



CEDAW WITHIN THE ALGERIAN LEGAL SYSTEM: LIMITS OF COMMITMENT AND THE EFFECT OF RESERVATIONS

Brahim MEBARKI*

University Centre of El Bayadh Nour El
Bachir- Algeria
mebarki.droit@gmail.com

Zaid BENAÏSSA

University Centre of El Bayadh Nour El
Bachir- Algeria
zaidbenaissa77@gmail.com

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Abstract:

This study examines the conceptual framework of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the mechanisms of its implementation within the Algerian legal system. It also analyses the grounds for national reservations intended to reconcile international obligations with the provisions of Islamic Sharī'aa. The study concludes that the Algerian legislature has adopted an approach of 'sovereign reconciliation' through substantial legislative reforms affecting the Family Code. Moreover, a gap nevertheless persists between international expectations and national particularity, which the Charter of the United Nations recognises within the framework of respect for cultural and religious diversity.

Keywords: CEDAW, Family Code, Islamic Sharī'aa, reservations, international obligation

Introduction:

Adoption by the United Nations General Assembly of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 constituted a fundamental turning point in the course of the legislative internationalisation of women's rights; it established a comprehensive normative instrument imposing substantive obligations upon State parties to ensure effective equality. Algeria, as a party to this treaty-based framework, confronted itself with a dual legal imperative: fulfilling the international obligations arising from ratification and preserving the constitutional and social

*Brahim MEBARKI



particularity derived from the Islamic reference framework upon which the national Family Code is founded.

The research gap addressed by this article lies in the need to trace the contentious intersections between the “policy of reservations” pursued by Algeria to protect its sovereign constants and the “legislative dynamism” experienced by the national legal system in its attempt to accommodate international standards; in this context, there emerges a need to assess the extent of the effectiveness of this harmonisation in light of the recent legal amendments that have reshaped the balance between the imperatives of modernity and the requirements of identity.

For this reason, the problematique of the study is crystallised in the following principal question: To what extent has the Algerian legislature succeeded in reconciling its international obligations arising from the CEDAW Convention with its declared reservations, and what is the effect of these reservations in directing the effectiveness of the Convention within the national legal structure?

To address this problem, an analytical method has been adopted to deconstruct the contents of the Convention and to compare its provisions with those of national legislation, supported by a comparative method to demonstrate the points of convergence and divergence between the international and national frameworks, in accordance with a research plan organised into two sections. The first section is devoted to the conceptual and legal framework of the CEDAW Convention as a reference for international commitment. In contrast, the second examines the implementation of the Convention in the Algerian legal system between the imperatives of commitment and the particularity of reservation.

1. The Conceptual and Legal Framework of the CEDAW Convention as a Reference for International Commitment

The 1979 CEDAW Convention is the foremost international instrument for advancing equality; it establishes a comprehensive framework to ensure women's enjoyment of their civil, political, economic, and social rights (CEDAW, 1979). Its approach is based on removing legal restrictions and cultural norms that perpetuate discrimination while obliging states to review their national legislation to achieve equality of opportunity. The Convention is divided into six

parts covering the definition of discrimination, protective measures, gender-specific rights, and the Committee's monitoring mechanisms (Abbas, 2016, pp. 228 ff.).

1.1. The Conceptual Foundations and Strategic Measures for the Elimination of Discrimination:

The first part addressed the definition of discrimination against women and urged states to adopt strategic measures to eliminate practices founded upon inferiority:

(a) Definition

Article 1 defined “discrimination” as any distinction or exclusion made on the basis of sex, the effect of which is to impair the recognition of women's rights or to nullify their enjoyment thereof in all fields, irrespective of their marital status, and on a basis of equality with men.

(b) Measures

Article 2 specified the measures required of states, foremost among them the abolition of discriminatory regulations and customs and their replacement with laws that enshrine equality (Al-Katarji, 2011, p. 17). Article 3, by contrast, focused on measures to ensure the development and advancement of women. Article 4 prohibited the establishment of special standards for women, except for “temporary measures” designed to accelerate equality, which were to be abolished as soon as their purpose was achieved. Article 5 also obliged states to embody equality constitutionally and legally (Tabsi, 2011, p. 68) while changing cultural patterns on the basis of the superiority of either sex and affirming the shared responsibility for the upbringing of children. Finally, Article 6 provided for the adoption of provisions to combat the trafficking and exploitation of women.

1.2. The Legal Capacity of Women in the Political and Diplomatic Spheres and the Right to Nationality

The international legislator devoted Part Two of the CEDAW Convention to the regulation of political rights (Boughezala & Skandari, 1998, p. 132). Moreover, the right to nationality is established through three central articles, aimed primarily at establishing the rules of absolute equality between men and women in the exercise of popular sovereignty. This equality is reflected in the guarantee of women's right to stand for election and to vote without



restriction, as well as to hold public office and positions of decision-making and to contribute effectively to the formulation of national policies and to participate in voluntary activities. This protection also extended to the diplomatic sphere by granting women the right to represent their government at the international level and to participate officially in international organisations. In a related context, the Convention safeguarded women's right to nationality, affirming their legal independence in acquiring or retaining it; it thus prohibited the imposition of a change in nationality upon the wife or children as a consequence of the husband's change in nationality, thereby protecting women's legal identity from marital dependency.

1.3. Women's Economic and Social Rights

Part Three of the CEDAW Convention guaranteed women the full enjoyment of their economic and social rights (Fahmi, 2007, p. 43) through five central articles that focused on the right to education and work. It called for equality in curricula and training, the removal of stereotypical conceptions of family roles, and the incorporation of family planning culture into education. In the field of employment, the Convention affirmed women's freedom to choose their profession (Tadj, 2006, p. 89) and guaranteed the equality of opportunity in wages, social security, and health protection while prohibiting dismissal on the grounds of pregnancy or motherhood and encouraging the establishment of childcare facilities.

The Convention also obliged states to adopt measures to eliminate discrimination in health care and to establish an economic system that activates the role of women in development. In a notable provision, the Convention accorded special attention to rural women, calling for the guarantee of their rights to participate in the formulation of development plans, to benefit from credit and training, and to participate in cooperatives and community activities while ensuring their right to adequate housing and basic services.

1.4. The Right to Legal Capacity

In Part Four, the CEDAW Convention devoted two fundamental articles to affirming women's full legal capacity, ensuring the equivalence of their legal status with that of men at all stages of judicial proceedings and before various levels of courts. This equality requires the nullification of all contracts and legal instruments that

restrict women's capacity or limit their legal acts while guaranteeing their inherent right to freedom of movement, travel, and choice of residence without restriction or guardianship.

These guarantees also extended to the family sphere, where the Convention affirmed women's right freely to choose a spouse and to establish the institution of marriage on the basis of full consent while recognising equal rights and responsibilities during the subsistence of the marital relationship or upon its dissolution. This includes the right to determine the number of children, to dissolve the marriage, and to equalise rights in matters of guardianship, custody, and parental authority over children. In the context of strengthening personal autonomy, the Convention further emphasised women's right to choose the family name and their own profession (Bassiouni et al., 1989, p. 324) and to administer and dispose of their property with complete freedom while requiring that they be subject to the same legal and judicial rules applicable to men to ensure the unity of the legal standard and prevent any procedural weakening.

1.5. The Establishment of the Committee on the Elimination of Discrimination against Women:

In Part Five, the CEDAW Convention devoted six legal articles through which it laid down the procedural rules governing the establishment of the Committee on the Elimination of Discrimination against Women as the international mechanism entrusted with monitoring the extent to which State parties comply with their treaty obligations. In this context, member states are required to submit periodic reports to the Secretary-General of the United Nations, reviewing the entirety of the legislative, judicial, and administrative measures adopted to implement the provisions of the Convention, within one year from the date of ratification, followed by periodic reports every four years containing an analytical description of the legal and political structure of the state, together with a detailed account of the status of women and the measures introduced to implement each article of the Convention (Tabasi, 2011, p. 62). This section also describes the regulatory rules governing the Committee's work and meetings, as well as the mechanism for submitting its annual report to the United Nations General Assembly through the Economic and Social Council. In addition, the Convention granted the



Committee the authority to invite the specialised agencies of the United Nations to participate in its deliberations related to the scope of their activities, with the possibility of requesting them to submit technical reports (Al-Mishni, 2011, pp. 89 ff.) on the extent of progress in implementing the provisions of the Convention in fields relevant to their competence, thereby strengthening the multilateral international monitoring framework.

1.6. The Procedural Framework for the Entry into Force of the Convention, the Regulation of Reservations, and the Settlement of Disputes:

Part Six constitutes the procedural framework governing signature, accession, and the mechanisms for the entry into force of the Convention, affirming at the outset that its provisions do not conflict with any national measures more beneficial to women that contribute to the achievement of equality. In this section, States are required to implement the provisions upon deposit of the instruments of ratification with the Secretary-General of the United Nations while retaining the right to request a review of the provisions by formal written notification.

With respect to reservations, the Convention laid down an essential rule that no reservation may affect its subject matter or fundamental purpose while preserving the right of states to withdraw their reservations in the future to enhance the flexibility of legislative adaptation. With respect to the settlement of disputes concerning interpretation or application, the Convention adopted a graduated approach beginning with negotiation, then international arbitration, and culminating in the International Court of Justice as a final option. Its provisions concluded by affirming the equal authenticity of its texts in the six official languages of the United Nations, thereby consecrating its universal character.

2. The Implementation of the CEDAW Convention in the Algerian Legal System between the Imperatives of Commitment and the Particularity of Reservation

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) represents the supreme international reference point in the institutionalisation of women's rights by virtue of its comprehensive normative character, which goes

beyond the theoretical affirmation of equality to impose executive and legislative obligations aimed at bringing about a structural transformation in cultural and social gender patterns. Hence, the Convention acquired binding force, obliging state parties to adapt their legal positions to ensure effective equality in all fields.

The Convention has enjoyed wide acceptance in the Arab sphere. However, the pace of accession varied between Egypt (1981), as the first state, and Sudan, as the last, with substantial regional reservations being recorded, most of which centred on Article 16 concerning family relations, on the grounds of its incompatibility with the provisions of Islamic Sharīaa or its lack of harmony with national legislative systems.

Within this rights-based context, Algeria entered the international framework through approval of the Convention pursuant to Order No. 96-03, followed by formal accession under Presidential Decree No. 96-51 (dated 22 January 1996), with the instrument of accession being deposited with the Secretariat-General of the United Nations on 22 May 1996. As is the case with states whose constitutional reference framework is founded upon Islamic constants, Algeria entered reservations to provisions whose content it considered to intersect with the mandatory rules of the Family Code and its societal values.

It should be noted that the inclusion of the Convention within the “hard core” of human rights conferred upon it a distinguished position in the hierarchy of national legislation, which constituted an incentive for the Algerian legislature to review several legal texts, particularly within the Family Code, with a view to achieving a precise balance between the fulfilment of international obligations and the preservation of religious and cultural particularity. Thus, the influence of the Convention remained effective within the Algerian legislative structure, albeit circumscribed by the limits of the reservations, which reflect the national approach to binding international standards.

2.1. The Reservations Entered by Algeria to the Provisions of the CEDAW Convention and Their Justifications:

2.1.1. The Legal Foundations of Reservation:

Reservation constitutes one of the manifestations of legal sovereignty in the exercise of contractual freedom when concluding



international treaties; it grants states the right to exclude or modify the legal effect of certain provisions upon assuming final commitment to the treaty, provided that neither its subject matter nor its purpose is affected, in accordance with the established rules of the Vienna Convention on the Law of Treaties (1969). Article 2, paragraph 1(d), of the Vienna Convention defined a reservation as “a unilateral statement, however phrased or named, made by a state when it expresses its final commitment to a treaty, whereby it aims to exclude or modify the legal effect of certain provisions in their application to it”. Therefore, a reservation places the State in a particular legal position vis-à-vis the other parties (Abdelhamid et al., n.d., p. 212; Boughezala&Skandari, 1998, p. 132), since it results either in suspending the operation of the provision subject to reservation in relation to that State or in applying it subject to restrictive conditions, notwithstanding the universal character of the CEDAW Convention and the breadth of its ratification, it is classified as one of the international conventions that have generated the greatest number of reservations in international practice.

2.1.2. Reservation under the CEDAW Convention

International human rights conventions as treaty law recognise the right of states to enter reservations as an affirmation of the principle of sovereignty; a state may defer its commitment to certain provisions that may conflict with its value system or legal order at the time of signature or accession (Ibrahim, 1995, p. 231). The CEDAW Convention adopted this approach under Article 28, paragraph 2, which laid down an essential limitation, namely, that “a reservation incompatible with the object and purpose of the Convention shall not be permitted”.

Procedurally, any reservation affecting the essence of the Convention is deemed legally void, which requires its exclusion while the treaty remains in force in relation to the state concerned. This aspect gave rise to a legal difficulty for certain states, which considered that restricting reservations by reference to the “spirit of the Convention” constituted a departure from the established rules of public international law.

Despite the breadth of ratification, the large number and wide scope of reservations gave rise to concern on the part of the CEDAW

Committee, prompting the Vienna Declaration and the Beijing Platform for Action to urge states to review and withdraw their reservations, particularly those that undermine the purpose of the Convention or conflict with the law of treaties. The international insistence on the removal of these reservations is attributable to the absence from the Convention of an explicit internal mechanism for rejecting reservations incompatible with its essence; in this regard, the Optional Protocol (Optional Protocol to CEDAW, 1999) came to affirm the necessity of eliminating such reservations, bearing in mind that there had been a general international tendency towards the withdrawal of states' reservations by the year 2000 (Al-Katarji, 2006, pp. 205 to 206).

2.1.3. The Content of Algeria's Reservations to the CEDAW Convention:

In line with the approach adopted by the majority of Arab states, Algeria entered substantial reservations to several provisions of the Convention on the basis of the difficulty of incorporating certain conventional principles and propositions into the national legislative system owing to their incompatibility with the provisions of Islamic Sharīaa. This position has a legal basis in the consideration of Sharīaa as a source of legislation under Article 2 of the Constitution, Article 1 of the Civil Code, and Article 222 of the Family Code, which refer to it on a supplementary basis. Within this normative framework, Algeria's reservations were directed at Article 2, Article 9, paragraph 2, Article 15, paragraph 4, and Articles 16 and 29, in accordance with the following details:

2.1.3.1. Reservation of Article 2:

This article obliges state parties to pursue a comprehensive policy for the elimination of discrimination against women through urgent legislative and institutional measures, including the incorporation of the principle of equality into national legal systems and the repeal of discriminatory penal provisions, regulations, and customs. It also requires the guarantee of judicial protection for women against any practices emanating from individuals or bodies, as well as the adaptation of the legislative environment to conform to the standards of absolute equality.



Algeria's position in relation to this article took the form of a conditional reservation, worded as follows: "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." This reservation constitutes a legal safeguard aimed at balancing the general commitment to combat discrimination with the preservation of the mandatory rules of the Family Code derived from Islamic Sharīaa.

2.1.3.2. Reservation to Article 9, paragraph 2:

This provision affirms women's entitlement to enjoy a legal status equal to that of men regarding the conferral of nationality upon children, thereby requiring state parties to establish absolute equality in the right to transmit nationality through the mother in the same manner as through the father.

Algeria formulated its reservation to this provision in a manner reflecting concern for legislative coherence, as follows: "The Government of the Republic of Algeria wishes to express its reservations concerning the provisions of paragraph 2 of Article 9, which are incompatible with the provisions of the Algerian Nationality Code and the Algerian Family Code." At the time of accession, this position was attributable to the particularity of the rules governing the grant of nationality under Algerian legislation, which were then based on criteria differing from the automatic equality advocated by the Convention.

2.1.3.3. Reservation to Article 15, paragraph 4:

This provision stipulates that men and women must enjoy identical rights under legislation relating to freedom of movement and the choice of residence and domicile. Algeria's reservation of this provision was expressed in interpretative form, to the effect that "the provisions of paragraph 4 of Article 15 should not be interpreted in a manner contrary to the provisions of Article 37 of the Algerian Family Code" (prior to its subsequent amendments). The substance of this reservation revolves around reconciling the requirements of the Convention with matrimonial obligations under national legislation; the residence of a married woman is linked to the "matrimonial home" as a legal consequence of the marriage contract, together with the Sharīaa-based and customary regulations governing movement and

travel that result therefrom, founded upon the principle of the stability of the family bond and the distribution of responsibilities within it in accordance with the principles of Islamic Sharīaa and social custom.

2.1.3.4. Reservation to Article 16:

This article constitutes the cornerstone of the Convention about family relations, as it requires states to take all the measures necessary to eliminate discrimination in matters relating to marriage and its dissolution, including the guarantee of full freedom in the choice of spouse, equal rights and duties during the marital bond, and rights of guardianship, parental authority, and custody over children, in addition to women's autonomy in choosing the family name and profession (Bassiouni et al., 1989, p. 324). The Convention also prohibited the marriage of minor girls, stressing the need to determine a minimum age for marriage and the compulsory official registration of marriage contracts to protect legal positions.

Algeria entered a conditional reservation to this article, worded as follows: “the provisions of Article 16 concerning the equality of the rights of men and women in all matters relating to marriage and upon its dissolution should not conflict with the provisions of Family Code No. 84-11”. This reservation is justified in the fact that matters relating to family regulation, particularly guardianship, *qiwāma*, and the effects of the dissolution of the marital bond constitute mandatory rules that the Algerian legislature derived from the provisions of Islamic Sharīaa, thereby necessitating the imposition of this limitation to ensure that no conventional provision conflicting with the legislative and doctrinal particularity of Algerian society should become operative.

2.1.3.5. Reservation to Article 29:

This article concerns the procedural mechanism for the settlement of disputes arising between State parties concerning the interpretation or application of the Convention. Its first paragraph provides for recourse to arbitration where direct negotiations fail, with the possibility of referring the dispute to the International Court of Justice if no agreement is reached on the organisation of arbitration within six months. Nevertheless, paragraph 2 of the same article grants States the right to declare, at the time of signature or accession, that they do not consider themselves bound by this compulsory



arbitration mechanism while preserving the right to withdraw such a reservation in the future pursuant to paragraph 3.

Algeria based its position on the exercise of a sovereign right guaranteed by law, declaring in its official reservation that “the Government of the People’s Democratic Republic of Algeria does not consider itself bound by paragraph 1 of Article 29”. This type of reservation is eminently procedural in character, as it is intended to protect the sovereignty of the state vis-à-vis international judicial bodies and compulsory arbitration; it is a reservation expressly permitted by the Convention and does not conflict with its subject matter or purpose according to the standards established by the Vienna Convention on the Law of Treaties (Vienna Convention on the Law of Treaties, 1969, art. 19).

2.1.4. The Justifications for Algeria’s Reservations to the CEDAW Convention:

The CEDAW Convention is classified as the international human rights instrument that has generated the greatest number of reservations in international practice. In Algeria's case, its accession was accompanied by a series of substantial reservations, which, taken together, centered on the “legal status of women” within the family framework. This Algerian approach is based on objective justifications for preserving harmony between international obligations and the mandatory rules of the Family Code derived from Islamic Shari’aa, as well as avoiding normative conflict with certain domestic legislative provisions. The principal justifications are manifested in the following aspects:

2.1.4.1. Reservation for Harmonising International Obligations with Domestic Legislation:

The central motive behind entering reservations to human rights instruments lies in avoiding the emergence of normative conflict between international obligations and national laws. Through this mechanism, states seek to create a temporal and legal space that enables them to adapt their domestic legislation in a manner consistent with their international undertakings and to ensure the highest degree of effectiveness and freedom in implementing those obligations. Thus, reservations constitute a sovereign instrument for ensuring that no

treaty provisions become operative except within the limits defined by the constitutions and national legal systems of states.

2.1.4.2. The Incompatibility of the CEDAW Convention with the Provisions of Islamic Sharīaa:

Notwithstanding the considerable care accorded by Algeria to the protection and advancement of women's rights, it made its accession to the CEDAW Convention subject to precautionary limitations, embodied in reservations to certain provisions considered incompatible with the provisions of Islamic Sharīaa. This approach is founded on the principle that Sharīaa constitutes a constitutional pillar and a source of legislation, requiring the legislature to observe its provisions when enacting laws. There thus emerges a conceptual gap between the approach of Islamic Sharīaa, which is based on the “complementarity of roles” and results in differentiation in rights and duties, and the international approach, which is founded upon “absolute sameness and identity” in the legal positions of men and women (Wahyani, 2019, p. 14).

2.2. Algeria’s Ratification of the Convention:

The entry into force of a State's commitment under any international treaty is not achieved merely through the signature of its duly authorised representatives but requires an express manifestation of final consent to be bound by its obligations. The Vienna Convention on the Law of Treaties (1969) established multiple mechanisms for the expression of such consent, and “ratification” is the most common legal instrument for approving treaties that have already been signed. This is the procedural approach adopted by the Algerian legislature to formalise its accession to the Convention and to confer binding force on it within the domestic legal system.

2.2.1. Ratification as a Means of Accepting the Obligation under the Convention in Algerian Domestic Law:

Ratification is legally defined as the approval issued by the competent authority that confers enforceable force upon the treaty and declares the State’s commitment to it internationally (Mokhtari, 2005, p. 9). Presidential Decree No. 96-51, in its references to Article 25 of the Convention, provided for the deposit of the instruments of ratification with the Secretary-General of the United Nations (Presidential Decree No. 96-51, 1996, p. 11). In the Algerian legal



system, ratification is the formal mechanism for incorporating treaties into national law, with the President of the Republic vested with the competence to conclude and ratify them under Article 91, paragraph 12, of the 2020 Constitution.

In Algeria, ratification takes two forms: unconditional ratification, exercised exclusively by the President of the Republic, and conditional ratification, which requires the prior approval of Parliament under Article 153 of the Constitution. By virtue of this accession, Algeria is required to submit periodic reports to the CEDAW Committee, beginning with an initial report within one year of the entry into force of the Convention, followed by periodic reports every four years, to review the legislative measures adopted and the obstacles encountered in their implementation. To ensure full compliance with these obligations, the state must harmonise its domestic legislation with the Convention's provisions to ensure its effective incorporation into the national legal system (Bousoltane, 2003, p. 282).

2.2.2. Harmonisation of Domestic Legislation with the Provisions of the Convention:

The full effectiveness of international conventions requires that national legal rules should not conflict with treaty obligations, in application of the principle that “agreements must be kept” (Bouhadjar, 2017, p. 212) and in affirmation of the good-faith performance of treaties (Vienna Convention on the Law of Treaties, 1969, art. 26). The incorporation of international instruments into the national legal system is governed by the constitutional provisions that determine the hierarchy of normative rules; in this context, Algeria sought to adapt its legislation to the CEDAW Convention, in line with the established constitutional principle that accords ratified treaties a status superior to that of ordinary legislation (Boudiaf, 2021, p. 122).

The obligation to implement international conventions does not stop at the level of “due diligence”; rather, it is an obligation to achieve a result, namely, effective compliance with their contents, since failure to discharge this duty entails the international responsibility of the State (Cheroun, 2007, p. 90). From this perspective, Algeria adopted expedited legislative measures to ensure the implementation of the Convention's provisions within its domestic

legislative framework, in a manner consistent with its eminent constitutional status.

Second, despite the passage of decades since Algeria's accession to the CEDAW Convention, legal and societal debate remains ongoing between one current that regards it as a source for the consolidation of equality and another that remains apprehensive about the clash between its provisions and religious and social particularity. It was this divergence that necessitated the formulation of "conditional reservations" to protect the mandatory provisions of national legislation, without thereby exempting the State from engagement in the international human rights process, which rendered the amendment of domestic texts a legislative necessity to keep pace with international development and ensure the fulfilment of obligations within the limits of national constants.

With reference to Law No. 84-11 containing the Family Code, it may be observed that it was the subject of wide criticism from national and international bodies concerning aspects related to women's legal capacity, guardianship, and matrimonial rights (Wahyani, 2019, pp. 10 ff.). These pressures, taken together with international obligations, constituted a central impetus for the review of the legislative framework, as reflected in Order No. 05-02, which introduced substantial reforms, including the expansion of women's capacity in marriage and the reorganisation of guardianship and divorce, in a manner affording greater protection to women. This course examines Algeria's adoption of a "sovereign balancing" approach, namely, the reconciliation of the requirements of international law and human rights with the principles of Islamic Shari'aa, which serves as the original reference for the regulation of the family. Therefore, the effect of the Convention was not absolute but remained constrained by the limits of the reservations and by cultural particularity. The principal amendments affecting the legal status of women are manifested as follows:

2.3.1. Equalisation of the Age of Marriage between Men and Women:

The Algerian legislature enshrined the principle of equality in marital capacity under Article 7 of the Family Code, fixing it after 19 years for both parties, which corresponds to the age of the civil



majority prescribed in Article 40 of the Civil Code (Order No. 75-58, 1975, art. 40). This amendment constitutes a response to Algeria's international obligations, particularly under the CEDAW Convention and the Convention on the Rights of the Child, both of which prohibit the marriage of persons under the age of eighteen on the basis that they are children entitled to special protection (Convention on the Rights of the Child, 1989; Presidential Decree No. 92-461, 1992).

The determination of the age of marriage is a regulatory measure permissible under both *Sharīaa* and law, aimed at preserving individual well-being and building a stable society (Mehda, 1990, p. 131). This orientation also reflects the legislature's concern to avert the biological and social risks arising from the marriage of minor girls, together with the resulting health complications and family burdens exceeding their capacities. Hence, harmonising the national text with international standards in this area constituted a sound step toward consolidating family welfare and fulfilling the demands of legislative modernisation.

2.3.2. The Authority of the Guardian in the Conclusion of the Marriage Contract:

The Algerian legislature granted an adult woman the freedom to contract her own marriage, thereby affirming her autonomy in the conclusion of the marriage contract (Wahyani, 2019, p. 41). Reference to Article 11 (as amended) of the Family Code shows that it provides the following: "An adult woman shall contract her marriage in the presence of her guardian, namely, her father, one of her relatives, or any other person whom she chooses", while retaining compulsory guardianship in the case of minors (male and female) for the father, then the relatives, then the judge, in application of the exception set out in Article 7. This amendment reflects the legislature's response to the requirements of the CEDAW Convention by making the woman a party to the contract from the outset and requiring her to express her consent directly before the notary or civil status officer. The use of the disjunctive particle "or" in the legal text has led to the severance of the traditional hierarchical order of guardianship so that the woman is now entitled to choose her guardian, whether her father or another person. The role of the guardian has thus shifted from a "constitutive authority" in the contract to a "formal procedure" intended to invoke

blessings and preserve family ties without prejudice to the woman's independent will.

2.3.3. The Expansion of Women's Right to Dissolve the Marital Bond:

By virtue of Order No. 05-02, the Algerian legislature strengthened the legal status of women in terminating the marital relationship by adding three new grounds entitling them to petition for divorce, namely, persistent discord between the spouses (Ait Chaouch, 2015, p. 250), breach of the conditions stipulated in the marriage contract, and violation of the provisions set out in Article 8, together with recognition of their right to financial compensation where harm is proven. The reform also included the institution of khul' by severing its dependence on the husband's consent so that khul' came to take effect by the sole will of the wife, without being contingent on the husband's approval (Mestari, 2014, pp. 16 ff.). These amendments reflect a legislative orientation toward giving effect to the principle of equality in rights and responsibilities during marriage and upon its dissolution, in conformity with the requirements of Article 16, paragraph 1, of the CEDAW Convention. In this way, the legislature succeeded in reconciling the international obligation with the objectives of Islamic Sharīaa, which grant women legal avenues to remove harm to themselves, thereby reducing procedural disparities between the sexes in the exercise of the right to terminate the marital bond.

2.3.4. Custody Reforms and the Consolidation of the Best Interests of the Child in Custody:

The Algerian legislature defined custody in Article 62 of the Family Code as the care of the child, the provision of education to him, the undertaking of his upbringing in the religion of his father, and the safeguarding of his health and morals, provided that the custodian possesses the capacity to do so (Aissaoui, 2015, p. 48). In line with the requirements of Article 16, paragraph (d), of the CEDAW Convention, which establishes equality in parental rights and duties while giving priority to the interests of the child, Order No. 05-02 introduced a substantial amendment to the ranking of those entitled to custody under Article 64, elevating the father to second place



immediately after the mother, thereby departing from the previous traditional juristic order.

The legislature also strengthened the protection of the female custodian under Article 67, paragraph 2, which expressly provides that “A woman’s employment shall not constitute a ground for the forfeiture of her right to exercise custody.” This provision constitutes a response to judicial tendencies that confronted attempts by fathers to deprive mothers of custody on the pretext that they worked outside the home. It cannot be consistent with justice to deprive the mother of custody of her child merely because she exercises her natural right to work, particularly since the father likewise goes out to work, such that the best interests of the child in custody require that he remain with his mother to ensure emotional and biological care (Ben Daoud, n.d., p. 178).

2.3.5. The Status of Women in Guardianship over Minor Children:

Whereas the CEDAW Convention provides for complete equality in rights and responsibilities relating to guardianship, the Algerian Family Code adopts a hierarchical approach, Article 87 providing for the father's original guardianship, followed by that of the mother by operation of law in the event of his death. In the event of divorce, guardianship is assigned in accordance with the court-issued custody order.

The difficulty lies in the restrictions imposed upon the mother's guardianship during the subsistence of the marriage; she does not replace the father in the event of his absence or incapacity and saves in “urgent matters”. This expression reflects the absence of absolute equality between the two parents, since the mother's guardianship is restricted to circumstances of urgency to avert harm to the child in her care. At the same time, nonurgent matters fall outside her authority. Although the legislature did not lay down a precise enumeration of such matters, the assessment of the “urgent character” is left to the mother in her capacity as the person responsible for her children's affairs, which opens the door to juristic and judicial interpretation of the limits of this authority (Aissaoui, 2015, p. 96).

2.3.6. The Right to Custody Housing:

By virtue of the new amendment, the Algerian legislature reformulated Article 72 of the Family Code, removing ambiguity from the housing obligations arising from the dissolution of the marital bond; it expressly provides that “In the event of divorce, the father must provide, for the exercise of custody, suitable accommodation for the female custodian, and if this proves impossible, he shall be required to pay rent in lieu thereof” (Ghedbane, 2018, p. 322). This wording, through its use of mandatory language, imposed a legal obligation, thereby ensuring that the female custodian remains in the matrimonial home until the father executes the judicial order relating to accommodation. This approach effectively affirms the interests of both the child in custody and the wife. This is consistent with Article 16 of the CEDAW Convention, paragraphs (c) and (d), which impose an equality of rights and responsibilities upon the dissolution of marriage while making the “best interests of the child” the primary consideration. Thus, the right to housing moved from being merely an incidental consequence of divorce to a strict legal duty to protect the family entity after separation.

2.3.7. Activating the Mechanism of the Maintenance Fund to Guarantee Financial Rights:

The affirmation of women’s right to receive maintenance payments where the debtor acts intransigently constitutes one of the most significant legislative mechanisms for strengthening social protection for children and divorced women (Wahyani, 2019, pp. 291 ff.). The Algerian legislature crowned this orientation by promulgating Law No. 15-01 on the establishment of the Maintenance Fund, which created an institutional mechanism to guarantee the payment of financial entitlements for the benefit of the child in custody and the female custodian in cases where the father refused or was unable to comply.

The legal procedures require the provincial director of social activity to disburse maintenance within a period not exceeding twenty-five days from the date of an application satisfying the prescribed conditions, while preserving the Fund's right of recourse against the debtor to recover the amounts paid; this serves to block the phenomenon of evasion of family obligations. This framework is



consistent with the objectives of the CEDAW Convention in protecting women from economic and social discrimination after the dissolution of the marital bond while maintaining a balance between international human rights commitments and legislative and national particularities.

Conclusion:

The analytical treatment of the problem of incorporating the CEDAW Convention into the Algerian legal system has shown that this Convention constitutes a pressing international point of reference that, at times, goes beyond protective dimensions toward an attempt to impose a comprehensive social model, thereby giving rise to a form of tension between the requirements of international commitment and doctrinal and national particularities. The study reached the following conclusions and recommendations:

First: Findings

- Legislative Effectiveness: The Convention has produced a direct reformative effect on domestic law, manifested in revisions to the Family Code to reduce discriminatory disparities in matters of guardianship, divorce, and maintenance.
- Normative Conflict: The incorporation of certain values of the Convention has led to tension with the mandatory rules of Islamic Shari'aa, thereby creating a juristic division over the suitability of these "imported values" for national identity.
- The Problem of Compliance: A gap persists between the "formal commitment" and the "actual implementation" of the Convention because of the ongoing tension between the pressures of international reporting and the requirements of sovereignty and cultural particularity.
- The crisis of cultural diversity: This study revealed the Convention's limited accommodation of the principle of "cultural diversity" affirmed by the Charter of the United Nations through its attempt to generalise unilateral standards.

Second: Proposed Recommendations

- Regulatory Frame of Reference: It is necessary to draw on Islamic Shari'aa as the governing frame of reference for any legislative reform aimed at limiting cultural alienation and ensuring social coherence.

- Sound Legal Rights Awareness: National programs of legal awareness should be launched to highlight women's rights as legislatively acquired while involving official institutions and civil society in protecting vulnerable groups.
- Procedural Protection for Victims: The system of protection for female victims of violence should be strengthened by guaranteeing free access to justice and expanding the establishment of specialised shelters and psychological support.
- Unified Codification: Consideration should be given to drafting a “comprehensive law on women’s rights” that incorporates the ratified international obligations within a vision consistent with constitutional and Islamic constants.
- Remedial Mechanisms: A qualified institutional body with regional reach should be established to oversee the implementation of policies relating to women and to examine complaints of discrimination under guarantees of confidentiality and privacy.
- Balancing Judicial Interpretation: The judiciary should develop reconciliatory interpretations that balance the requirements of international law with the particularities of national legislation in a manner that serves family justice.

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