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Reservations to the Convention on the Elimination of All Forms of Discrimination against Women

Weakening the protection of women from violence in the Middle East and North Africa region

1. Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol remain the only international treaties devoted to the rights of women. Partly due to the success of CEDAW, there have been significant advances in women's rights in the 25 years since CEDAW was adopted, although much remains to be done. The treaty has been ratified or acceded to by 178 countries and 14 countries in the Middle East and North Africa have signed up to it.

Several of the countries that have ratified the treaty have made declarations or reservations that exclude or diminish the domestic applicability of CEDAW. Among the Middle Eastern and North African countries covered by this report, the majority of these reservations have been based on Shari'a law, or incompatibility with existing national legislation. However, reservations that run contrary to the spirit or "object and purpose" of the Convention are not permitted under Article 28 (2) of CEDAW.

Amnesty International is concerned that many of the reservations entered by countries are contrary to the spirit and purpose of the Convention. Some of the reservations are so wide ranging that they are difficult to review or challenge. Others are based on conflicts between Shari'a law and CEDAW, although other countries in the region have not made similar reservations, suggesting that different interpretations of Shari'a exist. National legislation has also been used as a basis for reservations, although such a use of national legislation is clearly proscribed by international law.

Most of these reservations relate to the very purpose of the Convention to eliminate discrimination and protect women from it, including reservations related to the nature of states parties' obligations, and other core provisions of CEDAW related to equality. If unchanged, these reservations have a direct impact on ensuring that women enjoy the rights that CEDAW was meant to guarantee, including protection from violence and discrimination, and undermine their ability to access justice or obtain redress through national mechanisms.

This report gives a general overview of these reservations and declarations made to CEDAW by countries in the region from a human rights perspective. [1] It includes an

[1] For a more general overview of reservations to all states parties to CEDAW made until 1996, please see *Committee on the elimination of all forms of discrimination against women: Reservations to the Convention on the Elimination of All Forms of*

overview of reservations in international law, concentrating on what the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has said on the issue, and examines the link between reservations and violence against women. This is followed by a review of the specific reservations in the Middle East and North Africa, and the reasons given by states for making them, together with observations by the CEDAW Committee regarding them. The document concludes with a number of recommendations. Two appendices are included at the end of the document: the first includes the exact text of reservations to CEDAW by states in the region with the relevant text of concluding observations from the CEDAW Committee; the second is a table of overdue reports to CEDAW by states in the region.

The document will not cite legislation from the relevant countries (except where it is cited in the text of reservations) nor include specific case studies. It aims to urge governments to lift the reservations as recommended by the CEDAW Committee, and for women and human rights activists in the region to request that they bdo so.

2. CEDAW

CEDAW, adopted by the UN General Assembly in 1979, [2] contains a number of specific obligations on governments. Among those that are particularly relevant to this report are ensuring that private citizens including husbands, partners and fathers, and enterprises (for example, private businesses) do not abuse women's rights; and ensuring that states parties take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. It also targets culture and tradition as influential forces shaping gender roles and family relations. CEDAW also affirms women's rights to acquire, change or retain their nationality and the nationality of their children. CEDAW focuses on discrimination against women, without explicitly referring to violence against women. However, the CEDAW Committee, the body responsible for monitoring the implementation of CEDAW by states parties, clarified that:

> *Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.*[3]

In other words, gender-based violence against women is clearly within the ambit of CEDAW, and states parties' obligations under this treaty include preventing, punishing and ensuring reparation for such violence. One consequence of the Committee's position is that under the Optional Protocol to CEDAW, individual women or groups of women may petition the Committee with regard to gender-based violence.[4]

Only Iran, Oman, Qatar and United Arab Emirates have not ratified or acceded to CEDAW, among countries in the Middle East and North Africa. However, most of those who have ratified or acceded to CEDAW have also entered reservations or made declarations that

Discrimination Against Women, Report by the Secretariat, UN Doc. CEDAW/C/1997/4, 12 November 1996.

[2] UN GA Res. 34/80, 18 December 1979. The Convention entered into force on 3 September 1981. For text see, for instance, Office of the United Nations High Commissioner for Human Rights, *Human Rights: A Compilation of International Instruments, vol. 1 (First Part)*, New York, UN, 2002, pp. 155-166, and on the internet at http://www.unhchr.ch/html/menu3/b/e1cedaw.htm.

[3] *Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,* (U.N. Doc. HRI\GEN\1\Rev.1) (1994), para. 84.

[4] *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,* 1999. Entered into force on 22 December 2000. For text see, for instance, *Human Rights: A Compilation, vol. 1 (First Part)*, pp. 167-172, and on the internet at http://www.unhchr.ch/html/menu3/b/opt_cedaw.htm

limit the application of the Convention in their countries.[5] Only the Libyan Arab Jamahiriya has acceded to the Optional Protocol to the Convention granting individuals and groups the right of petition. [6] The impact of these reservations on the scope of CEDAW is examined in more detail in the next section.

3. General comments on reservations to treaties in international law

Article 19 of the Vienna Convention on the Law of Treaties permits States to make a reservation at the time of ratification or accession to a treaty. It defines reservations as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."

Frequently, states joining human rights treaties exclude or modify the legal effect of certain provisions by way of 'declaration' even though the action falls within the above definition of a reservation.[7]

The Human Rights Committee, the UN body responsible for monitoring the implementation of the International Covenant on Civil and Political Rights, has stated: "It is not always easy to distinguish a reservation from a declaration as to a State's understanding of the interpretation of a provision, or from a statement of policy. Regard will be had to the intention of the State, rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation." [8] This explanation applies equally to the reservations or declarations made to CEDAW.

Article 19 of the Vienna Convention provides further that a State may, when signing, or otherwise acceding to a treaty, formulate a reservation unless it is "incompatible with the object and purpose of the treaty". This is reflected in specific provisions found in most major international human rights treaties. Specifically, Article 28 (2) of CEDAW states: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

As CEDAW is an agreement among states, each state making a reservation should take note of other states parties' reaction to the reservation. There have been a number of reactions to the reservations made by the states in the region, describing the reservations as incompatible with the object and purpose of CEDAW and, therefore, prohibited under article 28 (2).[9]

The Beijing Declaration and Platform of Action of 1995 emphasises that it is necessary to avoid, as far as possible, resorting to reservations, in order to protect the human rights of women. The document stresses that "unless the human rights of women, as defined by international human rights instruments, are fully recognized and effectively protected, applied, implemented and enforced in national law as well as in national practice in family, civil, penal, labour and commercial codes and administrative rules

[5] The countries covered in this report are: Algeria, Bahrain, Egypt, Israel, Iraq, Iran, Jordan, Kuwait, Lebanon, The Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen. Mention of other countries is also made for comparison.

[6] Article 17 of the Optional Protocol states that no reservations are allowed to be entered to it.

[7] A "declaration" is a statement explaining how a state understands or interprets a certain provision, and should not, in principle, exclude or modify the legal effect of that provision.

[8] See *"Human Rights Committee, General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant"* UN Doc CCPR/C/21/Rev.1/Add.6, 4 November 1994, para. 3.

[9] For exact text of reactions to the reservations, see: *Multilateral Treaties Deposited with the Secretary General*, available on http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp

and regulations, they will exist in name only"[10] and recommends that states:

> *limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women; formulate any such reservations as precisely and as narrowly as possible; ensure that no reservations are incompatible with the object and purpose of the Convention or otherwise incompatible with international treaty law and regularly review them with a view to withdrawing them; and withdraw reservations that are contrary to the object and purpose of the Convention on the Elimination of All Forms of Discrimination against Women or which are otherwise incompatible with international treaty law.*[11]

A similar approach has been taken by the CEDAW Committee. At its thirteenth session, in 1993, the Committee agreed with the view of the World Conference on Human Rights where the Vienna Declaration and Program of Action was adopted (1993). According to that, States should consider limiting the extent of any reservations they make to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the treaty concerned and regularly review any reservations with a view to withdrawing them.[12] In doing so, the Committee recognised that the Convention allows reservations so that a maximum number of States can become parties.

In the light of this, the CEDAW Committee has revised its reporting guidelines to ensure that information by states parties concerning reservations, the reasons for them, and the efforts to lift them, come to its attention regularly. The Committee specifically requests that:

> *Any reservation to or declaration as to any article of the Convention by the State party should be explained and its continued maintenance justified. Taking account of the Committee's statement on reservations adopted at its nineteenth session (see A/53/38/Rev.1, part two, chap. I, sect. A), the precise effect of any reservation or declaration in terms of national law and policy should be explained. States parties that have entered general reservations which do not refer to a specific article, or which are directed at articles 2 and/or 3 should report on the effect and the interpretation of those reservations. States parties should provide information on any reservations or declarations they may have lodged with regard to similar obligations in other human rights treaties.*[13]

However, many states parties to CEDAW fail to meet their periodic reporting deadlines, often submitting reports very late. Appendix 2 to this document shows that some states in the region are late in reporting on their implementation of the Convention. The CEDAW Committee monitors the progress in implementing its recommendations related to reservations, and assesses efforts taken to withdraw reservations, in accordance with its general recommendations, through the submission of reports.

The implementation of CEDAW also requires that states parties respect the general and specific comments and recommendations of the CEDAW Committee. When states ratify CEDAW, they accept the authority of the CEDAW Committee to issue general recommendations interpreting the Convention. Article 21 (1) of CEDAW states that the Committee will "report annually to the General Assembly of the United Nations on its activities and may make suggestions and general

[10] *The Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995*, UN Doc. A/CONF.177/20, 1995 and UN Doc. A/CONF.177/20/Add.1 (1995), para. 218.
[11] *The Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995*, UN Doc. A/CONF.177/20, 1995 and UN Doc. A/CONF.177/20/Add.1 (1995), para. 230. (c) and (d).
[12] *Committee on the Elimination of All Forms of Discrimination against Women: Ways and Means of expediting the work of the Committee, Report by the Secretariat,* UN Doc. CEDAW/C/1994/6, 30 November 1993, paras. 3-7.
[13] *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, Addendum,* UN Doc HRI/GEN/2/Rev.1/Add.2, 5 May 2003.

recommendations based on the examination of reports and information received from the States Parties." Therefore, the concluding observations and the general recommendations issued by the CEDAW Committee are important and authoritative means of understanding the nature of states parties' obligations under the Convention both in relation to the specific countries and in general terms.[14]

Many of the reservations in general, and those from the Middle East and North Africa in particular (see Appendix 1), are worded in very general terms, and therefore are not consistent with the recommendations of the CEDAW Committee and the Beijing Declaration and Plan of Action. Generally worded reservations or declarations hinder the assessment of their real impact on women, particularly in relation to violence, and the reasons why they were made.

4. CEDAW articles subject to reservations or declarations

An overview of the reservations or declarations made, and the reasons given helps to assess what shared attitudes exist towards reservations among countries in the region, and the consistency of these reservations with international law. It should be noted that not all of the articles in the Convention have been subject to reservations by countries in the region. CEDAW articles to which reservations or declarations have been made are listed below:

Article	Countries
Article 2 States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (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;	Whole Article: Algeria, Bahrain, Egypt, Libya, Morocco (declaration), Syria Article 2 (f) and (g): Iraq

[14] *Committee on the elimination of all forms of discrimination against women: Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, Report by the Secretariat,* UN Doc. CEDAW/C/1997/4, 12 November 1996.

(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 repeal all national penal provisions which constitute discrimination against women.	
Article 7 States Parties shall take all appropriate measures to eliminate 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;	Article 7 (a): Kuwait, Israel
Article 9 (1) and (2) 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that	Article 9 (1) and (2): Iraq Article 9 (2): Algeria, Bahrain, Egypt, Jordan, Lebanon, Morocco,

Article 15 (2) and (4) 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. 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.	Article 15 (2): Bahrain Article 15 (4): Jordan, Morocco (declaration), Syria, Tunisia (declaration)
Article 16 1. States Parties shall take all appropriate measures to eliminate discrimination against	Whole Article: Algeria, Bahrain, Egypt, Iraq, Morocco, Israel

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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 right to enter into marriage; (b) The same right freely to choose 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, 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 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	Article 16 (1-c): Jordan, Lebanon, Libya, Syria, Tunisia Article 16 (1-d): Jordan, Libya, Syria, Tunisia Article 16 (1-f): Kuwait, Lebanon, Syria, Tunisia Article 16 (1-g): Jordan, Lebanon, Syria, Tunisia Article 16 (1-h): Tunisia Article 16 (2): Syria
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.	
Article 29 (1) Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that 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	Whole Article: Algeria, Bahrain, Egypt, Iraq, Israel, Kuwait, Lebanon, Morocco, Saudi Arabia, Syria, Tunisia, Yemen

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.	

The above information demonstrates clearly that six of the articles of the Convention have been subject to reservations or declarations. It also shows that three articles, namely Articles 2, 9, and 16 (either in full or part), have attracted most of the attention. Article 29 has been the subject of most reservations, but is not discussed in this report as it concerns the dispute resolution mechanism. Articles 2, 9 and 16 relate to fundamental aspects of the Convention in terms of elimination of discrimination. The CEDAW Committee believes that Articles 2 and 16 are core articles of the Convention. Entering reservations to these articles without giving specific reasons and interpretation, as well as without identifying the potential effects of these reservations on women is contrary to the requirements of the CEDAW Committee as reflected in its reporting guidelines discussed earlier. It should also be noted that Yemen did not enter any substantive reservations to the Convention, except for the procedural mechanism of Article 29.

These reservations can be better understood in the light of the discussion below on the reasons given for their promulgation and whether they are consistent with international law. The following two sections provide a brief overview of the two main justifications offered by states when they have entered reservations or declarations to CEDAW, followed by comments from CEDAW Committee. These two main justifications are that the articles concerned in CEDAW contradict national legislation; or that they conflict with the Islamic Shari'a (Islamic law).[15] It should be noted that several states in the region, however, entered reservations to provisions in CEDAW without providing specific reasons, while others have entered reservations to these same provisions using the justifications above. This suggests that there is no uniform interpretation to these reservations in the region.[16]

4.1 National legislation based reservations or declarations

The following states have stated that they would implement the relevant provision in the Convention if did not conflict with their national legislation:

Countries entering reservations referring to national legislation
Algeria: article 2, article 9 (2), article 15 (4), article 16;
Israel: articles 7 (b), article 16;
Kuwait: article 7 (a), article 9 (2);
Morocco: article 2 and reference to constitutional requirements regarding rules of succession to the throne, article 15 (4), article 9 (2);
Tunisia: article 9 (2), article 16, article 15 (4).

None of these states have limited the duration of their reservation until national legislation is

[15] Egypt, Kuwait, and Morocco have entered reservations to Article 9 (2) in relation to the determination of a child's nationality by his/ her father. However, no specific justification was given in the case of Egypt or Kuwait of whether this was because it contradicted the Shari'a, national legislation or for any other reason. In the case of Morocco, the explanation was based on national legislation. The following states have entered reservations to provisions in CEDAW without giving specific reasons: Bahrain (9 (2) and 15 (4)); Lebanon (9 (2) and 16 (1, c, d, f, and g)); Jordan (articles 9 (2), 15 (4), 16 (1, c, d, and g); Iraq (2 , f, n, and g) and 9(1 and 2); Syria (2, (9 (2), 15 (4), 16 (1, c, d, f, and g).

[16] The following states have entered reservations to provisions in CEDAW without giving specific reasons: Bahrain (articles 9 (2) and 15 (4)); Lebanon (articles 9 (2) and 16 (1, c, d, f, and g)); Jordan (articles 9 (2), 15 (4), 16 (1, c, d, and g); Iraq (articles 2 , f, n, and g) and 9(1 and 2); Syria (articles 2, (9 (2), 15 (4), 16 (1, c, d, f, and g)).

reviewed and made consistent with CEDAW. It is important that states parties should review their national legislation within a reasonable period of time to ensure that national legislation is consistent with international law. International treaties, in their concluding observations, have repeatedly called for such regular reviews. The use of national legislation to excuse non-implementation of obligations under international law is clearly prohibited. Article 27 of the Vienna Convention states: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

The CEDAW Committee noted on the basis of its examination of initial and periodic reports in 1994, that "in some States parties to the Convention that had ratified or acceded without reservation, certain laws, especially those dealing with family, do not actually conform to the provisions of the Convention. [These] laws still contain many measures that discriminate against women based on norms, customs and socio-cultural prejudices. These States, because of their specific situation regarding these articles, make it difficult for the Committee to evaluate and understand the status of women."[17]

Many provisions in national legislation in the region are discriminatory. Instead of correcting these provisions to eliminate discrimination and protect women against violence, states in the region which entered reservations based on contradiction with national legislation are effectively refusing their obligation to correct discriminatory provisions in their national legislation. The CEDAW Committee has expressed concern in the case of Algeria, for example: "that mothers cannot transmit their nationality to their children in the same way that fathers can. Citizenship is a fundamental right which men and women must be able to enjoy equally. The Committee recommends the revision of legislation governing nationality in order to make it consistent with the provisions of the Convention." [18] The Committee adds: "The Committee is seriously concerned by the fact that the Family Code still contains many discriminatory provisions which deny Algerian women their basic rights, such as free consent to marriage, equal rights to divorce, sharing of family and child-rearing responsibilities, shared child custody rights with fathers, the right to dignity and self-respect and, above all, the elimination of polygamy." [19] These are the provisions to which Algeria has entered reservations.

Upon ratification, one of the important obligations under the Convention is to bring national legislation into line with it. Article 2 states that parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women including embodying the principle of equality in legislation, adopting legislative and other measures prohibiting discrimination, and abolishing or modifying existing laws, regulations or customs which constitute discrimination against women.

Article 2 reflects the fact that ratification of CEDAW is intended to ensure that the Convention's rights be guaranteed to all those under a State party's jurisdiction. This requires appropriate amendments to domestic laws and mechanisms to reflect the demands of the treaty; and ensuring that the rights guaranteed in CEDAW are enforceable at a local level.

This provision is vital for combating violence against women since it is the duty of the state to take all steps to eliminate discrimination leading to such violence. Women should enjoy the protection of the law, and should be able to claim their rights in courts on the basis of existing legislation and mechanisms. By entering reservations to this fundamental provision of the Convention, states are denying

[17] *Report of the Committee on the Elimination of Discrimination against Women,* UN Doc. A/49/38, 12 April 1994, paras 45 and 46.

[18] *CEDAW Concluding Recommendation: Algeria,* UN Doc A/54/38, 27 January 1999, paras 83-84.

[19] *CEDAW Concluding Recommendation: Algeria,* UN Doc A/54/38, 27 January 1999, para 91.

women this protection. Given that national legislation lags behind international standards, one of the reasons for ratifying international instruments is often to bring such laws into line. However, by entering reservations based on conflict with national legislation, particularly in relation to Article 2, states parties are actually seeking to subordinate international law to national legislation.

Other human rights treaty bodies have voiced similar concerns. The Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, has stated: "Equally, a reservation to the obligation to respect and ensure the rights, and to do so on a non-discriminatory basis (article 2 (1)) would not be acceptable. Nor may a State reserve an entitlement not to take the necessary steps at the domestic level to give effect to the rights of the Covenant (article 2 (2))." [20]

Commenting on a similar situation where reservations to the Convention on the Rights of the Child has been entered using the argument of conflict with national legislation, the Committee on the Rights of the Child stated that it is "deeply concerned that some States have made reservations … that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law."[21]

4.2 Islamic Shari'a based reservations or declarations

The following countries have entered reservations to Articles in the Convention stating that they contradict Islamic Shari'a.

Countries entering reservations referring to Islamic Shari'a

Bahrain: article 2, article 16;
Egypt: article 2, article 16;
Iraq: article 16;
Kuwait: article 16 (f);
Libya: article 2, article 16 (c) & (d);
Morocco: article 2, article 16;
Saudi Arabia: general reservation on all the Convention
Syria: article 16 (2)

Bahrain, Egypt, Libya, and Morocco have entered reservations to Article 2 based on Shari'a. Reservations to Article 16 (in part or as a whole) were entered by Bahrain, Egypt, Iraq, Kuwait, Libya, Morocco, and Syria, while Saudi Arabia entered a general reservation covering any unspecified discrepancies between Islamic Shari'a and CEDAW.

However, not all the countries in the region have entered reservations to Articles 2 and 16 based on conflict with Shari'a: Algeria, Jordan, Lebanon, and Tunisia have done so solely based on conflict with national legislation.

Other States outside the region have entered reservations to articles of the Convention on the same basis of conflict with Islamic Shari'a: Bangladesh (articles 2 and 16 (1) (c)), Malaysia (Articles 5 (a) and 7 (b)), Maldives

[20] *Human Rights Committee, General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant,* UN Doc. CCPR/C/21/Rev.1/Add.6, 4 November 1994, para. 9. Article 2 (1 and 2) of the ICCPR states: "*1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

[21] *Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child,* UN Doc. CRC/GC/2003/5, 27 November 2003, para. 15.

(Article 16), and Mauritania (Article 13). Singapore has also entered reservations to Articles 2 and 16 on the basis that they should be subject to "religious laws" without specifying the particular laws in question. Similarly, Israel has entered reservations to Articles 7 and 16 referring to undefined "religious laws".

It is clear from the above that there is no consistent approach among states entering reservations in reference to Shari'a in as much as:

- Not all states in the region have entered reservations to the same provisions while referring to the Islamic Shari'a as the reason;
- Whilst some states outside the region have entered similar reservations to those in the region (mainly to Articles 2 and 16), they have also entered reservations to other provisions on the basis of Shari'a (e.g. to Articles 5, 7 and 13);
- Not all states in the region have entered reservations relating to Islamic Shari'a.

It therefore appears that there is no consistent interpretation, either among countries in the region or outside it, for applying Shari'a as a basis for contradicting the provisions of the Convention.

Furthermore, the only two articles that have been subject to reservations entered based on conflict with Islamic Shari'a are articles 2 and 16. While the effect of reservations on these two articles is discussed in more detail in the following section, it should be stressed that any reservation to these core articles is contrary to the object and purpose of the Convention and should be withdrawn.

Article 2 concerns the nature of state obligations, especially in relation to policies and measures, including legislative, that should be adopted to eliminate discrimination against women. Article 16 of the Convention deals with the elimination of discrimination against women in all matters relating to marriage and family relations including the right to enter into marriage, to choose a spouse, and equality of rights and responsibilities during marriage and at its dissolution. It includes provisions concerning equal rights and responsibilities related to children and also recognises the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

It also should be noted that Saudi Arabia has entered a general reservation referring to the Islamic Shari'a. It stated: "in case of contradiction between any term of the Convention and the norms of Islamic Law, the Kingdom [of Saudi Arabia] is not under the obligation to observe the contradictory terms of the Convention." Due to its generality**,** it is entirely unclear how this is expected to be effective in the domestic judicial setting. It is unclear which articles of CEDAW this refers to or whether it refers to all the articles.

In this context, several UN Special Rapporteurs and treaty bodies have expressed concern over the use of religious law as a pretext by states for not implementing their obligations according to international standards. For example, the Special Rapporteur on Torture said in relation to corporal punishment "the Government's invocation of judicial independence in the application of Shari'a… does not relieve the State… from its obligation under international law to prevent the infliction of cruel, inhuman and degrading punishment".[22] The Special Rapporteur, highlighting a very important aspect of this debate, noted that there exists a great divergence of views among Islamic scholars and clerics concerning the obligations of States in relation to corporal punishment and that the overwhelming majority of member States of the Organization of the Islamic

[22] *Report of the UN Special Rapporteur on Torture to the Commission on Human Rights,* UN Doc. E/CN.4/1998/38, 24 December 1997, para. 213.

Conference do not implement corporal punishment in their domestic laws.[23]

5. Effects of the reservations

The CEDAW Committee has stressed repeatedly that states should take into consideration the overall effect of a group of reservations, as well as the effect of each reservation on the integrity of the treaty, to determine if a reservation is incompatible with the object and purpose of the Convention. Further, states should not enter several reservations so that they are, in effect, accepting a limited number of human rights obligations, and not the treaty as such. In particular, states should not systematically reduce the obligations undertaken merely to those presently existing in less demanding standards of domestic law, thereby leading to a perpetual non-attainment of international human rights standards. [24] States should therefore report periodically on the effect of reservations on the lives of women, and the exact interpretation of these reservations.

The CEDAW Committee has stated specifically that Articles 2 and 16 are core provisions of the Convention. The Committee holds the view that article 2 is central to the object and purpose of the Convention. Traditional, religious or cultural practice cannot justify violations of the Convention. The Committee is similarly convinced that reservations to article 16, 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. [25] Accordingly, CEDAW has made the following specific comments in relation to reservations to these articles stating:

> *The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family based, inter alia, on cultural or religious beliefs or on the country's economic or political status…*
>
> *States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.*[26]

By entering reservations to such core articles of the Convention, states in the region are effectively denying women equality, which is the main purpose of the Convention. They are maintaining the situation where discrimination exists in law, customs, and practice and refute their obligations to take effective steps to eliminate discrimination and violence against women. The preamble of CEDAW reflects that protection from discrimination and ensuring equality is actually about respect for human dignity. It states:

> *Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.*

The specific provisions that have been subject to reservations by countries in the region are fundamental to the protection of women from discrimination. Countries which subordinate the applicability of the provisions of CEDAW's Article 2 (on the nature of states

[23] *Report of the UN Special Rapporteur on Torture to the Commission on Human Rights,* UN Doc. E/CN.4/1997/7, 10 January 1997, para. 10.
[24] *Human Rights Committee, General Comment No. 24,* para. 19.
[25] For more on the view of CEDAW on reservations see: http://www.un.org/womenwatch/daw/cedaw/reservations.htm
See also the concluding observations of CEDAW on Egypt, Iraq, and Morocco included in Appendix 1 of this document.

[26] *CEDAW General Recommendation 21: Equality in marriage and family relations,* 4 February 1994, paras. 41 and 44.

parties' obligations) to their Family Code, Personal Status law or to Islamic Shari'a qualify and compromise their commitment to eliminating discrimination against women, in effect defeating the intention of the treaty itself.[27]

Article 2 is directly relevant to the requirement on states under CEDAW to eliminate violence against women. In its General Comment 19 regarding violence against women, the CEDAW Committee states that: "States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence". Excluding or modifying the legal effect of Article 2 in the national judicial system may mean:

- Law and policy formulation on the elimination of violence against women and other discriminatory practices cannot effectively refer to the state's international legal obligations under Article 2;
- Human rights defenders, legal professionals and courts cannot effectively invoke international legal obligations under the reserved article in legal proceedings regarding instances of violence against women and other discriminatory practices.

Hence the CEDAW Committee urged states to comply with the provision of Article 2 to ensure that, in both public and family life, women are free of the gender-based violence that so seriously impedes their rights and freedoms.

Article 2(f) sets out the obligation to modify and abolish laws, regulations, customs and practices discriminating against women. By entering reservations to that provision, states may effectively exempt themselves from responding to both the causes and the manifestations of all forms of violence against women.

Reservations to Article 2(g) (national penal provisions discriminating against women) permit states to take little or no action to amend laws which lead to *de jure* or *de facto* discrimination against women. These include laws that criminalise sexual relationships outside marriage, or laws that impose restrictions such as dress codes or curbs on the freedom of movement. It also includes laws that do not provide for adequate or any penalties for violence against women, including rape, and the so called "honour killings".

The specific effect of modifying or excluding treaty obligations under Article 2 will depend on how the modification or exclusion is interpreted at the national level. However, it can be argued – at the very least at the level of formal commitment – that states entering reservations on Article 2 raise questions regarding their commitment to eliminating violence against women.

Similar doubts are raised by reservations to Articles 15 (equal right to conclude contracts and administer property, freedom of movement),[28] and 16 (equal rights relating to marriage and family relations).[29] Articles 15 and 16, along with Article 2(e), identify issues of equality of women in the 'private' sphere, which when unresolved help perpetuate various forms of violence against women.

With regard to freedom of movement, former UN Special Rapporteur on violence against women Radhika Coomaraswamy has noted how "attitudes towards female sexuality are often the cause of violence against women" in ways that make it "important for society to 'protect' its women from the violence of 'the

[27] States in the region that entered reservation or declaration to Article 2 are: Algeria, Bahrain, Egypt, Libya, Morocco, Syria and Iraq.

[28] States in the region entering reservation to Article 15 are Bahrain, Jordan, Morocco, Syria, and Tunisia.

[29] States in the region entering reservations to Article 16 are Algeria, Bahrain, Egypt, Iraq, Morocco, Israel, Jordan, Lebanon, Libya, Syria, and Tunisia. This is the most heavily reserved article in CEDAW by states in the region.

other'. This protection often entails restrictions being placed on women, whether in the form of dress codes or the freedom of movement… Women who challenge the codes of dress and the restrictions on movement are often targets of male violence."[30] Restrictions on women's right to freedom of movement may mean that women are prevented from leaving abusive relationships.

Reservations to Article 15 (2), which calls for governments to give women equal rights to conclude contracts and administer property, help sustain environments which make women socially and financially dependent on men and weaken women's ability to protect themselves from gender-based violence. Women's lack of legal status and inability to conclude contracts make them reliant on men in ways that may not allow them to leave violent relationships.

Reservations to Article 16 (regarding equal rights in marriage and family relations) also protect various forms of explicit and implicit violence against women. These include: child marriage and forced marriage; marital rape; abandonment by the spouse; polygamy and denial of custody rights to women who leave violent relationships and seek a divorce.[31] The issue of unequal minimum ages for marriage, for example, has focussed attention on child marriage as a human rights violation condoned by disregard of Article 16 and on the sexual exploitation of girls within socially sanctioned marital relations. With regard to reservations to Article 16, the CEDAW Committee has stated:

> *Many of these countries [which have entered reservations to Article 16] hold a belief in the patriarchal structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged. … [T]he Committee requires that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention. States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.*[32]

6. Conclusions and Recommendations

Reservations to CEDAW reveal that while it is widely ratified in the region, it is also subject to reservations that substantially hinder its implementation. These reservations are very broad and lack clarity and precision. Most are related to Articles 2 and 16, considered by the Committee to be core provisions of the Convention, and any reservations to these articles are therefore incompatible with it. These reservations relate to the object and purpose of the Convention, and therefore are prohibited by international law. They would mean that discrimination against women is effectively sustained in law and practice, and deny women the protection against discrimination and violence. This is particularly so, as national legislation in the region, including the religiously-inspired ones, is often discriminatory against women.

Many of these reservations have a direct impact on the protection of women against

[30] UN Doc. E/CN.4/1995/42, 22 November 1994, para. 61.

[31] Polygamy as a form of violence against women is discussed by the former Special Rapporteur on Violence against Women in her 2002 report, UN Doc. E/CN.4/2002/83, 31 January 2002, para. 63. The CEDAW Committee discusses its effects on women's equal enjoyment of human rights in its *General Recommendation 21: Equality in Marriage and Family Relations*, para. 14.

[32] *CEDAW General Recommendation 21: Equality in Marriage and Family Relations,* para. 41.

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violence and other forms of discrimination. They impede progress in ensuring that women enjoy their rights, including protection against violence and discrimination, and their ability to obtain redress from appropriate national mechanisms.

Although international law and CEDAW permit reservations upon ratification, most of those entered by countries covered in this report are inconsistent with what is permissible and several bodies, including CEDAW, have expressed their particular concern. Despite such criticism, most states parties in the region have made little or no effort to implement CEDAW's recommendations either in relation to specific country reservations, or general recommendations on the subject.

Accordingly, Amnesty International recommends that states in the region take immediate steps to:

- Fulfil their reporting requirements under the Convention and report as soon as possible to CEDAW regarding steps they are taking to meet the Committee's recommendations on the removal of reservations;

- Implement immediately the recommendations of CEDAW Committee by lifting all reservations to the Convention, particularly those that are clearly incompatible with their fundamental obligations under the treaty, and take steps to review relevant national legislation;

- Ratify the Convention without reservations in the case of those that have yet to do so (i.e. Iran, Oman, Qatar and United Arab Emirates); and

- Join the Optional Protocol to the Convention, enabling individual women and groups to petition the Committee directly.

Appendix 1: Full text of reservations to CEDAW and relevant recommendations by CEDAW Committee

The following is the exact text of reservations as entered by states parties to CEDAW in the region upon their ratification or accession to the treaty. Relevant observations and recommendation by the CEDAW Committee are also included.

Algeria

Reservations:
"Article 2:
The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code.

Article 9, paragraph 2:
The Government of the People's Democratic Republic of Algeria wishes to express its reservations concerning the provisions of article 9, paragraph 2, which are incompatible with the provisions of the Algerian Nationality Code and the Algerian Family Code.

The Algerian Nationality code allows a child to take the nationality of the mother only when:
- the father is either unknown or stateless;
- the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria;
- moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object.

Article 41 of the Algerian Family Code states that a child is affiliated to its father through legal marriage.

Article 43 of that Code states that "the child is affiliated to its father if it is born in the 10 months following the date of separation or death".

Article 15, paragraph 4:
The Government of the People's Democratic Republic of Algeria declares that the provisions of article 15, paragraph 4, concerning the right of women to choose their residence and domicile should not be interpreted in such a manner as to contradict the provisions of chapter 4 (art. 37) of the Algerian Family Code.

Article 16:
The Government of the People's Democratic Republic of Algeria declares that the provisions of article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code.

Article 29:
The Government of the People's Democratic Republic of Algeria does not consider itself bound by article 29, paragraph 1, which states that any dispute between two or more Parties concerning the interpretation or application of the Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration or to the International Court of Justice.

The Government of the People's Democratic Republic of Algeria holds that no such dispute can be submitted to arbitration or to the Court of International Justice except with the consent of all the parties to the dispute."

Recommendations by CEDAW Committee

The Committee also notes that the reservations of the State party to articles 2, 9, paragraph 2, 15, paragraph 4, and 16 are obstacles to the Convention's full implementation.

The Committee reiterates its concern at the reservations to the Convention entered by the State party.

The Committee urges the State party to expedite the steps necessary for withdrawal of its reservations.[33]

Bahrain

Reservations:
"....the Kingdom of Bahrain makes reservations with respect to the following provisions of the Convention:
- Article 2, in order to ensure its implementation within the bounds of the provisions of the Islamic Shariah;
- Article 9, paragraph 2;
- Article 15, paragraph 4;
- Article 16, in so far as it is incompatible with the provisions of the Islamic Shariah;
- Article 29, paragraph 1."

No Recommendations by CEDAW Committee yet.

Egypt

Reservations made upon signature and confirmed upon ratification:

"In respect of article 9
Reservation to the text of article 9, paragraph 2, concerning the granting to women of equal rights with men with respect to the nationality of their children, without prejudice to the acquisition by a child born of a marriage of the nationality of his father. This is in order to prevent a child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality.

In respect of article 16
Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the provisions of Islamic Shari'a whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the Shari'a lie down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Shari'a therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.

In respect of article 29:
The Egyptian delegation also maintains the reservation contained in article 29, paragraph 2, concerning the right of a State signatory to the Convention to declare that it does not consider itself bound by paragraph 1 of that article concerning the submission to an arbitral body of any dispute which may arise between States concerning the interpretation or application of the Convention. This is in order to avoid being bound by the system of arbitration in this field.

General reservation on article 2
The Arab Republic of Egypt is willing to comply with the content of this article, provided that

[33] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Algeria,* A/54/38, paras.41-94, 27 January 1999, Paras. 67-70.

such compliance does not run counter to the Islamic Shari'a."

Recommendations by CEDAW Committee

While appreciating the efforts of the National Council for Women to encourage the Government to withdraw its reservations to articles 2 and 9, paragraph 2, and article 16 of the Convention, the Committee expresses its concern that these reservations entered by the State party upon ratification have been retained.

The Committee urges the State party to expedite the steps necessary for the withdrawal of its reservations and in that regard draws its attention to the Committee's statement on reservations in its report on its nineteenth session and, in particular, its view that articles 2 and 16 are central to the object and purpose of the Convention and that, in accordance with article 28, paragraph 2, they should be withdrawn.[34]

Iraq

Reservations:
"1. Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them. Iraq also enters a reservation to article 29, paragraph 1, of this Convention with regard to the principle of international arbitration in connection with the interpretation or application of this Convention.

2. This approval in no way implies recognition of or entry into any relations with Israel."

Recommendations by CEDAW Committee

The Committee is concerned that the State party explicitly ruled out the possibility of withdrawal of its reservations to article 2, subparagraphs (f) and (g), and articles 9 and 16. The Committee expresses its concern at the State party's justification of those reservations as being based on its desire to apply the provisions of the Convention in a manner consistent with Islamic Shari'a. In that regard, the Committee draws the attention of the State party to its statement on reservations (see A/53/38/Rev.1, part two, chap. I), and in particular its view that articles 2 and 16 are central to the object and purpose of the Convention, and that, in accordance with article 28, paragraph 2, reservations should be reviewed and modified or withdrawn.

The Committee recommends that the Government of Iraq review its reservations to article 2, subparagraphs (f) and (g), and articles 9 and 16, in the light of the Committee's statement on reservations, assess the justifications for those reservations and modify or withdraw them as soon as possible to ensure full implementation of the Convention.[35]

Jordan

Declaration made upon signature and confirmed upon ratification:
"Jordan does not consider itself bound by the following provisions:
1. Article 9, paragraph 2;
2. Article 15, paragraph 4 (a wife's residence is with her husband);
3. Article 16, paragraph (1) (c), relating to the rights arising upon the dissolution of marriage with regard to maintenance and compensation;
4. Article 16, paragraph (1) (d) and (g)."

[34] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Egypt,* 2 February 2001, A/56/38, paras 319, 326, 327.

[35] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Iraq,* A/55/38, 14 June 2000, paras. 186 and 188.

Recommendations by CEDAW Committee

The Committee notes with concern that Jordan has entered reservations to articles 9.2 and 15.4, which relate to these matters.

The Committee calls on the State party to revoke these laws and to withdraw these reservations to articles 9.2 and 15.4.

It also recommends that the Government review its reservations to article 16 (c), (d) and (g) with a view to their withdrawal.[36]

Kuwait

Reservations:
"1. Article 7 (a)
The Government of Kuwait enters a reservation regarding article 7 (a), inasmuch as the provision contained in that paragraph conflicts with the Kuwaiti Electoral Act, under which the right to be eligible for election and to vote is restricted to males.

2. Article 9, paragraph 2
The Government of Kuwait reserves its right not to implement the provision contained in article 9, paragraph 2, of the Convention, inasmuch as it 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 (f)
The Government of the State of Kuwait declares that it does not consider itself bound by the provision contained in article 16 (f) inasmuch as it conflicts with the provisions of the Islamic Shariah, Islam being the official religion of the State.

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

No recommendations yet by CEDAW Committee.

Lebanon

Reservations:
"The Government of the Lebanese Republic enters reservations regarding article 9 (2), and article 16 (1) (c) (d) (f) and (g) (regarding the right to choose a family name).
In accordance with paragraph 2 of article 29, the Government of the Lebanese Republic declares that it does not consider itself bound by the provisions of paragraph 1 of that article."

No Recommendations yet by CEDAW Committee.

Libyan Arab Jamahiriya

Reservation:
"1. Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the Islamic Shari'a relating to determination of the inheritance portions of the estate of a deceased person, whether female or male.

2. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic Shari'a."

No recommendations by CEDAW Committee yet.

Morocco

Declarations:
"1. With regard to article 2:
The Government of the Kingdom of Morocco express its readiness to apply the provisions of this article provided that:

[36] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Jordan,* A/55/38, 27 January 2000, paras 172, 173, and 175.

- They are without prejudice to the constitutional requirement that regulate the rules of succession to the throne of the Kingdom of Morocco;
- They do not conflict with the provisions of the Islamic Shariah. It should be noted that certain of the provisions contained in the Moroccan Code of Personal Status according women rights that differ from the rights conferred on men may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah, which strives, among its other objectives, to strike a balance between the spouses in order to preserve the coherence of family life.

2. With regard to article 15, paragraph 4:
The Government of the Kingdom of Morocco declares that it can only be bound by the provisions of this paragraph, in particular those relating to the right of women to choose their residence and domicile, to the extent that they are not incompatible with articles 34 and 36 of the Moroccan Code of Personal Status.

Reservation:
1. With regard to article 9, paragraph 2:
The Government of the Kingdom of Morocco makes a reservation with regard to this article in view of the fact that the Law of Moroccan Nationality permits a child to bear the nationality of its mother only in the cases where it is born to an unknown father, regardless of place of birth, or to a stateless father, when born in Morocco, and it does so in order to guarantee to each child its right to a nationality. 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 majority, its desire to acquire that nationality, provided that, on making such declaration, its customary and regular residence is in Morocco.

2. With regard to article 16:
The Government of the Kingdom of Morocco makes a reservation with regard to the provisions of this article, particularly those relating to the equality of men and women, in respect of rights and responsibilities on entry into and at dissolution of marriage. Equality of this kind is considered incompatible with the Islamic Shariah, which guarantees to each of the spouses rights and responsibilities within a framework of equilibrium and complementary in order to preserve the sacred bond of matrimony.
The provisions of the Islamic Shariah oblige the husband to provide a nuptial gift upon marriage and to support his family, while the wife is not required by law to support the family.
Further, at dissolution of marriage, the husband is obliged to pay maintenance. In contrast, the wife enjoys complete freedom of disposition of her property during the marriage and upon its dissolution without supervision by the husband, the husband having no jurisdiction over his wife's property.
For these reasons, the Islamic Shariah confers the right of divorce on a woman only by decision of a Shariah judge.

3. With regard to article 29:
The Government of the Kingdom of Morocco does not consider itself bound by the first paragraph of this article, which provides that "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".
The Government of the Kingdom of Morocco is of the view that any dispute of this kind can only be referred to arbitration by agreement of all the parties to the dispute."

Recommendations by CEDAW Committee

The Committee was of the view that, although the instrument of ratification of the Convention by the Kingdom of Morocco was in itself an important event, the fact that it had been accompanied by declarations and reservations concerning the substance of the Convention seriously hindered the latter's implementation.

The Committee was deeply concerned at the number and importance of the reservations made by Morocco, particularly the reservation to article 2, one of the Convention's central articles.

The Committee considers any reservation to that article to be contrary to the object and purpose of the Convention and incompatible with international law. The Committee was likewise concerned that the combination of reservations to articles 2 and 15 leave no room for evolving concepts of Islamic law.

The Committee noted with regret that the State party did not envisage withdrawing any of its reservations.

The Committee expressed the hope that the Government would envisage, through the political will of its leaders, the progressive withdrawal of the many reservations that were seriously undermining the proper implementation of the Convention."[37]

Saudi Arabia

Reservations:
"1. In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.
2. The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention."

No recommendations yet by CEDAW Committee.

Syrian Arab Republic

Reservation:
".....subject to reservations to article 2; article 9, paragraph 2, concerning the grant of a woman's nationality to her children; article 15, paragraph 4, concerning freedom of movement and of residence and domicile; article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child, inasmuch as this provision is incompatible with the provisions of the Islamic Shariah; and article 29, paragraph 1, concerning arbitration between States in the event of a dispute.

The accession of the Syrian Arab Republic to this Convention shall in no way signify recognition of Israel or entail entry into any dealings with Israel in the context of the provisions of the Convention."

No recommendations yet by CEDAW Committee.

Tunisia

"1. General declaration:
The Tunisian Government declares 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 chapter I of the Tunisian Constitution.
2. Reservation concerning article 9, paragraph 2:
The Tunisian Government expresses its reservation with regard to the provisions in article 9, paragraph 2 of the Convention, which must not conflict with the provisions of chapter VI of the Tunisian Nationality Code.
3. Reservation concerning article 16, paragraphs (c), (d), (f), (g) and (h):
The Tunisian Government considers itself not bound by article 16, paragraphs (c), (d) and (f) of the Convention 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.
4. Reservation concerning article 29, paragraph 1:
The Tunisian Government declares, in conformity with the requirements of article 29, paragraph 2 of the Convention, that it shall not be bound by the provisions of paragraph 1 of that article which specify that any dispute

[37] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Morocco,* A/52/38/Rev.1, 12 August 1997, paras. 52, 59, 60, and 70.

between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall be referred to the International Court of Justice at the request of any one of those parties.
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.
5. Declaration concerning article 15, paragraph 4:
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 on the Elimination of All forms of Discrimination against Women, 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."

Recommendations by CEDAW Committee

[The Committee members] expressed concern at the reservations entered concerning articles 9 and 16, and in particular, at the language of the general declaration and the declaration made with regard to article 15, which seemed to close the door on any future revisions of national legislation. They expressed the hope that the reservations and declarations would be withdrawn in the near future.

The Committee was concerned about the general declaration made at ratification in relation to reservations made to the Convention.

The Committee urges the Government to consider withdrawing its reservations.[38]

[38] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Tunisia,* A/50/38, 31 May 1995, paras. 222, 266, 271.

Yemen

Declaration:
"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."

Recommendations by CEDAW Committee

The Committee noted with appreciation that Yemen had not made any substantial reservations to the Convention. The only one that had been made concerned the system for the settlement of disputes, on which many other countries had made reservations. Nevertheless, members asked whether the Government could consider withdrawing its reservation.[39]

Israel

Reservations:
"1. The State of Israel hereby expresses its reservation with regard to article 7 (b) of the Convention concerning the appointment of women to serve as judges of religious courts where this is prohibited by the laws of any of the religious communities in Israel. Otherwise, the said article is fully implemented in Israel, in view of the fact that women take a prominent part in all aspects of public life.
2. The State of Israel hereby expresses its reservation with regard to article 16 of the Convention, to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform to the provisions of that article.

Declaration:
3. In accordance with paragraph 2 of article 29 of the Convention, the State of Israel hereby

[39] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Yemen*, A/48/38, 2 February 1993, para. 216.

declares that it does not consider itself bound by paragraph 1 of that article."

Recommendations by CEDAW Committee

The Committee regretted the fact that Israel had maintained its reservations to articles 7 (b) and 16 of the Convention. It also regretted the fact that women could not become religious judges and that the religious laws that to a considerable degree govern family relations discriminated against women.

The Committee suggested that in order to guarantee the same rights in marriage and family relations in Israel and to comply fully with the Convention, the Government should complete the secularization of the relevant legislation, place it under the jurisdiction of the civil courts and withdraw its reservations to the Convention.[40]

[40] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Israel,* A/52/38/Rev, 12 August 1997, paras. 157 and 173.

Appendix 2

Overdue reports on CEDAW by Country

Country	Periodic report	Overdue Date
Bahrain	First	18 July 2003
Egypt	Sixth	18 October 2002
Iraq	Fourth Fifth	12 September 1999 12 September 2003
Israel	(no overdue reports)	
Jordan	Third	31 July 2001
Kuwait	Third	2 October 2003
Lebanon	Second	16 May 2002
Libya	Third Fourth	15 June 1998 15 June 2002
Morocco	Third	21 July 2002
Saudi Arabia	First	7 October 2001
Syria	First	27 April 2004
Tunisia	Fifth	20 October 2002
Yemen	(no overdue reports)	