

**BCNM01 - Human Rights in the Middle East**  
**Personal Essay**

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*State party reservations to international human rights conventions raise serious questions about the universality of rights. With regard to either the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the Convention on the Rights of the Child (CRC) discuss instances where reservations have been made on the basis of Islamic law. In your answer be sure to consider:*

- a) *Whether such reservations ought to be allowed on the basis of religious rationale.*
- b) *Whether these reservations further or hinder the human rights of women and children.*

Throughout this essay I will discuss the above thesis with regards to the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*<sup>1</sup>. I will discuss various reservations made by multiple nations, all opinions raised are that of my own and bare no political stance or bias.

CEDAW was first drafted and adopted by the UN General Assembly in 1971 and can be interpreted as an international bill of rights for women. The convention aimed to highlight, throughout 30 articles, what constitutes discrimination against women and lays the groundwork for an international movement to end such discriminations and to further push for equality throughout the globe. The convention serves to enable equality between both men and women and to ensure that women are given the proper platform for equal opportunities within both their private and professional lives.

The UN claims that 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.*”<sup>1</sup>. Any nation who has ratified the treaty is legally bound under international law to enforce all 30 articles within their respective societies and laws. These nations must also submit national reports on their efforts to put the treaty into practice. This can be seen as a positive measure as it enables clear transparency and allows international insight into various nations progress in enabling equality between men and women. However, it also unfortunately enables unjust nations to falsely portray what may be inaccurate figures and steps taken to allow them to be held in higher regards internationally on a political and social level.

Since 1971, there has been a total of 41 separate sessions of the convention and the treaty currently has 99 signatories from a total of 189 parties. While these numbers are quite impressive, there have been quite some number of reservations towards the treaty from a number of nations. A large number of these reservations can be found to be in opposition to various articles of convention as they appear to be in conflict with Islamic Shariah Law. Reservations to the committee with direct reference to conflict with Islamic law has come from nations such as Bahrain, Egypt, Iraq, Kuwait,

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<sup>1</sup> <http://www.un.org/womenwatch/daw/cedaw/>

Libya, Saudi Arabia and Pakistan<sup>2</sup>. These are extremely large and influential nations with a combined population of over 400 million citizens.

All reservations made by individual nations are published under the reservations and objections section of the convention and several of the above nations are in direct opposition to the treaty in multiple areas on the basis of Islamic law. The state of Bahrain, which has a Muslim population of 70.3%<sup>3</sup> hold multiple reservations with regards to the convention which are in direct relation to Islamic law.

Bahrain originally stated that they held reservations against Article 15, paragraph 4 of the convention which states that “*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.*”<sup>4</sup> While this can be regarded to being tied to cultural aspects of Islamic law it is direct opposition of Article 13 of the Universal Declaration of Human Rights which states that everyone has the right to freedom of movement and residence within the borders of each state. It was unacceptable of Bahrain to hold a standpoint such as that stated above and to also publicly declare that “*Democratic values and respect for human rights will remain the two wings that will move with Bahrain to the future; two cornerstones of the reform project that reinforce constitutional rights according to national and Islamic values and in line with the people’s will.*”<sup>5</sup>.

In 2014 Bahrain changed their stance with regards to two of the articles of the convention that they originally opposed. Their new standpoint was on the basis that they are committed to implementing these articles – including Article 15, paragraph 4 – so long as the implementation is done “*without breaching the provisions of the Islamic Shariah*”<sup>2</sup>. It is fully the right of every nation to decide how they implement their laws with respect to their own population even on the basis of religious rationale. However, I believe that holding reservations towards something as simple as the movement of persons within a state is in direct opposition to the basic human right to the freedom of movement. Reservations such as this are in direct conflict with everything the convention aims to achieve and it directly hinders the rights of women and children within these nations. It is profound that the basic right to freedom of travel can not be implemented within the bounds of Islamic law.

Another primarily Islamic nation that holds reservations towards the convention with direct regards to Islamic law is Kuwait, which has a Muslim population of 76.7%<sup>6</sup>. Kuwait holds reservations towards Article 16 (f) of the convention, stating that the article is it “*conflicts with the provisions of the Islamic Shariah, Islam being the official religion of the State.*”<sup>2</sup>. What Article 16 (f) of the convention states briefly is that with respect to guardianship, wardship, trusteeship and adoption of children; the interests of the children shall be paramount. While this may sound like a basic and fully just right, the state of Kuwait finds it in direct conflict with Islamic law. A universal right as simple as the one discussed in Article 16 (f) should not be in direct conflict with any law that holds

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2 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

3 [https://www.indexmundi.com/bahrain/demographics\\_profile.html](https://www.indexmundi.com/bahrain/demographics_profile.html)

4 <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>

5 <https://www.mofa.gov.bh/Default.aspx?tabid=135&language=en-US>

6 [https://www.indexmundi.com/kuwait/demographics\\_profile.html](https://www.indexmundi.com/kuwait/demographics_profile.html).

any regards to the children in which it serves. Reservations such as that of Kuwait should not be allowed on the basis of religious rationale, an article such as this needs to be taken into consideration from a humanitarian and social perspective. This reservation also directly hinders the human rights of children.

A narrative that can be found to rise quite a lot throughout the reservations held by states with a large Muslim population is that of the rights of women and children when it comes to marital and family life. This is primarily described under Article 16 of the convention in which the convention aims to eliminate discrimination against women in all matters relating to marriage and family relations. The state of Malaysia (Muslim population of 61.3%<sup>7</sup>) declared that they held reservations towards a total of 4 of the sub-articles of Article 16, specifically (a), (c), (f) and (g), stating that it “*does not consider itself bound*”<sup>2</sup> by these articles as they are in conflict with Islamic law. Whilst Malaysia officially ratified the convention on the 5<sup>th</sup> July 1995, holding reservations such as these directly impacts the rights of women and children, solely on the basis of religious rationale and it is unacceptable to be able to declare ratification of the convention whilst holding reservations towards articles which seek to directly eliminate discrimination towards women.

Various nations objected to Malaysia’s reservations, some of which noting that their reservations were in direct conflict with the convention, regardless of religion. Norway objected to the state of Malaysia’s reservations, specifically that of the reservations towards Article 16 as discussed above, stating that Malaysia’s reservations are “*so extensive as to be contrary to the object and purpose of the Convention*”<sup>2</sup>. Similarly, the Netherlands also objected to Malaysia’s reservations with an objection quite similar to that of Norway’s, stating that Malaysia’s reservations “*are incompatible with the object and purpose of the Convention.*”<sup>2</sup>. It is clear that various nations were not comfortable allowing Malaysia to ratify a treaty such as the CEDAW whilst publicly holding reservations which hindered the advancement of the rights of women, especially when those reservations are held on the basis of religious rationales.

Following these initial objections, in 1998 the Government of Malaysia notified the Secretary-General of a “*partial withdrawal*”<sup>2</sup> of their original reservations, withdrawing some and modifying others. Whilst this was a step forwards towards enabling equality between men and women in Malaysia, some of the modifications were found to still be in conflict with the convention. France objected to the new revised reservations stating that were still “*incompatible with the object and purpose of the Convention.*”<sup>2</sup>. It wasn’t until July 2010 that Malaysia partially withdrew a portion of their reservations, yet still holding reservations towards those discussed earlier under Article 16. It is brilliant that various nations have objected to these reservations and it has been publicly noted that the state of Malaysia is acting in contrary to eliminating discriminating against women. However, I still believe that nations should be unable to ratify a convention such as this on the basis of religious rationales whilst still opposing articles which represent the core principles of what the convention aims to achieve.

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7 [https://www.indexmundi.com/malaysia/demographics\\_profile.html](https://www.indexmundi.com/malaysia/demographics_profile.html)

A common reservation held throughout a large number of states with a Muslim population is that towards Article 9, Paragraph 2 which states that “*States Parties shall grant women equal rights with men with respect to the nationality of their children.*”<sup>4</sup>. States which initially declared reservations towards this article of the convention include Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Bahrain, Qatar and Oman to name but a few. Saudi Arabia declared that “*The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention*”<sup>2</sup>. Whilst it may be culturally/religiously the norm for children within these states to be given the nationality of their fathers, it is a basic right for a mother to also have a say in the nationality of that child. The child is not a sole possession of the father and it is only fair that the mother is granted equal rights with respect to that of the nationality of their child.

This was duly noted by various nations throughout the convention who raised direct objections towards some of the reservations held by nations above. Objecting to Saudi Arabia’s reservation towards Article 9, Paragraph 2 as discussed above, Denmark brilliantly notes that Saudi Arabia’s reservation “*aims to exclude one obligation of non-discrimination which is the aim of the Convention and therefore renders this reservation contrary to the essence of the Convention.*”. This is exactly what these reservations aim to do. They are entirely built on the false pretense of religious rationales and aim to entirely diminish the rights of both the child and the mother, fully discriminating against both parties in favor of the father.

Although a large number of the reservations previously discussed throughout this essay are built upon the basis of religious rationale and may appear quite archaic to a Western audience, you must also take into account the cultural and social grounds upon which these reservations are founded. Some articles proposed throughout the convention come into direct conflict with social norms throughout different nations, both those of a majority Islamic population and those of other religions.

Niger’s reservations towards sections of Article 2, 15 and 16 of the convention quite effectively portray the fact that some of the articles of the convention are in conflict with deeply rooted social norms throughout nations and it may be difficult to change these. Their reservation states that some articles “*cannot be applied immediately, as they are contrary to existing customs and practices which, by their nature, can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority.*”. With the population of Niger being close to 20 million and there being a total of 8 different known groups of ethnicity, it is fair that there may be multiple different groups which hold many different customs and practices. Whilst to a Western left-leaning audience some of these customs might appear heavily discriminative towards both women and children, sometimes it is not our place to interfere with the customs and social practices within other nations.

In conclusion, I believe that a large number of the reservations made throughout the convention that were founded on the basis of religious rationales have no place in a convention such as this. I believe that nations which hold reservations - be it of a religious rationale or not – that directly act to hinder the rights of either the woman or the child should not be allowed to ratify or sign the

treaty. Holding reservations such as these entirely contradicts everything the Convention on the Elimination of All Forms of Discrimination against Women aims to achieve. Whilst on the other hand we must also be somewhat understanding of the social context in which these reservations are coming from. Some articles of the convention are in direct conflict with the customs and practices of nations, some of which are deeply founded within tradition. We have a duty as humans to ensure equal rights amongst men, women and children however we also have a responsibility to respect and acknowledge other customs and religious beliefs that differ to our own.

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