an additional nationality. On the other hand, some Muslim countries allow individuals to have two nationalities and give women the right to confer their nationality on their husbands and children. This indicates that article 9 of CEDAW is not contradictory with Islam but rather contradictory with Sudanese laws. Furthermore, Islam approves of inheritance claims through maternal kinship,

from mother to children and therefore acquiesces to the right of mothers to bestow their nationality upon their children.

Other arguments claim that rejecting article 9 of CEDAW is not based on religious grounds since the hadith refers only to the case of adoption and not nationality. Indeed, adoption is an issue of descent claims which is still a controversial issue between Islamic jurists. Therefore, the scholars conclude that the disparity occurs between CEDAW and the Sudan Nationality act, and not between CEDAW and *Shari'a*. Women groups in Sudan are recently advocating the introduction of changes to give women equal rights to confer nationality.

ARTICLE 10

"State Parties shall take measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

a. the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

b. Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

c. The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by revision of textbooks and school programmes and the adaptation of teaching methods;

d. The same opportunities to benefit from scholarships and other study grants;

e. Same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

f. The reduction of female student drop out rates and the organization of programmes for girls and women who have left school prematurely;

g. The same opportunities to participate actively in sports and physical education;

h. Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning."

RESERVATION:

Despite the fact that article 10 almost coincides with the National Sudanese Plans, some male scholars considered the whole article to be against *Shari'a* because of few minor statements. The statements that create controversial arguments are: the concept of coeducation, the eradication of the stereotyped image of the role of women and men, giving the opportunities of training and study grants to both sexes, and finally the participation of women in physical education.

The essence of Islam is equality among all Muslims irrespective of gender

THE COUNTER POSITION:

It was stated by some people who were interviewed last year regarding their views on CEDAW that Sudanese customs, beliefs and religion do not encourage coeducation. The reply is that coeducation does not contradict with basic Islamic rules as there are no Quranic verses that forbid it. Furthermore, coeducation is practiced in Sudan at present since there are coeducational schools at the elementary level in rural areas and coeducation takes place also at the university level. Consequently, this article may be problematic to only a few fundamentalists but not to the state or to Islam.

On the other hand, research conducted in 1996 by Ahfad students on the image of women and men in school curricula shows that stereotyped roles of men and women are still portrayed in subjects such as Arabic, English, Religious Studies, and Sciences. Books on these subjects neglect the productive and community roles of women in the public, traditional, and informal sectors. While in reality, despite the stereotypical role of women as housewives and mothers, Sudanese women are known for their participation in both public and private spheres. These roles are encouraged by Islam and hence constitute no contradiction to the Islamic faith.

Physical education and women's participation in sports is a cultural issue wherein Sudanese women are constrained and pressured by customs and traditions not to participate actively in sports. Despite the fact that women's participation in all sport activities is not prohibited by the Constitution, or by Islam, there are severe restrictions in the public Act of 1992 and 1996 of the Khartoum State and the Public Orders of other different states that prohibit mixing between men and women in sports. The participation of women in public games is very limited and their input is restricted to certain types of sports primarily because of the obligation to wear the traditional Sudanese dress.

ARTICLE 13

“States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a. The right to family benefits;*
- b. The right to bank loans, mortgages and other forms of financial credit;*
- c. The rights to participate in recreational activities, sports and all aspects of cultural life.”*

RESERVATION:

The law of inheritance in Islamic *Shari'a* appears to contradict article 13 section a of CEDAW, with the stipulation that men and women should have equal access to family benefits. From *Shari'a* point of view, women inherit half the share of men. Hence, the article is viewed as contradicting Islamic laws of inheritance, if the right to family benefit is understood as referring to inheritance as well.

THE COUNTER POSITION:

According to Islamic law, parents have the right to give donations, to designate wills, whereby they can give equal shares to their children of different sex. The issue of the principle of equality is not contradictory with

Islam. Parents who make such wills are not sinful; it is simply a personal decision. Furthermore, in Sudan there are many non-Muslims who abide by customary laws whereby women are not given rights of inheritance. If adopted, this article will help all women particularly those in Southern Sudan. There is a need for more explanation regarding the details and meanings of section (a) of this article.

ARTICLE 15**RESERVATIONS:**

The Transitional Constitution of the Republic of Sudan, 1985, guarantees equality before the law in its article 4 where “All persons in the Republic of the Sudan are free and are equal before the law”. Hence, one notes that there is no contradiction between CEDAW and the Constitution. However, the difference occurs between CEDAW and the other forms of Islamic laws such as the Law of Evidence, and the civil law of freedom of movement passed by the current government.

In the Law of Evidence, in *Shari'a* courts, the testimony of two women against one man is required. Furthermore, some believe that men are *qawama* over women as mentioned in the Quran. Al Aqqad has, among other Muslim jurists, referred to the notion of *qawama* as a basis for placing women and men in a different social, economic and political space. Hence, according to the concept of *qawama*, women and men have different obligations and rights, and there is no equality between

