

Harmonizing the CEDAW and Bahraini Legislation Constraints 'An International Perspective'

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Abstract:

The Middle East: A Special Case in the International Legal Order:

I. The International Instruments in the field of Human Rights Protection: Women's Rights

1. The Universal Declaration of Human Rights (1948);
2. The International Covenant on Civil and Political Rights;
3. The International Covenant of Economic, Social and Cultural Rights;
4. The United Nations Convention of Elimination of All Kinds of Discrimination Against Women (CEDAW);
5. The CEDAW from Ratification to Implementation: An International Perspective
6. The Regional Instruments in the Arab Countries: The Arab Charter for Human Rights, 2004.

II. The CEDAW's Value Added to the Coexisting and Overlapping International, Regional and Domestic Equality and non-discrimination Regime: The Actual Value Added of the CEDAW: Socio-economic Rights as the Kingdom of Bahrain is a Democratic Welfare State.

III. The CEDAW at the Kingdom of Bahrain's National Legislation? Challenges and Prospects

IV. The Interplay between the CEDAW and the Domestic Legal Regime at the Kingdom of Bahrain: The Implementation and Domestication of the CEDAW at the Kingdom of Bahrain

Women's Rights Legal framework at the Kingdom of Bahrain

1. Constitutional Framework
2. Legislative framework

V. Conclusions

Abstract:**The Middle East: A Special Case in the International Legal Order:
Cultural globalization and women's rights****Conceptual Background****The Middle East: A Special Case in the International Legal Order***The Division of the Middle East to British and French Colonies after World War I, and the Influence of Various Legal Cultures upon the Middle East*

The Ottoman Empire has a leading role in the MENA region centuries ago and until the British and French imperialism controlled the region for decades. The Ottoman Empire ruled the Arab countries through Islamic Shari'a law and the legal and judicial systems in those countries applied the Shari'a law.

The Arab world was divided into British and French colonies during the late 19th century and early 20th century, after the deterioration of the Ottoman Empire. This division of the MENA region has diversified the character of the region in many aspects. It is true that the region still has its Eastern conservative character regarding family laws and women's rights despite the forces of cultural and legal globalization which are reshaping new patterns of women's legislation in the region¹. These patterns of women's rights were not recognized before in the MENA region. This practice appeared in the second half of the 20th century, as a result of influence by social trends, particularly in women's legislation in the MENA region. The division of the Middle East into French and British colonies had a minor influence upon the legal cultures in various Arab countries and also had a considerable influence on the language and some social and cultural habits (norms) due to the French influence on the Maghreb countries (Tunisia, Algeria and Morocco). This French influence is not recognized in the Gulf countries. Despite this controversy, most Arab countries, are influenced by the French legal system in public law such as simple unified states, like the Kingdom of Bahrain and Egypt. The Kingdom of Bahrain, and for instance Saudi Arabia, Egypt, Morocco, Algeria, Libya, Kuwait, Oman and many other Arab states are simple states and not federal states. These countries have written

1 Ismail, Mohamed A.M., Globalization and New International Public Works Agreements in Developing Countries, Ashgate Publishing, Routledge, UK, 2011; International Investment Arbitration, Lessons from Developments in the MENA Region, Ashgate Publishing, Routledge, UK, 2013; and for the same author: Public Economic Law and New International Administrative Contracts, El Halabi Publishing, Beirut, 2010, In Arabic. The latter book was awarded the State Prize in Academic Legal Research in the Arab Republic of Egypt.

Constitutions, and were greatly influenced by the French system, not only in Civil Codes, but also in Constitutional Law and Administrative Law. Some countries such as Egypt and Morocco have *dual* judicial systems like the French system. Those countries have a special judicial organs specialized in administrative disputes ' Le Conseil D'Etat'.

The Civil Law Codification and Influence of the French Civil Napoleonic Codes

Arab civil codes are based on Napoleonic codes. This is related to the historical circumstances which characterized the region's legal order. After the Arab revolutions in the 1950s and 1960s, a new era of the political, constitutional and legal order began. It is appropriate to refer to the fact that Arab legislation, in the past centuries, was the Islamic Law "Shari'a Law" or "Fiqh,". Shari'a Law included the legal and religious framework relating to family law and its practices. It is true that the history of law in most Arab countries was a combination of the Shari'a and European laws. The legal and judicial system, particularly in Egypt, was influenced by the combination of the Shari'a and European Laws in many of the law branches.²

The Minor Diversity in the Middle Eastern and North African (MENA) Countries, in Cultural, Economic, Social and Geographical Aspects

1-The cultural influence from Egypt to the Middle East began many centuries before when the Egyptian civilization began around 7000 years ago, to be the first nation in the Middle East and the world. Similarly to the cultural globalization phenomenon nowadays, the flow of cultural, moral and legal concepts started to flow from Egypt, in the beginning of the 20th century, to the Arab region.

2-Meanwhile, the economic factor was in favour of the Gulf States which are rich of its natural resources, such as oil and gas resources. The infrastructure revolution started early in Gulf countries, on the second half of the 20th century, after the discovery of huge oil and gas reservoirs. Parallel to the infrastructure huge projects and developments in the Gulf, there was a considerable revolution in all economic sectors, particularly in the last five decades. Telecommunication, health, education, civil aviation, ports, energy, construction and other sectors had a vital progress in terms of very sophisticated agreements with multinational companies as contractors, and by adopting very advanced technology. Family disputes were progressed in

² In Egypt, see: Arbitration in Egypt in Abdul Hamid El Ahdab and Jalal El Ahdab , Arbitration with the Arab Countries, (Kluwer Law International 2011) pp. 155 - 223

the Gulf region despite the fact that they are still depending on Sharia'a law. Women's rights have progressed through decades and women now are fully liberalized within the legal and religious context of Sharia'a law.

3- The social dimensions are almost the same in all Arab countries. The entire Arab region, whether Copts or Muslims, have the same social and cultural traditions. They are mainly Eastern conservative countries³. Cultural and legal globalization have a considerable effect upon many legislation and other branches of law in the MENA region, but do not influenced the eastern social traditions which directly relates to culture. At the Kingdom of Bahrain, it is clear that all sects are subject to courts which apply legal rules that are mainly based on social traditions norms and social habits' influence, despite the fact that each sect has its own applicable laws and own religious features. The non- Muslims family law disputes are governed by ordinary civil courts as stipulated by the Judicial Power Act no. 42 of 2002(article/ 6) and the Code of Civil and Commercial Procedures no. 12 of 1971 at the Kingdom of Bahrain (article 1). It is clear that the Bahrini legislative framework have liberalized decades ago as it guarantees an easy access to judiciary in family law disputes, not only to Muslim sects, but also to non-Muslims as the right to start litigation is a constitutional right at the Kingdom of Bahrain (article 20/f of the Bahraini constitution). This is the sign of liberalization of the Bahraini legislation. As a matter of fact, the cultural and legal globalization and the flow of the legal culture as an intangible value, will influence many areas of legislation, regulatory framework and contractual types. This influence is not expected to extend to family laws of Muslims' sects, in their family law governing rules, as they are influenced to a great extent by social eastern conservative habits. The same vision is valid for Muslims and Copts in Bahrain, Egypt and other Arab countries as both religions are influenced by Arab social eastern conservative habits and consequently they have common social habits in their family laws which are not subject to the cultural and legal globalization flow.

Similarities which Characterize the Entire Region's Political and Legal order

In brief, all Arab countries share the same culture with some minor liberal

³ Ismail, Mohamed A M, Globalization and New International Public Works Agreements in Developing Countries, Ashgate Publishing, Routledge, UK, 2010; and for the same author: Public Economic Law and New International Administrative Contracts, El Halabi Publishing, Beirut, 2010.

exceptions. The latter liberal trend was reflected in family laws. Those liberal Arab countries were the first to develop family legislative tools in their legislation in accordance with the international instruments. Conversely, legal globalization will not influence family laws in Arab countries despite the facts that it has considerably influenced women's rights.

The historical Ottoman Empire which characterized the Islamic Caliphate in recent centuries reflected the Islamic Caliphate which existed in the Arab world centuries before the Ottoman Empire. The latter Empire deteriorated after World War I and the Arab world was divided into British and French Colonies. Liberation revolutions, for instance, started in many Arab countries and The Kingdom of Bahrain was liberalized in 1973.

There was consistency and harmony in the political, constitutional and legal order in the region after the mid-20th century revolutions. The socialist ideology was the leading ideology in Egypt, Syria, Libya and many Arab countries in the late 1950s and early 1960s and for the following two decades. This led to nationalization of private sectors' assets, unpredictability and difficulties in various economic activities in the Arab world. The Gulf region was far away from the socialist ideology and its dramatic possible effect on some Arab countries' economy such as Egypt, Libya and Syria.

The Gulf States adopted the monarchy political pattern in light of the families' social historical background.

I. The International Instruments in the field of Human Rights Protection: Women's Rights

During decades, the international community has recognized various international instruments to achieve a high threshold of protection to women's rights and to raise the level of awareness in many regions of the world regarding equality between men and women and to implement human rights' principles in women's rights. The most fundamental international instruments are:

1) The Universal Declaration of Human Rights (1948):

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 (III)), as a common standard of achievements for all peoples and all nations. It sets out, for the

first time, fundamental human rights to be universally protected.

The United Nations Charter reaffirmed faith in fundamental human rights, and dignity and worth of the human person and committed all member states to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

When the atrocities committed by the Nazi Germany became apparent after the World War II, the consensus within the world community was that the United Nations Charter did not sufficiently define the rights to which it referred. A universal declaration that specified the rights of individuals was necessary to give effect to the Charter's provisions on human rights.

The underlying structure of the UDHR was introduced in its second draft. Articles 1 and 2 are the foundation blocks, with their principles of dignity, liberty, equality and brotherhood. The articles from 3 to 11 constitute rights of the individual such as the right of life and prohibits slavery.

2) The International Covenant on Civil and Political Rights:

The **International Covenant on Civil and Political Rights (ICCPR)** is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties⁴.

The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights(UDHR). [2]

The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and normally holds three sessions per year⁵.

4 Visit: https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights. Last accessed on 4th of August, 2016.

5 Visit: Visit: https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights. Last accessed on 4th of August, 2016.

Visit: https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights. Last

The ICCPR has its roots in the same process that led to the Universal Declaration of Human Rights. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Drafting continued on the convention, but there remained significant differences between UN members on the relative importance of negative Civil and Political versus positive Economic, Social and Cultural rights. These eventually caused the convention to be split into two separate covenants, «one to contain civil and political rights and the other to contain economic, social and cultural rights.»^[5] The two covenants were to contain as many similar provisions as possible, and be opened for signature simultaneously. Each would also contain an article on the right of all people to self-determination⁶. The first document became the International Covenant on Economic, Social and Cultural Rights and the second is the International Covenant on Civil and Political Rights. The drafts were presented to the UN General Assembly for discussion in 1954, and adopted in 1966. As a result of diplomatic negotiations, the International Covenant on Economic, Social and Cultural Rights was adopted shortly before the International Covenant on Civil and Political Rights.

The Covenant follows the structure of the UDHR and, with a preamble and fifty-three articles, divided into six parts:

Part 1 (Article 1)

recognizes the right of all peoples to self-determination, including the right to “freely determine their political status”, pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognizes a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self-governing and trust territories (colonies) to encourage and respect their self-determination.

accessed on 4th of August, 2016.

6 Visit: https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights. Last accessed on 4th of August, 2016.

Part 2 (Articles 2 – 5)

obliges parties to legislate where necessary to give effect to the rights recognized in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognized «without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,» and to ensure that they are enjoyed equally by women. The rights can only be limited «in time of public emergency which threatens the life of the nation,» and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion.

Part 3 (Articles 6 – 27)

lists the rights themselves. These include rights to physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8); liberty and security of the person, in the form of freedom from arbitrary arrest and detention (Articles 9 – 11); procedural fairness in law, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16); individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24); prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20); political participation, including the right to vote (Article 25); Non-discrimination, minority rights and equality before the law (Articles 26 and 27). Many of these rights include specific actions which must be undertaken to realize them.

Part 4 (Articles 28 – 45)

governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognize the competence of the Committee to resolve disputes between parties on the implementation of the Covenant (Articles 41 and 42).

Part 5 (Articles 46 – 47)

clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or «the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources».

Part 6 (Articles 48 – 53)

governs ratification, entry into force, and amendment of the Covenant.

The Kingdom of Bahrain ratified the ICCPR by law no. 56 of 2006. The ICCPR became part of the Bahraini legislation since ratification in 12th of August, 2006.

3) The International Covenant of Economic, Social and Cultural Rights:

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights to the Non-Self-Governing and Trust Territories and individuals, including labor rights and the right to health, the right to education, and the right to an adequate standard of living. As of 2015, the Covenant has 164 parties. A further six countries, including the United States, have signed but not ratified the Covenant. The ICESCR is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), including the latter's first and second Optional Protocols⁷.

The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.[5]

Right to health

Article 12 of the Covenant recognizes the right of everyone to «the enjoyment of the highest attainable standard of physical and mental health». «Health» is understood not just as a right to be healthy, but as a right to control one's own health and body (including reproduction), and be free from interference such as torture or medical experimentation. States must protect this right by ensuring that everyone within their jurisdiction has access to the underlying determinants of health, such as clean water, sanitation, food, nutrition and housing, and through a comprehensive system of healthcare, which is

⁷ Visit: https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights. Last accessed on 4th of August, 2016.

available to everyone without discrimination, and economically accessible to all. Article 12.2 requires parties to take specific steps to improve the health of their citizens, including reducing infant mortality and improving child health, improving environmental and workplace health, preventing, controlling and treating epidemic diseases, and creating conditions to ensure equal and timely access to medical services for all. These are considered to be 'illustrative, non-exhaustive examples', rather than a complete statement of parties' obligations.

The right to health is interpreted as requiring parties to respect women's' reproductive rights, by not limiting access to contraception or 'censoring, withholding or intentionally misrepresenting' information about sexual health. They must also ensure that women are protected from harmful traditional practices such as female genital mutilation.

Right to health is inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions⁸.

It is worth mentioning that Egypt accepted the Covenant to the extent it does not conflict with Islamic Sharia'a law. Sharia is 'The primary source of legislation' pursuant to Article 2 of both the previous 1971 Constitution and Article 2 of the current 2014 constitution.

The Kingdom of Bahrain ratified the ICESCR by law no. 10 of 2007. The ICESCR became part of the Bahraini legislation since ratification in 16th of July, 2007.

4) The United Nations Convention of Elimination of All Kinds of Discrimination Against Women (CEDAW):

The United Nations Convention of Elimination of All Kinds of Discrimination Against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as '...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise

⁸ Visit: Visit: https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights. Last accessed on 4th of August, 2016.

by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal systems, abolish all discriminatory laws and adopt appropriate new modified ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life, including the right to vote and to stand for election, as well as education, health and employment. States' parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms⁹.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations¹⁰.

The Kingdom of Bahrain ratified CEDAW by Decree-law no 5 of 2002. The CEDAW is a part of the Bahraini legislation since ratification.

9 Visit: <http://www.un.org/womenwatch/daw/cedaw/>. Last accessed on 4th of August 2016.

10 Visit: <http://www.un.org/womenwatch/daw/cedaw/>. Last accessed on 4th of August 2016.

5) The CEDAW from Ratification to Implementation: An International Perspective:

The CEDAW had several steps from ratification to implementation as follows:

Ratification:

The Kingdom of Bahrain made reservations with respect to the following provisions of the Convention¹¹:

- 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.

Decree-Law no (5) of 2002 at the Kingdom of Bahrain stipulated the abovementioned reservations which were made by the Kingdom of Bahrain. The CEDAW was ratified by the same decree-law and since the promulgation of this decree-law the CEDAW is a valid reservation at the Kingdom of Bahrain.

It is appropriate to refer that on 25th of April 2003, and with regard to reservations made by Bahrain upon accession¹², The Government of the Republic of France has examined the reservations made by the Government of the Kingdom of Bahrain upon accession to the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979. The Government of the Republic of France considers that, by making the implementation of articles 2 and 16 of the Convention subject to respect for the Islamic Shariah, the Government of the Kingdom of Bahrain is making two reservations of such a general and indeterminate scope that it is not possible to ascertain which changes to obligations under the Convention they are intended to introduce. Consequently, the Government of France considers that the reservations as formulated could make the provisions of the Convention completely ineffective. For these reasons, the Government objects to the reservations made in respect of articles 2 and 16 of the

11 Visit: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>. Last accessed 7th of August, 2016.

12 <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>. Last accessed on 7th of August, 2016.

Convention, which it considers to be reservations likely to be incompatible with the object and purpose of the Convention.

The Government of France objects to the reservations made in respect of article 9, paragraph 2, and article 15, paragraph 4, of the Convention.

The Government of France notes that these objections shall not preclude the entry into force of the Convention on the Elimination of All Forms of Discrimination against Women between Bahrain and France.

It is appropriate to refer to the fact that on the 28 February 2003 and with regard to the reservation made by Bahrain upon accession:

“The Government of Denmark has examined the reservations made by the Government of Bahrain upon accession to the Convention on the Elimination of All Forms of Discrimination against Women regarding article 2, paragraph 2 of article 9, and paragraph 4 of article 15 and article 16.

The Government of Denmark finds that the reservation to articles 2 and 16 with reference to the provisions of Islamic Sharia is of unlimited scope and undefined character. Consequently, the Government of Denmark considers the said reservations as being incompatible with the object and purpose of the Convention and accordingly inadmissible and without effect under international law.

The Government of Denmark furthermore notes that the reservations to paragraph 2 of article 9 and to paragraph 4 of article 15 of the Convention seek to exclude an obligation of non-discrimination, which is the aim of the Convention. The Government of Denmark finds that these reservations made by the Government of Bahrain are not in conformity with the object and purpose of the Convention.

The Government of Denmark therefore objects to the aforementioned reservations made by the Government of Bahrain to the Convention on the Elimination of all Forms of Discrimination against Women. This shall not preclude the entry into force of the Convention in its entirety between Bahrain and Denmark.

The Government of Denmark recommends the Government of Bahrain to reconsider its reservations to the Convention on the Elimination of All Forms of Discrimination against Women.”

Some other European countries expressed the same concerns such as Netherlands, Sweden, the Federal Republic of Germany and other countries.

It is appropriate to refer at this stage to the fact that Egypt has ratified the CEDAW with similar reservations as follows¹³:

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 Islamic Sharia's provisions 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 Sharia lay 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 Sharia 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.

13 Visit: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>. Last accessed 7th of August, 2016.

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.

Reservation made upon ratification:

General reservation on article 2

The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia.

It is worth mentioning that the Republic of France had also some reservations in the light of the French social patterns and legal infrastructure as follows²⁸:

Upon signature:

The Government of the French Republic declares that article 9 of the Convention must not be interpreted as precluding the application of the second paragraph of article 96 of the code of French nationality¹⁴.

[All other declarations and reservations were confirmed in substance upon ratification.]

Upon ratification:

Declarations:

The Government of the French Republic declares that the preamble to the Convention in particular the eleventh preambular paragraph contains debatable elements which are definitely out of place in this text.

The Government of the French Republic declares that the term "family education" in article 5 (b) of the Convention must be interpreted as meaning public education concerning the family and that, in any event, article 5 will be applied subject to respect for article 17 of the International Covenant on Civil and Political Rights and article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Government of the French Republic declares that no provision of the Convention must be interpreted as prevailing over provisions of French legislation which are more favorable to women than to men.

Reservations:

¹⁴ Visit: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>. Last accessed 7th of August, 2016.

Article 14

1. The Government of the French Republic declares that article 14, paragraph 2 (c), should be interpreted as guaranteeing that women who fulfil the conditions relating to family or employment required by French legislation for personal participation shall acquire their own rights within the framework of social security.

2. The Government of the French Republic declares that article 14, paragraph 2 (h), of the Convention should not be interpreted as implying the actual provision, free of charge, of the services mentioned in that paragraph.

Article 16 1 (g)

The Government of the French Republic enters a reservation concerning the right to choose a family name mentioned in article 16, paragraph 1 (g), of the Convention.

Article 29

The Government of the French Republic declares, in pursuance of article 29, paragraph 2, of the Convention, that it will not be bound by the provisions of article 29, paragraph 1.

It is clear from the abovementioned facts that the French Republic made several reservations which are compatible with the French community social patterns and French civil legal culture.

The Kingdom of Bahrain has ratified the CEDAW by Decree-law no. 5 of 2002.

Implementation:

Pursuant to article 2 of the Decree-law no.70 of 2014, the Kingdom of Bahrain has reservations only to article 9/2 and 29/1 from the CEDAW. The Kingdom of Bahrain relinquished all other reservations to the Convention. In fact, the new Decree-law in 2014 has fine-tuned the previous reservations which were made by the Kingdom of Bahrain in 2002 upon the ratification of the Convention.

This article will refer on a later stage to the reservations made by the Decree-law no. 70 of 2014 and which are currently part of the Bahrini legislation.

6) The Regional Instruments in the Arab Countries: The Arab Charter for Human Rights, 2004

On the 23rd of May, 2004 the sixteenth Arab Summit in Tunisia approved the Arab Charter for Human Rights. The charter sets out the main legislative framework for the core rights protection for women, in addition to other human rights which need protection in Arab countries.

Among many rights which the Charter maintains to Arab citizens, The Charter clarifies the core rights for women in addition to many other women's rights which the charter emphasizes. A clear example is Article 3/3 of the Charter stipulates that 'men and women are equal in human dignity, in rights and duties, in the light of positive discrimination which the Islamic Sharia'a, other religions, legislation and valid charters have approved, in favor of women. Each state party undertakes all precautions to secure equal opportunities and practical equality between men and women in enjoying all rights stipulated in this charter.' Article 33/1 stipulated that 'family is the natural and basic unit for the society. Marriage between a man and a woman is the base to start a family. The man and the woman, since they are adults, have the right to marry and establish a family pursuant to marriage contract stipulations. Marriage is not held unless there is a complete consent from parties without any duress. [...].'

Article 33/2 pointed out that state and community guarantee protection for the family and its support, protection of its members and the prohibition of all kinds of violence and bad treatment between its members, particularly woman and child. They also guarantee for maternity, childhood, and disabled, protection and care which are necessary. They also guarantee for kids and youth the greatest opportunities for body and mental developments.

Article 34/1 stipulates that work is normal right for each citizen and states guarantee work opportunity as possible to people without any discrimination based on sex or any other reason. Article 34/4 prohibits any discrimination between man and women on the rights of getting an advantage from training, operation, protection of labor, and wages when the value and kind of work are equal.

Article 41 stipulates that states party to this charter, in all fields, should take all appropriate measures to achieve partnership between man and women to achieve national development goals.

The kingdom of Bahrain has ratified the Charter pursuant to law no. 7 of 2006. The Charter is part of the Bahraini legislation since ratification.

II) The CEDAW's Value Added to the Coexisting and Overlapping International, Regional and Domestic Equality and non-discrimination Regime: The Actual Value Added of the CEDAW: Socio-economic Rights as the Kingdom of Bahrain is a Democratic Welfare State.

The CEDAW's Value Added to the coexisting and overlapping international, regional and domestic equality and non-discrimination regime is remarkable. It is of a fundamental importance to refer to the fact that CEDAW has great effect to the socio-economic rights of women. 'Human development if not engendered, is endangered'¹⁵. This was a verdict of the Gender Development, the 1995 Human development Report devoted to gender. The crucial question is 'can the CEDAW make a unique contribution to international human rights law by engendering human rights?' 'Most of the human rights instruments contain a provision to prohibit discrimination between sexes and there is an implicit assumption that rights are given, and should simply be extended to women. But, it is argued here, this does little to address the gendered nature of social institutions and structures. Instead, human rights should be 'engendered' or infused with substantive gender equality. The CEDAW, by contrast, through its express focus on women, goes a long way towards engendering human rights. What does the concept of 'engendering socio-economic rights' entail? Some scholars point out that it is necessary to recognize the distinctive nature of women's experience of poverty and disadvantages.

This vision suggests that it is not sufficient simply to extend human rights to women. Instead, rights need to be recast in the light of the demands of substantive gender equality. Substantive equality goes beyond treating women in the same way as men and requires transformative measures¹⁶. This entails re-conceptualizing the rights themselves.

i) Substantive Equality:

It is not sufficient simply to extend rights to women. If the gender-specific factors causing women's disadvantage are fully to be addressed, rights must be infused with substantive gender equality. What would this entail?

Formal equality assumes that the aim is to treat everyone in their merits,

¹⁵ United Nations Development Program (UNDP), Gender Development (Oxford University Press, 1995) at 1, available at: <http://hdr.undp.org/en/reports/global/hdr1995/chapter> (last accessed 8 February 2013).

¹⁶ Anne Hellum and Henriette Sinding Aasen, Women's Human Rights, CEDAW in International, Regional, and national Law, Cambridge University Press, 2013, Part II Actual added value of the CEDAW.

regardless of their gender. But treating gender as irrelevant merely ignores the ongoing disadvantage experienced by women. The result is to entrench disadvantage. For example, simply extending the right to social security to women on equal terms with men ignores the fact that women have interrupted work patterns and are often engaged in informal work. Equality might demand, not identical treatment, but very different treatment. Equal consideration for all may demand very unequal treatment in favor of the disadvantages¹⁷.

Formal equality is a relative concept as it requires that two similarly situated individuals be treated alike. This means that there is no difference in principle between treating men and women equally badly and treating them equally well. Equality is not substitute for substantive rights. For instance, if women's rights to equal pay is based on the pay of men in a very low-paid occupation, equality holds out little promise. Substantive rights to minimum wages are far more valuable. Moreover, because formal equality is agnostic as to the substantive outcome, it can be fulfilled by removing benefits from men rather than extending benefits to women. The result is that women are worse off and men are not better off.

Substantive equality moves beyond the need for a male norm. It requires some social institutions to change. Secondly, substantive equality takes into account existing power structures and the role of gender within them. Far from being irrelevant, gender may be highly relevant in addressing inequalities in society. Thus, substantive equality does not simply aim to equal treatment. Equal treatment sometimes leads to disadvantage for women, therefore, it may be necessary to treat women differently in order to achieve equalities of the outcome. Substantive equality is not neutral as to the outcome. It is substantive in the sense that it advances individuals, rather than formal in ensuring only consistency. Substantive equality might entail in the context of gender, and in particular in relation to engendering socio-economic rights.

It is argued by some scholars that the substantive equality should be regarded as having four different dimensions: **the redistributive dimension:** the substantive equality concentrates on remedying disadvantage, rather than achieving gender neutrality. Disadvantage is both material and social. Gender-based disadvantage includes the lack of empowerment of women

17 Anne Hellum and Henriette Sinding Aasen, *Women's Human Rights, CEDAW in International, Regional, and national Law*, Cambridge University Press, 2013, Part II Actual added value of the CEDAW.

within the context of family and social relations. Thus substantive equality aims to redress disadvantage in its specifically gendered context, including women's subordinate positions in the family and reproduction, in the paid workforce and in other relationships of power. This means that affirmative action measures in favor of women do not breach the principle of equality as long as their aim is to redress discriminatory disadvantage¹⁸.

The recognition dimension is a matter of respect and dignity. Dignity as a matter of substantive equality means that, as well as socio-economic disadvantage and distributive wrongs, account is taken of what is called 'recognition' wrongs. 'Recognition' wrongs consist in 'misrecognition' or inequality in the mutual respect and concerns that people feel for one another in society. This dimension of substantive inequality includes, in particular, humiliation and violence on grounds of gender. Such wrongs can be experienced regardless of relative socio-economic disadvantage. Therefore, it is important to recognize the need for respect, recognition and dignity as a separate element of substantive equality¹⁹.

The transformative dimension of substantive equality is the way it deals with difference. The problem is not so much difference per se, but the detriment that is attached to difference. Substantive equality should aim to respect and accommodate difference, removing the detriment but not the difference itself. Thus, instead of requiring the women to conform the male norms, substantive equality requires transformation of existing male-oriented institutions and social structures.

The participative dimension is the final dimension of the substantive equality and it means the importance it attaches to women's agency and voice. Substantive equality requires decision-makers to hear and respond to the voice of women, rather than imposing top-down decisions.

Engendering Socio-economic rights: Substantive equality requires a transformation of the right itself. Constraints of freedom include not just political interference, but also socio-economic and personal circumstances: what people can achieve is influenced by economic opportunities, political

¹⁸ Anne Hellum and Henriette Sinding Aasen, *Women's Human Rights, CEDAW in International, Regional, and national Law*, Cambridge University Press, 2013, Part II Actual added value of the CEDAW.

¹⁹ Ibid.

liberties, social powers and the enabling conditions of the good health and basic education.

This means that for human rights to be meaningful, the state must take positive steps to remove barriers and facilitate the exercise of such rights.

ii) International Instruments and the Gender Equality:

The gender equality is considered as an 'add-on' the existing rights within the ICESCR. The ICESCR includes Article 3, which states 'The state parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant'. Equality can enhance socio-economic rights as 'add-on'. The committee on Economic, Social and Cultural Rights (CESCR) puts it in the General Comment on Non-Discrimination issues on 2009: 'discrimination undermines the fulfillment of economic, social and cultural rights for a significant proportion of the world's population'²⁰. Equality can be powerful partner to socio-economic rights. The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of states parties. Equality is regarded as simply extending rights in the ICESCR to women. The travaux préparatoires state that Article 3 was included in the covenant to indicate that 'the same rights should be expressly recognized for men and women on an equal footing'. At the same time, they refer to the need for 'suitable measures to be taken to ensure that women had the opportunity to exercise their rights'.²¹ The CESCR claims that it has taken notes for factors negatively affecting the equal right of men and women to the enjoyment of socio-economic rights in many of its general comments, including the right to adequate housing, the right to adequate food, the right to education and the right to the highest attainable standard of health. The CESCR has produced a comment on equality for women which makes it clear that equality should be understood in a substantive way that goes beyond gender neutrality. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the

²⁰ Anne Hellum and Henriette Sinding Aasen, *Women's Human Rights, CEDAW in International, Regional, and national Law*, Cambridge University Press, 2013, Part II Actual added value of the CEDAW.

²¹ Anne Hellum and Henriette Sinding Aasen, *Women's Human Rights, CEDAW in International, Regional, and national Law*, Cambridge University Press, 2013, Part II Actual added value of the CEDAW.

effect of laws, policies and practices.

The covenant was clear in respect of Article 6(1), the right to work, and Article 7, the right to just and favorable conditions of work. According to the general comment, implementing Article 3 in relation to Article 6 of the Covenant requires, inter alia, that, in law and in practice, men and women have equal access to jobs at all levels and occupations and that vocational training and guidance programmers, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit equally from the right to work. It is true that the ICESCR also protects the women's substantive rights to dignity.

The CEDAW differs from the ICESCR in that it regards gender equality and socio-economic rights as interdependent, recognizing that gender inequality must be addressed at least in part by providing justiciable socio-economic rights. However, on closer inspection it can be seen that the CEDAW highlights two approaches. Part of the CEDAW, and its interpretation in later General Recommendation, go beyond simply extending given rights to women, and instead reframes the rights themselves in the light of substantive equality. However, other parts of the CEDAW simply extend given socio-economic rights to Women.

III) The CEDAW at the Kingdom of Bahrain's National Legislation? Challenges and Prospects

The Kingdom of Bahrain had a reservation to article 2 of the CEDAW convention²², to assure that its application is in accordance with the rules of Sharia'a law. The Sharia'a law is a main source of legislation as per the stipulation of article 2 of the constitution of the Kingdom of Bahrain. The CEDAW is a valid legislation at the Kingdom of Bahrain and it is below the constitution in the hierarchy of the applicable legal rules within the legal system of the Kingdom of Bahrain. The scope of reservation is extended only to some family rights such as custodianship, guardianship, and inheritance. The constitution and the legislation contained other women's rights such as the rights of equal opportunity, the right of work, the right of equal wages, the right to participate on public life, and etc.

²² Article 2 of Decree-law no. 5 of 2002. Decree-law no. 70 of 2014 which annulled article 2 of the Decree-law no. 5 of 2002. The Decree-law which was promulgated on 2014 stipulates that the Kingdom of Bahrain has reservations on article 9 paragraph 2, and article 29 paragraph 1.

It is worth stating that the Sharia's law while codifying inheritance rules stipulates that men has double rights of women in only some restricted cases as the substantive application in inheritance rules in Sharia's rules stipulates favorable financial treatment to women in most financial cases²³. The latter conclusion confirms the approach of Sharia's law to protect women's socio-economic rights.

Pursuant to article 2 of the Decree-law no.70 of 2014, the Kingdom of Bahrain has reservations only to article 9/2 and 29/1 from the CEDAW. The Kingdom of Bahrain relinquished all other reservations to the Convention. In fact, the new Decree-law in 2014 has fine-tuned the previous reservations which were made by the Kingdom of Bahrain in 2002 upon the ratification of the Convention.

The reservation to Article 9/2:

The Kingdom of Bahrain made a reservation to article 9/2 of the convention which stipulates that member states grant women equal rights to men regarding the nationality of children. The reason of this reservation is that the Bahraini nationality requirements is organized by the Nationality law which was promulgated in 1963 and its amendments. Article 4 of this legislation, was amended by Decree-law no. 12 of 1989, and stipulates that any person can be Bahraini if: a) he was born in Bahrain or outside and his father was Bahraini when he was born. A person can be Bahraini if he was born in Bahrain, his father was born in Bahrain and he stayed in Bahrain as a permanent residence. This is conditioned that his father does not hold another nationality. The same legislative policy was adopted by many other legislation such as Kuwait, Saudi Arabia, Qatar, UAE, Jordan and Syria. A Bahraini mother if married to a non-Bahraini cannot grant Bahraini nationality to her child. The Bahraini legislature aims to avoid dual nationality to children if the legislation grants Bahraini nationality to the child from both parents. A child may get the foreign nationality of his father in addition to the Bahraini nationality.

It is of fundamental importance to refer to the fact that article 4 of the abovementioned nationality law stipulates that: A person can be Bahraini if he was born in Bahrain or outside and his mother was Bahraini when born, if he has no known father or his ancestry to his father was not legally proven.

23 The United Nations, The Committee concerned with elimination of discrimination against women, Reports submitted from member states pursuant to article 18 from the Convention of Elimination of all forms of Discrimination Against Women. The regular first and second report for member states, Bahrain, pages 75-6.

The latter legislative provision is the sign of development and compatibility of Bahraini legislation with international human rights law.

The reservation to Article 29/1:

The Kingdom of Bahrain made a reservation to article 29 of the Convention which stipulates that arbitration is the mechanism of disputes' settlements if any disputes arises between members party to the Convention.

The Kingdom of Bahrain made this reservation for many reasons: Firstly sub-clause (2) of article 29 of the Convention grants any state, which is a party to the Convention, the right not to oblige with sub-clause (1) of article 29.

Secondly, the Kingdom of Bahrain do not prefer to be involved in any international dispute before assuring that the practice in applying the Convention provisions at the Kingdom of Bahrain is successful. This will be maintained through promoting the right legislative and regulatory frameworks to apply the Convention to the Bahraini community. The Kingdom of Bahrain would like to assure the compatibility of its legislation and regulatory framework with the Convention. The latter vision assures that the Kingdom of Bahrain is serious to apply the Convention as it respects the aims and goals of the Convention.

Thirdly, The Kingdom of Bahrain may withdraw this reservation in the right time pursuant to sub-clause (3) of article 29 24.

IV) The Interplay between the CEDAW and the Domestic Legal Regime at the Kingdom of Bahrain: The Implementation and Domestication of the CEDAW at the Kingdom of Bahrain:

Women's Rights; the Legal framework at the Kingdom of Bahrain

1) Constitutional Framework:

The constitution of the Kingdom of Bahrain stipulates in article 1.h that: 'Citizens men and women have the right to participate in public affairs and enjoy political rights, among those rights is the right to vote and the right of candidacy, pursuant to this constitution and in the light of legislative stipulations explained in legislation. Any of the citizens cannot be deprived

24 The United Nations, The Committee concerned with elimination of discrimination against women, Reports submitted from member states pursuant to article 18 from the Convention of Elimination of all forms of Discrimination Against Women. The regular first and second report for member states, Bahrain, pages 164-65.

from the right to vote or the right of candidacy unless for reasons stipulated pursuant to law'.

Article 5.a from the constitution of the Kingdom of Bahrain stipulates that: 'Family is the base of society, based on religion, morals, and love of the nation. Law maintains its legitimate existence, and enforces its ties and values, and protects maternity and childhood, and take care of children.....'.

Article 5.b stipulates that:

'State maintains coordination between woman duties towards her family and her work in the society and maintains her equality with men in political, social, cultural, economic life without violation to Sharia'a law stipulations'.

Article 18 stipulates that equality between people is a constitutional principle as follows:

'People are equal in human dignity, and citizens are equal before law in rights and public duties, no discrimination between them on this regard because of sex, origin, language, religion, beliefs'.

In conclusion, the constitutional framework at the Kingdom of Bahrain is unique in maintaining protection of women's rights in various aspects. Further, it is clear that socio-economic rights of women were existing at the Kingdom of Bahrain's constitution long time ago and even before the ratification of the CEDAW in 2002.

2) Legislative and regulatory framework

The Bahraini legislature has developed various legislation since 1956 concerning women's rights. For instance, in 1957 the Governor of Bahrain Shiekh Salman bin Hamad Al Khalifa promulgated the declaration no. 10 of 1957 which permitted women working at the government and who work as doctors or nurses to drive cars. This declaration was unique as it grants the right to drive cars to women in Bahrain as the first country in the Gulf countries to grant this right to women. It is estimated that about 169 legislative and administrative tools have been promulgated and issued to procure and maintain women's right implementation at the Kingdom of Bahrain since 1956 and until present. Among many administrative tools is the decree issued by his highness the Prince of Bahrain no. 44 of 2011 to establish the Supreme Council of Women. Article one of this decree stipulates that the Supreme Council of Women shall be established and it has the juristic entity. The article further adds that the Council is considered the authority in Bahrain for all issues concerning women. Article two pointed out that the Council is headed by Her Highness Princess Sabika bint

Ibrahim Al Khalifa and the members of the Council should be 14 members. Article three stipulates that the Council is concerned, among many issues, with the proposing of the public policy in the field of development of women in the society's constitutional and civil institutions. The Council is also concerned with how to enable women to carry out its role in public life and the integration of women's efforts in developments' programs with the guarantee of non-discrimination against women. Further, and among many issues, the Council is concerned with drawing up a national plan for the development of women and solving their problems in various fields. The 1957 declaration and other legislative and administrative tools since this date and until present reflect the governmental policies in the Kingdom of Bahrain which aim to procure and maintain a high threshold of protection to the socio-economic rights of women. In addition, those polices are compatible with the international instruments and international practice.

V) Conclusions:

- 1- It is monitored that there is a considerable progress in Women's rights in the Kingdom of Bahrain on the legislative side on one hand, and on the regulatory framework and polices on the other hand. The Kingdom of Bahrain has ratified the CEDAW with very minor reservations, stipulated in 2014, in order to increase the threshold of Protection to women's human rights in Bahrain, and to enable the juristic entities which are responsible for women's rights' protection to exercise more positive and constructive roles in women's rights protection. Bahrain's target behind the CEDAW's ratification is to respect the state's international undertakings on the international community regarding women's rights protection.
- 2- The CEDAW from ratification to implementation is a considerable step in women's human rights in the Kingdom of Bahrain and in other Arab countries in the MENA region. It is true that on the date the Kingdom of Bahrain has ratified the CEDAW there was a significant improvements in women's legislation and on the regulatory framework as well as polices at the Kingdom of Bahrain. The CEDAW was an international instrument to assure the existing legislative and regulatory situation in the Kingdom of Bahrain in favor of women's rights since 1956 and until present.
- 3- The main reason behind social objections against CEDAW at the Kingdom of Bahrain is the lack of information regarding the substance of the international convention. The substantive rules of the convention and the reservations which the Kingdom of Bahrain had undertaken upon

ratification and minimized in 2014 to maintain compatibility with Sharia'a law, are not well explained to the public, and in particular the religious forces at the Kingdom.

4- The roles of the media and press are pivotal on this context as they enable think tanks to explain to the public the advantages of the substantive rules of the CEDAW and how is the reservation made by the Kingdom of Bahrain is a fundamental safeguard to protect the public interest, the Islamic and Arab identity of the Kingdom of Bahrain, eastern conservative characteristics of the Bahraini society, and the public policy and morals constraints of the Bahraini Arab society.

5- The kingdom of Bahrain's reservations regarding some articles of the CEDAW and the stipulation by Bahrain that CEDAW must be compatible with Sharia'a law is consistent with the Bahraini Islamic legal infrastructure, social patterns and in general Bahraini culture. It is worth mentioning that the Republic of France has also some reservations as the CEDAW has to be compatible with the French social and legal culture. Further, pursuant to the French Constitution of 4th of October, 1958, and as stipulated in article 55, the international treaty, after ratification, supersedes ordinary legislation in France.

6- It is of fundamental importance to refer that most of the Arab countries have ratified the CEDAW with same reservations as the Kingdom of Bahrain.

7- It is suggested that the substantive equality between women and men, from an international perspective, doesn't mean equality in all rights as it is granted to men, so it has to be copied, pasted and granted to women, but it means in its right interpretation that each gender has to enjoy the rights which are compatible with its nature. On the other hand, from some western perspectives, men has to exercise some duties towards family and children to enable women to enjoy the right to work, equal wages, equal opportunity and many other rights.