



The impact of international human rights on women's rights  
In the United Arab Emirates: progress towards gender equality

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# **Abstract**

## **The impact of international human rights on women's rights In the United Arab Emirates: progress towards gender equality**

Despite substantial progress, gender inequality is still endemic in many regions around the world, particularly in Muslim countries. This constitutes a main obstacle to human development. At the international level, various instruments have been adopted in order to improve the situation of women, such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These conventions are important tools to advance the rights of women across the world. Amongst other international instruments, the UAE has ratified these conventions in order to demonstrate its commitment to women rights. Nonetheless, the UAE has repeatedly been criticised by the Committees of the CERD and the CEDAW and other non-governmental bodies for failing to meet the requisite international standards. Whilst the UAE has embarked on a modernisation programme several decades ago and has adopted a national strategy on the advancement of women and has created various national mechanisms and has made considerable progress in empowering women, there still exist some issues which impede gender equality. It is against this background that the research ascertains what impact the ratified human rights conventions have had in the UAE and how the UAE meets its international gender equality obligations. The objective of the research is therefore to critically assess to what extent the UAE has enabled women to enjoy political rights, as well as other rights affirmed by international women rights instruments and to analyse the impact which major international conventions, which the UAE has ratified, have had, as well as relevant national laws, policies and initiatives. A doctrinal analysis was critically conducted and socio-legal research was also considered. Additionally, a mixed method approach was adopted. Interviews were conducted with 14 respondents from the Ministry of the State for National Council Affairs, the Ministry of Health, the Ministry of Interior, the United Arab Emirates

University, the Ministry of Foreign Affairs, the Ministry of Justice, the United Arab Emirates National Committee to Combat Human Trafficking, the Emirates Human Rights Association, UAE non-profit bodies, the General Women's Union, the Ewa'a Shelter for Women and Children, the Family Development Foundation Abu Dhabi and the Dubai Foundation for Women and Children. Furthermore, two surveys were conducted with 427 female Emiratis and non-Emiratis, who live in the UAE. The research generally confirmed the literature. The findings highlighted that ratification constituted the logical conclusion of a long standing state policy to promote gender equality. However, whilst much progress has been made in the economic and educational realm and to some extent in the political sphere, issues still persist in the private and family realm. Yet over time, the existing issues are likely to disappear, particularly in light of the fact that women are now much more educated, which will inevitably change their economic role and result in more public participation over the next years. Nonetheless, it is important that further legal reform takes place in order to combat androcentric and patriarchal interpretations within the law.

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## Acronyms

<b>BPA:</b>	Beijing Platform for Action
<b>CAT:</b>	United Nations Committee against Torture
<b>CEDAW:</b>	Convention on the Elimination of all Forms of Discrimination against Women
<b>CERD:</b>	Committee on the Elimination of Racial Discrimination
<b>CERD:</b>	Convention on the Elimination of Racial Discrimination
<b>CESCR:</b>	The Committee on Economic, Social and Cultural Rights
<b>CRC :</b>	Convention on the Rights of the Child
<b>Faskh:</b>	Judicial annulment of marriage.
<b>FNC:</b>	Federal National Council
<b>GCC:</b>	Gulf Cooperation Council
<b>Hadith:</b>	Saying; Traditions of the Prophet Muhammad.
<b>HR:</b>	Committee Human Rights Committee
<b>HRC:</b>	Human Rights Council
<b>ICCPR-OP1:</b>	First Optional Protocol to the International Covenant on Civil and Political Rights
<b>ICCPR:</b>	International Covenant on Civil and Political Rights
<b>ICESCR:</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICRMW:</b>	International Convention on the Protection of the Rights of All Migrant Workers
<b>IHRRI:</b>	The International Human Rights Indicator
<b>Ijtihad:</b>	Juridical reasoning of a qualified Islamic legist.
<b>ILO:</b>	International Labour Organization
<b>Khul:</b>	Divestiture; Discharge of marriage initiated by the wife.
<b>NGOs:</b>	Non-governmental organizations
<b>OP-CEDAW:</b>	Optional Protocol to the Convention on the Elimination of Discrimination against Women
<b>UAE :</b>	United Arab Emirates
<b>UDHR:</b>	Universal Declaration of Human Rights

**UN:** United Nations  
**UNGA:** United Nations General Assembly  
**UPR:** Universal Periodic Review  
**UK:** United Kingdom  
**U.S :** United States  
**Zina:** Adultery/Fornication

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# Chapter One

## Introduction

### 1. Introduction

Human rights spell out essential standards which enable individuals to live peacefully, with dignity, in freedom, and to enjoy justice and equality.<sup>1</sup> Within the human rights discourse, women's rights have increasingly been conceptualised as human rights in order to address the historic disadvantage which women to this present day still experience.<sup>2</sup> Already the Preamble to the United Nations (UN) Charter 1945 affirms “*the equal rights of men and women.*”<sup>3</sup> The preamble and Articles 1-2 of the Universal Declaration of Human Rights (UDHR)<sup>4</sup>, the preamble and Article 2 of the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup>, as well as the preamble and Article 2 of the International Covenant on Economic Social and Cultural Rights (ICESCR)<sup>6</sup> all affirm the principles of equality and non-discrimination.<sup>7</sup> Articles 1-2 of the UDHR affirm that everybody is equal and free and that all human beings, irrespective of sex, are entitled to the freedoms and rights which the Declaration spells out. Moreover, the State Parties to these Covenants are

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<sup>1</sup> E. H. Lawson, M. L. Bertucci, *Encyclopedia of Human Rights* (2nd ed, Washington, DC, Taylor & Francis 1996) 227

<sup>2</sup> United Nations Economic and Social Commission for Asia and the Pacific, *Promoting Women's Rights as Human Rights* (New York, United Nations 1999) 114

<sup>3</sup> Also see R. K. M. Smith, *Text and Materials on International Human Rights* (3rd ed, Abingdon, Routledge 2013) 522; J. Morsink, ‘Women's rights in the Universal Declaration’ (1991) 13 *Human Rights Quarterly*, 229-256, 229

<sup>4</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

<sup>5</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

<sup>6</sup> International Covenant on Economic, Social & Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3/ [1976] ATS 5 / 6 ILM 360 (ICESCR)

<sup>7</sup> E. Brems, C. Van der Beken, S. A. Yimer, *Human Rights and Development: Legal Perspectives from and for Ethiopia* (Leiden, Brill Nijhoff 2015) 367

required to ensure that men and women are treated equally, so that they can enjoy all the political, civil, social, economic and cultural rights.<sup>8</sup> Furthermore, specialised instruments have been adopted, most notably the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW).<sup>9</sup> The CEDAW explains what discrimination against women denotes and spells out a roadmap for domestic action, so that discrimination against women is eradicated.<sup>10</sup> Over the last forty years, gender equality norms have thereby been globally created and gender issues have been highlighted within the international human rights regime.<sup>11</sup> Nonetheless, there exists no universalism, as some state parties enter reservations. There also exists some “margin of appreciation” in order to realise pluralism.<sup>12</sup> This also makes it more difficult to achieve that women all over the world can evoke the same equality and non-discrimination guarantees.<sup>13</sup>

The CEDAW has also generated activism within the non-governmental sector.<sup>14</sup> This is also because Article 7(c) of the CEDAW provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: ...To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

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<sup>8</sup> Ibid

<sup>9</sup> N.2

<sup>10</sup> Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entered into force on the 3rd of September 1981. United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV, Human Rights, UN, Treaty Series, Vol. 1249, at 13; see also E. Brems, C. Van der Beken, S. A. Yimer, *Human Rights and Development: Legal Perspectives from and for Ethiopia* (Leiden, Brill Nijhoff 2015) 367

<sup>11</sup> S. Zwingel, From intergovernmental negotiations to (sub)national change, 7(3) *International Feminist Journal of Politics* 2005, 400-424, 400

<sup>12</sup> J. Resnik, Comparative (in)equalities: CEDAW, the jurisdiction of gender, and the heterogeneity of transnational law production, 10(2) *International Journal of Constitutional Law* (2012) 531-550, 531

<sup>13</sup> Ibid

<sup>14</sup> N.11

This provision has ensured that the convention has become associated with the local experience of women, which has facilitated domestic policy development.<sup>15</sup> Hence, the CEDAW Articles spell out normative and theoretical devices to challenge patriarchal and religious customs and traditions and to also combat neoliberal mistreatment of women.<sup>16</sup> Yet there still exists a large chasm between theory and practice and the assurance of de facto and de jure equality requires more than just legal reform.<sup>17</sup> Nonetheless, research has found that the CEDAW has a “statistically significant and positive effect on women's rights”, particularly in respect of political rights for women.<sup>18</sup> However, it is wrong to simply assume “a global-to-local flow of norms.”<sup>19</sup> It is for this reason that it is important to conduct research in order to critically analyse the impact which major international conventions have had on women empowerment.

Within the UN system, the Commission on the Status of Women (CSW) was created within the Economic and Social Council (ECOSOC) and in 1946, the CSW became recognised as an independent entity.<sup>20</sup> The CSW's main functions are to “*prepare recommendations and reports to the Economic and Social Council on promoting women's rights in the political, economic, civil and educational fields*” and to provide recommendations “*on urgent problems requiring immediate attention in the field of*

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<sup>15</sup> Ibid

<sup>16</sup> F. Raday, Gender and democratic citizenship: the impact of CEDAW, 10(2) *International Journal of Constitutional Law* 2012, 512-530, 512

<sup>17</sup> Ibid

<sup>18</sup> N. A. Englehart, M. K. Miller, The CEDAW Effect: International Law's Impact on Women's Rights, 13(1) *Journal of Human Rights* 2014, 22-47, 22

<sup>19</sup> S. Zwingel, How Do Norms Travel? Theorizing International Women's Rights in Transnational Perspective, 56(1) *International Studies Quarterly* 2012, 115-129, 115

<sup>20</sup> ECOSOC Resolution establishing the Commission on the Status of Women, E/RES/2/11, 21 June 1946 <[http://www.un.org/womenwatch/daw/csw/pdf/CSW\\_founding\\_resolution\\_1946.pdf](http://www.un.org/womenwatch/daw/csw/pdf/CSW_founding_resolution_1946.pdf)> accessed 15th May 2016; A. Aharoni, *Peace, Literature, and Art - Volume II, Encyclopedia of Life Support Systems* (Washington DC, United Nations Educational, Scientific and Cultural Organization 2009) 167

women rights.”<sup>21</sup> In 1946, the United Nations Commission on Human Rights was formed in order to safeguard important rights and many decisions and resolutions and statements about important topics have been issued by this body.<sup>22</sup> In 2006, the Commission was replaced by the Human Rights Council by the General Assembly resolution 60/251. The establishment of the Human Rights Council has frequently been heralded as the “dawn of a new era” for the protection and promotion of human rights within the UN system.<sup>23</sup> As part of the reform of the Commission, an “institution-building package” was adopted, which includes a Universal Periodic Review mechanism in order to determine human rights adherence in UN member states.<sup>24</sup> A complaint procedure enables organisations and individuals to alert the Council to human rights breaches.<sup>25</sup>

Moreover, a CEDAW Committee was created in 1982.<sup>26</sup> This Committee is composed of twenty-three experts. Meetings take place twice a year. The Committee prepares Concluding Comments, which provide recommendations and highlight concerns. Since the Committee started its work, it has analysed the reports from many governments and has determined to what extent the CEDAW has been transposed at the domestic level.<sup>27</sup> Non-governmental organisations (NGOs) also provide shadow

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<sup>21</sup> Ibid

<sup>22</sup> United Nations Human Rights, Office of the High Commissioner, United Nations Commission on Human Rights, 2016 <<http://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx>> accessed 2nd February 2016

<sup>23</sup> J. Wouters, S. Basu, N. Bernaz, 'The Role of the European Union in the Human Rights Council', Study for the European Parliament, November 2008, iv

<sup>24</sup> United Nations Human Rights Office of the High Commissioner, United Nations Human Rights Council, 2016 <<http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>> accessed 12th February 2016

<sup>25</sup> Ibid

<sup>26</sup> Article 17 of the CEDAW; see also Combat Poverty Agency, Conference Papers: Having Your Say: Strengthening the Policy Voices and Practices of People in Poverty, A National Conference, Dublin, 28th November 2005, 3

<sup>27</sup> M. McPhedran, S. Bazilli, M. Erickson, A. Byrnes, The First CEDAW Impact Study, Final Report, Released during the Twenty-Third Session of the CEDAW Committee, New York, June 2000,

reports to the CEDAW Committee, so that the Committee is furnished with additional information and gains a more holistic picture to enable the Committee to challenge and question governments.<sup>28</sup> However, research has found that states often only comply to some extent with the CEDAW recommendations, which highlights that there exist formidable obstacles in affording women their human rights.<sup>29</sup>

Moreover, in countries which have ratified the Optional Protocol to the CEDAW, individual complaints can be lodged under Article 2 and the CEDAW Committee can then undertake an inquiry, as provided for under Article 9.<sup>30</sup> The United Nations Human Rights Committee initially ensured that the ICCPR is implemented by State Parties, which are required to furnish reports on a regular basis and the Committee then scrutinises each country report and issues Concluding Observations which make recommendations and address concerns.<sup>31</sup> The Committee on Economic, Social and Cultural Rights (CESR) is responsible for monitoring that the ICESCR is implemented by State Parties.<sup>32</sup> This Committee was created by virtue of ECOSOC Resolution 1985/17 on 28 May 1985 and took over the work of the Sessional Working Group, which has resulted in more attention being paid to economic, social

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International Women's Rights Project, 2000, 1-16, 12 <<http://iwrp.org/new/wp-content/uploads/2010/06/Introduction.pdf>> accessed 4th March 2016

<sup>28</sup> Ibid

<sup>29</sup> R. J. A. McQuigg, The Responses of States to the Comments of the CEDAW Committee on Domestic Violence, 11(4) *The International Journal of Human Rights* 2007, 461-479, 461

<sup>30</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by General Assembly resolution A/54/4 on 6 October 1999, United Nations, opened for signature on 10 December 1999, entered into force 22<sup>nd</sup> December 2000, Treaty Series, vol. 2131, p.83; see also E. Y. Krivenko, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (Leiden, Martinus Nijhoff Publishers 2009) 206

<sup>31</sup> Article 40(4) of the ICCPR; G. Alfredsson, J. Grimheden, B. G. Ramcharan, *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Moller* (2nd ed, Leiden, Martinus Nijhoff Publishers 2009) 36

<sup>32</sup> ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant; see also I. Merali, V. Oosterveld, *Giving Meaning to Economic, Social, and Cultural Rights* (Philadelphia, University of Pennsylvania Press 2001) 46



and cultural rights.<sup>33</sup> Like the United Nations Human Rights Committee, the Committee provides Concluding Observations in respect of each report it deals with and the reports inform to what degree ICESCR rights are safeguarded by a State Party and point out whether particular rights have been breached.<sup>34</sup> This dialogue strengthens the advancement of the respective rights, as it puts pressure on states to adopt these recommendations and to address any highlighted issues. Both the ICCPR's Human Rights Committee and the ICESCR's Committee also issue general comments, which ensure that the substantive content of the various rights is clarified.<sup>35</sup>

Additionally, NGOs, such as Human Rights Watch or Amnesty International, have regularly published situation-specific and country-specific reports and have thereby contributed to the advancement of human rights, including the rights of women, in both developed and developing countries alike.<sup>36</sup> These reports describe the general human rights situation in certain countries or discuss the plight of particular individuals or groups or circumstances as part of a broader strategy to prevent further violations and to implement universal human rights standards.<sup>37</sup> Even if this objective is not always achieved, reporting may be considered an end by itself, as it results in the duty to convey the truth and to bear witness being discharged.<sup>38</sup> Undoubtedly, these reports have generated an extraordinary volume of information over the last decades. This coverage is obviously neither completely comprehensive, nor evenly

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<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> C. E. Welch, *NGOs and Human Rights: Promise and Performance* (Philadelphia, University of Pennsylvania Press 2001) 233

<sup>37</sup> Ibid

<sup>38</sup> S. Cohen, Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims, 18 *Human Rights Quarterly* 1996, 517-543, 517

distributed.<sup>39</sup> There are clear reasons for this both rational (human rights problems are objectively worse in some countries than in others) and contingent (some countries are closed to outside scrutiny, more obscure and less politically interested in international, especially US-based, organisations). Consequently, some countries are subjected to more vigorous scrutiny than others, especially those with a combination of visible violations and open access to media and human rights observers.<sup>40</sup>

Yet despite sexism being already denounced by the UDHR in 1948<sup>41</sup> and the adoption of various international and regional instruments<sup>42</sup> designed to promote the realisation of women's civil, political, economic, social and cultural rights, women still face gender discrimination in many countries around the world.<sup>43</sup> For instance, in many Middle Eastern Muslim countries, women still experience sexism due to conservative values and discriminatory domestic legislation.<sup>44</sup>

The relationship between women rights and Islam<sup>45</sup>, tradition, values and culture has also been heatedly debated and has caused controversy.<sup>46</sup> It is generally thought that

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<sup>39</sup> N.36

<sup>40</sup> N.38, 517-518

<sup>41</sup> Articles 2 and 16 of the Universal Declaration of Human Rights 1948; J. Morsink, Women's rights in the Universal Declaration, 13 *Human Rights Quarterly* 1991, 229-256, 229

<sup>42</sup> For example, the Convention on the Elimination of all Forms of Discrimination against Women 1979 (CEDAW), 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; Article 14 of the European Convention on Human Rights, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5; Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESC), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; the Cairo Declaration on Human Rights in Islam, 5 August 1990; the Arab Charter on Human Rights, May 22, 2004, reprinted in 12 *International Human Rights Reports* 893 (2005), which entered into force on 15 March 2008 all outlaw sex discrimination and thereby affirm the principle of non-discrimination between men and women.

<sup>43</sup> United Nations Women, Discrimination against women persists around the globe hampering development, UN Women Press Release, 5 July 2012 <<http://www.unwomen.org/en/news/stories/2012/7/discrimination-against-women-persists-around-the-globe-hampering-development>> accessed 6th February 2016

<sup>44</sup> L. E. Schroeder, The Rights of Muslim Women in the Middle East: A Pathfinder, 37(1) *International Journal of Legal Information* 2009, 135-165, 136

<sup>45</sup> Islam is based on the *Quran*, the *Sunnah* and *Fiqh* and Muslims believe that the Quran contain the actual words of Allah, which were revealed to the Prophet Muhammad during his lifetime. The Sunnah contains stories of the Prophet Muhammed, his actions, what he approved and disapproved and this has

Sharia law and women rights contradict each other.<sup>47</sup> The Sharia is often an important legal source, particularly in respect of women's rights, e.g. in the area of family law, and states are unwilling to adopt a secular legal regime for women rights, so that Islamic law governs.<sup>48</sup> However, not only Islam does have an impact on rights, but also the economic and political situation and other issues.<sup>49</sup> Mashhour states that Islam and human rights cannot be reconciled not because of Islam, but because of patriarchy and that it is therefore possible to find “a common ground...between Islamic law and gender equality.”<sup>50</sup> Mir-Hosseini believes that this is because “patriarchy is justified and upheld in the name of Islam” and which results in women being treated like second-class citizens.<sup>51</sup>

Nonetheless, in 1948 Saudi Arabia refused to ratify the UDHR since it argued that the document breached Islamic law which already safeguards human rights.<sup>52</sup> Islamic human rights schemes have also been developed, but these diverge significantly from international human rights, particularly in respect of women's rights, thus highlighting cultural relativism.<sup>53</sup> There therefore exists a certain degree of incompatibility between Islamic and human rights standards because of the insistence of Muslim

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been transmitted from generation to generation. The Fiqh are mainly legal interpretations by scholars which provide general guidance: F. E. Vogel, *Islamic law and legal system studies of Saudi Arabia* (Leiden, Brill 1996) 4

<sup>46</sup> L. Welchman, ed. *Women's Rights and Islamic Family Law: Perspectives on Reform* (London, Zed Books Ltd 2004) 254

<sup>47</sup> J. Hursh, Advancing Women's Rights Through Islamic Law: The Example of Morocco, *Berkeley Journal of Gender, Law & Justice* 2012, 252-306, 254

<sup>48</sup> Ibid, 255

<sup>49</sup> D. E. Arzt, The Application of International Human Rights Law in Islamic States, 12(2) *Human Rights Quarterly* 1990, 202-230, 202

<sup>50</sup> A. Mashhour, Islamic Law and Gender Equality: Could There be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt, 27(2) *Human Rights Quarterly* 2005, 562-596, 562

<sup>51</sup> Z. Mir-Hosseini, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, 32(4) *Critical Inquiry* 2006, 629-645, 629

<sup>52</sup> D. E. Price, *Islamic Political Culture, Democracy, and Human Rights: A Comparative Study* (London, Praeger 1999) 158

<sup>53</sup> Ibid

countries to uphold ancient traditions rooted in patriarchy.<sup>54</sup> Consequently, the promotion of gender equality has been adversely affected in Muslim countries, particularly in Islamic countries which partly or fully adopt Sharia law, though some Muslim countries have been influenced by secularisation and Westernisation.<sup>55</sup>

The constitutions of the Gulf Cooperation Council (GCC) countries<sup>56</sup> make clear that Islamic Sharia jurisprudence constitutes the main source for legislation.<sup>57</sup> There are therefore marked differences in the way women have been empowered.<sup>58</sup> The United Arab Emirates (UAE) has sought to vastly transform its society by improving the status of women.<sup>59</sup> Women's empowerment has therefore become an important government policy for the UAE, including at the international level.<sup>60</sup> The UAE is considered to be one of the developing countries, which has enabled, strengthened and advanced the rights of women during the last decade.<sup>61</sup> Already in 1975, the General Women's Union was created and there are six other women's associations, which work on women being able to participate more fully in society.<sup>62</sup> However,

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<sup>54</sup> N. A. Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Leiden, Martinus Nijhoff Publishers 2006) 235

<sup>55</sup> Netherlands Ministry of Foreign Affairs, *The position of women in Islamic countries: possibilities, constraints and strategies for change* (Brighton, Institute of Development Studies 1992) 20-21

<sup>56</sup> The GCC countries are Qatar, Saudi Arabia, Oman, Kuwait, Bahrain and the United Arab Emirates.

<sup>57</sup> Article 7 of United Arab Emirates Constitution stipulates "Islam is the official religion of the Union. The Islamic Shari'ah shall be a main source of legislation in the Union. The official language of the Union is Arabic."

<sup>58</sup> B. J. Aljishi, Reforms and Political Participation of Women in the Kingdom of Bahrain, 11(4) *Turkish Policy Quarterly* 2013, 55-67, 59

<sup>59</sup> Freedom House, Women's Rights Gain Traction in Gulf Arab States, but Inequality Persists, Washington DC, 2009 <<https://freedomhouse.org/article/womens-rights-gain-traction-gulf-arab-states-inequality-persists#.VH5H3mfeilR>> accessed 1<sup>st</sup> October 2014

<sup>60</sup> L. Redvers, Is Dubai the best place for women in the Middle East? BBC, 23 April 2015 <<http://www.bbc.com/capital/story/20150422-which-women-get-ahead-in-dubai>> accessed 5<sup>th</sup> February 2015; WAM, Report on Women's Empowerment in the UAE, 27 April 2015 <<https://www.wam.ae/en/news/emirates/1395279799365.html>> accessed 5<sup>th</sup> February 2016

<sup>61</sup> Ministry of State for Federal National Council Affairs, Women in the United Arab Emirates: A Portrait of Progress, 1-14, 4 <[http://www.uae-embassy.org/sites/default/files/Women\\_in\\_the\\_UAE\\_Eng.pdf](http://www.uae-embassy.org/sites/default/files/Women_in_the_UAE_Eng.pdf)> accessed 5<sup>th</sup> February 2016

<sup>62</sup> N. R. Keddie, *Women in the Middle East: Past and Present* (Princeton, Princeton University Press 2007) 158; The Oxford Business Group, *The Report: Sharjah 2008* (Oxford, Oxford Business Group 2008) 21

admittedly women have only occupied high positions for a very short period of time and there still exists a large disparity between “*the ratio of Emirati women and men in the labor force*” and in 2013 “*the country occupie[d only] one-hundred thirty-first position in the global ranking.*”<sup>63</sup>

In 2015, the UAE ranked 41th on the global Gender Inequality Index by the UN, which measures gender inequality in respect of health, empowerment and labour market participation.<sup>64</sup> Furthermore, in the Global Gender Gap 2014 index the UAE only ranked 119th, namely only reached the 128rd place in respect of economic participation and opportunity, reached the 86rd rank in respect of educational attainment, came 133nd in respect of health and survival, and reached the 93th place in respect of political empowerment.<sup>65</sup> It is therefore important that women become fully engaged in the political process and also take up important roles within the economic and social arena and in public life in general.<sup>66</sup> This also underscores that further steps have to be taken in order to realise gender equality in the UAE.

As the researcher is sponsored by the government, the findings and recommendations of the research will be presented to his sponsors and are hoped to lead to law reform, which improve the rights of women living in the UAE. Consequently, the research seeks to improve law, policy and practice.

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<sup>63</sup> M. Spraggon, V. Bodolica, *Managing Organizations in the United Arab Emirates: Dynamic Characteristics and Key Economic Developments* (London, Palgrave Macmillan 2014) 168

<sup>64</sup> Gender Inequality Index United Nations Development Programme, Human Development Reports, Gender Inequality Index 2015 <<http://hdr.undp.org/en/composite/GII>> accessed 6th October 2016

<sup>65</sup> World Economic Forum, The Global Gender Gap Index 2015, Global rankings 2015 <<http://www3.weforum.org/docs/GGGR2015/cover.pdf>> accessed 6th October 2016

<sup>66</sup> S. J. Khader, *Adaptive Preferences and Women's Empowerment* (Oxford, Oxford University Press 2011) 91

## **1.2 The research topic, its significance and justification**

The research seeks to highlight the importance of international organisations, whether at the intergovernmental or non-governmental level, in order to highlight important issues, which still impede women from exercising the same political, civil, economic, social, cultural and other rights as men in the UAE. The UN has made clear that sustainable development cannot be achieved without women's empowerment and gender equality.<sup>67</sup> Hence, it should be the priority of every country to fully achieve these objectives, irrespective of culture or tradition. It is therefore very important to assess whether the UAE government has granted women the full spectrum of political rights, most fundamentally the right to vote, to stand as a candidate in Federal National Council elections and to take senior positions. In this context, it is explored whether any political, civil, economic, social and cultural rights have been granted in response to the government adhering to international conventions and agreements or rather due to mounting pressure emanating from regular reports released by international organisations. The research is important since it deals with the human right to equal treatment and related human rights and theories will be explored and proposals will be made to facilitate that the prohibition of sexism becomes a fully enforceable right in the UAE.

The research is original since it has not been previously studied what impact the human rights conventions have had for women in the UAE. The findings not only contribute to the existing literature, but also expand and clarify it and highlight new developments. The research findings confirm that international human rights have had

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<sup>67</sup> United Nations Sustainable Development Knowledge Platform, Gender equality and women's empowerment, 2015  
<<https://sustainabledevelopment.un.org/topics/genderequalityandwomensempowerment>> accessed 5th February 2016

a positive impact and have helped to promote the right to equal treatment and, for instance, will explain the latest steps, which the UAE government has adopted to promote the rights of women. Also, criticism, which has been levied at the UAE government, will be analysed in light of the applicable literature and the findings from the qualitative and quantitative research segments. The doctrinal analysis has been strengthened by the findings from the qualitative and quantitative research segments, as further discussed below. In this context, it is important to emphasise that the research was based on a rich sample in respect of the quality, as very experienced UAE interview respondents participated and also in respect of the quantity, as the two questionnaires were completed by 427 individuals from diverse socio-economic backgrounds. Unique insights were thereby gained and the thesis thus contributes to knowledge creation.

Furthermore, it is intended that the findings from the research will lead to the promulgation of recommendations, which will spell out how the UAE can further promote the rights of female Emirati and non-Emiratis alike. Consequently, new solutions will be presented to overcome the issue of gender inequality. The findings therefore have policy and legal implications since the recommendations will also be presented to the UAE government, so that new initiatives can be developed and laws can be adopted and changed in order to empower women in the UAE.

Indeed, the UAE has actively promoted gender equality and has also ratified various international instruments. McGeehan states that the UAE has not complied with the *pacta sunt servanda* principle i.e. has failed to discharge its treaty duties *bona fide* when dealing with the UN Committee on Discrimination Against Women and the UN

Committee on Racial Discrimination.<sup>68</sup> He explains that in the Concluding Observations of the Committee on the Elimination of Racial Discrimination 2009, the UAE was urged amongst others, to improve the situation of domestic workers and to address the issue of abuse against women.<sup>69</sup> Yet no follow-up information was provided to either one of the committees.<sup>70</sup> In 2015, the UN Special Rapporteur on the independence of judges and lawyers also highlighted that there exists “*institutional gender discrimination in many facets of the justice system.*”<sup>71</sup> Human Rights Watch also reports that women face discrimination in practice and in law and which results in them often being “*second class citizens.*”<sup>72</sup> Hence, the available literature informs that this is a needed research area of inquiry.

Moreover, there are not many NGOs, present in the UAE and there exist “*no independent women's human rights NGOs*”, while international NGOs find it difficult to freely conduct their affairs, especially for “*migrant women's rights groups.*”<sup>73</sup> For instance, in 2012 reports surfaced that foreign employees from a foreign NGO were arrested.<sup>74</sup> The reason for this is that the UAE considers that NGOs unduly interfere

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<sup>68</sup> N. McGeehan, 'The Gulf's Servant Class' in (eds) W. Kymlicka, E. Pfostl, *Multiculturalism and Minority Rights in the Arab World* (Oxford, Oxford University Press 2014) 182

<sup>69</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, CEDAW/C/ARE/CO/17, 21 September 2009, para.37; N. McGeehan, 'The Gulf's Servant Class' in (eds) W. Kymlicka, E. Pfostl, *Multiculturalism and Minority Rights in the Arab World* (Oxford, Oxford University Press 2014) 182

<sup>70</sup> McGeehan (ibid)

<sup>71</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Addendum: Mission to the United Arab Emirates, Gabriela Knaul, A/HRC/29/26/Add.2, 5 June 2015, 1-22, 15 <<http://www.refworld.org/docid/55840f374.html>> accessed 8th February 2016

<sup>72</sup> R. Begum, Time to Take Action for Women in the United Arab Emirates, Human Rights Watch, 8 March 2015 <<https://www.hrw.org/news/2015/03/08/time-take-action-women-united-arab-emirates>> accessed 7th February 2016

<sup>73</sup> S. Nazir, L. Tomppert, *Women's Rights in the Middle East and North Africa: Citizenship and Justice* (New York, Rowman & Littlefield 2005) 326

<sup>74</sup> J. Rogin, Exclusive: UAE detains foreign NGO workers, 5 April 2012 <<http://foreignpolicy.com/2012/04/05/exclusive-uae-detains-foreign-ngo-workers/>> accessed 1st July 2017



with the political and national affairs of the UAE.<sup>75</sup> This also constitutes a criminal offence under UAE law.

As the researcher not only theoretically studies the governing laws, policies and initiatives, but also engages in field work (i.e. conducts two questionnaires with female Emiratis and non-Emiratis living in the UAE and also conducts interviews with government offices and important civil society organisations) new data has been generated. Hence, the research casts light on a phenomenon which has not been sufficiently investigated by individuals on the ground and therefore extends our knowledge base.

### **1.3 The scope of the study**

The research deals with the topic of women rights in the UAE, including how international law has affected the available rights which women in the UAE can enjoy. Hence, the research analyses to what extent has progress been made toward gender equality. Human rights which affirm the rights to equality and non-discrimination are studied, as well as civil, political, social, economic and cultural rights, as contained in the ICCPR and the ICESCR. Recourse is particularly made to the CEDAW and other international instruments, such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The research puts the topic in context and therefore considers how the women rights movement in the West and Middle East have impacted on the development of women rights at the domestic level and internationally. The domestic rights which women have been afforded are studied, including which international conventions the UAE has ratified and which

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<sup>75</sup> Ibid

impact this has had for women living in the UAE. Various barriers which currently impede women from being fully empowered in the UAE are analysed, such as nationality rights, the right to education, political and economic, including workforce participation, marriage, divorce and child custody rights under the Sharia and the Personal Status Law, inheritance rights and the rights of women migrant workers. Furthermore, Concluding Observations by international committees and NGO reports are studied with a view to ascertaining in which aspects women should be further empowered in line with international standards. It is thus explored which domestic laws require amending. For instance, it is not studied what impact the CEDAW has had in the Middle East or in neighbouring countries.

Accordingly, the research particularly focuses on the CEDAW and the impact which ratification had in the UAE, how customs and traditions can be overcome, which mechanisms have been created for women's empowerment, which reservations the UAE has entered to the CEDAW and the reasons for this, the protection of temporary female workers, particularly domestic workers and the issue of how to realise gender equality. These topics are being explored through two questionnaires and interviews, which were conducted in the UAE with Emiratis and non-Emiratis and are discussed in light of the relevant literature.

Whilst the researcher also wanted to involve temporary female workers i.e. domestic workers, this was not possible, as the researcher could not gain access to them, as they work in private homes to which the researcher had no access. However, it was nevertheless ensured that those with lower paid jobs and who, for instance, work as

shop assistants, took part in the survey. Hence, one of the limitations of the study was that no domestic workers were involved in the questionnaire.

#### **1.4 Research objectives and questions**

The research therefore raises the following research questions:

1. Which rights have been incorporated at the international level to foster women's rights in general?
2. Which recommendations have been made by international human rights organisations in relation to advancing political, civil, economic, social and cultural rights for women in the UAE? Which associated rights have international organisations advocated to enable Emirati and migrant women to become more active members within society?
3. To what extent does Islam prevent Emirati women from being fully empowered and politically enabled? Do other traditions and customs impede the political status of women?
4. Which steps has the UAE taken in order to address recommendations from international human rights organisations?
5. To what extent do women in the UAE feel that these recommendations have had an impact on them? What is the nature of that impact, if any? What else could be done in order to increase the impact of the recommendations?

#### **1.5 Research methodology**

The research methodology combines doctrinal analysis with the empirical methods in order to meet the research objectives and answer the research questions.

### 1.5.1 The legal analysis

The doctrinal analysis is the traditional method employed to analyse law and is focused on what the law says.<sup>76</sup> Doctrinal research places reliance particularly on statutes and court decisions in order to describe the law.<sup>77</sup> The doctrinal approach is different to the social science approach, as it is inherently formalistic and is rooted in legal positivism, so that statutes and case decisions constitute the core “*universe*” of this approach.<sup>78</sup> Legal positivism has been described as a theory which is “*morally neutral*” and descriptive and has been associated with jurisprudential writers, such as John Austin, H.L. A. Hart and Hans Kelsen.<sup>79</sup> Austin states in his essay ‘The Uses of the Study of Jurisprudence’ that “[*t*]he appropriate subject of Jurisprudence, in any of its different departments, is positive law: Meaning by positive law (or law emphatically so-called) law established or ‘positum’, in an independent political community, by the express or tacit authority of its sovereign or supreme government.”<sup>80</sup> Austin's theory is known as the “*command theory*” which argues that law constitute demands which are enforced through the sovereign threatening sanctions.<sup>81</sup>

Hart criticises Austin's command model and puts forward a revised positivist model in which not sanctions but rules are at the center and he states that “[*t*]he most

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<sup>76</sup> W. Twining, D. Miers, *How to Do Things with Rules* (5th edn, Cambridge, Cambridge University Press 2010) 69; also see C. Morris, C. C. Murphy, *Getting a PhD in Law* (Oxford, Hart Publishing 2011)

<sup>77</sup> M. McConville, W. H. Chui, *Research Methods for Law* (Edinburgh, Edinburgh University Press 2007) 3

<sup>78</sup> P. Fitzpatrick, *The Mythology of Modern Law* (London, Routledge 1992) 3

<sup>79</sup> A. Marmor, 'Legal Positivism: Still Descriptive and Morally Neutral' (2006) 26 *Oxford Journal of Legal Studies*, 683-699, 683; B. Leiter, *Legal Positivism: Oxford Bibliographies Online Research Guide* (Oxford, Oxford University Press 2010) 6-7

<sup>80</sup> J. Austin, *Lectures on Jurisprudence, or the Philosophy of Positive Law (Vol.2)* (London, Forgotten Books 2003) (original work published in Campbell 1885) 579-580

<sup>81</sup> Also see W. E. Rumble, J. Austin, 'The Province of Jurisprudence Determined' (Cambridge, Cambridge University Press 1995); B. Leiter, *Legal Positivism: Oxford Bibliographies Online Research Guide* (Oxford, Oxford University Press 2010) 6

*prominent general feature of law at all times and places is that its existence means that certain kinds of human conduct are no longer optional, but in some sense obligatory.*”<sup>82</sup> Hart further explains in his book ‘The Concept of Law’ that when law is being described, the position of a “*non-participant external observer*” is assumed.<sup>83</sup> For Kelsen, law is “*made by human will*” and therefore does not constitute natural law, as the latter is not made by man.<sup>84</sup>

Legal positivists therefore consider that a norm is valid because it is posited by a sovereign and law therefore does not encapsulate a “*higher moral source.*”<sup>85</sup> The doctrinal approach results in law being internally coherent and unified and distinct.<sup>86</sup> Hans Kelsen advocated a “*pure theory of law*” by distinguishing law “*from the philosophy of justice on the one hand and from sociology, or the cognition of social reality on the other*” and thereby spelled out “*the basic forms under which meanings can be known scientifically as legal norms.*”<sup>87</sup> Hence, methodological norms have to be applied, so that law can be scientifically investigated, similarly to the approach taken by natural science.<sup>88</sup> The researcher therefore tried to clarify and systematise

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<sup>82</sup> H. L. A. Hart, *The Concept of Law* (Oxford, Clarendon Press 1961) 61; J. Penner, N. D. White, H. McCoubrey, E. Melissaris, *McCoubrey & White's Textbook on Jurisprudence* (5th ed, Oxford, Oxford University Press 2012) 59

<sup>83</sup> H. Hart, *The Concept of Law* (2nd ed, Oxford, Clarendon Press 1994) 242; P. Capps, 'Positivism in Law and International Law' in (eds) K. E. Himma, *Law, Morality, and Legal Positivism: Proceedings of the 21st World Congress of the International Association for Philosophy of Law and Social Philosophy (IVR): Lund, Sweden, 12-18 August 2003* (Wiesbaden, Franz Steiner Verlag GmbH 2004) 10

<sup>84</sup> H. Kelsen, *General Theory of Law and State*, translated A. Wedberg (Cambridge, Harvard University Press 1945) 392; S. Baume, *Hans Kelsen and the Case for Democracy* (Colchester, ECPR Press 2012) 7

<sup>85</sup> P. Capps, 'Positivism in Law and International Law' in (eds) K. E. Himma, *Law, Morality, and Legal Positivism: Proceedings of the 21st World Congress of the International Association for Philosophy of Law and Social Philosophy (IVR): Lund, Sweden, 12-18 August 2003* (Wiesbaden, Franz Steiner Verlag GmbH 2004) 10

<sup>86</sup> P. Fitzpatrick, *The Mythology of Modern Law* (London, Routledge 1992) 3

<sup>87</sup> H. Kelsen, *What is Justice?* (California, California University Press) 266 M. Freeman, Introduction to Jurisprudence (8th ed, London, Sweet & Maxwell 2008) 307; K. Frew, Hans Kelsen's Theory and the Key to His Normativist Dimension', 4 *The Western Australian Jurist* 2013, 285-293, 286

<sup>88</sup> D. Watkins, M. Burton, *Research Methods in Law* (Abingdon, Routledge 2013) 123

the rights which women have been afforded both at the international level and domestically in the UAE.<sup>89</sup>

However, the researcher did not just adopt doctrinal approach, but also employed a socio-legal approach.<sup>90</sup> This is because the researcher values socio-legal research and thinks that socio-legal aspects should not be overlooked.<sup>91</sup> This approach also accords with the empirical segments, which this research contains, as further discussed below. The law is thus put in context and can be studied in action.<sup>92</sup> An interdisciplinary approach towards law has therefore been adopted, so that the background within which the law exists is also studied and it is understood how law impacts social conditions.<sup>93</sup> It is intended that this closes “*the gap between the intentions of legislatures and the reality of law.*”<sup>94</sup> Such an approach reveals how the law is representative of differences and power struggles in society.<sup>95</sup> Structurally, socio-legal studies are influenced by Marxism and critical approaches which scrutinise whether the law confers privileges to some.<sup>96</sup> As women’s rights are closely related to the women’s movement, this approach is particularly relevant, as law making is often influenced by broader social forces and law often “*bears the marks of those struggles.*”<sup>97</sup>

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<sup>89</sup> N.77, 4

<sup>90</sup> F. Cownie, *Legal Academics: Culture and Identities* (Oxford, Hart Publishing 2004) 54

<sup>91</sup> C. Hunter, *Integrating Socio-Legal Studies Into the Law Curriculum* (London, Palgrave Macmillan 2012) 62

<sup>92</sup> D. Cowan, D. Wincott, *Exploring the 'Legal' in Socio-Legal Studies* (London, Palgrave Macmillan 2015) 169

<sup>93</sup> R. Banakar, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (London, Springer 2015) 48-49

<sup>94</sup> *Ibid*

<sup>95</sup> S. Halliday, P. D. Schmidt, *Human Rights Brought Home: Socio-legal Perspectives on Human Rights in the National Context* (Oxford, Hart Publishing 2004) 7

<sup>96</sup> *Ibid*

<sup>97</sup> *Ibid*

Moreover, a critical perspective was adopted. The critical legal studies approach is often associated with the ideal of creating a more egalitarian, humane and democratic society.<sup>98</sup> This approach is particularly important, as history highlights that women have not been treated as equals, as well as frequently inhumanely because of a patriarchal society. Whilst critics consider that critical theory is nothing more than “*philosophical idealism*”, it is argued that this approach is pertinent to effect change.<sup>99</sup> This is because critical legal studies challenge formalism, including the current status quo which subjects women to prejudice.<sup>100</sup> In this context, Geuss explicates that critical theory encapsulates the following three ideas: Firstly, the ability to freely think and reason; secondly, to acquire knowledge through an empirical procedure; and thirdly, the ability to distinguish opinion from justified convictions and not just a mere study of external phenomena.<sup>101</sup> Moreover, critical legal studies highlight how law fails to realise its stated ideals and also elucidates that law is a tool for political, economic and social domination which improves the interests of those in power and legitimises the present status quo.<sup>102</sup> Certainly, women have been suppressed, including by laws which have not afforded them equal rights. It would therefore be inappropriate to adopt a solely doctrinal approach rooted in scientific objectivity and neutrality since with this research topic, this may further unjust policies.<sup>103</sup> This is not to say that this research falls outside “*the established*

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<sup>98</sup> D. Kennedy, K. E. Klare, 'A Bibliography of Critical Legal Studies' (1984) 94 *Yale Law Journal*, 461-490, 461

<sup>99</sup> R. W. Bauman, *Ideology and Community in the First Wave of Critical Legal Studies* (London, University of Toronto Press 2002) 73

<sup>100</sup> M. V. Tushnet, 'Perspectives on Critical Legal Studies' (1983-1984) 52 *George Washington Law Review*, 239, 239

<sup>101</sup> R. Geuss, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge, Cambridge University Press 1981) 1-2

<sup>102</sup> M. Kelman, *A Guide to Critical Legal Studies* (Harvard, Harvard University Press 1987) 297

<sup>103</sup> L. Shaskolsky Sheleff, *Social Cohesion and Legal Coercion: A Critique of Weber, Durkheim, and Marx* (Amsterdam, Rodopi 1997) 228

*framework of law*”, but rather tries to highlight unfairness and thereby make the legislature “*responsive to the real needs of*” women and the importance of law reform.<sup>104</sup> However, whilst this research makes use of the socio-legal and critical paradigms, the techniques and the content of the law is at all times considered imperative, as a firm understanding of the law is crucial and forms the basis for any meaningful discussion, including of contextual issues, such as political, social and economic matters or critical perspectives.<sup>105</sup> It is also important to appreciate that what is considered by some as “doctrinal approach” or “*socio-legal*” approach is sometimes unclear and there exists some fluidity between the concepts.<sup>106</sup> This is because the doctrinal approach is no longer pure, but has become watered down since social phenomena and policy objectives have increasingly entered the legal arena.<sup>107</sup>

It is against this background that the researcher has studied primary, as well as secondary sources.<sup>108</sup> For instance, various academic journals which deal with women rights and human rights and the wider context were read, such as *Gender & Society*, *Feminist Studies* and the *European Journal of Women's Studies*, to name a few. The numerous views of Islamic jurists about women rights were analysed. For example, Mashhour<sup>109</sup> sought to answer the question of whether Islamic law can be reconciled with gender equality. She particularly explores the question of the compatibility of the reservations which are commonly entered by Muslim countries. Interestingly, she identifies that the Sharia is not at all incompatible with the CEDAW. However, she

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<sup>104</sup> Ibid, 229

<sup>105</sup> N.90, 55

<sup>106</sup> Ibid, 56

<sup>107</sup> Ibid, 56

<sup>108</sup> N.77, 4

<sup>109</sup> A. Mashhour, *Islamic Law and Gender Equality: Could There be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt*, 27(2) *Human Rights Quarterly* 2005, 562-596, 562



convincingly argues that this requires that the Holy Quran is no longer interpreted in a male-biased manner. Instead, emphasis must be placed on the various Quranic verses which clearly command that men and women are treated equally, particularly al-Hajj, 22:5; Nisa' 4:1; Al-Nisa' 4:124; Al-Baqarah 2:30-34; Ghafir, 40:40; Al-Ahzab, 33:35; Al-Imran 3:195 and Al-Nahl 16:97.<sup>110</sup> She also points out that such a new approach requires the involvement of civil society, including activists, NGOs and scholars.<sup>111</sup> The article also emphasises that the Islamic idea of protecting the vulnerable has been misused to create Islamic laws which disadvantage women in today's society.<sup>112</sup> Mir-Hosseini's<sup>113</sup> provides consulted since it provides important insights about how Islam has been subverted by patriarchal values which are not rooted in the Quran. The article stresses that the Sharia clearly commands equality and justice, but that these fundamental values have been disregarded by Islamic scholars.<sup>114</sup> As a result, women have been subjugated.<sup>115</sup> Political motivations are partly to blame for this.<sup>116</sup> In other words, the Sharia has been interpreted in a patriarchal manner in order to retain the present status quo. Yet as highlighted by Mir-Hosseine, such an outdated legal vision of Islam is no longer tenable.<sup>117</sup> In today's society, women and men experience in reality a much more egalitarian way of life which contravenes the old assumptions which Islamic law still upholds.<sup>118</sup> Mir-Hosseine therefore advocates that Islamic law should not be used by states for ideological reasons.<sup>119</sup> Conservative religious views

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<sup>110</sup> Ibid, 352-355

<sup>111</sup> Ibid, 367

<sup>112</sup> Ibid

<sup>113</sup> Z. Mir-Hosseini, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, 32(4) *Critical Inquiry* 2006, 629-645, 629

<sup>114</sup> Ibid, 631

<sup>115</sup> Ibid, 631

<sup>116</sup> Ibid, 631

<sup>117</sup> Ibid, 636

<sup>118</sup> Ibid

<sup>119</sup> Ibid, 637

should not curtail the private life of individuals, especially those of women.<sup>120</sup> One way to achieve this is to opt for secularisation i.e. to separate religion from law and the state.<sup>121</sup> The view held that women rights are a post-colonialist attempt to suppress Muslim countries must also be rejected.<sup>122</sup> Feminist movements should also not be suppressed to strengthen national identity.<sup>123</sup> An Islamic feminist discourse is also not helpful since it distracts from the importance of realising equality and justice for women.<sup>124</sup> Moreover, when Islamic law became formulated, it was strongly influenced by cultural values.<sup>125</sup> It is for these reasons that Mir-Hosseine strongly advocates that Islam is construed in more a tolerant and pluralistic manner.<sup>126</sup> Legalistic and absolutist interpretations of Islamic law should therefore be replaced in order to recognise the present realities of women, which have clearly changed since the Islamic laws were first conceived.<sup>127</sup>

The reports of intergovernmental and non-governmental organisations, as well as national reports were studied. For instance, the periodic reports by the Committee on the Elimination of all Forms of Racial Discrimination were carefully evaluated in order to further understand the respective international obligations which the UAE has to discharge. It was particularly identified that it is crucial for the UAE to combat gender-related racial discrimination, e.g. sexual abuse against foreign domestic worker.

The Concluding Observations of the Committee on the Elimination of Discrimination against Women about the UAE highlighted the various shortcomings with the

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<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> Ibid, 639

<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> Ibid, 642

<sup>126</sup> Ibid, 643

<sup>127</sup> Ibid

domestic regime. Recourse was also made to reports by non-governmental organisations, e.g. various Human Rights Watch reports.<sup>128</sup> This was done in order to understand the issue of gender inequality which still is endemic in the UAE through the lens of Western organisations. For instance, the Human Rights Watch report ‘Exported and Exposed, Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates’ criticised the UAE for excluding female domestic workers from its labour law. This is because it renders these women very vulnerable to exploitation and abuse. Reports of actual cases where domestic workers did not receive their wages, had to overwork or were sexually harassed and abused were cited in support of this. The problem of not receiving assistance from the police and being unable to prosecute their employers was another point of criticism, which this report highlighted. Overall, the foreign NGOs condemned the UAE's failure to enact sufficient legal safeguards for women, especially for migrant domestic workers.

The countless resources available at Middlesex University and other universities were also extensively consulted. The researcher thus thoroughly examined the relevant literature. However, not only a library and desk-based research approach was pursued, as the research was supplemented by questionnaires and interviews, hence, a field investigation was also undertaken.<sup>129</sup>

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<sup>128</sup> For instance, Human Rights Watch, *Exported and Exposed, Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates* (New York, Human Rights Watch 2007); Human Rights Watch, *The UAE's Draft Labor Law, Human Rights Watch's Comments and Recommendations* (New York, Human Rights Watch 2007); Human Rights Watch, *United Arab Emirates: Trapped, Exploited, Abused*, 23 October 2014 <<http://www.hrw.org/news/2014/10/22/united-arab-emirates-trapped-exploited-abused>> accessed 27th December 2014

<sup>129</sup> R. P. Misra, *Research Methodology: a Hand Book* (New Delhi, Concept Publishing Company 1989) 59

### 1.5.2 The empirical investigation

The empirical method has been chosen since the research does not solely scrutinise the law and thus does not only investigate what conventions and laws have been adopted. Part of the originality of the thesis is that it is investigated what impact the ratified conventions have had on women who are living in the UAE. It questions whether the Conventions have had an impact or whether they were adopted because a change had already occurred or whether there was already a change and the ratification of the CEDAW and CERD has further accelerated the progress which had already been made. Also, it is evaluated whether women, who live in the UAE, are sensitised to the issues of gender violence and gender equality. The researcher sought to address these issues through social science methods and chose to pursue a mixed methods research approach for the empirical method which Creswell and Plano Clark describe this method as *“a research design with philosophical assumptions as well as methods of inquiry. As a methodology, it involves philosophical assumptions that guide the direction of the collection and analysis of data and the mixture of qualitative and quantitative data in a single study or series of studies. Its central premise is that the use of quantitative and qualitative approaches in combination provides a better understanding of research problems that either approach alone.”*<sup>130</sup>

Mixed methods research denotes that all data collection and data analysis methods involving qualitative and quantitative data were combined within one study.<sup>131</sup>

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<sup>130</sup> J. W. Creswell, V. L. Plano Clark, *Designing and Conducting Mixed Methods Research* (Thousand Oaks, Sage 2007) 5

<sup>131</sup> D. L. Driscoll, A. Appiah-Yeboah, P. Salib, D. J. Rupert, 'Merging Qualitative and Quantitative data in Mixed Methods Research: How To and Why Not' (2007) 3(1) *Ecological and Environment Anthropology* (University of Georgia), Paper 18, 19-28, 19

Such an approach is based on a pragmatic research philosophy with emphasis on “*what works*”, which sidesteps strict epistemological underpinnings.<sup>132</sup> Accordingly, the researcher therefore does not consider the qualitative and quantitative method incompatible, but instead a pragmatic approach is taken i.e. the two approaches are combined creatively to enhance the benefits and minimise the weaknesses of each approach in order to strengthen the research overall.<sup>133</sup> Hence, pragmatism represents an extremely practical research philosophy which is different to positivism.<sup>134</sup>

Pragmatists consider that different means and concepts and multiple interpretations can depict phenomena and for them the yardstick is usefulness, rather than debates surrounding subjectivity and objectivity, as they acknowledge that both concepts can serve a particular purpose and realise relevant goals.<sup>135</sup> The researcher is also a pragmatist and is therefore driven by the desire to “*produce socially useful knowledge*” and considers that mixed methods research is particularly useful since it enables him to obtain a more comprehensive and holistic view of the research topic.<sup>136</sup> However, Giddings cautions that “*[c]lothed in a semblance of inclusiveness, mixed methods could serve as a cover for the continuing hegemony of positivism, and maintain the marginalization of non-positivist research methodologies. I argue here that mixed methods as it is currently promoted is not a methodological movement, but a pragmatic research approach that fits most*

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<sup>132</sup> S. Nagy Hesse-Biber, B. Johnson, *The Oxford Handbook of Multimethod and Mixed Methods Research Inquiry* (Oxford, Oxford University Press 2015) xxxvi

<sup>133</sup> Ibid

<sup>134</sup> K. Klenke, *Qualitative Research in the Study of Leadership* (2nd ed, Bingley, Emerald Group Publishing Ltd 2016) 27

<sup>135</sup> Ibid

<sup>136</sup> M. Y. Feilzer, Doing Mixed Methods Research Pragmatically: Implications for the Rediscovery of Pragmatism as a Research Paradigm, 4(1) *Journal of Mixed Methods Research* 2010, 6-16, 6

*comfortably within a postpositivist epistemology.*"<sup>137</sup> Yet such a fear may only be warranted in respect of research which has no solid philosophical basis and explicit research design framework which guides the inquiry.<sup>138</sup>

The different research approaches have also an impact on the research design. For the qualitative research, data was generated from the experiences of individuals, which were communicated during interviews, whilst numerical data was generated from questionnaires for the quantitative research segment.<sup>139</sup> Interviews were held to generate broad, rich and thick descriptions about the extent to which gender equality has been realised and to fully understand the issue of gender inequality in the UAE.<sup>140</sup> It was hoped that this would bring a fresh picture about the topic of gender inequality in the UAE.<sup>141</sup>

The objective was particularly to investigate to what extent the UAE has adopted measures to empower women, particularly as a result of the adoption of international conventions and domestic legislation and policy initiatives. The researcher conducted in-depth individual face-to-face interviews with 14 participants from the following government offices and important civil society organisations: the Ministry of the State for National Council Affairs, the Ministry of Health, the Ministry of Interior, the

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<sup>137</sup> L. S. Giddings, 'Mixed-methods research: Positivism dressed in drag?' (2006) 11(3) *Journal of Research in Nursing*, 195-203, 195; also see J. De Lisle, 'The Benefits and Challenges of Mixing Methods and Methodologies: Lessons Learnt From Implementing Qualitatively Led Mixed Methods Research Designs in Trinidad and Tobago', 18 *Caribbean Curriculum* 2011, 87-120, 90

<sup>138</sup> J. De Lisle, 'The Benefits and Challenges of Mixing Methods and Methodologies: Lessons Learnt From Implementing Qualitatively Led Mixed Methods Research Designs in Trinidad and Tobago', 18 *Caribbean Curriculum* 2011, 87-120, 90

<sup>139</sup> *Ibid*

<sup>140</sup> D. W. Turner, 'Qualitative Interview Design: A Practical Guide for Novice Investigators', 15 *The Qualitative Report* 2010, 754-760, 754; also see K. D. Elsbach, R. M. Kramer, *Handbook of Qualitative Organizational Research: Innovative Pathways and Methods* (Abingdon, Routledge 2016) 293

<sup>141</sup> B. L. Weathington, C. J. L. Cunningham, D. J. Pittenger, *Research Methods for the Behavioral and Social Sciences* (Hoboken, John Wiley & Sons Inc 2010) 526

United Arab Emirates University (UAEU), the Ministry of Foreign Affairs (MoFA), the Ministry of Justice, the United Arab Emirates National Committee to Combat Human Trafficking, the Emirates Human Rights Association (EHRA), UAE non-profit bodies (NGOs), the General Women's Union, the Ewa'a Shelter for Women and Children, the Family Development Foundation Abu Dhabi and the Dubai Foundation for Women and Children. The researcher stopped the interviews when data saturation had been reached and this denotes the amount of interviews which are required to realise "*thematic exhaustion*."<sup>142</sup> Purposive sampling (i.e. non-probability sampling) was used<sup>143</sup> in accordance with the following criteria: most of the participants were involved in the first and second CEDAW and Universal Periodic Review (UPR) reports, as well as with the ratifications of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Racial Discrimination. Hence, those, who were interviewed, were practically engaged with the topic of gender inequality. They were thus not chosen randomly, but strategically and it was ensured that there was sufficient diversity within the sample, though this also means that the researcher could not generalise the findings since the individuals were selected with the research objectives in mind.<sup>144</sup>

The researcher read through the data and identified the most important aspects whilst the data collection was still continuing and adopted a categorising strategy i.e. prepared memos, reflective remarks and used coding.<sup>145</sup> Coding "*is a way of*

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<sup>142</sup> A. Bryman, *Social Research Methods* (5<sup>th</sup> ed, Oxford, Oxford University Press 2015) 417

<sup>143</sup> *Ibid*, 408

<sup>144</sup> *Ibid*

<sup>145</sup> D. R. Monette, T. J. Sullivan, C. R. DeJong, *Applied Social Research: A Tool for the Human Services* (8th ed, Belmont, Brooks/Cole Cengage Learning 2011) 434

*developing and refining interpretations of the data.*"<sup>146</sup> Hence, the data was categorised in order to simplify and reduce it, but without quantification.<sup>147</sup> For this purpose, the researcher read the data several times and assigned initially open codes, which were largely descriptive and thus closely related to the data.<sup>148</sup> The researcher asked himself a series of questions, such as who, what, when, how, what for, through which means.<sup>149</sup> Hence, through the open coding process, themes were noted down when the data was repeatedly read and the researcher thought of different ways of organising and labeling the data and made a preliminary decision in respect of the types of analysis which have to be pursued.<sup>150</sup> The more the data was studied, the more focused did the coding process become and wider conceptual issues were understood and category codes were therefore assigned.<sup>151</sup> These different branches which thereby emerged were then grouped into more complex and abstract categories and themes.<sup>152</sup> During the focused coding process, the researcher developed a story, identified all the main themes, concepts, typologies and propositions, developed the codes and sorted the data accordingly and compared the data and further refined the analysis.<sup>153</sup> Throughout the data analysis process, codes were refined i.e. new codes were added or removed and notes were made to capture ideas in relation to the interpretation and links to other data.<sup>154</sup> The researcher tried to achieve internal homogeneity i.e. ensure that the data which is in a category represents the particular concept for which that category stands, as well as external heterogeneity i.e. make

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<sup>146</sup> S. J. Taylor, R. Bogdan, M. DeVault, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (Hoboken, John Wiley & Sons Inc 2016) 181

<sup>147</sup> Ibid

<sup>148</sup> R. K. Yin, *Qualitative Research from Start to Finish* (2nd ed, London, The Guildford Press 2016) 196

<sup>149</sup> N.134, 99

<sup>150</sup> S. J. Taylor, R. Bogdan, M. DeVault, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (Hoboken, John Wiley & Sons Inc 2016) 181

<sup>151</sup> N.146

<sup>152</sup> Ibid, 198

<sup>153</sup> N.146

<sup>154</sup> Ibid



sure that the differences within the categories are consistent.<sup>155</sup>

Thereafter, the researcher prepared two questionnaires to test whether the UAE had not yet realised full gender equality and women empowerment. Hence, the questionnaires were designed to test whether predetermined assumptions that were developed through a review of the literature and a deductive process was thus employed.<sup>156</sup> The survey was also based on the findings of the qualitative research. The questions were short and easy to understand and no double negatives were used to avoid confusion and clear instructions were given.<sup>157</sup> An attitudinal rating scale i.e. a Likert scale was used i.e. an agree, neutral disagree scale was used, so that the participants could indicate whether they strongly agreed or agreed or were neutral or disagreed or strongly disagreed.<sup>158</sup> The researcher is aware that Likert scales may have an order effect i.e. that there is a tendency to opt for the left side on a scale; that there may be acquiescence i.e. that the participants may simply agree because of “*yea saying*”; that there may be a central tendency i.e. that participants avoid opting for extremes; and that there may be pattern answering i.e. that a participant just ticks boxes in a straight line and negative and positive statements were included to avoid this latter phenomenon.<sup>159</sup>

One questionnaire was designed for female Emiratis and the other was for female non-Emiratis, who had migrated to the UAE. In total, 313 female nationals completed the first questionnaire and 114 female non-UAE nationals completed the second questionnaire. However, no domestic workers participated in the survey, as it was

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<sup>155</sup> E. R. Monsen, L.Van Horn, *Research: Successful Approaches* (3rd ed, New York, American Dietetic Association 2008) 72

<sup>156</sup> N.141

<sup>157</sup> I. Brace, *Questionnaire Design: How to Plan, Structure and Write Survey Material for Effective Market Research* (2nd ed, London Kogan Page 2008) 150

<sup>158</sup> Ibid, 73

<sup>159</sup> Ibid, 75-76

difficult to get access to them since they work in homes. Also, many domestic workers do not speak Arabic or English and may not be able to read and write. They may also not have access to the internet or be sufficiently computer literate. Hence, in total 427 individuals participated in the survey. In terms of the sample, the participants came from diverse socio-economic backgrounds. Only those aged eighteen or above were asked to partake in the survey.

Frequency-type data, numbers and counts were generated i.e. the data was quantified.<sup>160</sup> These were graphically displayed through bar charts and graphs.<sup>161</sup> Descriptive statistics were generated which are easy to understand and use, as the central tendency was displayed and variances were identified and the data was thereby described.<sup>162</sup> A descriptive univariate data analysis was conducted i.e. one variable was studied at a time in terms of its frequency distribution.<sup>163</sup>

In respect of the quantitative research, validity was achieved.<sup>164</sup> Hammersley explains that “[a]n account is valid or true if it represents accurately those features of the phenomena, that it is intended to describe, explain or theorise.”<sup>165</sup> Lehner describes validity as “accuracy”<sup>166</sup>, whilst Johnston and Pennypacker define validity as “degree of approximation of 'reality.’”<sup>167</sup> Validity is often combined with

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<sup>160</sup> N.141

<sup>161</sup> R. M. Heiberger, B. Holland, *Statistical Analysis and Data Display: An Intermediate Course with Examples in R* (2nd ed, London, Springer 2015) 567

<sup>162</sup> R. Ho, *Handbook of Univariate and Multivariate Data Analysis with IBM SPSS* (2nd ed, London CRC Press 2014) 1

<sup>163</sup> E. R. Babbie, *The Basics of Social Research* (7th ed, Belmont, Cengage Learning 2017) 428; A. Rubin, E. R. Babbie, *Essential Research Methods for Social Work* (2nd ed, Belmont, Brooks/Cole Cengage Learning 2010) 290

<sup>164</sup> A. M. Riazi, *The Routledge Encyclopedia of Research Methods in Applied Linguistics, Quantitative, qualitative, and mixed-methods research* (Abingdon, Routledge 2016) 142

<sup>165</sup> M. Hammersley, Some notes on the terms 'validity' and 'reliability', 13(1) *British Educational Research Journal* 1987, 73-81, 69

<sup>166</sup> P. N. Lehner, *Handbook of ethological methods* (New York, STPM Press 1979) 130

<sup>167</sup> J. M. Johnston, H. S. Pennypacker, *Strategies and tactics of human behavioural research* (Hilldsdale, Lawrence Erlbaum Associates 1980) 190-191

“reliability”,<sup>168</sup> which has been defined as the “[a]bility to measure consistently”<sup>169</sup> and as “[c]apacity to yield the same measurement...stability.”<sup>170</sup> Accordingly, validity requires that the tools which are used to measure are accurate and that actually that is measured what was intended to be measured, whilst reliability is most commonly understood as being able to replicate.<sup>171</sup> Different methods would have nonetheless produced the same data and there was thus descriptive validity as factual accuracy was achieved.<sup>172</sup> The accounts of the survey participants were respected, so that there was also interpretative validity i.e. a “realist” stance was taken towards validity.<sup>173</sup> The findings can be generalised and applied to a broader population i.e. there is also external validity to a certain extent.<sup>174</sup> Hence, this generalisability or what is also called “transferability” made it possible to make universal statements and to describe populations since the surveys were quite representative.<sup>175</sup>

In respect of qualitative research, it has been argued that it is inappropriate to use the concept of validity and that it is better to speak of “trustworthiness”<sup>176</sup> and this is concerned with maximising objectivity and minimising bias.<sup>177</sup> Bias denotes having a tendency to prejudge and to encourage a certain outcome.<sup>178</sup> The researcher thus tried

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<sup>168</sup> J. A. Black, D. J. Champion, *Methods and issues in social research* (New York, Wiley 1976) 222

<sup>169</sup> Ibid, 232-234

<sup>170</sup> N.147

<sup>171</sup> G. Winter, A Comparative Discussion of the Notion of 'Validity' in Qualitative and Quantitative Research, 4(3) *The Qualitative Report* 2000, 1-14, 5

<sup>172</sup> J. A. Maxwell, 'Understanding and validity in qualitative research' (1992) 62(3) *Harvard Educational Review*, 279-300, 287

<sup>173</sup> Ibid, 290

<sup>174</sup> M. T. Blanche, K. Durrheim, D. Painter, *Research in Practice: Applied Methods for the Social Sciences* (Cape Town, University of Cape Town Press (Pty) Ltd 2006) 91

<sup>175</sup> Ibid

<sup>176</sup> G. Winter, A Comparative Discussion of the Notion of 'Validity' in Qualitative and Quantitative Research, 4(3) *The Qualitative Report* 2000, 1-14, 10; J. Loh, Inquiry into Issues of Trustworthiness and Quality in Narrative Studies: A Perspective, 18(65) *The Qualitative Report* 2013, 1-15, 1

<sup>177</sup> A. Rubin, E. R. Babbie, *Essential Research Methods for Social Work* (2nd ed, Belmont, Brooks/Cole Cengage Learning 2010) 231

<sup>178</sup> T. Gerhard, Bias: Considerations for research practice, 65 *American Journal of Health-System Pharmacy* 2008, 2159–2168, 2159

to overcome his own biases by focusing on generating knowledge, as opposed to passing judgment.<sup>179</sup> The researcher tried his utmost to see what was reported through the lens of the participants.<sup>180</sup> There was also no sponsor bias and this is also underscored by the findings.<sup>181</sup> Personal reactions were monitored throughout and this made the researcher more aware of “*any subjective lens that is being activated.*”<sup>182</sup> For instance, disagreements, longer inattention or stronger connections which evoke personal experiences were all treated as signs that subjectivity was being triggered and these factors were therefore paid attention to and reflected on.<sup>183</sup>

It was explained who was selected, as well as the approach towards the data collection and it was ensured that the data reflected accurately what the interviewees stated.<sup>184</sup> A rigorous process was used and high standards were met.<sup>185</sup> Credibility i.e. internal validity was achieved, for instance, through ongoing observation and continued engagement, whilst transferability i.e. external validity was realised through thick descriptions, whilst dependability i.e. reliability was aided through examining the inquiry process and ensuring that a rigorous data collection was used, which resulted in the data being accurate<sup>186</sup> and confirmability i.e. objectivity was also achieved since the data confirmed the findings and interpretations.<sup>187</sup> No general criteria were used, though as explained by Garratt and Hodkinson “*(a)ny prespecification of*

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<sup>179</sup> N. S. Rajendran, *Dealing with Biases in Qualitative Research: A Balancing Act for Researchers*, Universiti Pendidikan Sultan Idris, 2001, 1-15, 3  
<<http://nsrajendran.tripod.com/Papers/Qualconfe2001.pdf>> accessed 7th February 2016

<sup>180</sup> Ibid, 4

<sup>181</sup> V. Berger, *Selection Bias and Covariate Imbalances in Randomized Clinical Trials* (Chichester, John Wiley & Sons Ltd 2005) 39

<sup>182</sup> C. L. Mears, *Interviewing for Education and Social Science Research* (Basingstoke, Palgrave Macmillan 2009) 28

<sup>183</sup> Ibid

<sup>184</sup> N.148, 86

<sup>185</sup> R. M. Tappen, *Advanced Nursing Research* (Sudbury, Jones & Bartlett Learning 2011) 153

<sup>186</sup> Also see A. K. Shenton, *Strategies for ensuring trustworthiness in qualitative research projects*, 22 *Education for Information* 2004, 63-75, 63

<sup>187</sup> Y. S. Lincoln, E. G. Guba, *Naturalistic inquiry* (Newbury Park, Sage Publications 1985) 327

*universal criteria is in danger of foisting on research artificial categories of judgment, and a framework of a priori conditions that may be impossible or inappropriate to meet...*"<sup>188</sup> Nonetheless, the research is good since empirically strong, valid and reliable findings were generated, the data was theoretically thought through, appropriate methods were used and the data also contributes to legal and policy development.<sup>189</sup>

### **1.5.3 Research ethics**

The researcher adhered to the University's ethical guidelines, the Research Ethics Review Framework, the Code of Practice for Research, as well as the Statement of Ethical Practice for the British Sociological Association. Autonomy was ensured i.e. the participants were made aware that participation is entirely voluntary and that they can withdraw whenever they want and without having to provide any reason and without this having any adverse effect.<sup>190</sup> At no times were participants coerced to participate. The objective of beneficence - i.e. ensuring welfare for the research participants - was realised since the research is useful and has positive effects.<sup>191</sup> The research participants may benefit in the future, in case the government improves the situation of women as a result of the findings from this research. Also, a strong methodology was used which generated good results and no harm was caused.<sup>192</sup> Potential risks were minimised and eliminated through strong precautionary measures and the overall good was promoted in accordance with the principle of non-

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<sup>188</sup> D. Garratt, P. Hodkinson, Can there be criteria for selecting research criteria? - A hermeneutical analysis of an inescapable dilemma, 4(4) *Qualitative Inquiry* 1998, 515-539, 533

<sup>189</sup> D. Silverman, A. Marvasti, *Doing qualitative research: A comprehensive guide* (Thousand Oaks, Sage Publications 2008) 295

<sup>190</sup> E. R. Babbie, *The Basics of Social Research* (7th ed, Boston, Cengage Learning 2017) 74

<sup>191</sup> R. G. Frey, C. H. Wellman, *A Companion to Applied Ethics* (Oxford, Blackwell Publishing Ltd 2003) 415

<sup>192</sup> Ibid

maleficence.<sup>193</sup> The researcher took into account possible conflicts of interests and conducted himself in a manner which ensured research integrity and research integrity requires that one has “*soundness of moral principle; the character of uncorrupted virtue, esp. in relation to truth and fair dealing; uprightness, honesty, sincerity.*”<sup>194</sup> Moreover, the researcher provided information to prospective participants and this information was easy to understand, so that also those who do not speak English or Arabic well could understand what was asked. Consent was sought from those who participated in the research and it was also ensured that consent continued i.e. the researcher did not consider that seeking consent is a one-off event.<sup>195</sup> Informed consent was sought and Danis et al state that this has the following four dimensions: Firstly, the participant has to possess capacity in order to give consent; secondly, research information has to be disclosed to prospective participants, thirdly, the prospective participant has to comprehend the information; and fourthly, participation has to be voluntary.<sup>196</sup> Subjects who provided informed consent could choose not to answer particular questions. The researcher protected the privacy of the participants and kept the information confidential.<sup>197</sup> Privacy was also maintained by not intruding unwantedly, choosing interview times which were convenient for the interviewees and conducting himself properly throughout the research.<sup>198</sup> Information which could identify participants was removed in order to preserve their anonymity, but without

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<sup>193</sup> Ibid

<sup>194</sup> Oxford University Press, Oxford English Dictionary 2002; cited from N. H. Steneck, *Fostering Integrity in Research: Definitions, Current Knowledge, and Future Directions*, 12 *Science and Engineering Ethics* 2006, 53-74, 55

<sup>195</sup> T. Long, M. Johnson, *Research Ethics in the Real World: Issues and Solutions for Health and Social Care* (London, Elsevier Ltd 2007) 74

<sup>196</sup> M. Danis, E. Largent, C. Grady, S. C. Hull, D. Wendler, *Research Ethics Consultation: A Casebook* (Oxford, Oxford University Press 2012) 52

<sup>197</sup> L. S. Silver, R. E. Stevens, B. Wrenn, D. Loudon, *The Essentials of Marketing Research* (3rd ed, Abingdon, Routledge 2013) 31

<sup>198</sup> Ibid

altering the data.<sup>199</sup> A key to identify participants was kept in a different location to the original data.

Confidentiality was safeguarded in accordance with the Data Protection Act 1998, including the eight data protection principles i.e. data was lawfully and fairly processed; the processing was only for a limited purpose; only relevant and adequate data was collected and it was ensured that there was no excessive data collection; the data is accurate; the data is not kept for more than what is necessary; processing accorded with the rights of the individuals; the data has been kept in a secure location; and adequate safeguards were taken for transfers to non-EEA countries.<sup>200</sup> Data security was achieved through data preservation i.e. data integrity was realised and the data was not modified and remained uncorrupted.<sup>201</sup>

The research is also one of few studies, which has been conducted by a government sponsored UAE national, which critically analyses how international human rights reports have affected the rights of women in the UAE. Hence, in terms of positionality, this was a government funded piece of research and this had arguably an effect on neutrality.<sup>202</sup> As a government sponsored researcher, it was easier to gain access to senior officials whom the researcher could interview. Hence, as the research was approved by the Ministry of Interior, there was tremendous co-operation. This also resulted in the researcher having the trust of the senior officials whom he interviewed. However, as government sponsored researcher, there was also the danger

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<sup>199</sup> S. Loue, *Textbook of Research Ethics: Theory and Practice* (London, Kluwer Academic Publishers 2002) 152

<sup>200</sup> N.195, 75

<sup>201</sup> D. G. Hill, *Data Protection: Governance, Risk Management, and Compliance* (Boca Raton, CRC Press 2010) 121

<sup>202</sup> D. Hartas, *Educational Research and Inquiry: Qualitative and Quantitative Approaches* (London, Bloomsbury Academic 2015) 20-21

that the research would be biased and the researcher reminded himself that preconceived opinions may diminish the quality of the research.<sup>203</sup> Consequently, the researcher tried to avoid arriving at assumptions by taking into account all the different narratives, reports and statistical findings.<sup>204</sup> As many different individuals took part in the research, it was possible to gain a wide overview and this facilitated objectivity. The use of the quantitative, as well as the qualitative method also made it possible to arrive at findings without prejudice because the views of not only government officials were considered, but also those of women. The researcher also had very limited professional contact with those, who took part in the research. No information was provided to any officials about the views which individual research participants expressed. Nonetheless, the participants may have felt compelled to provide diplomatic answers because the researcher is sponsored by the government. It is thus conceded that the research may suffer from this weakness, though it was nonetheless considered that the benefits outweigh this disadvantage.

## **1.6 The thesis structure**

The thesis is composed of seven chapters and each chapter is designed to meet the research objectives and addresses the research questions.

**Chapter One** is the introduction, which explains the research topic and its significance, the scope of the study, the research objectives and questions and justifications for the research topic and the research methodology. It also presents the thesis structure.

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<sup>203</sup> C. Babione, *Practitioner Teacher Inquiry and Research* (San Francisco, John Wiley & Sons Inc 2015) 148

<sup>204</sup> *Ibid*, 149



**Chapter Two** contains the literature review and is entitled '*A literature review of the women's rights movement in the West and Middle East and the development of domestic and international women rights.*' This chapter explores the applicable literature from the perspective of women's rights movement in the West and how this has translated itself into fundamental rights and freedoms for women, as spelled out in international conventions. It then explores international women rights and the Western-liberal feminism paradigm. Thereafter, the recent women's right movement in the Middle East is discussed and its impact on women rights. Key concerns and criticism expressed by international, intergovernmental and non-governmental organisations reports and their recommendations for advancing the different rights of women in the UAE are explored. This chapter highlights how important it is that women are afforded rights in line with international standards, so that women are fully empowered.

**Chapter Three** is entitled '*Context and background of women's socio-economic, political and civil rights in UAE.*' This chapter discusses the extent to which the UAE has ratified important international conventions and analyses the national legal framework to protect women, including women migrant workers. This chapter serves as a framework chapter, which is particularly focused on the domestic legal regime, also as a result of the ratification of various conventions. This chapter is important since it informs about the context in which it is being explored how women can be further empowered in the UAE.

**Chapter Four** is entitled '*Interview research results and data analysis.*' This chapter discusses and analyses the interview findings in light of the applicable literature. It is

divided into the topics of the CEDAW, overcoming customs and traditions, creating mechanisms for women empowerment, the CEDAW reservations, the protection of temporary workers and realising gender equality. This chapter provides important insights how those involved in government policy about women rights perceive the topic.

**Chapter Five** is entitled '*Questionnaire research results and data analysis.*' This chapter gives an overview of the survey participants and their characteristics before discussing and analysing the findings in light of the applicable literature, particularly how gender equality laws are perceived, the CEDAW and the CERD, how customs and traditions can be overcome, the available mechanisms for women empowerment, the CEDAW reservations, the protection of female temporary workers and any perceived incompatibility between Western and Sharia conceptions about gender equality. The views of normal female Emiratis and female migrant workers become understood and this adds a new perspective to the topic of gender inequality in the UAE.

**Chapter Six** is entitled '*Discussion and analysis.*' This chapter analyses how the women's rights movement in the UAE can be advanced through international efforts. For this purpose, recourse is made to the CEDAW and its reservations and the Optional Protocol, the CERD and international best practice. Strategies to overcome local customs and traditions are presented, as well as how local mechanisms for women empowerment can be strengthened. It is also critically analyses how heightened protection for female temporary workers can be achieved. Finally, a roadmap for realising gender equality is spelled out. This chapter is very important

since the literature and all the findings are synthesised and recommendations are made, which are customised to the UAE's particular culture.

**Chapter Seven** is the conclusion which explains how the research objectives and questions have been met and how the study has contributed to knowledge creation. The strengths and weaknesses of the research are highlighted. Recommendations, which have been developed from the research are put forward, including law reform suggestions for the UAE.

## Chapter Two

### The women's rights movement in the West and Middle East and the development of domestic and international women rights

#### 2. Introduction

Already prior to the French Revolution in 1789, there existed an intellectual movement which called into doubt the subjugation of women.<sup>1</sup> For instance, in the 14th century, de Pisan, a poetess highlighted the issue.<sup>2</sup> Advocates of the Enlightenment period, such as Voltaire, Montesquieu, Poulain de la Barre and Diderot, all provided justifications for treating the sexes equally.<sup>3</sup> For example, Francois Poulain de la Barre's brochure entitled "*The Woman as good as the man; or the equality of both sexes*" in 1673 employed the Cartesian argument that reason is universal.<sup>4</sup> Poulain did not consider that the absence of women from public offices, arts or sciences showed that they were incapable in these fields.<sup>5</sup> Instead, he considered that such assumptions were "*prejudice*" and noted that "*[w]e are filled with prejudices, and we must renounce them completely if we are to attain clear and definite knowledge.*"<sup>6</sup> Poulain's second justification was based on the Cartesian difference between

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<sup>1</sup> E. Racz, The Women's Rights Movement in the French Revolution, 16(2) *Science & Society* 1952, 151-174, 151; also see B. J. Stern, *Women, Position in Society, Encyclopedia of the Social Science, Volume XV* (New York, 1934) 442

<sup>2</sup> B. J. Stern, *Women, Position in Society, Encyclopedia of the Social Science, Volume XV* (New York, 1934) 442

<sup>3</sup> N.1 (E. Racz,)

<sup>4</sup> F. Poulain de la Barre, *De l'egalite de deux sexes: Discours physique et morale ou l'on voit l'importance de se defaire des prejuges* (Paris, Jean Du Puis 1673); H. Nagl-Docekal, C. Klinger, *Continental Philosophy in Feminist Perspective: Re-Reading the Canon in German* (Pennsylvania, Pennsylvania State University Press 2000) 34

<sup>5</sup> H. Nagl-Docekal, C. Klinger, *Continental Philosophy in Feminist Perspective: Re-Reading the Canon in German* (Pennsylvania, Pennsylvania State University Press 2000) 34

<sup>6</sup> F. Poulain de la Barre, *De l'egalite de deux sexes: Discours physique et morale ou l'on voit l'importance de se defaire des prejuges* (Paris, Jean Du Puis 1673) 9; H. Nagl-Docekal, C. Klinger, *Continental Philosophy in Feminist Perspective: Re-Reading the Canon in German* (Pennsylvania, Pennsylvania State University Press 2000) 34-35

*res extensa* and *res cogitans* i.e. that the body is separate from the mind and that physical features do not impact thought.<sup>7</sup> He therefore wrote “*reason has no sex.*”<sup>8</sup>

During the Enlightenment period, other proponents advocated that women should be given rights. For example, in 1790, Marquis de Condorcet published an article called “*On Giving Women the Right of Citizenship*” in which he requested that women should be afforded political rights.<sup>9</sup> He emphasised that the rational and emotional capacities of women necessitate that they are afforded equal rights.<sup>10</sup> Condorcet considered education essential to develop persons and that the lack of education and experience have resulted in women holding an inferior role within society.<sup>11</sup> His view on the topic of women rights is representative of the Revolutionary and Enlightenment decades, which described “*the universal human.*”<sup>12</sup>

In the US, it was not until 1848 that the first convention was convened to discuss women's civil, religious and social conditions and rights.<sup>13</sup> In England, women were also not emancipated. Instead, the common law concept of coverture resulted in the wife and husband being only viewed as one person i.e. the wife was considered to belong to the husband.<sup>14</sup> Finn explains that during the 18th and 19th centuries, this practice restricted the opportunities of women and prevented them from entering into economic agreements by themselves.<sup>15</sup> As a result, the security of women depended on the good will of their husbands, but those who had

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<sup>7</sup> Ibid (Poulain de la Barre) 9; ibid (Nagl-Docekal and Klinger) 35

<sup>8</sup> Ibid (Poulain de la Barre) 9; ibid (Nagl-Docekal and Klinger) 35

<sup>9</sup> W. K. Wayne, *Feminist Writings from Ancient Times to the Modern World* (Oxford, Greenwood 2011) 151-152

<sup>10</sup> Ibid

<sup>11</sup> Ibid, 153

<sup>12</sup> Ibid

<sup>13</sup> A. K. Kuersten, *Women and the Law: Leaders, Cases, and Documents* (Oxford, ABC Clio 2003) 14

<sup>14</sup> Ibid

<sup>15</sup> M. Finn, Women, Consumption and Coverture in England, c.1760-1860, 39(3) *The Historical Journal* 1996, 703-722, 703

inherited property could sometimes control it.<sup>16</sup> Men kept all the material resources whilst women did not own anything,<sup>17</sup> except in respect of household affairs.<sup>18</sup> Similarly, in Islam women have traditionally been considered “*inferior to men*” and this has resulted in women being significantly discriminated against and oppressed in the name of religion.<sup>19</sup> This is also partly attributable to socio-economic development, as rapid socio-economic development only really started with the discovery of oil in the UAE in the 1950s.<sup>20</sup> Accordingly, just like it has taken in the West many decades to improve the situation of women, it is argued that the realisation of gender equality in the Middle East is a gradual process.<sup>21</sup>

However, in the West over time, this systematic social and political oppression and patriarchy was challenged by women, who increasingly were afforded equality rights.<sup>22</sup> This perspective has become labelled feminism and Conrad and Peplau explain that “*feminism is both an ideology - a set of beliefs and values about women and gender relations - and a social-political movement for social change.*”<sup>23</sup> Whilst feminism is an ideology, it is also a movement to initiate social and political change with the aims of improving the lives of women and realising gender equality in all aspects of life.<sup>24</sup> This is important since gender inequality has been entrenched within societal structures, so that men have been preferred in

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<sup>16</sup> A. L. Erickson, *Women and property* (London, Routledge 1993) 19-20

<sup>17</sup> M. Hunt, Wife beating, domesticity and women's independence in eighteenth-century London, 4 *Gender and History* 1992, 1-23, 18-19

<sup>18</sup> J. Bailey, Favoured or oppressed? Married women, property and 'coverture' in England, 1660-1800, 17(3) *Continuity and Change* 2002, 351-372, 367

<sup>19</sup> V. S. Harrison, *Religion and Modern Thought* (London, SCM Press 2007) 304

<sup>20</sup> BBC, United Arab country profile, 18 November 2015 <<http://www.bbc.com/news/world-middle-east-14703998>> accessed 2nd January 2016

<sup>21</sup> Also see B. Wejnert, 'Turning Globalization and the Diffusion of Democracy into Opportunities for Women and Girls' in (eds) E. Rodriguez, B. Wejnert, *Enabling Gender Equality: Future Generations of the Global World, Research in Political Sociology, Volume 23* (Bingley, Emerald Group Publishing Ltd 2015) 12

<sup>22</sup> P. McQueen, H. McQueen, *Key Concepts in Philosophy* (Basingstoke, Palgrave MacMillan 2010) 78

<sup>23</sup> E. Conrad, L. A. Peplau, Beyond non-sexist research: The perils of feminist methods in psychology, 13(4) *Psychology of Women Quarterly* 2006, 379-400, 381

<sup>24</sup> A. Abdullatif, Voices of Women in the Arab Spring, 12(1) *Journal of Social Science Education* 2013, 14-30, 15

the political and legal system, in employment and education.<sup>25</sup> Resultantly, the goal of feminism is to stop this oppression.<sup>26</sup>

Like everywhere in the world, women did not realise this goal overnight, but important rights were granted incrementally, including at the international level. However, these international women rights are predominantly based on a Western liberal feminist model and this particular model of feminism is more difficult to align with the Islamic conceptualisation of women rights. In this context, Massad states that “*liberal American women's feminism...[was] universalized through the United Nations*”, despite being “*anti-Islam.*”<sup>27</sup> Hence, by Muslim countries, this is perceived as the West trying to impose its universalism. These states consider that human rights, including women human rights, are a tool to impose Western duties on “*non-Western cultures.*”<sup>28</sup> Hence, human rights are being criticised for being Eurocentric in the way they are conceived and formulated.<sup>29</sup> Those countries which oppose universalism advocate cultural relativism.<sup>30</sup> They object to human rights being inseparable and belonging to all and argue instead that they depend on the particular society.<sup>31</sup> These states have therefore framed certain human rights in a manner which is incompatible with the universalist stance. For example, Article 30 of the Arab Charter on Human Rights 2004 permits that the right to freedom of thought, belief and religion can be limited, so long as this has been prescribed by law.<sup>32</sup> Arab states argue in favour of cultural relativism primarily because the Sharia is the ultimate source of law and not human rights,

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<sup>25</sup> N.22

<sup>26</sup> Ibid

<sup>27</sup> J. A. Massad, *Islam in Liberalism* (Chicago, The University of Chicago Press 2015) 125

<sup>28</sup> B. H. Weston, A. Gear, *Human Rights in the World Community: Issues and Action* (4th ed, Philadelphia, University of Pennsylvania Press 2016) 20

<sup>29</sup> Ibid

<sup>30</sup> K. K. Grewal, *The Socio-Political Practice of Human Rights: Between the Universal and the Particular* (Abingdon, Routledge 2017) 17

<sup>31</sup> Ibid

<sup>32</sup> M. Rishmawi, The Arab Charter on Human Rights and the League of Arab States: An Update, 10(1) *Human Rights Law Review* 2010, 169-178, 172

irrespective of whether they are considered to be of a universal nature.<sup>33</sup> Müller therefore observes that “*there is a fundamental ideological barrier to dialogue*” with “*international human rights courts and their jurisprudence, or domestic courts applying international human rights treaties and/or relevant domestic law in light of these treaties.*” This is also known as the “*universalism versus relativism debate.*”<sup>34</sup>

Clearly, the universalist position ensures that human rights are better protected than under the cultural relativism paradigm. This is because a conceptualisation of human rights as being universal requires that values and principles are recognised and not made dependent on cultural, religious, political, social, economic, historical or other factors.<sup>35</sup> This idea of universality is also affirmed in the first paragraph of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993, wherein it is stated that “*The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.*” Yet the Declaration also provides that the international community should “*respect the value and diversity of ...cultures and identities.*”<sup>36</sup> However, as observed by Donnelly, a proper reading of human rights shows that states are afforded sufficient room for cultural, regional, domestic and other types of relativity.<sup>37</sup> It therefore appears incorrect to assume that a *prima facie* incompatible Western system is being imposed on Middle Eastern countries. Also, the perceived incompatibility can be overcome to a great extent, particularly since the researcher considers that the realisation of gender equality cannot be resisted by any state in

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<sup>33</sup> A. Müller, *Judicial Dialogue and Human Rights* (Cambridge, Cambridge University Press 2017) 160

<sup>34</sup> A. Fagan, *Human Rights: Confronting Myths and Misunderstandings* (Cheltenham, Edward Elgar 2009) 51

<sup>35</sup> Ibid

<sup>36</sup> Ibid, 52

<sup>37</sup> J. Donnelly, The Relative Universality of Human Rights, 29(2) *Human Rights Quarterly* 2007, 281-306, 281



the long-term, as it also means improved social development, increased productivity, achievement of social needs and less deprivation and poverty.<sup>38</sup> Those Arab States which actively present human rights, including women human rights, as a form of “*aggressive imposition of one narrow vision*”<sup>39</sup> do this in order to demonise their own local human rights and women’s rights activists and movements who seek to invoke and activate international conventions and mechanisms, and to avoid the implications of international obligations to which they have signed up. It is against this background that the next sections analyse the prevailing literature discourse about the feminist movement and the recognition of rights in the UK and other Western countries. The predominant models of feminism are presented, including the “*hegemony of liberal feminism*” at the international plane over these other types.<sup>40</sup> The history of the women’s movement, particularly after the Second World War and the associated realisation of civil and political rights, as well as social, economic and cultural rights and other cultural and solidarity rights will be studied. Thereafter, it is analysed how feminism and the resultant social movement have influenced the development of rights and have resulted in discrimination and inequality against women being combated at the international level. Subsequently, the literature about the women’s movement in the Middle East is investigated at the conclusion of the chapter.

## **2.1 The feminist movement and the recognition of women rights in the West**

The women movement’s in the West started much earlier than in the Middle East, which arguably partly explains why women still lag behind in the Middle East. Their incremental

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<sup>38</sup> G. Kelkar, 'Development Effectiveness through Gender Mainstreaming, Gender Equality and Poverty Reduction in South Asia' (2005) 40(44/45) *Economic and Political Weekly*, 4690–4699, 4690

<sup>39</sup> B. Orend, *Human Rights: Concept and Context* (Toronto, Broadview Press 2002) 156

<sup>40</sup> N. Reilly, *Women's Human Rights, Seeking Gender Justice in a Globalizing Age* (Cambridge, Polity Press 2009) 43

demands for equality in various spheres thereby became entrenched in the law over time. In contrast, legal changes were only initiated in more recent times in the Middle East, as further discussed below. Consequently, the laws are still deficient in various aspects. The way in which Western feminists have shaped the discourse about women rights and how this debate was transposed by the law illustrates how patriarchal barriers have been overcome to a considerable extent. As patriarchy still has a significant hold in Middle Eastern countries, it is important to study how the feminist movement in the West has afforded women legal rights, as this section does.

In 1790, England, Mary Wollstonecraft published "*A Vindication of the Rights of Men*" in 1790 and "*A Vindication of the Rights of Women*" in 1792.<sup>41</sup> Wollstonecraft, which is by some considered the grandmother of feminism in the UK, influenced the movement of the suffragettes i.e. those women who became part of the Women's Social and Political Union in the UK, who particularly demanded that women were allowed to vote.<sup>42</sup>

The feminist ideas became advocated particularly by rich women.<sup>43</sup> This is underscored by the enactment of the Women's Property Act 1870, which significantly improved the standing of women, who owned property.<sup>44</sup> In 1878, the Matrimonial Causes Act dealt for the first time with the topic of domestic violence.<sup>45</sup>

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<sup>41</sup> I. Hampsher-Monk, *The Impact of the French Revolution: Texts from Britain in the 1790s* (Cambridge, Cambridge University Press 2005) 104

<sup>42</sup> B. A. Shukla, *Women On Women: A Feminist Study* (New Delhi, Prabhat Kumar Sharma for Sarup & Sons 2006) 7

<sup>43</sup> C. Bolt, *The Women's Movements, In the United States and Britain from the 1790s to the 1920s* (Abingdon, Routledge 2014) 5

<sup>44</sup> M. L. Shanley, *Feminism, Marriage, and the Law in Victorian England* (Princeton, Princeton University Press 1989) 103

<sup>45</sup> L. Harné, *Tackling Domestic Violence: Theories, Policies and Practice* (Maidenhead, Open University Press 2008) 91

In light of the increasingly more militant approach by the suffragette movement, the right to vote was firstly recognised by virtue of the UK Qualification of Women Act 1907.<sup>46</sup> The Act permitted women to participate in county and borough council elections for the post of mayor.<sup>47</sup> Crawford explains that the UK Representation of the People Act 1918 allowed those women aged over 30 years the right to vote at national elections and those over 21 could vote at local elections.<sup>48</sup> The UK Parliament (Qualification of Women) Act 1918 allowed women to run as MP in the House of Commons elections.<sup>49</sup> Then in 1928, all women were given the right to vote, predominantly because of the role they had played during the First World War.<sup>50</sup> In the US, women were given the right to vote by virtue of the Nineteenth Amendment in 1920.<sup>51</sup> However, in France women only received this right in 1944.<sup>52</sup> Yet formal political equality cannot be equated with substantive equality.<sup>53</sup> Formal equality assumes that all individuals are afforded the same rights, so that discrimination can be combated by providing the same entitlements and rights to women and thus ensuring a neutral approach.<sup>54</sup> Formal equality is rooted in the Aristotelian idea that like has “*to be treated alike.*”<sup>55</sup> In contrast, substantive equality takes into account structural and entrenched equality and thus looks at the effects or results of a legal provision.<sup>56</sup> It also necessitates a broader assessment of the realities and social conditions of individuals and groups in order to

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<sup>46</sup> C. Debenham, *Birth Control and the Rights of Women: Post-suffrage Feminism in the Early Twentieth Century* (London, I. B. Tauris & Co Ltd 2013) 5

<sup>47</sup> Ibid

<sup>48</sup> E. Crawford, *The Women's Suffrage Movement: A Reference Guide 1866-1928* (London, UCL Press 1999) 436

<sup>49</sup> H. Barnett, *Introduction to Feminist Jurisprudence* (London, Cavendish Publishing Limited 1998) 43

<sup>50</sup> N.42

<sup>51</sup> P. Higgs, J. Smith, *Rethinking Our World* (2nd ed, Cape Town Juta & Co 2006) 96

<sup>52</sup> S. R. Grayzel, *Women's Identities at War: Gender, Motherhood, and Politics in Britain and France During the First World War* (North Carolina, University of North Carolina Press 1999) Chapter 6

<sup>53</sup> A. Nayak, A. Jeffrey, *Geographical Thought: An Introduction to Ideas in Human Geography* (Abingdon, Routledge 2013) 132

<sup>54</sup> M. MacEwen, A. Louw, O. Dupper, *Employment Equity in the Higher Education Sector: A Study of Transformation in the Western Cape* (Stellenbosch, Sun Press 2005) 17

<sup>55</sup> Ibid

<sup>56</sup> Ibid

see whether equality is really achieved.<sup>57</sup> Instead of asking “*How do we treat all people in the same way?*”, the relevant question in realising substantive equality is “*What is required for people in fundamentally different circumstances to actually have equal enjoyment of their rights?*”<sup>58</sup> In contrast, under the formal approach, women are treated like men in all respects, but it has been observed that this deprives women of their “*traditional roles*” and also does not achieve proper equal treatment.<sup>59</sup> Formal equality thus does not empower women to enjoy the theoretical rights since it “*give[s] the illusion that fairness exists*”, but without the underlying injustices in the political and socio-economic field being addressed.<sup>60</sup>

Indeed, the feminist activity in the West in the 19th and beginning of 20th century was primarily focused on ensuring the formal right to suffrage and is commonly described as “*first-wave*” feminism.<sup>61</sup> This first wave is therefore commonly associated with *de jure* civil and political rights, as opposed to *de facto* civil and political rights and women in politics are still to this present day in the minority. However, women were not only being afforded the right to vote, but to a limited extent the right to equal treatment before the law in respect of family and other matters.<sup>62</sup> For instance, Harne explains that the Guardianship of Infants Act 1925 gave women the same rights of custody over children, though it took until 1973 for women to be considered equal guardians.<sup>63</sup>

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<sup>57</sup> Ibid

<sup>58</sup> A. E. Yamin, *Power, Suffering, and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter* (Philadelphia, University of Pennsylvania Press 2016) 190

<sup>59</sup> F. Mancini, *Democracy and Constitutionalism in the European Union: Collected Essays* (Oxford, Hart Publishing 2000) 140

<sup>60</sup> N.58

<sup>61</sup> N.42

<sup>62</sup> N.51, 40

<sup>63</sup> N.45, 92

Certainly, the first wave resulted in the topic of women rights entering the public arena.<sup>64</sup> Yet as observed by Bolt, this first feminist movement was also affected by industrialisation, urbanisation, the class system, the market economy and the middle class emphasising the different spheres for men and women.<sup>65</sup> For instance, industrialisation resulted in “*a demand for female labour*” and this contributed to women being acknowledged certain rights.<sup>66</sup>

Following the Second World war, statutory or legal gender equality became recognised as “*a universal issue that applied to non-western contexts*”.<sup>67</sup> However, such an approach is problematic, as it disregards culture, including the religious heritage of the Sharia. Nonetheless, the United Nations developed international legislation which affirmed the universal rights of women in the private and public spheres, as further discussed below.<sup>68</sup> In the early 1960s, feminism emerged as a social movement in the US.<sup>69</sup> Equal treatment was the main objective together with a rights-based, as opposed to a justice-based approach towards social change.<sup>70</sup> Nonetheless, there are many different types of feminism, as “*the notion that there is no universal man, implies that there is also no universal woman - women's lives and experiences are varied.*”<sup>71</sup> The feminist social movement has typically found its expression in liberal, radical, socialist and cultural feminism,<sup>72</sup> though there also exist other feminist strands, for instance, ecofeminism, black feminism, lesbian feminism, psychoanalytic feminism, political feminism and postmodernist feminism.<sup>73</sup> These different

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<sup>64</sup> N.43, 1

<sup>65</sup> Ibid

<sup>66</sup> A. Kuhn, A. Wolpe, *Feminism and Materialism: Women and Modes of Production* (Abingdon, Routledge 2013) 169

<sup>67</sup> D. M. Figart, T. L. Warnecke, *Handbook of Research on Gender and Economic Life* (Cheltenham, Edward Elgar 2013) 48

<sup>68</sup> See the Universal Declaration of Human Rights 1948; the International Covenant on Civil and Political Rights 1966; the International Covenant on Economic, Social and Cultural Rights 1966; and the Convention on the Elimination of All Forms of Discrimination Against Women 1979; *ibid*

<sup>69</sup> I. Adams, *Political Ideology Today* (2nd ed, Manchester, Manchester University Press 2001) 227

<sup>70</sup> B. Thompson, Multiracial Feminism: Recasting the Chronology of Second Wave Feminism, 28(2) *Feminist Studies* 2002, 336-360, 336

<sup>71</sup> N.23, 385

<sup>72</sup> N.70

<sup>73</sup> R. Phillips, 'Feminism(s) and domestic violence within national policy contexts' in (eds) B. Fawcett, F. Waugh, *Addressing Violence, Abuse and Oppression: Debates and Challenges* (Abingdon, Routledge 2008) 58

perspectives have developed from activist and analytic conceptions of which liberal feminism is particularly important.<sup>74</sup> This is because liberal feminism has particularly shaped the international agenda and policy development, as further discussed below.<sup>75</sup>

Liberal feminism can be traced back to liberals, such as Locke, Rousseau and Mills.<sup>76</sup> Mill employed agnosticism and concluded that “*the nature of the two sexes, as long as they have only been seen in their present relation to one another. Until conditions of equality exist, no one can possibly assess the natural differences between women and men.... What is natural to the two sexes can only be found out by allow[ing] both to develop and use their faculties freely.*”<sup>77</sup> Mill pointed out that “[i]n struggles for political emancipation, ...[a]ll women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self will, and government by self-control, but submission, and yielding to the control of other.”<sup>78</sup> He viewed the discrimination of women on par with discrimination “*of the white man over the black.*”<sup>79</sup> Mill’s liberal feminism advocated that women are admitted to the suffrage and receive education.<sup>80</sup> Mill assigned fundamental importance to the “*progressive being*” and that this presupposes that sex is a flawed discriminating factor, just like colour, wealth or birth.<sup>81</sup> Wendell notes that liberal feminism seeks equal rights and treatment not based on sex, but on effort and skill.<sup>82</sup> Liberal feminists want that social, economic, political and legal obstacles are removed which hinder women

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<sup>74</sup> Ibid

<sup>75</sup> M. Hirsch, E. Fox Keller, *Conflicts in Feminism, Conflicts in Feminism* (London, Routledge 1990) 264

<sup>76</sup> J. Scott, *Power: Critical Concepts* (London, Routledge 1994) 181

<sup>77</sup> J. S. Mill, On the Subjection of Women, 1869; cited from cited from S. Moller Okin, *Women in Western Political Thought* (Princeton, Princeton University Press 1979) 217

<sup>78</sup> Ibid (Mill); ibid (Moller Okin)

<sup>79</sup> Ibid (Mill); ibid (Moller Okin)

<sup>80</sup> G. Tullock, V. College, Mill's epistemology in practice in his liberal feminism, 21(2) *Educational Philosophy and Theory* 1989, 32-39, 32

<sup>81</sup> Ibid (Tullock and College) 37

<sup>82</sup> S. Wendell, A (Qualified) Defense of Liberal Feminism, 2(2) *Hypatia* 1987, 65-93, 67

being afforded equal opportunities.<sup>83</sup> This approach has resulted in the enactment of the Equal Pay Act 1970 and the Sex Discrimination Act 1975 in the UK, which was adopted to eliminate certain discriminatory conduct at work.<sup>84</sup>

Not only liberal feminism shaped this second wave, but also the socialist-feminist perspective, which predominantly emerged in the 1960s and 70s, but rather as an academic discipline.<sup>85</sup> Hennessy and Ingraham explain that socialist feminism criticises that patriarchy and capitalism are systematically intersected.<sup>86</sup> Socialist feminism is influenced by Marxism, which also shaped the Black Power and civil rights movements in the US and led to liberation uprisings in Cuba, China and Vietnam and endorsed a New Left, distinct from the old Soviet Union approach.<sup>87</sup> Socialist feminists rephrased women issues in accordance with Marxist rationales into labour, class, production and reproduction.<sup>88</sup> Socialist feminists analyse the link between class and features which influence identity and particularly scrutinises the terms “*economic*” and “*material*” and demand economic rights, such as equal pay.<sup>89</sup> Proponents, such as Dorothy Allison, Micaela di Leonardo and Emily Martin, also discuss important topics, such as reproduction and sexuality and criticise that personal matters are politicised, for instance, that premenstrual syndrome (PMS) is labelled a medical issue.<sup>90</sup> They point out that this undermines economic justice and the broader human right to reproduce.<sup>91</sup> This is because PMS has been labelled a disease and has contributed to “*gendered assumptions*

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<sup>83</sup> Ibid, 70

<sup>84</sup> A. Giddens, *Sociology* (5th ed, Cambridge, Polity Press 2006) 470

<sup>85</sup> N. Holmstrom, *The Socialist Feminist Project: A Contemporary Reader in Theory and Politics* (New York, Monthly Review Press 2002) 9

<sup>86</sup> R. Hennessy, C. Ingraham, *Materialist Feminism: A Reader in Class, Difference, and Women's Lives* (London, Routledge 1997) 6

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> N. Holmstrom, *The Socialist Feminist Project: A Contemporary Reader in Theory and Politics* (New York, Monthly Review Press 2002) 9

<sup>90</sup> Ibid, 10

<sup>91</sup> Ibid, 10

*about gender, health, and normality*” and has been used as a reason to argue that women should remain in the private sphere, thus negating their economic rights.<sup>92</sup>

Another important branch of post-Second World War feminism is radical feminism, which is mostly associated with Simone de Beauvoir's theory of “*sex class*”, which she developed in the 1950s and which was elaborated in the 1960s by women who favoured the New Left.<sup>93</sup> Radical feminists consider that patriarchy results in subordination of women in the home and at work.<sup>94</sup> Radical feminists highlight that men cause sexual and physical violence for women and that men control most of the material rewards.<sup>95</sup> Radical feminists point out that men try and justify their actions by asserting that the natural design proves that they are the stronger sex.<sup>96</sup> They explain that such a view has been institutionalised and that this has created sexual inequality.<sup>97</sup>

According to Taylor and Rupp, the arrival of cultural feminism was the end of radical feminism in the US.<sup>98</sup> They observe that this branch of feminism adopts an essentialist stance which distinguishes men and women and proposes separatism and independent development of institutions, so that women can be set free via an alternative “*women's culture.*”<sup>99</sup> In this context, Alcoff explicates that it is inherently difficult to define what “*the concept of woman*” entails.<sup>100</sup> This is because all depends on the experiences which women have in a

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<sup>92</sup> S. Markens, The Problematic of 'Experience' A Political and Cultural Critique of PMS, 10(1) *Gender & Society* 1996, 42-58, 42

<sup>93</sup> J. Saltzman Chafetz, *Handbook of the Sociology of Gender* (New York, Springer 2006) 156

<sup>94</sup> C. Burton, *Subordination: Feminism and Social Theory* (Abingdon, Routledge 2013) 59-60

<sup>95</sup> Ibid

<sup>96</sup> N.93

<sup>97</sup> C. Burton, *Subordination: Feminism and Social Theory* (Abingdon, Routledge 2013) 59

<sup>98</sup> V. Taylor, L. J. Rupp, Women's Culture and Lesbian Feminist Activism: A Reconsideration of Cultural Feminism, 19(1) *Signs* 1993, 32-61, 32

<sup>99</sup> Ibid

<sup>100</sup> L. Alcoff, Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory, 13(3) *Signs* 1988, 405-436, 405



particular culture and which are shaped by male supremacy.<sup>101</sup> She observes that it is therefore difficult to identify what women are.<sup>102</sup> Cultural feminism also paved the way for lesbianism.<sup>103</sup> Moreover, cultural feminism became associated with an anti-pornography stance, but this also resulted in a split within cultural feminism.<sup>104</sup> Cultural feminism also mirrors the main cultural stereotypes about sexuality and gender.<sup>105</sup> It thereby calls into doubt the universal approach towards women rights adopted by international institutions and arguably lends support to culturally specific conceptions of women rights, including those advocated by Muslim countries. Ghodsee points out that the risk is that “*the hegemony of Western cultural feminism*” suppresses other less dominant cultures of women in developing countries, including in the Middle East, resulting in a “*collective gendered identity*” being imposed.<sup>106</sup> Yet as pointed out by black feminists, socialist feminists, radical feminists and postmodern feminists, rejection of a collective and universal approach in favour of cultural feminism also deradicalises and demobilises the women’s movement.<sup>107</sup>

In the UK, there existed no united branch of feminism following the Second World War and this wave was facilitated by “*professional self-sufficiency for women*” and led to many legal changes.<sup>108</sup> For instance, in 1958, women in the UK were permitted to become peers in the House of Lords due to the enactment of the Life Peerages Act.<sup>109</sup> Hence, political rights became further strengthened. However, Hausman and Sauer observe that it took until 1963

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<sup>101</sup> Ibid

<sup>102</sup> Ibid

<sup>103</sup> K. King, 'Producing Sex, Theory, and Culture: Gay/Straight Remappings in Contemporary Feminism' in (eds) M. Hirsch, E. Fox Keller, *Conflicts in Feminism* (London, Routledge 1990) 91-92

<sup>104</sup> Ibid

<sup>105</sup> A. Echols, Cultural Feminism: Feminist Capitalism and the Anti-Pornography Movement, *7 Social Text* 1983, 34-53, 34

<sup>106</sup> K. Ghodsee, Feminism-by-Design: Emerging Capitalisms, Cultural Feminism, and Women's Nongovernmental Organizations in Postsocialist Eastern Europe, *29(3) Signs* 2004, 727-753, 727

<sup>107</sup> N.98

<sup>108</sup> L. Heywood, J. Drake, *Third Wave Agenda: Being Feminist, Doing Feminism* (4th ed, Minneapolis, University of Minnesota Press 2003) 27

<sup>109</sup> M. Hausman, B. Sauer, *Gendering the State in the Age of Globalization: Women's Movements and State Feminism in Postindustrial Democracies* (Lanham, Rowman & Littlefield Publishers Inc 2007) 268

for women to be admitted as hereditary peers.<sup>110</sup> Even in 1996, out of 382 life peers, there were only 67 women and out of the 767 hereditary peers, there were 16 women.<sup>111</sup>

The objective of gender equality became partly realised by the UK Married Women's Property Act 1964, which permitted women to keep 50% of any savings from her allowance.

<sup>112</sup> Women's rights within the private sphere were also further advanced in 1967, when abortion became decriminalised in certain narrow circumstances by virtue of the Abortion Act, after women had campaigned for this since the 1930s.<sup>113</sup> The right for women to abort was particularly opposed by religious fundamentalists and the Roman Catholic Church, as well as the medical profession.<sup>114</sup> In the US, women were afforded the right to opt for abortion in 1973, as the Supreme Court in *Roe v Wade*<sup>115</sup> ruled that this fell within the right to privacy, which was protected by the constitution.<sup>116</sup>

The adoption of the UK Matrimonial Proceedings and Property Act 1970 ensured that women received a larger share of the matrimonial property upon divorce since non-financial contributions were firstly recognised.<sup>117</sup> The Attachment of Earnings Act 1971 enabled courts to require husbands to pay maintenance.<sup>118</sup> In 1973, mothers were also deemed equal guardians in respect of their children by virtue of the Guardianship Act 1973.<sup>119</sup> Bridgeman and Monk note that "*the breadwinner ideology...tended to erase domestic violence from legal*

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<sup>110</sup> Ibid, 269

<sup>111</sup> Ibid

<sup>112</sup> J. Gottlieb, *The Aftermath of Suffrage: Women, Gender, and Politics in Britain, 1918-1945* (Basingstoke, Palgrave Macmillan 2013) 226

<sup>113</sup> Also see *R v Bourne* [1939] 1 KB 687

<sup>114</sup> M. Latham, *Regulating Reproduction: A Century of Conflict in Britain and France* (Manchester, Manchester University Press 2002) 104

<sup>115</sup> *Roe v Wade*, 410 U.S. 113 (1973)

<sup>116</sup> C. A., MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard, Harvard University Press 1988) 93

<sup>117</sup> I. Zweigiger-Bargielowska, *Women in Twentieth-Century Britain: Social, Cultural and Political Change* (Abingdon, Routledge 2014) 282

<sup>118</sup> Ibid

<sup>119</sup> Ibid

*discourse on the family.*"<sup>120</sup> However, this changed at the beginning of the 1970s, when economic and cultural developments increasingly challenged this and paved the way for an "autonomous motherhood" concept.<sup>121</sup> The law kept pace with these developments and domestic violence became combated by virtue of the Domestic Violence and Matrimonial Proceedings Act 1976.<sup>122</sup>

Furthermore, feminism in the 1960s and 1970s resulted in rape being perceived differently.<sup>123</sup> In 1976, women were permitted to pursue rape charges, whilst being anonymous.<sup>124</sup> In 1976, the definition of rape contained in the Sexual Offences Act 1956 was changed from "against her will" and evidence that there was physical resistance to "without her consent".<sup>125</sup>

In the UK, feminism further advanced the economic rights of women through employment legislation in respect of equal pay in 1970 and sex discrimination in 1975.<sup>126</sup> The Equal Pay Act 1970 allowed women to bring claims for equal pay, though required a male comparator who worked at the same employer<sup>127</sup> and it was difficult for women to win such cases.<sup>128</sup> The UK Sex Discrimination Acts 1975 and 1986 proscribed that women are discriminated against in work, education or vocational training and when being provided facilities, services or goods.<sup>129</sup> Not only direct, but also indirect sex discrimination was rendered illegal. Indirect

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<sup>120</sup> J. Bridgeman, D. Monk, *Feminist Perspectives on Child Law* (London, Cavendish Publishing Ltd 2000) 136

<sup>121</sup> Ibid

<sup>122</sup> H. Barnett, *Introduction to Feminist Jurisprudence* (London, Cavendish Publishing Ltd 1998) 255;

<sup>123</sup> K. Daly, B. Bouhours, Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries, 39(1) *Crime and Justice* 2010, 565-650, 569

<sup>124</sup> N.106, 281

<sup>125</sup> C. E. Jordan, *Violence Against Women in Kentucky: A History of U.S. and State Legislative Reform* (Kentucky, University Press of Kentucky 2014) 90

<sup>126</sup> M. Shaw, 'Old Feminism, New Feminism' (eds) C. Jones, E. Hogg, *Influence and Inheritance in Feminist English Studies* (Basingstoke, Palgrave MacMillan 2015) 16

<sup>127</sup> S.1(6) of the Equal Pay Act 1970

<sup>128</sup> M. Connolly, 'The Gender Pay Gap, Hypothetical Comparators and the Equality Act 2010, 101 *Employment Law Bulletin* 2011, 6-8, 6

<sup>129</sup> J. Wajcman, *Managing Like a Man: Women and Men in Corporate Management* (Oxford, John Wiley & Co 2013) Chapter 1; N. Lacey, Legislation Against Sex Discrimination: Questions from a Feminist Perspective, 14(4) *Journal of Law and Society* 1987, 411-421, 411

discrimination takes place when the same condition is applied to both sexes, but one sex cannot comply as much.<sup>130</sup> In 1976, the Equal Opportunities Commission was established to promote equality and combat discrimination.<sup>131</sup> Whilst one of the big demands of the women's movement, namely for women to work full time, was relatively successful, the pay gap still persists to this present day and Coppock et al point out that this is predominantly because of the narrow scope of the laws which fail to address the underlying causes which result in the inequalities.<sup>132</sup> For example, those who could not work full-time or had children were effectively precluded from placing reliance on the Equal Pay Act.<sup>133</sup> Hence, the formal equality approach prevents full women empowerment.

In 1975 another law was passed as a result of the UK preparing to become part of the European Economic Communities, namely the Employment Protection Act.<sup>134</sup> This Act provided women with the right not to be dismissed because of pregnancy or childbirth or maternity leave; entitled women to receive money whilst on maternity leave; and to resume work within 29 weeks of the birth of their child.<sup>135</sup> Yet the scope of these rights was very narrow and it was difficult to satisfy the conditions, so that in practice not many women could evoke these new statutory rights.<sup>136</sup> Furthermore, despite these new labour laws, the opportunities which women had at work were indirectly curtailed because of well-established patriarchal traditions, practices and structures.<sup>137</sup> For instance, *"in many industries, the sex of the workers was the main influence on payment structures and employment systems...jobs*

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<sup>130</sup> Ibid (Wajcman) Chapter 1

<sup>131</sup> S. Osborne, *Feminism: The Pocket Essential Guide* (Herts, Pocket Essentials 2001) 31

<sup>132</sup> V. Coppock, D. Haydon, I. Richter, *The Illusions of Post-Feminism: New Women, Old Myths* (London, Routledge 2006) 75

<sup>133</sup> Ibid

<sup>134</sup> J. Gelb, *Feminism and Politics: A Comparative Perspective* (Los Angeles, University of California Press 1990) 110

<sup>135</sup> Ibid

<sup>136</sup> Ibid

<sup>137</sup> N.132

[were] regarded as unskilled because they [were] feminised...”<sup>138</sup> Yet despite the various shortcomings of the laws, the 1960s and 1970s ensured that the important concept of gender equality became entrenched in different fields, including at the international level, as discussed below.<sup>139</sup>

Henry explains that in the 1980s, post-feminism emerged which implies a more developed version of traditional feminism but also opposition.<sup>140</sup> During this period feminism became developed in response to criticism levied against earlier feminism.<sup>141</sup> In terms of legal change, in 1983, the Equal Pay (Amendment) Regulations 1983 were adopted following *EC Commission v UK* [1982].<sup>142</sup> As a result, it became easier for women to pursue equal pay claims by asserting that their work is of an equal value.<sup>143</sup> However, Morris and O'Donnell note that the process was nonetheless protracted and complicated.<sup>144</sup>

The UK was also at the forefront of outlawing female genital circumcision by enacting the Prohibition of Female Circumcision Act 1985, which subsequently became substituted by the Female Genital Mutilation Act 2003.<sup>145</sup> This sent out the message that “*patriarchal sexual constructions*” are not tolerated.<sup>146</sup> Women's reproductive autonomy was further affirmed by virtue of the Human Fertilisation and Embryology Act 1990 and the updated Human

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<sup>138</sup> S. Fredman, *Women and the Law* (Oxford, Oxford University Press 2002) 154

<sup>139</sup> N.134, 110-111

<sup>140</sup> A. Henry, *Not My Mother's Sister: Generational Conflict and Third-wave Feminism* (Bloomington, Indiana University Press 2004) 16

<sup>141</sup> S. Archer Mann, D. J. Huffman, The Decentering of Second Wave Feminism and the Rise of the Third Wave, 69(1) *Science & Society* 2005, 56-91, 56

<sup>142</sup> *EC Commission v UK* [1982] IRLR 333; A. Morris, T. O'Donnell, *Feminist Perspectives on Employment Law* (London, Cavendish Publishing Ltd 1999) 198

<sup>143</sup> *Ibid* (Morris and O'Donnell)

<sup>144</sup> *Ibid*

<sup>145</sup> M. C. La Barbera, *Multicentered Feminism: Revisiting the "Female Genital Mutilation" Discourse* (Palermo, Compostampa de M Savasta 2009) 134

<sup>146</sup> G. U. Ukagba, O. Des-Obi, I. J. Nwankwor, *The Kpim of Feminism: Issues and Women in a Changing World* (Victoria BC, Trafford Publishing 2010) 548

Fertilisation and Embryology Act 2008.<sup>147</sup> In *R v R* [1991],<sup>148</sup> the House of Lords rendered marital rape illegal, though Lord Lane explained that “[t]his is not the creation of a new offence. It is the removal of a common law fiction which has become anachronistic and offensive.”<sup>149</sup> This reversed the old Hale's declaration which had granted immunity to marital rapists.<sup>150</sup> This was also put on a statutory footing in 1994.<sup>151</sup> In contrast, in the US the first conviction for marital rape was passed in 1981 in the case of *Commonwealth v Chretien*.<sup>152</sup> Kirk explains that Western states also acknowledged the rights of women in the context of refugee law.<sup>153</sup> She notes that in 1993, Canada adopted the first Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and other countries followed suit, for instance, the United States adopted the 1995 Considerations for Asylum Officers Adjudicating Asylum Claims from Women.<sup>154</sup>

Moreover, “the 1990s were the high tide for feminism within the United Nations” and many topics were “recast in terms of women's rights”.<sup>155</sup> Hence, feminism transformed itself into a global women's movement.<sup>156</sup> In this context, Higgs and Smith explain that the earlier objectives of feminism became occasionally merged.<sup>157</sup> Concerns in respect of topics, such as

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<sup>147</sup> R. A. Fenton, D. J. V. Rees, S. Heenan, 'Shall I be mother?' Reproductive autonomy, feminism and the Human Fertilisation and Embryology Act 2008' in (eds) J. Jones, A. Gear, R. A. Fenton, K. Stevenson, *Gender, Sexualities and Law* (Abingdon, Routledge 2011) 241

<sup>148</sup> *R v R* [1991] 2 All ER 257

<sup>149</sup> N.123, 578

<sup>150</sup> J. Hanmer, C. Itzin, *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice A Reader* (Abingdon, Routledge 2000) 59

<sup>151</sup> Ibid

<sup>152</sup> 417 N.E.2d 1203 (Mass. 1981); C. E. Jordan, *Violence Against Women in Kentucky: A History of U.S. and State Legislative Reform* (Kentucky, University Press of Kentucky 2014) 90

<sup>153</sup> K. Kirk, Gender related persecution and the Refugee Convention Article 1A(2), International Refugee Law and Human Rights Research Paper, undated, 1-33, 3  
<[https://www.iarlj.org/general/images/stories/papers\\_to\\_be\\_published/101025\\_linda\\_kirk\\_-\\_research\\_paper-final.pdf](https://www.iarlj.org/general/images/stories/papers_to_be_published/101025_linda_kirk_-_research_paper-final.pdf)> accessed 20th November 2015

<sup>154</sup> Ibid

<sup>155</sup> C. Bulbeck, *Sex, Love and Feminism in the Asia Pacific: A Cross-Cultural Study of Young People's Attitudes* (Abingdon, Routledge 2009) 9

<sup>156</sup> A. Henry, *Not My Mother's Sister: Generational Conflict and Third-wave Feminism* (Bloomington, Indiana University Press 2004) 16; *ibid*

<sup>157</sup> N.51, 41

gender, sexuality, reproduction and family became interwoven with international women communities and issues.<sup>158</sup> Women rights became also conceptualised as human rights.<sup>159</sup>

In the 1990s, there were even calls for gender apartheid since it was thought that men treat women maliciously i.e. there was a renewed insurgence in radical feminism.<sup>160</sup> Nonetheless, a more “*tactical approach*” was adopted towards impasses which feminists previously faced.<sup>161</sup> This was done firstly to overcome the issue of the blurred concept of a woman and resulted in more emphasis being placed on personal narratives which portray multiperspectival accounts.<sup>162</sup> Secondly, in response to postmodernism, feminists started disregarding theoretical justifications, but looked at action and opted for multivocality instead of synthesis.<sup>163</sup> Thirdly, to address the problem that sex wars are highly divisive, an unbiased and inclusive stance was adopted, so that difficult to define boundaries in respect of the feminist political realm did not become centre stage.<sup>164</sup> Moreover, a dynamic account, as opposed to one united narrative, was chosen.<sup>165</sup>

In the 1990s, different perspectives were adopted which emphasised deconstruction, difference and decentering and which scrutinise historical and social conditions through the lens of feminist Marxism and which are rooted in poststructuralism/postmodernism; intersectionality theory; feminist postcolonial theory; and the vision of young feminists and thereby adopt a materialist driven analysis.<sup>166</sup> Kinser observes that the main arguments of

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<sup>158</sup> M. C. Green, 'From Third Wave to Third Generation: Feminism, Faith, and Human Rights' in (eds) M. A. Failinger, E. R. Schiltz, S. J. Stabile, *Feminism, Law and Religion* (Farnham, Ashgate Publishing Ltd 2013) 142

<sup>159</sup> Ibid

<sup>160</sup> P. Higgs, J. Smith, *Rethinking Truth* (2nd ed, Cape Town, Juta & Co 2006) 41

<sup>161</sup> R. C. Synder, What is Third-Wave Feminism? A New Directions Essay, 34(1) *Signs* 2008, 175-196, 175

<sup>162</sup> Ibid, 176

<sup>163</sup> Ibid, 177

<sup>164</sup> Ibid

<sup>165</sup> Ibid

<sup>166</sup> N.141

feminism have thereby become deconstructed and depoliticised,<sup>167</sup> though she concedes that this also enables women to respond to cultural, political, technological and economic circumstances which shape their era.<sup>168</sup> This has also facilitated the building of international coalitions by women organisations “*across difference*” and the taking into account of “*diverse experiences of women.*”<sup>169</sup> Hence, feminism emerged as a reform social movement which became transnational and sought to realise change not by overturning but by reforming the prevalent social framework.<sup>170</sup> This movement has advocated “*contemporary liberal or 'mainstream' feminism*” and its main strategy has been to obtain economic and legal equalities and provide access to high positions in politics and at work.<sup>171</sup>

According to Green, this has resulted in the development of third generation rights, namely “*material rights in a neoliberal political economy in ways that correspond to third-wave anti-poverty and development rights*” and these are essential in a global world.<sup>172</sup>

The realisation of these rights necessitates gender mainstreaming i.e. that the impact for men and women of planned policy decisions, programmes and laws in respect of all fields is studied and a pluralistic stance is adopted which ensures that men and women are valued.<sup>173</sup>

Gender mainstreaming has also been endorsed by the Beijing Platform for Action (BPA) 1995<sup>174</sup>, which member states endorsed at the United Nations Fourth World Conference on

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<sup>167</sup> A. E. Kinser, Negotiating Spaces for/Through Third-Wave Feminism, 16(3) *NWSA Journal* 2004, 124-153, 124

<sup>168</sup> Ibid

<sup>169</sup> N.155

<sup>170</sup> R. Baksh, W. Harcourt, *The Oxford Handbook of Transnational Feminist Movements* (Oxford, Oxford University Press 2015) 119; J. H. Rollins, *Women's Minds/women's Bodies: The Psychology of Women in a Biosocial Context* (London, Prentice Hall, 1996) 3

<sup>171</sup> N.93

<sup>172</sup> N.158,143

<sup>173</sup> L. J. Shepherd, *Gender Matters in Global Politics: A Feminist Introduction to International Relations* (2nd ed, Abingdon, Routledge 2015) 228

<sup>174</sup> J. True, L. Parisi, 'Gender mainstreaming strategies in international governance' in (eds) G. Caglar, E. Prügl, S. Zwingel, *Feminist Strategies in International Governance* (Abingdon, Routledge 2013) 37



Women.<sup>175</sup> It was made clear that gender mainstreaming should be adopted in respect of all aspects of governance.<sup>176</sup> Whilst the United Nations Vienna Declaration on Human Rights already advocated “*gender-mainstreamed human rights*”, the BPA is more far-reaching, as it demands that governments, as well as governance actors implement gender mainstreaming policies and programs.<sup>177</sup> In 2000, the United Nations Security Council also adopted Resolution 1325 on Women, Peace and Security in order to affirm gender mainstreaming, which was seen as a victory by many feminists.<sup>178</sup> Yet Otto cautions that the processes which gender mainstreaming implies have to be critically appraised and “*reappropriated for the political purposes of feminism.*”<sup>179</sup>

Accordingly, gender mainstreaming necessitates that gendered consequences are duly taken into account when policies and legislation are adopted, so that obstacles can be fully eliminated which still impede the rights of women and which cause discrimination.<sup>180</sup> However, Rowley observes that gender mainstreaming is dependent on the state being committed to adopting structures which institutionalise gender equity.<sup>181</sup> Furthermore, whilst mainstreaming procedures and policies are useful, the issue is that these cannot be legally enforced and are unlikely to result in “*power brokers (e.g., politicians and bureaucrats) to rethink privilege and power.*”<sup>182</sup> Moreover, gender mainstreaming can be employed to further non-feminist and feminist perspectives and very often gender mainstreaming is only employed in fields where gender inequality is particularly prevalent, for instance, in relation

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<sup>175</sup> Beijing Declaration and Platform for Action, adopted by the 4th World Conference on Women, Beijing 4-15 Sept. 1995, UN Doc. ACONF.177/20 Rev. 1 (96.IV.13) para. 129a

<sup>176</sup> N.147

<sup>177</sup> Ibid

<sup>178</sup> D. Otto, Power and Danger: Feminist Engagement with International Law Through the UN Security Council, 32 *The Australian Feminist Law Journal* 2010, 97-121, 100-101

<sup>179</sup> Ibid, 121

<sup>180</sup> L. J. Shepherd, *Gender Matters in Global Politics: A Feminist Introduction to International Relations* (2nd ed, Abingdon, Routledge 2015) 228

<sup>181</sup> M. V. Rowley, *Feminist Advocacy and Gender Equity in the Anglophone Caribbean: Envisioning a Politics of Coalition* (Abingdon, Routledge 2011) 8

<sup>182</sup> Ibid, 8-9

to family policy.<sup>183</sup> Booth and Bennett point out that “*mainstreaming gender equality*” is best understood through the following holistic “*three-legged equality stool*”: “*the equal treatment perspective, the women's perspective and the gender perspective.*”<sup>184</sup> They argue that this also prevents that gender mainstreaming remains a too vague concept.<sup>185</sup> Daly avers that gender mainstreaming has to be understood from the perspective of societal change and gender inequality.<sup>186</sup> Andersson thinks that gender conflict can be circumvented through a gender mainstreaming strategy.<sup>187</sup> This is because affirmative action is often not welcomed as a concept, as some feel that it conflicts with valid political affairs and professionalism.<sup>188</sup> Hence, the adoption of gender mainstreaming can avoid gender conflicts and controversial topics, such as quotas for women and other privileges.<sup>189</sup>

In the 1990s, gender mainstreaming was implemented by the European Union (EU) in order to combat iniquity.<sup>190</sup> Art.8 of the Treaty on the Functioning of the European Union (TFEU) incorporates the principle of mainstreaming and states that “*in all the activities...in this article, the Community shall aim to eliminate inequalities and...promote equality, between men and women.*” Gender mainstreaming has thus become entrenched as a proactive policy to improve gender equality in respect of all activities, including activities at the international level.<sup>191</sup> Gender mainstreaming and the non-discrimination principle have also horizontal

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<sup>183</sup> E. Lombardo, P. Meier, Gender Mainstreaming in the EU, Incorporating a Feminist Reading? 13(2) *European Journal of Women's Studies* 2006, 151-166, 151

<sup>184</sup> C. Booth, C. Bennett, Gender Mainstreaming in the European Union, Towards a New Conception and Practice of Equal Opportunities? 9(4) *European Journal of Women's Studies* 2002, 430-446, 430

<sup>185</sup> Ibid

<sup>186</sup> M. Daly, Gender Mainstreaming in Theory and Practice, 12(3) *Social Politics* 2005, 433-450, 433

<sup>187</sup> R. Andersson, The Question of Feminism in Gender Mainstreaming - A Case of Non-conflict in Local Politics, 23(3) *Nordic Journal of Feminist and Gender Research* 2015, 203-219, 203

<sup>188</sup> Ibid

<sup>189</sup> Ibid

<sup>190</sup> I. Rittenhofer, C. Gatrell, Gender Mainstreaming and Employment in the European Union: A Review and Analysis of Theoretical and Policy Literatures, 14(2) *International Journal of Management Reviews* 2012, 201-216, 201

<sup>191</sup> A. E. Woodward, A. van der Vleuten, 'EU and the Export of Gender Equality Norms: Myth and Facts' in (eds) A. van der Vleuten, A. van Eerdewijk, C. Roggeband, *Gender Equality Norms in Regional Governance: Transnational Dynamics in Europe, South America and Southern Africa* (London, Palgrave Macmillan 2014) 72

effect i.e. apply between individuals and not just between the state and individuals.<sup>192</sup> However, Rittenhofer and Gatrell remark that gender mainstreaming has only had a limited effect, predominantly because it was unclear whether gender mainstreaming is a strategy of policy; the issue of how to capture inequality and to address difference and sameness in respect of issues which men and women have and the question of whether emphasis should be placed on gender or women.<sup>193</sup> They therefore argue that the concept has been primarily unsuccessful because of the lack of an adequate definition.<sup>194</sup> Equally, Woodward and van der Vleuten state that despite the gender mainstreaming duty having a Treaty basis that it nevertheless “*lacks muscle for there are no sanctions in the case where no action is taken.*”<sup>195</sup> Similarly, More states that the “*formula for sex equality is...abstract, narrow and rigid...reinforces inequalities ...and masks...inequalities at work.*”<sup>196</sup> To overcome this problem, Rittenhofer and Gatrell propose that gender is analysed from a situational and organisational expectations’ perspective in respect of the social roles which men and women are meant to fulfil.<sup>197</sup> Hence, gender should be interpreted more fluidly by taking into account socio-cultural and post-structural perspectives. Butler's research informs that this means understanding gender mainstreaming through a “*gender as performativity*” model i.e. by reconceptualising gender through particular situations which are assigned to men and women because of their social roles and organisational expectations.<sup>198</sup>

Gender mainstreaming has also been important in the EU employment law context.<sup>199</sup> For instance, at the end of the 1990s, the Maternity and Parental Leave Regulations 1999 were

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<sup>192</sup> Ibid

<sup>193</sup> N.190

<sup>194</sup> Ibid

<sup>195</sup> N.191

<sup>196</sup> G. More, Equal Treatment of the Sexes in European Community Law: What Does Equal Mean? 1 *Feminist Legal Studies* 1993, 45, 64

<sup>197</sup> N.190

<sup>198</sup> J. Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London, Routledge 1990) 25

<sup>199</sup> C. Barnard, *EU Employment Law* (4th ed, Oxford, Oxford University Press 2012) 388

adopted in the UK due to EU Council Directive 96/34/EC.<sup>200</sup> The Directive enables women in all European Member States to be paid to some degree whilst on maternity leave.<sup>201</sup> However, in contrast to Europe, in the US only a piecemeal approach has been adopted in relation to paid maternity leave.<sup>202</sup> Until 1993, paid maternity leave was only available in certain industries in the US.<sup>203</sup> Even the passing of the Family and Medical Leave Act 1993, which introduced paid maternity leave, only mandated this for businesses and government offices which had over 50 employees.<sup>204</sup> The state also did not pay for maternity leave and the length was restricted to three months.<sup>205</sup>

In the UK, the Equality Act 2010 has been adopted which contains provisions to prevent gender inequality. For instance, equality objectives have to be considered by public authorities, including in respect of gender.<sup>206</sup>

Feminism in the 21st century has also resulted in a new interpretation of “*what makes an ideal family*.”<sup>207</sup> The UK Adoption and Children Act 2002, s.50 provides that “*two people (whether of different sexes or the same sex) living as partners in an enduring family relationship*” can adopt children. As a result, lesbians can adopt and Arnup states that “*[a]s our children come into contact with children of so-called normal families at day care and schools, they break down the artificial barriers between the heterosexual and lesbian worlds*.”<sup>208</sup>

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<sup>200</sup> (TN9801201S); A. McColgan, Family-Friendly Frolics? The Maternity and Parental Leave Regulations 1999, 29 *Industrial Law Journal* 1999, 125-144, 124

<sup>201</sup> A. G. Mazur, *Theorizing Feminist Policy* (Oxford, Oxford University Press 2002) 112

<sup>202</sup> *Ibid*

<sup>203</sup> *Ibid*, 113

<sup>204</sup> *Ibid*

<sup>205</sup> *Ibid*

<sup>206</sup> S.149 of the UK Equality Act 2010; K. Monaghan, The Equality Bill: a sheep in wolf's clothing or something more? 4 *European Human Rights Law Review* 2009, 512, 530

<sup>207</sup> M. Cooper, Gay and Lesbian Families in the 21st Century: What Makes a Family?: Addressing the Issue of Gay and Lesbian Adoption, 42 *Family Court Review* 2004, 178, 178

<sup>208</sup> K. Arnup, 'We are family': Lesbian mothers in Canada, 20(3/4) *Resources for Feminist Research* 1991, 101-107, 103

With the increasing acceptance of sexual freedom in the West, the state embraced a new political right, namely sexual freedom, and this necessitated that the state had to abandon the idea that what happens sexually falls within its jurisdiction or concerns it and the state therefore had to renounce “any interest in people's sexuality per se.”<sup>209</sup> This also required legislation to prevent that others stigmatise those who live in same-sex relationships.<sup>210</sup> In this context, Barker points out that the UK Employment Equality (Sexuality Orientation) Regulations 2003 proscribe that persons are discriminated against at work because of their sexual orientation and the Equality Act (Sexual Orientation) Regulations 2007 does the same in respect of the provision of services and goods.<sup>211</sup> Similar law reforms took place in the US, Canada, Australia and South Africa where same-sex relationships can be formalised through something akin to marriage or through actual marriage.<sup>212</sup> Equally in the UK, the Civil Partnerships Act was enacted in 2005, so that same-sex couples can enter into civil partnerships and in 2013, the Marriage (Same Sex Couples) Act was passed and which legalises same-sex marriage.<sup>213</sup> As a result, the same rights and duties are imposed as on married spouses, though Munro and Stychin state that from a feminist point of view they considered the Act disappointing since as lesbians they were proud to conduct their lives differently than heterosexual relationships.<sup>214</sup>

Many legal changes have been made and new laws have been enacted, but despite this, the Fawcett Society published a report entitled *Sex and Power 2013: Who runs Britain?* which highlights that since 2001 women in the UK have fallen from the 33rd rank to the 57th rank

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<sup>209</sup> B. Mousli, E.-A. Roustang-Stoller, *Women, Feminism, and Femininity in the 21st Century, American and French Perspectives* (Basingstoke, Palgrave MacMillan 2009) 202

<sup>210</sup> Ibid

<sup>211</sup> N. Barker, *Not The Marrying Kind: A Feminist Critique of Same-Sex Marriage* (Basingstoke, Palgrave MacMillan 2012) 2

<sup>212</sup> Ibid

<sup>213</sup> V. Munro, C. Stychin, *Sexuality and the Law: Feminist Engagements* (Abingdon, Routledge 2014) 91

<sup>214</sup> Ibid

in terms of global power rankings; there were only 17.4% in the Cabinet; 22.5% MPs; only 11% of the CEOs from UK banks were women and 5% were editors of daily newspaper.<sup>215</sup> This demonstrates “*a shocking absence of women from UK public life.*”<sup>216</sup> The recent Sex & Power, Who Runs Britain? 2015 Report informs that at the 2015 UK parliamentary election, 29% women of the MPs were women, which is a 7% increase from the 2010 election.<sup>217</sup> However, since women were first allowed to become MPs, there have only been 450 female MPs, despite the full parliament having 459 MPs.<sup>218</sup> Furthermore, a recent article in the Guardian reports about pregnant women feeling discriminated by mortgage lenders when applying for a mortgage.<sup>219</sup> Certainly, in other countries the position is not much different. For instance, in 2014, women in the US, who worked full time, received 21% less pay than men.<sup>220</sup> There thus exist still many obstacles for women to assert their fundamental rights, as guaranteed by various international instruments. The next section will discuss how the prohibition of discrimination and the principle of equality can enable women to exercise first second and third generation rights and freedoms contained in various international instruments and will highlight issues which still make this difficult.

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<sup>215</sup> Fawcett Society, Sex and Power 2013, Who runs Britain? Centre for Women and Democracy, 2013, 1-46, 5 <<http://www.fawcettsociety.org.uk/wp-content/uploads/2013/02/Sex-and-Power-2013-FINAL-REPORT.pdf>> accessed 20th November 2015; M. Shaw, 'Old Feminism, New Feminism' (eds) C. Jones, E. Hogg, *Influence and Inheritance in Feminist English Studies* (Basingstoke, Palgrave MacMillan 2015) 16

<sup>216</sup> N.126

<sup>217</sup> Fawcett Society, Sex and Power 2015, Who runs Britain? Centre for Women and Democracy, 2015, 1-61, 8 <<http://electoral-reform.org.uk/sites/default/files/Sex%20and%20Power%20Report%20Final.pdf>> accessed 20th November 2015

<sup>218</sup> Ibid

<sup>219</sup> D. Ferguson, Women warned to beware pregnancy pitfalls when applying for a mortgage, *The Guardian*, 22 November 2015 <<http://www.theguardian.com/money/2015/nov/22/mortgage-lenders-pregnancy-deny-loan-discrimination-affordability-rules-income>> accessed 22nd November 2015

<sup>220</sup> AAUW, The Simple Truth about the Gender Pay Gap (Fall 2015), 2015 <<http://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>> accessed 20th November 2015

## 2.2 International women rights and the Western-liberal feminism paradigm

Just like women in different countries called for more rights before the Second World War, the international women's movement gathered pace in the Americas in the 1920s, where feminist activists demanded that the topic of women rights receives more attention and this led to the set-up of the Inter-American Commission of Women.<sup>221</sup> In 1948, the United Nations Commission on the Status of Women (CSW) was created, which drafted several declarations and conventions, for instance, the Convention on the Political Rights of Women 1952 and most notably the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW).<sup>222</sup> The CEDAW is at the heart of this research since it is the most comprehensive international instrument for women rights. Nonetheless, when the CEDAW was adopted it was not afforded the importance of an international human rights treaty by the community of states and also by academics.<sup>223</sup> This is also apparent from the failure to have it dealt with under the Geneva-based human rights treaties.<sup>224</sup>

As illustrated by the above discussion, the rights which women were granted developed over time. This also accords with the two broad generations of human rights.<sup>225</sup> The rationale behind classifying rights is that political and civil rights were first recognised in the 18th century.<sup>226</sup> In contrast, in the 19th and 20th century, economic and social rights were acknowledged and a third generation of rights also developed, which has been labelled

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<sup>221</sup> G. M. Lyons, J. Mayall, *International Human Rights in the 21st Century: Protecting the Rights of Groups* (Oxford, Rowman & Littlefield Publishers Inc 2003) 106

<sup>222</sup> Ibid, 107

<sup>223</sup> M. Freeman, C. Chinkin, B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary*. Oxford commentaries on international law (Oxford, Oxford University Press 2012) 25

<sup>224</sup> Ibid

<sup>225</sup> M. Seleokane, *Socio-economic Rights in the South African Constitution: Theory and Practice* (Pretoria, Human Sciences Research Council 2001) 35

<sup>226</sup> Ibid, 36

“*solidarity rights*.”<sup>227</sup> Hence, typical first generation rights are political and civil rights and second generation human rights are economic, social and cultural rights.<sup>228</sup> Political and civil rights are set out in the International Covenant on Civil and Political Rights (ICCPR) and economic, social and cultural rights are spelled out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 1993, women rights were further affirmed at the World Conference on Human Rights in Vienna, namely in the UN Vienna Declaration.<sup>229</sup> However, An-Na'im criticises a classification into civil and political rights and economic, social and cultural rights since this implicitly erodes the universality of human rights and their implementation and undermines their quality.<sup>230</sup> Nonetheless, it is generally assumed that human rights are universal.<sup>231</sup> Yet the issue is that human rights for women are not universal, but sex-specific.<sup>232</sup> A universal approach also ignores cultural differences which impact the conceptualisation of what it means to be a women, as pointed out by cultural feminists, as discussed above. It thereby also prevents Muslim countries from adopting women rights which suit their culture and religious heritage. The universal approach, which has been adopted at the international level, thus prevents that cultural differences are recognised. This causes conflict, particularly since it makes it impossible for those states which consider the Sharia to be the supreme source of law to fully comply with their international obligations. Yet states are also afforded a “*margin of appreciation*” which

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<sup>227</sup> Ibid

<sup>228</sup> Ibid, 35

<sup>229</sup> United Nations Vienna Declaration and Programme of Action, 20 Years Working for Your Rights, 1993 World Conference on Human Rights, 1-28, 4  
<[http://www.ohchr.org/Documents/Events/OHCHR20/VDPA\\_booklet\\_English.pdf](http://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_English.pdf)> accessed 1st June 2016

<sup>230</sup> A. A. An-Na'im, 'To Affirm the Full Human Rights Standing of Economic, Social & Cultural Rights' in (eds) J. Cottrell, Y. Ghai, *Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social & Cultural Rights* (London, The Interights 2004) 7

<sup>231</sup> J. Donnelly, *Universal Human Rights in Theory and Practice* (2nd ed, New York, Cornell University 2003) 10

<sup>232</sup> I. Radacic, Human Rights of Women and the Public/Private Divide in International Human Rights Law, 3 *Croatian Yearbook of European Law and Policy* 2007, 443-468, 445; also see D. Otto, 'Disconcerting Masculinities: Reinventing the Gendered Subject(s) of International Human Rights Law' in D. Buss, A. Manji, *International Law: Modern Feminist Approaches* (Oxford, Hart Publishing 2005) 106



allows them to deviate from the rights to a certain degree.<sup>233</sup> These women rights are therefore relative, as they permit “*national, regional, cultural particularity and other forms of diversity and relativity.*”<sup>234</sup> Whilst Articles 2, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 16 of the CEDAW obligate state parties to take all adequate steps to eradicate discrimination in the different fields, Freeman et al point out that this wording confers flexibility on state parties to determine on how best to implement the CEDAW. Hence, no strict interpretation must be followed.<sup>235</sup> This also arguably allows states to accommodate cultural and religious differences. The perceived schism between the universality and cultural relativity paradigms is thus not as wide, as not to be bridged. Also, by perceiving culture and Islamic laws “*as dynamic rather than as monolithic or immutable*”, it is possible for Muslim states to overcome issues with the implementation of the CEDAW.<sup>236</sup>

However, even the universal approach has not prevented in practice that international law has a male slant: Generation rights do not address structural inequalities and fail to include important rights which are a prerequisite to meaningfully exercise political and civil rights; whilst many second and third generation human rights omit women specific topics, for instance, that the right to health should include reproductive and sexual freedom.<sup>237</sup> Hence, the liberal version of feminism, which has been adopted at the international level and which affords women equal rights, is based on “*existing androcentric human rights treaties*” and

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<sup>233</sup> J. Resnik, Comparative (in)equalities: CEDAW, the jurisdiction of gender, and the heterogeneity of transnational law production, 10(2) *International Journal of Constitutional Law* 2012, 531-550, 531

<sup>234</sup> J. Donnelly, The Relative Universality of Human Rights, 29(2) *Human Rights Quarterly* 2007, 281-306, 281

<sup>235</sup> M. Freeman, C. Chinkin, B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary. Oxford commentaries on international law* (Oxford, Oxford University Press 2012) 16

<sup>236</sup> Ibid, 31

<sup>237</sup> Ibid (Radacic) 466; ibid (Otto)

this ignores certain perspectives and experiences of women in situations where they are entirely different.<sup>238</sup>

Nonetheless, sex-specific women rights have also been promulgated and spelled out in declarations and Conventions, particularly the CEDAW which is often described as a “*Bill of Rights for women*.”<sup>239</sup> Irving and English consider the “*CEDAW...the cornerstone of the feminist movement internationally*.”<sup>240</sup> Yet the older instruments, for instance, the UN Convention on the Political Rights of Women 1952 “*reflect a 'sameness' approach [and]...are based on a concept of formal equality*” without doing “*justice to the specific needs and experiences of women*”, whereas others are more specific, e.g. the UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict 1974, but are interpreted, so that certain women become excluded, as they are viewed as vulnerable.<sup>241</sup> Equally, Albertson Fineman states that the CEDAW adopts “*formal rules of equality*” and gives as example Article 3.<sup>242</sup> Article 3 provides that “*States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*” The “*equality model*” which the CEDAW has adopted is premised on the harm which men have experienced.<sup>243</sup> The non-discrimination standard therefore fails to take into account the entirety of mistreatment which women

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<sup>238</sup> J. Moussa, *Competing Fundamentalisms and Egyptian Women's Family Rights: International Law and the Reform of Sharia-Derived Legislation* (Leiden, Brill 2011) 65-66

<sup>239</sup> N. F. A.A. Al-Hadad, *Working Women and their Rights in the Workplace: International Human Rights and its Impact on Libyan Law* (Farnham, Ashgate Publishing Ltd 2015) 29

<sup>240</sup> C. J. Irving, L. M. English, *Feminism in Community* (Rotterdam, Sense Publishers 2015) 151

<sup>241</sup> G. M. Lyons, J. Mayall, *International Human Rights in the 21st Century: Protecting the Rights of Groups* (Oxford, Rowman & Littlefield Publishers Inc 2003) 107-108

<sup>242</sup> M. Albertson Fineman, *Transcending the Boundaries of Law: Generations of Feminism and Legal Theory* (Abingdon, Routledge 2011) 105

<sup>243</sup> M. Freeman, C. Chinkin, B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary. Oxford commentaries on international law* (Oxford, Oxford University Press 2012) 17

experience.<sup>244</sup> For instance, the topics of unwanted pregnancy, abortion, and the recognition of household work, are all not addressed.<sup>245</sup> Also, the CEDAW does not expressly proscribe gender-based abuse, for instance, female genital mutilation, domestic violence or rape, which take place in the private arena and this has diminished the responsibility of states in this field.<sup>246</sup> Nonetheless, it is clear that gender-based abuse is outlawed by virtue of Article 1, which states that *“For the purposes of the present Convention, the term ‘discrimination against women’ shall mean 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 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.”*

Radical feminists criticise the liberal stance which the CEDAW adopts since it is premised on the presumption that procedures and institutions display adequate behaviour and that the only issue is that women are not allowed access or genuine access.<sup>247</sup> However, this disregards that there exists indirect discrimination and that policies may appear gender neutral, despite their discriminatory impact on women due to structural issues, including lifestyles, customs and the educational system which favour men.<sup>248</sup> The concept of equality in the CEDAW therefore arguably fails women, also since the different roles of women and men are not recognised.<sup>249</sup> At the Beijing Platform for Action, Muslim states, as well as other states,

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<sup>244</sup> Ibid

<sup>245</sup> Ibid

<sup>246</sup> J. Moussa, *Competing Fundamentalisms and Egyptian Women’s Family Rights: International Law and the Reform of Sharia-Derived Legislation* (Leiden, Brill 2011) 66; also see L. Askari, 'Girls Rights Under International Law. An Argument for Establishing Gender Equality as a Jus Cogens' (1998) 8 *Southern California Review of Law & Women's Studies*, 3, 25-26

<sup>247</sup> Ibid

<sup>248</sup> Ibid

<sup>249</sup> M. Freeman, C. Chinkin, B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary. Oxford commentaries on international law* (Oxford, Oxford University Press 2012) 18

therefore advocated that the concept of equality should be replaced with that of equity.<sup>250</sup> Whilst such an argument may appear attractive at first sight, the problem is that equity gives rise to subjectivism.<sup>251</sup> It would empower states to use different kinds of excuses, which cannot be evoked in respect of the obligation of states to ensure that women are granted the legal right to equality.<sup>252</sup>

The Charter of the United Nations outlaws discrimination on the basis of “...sex...” and the Universal Declaration of Human Rights (UDHR) repeats this.<sup>253</sup> Article 2 of the UDHR deals with non-discrimination and Article 7 with equality. Hence, nondiscrimination and equality are central themes of the Declaration.<sup>254</sup> Similarly, Article 2 of the ICCPR mandates non-discrimination and Article 7 requires equality. Moreover, Article 26 of the ICCPR prohibits discrimination and affirms firstly “*a right to equality before the law*”; secondly “*equal protection of the law*” and thirdly imposes “*a general prohibition of discrimination.*” Equal protection and equality before the law, as well as non-discrimination are thus essential principles to safeguard human rights, including women rights.<sup>255</sup> Article 2 of the ICESCR also affirms non-discrimination. Article 1 of the CEDAW defines discrimination 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 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.”*

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<sup>250</sup> Ibid

<sup>251</sup> Ibid

<sup>252</sup> Ibid

<sup>253</sup> J. Morsink, Women's Rights in the Universal Declaration, 13(2) *Human Rights Quarterly* 1991, 229-256, 229

<sup>254</sup> Ibid

<sup>255</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18 <<http://www.unhcr.org/refworld/docid/4415453b4.html>> accessed on 15<sup>th</sup> November 2015

Coomaraswamy considers that the way in which CEDAW defines discrimination favours empowered, free and independent women.<sup>256</sup> Byrnes et al, as well as Al-Hadad, explain that the preamble, Articles 1-3 and 24 and the comments made by the CEDAW Committee mean that the CEDAW guarantees that women are afforded not just the rights in Articles 6 to 16, but that the concept of equality extends to all internationally recognised fundamental freedoms and human rights.<sup>257</sup>

States should therefore introduce a right to equality before the law, which even trumps laws which contravene this fundamental principle. Similarly, the principle of non-discrimination should be transposed by states. States have to be thus particularly vigilant to ensure that sex discrimination is outlawed and this necessitates that courts scrutinise this thoroughly, including any justifications.<sup>258</sup> This is because states have to adopt whatever measure is necessary to prevent that women are discriminated against in any field.<sup>259</sup> Otherwise, states may not only violate the CEDAW, but also risk breaching Article 3 of the ICCPR, which requires states to ensure equality between the sexes.<sup>260</sup> Yet as observed by MacNaughton, “interpretations of the rights to equality and non-discrimination, as well as their relationship

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<sup>256</sup> R. Coomaraswamy, 'To Bellow Like a Cow: Women, Ethnicity and the Discourse of Rights', in (eds) R. J. Cook, *Human Rights of Women. National and International Perspectives* (Pennsylvania, Pennsylvania Press 1990) 40

<sup>257</sup> A. Byrnes, M. H. Graterol, R. Chartres, *State Obligation and the Convention on the Elimination of All Forms of Discrimination against Women* (New South Wales, University of New South Wales 2007) 117; N. F. A.A. Al-Hadad, *Working Women and their Rights in the Workplace: International Human Rights and its Impact on Libyan Law* (Farnham, Ashgate Publishing Ltd 2015) 29-30

<sup>258</sup> A. F. Bayefsky, The Principle of Equality or Non-Discrimination in International Law, (1990) 11(1-2) *Human Rights Law Journal* 1990, 1-34,18

<sup>259</sup> Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para.23 <<http://www1.umn.edu/humanrts/gencomm/hrcom28.htm>> accessed 18<sup>th</sup> November 2015

<sup>260</sup> A. F. Bayefsky, The Principle of Equality or Non-Discrimination in International Law, (1990) 11(1-2) *Human Rights Law Journal* 1990, 1-34,18

to each other, vary considerably.”<sup>261</sup> In this context, Mayer points out that a universalist perspective can be adopted towards women's rights or the topic can be viewed through the lens of cultural relativism.<sup>262</sup> Instead of considering that all share identical inalienable rights, cultural relativists consider that this imposes Western values and amounts to an ethnocentric and insensitive form of cultural imperialism.<sup>263</sup> However, the CEDAW provisions evidence that the drafters were not only concerned with realising formal equality, but appreciated that “existing international human rights law were not effectively addressing the specific disadvantages and injustices faced by women.”<sup>264</sup> Nonetheless, the adoption of a liberal version of feminism at the international level makes it more difficult for Muslim nations to align their laws than if a cultural perspective had been adopted.

Furthermore, in *S. W. M. Brooks v Netherlands*,<sup>265</sup> the UN Human Rights Committee explained that to assess the scope of Article 26 of the ICCPR<sup>266</sup>, the ordinary meaning has to be given to each aspect in light of the background, purpose and object. Article 26 requires that equality is realised in respect of all areas of law and not just those set out in the ICCPR.<sup>267</sup> Hence, this right is entirely free-standing and autonomous and means that the Human Rights Committee can deal with any type of complaints, even if it does not concern

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<sup>261</sup> G. MacNaughton, Untangling equality and non-discrimination to promote the right to health care for all, 11(2) *Health and Human Rights Journal* 2013 [online] <<http://www.hhrjournal.org/?p=2836>> accessed 13<sup>th</sup> November 2015

<sup>262</sup> A. E. Mayer, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in (eds) J. Peters, A. Wolper, *Women's Rights, Human Rights: International Feminist Perspectives* (London, Routledge 1995) 176

<sup>263</sup> Ibid

<sup>264</sup> L. A. Hoq, 'The Women's Convention and its Optional Protocol: Empowering Women to Claim their Internationally Protected Rights' (2001) 32 *Columbia Human Rights Law Review*, 677, 681

<sup>265</sup> *S. W. M. Brooks v Netherlands*, Communication No. 172/1984: Netherlands. 09/04/87. CCPR/C/29/D/172/1984

<sup>266</sup> Article 26 of the ICCPR states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>267</sup> *S. W. M. Brooks v Netherlands*, Communication No. 172/1984: Netherlands. 09/04/87. CCPR/C/29/D/172/1984, paras 12 & 12.4; W. Vandenhoe, *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Oxford, Hart Publishing 2005) 14

political and civil rights as set out in the ICCPR.<sup>268</sup> Consequently, aspects which are dealt with by public authorities and are discriminatory can be examined by the Human Rights Committee, which has dealt with a myriad of different topics, ranging from unemployment benefits, severance pay, employment matters, education subsidies, equal remedies to the right to property.<sup>269</sup> The Human Rights Committee explained<sup>270</sup> that it

*“regrets the maintenance of Switzerland’s reservation to article 26 of the Covenant, which limits the applicability of the principle of equality of all persons before the law and of the prohibition of discrimination to only those rights which are contained in the Covenant, whereas article 26 of the Covenant, as interpreted by the Committee, extends it to every area regulated and protected by the public authorities.”*

Despite this expansive approach, Radacic makes clear that the human rights of women have been neglected by international human rights law due to *“[t]he public/private divide on which international human rights law rests [and which] has been constructed in a manner that obscures the experiences of women and fails to challenge women’s disadvantage.”*<sup>271</sup> Hence, women will remain disadvantaged, so long as international law does not abolish the public/private distinction. As a result, international law remains too male-centred.<sup>272</sup> This is particularly concerning since *“women’s rights are most often violated within the family.”*<sup>273</sup> Equally, Eisler has observed that this distinction is a tool to avert that human rights for women are applied and developed.<sup>274</sup> In this context, Radacic observes that the right to

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<sup>268</sup> Ibid

<sup>269</sup> W. Vandenhoe, *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Oxford, Hart Publishing 2005) 14-15

<sup>270</sup> United Nations, Report of the Human Rights Committee, Volume I, Fifty-second Session Supplement No.40 (A/52/40), para.96

<sup>271</sup> I. Radacic, Human Rights of Women and the Public/Private Divide in International Human Rights Law, 3 *Croatian Yearbook of European Law and Policy* 2007, 443-468, 443

<sup>272</sup> H. Charlesworth, C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester, Manchester University Press 2000) 275-276

<sup>273</sup> Ibid, 452

<sup>274</sup> R. Eisler, Human Rights: Towards an Integrated Theory, 9 *Human Rights Quarterly* 1987, 287-308, 287,

freedom of religion, which falls within the private sphere, has been used to limit the rights of women in relation to reproductive and sexual freedoms.<sup>275</sup> The topic of pornography has also not been addressed, despite the fact that certain forms are harmful since this topic has been conceptualised as a public morality, as opposed to a gender equality matter.<sup>276</sup>

To overcome these issues, Byrnes advocates that it is ensured that gender is treated as an essential factor when an analysis is undertaken to identify “*the substantive content of rights.*”<sup>277</sup> This in turn necessitates that the state takes measures which are “*different from those which may be necessary to ensure that men enjoy that right.*”<sup>278</sup> The Human Rights Committee has noted that “*the principle of equality sometimes requires States parties to take affirmative action.*”<sup>279</sup> The Human Rights Committee when dealing with the equality of rights between men and women has also stated that “[*t*]he state party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective an equal empowerment of women.”<sup>280</sup> This implies that affirmative action is mandated. Howard argues that this highlights that equality in fact/substantive equality is needed and not formal equality to ensure that not only lip service is paid to the objective of equality.<sup>281</sup> Freeman et al also explain in this context that there exist different concepts of equality: “*formal equality, substantive equality, equality of opportunity, equality of results, and*

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<sup>275</sup> I. Radacic, Human Rights of Women and the Public/Private Divide in International Human Rights Law, 3 *Croatian Yearbook of European Law and Policy* 2007, 443-468, 454

<sup>276</sup> Ibid

<sup>277</sup> A. Byrnes, Feminism and International Human Rights - Methodological Myopia, Fundamental Flaws or Meaningful Marginalization? Some Current Issues, 12 *Australian Year Book of International Law* 1992, 201-223, 205

<sup>278</sup> Ibid

<sup>279</sup> Human Rights Committee, General Comment No.18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 146 (2003) para.10

<sup>280</sup> Human Rights Committee (HRC), CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), CCPR/C/21/Rev.1/Add.10, 29 March 2000, para.3

<sup>281</sup> E. Howard, The European Year of Equal Opportunities for All—2007: Is the EU Moving Away From a Formal Idea of Equality? 14(2) *European Law Journal* 2008, 168-185, 170



*transformative equality, among others*”, though these concepts overlap to a certain extent.<sup>282</sup> Formal equality only guarantees “*identical treatment*” and therefore *de jure* equality, but not *de facto* equality.<sup>283</sup> In contrast, substantive equality goes further since it recognises that in certain circumstances identical treatment is insufficient and differential treatment is necessary to ensure real equality.<sup>284</sup> Substantive equality makes it easier to address disadvantages which arise from unequal power structures.<sup>285</sup> Transformative equality goes even further since it considers that real equality can only be realised through a transformation of the social underpinning of dominance and hierarchy which has developed due to gender and sex.<sup>286</sup> This requires that society is no longer “*male-defined*” and requires that positive steps are taken not only to remove barriers, but also to restructure resources and power. However, instead of adopting such broader constructions of the concept of equality, the CEDAW only guarantees equal treatment. Women are therefore only granted the right to identical treatment, even though their specific situations require more than this to realise true equality.<sup>287</sup>

As a result, affirmative action policies have been criticised and instead of implementing any such policies, this idea has been largely abandoned.<sup>288</sup> Equally, Schneider and Segura point out that the discourse has moved away from affirmative action policies to capture a wider “*diversity embrace*” which proposes respect, tolerance and equality.<sup>289</sup> This is illustrated by the US Supreme Court cases *Gratz v Bollinger*<sup>290</sup> and *Parents Involved in Community*

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<sup>282</sup> M. Freeman, C. Chinkin, B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary. Oxford commentaries on international law* (Oxford, Oxford University Press 2012) 53

<sup>283</sup> *Ibid*, 55

<sup>284</sup> *Ibid*, 54

<sup>285</sup> *Ibid*, 55

<sup>286</sup> *Ibid*

<sup>287</sup> *Ibid*, 53

<sup>288</sup> J. S. Glazer, 'Affirmative Action and the Status of Women in the Academy' in (eds) C. Marshall, *Feminist Critical Policy Analysis, A Perspective from Post-Secondary Education* (London, The Falmer Press 2005) 56

<sup>289</sup> B. E. Schneider, D. A. Segura, From Affirmative Action to Diversity: Critical Reflections on Graduate Education in Sociology, 8(2) *Sociology Compass* 2014, 157-171, 157

<sup>290</sup> *Gratz v Bollinger*, 539 US 244 (2003)

*Schools v Seattle School District No.1*,<sup>291</sup> where the affirmative action programs were invalid, despite it being acknowledged that diversity was an important interest.<sup>292</sup> In the latter case, it was found that enrolment targets were not sufficiently narrow to constitute a compelling interest.<sup>293</sup> Whilst these cases dealt with race discrimination, they send out a clear message that reverse discrimination is not permissible or in only the narrowest of circumstances.<sup>294</sup> Such an approach may endanger the full realisation of substantive equality.

Radacic further explains that the international strategy to view women rights as human rights through gender mainstreaming,<sup>295</sup> as discussed above, has not been completed.<sup>296</sup> She explains that no binding instruments have been adopted in respect of reproductive rights or on violence and the Committee against Torture does not pay sufficient attention to gender based torture, such as sexual violence perpetrated by individuals.<sup>297</sup> Not many women bring cases for human rights violations which are gender specific and out of the 151 complaints made to the United Nations Committee against Torture (CAT) between 1988 and 2005, only 18 were from women.<sup>298</sup>

Another issue is that Article 26 of the ICCPR does not define discrimination, though this problem has been remedied by the Human Rights Committee, which has defined discrimination in its General Comment 18 at para.7 “*to imply any distinction, exclusion, restriction or preference which is based on any ground such as...sex..., and which has the*

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<sup>291</sup> *Parents Involved in Community Schools v Seattle School District No.1*, 551 US 701 (2007)

<sup>292</sup> R. B. Levinson, Gender-Based Affirmative Action and Reverse Gender Bias: Beyond Gratz, Parents Involved, and Ricci, 34(1) *Harvard Journal of Law & Gender* 2011, 1-35, 1

<sup>293</sup> Ibid

<sup>294</sup> Ibid, 31

<sup>295</sup> For example, see Vienna Declaration and Programme for Action; Third world Conference on Human Rights, 12 July 1993, UN Doc A/CONF.157/23; UNGA Declaration on the Elimination of Violence against Women, 20 December 1993, UN Doc A/RES/48/104; UNCHR Resolution 45 (1994) UN Doc/ E/CN 4/1994/132; Programme of Action International Conference on Population and Development, 18 October 1994, UN Doc A/CONF.171/13

<sup>296</sup> I. Radacic, Human Rights of Women and the Public/Private Divide in International Human Rights Law, 3 *Croatian Yearbook of European Law and Policy* 2007, 443-468, 447-448

<sup>297</sup> Ibid, 449

<sup>298</sup> Ibid

*purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*” Conte and Burchill state that reference to “*purpose or effect*” denotes that direct discrimination and indirect discrimination are proscribed.<sup>299</sup>

This means that states should adopt jurisprudence for the concepts of direct and indirect discrimination in order to fully comply with Article 26. However, as made clear by the Human Rights Committee in its General Comment 18 at para.13 “*not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*” The European Court of Human Rights has interpreted the criteria for unjustified and justified decisions in the *Belgian Linguistics Case*.<sup>300</sup> A two stage test has been adopted under which it firstly has to be shown that the different treatment was because of a legitimate aim and secondly that this was a proportionate response.<sup>301</sup> This test has been adopted by most human rights bodies since the Human Rights Committee has not spelled out a precise test for determining what are “*reasonable and objective criteria*”, though in *Gillot v France*<sup>302</sup>, the Human Rights Committee made clear that a legitimate aim is required and proportionality.<sup>303</sup> This means that states can justify discrimination, so long as this test is met.

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<sup>299</sup> A. Conte, R. Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (2nd ed, Farnham, Ashgate Publishing Ltd 2009) 290

<sup>300</sup> *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (No.2)* [1968] 1 EHRR 252, para.10; D. Moeckli, S. Shah, S. Sivakumaran, D. Harris, *International Human Rights Law* (Oxford, Oxford University Press 2010) 201

<sup>301</sup> *Ibid* (Moeckli et al)

<sup>302</sup> *Gillot v France*, A/57/40 (15 July 2002) para.13.2; D. Moeckli, S. Shah, S. Sivakumaran, D. Harris, *International Human Rights Law* (Oxford, Oxford University Press 2010) 201

<sup>303</sup> *Ibid* (Moeckli et al)

Furthermore, the CEDAW implementation has been difficult: States have entered reservations<sup>304</sup> and whilst equality is guaranteed, the means to ensure enforcement are too limited.<sup>305</sup> This means that women cannot properly invoke the CEDAW or rely on national legal systems.<sup>306</sup> The realisation of women rights has also been hampered by the international law concept of state responsibility which fails to acknowledge private breaches.<sup>307</sup> Hence, only acts facilitated or perpetrated by the state can be pursued.<sup>308</sup> Eriksson states that “[t]his has indirectly based an ideological barrier between contraventions deserving international attention based upon the identity of the perpetrator.” Consequently, when private individuals violate the rights of women, then this is dealt with by national law and is eliminated from the purview of the international realm and this is a problem when national law does not effectively deal with an issue.<sup>309</sup>

Goel and Goodmark explain that this issue has also not been addressed by the CEDAW, which renders the CEDAW ineffective.<sup>310</sup> They explain that this is because no article is contained in the CEDAW which imposes a duty on states to act diligently when combating violence, though the Committee on the Elimination of Discrimination against Women's General Recommendation No.12 (1989) makes clear that “*discrimination under the Convention is not restricted to action by or on behalf of Governments*” and ““*States may also be responsible for private acts...*”<sup>311</sup> Goel and Goodmark also state that for women rights to become fully enforceable human rights, state responsibility has to be viewed more

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<sup>304</sup> The reservations are discussed in chapter three

<sup>305</sup> M. Albertson Fineman, *Transcending the Boundaries of Law: Generations of Feminism and Legal Theory* (Abingdon, Routledge 2011) 105

<sup>306</sup> Ibid

<sup>307</sup> M. Eriksson, *Defining Rape: Emerging Obligations for States Under International Law?* (Leiden, Koninklijke Brill NV 2011) 181

<sup>308</sup> Ibid

<sup>309</sup> Ibid

<sup>310</sup> R. Goel, L. Goodmark, *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide* (Oxford, Oxford University Press 2015) 17

<sup>311</sup> Ibid

holistically to address breaches “*in law, policy, and practice*” and the concept of gender equality and other human rights principles have to be considered, particularly non-discrimination and states have to prevent, investigate, sanction and provide remedies whenever women rights are violated.<sup>312</sup> Hence, anti-discrimination laws should be enacted for all fields.

Nonetheless, in terms of the impact, the CEDAW is a milestone within international women history, which has brought to the fore gender issues.<sup>313</sup> It is “*the most important instrument for women's human rights globally.*”<sup>314</sup> Theoretical tools have been spelled out to fight patriarchy.<sup>315</sup> Milner and Moravcsik opine that the CEDAW ratification has “*a systematic impact on the average national commitment to get girls into the classroom*” and has also ensured that more women obtain tertiary education.<sup>316</sup> The CEDAW has thus a transformative effect since it often requires that states make constitutional amendments, undertake law reform and change their executive policy.<sup>317</sup> There exists substantial evidence that the CEDAW has enhanced women's right to equality in many regions, though it depends on the regions and much remains to be done to ensure that women can enjoy full equality rights in all countries.<sup>318</sup> Moreover, research has found that the international enforcement mechanisms of the CEDAW are not responsible for its effectiveness, but that instead the

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<sup>312</sup> Ibid, 18

<sup>313</sup> S. Zwingel, From intergovernmental negotiations to (sub)national change, 7(3) *International Feminist Journal of Politics* (2005), 400-424, 400

<sup>314</sup> N. Bruun, Women's Human Rights. CEDAW in International, Regional and National Law, 33(2) *Nordic Journal of Human Rights* (2015), 184-186, 184

<sup>315</sup> F. Raday, Gender and democratic citizenship: the impact of CEDAW, 10(2) *International Journal of Constitutional Law* (2012), 512-530, 512

<sup>316</sup> H. V. Milner, A. Moravcsik, *Power, Interdependence, and Nonstate Actors in World Politics* (Princeton, Princeton University Press 2009) 121

<sup>317</sup> T. Li-ann, The Impact of Internationalisation on Domestic Governance: Gender Egalitarianism & The Transformative Potential of CEDAW, 1(1) *Singapore Journal of International & Comparative Law* (1997), 278-350, 278

<sup>318</sup> A. C. Byrnes, M. Freeman, The Impact of the CEDAW Convention: Paths to Equality, UNSW Law Research Paper No.2012-7, 20 February 2012, 1-61, 2 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2011655](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011655)> accessed 6th March 2016

treaty has “*put in motion...domestic dynamics*” which are responsible for this.<sup>319</sup> Whilst the CEDAW has had a positive effect for women, one issue is that the enforcement mechanisms under the CEDAW are not as robust as those created for other human rights instruments and it is also not easy to affect change “*in deeply ingrained cultural systems.*”<sup>320</sup> As a result, there exist no uniform positive CEDAW effect.<sup>321</sup> For instance, political rights of women have been particularly strengthened, but research has found that the positive effect has not been as strong in respect of social and economic rights.<sup>322</sup> Moreover, whilst transnationalism has been promoted through the CEDAW and has had an effect on domestic policies, these have not been consistent.<sup>323</sup> Nonetheless, this has put pressures on states to adhere to the norms spelled out by the CEDAW and has resulted in a “*race toward the top*” in relation to the adoption of policies which comply with gender equality norms.<sup>324</sup> However, in certain countries, the implementation of the CEDAW rights is undermined by “*conservative forces*”, which consider the CEDAW to be a tool to westernise their country and erode their religious and cultural heritage.<sup>325</sup> Also, in certain regions there is more resistance to the national implementation of particular rights.<sup>326</sup> Furthermore, many states only partially comply with the CEDAW Committee recommendations.<sup>327</sup> For instance, research showed that the Concluding Observations of the CEDAW Committee have not resulted in legislative or

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<sup>319</sup> N. Englehard, M. K. Miller, Women's Rights, International Law and Domestic Politics: Explaining CEDAW's Effectiveness, APSA 2011 Annual Meeting Paper, 2011, 1-34, 1 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1902066](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1902066)> accessed 4th March 2016

<sup>320</sup> N. A. Englehart, M. K. Miller, The CEDAW Effect: International Law's Impact on Women's Rights, 13(1) *Journal of Human Rights* (2014), 22-47, 22

<sup>321</sup> Ibid

<sup>322</sup> Ibid

<sup>323</sup> J. Gelb, Feminism, NGOs and the Impact of the New Transnationalisms in (eds) D. Vogel, R. A. Kagan, *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies* (Los Angeles, University of California Press 2004) 298

<sup>324</sup> Ibid

<sup>325</sup> C. Farhoumand-Sims, CEDAW and Afghanistan, 11(1) *Journal of International Women's Studies* (2009), 136-156, 136

<sup>326</sup> E. A. On, Fighting Discrimination in Africa Through CEDAW: Hard Fights! Easy Fights! 16 *New England Journal of International & Comparative Law* (2010), 89-112, 89

<sup>327</sup> R. J. A. McQuigg, The Responses of States to the Comments of the CEDAW Committee on Domestic Violence, 11(4) *The International Journal of Human Rights* (2007), 461-479, 461

policy changes in New Zealand, though the comments, together with the demands from local actors, are nonetheless important to ensure that certain topics receive attention.<sup>328</sup>

The effectiveness of the CEDAW is also limited in the field of violence against women and a new international convention is required to fully address this topic.<sup>329</sup> Similarly, the fact that nearly all countries have ratified the CEDAW has not resulted in a repeal of sex discriminatory laws in many countries, which makes a “mockery” of the legal duties spelled out by the CEDAW.<sup>330</sup> The fact that states have entered reservations means that state parties are not fully committed to realising equality for women, but are “parties in name only” without effecting the important legal and social changes within their country.<sup>331</sup> The reservations are discussed in chapter three.

The deficiencies at the international level, which are heightened by the adoption of a liberal policy agenda, make it difficult to fully realise women rights, including in the Middle East, where the women’s movement has also started to gather pace, as discussed in the next section.

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<sup>328</sup> J. Krommendijk, Just 'a little UN Committee' or important policy driver? - The impact and effectiveness of the CEDAW Committee in New Zealand, 16(1) *Tijdschrift voor Genderstudies* (2013), 8-23, 8

<sup>329</sup> E. Evatt, Eliminating Discrimination Against Women: The Impact of the UN Convention, 18(1) *Melbourne University Law Review* (1991-1992), 435-449, 435

<sup>330</sup> J. Neuwirth, Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform of Action, 18 *Harvard Human Rights Journal* (2005), 19-54, 19

<sup>331</sup> L. M. Keller, The Impact of States Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, *Michigan State Law Review* (2014), 309-326, 309

### 2.3 The women's right movement in the Middle East and the impact on women rights

The first women's movement in the Middle East emerged during the post-colonial era where states were formed in the 19th century and early 20th century.<sup>332</sup> Wayne points out that in Egypt the first feminist movement in the 1920 was headed by Huda Shaarawai, who created the Feminist Union.<sup>333</sup> Doria Shafik was another important Egyptian feminist, who through the Bint el-Nil Union provided social programs, such as health and literacy programs, and who called for an overhaul of the family law. Then in 1956, the Egyptian constitution became amended and women were given the right to vote and gender equality was upheld, so that women were granted equal rights to work, public office and education, though the personal status law was not changed.<sup>334</sup>

Hence, feminism has existed over a century in the Middle East and Badran notes that there are two predominant feminist paradigms - "*Islamic feminism*" and "*secular feminism.*"<sup>335</sup> Secular feminism started at the end of the 19th century, whilst Islamic feminism emerged in the later twentieth century.<sup>336</sup> In this context, Moghadam explains that following the Iranian Revolution and the call for women to wear veils, in the Middle East women rights have been linked to political or fundamentalist Islam.<sup>337</sup> "*Islamic feminism is a discourse of gender equality and social justice that derives its understanding and mandate from the Qur'an and*

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<sup>332</sup> D. Kandiyoti, *Gendering the Middle East: Emerging Perspectives* (New York, Syracuse University Press 1996) 8

<sup>333</sup> N.9, 564

<sup>334</sup> F. J. Ghazoul, H. Reda-Mekdashy, *Arab Women Writers: A Critical Reference Guide, 1873-1999* (Cairo, The American University in Cairo Press 2008) 126

<sup>335</sup> M. Badran, Between Secular and Islamic Feminisms, Reflections on the Middle East and Beyond (1(1) *Journal of Middle East Women's Studies* 2005, 6-28, 6

<sup>336</sup> Ibid

<sup>337</sup> V. M. Moghadam, Islamist Movements and Women's Responses in the Middle East, 3(3) *Gender & History* 1991, 268-286, 268



*seeks the practice of rights and justice for all human beings in the totality of their existence across the public-private continuum.*"<sup>338</sup>

The term Muslim feminism is less troublesome than Islamic feminism, though the latter is a distinct discourse within the still relatively new and undefined branch of Muslim feminism.<sup>339</sup>

Moghadam points out that it is strongly debated whether feminism is compatible with Islam and whether Islamic feminism is just one way to legitimise and strengthen a discriminatory and patriarchal gender policy.<sup>340</sup> In contrast, Badran states that "*Islamic feminism is the creation of women and men for whom religion is important in their daily lives and who are troubled by inequalities and injustices perpetrated in the name of religion. Islamic feminism continues to spread because it is relevant. It is engaged and enlightened. It is also controversial and unsettling.*"<sup>341</sup>

However, Mojab has argued that Islamic feminism is not a viable emancipatory alternative, but instead strengthens patriarchal and religious stereotypes.<sup>342</sup> Yet Choudhury cautions that Muslim women should not be expected to strive for the same values as Western feminists.<sup>343</sup> She explains that this is because Muslim women often have a different vision of what helps

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<sup>338</sup> A. Barlas, *The Pleasure of our Text: Re-reading the Qur'an*: Interchurch Conference on Women in Religion in the 21st Century, New York City, 18 October 2006, 1-5, 1 <[http://www.asmabarlas.com/PAPERS/Pleasure\\_of\\_our\\_text\\_Interchurch.pdf](http://www.asmabarlas.com/PAPERS/Pleasure_of_our_text_Interchurch.pdf)> accessed 15<sup>th</sup> November 2015

<sup>339</sup> N. Tohidi, "Islamic Feminism: Perils and Promises" in (eds) Woodrow Wilson International Center for Scholars, *Middle Eastern Women on the Move, Openings for and the Constraints on Women's Political Participation in the Middle East* (Washington DC, Woodrow Wilson International Center for Scholars 2003) 138

<sup>340</sup> V. M. Moghadam, *Islamic Feminism and its Discontents: Toward a Resolution of the Debate*, 27(4) *Signs* 2002, 1135-1171, 1135

<sup>341</sup> M. Badran, *Islamic Feminism Revisited*, 10 February 2006, *Countercurrents.org* <<http://www.countercurrents.org/gen-badran100206.htm>> accessed 15<sup>th</sup> November 2015; C. A. Choudhury, *Empowerment or Estrangement?: Liberal Feminism's Visions of the "Progress" of Muslim Women*, 39 *University of Baltimore Law Forum* 2009, 153, 161

<sup>342</sup> S. Mojab, *Theorizing the Politics of 'Islamic Feminism'*, 69(1) *Feminist Review* 2001, 124-146, 124

<sup>343</sup> C. A. Choudhury, *Empowerment or Estrangement?: Liberal Feminism's Visions of the "Progress" of Muslim Women*, 39 *University of Baltimore Law Forum* 2009, 153, 153

them to flourish, which coincides with liberal tenets, but is equally different since they perceive religion as a way to flourish.<sup>344</sup>

Feillard argues that Muslim feminists are neither Islamist nor secular, but instead labels them “*progressive*” i.e. they try to initiate reforms within Islam.<sup>345</sup> Their challenge is to overcome a literal interpretation by conservatives, so that the holy scripts are aligned with modern culture.<sup>346</sup> Similarly, Ahmed-Gosh argues that there is a “*hybrid feminism*” which adopts Islamic feminism and a secular perspective.<sup>347</sup>

Equally, Tohidi observes that just like Christian feminist reformers, their religion is wrongly interpreted and thereby permits for women to be subordinated to men.<sup>348</sup> Moreover, whilst Muslim scholars and jurists assert that the core values of the Sharia and Islam are equality and justice, this contravenes the fact that women are placed under the domination of men and are treated like second-class citizens.<sup>349</sup>

Muslim feminists, who favour a more secular orientation, have had to fight authoritarian governments and Islamic patriarchy which prevents women from being afforded full equality.<sup>350</sup> Feminists have tried to ensure that women are given a voice and this means negotiating many different issues, ranging from male-female relationships, Muslim kinship

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<sup>344</sup> Ibid, 155

<sup>345</sup> A. Feillard, Indonesia's Emerging Muslim Feminism: Women Leaders on Equality, Inheritance and Other Gender Issues, 4(1) *Indonesian Journal for Islamic Studies* 1997, 85-111, 105

<sup>346</sup> Ibid

<sup>347</sup> H. Ahmed-Gosh, Dilemmas of Islamic and Secular Feminists and Feminisms, 9(3) *Journal of International Women's Studies* 2008, 99-116, 102

<sup>348</sup> N. Tohidi, "Islamic Feminism: Perils and Promises" in (eds) Woodrow Wilson International Center for Scholars, *Middle Eastern Women on the Move, Openings for and the Constraints on Women's Political Participation in the Middle East* (Washington DC, Woodrow Wilson International Center for Scholars 2003) 138

<sup>349</sup> Z. Mir-Hosseini, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, 32(4) *Critical Inquiry* 2006, 629-645, 629

<sup>350</sup> A. Ong, Muslim feminism: Citizenship in the shelter of corporatist Islam, 3(3) *Citizenship Studies* 1999, 335-371, 335

codes to citizenship.<sup>351</sup> Common topics for Muslim feminists are issues which arise because of gender, roles and relations between men and women.<sup>352</sup>

Since the 1980s, feminists in Morocco, Algeria and Tunisia have focused on realising “*legal equality through family law reform, collective action against fundamentalism and political Islam, advocacy to end violence against women, and lobbying to enhance women's political participation and social rights.*”<sup>353</sup> This has also led to law reforms. For instance, in 2004, Morocco reformed its gender-biased family law.<sup>354</sup> Similarly in 2005, the UAE enacted the Personal Status Law which improved the rights of women.<sup>355</sup>

In 2011, the Arab Spring was sparked by a fruit seller in Tunisia, who set himself alight due to the corruption, unemployment and inability to voice concerns freely due to the despotic governance.<sup>356</sup> This led to calls for free elections and democracy and resulted in an uprising in Egypt.<sup>357</sup> Young protesters made use of popular media.<sup>358</sup> As a result, there were demonstrations in other countries, for instance, in Libya, Syria, Morocco, Algeria and other places.<sup>359</sup> Mui and Murphy explain that Muslim women took part in these democracy movements which ensued in the region.<sup>360</sup>

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<sup>351</sup> Ibid

<sup>352</sup> A. Feillard, Indonesia's Emerging Muslim Feminism: Women Leaders on Equality, Inheritance and Other Gender Issues, 4(1) *Indonesian Journal for Islamic Studies* 1997, 85-111, 85

<sup>353</sup> V. M. Moghadam, Women's/Feminist Activism in North Africa, Northeastern University, May 2014, 1-7, 1 <<http://www.northeastern.edu/cssh/wp-content/uploads/2013/08/Moghadam-Feminist-Activism-in-North-Africa-final-May-2014-2.pdf>> accessed 21st November 2015

<sup>354</sup> V. M. Moghadam, Modernising women and democratisation after the Arab Spring, 19(2) *The Journal of North African Studies* 2014, 137-142, 140

<sup>355</sup> D. H. Al-Ghurair, Family law in the United Arab Emirates, *Practical Law*, 1 May 2015 <<http://uk.practicallaw.com/4-612-5426>> accessed 20th November 2015

<sup>356</sup> P. N. Howard, A. Duffy, D. Freelon, M. M. Hussain, W. Mari, M. Maziad, Opening Closed Regimes: What Was the Role of Social Media During the Arab Spring? University of Washington, 2011, 1-30, 2 <<http://ssrn.com/abstract=2595096>> accessed 10<sup>th</sup> November 2015

<sup>357</sup> Ibid

<sup>358</sup> Ibid

<sup>359</sup> Ibid

<sup>360</sup> C. Mui, J. Murphy, 'Sartre's Socialist Democracy and Global Feminism' in (eds) N. J. Jun, S. Wahl, *Revolutionary Hope: Essays in Honor of William L. McBride* (Plymouth, Lexington Books 2013) 124

Yet it is unclear what implications the Arab spring will have for everyone.<sup>361</sup> In Algeria, despite not experiencing an Arab Spring as such, a gender quota resulted in 31% of the National Assembly being made up of women, though already in the 1990s, five women became ministers for a short period.<sup>362</sup> In 2013, women held 17% of the parliamentary seats in Morocco, 27% in Tunisia and only 2% in Egypt, though this is not a reliable indicator for women empowerment, as for instance, in Afghanistan women's parliamentary representation was 27%.<sup>363</sup> UNICEF reports that 91% of girls and women in Egypt were subjected to female genital mutilation and a 2013 UN report on women found that 99.3% of girls and women were sexually harassed in Egypt.<sup>364</sup> In this poll, the UAE ranked tenth out of 22 countries and Egypt came last.<sup>365</sup> In terms of the methodology which was employed for this poll, 336 specialists from international, regional, national and local human rights and development organisations, media professionals, refugee shelters, health care providers, activists, women's shelters, legal advisers and academics were asked, particularly women, to take part in a survey in order to identify their perceptions and which particularly asked questions about important CEDAW articles.<sup>366</sup>

In the Middle East, economic empowerment has not yet been achieved and a 2014 report points out only 21.6% of women are only employed, 74.6% are inactive and 3.8% are unemployed and this lack of economic empowerment is linked to capability, freedom and

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<sup>361</sup> M.-L. Gunmughian, Arab Spring puts women's rights in the spotlight, Reuters, 20 December 2011 <<http://uk.reuters.com/article/2011/12/20/us-arabs-women-idUSTRE7BJ0QW20111220>> accessed 22nd November 2015

<sup>362</sup> V. M. Moghadam, Modernising women and democratisation after the Arab Spring, 19(2) *The Journal of North African Studies* 2014, 137-142, 138

<sup>363</sup> Ibid

<sup>364</sup> Thompson Reuters Poll, Women's Rights in the Arab world, 12 November 2013 <<http://www.trust.org/spotlight/poll-womens-rights-in-the-arab-world/>> accessed 18th November 2015

<sup>365</sup> Ibid

<sup>366</sup> Ibid

also education and makes it more difficult for women to be active citizens.<sup>367</sup> The Arab spring has ensured that it has become accepted that women are entitled to receive education and that gender-based violence should not be allowed, but this is not the case in relation to other topics, such as the importance of women having political leadership roles and enjoying equal family settings.<sup>368</sup> Tankiwala states that the issue is that the patriarchal honour and protection custom and the authoritarian regimes erode liberal values which promote women's rights.<sup>369</sup>

## 2.4 Conclusion

In the West, the story of women has been similar to that in the Middle East in the sense that it has resulted in women having been marginalised. Their achievements have not been recognised by history, as they have been predominantly confined to the private space. However, women challenged their subjugation. In the West, the emphasis has been on rights, for instance, the suffragette movements called for the right to vote and the discussion illustrates that achievements were driven by the recognition of rights. Consequently, women's organisations have predominantly advocated liberal feminism which has thereby dominated the national and international policy agenda. The main focus has therefore been on preventing that women are excluded from public life, but not on "*the nature of that public life.*"<sup>370</sup> Accordingly, liberal feminism has emphasised the importance of universality and this idea has become transposed through international conventions. For instance, the CEDAW enacts

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<sup>367</sup> Rapporteur H. N. A. Baker (Palestine), The Role of Women in the Arab Spring, Report, 3rd Standing Committee on Dialogue among Civilizations and Human Rights, Marseille, 12 January 2014, 1-10, 7 <[http://cdn02.abakushost.com/pam/downloads/Adopted\\_Report\\_2013\\_WOMEN\\_EN.pdf](http://cdn02.abakushost.com/pam/downloads/Adopted_Report_2013_WOMEN_EN.pdf)> accessed 17th November 2015

<sup>368</sup> C. Villa-Vicencio, E. Doxtader, E. Moosa, *The African Renaissance and the Afro-Arab Spring: A Season of Rebirth?* (Washington, DC, Georgetown University Press 2015) 149

<sup>369</sup> S. Tanikwala, *Arab Spring Women's Nightmare* (London, Tankiwala 2014) 113

<sup>370</sup> R. Devetak, A. Burke, J. George, *An Introduction to International Relations* (2nd ed, Cambridge, Cambridge University Press 2012) 87

Western-liberal feminism, but the issue is that this results in a male standard being adopted in order to assess equality i.e. one which views “*women as copies of men*”.<sup>371</sup> This has been critiqued since universality is problematic, particularly since it has been argued that this “*represent[s] the interests of white women in Western societies as if they were the interests of all women*”, despite this being “*ignorant of subjective concerns and issues based on other identities such as race, ethnicity, religion or socio-economic background.*”<sup>372</sup> Radical and cultural feminists have also criticised such an approach, as equality is being conceptualised as “*being like a man.*”<sup>373</sup> The adoption of the Western liberal feminism paradigm at the international level also makes it difficult to align the domestic rights for women in Middle Eastern countries, which embrace a different version of feminism, namely Islamic feminism, with the international women rights regime. This is because at the international level, their ideas are not addressed, so that the uniqueness of culture and the wisdom of the Quran are sidestepped. However, despite such an approach being culturally insensitive and being opposed to the tenets of some cultural feminists, this arguably combats gender inequality and sex discrimination more effectively since it takes away cultural defences and thereby helps to overcome patriarchal interpretations of cultural and tribal practices.

The adoption of more women rights is particularly crucial and to date, the UAE has progressively developed the rights of women and is continuously working on improving the rights. For instance, in January 2016, a new labour law entered into force with the objectives to separate sponsorship from work relations, to increase transparency and to reinforce due

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<sup>371</sup> J. Moussa, *Competing Fundamentalisms and Egyptian Women’s Family Rights: International Law and the Reform of Sharia-Derived Legislation* (Leiden, Brill 2011) 64

<sup>372</sup> R. Devetak, A. Burke, J. George, *An Introduction to International Relations* (2nd ed, Cambridge, Cambridge University Press 2012) 87

<sup>373</sup> H. Charlseworth, C. Chinkin, S. Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law*, 613, 613

process within employment relationships.<sup>374</sup> However, as the history of the different phases of the women's movement show, it can take a long time for societal change to take place. Law reform can act as an important catalyst, but has to be accompanied by awareness and change of attitude. This is also illustrated by the latest 2015 election, where only one woman obtained a seat at the Federal National Council.<sup>375</sup> This is despite the women's movement in the Middle East having also a relatively long history, albeit a slightly different one to the one in the West, also because of the colonial past and the different religious and cultural and philosophical heritage, which has always emphasised community over individual liberalism. This has resulted in a distinct approach, which is patriarchal in its core root.

The next chapter will now discuss in detail the context and background of women's socio-economic, political and civil rights in the UAE.

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<sup>374</sup> D. Baldwin, New UAE labour rules kick in on January 1, 2015, Gulfnews, 28 September 2015 <<http://gulfnews.com/news/uae/government/new-uae-labour-rules-kick-in-on-january-1-2016-1.1591368>> accessed 24th November 2015; I. Hainey, How changes to the UAE labour laws will affect you, The National, 29 February 2016 <<http://www.thenational.ae/business/the-life/how-changes-to-the-uae-labour-laws-will-affect-you>> accessed 1st June 2016

<sup>375</sup> A. Al Khoori, Emirati women disappointed in lack of female representation in FNC, the National, 4 October 2015

## Chapter three

# Context and background of women's socio-economic, political and civil rights in the UAE

### 3. Introduction

Already in 1948, the International Declaration of Human Rights made clear that sexism is outlawed.<sup>1</sup> Ever since, the prohibition of sex discrimination has become internationally advocated.<sup>2</sup> The CEDAW, like the UN Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) use the terms 'sex' and 'sex based discrimination.' At the time of the enactment of these instruments, the term sex was understood as a biological category, whereas in social science, the term gender is understood as a social category, though the term gender does not appear in international human rights discourses until the 1990s.<sup>3</sup> In contrast, nowadays, the term gender is used by all human rights treaty bodies without any clear definition.<sup>4</sup> Yet the CEDAW Committee has explained that "*[t]he term gender refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.*"<sup>5</sup>

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<sup>1</sup> Articles 2 and 16 of the Universal Declaration of Human Rights; J. Morsink, Women's rights in the Universal Declaration, 13 *Human Rights Quarterly* 1991, 229-256, 229

<sup>2</sup> R. J. Cook, Women's international human rights law: the way forward, 15 *Human Rights Quarterly* 1993, 230-261, 236

<sup>3</sup> A. Hellum, H. Sinding Aasen, *Women's Human Rights: CEDAW in International, Regional and National Law, Volume 3* (Cambridge, Cambridge University Press, 2013) 1

<sup>4</sup> Ibid

<sup>5</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No.28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para.5



Gender discrimination has thus become outlawed by virtue of numerous regional and international conventions and which have thereby advanced women rights. For example, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Article 14 of the European Convention on Human Rights, Article 2(1) of the ICCPR and Article 2(2) of the ICESCR all outlaw sex discrimination and thereby affirm the principle of non-discrimination between men and women. Despite this, women still face gender discrimination in many countries around the world and can therefore not enforce their rights to equal treatment. The objective is therefore to analyse to what extent the United Arab Emirates (UAE) has implemented the international conventions which it has ratified, namely the CEDAW and the Convention on the Elimination of all Forms of Racial Discrimination (CERD). It is also assessed which particular instruments equally guarantee gender equality, but which the UAE has not yet become a state party to, as well as the reasons for not adopting, for example, the Optional Protocol of the CEDAW, the ICCPR, the ICESCR and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. As the issue of achieving equality between the sexes has received increased international attention, national governments, which have not realised this yet, have come under pressure to take the necessary steps to empower women.<sup>6</sup> Intergovernmental organisations and non-governmental organisations (NGOs) have further scrutinised how the UAE government has promoted gender equality between men and women in all its governmental institutions and this research therefore makes recourse to these reports.

The Muslim world covers vast geographical areas on different continents. Consequently, there exists a great diversity within Muslim values, ethics and culture and this has also had an

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<sup>6</sup> M. Afkhami, *Faith & Freedom - Women's Human Rights in the Muslim World* (London, I. B. Tauris & Co Ltd 1995) 26

impact on the interpretation of Sharia law.<sup>7</sup> In many Middle East Muslim countries, women often still experience sexism due to conservative values.<sup>8</sup> Muslim traditions particularly impact women in the field of personal law matters, for instance, marriage, custody of children and inheritance.<sup>9</sup> As explained by Bielfeld, “[w]hile traditional Shariah norms continue to mark family structures all over the Islamic world, the Shariah criminal law is applied only in a few Islamic countries today...The emphasis of the Shariah has always been much more on family matters than on criminal law...”<sup>10</sup> Many Muslim states have therefore entered reservations to international human rights instruments based on the Sharia.<sup>11</sup> However, Abiad observes that the Sharia is not the only factor which undermines the advancement of women's human rights, but it is also the governments which are responsible, as well as the pervasive patriarchal cultures.<sup>12</sup> This has also made it difficult for Muslim states to accept an international discourse in which women's rights are conceptualised as universal human rights, but instead Muslim countries have frequently evoked cultural relativity and insisted that Islamic law has to be applied in respect of matters which affect women.<sup>13</sup> For instance, countries, such as Pakistan, Afghanistan, Iran and the Gulf countries, strictly follow Sharia law. Sharia or Islamic law is the religious law which is mainly based on the Quran and which contains the words of God, revealed to the Prophet Muhammad.<sup>14</sup> The Sunna is the second

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<sup>7</sup> A. An-Na'im, The rights of women and international law in the Muslim context, 9(3) *Whittier Law Review*, 1987, 491-561, 493

<sup>8</sup> L. E. Schroeder, The Rights of Muslim Women in the Middle East: A Pathfinder, 37(1) *International Journal of Legal Information* 2009, 135-165, 136

<sup>9</sup> K. Hashemi, *Religious Legal Traditions, International Human Rights Law and Muslim States* (Leiden, Martinus Nijhoff Publishers 2008) 2

<sup>10</sup> H. Bielefeld, Muslim Voice in the Human Rights Debate, 17(4) *Human Rights Quarterly* 1995, 587-617, 612

<sup>11</sup> N. Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London, British Institute of International and Comparative Law 2008) xv

<sup>12</sup> *Ibid*, xv-xvi

<sup>13</sup> S. Joseph, A. Nağmābādī, *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics, Volume II* (Leiden, Brill 2005) 265

<sup>14</sup> S. S. Ali, 'The Twain Doth Meet! A Preliminary Exploration of the Theory and Practice of as-Siyar and International Law in the Contemporary World' in J. Rehman, S. C. Breau (eds), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Leiden, Martinus Nijhoff Publishers 2007) 82

most important source of Islamic law since it helps with the interpretation of the Quran.<sup>15</sup> Sharia or Islamic law is considered all-encompassing by these countries and therefore regulates both public and private life. Whilst these countries have also enacted either civil law or common law in order to regulate individual matters, especially in the civil and commercial sphere, Islamic law still impacts all legal fields.<sup>16</sup> For instance, Pakistan has adopted aspects of English common law, whilst Bahrain has enacted parts of Egyptian law which in turn is largely based on French civil law.<sup>17</sup> In contrast, Afghanistan and Saudi Arabia predominantly base their legal system on the Sharia.<sup>18</sup> An extremely reactionary and conservative approach has thus been adopted by courts in Afghanistan and Saudi Arabia. More weight is assigned to the holy scripture of Islam in line with the particular Islamic doctrine which a country pursues. For example, Saudi Arabia follows the Hanbali jurisprudence which has given rise to an ultraconservative and strict Islamic movement known as Wahhabism based on a literal interpretation of the Quran.<sup>19</sup> The extent to which Islamic movements exist in these countries has had a significant influence on the law, including the promotion of equality. However, in other Muslim countries, such as Turkey, Egypt and Tunisia, the Islamic movement has been influenced by secularisation and westernisation.<sup>20</sup> For instance, in 1939 Turkey led by Kemal Ataturk became a secular state and Islam became culturally and politically disestablished in favour of liberal economic and political institutions.<sup>21</sup> As a result, Islamic law does not govern the legal system.<sup>22</sup> Similarly,

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<sup>15</sup> Ibid

<sup>16</sup> S. C. Tucker, *The Encyclopedia of Middle East Wars: The United States in the Persian Gulf, Afghanistan, and Iraq Conflicts* (Santa Barbara, ABC Clio LLC 2010) 1109

<sup>17</sup> M. C. Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge, Cambridge University Press 2014) 123

<sup>18</sup> Ibid

<sup>19</sup> A. Shahi, *The Politics of Truth Management in Saudi Arabia* (Abingdon, Routledge 2013) 34

<sup>20</sup> Netherlands Ministry of Foreign Affairs, *The position of women in Islamic countries: possibilities, constraints and strategies for change* (Brighton, Institute of Development Studies 1992) 20-21

<sup>21</sup> R. D. Robinson, *The First Turkish Republic: A Case Study in National Development* (Cambridge Massachusettes, Harvard University Press 1963) 90; A. H. A. Rahman, W. I. W Ahmad, F. Adam, N. Ali, D. Ismail, *The Consequences of Ataturk's Secularization on Turkey*, 11(21) *Asian Social Science* 2015, 350-354, 352

when Tunisia became independent in 1956, it pursued a far-reaching secularisation policy, which resulted in the marginalisation of Islam.<sup>23</sup> For example, headscarves were banned and Sharia courts were closed.<sup>24</sup> In Egypt, the secularisation debate commenced in 1925.<sup>25</sup> As a result, the legal system in Tunisia and Egypt is less focused on the Sharia.<sup>26</sup> Yet in recent times, Islamisation has taken root again in Egypt, Tunisia and Turkey.<sup>27</sup>

In contrast, the constitutions of the Gulf Cooperation Council (GCC) countries<sup>28</sup> make clear that Islamic Sharia jurisprudence constitutes the main source for legislation. This has resulted in a widely different practice for women rights. There are therefore marked differences in the way women have been empowered. Bahraini women arguably enjoy more freedom because the new parliamentary election system allows them to partake in social and political life.<sup>29</sup> Equally, the UAE has sought to vastly transform its society by improving the status of women.<sup>30</sup> Women empowerment has therefore become an important government policy, including at the international level. Consequently, the Minister of Foreign Affairs, Sheikh Abdullah bin Zayed, also made this a priority in his address to the United Nations General Assembly in September 2012, during which he highlighted that an important feature of the UAE's human rights policy is “ *[m]oderation and tolerance...and acceptance [of] other*

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<sup>22</sup> Ibid

<sup>23</sup> E. S. Hurd, Tunisia: Democracy after secularism, Aljazeeraa, 11 April 2012

<<http://www.aljazeera.com/indepth/opinion/2012/04/20124795440442662.html>> accessed 1st July 2017

<sup>24</sup> Ibid

<sup>25</sup> Mujiburrahman, *Feeling Threatened: Muslim-Christian Relations in Indonesia's New Order* (Amsterdam, Amsterdam University Press 2006) 257

<sup>26</sup> M. C. Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge, Cambridge University Press 2014) 123

<sup>27</sup> S. A. Cook, Egypt, Turkey, and Tunisia Are All Slowly Islamizing, The Atlantic, 13 May 2013

<<https://www.theatlantic.com/international/archive/2013/05/egypt-turkey-and-tunisia-are-all-slowly-islamizing/275663/>> accessed 1st July 2017

<sup>28</sup> The GCC countries are Qatar, Saudi Arabia, Oman, Kuwait, Bahrain and the United Arab Emirates.

<sup>29</sup> B. J. Aljishi, Reforms and Political Participation of Women in the Kingdom of Bahrain, 11(4) *Turkish Policy Quarterly* 2013, 55-67, 59

<sup>30</sup> Freedom House, Women's Rights Gain Traction in Gulf Arab States, but Inequality Persists, Washington DC, 2009  
<<https://freedomhouse.org/article/womens-rights-gain-traction-gulf-arab-states-inequality-persists#.VH5H3mfeilR>> accessed 1<sup>st</sup> October 2014

*communities as part of a diverse world built on mutual respect.*"<sup>31</sup> In a speech to the Sixty-Ninth Ordinary Session of the United Nations General Assembly, his Highness, Sheikh Abdullah bin Zayed, reaffirmed that the UAE is committed "*to human rights principles*" and is particularly focusing "*its efforts on ending gender discrimination.*"<sup>32</sup> Similarly, His Highness Sheikh Mohammed bin Rashid Al Maktoum, the President of the State, Prime Minister and Governor of Dubai, has repeatedly stated that women are primary partners in development.<sup>33</sup> This is particularly crucial since women can play a crucial role in international development if they are fully and equally integrated within society.<sup>34</sup> Emirati leaders have also frequently emphasised the importance of realising women empowerment in political speeches, for instance, His Highness Sheikh Mohammed bin Rashid Al Maktoum observed that greater balance in decision-making will be achieved through the law which he enacted to render it compulsory for all government offices and related businesses to have women on their boards.

Already, the UAE is one of the most successful development stories in the Middle East, which has a strong economy and significantly improved infrastructure, which offers a high overall standard of living to its citizen. The International Human Rights Indicator (IHRI) ranks the UAE first amongst the Arab countries and 14th internationally<sup>35</sup> and the 2013 World Human Development Index rated the UAE second in the Arab world and 41st

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<sup>31</sup> United Nations General Assembly, Foreign Minister's Statement at the General Debate of the 67th Session. Foreign Minister's Statement at the General Debate of the 67th Session, Geneva, United Nations, 2012 <<http://www.un.int/wcm/content/lang/en/pid/33227>> accessed 1<sup>st</sup> October 2014

<sup>32</sup> United Nations General Assembly, Foreign Minister's Statement at the General Debate of the 69th Session. Foreign Minister's Statement at the General Debate of the 69th Session, Geneva, United Nations, 2013

<sup>33</sup> The National, Dubai Ruler reaffirms UAE's commitment to gender equality at first council meeting, 7 July 2015 <<http://www.thenational.ae/uae/dubai-ruler-reaffirms-uaes-commitment-to-gender-equality-at-first-council-meeting>> accessed 4th March 2016; The United Arab Emirates Cabinets, Ministry of Foreign Affairs Report on Occasion of Emirati Women's Day on 28th August, 2015 <<http://www.uaecabinet.ae/en/details/news/ministry-of-foreign-affairs-report-on-occasion-of-emirati-womens-day-on-28th-august>> accessed 3rd March 2016

<sup>34</sup> D. Narayan, *Measuring Empowerment: Cross-disciplinary Perspectives* (Washington DC, World Bank Publications 2005) 71

<sup>35</sup> Global Network for Rights and Development, Global Network for Rights and Development, International Human Rights Rank Indicator, undated <<http://www.ihri.com/>> accessed 1<sup>st</sup> October 2014

globally.<sup>36</sup> However, the challenge is that these high overall standards of living and rights, which flow from economic prosperity, become more based on the notion of equality between the sexes. Of particular importance is that rights are extended to those women, who are most vulnerable and often work as domestics or in other menial jobs due to insufficient qualifications and poor conditions in their native home country, which requires them to locate abroad in search of better job prospects to support their families back home.

### **3.1 The legal framework to protect and promote women rights**

The UAE constitution guarantees social justice and equal rights for both women and men. Women have therefore the same legal status as men and have equal rights to education, employment, health and welfare rights.<sup>37</sup> Yet this constitutional guarantee does not trump laws in which the Sharia prevails, for instance, the Personal Status law which governs family matters.<sup>38</sup> However, despite the perceived difficulties in consolidating the Sharia with international standards, the government has made significant efforts to adopt international standards in order to advance the rights of women in the UAE. For instance, in March 2014, it was announced that a new law would be adopted to spell out the rights of women with a view of combating domestic violence, to protect their health and to provide unified support facilities for this purpose across all seven emirates.<sup>39</sup> Yet in July 2017, the government had still not implemented this law.

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<sup>36</sup> United Nations, Human Development Report 2013, New York, United Nations Development Programme, 2013, 148&203

<sup>37</sup> Ministry of State for Federal National Council Affairs, Women in the United Arab Emirates: A Portrait of Progress. Dubai, 2008, 1-7, 4 <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR\\_UAE\\_ANNEX3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR_UAE_ANNEX3_E.pdf)> accessed 1<sup>st</sup> October 2014

<sup>38</sup> United Nations Children's Fund Regional Office for the Middle East and North Africa, United Arab Emirates MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa, UNICEF, 2011, 1-12, 1 <<http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>> accessed 1<sup>st</sup> October 2014

<sup>39</sup> S. Salama, Domestic workers get more protection from exploitation, Gulf News, 2012

Undoubtedly, such a measure is very important since at present the rights of women are further undermined because the huge influx of nationalities has resulted in there being different categories of women: nationals, highly-skilled temporary workers, semi-skilled temporary workers, domestic workers and wives of temporary workers.<sup>40</sup> These different groups of females are often afforded different status in accordance with the Sharia and domestic civil and criminal law. Hence, despite Emirati women being afforded protections and the right to equality in many respects, many other women still experience discrimination.<sup>41</sup> Hence, the challenge in the future is to ensure that these different categories of women are all given the same equal rights, as their male counterparts. International standards, such as Article 2(1) and Article 3 of the ICCPR, certainly mandate that all women, “*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”, are afforded equal treatment.

### **3.1.1 Women rights and female empowerment through the treaty bodies**

The UAE became a signatory to the International Labour Organisation (ILO) Convention concerning Night Work of Women Employed in Industry 1948, ILO Equal Remuneration Convention 1951, the Convention on the Elimination of all Forms of Racial Discrimination 1965 (the CERD), the ILO Convention on Minimum Age 1973, the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, the Convention on the Rights of the Child 1989, the ILO Hours of Work (Industry) Convention

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<<http://gulfnews.com/news/gulf/uae/employment/domestic-workers-get-more-protection-from-exploitation-1.1016692>> accessed 4<sup>th</sup> January 2014

<sup>40</sup> S. Kelly, J. Breslin, *Women's Rights in the Middle East and North Africa Progress Amid Resistance* (New York, Freedom House, 2010) 3

<sup>41</sup> Ibid

1982 and the Convention on Child Protection 2004 and the Convention on the Rights of Persons with Disabilities 2006. However, the UAE has not signed further human rights treaties, including the ICCPR and the ICESCR, as well as the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The following sections particularly focus on the CERD and the CEDAW, which are arguably the most pertinent treaties for women's rights, though these other instruments also contain very important women's rights.

### **3.1.1.1 An overview of the CERD and the implementation of the CERD by the UAE**

In 1969, the United Nations adopted the International Convention on the Elimination of all Forms of Racial Discrimination (CERD). This constituted one of the major developments within international human rights law.<sup>42</sup> This Convention combats gender discrimination, racism and xenophobia and reaffirms gender equality and non-discrimination in Article 1. The Convention emphasises the importance of equitable participation within decision-making of all people without distinction.<sup>43</sup> The Convention has had a positive effect on countries, which have ratified the Convention, most notably it has resulted in amendments to constitutions and adoption of domestic legislation to guarantee equality and eliminate all forms of discrimination.<sup>44</sup> Article 5 of the CERD requires state parties to take measures to guarantee the enjoyment of political, economic, social, cultural, and civil rights and to eliminate racial discrimination in order to achieve equality between men and women. This

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<sup>42</sup> J. Jennings, The International Convention on the Elimination of All Forms of Racial Discrimination: Implications for Challenging Racial Hierarchy, 40(3) *Howard Law Journal* 1997, 597-618, 598

<sup>43</sup> United Nations Department of Public Information, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Declaration and Programme of Action, Durban, 2001

<sup>44</sup> K. I. Tang, Combating Racial Discrimination: The Effectiveness of an International Legal Regime. 33(1) *British Journal of Social Work* 2003, 17-29, 20



Article also provides other rights and freedoms, such as the right to equal treatment before tribunals, which is to be enjoyed by all people living in a particular country and the rights of the citizens to participate, vote and stand in elections.<sup>45</sup> The Committee on the CERD (CERD Committee) was established pursuant to Article 8 of the Convention in order to give more effect to the Convention. The CERD Committee consists of 18 high profile experts, who are elected by the state parties. The Committee monitors the implementation of the Convention by the state parties and adherence of the thereby assumed duties.<sup>46</sup> Article 9(1) obligates state parties to submit a report one year after the ratification in order to explain how the Convention has been implemented through legislative, judicial, administrative or other measures. Thereafter, every state party has to submit a report every two years and whenever the Committee requests this. Article 11 of the CERD also provides a mechanism for state-to-state complaints and the Committee can therefore also hear these complaints. This helps state parties to settle any disputes that may arise in relation to achieving their obligations under the Convention. However, as states may be reticent to submit complaints about discrimination in other countries, except in the most glaring circumstances, it is equally important to empower individuals to evoke the complaint mechanism.<sup>47</sup> Article 14 of the Convention permits the Committee to act on communications received from people, who claim that their rights have been violated. However, some Arab countries have weakened the effectiveness of the Convention by entering reservations in relation to the dispute resolution mechanism. This causes particular problems to women migrant workers, who often experience discriminatory work practices and are treated less favourably as a result of their nationality and gender. It is therefore crucial to empower all victims to exercise their right to lodge an individual

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<sup>45</sup> Committee on the Elimination of Racial Discrimination, General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5), 15<sup>th</sup> March 1995

<sup>46</sup> N.44

<sup>47</sup> Ibid, 20-21

complaint with the Committee.<sup>48</sup> Additionally, it should be ensured that the necessary domestic institutions are created to particularly empower those, who are unskilled to be able to seek protection when they are abused whether physically, mentally or when they are subjected to less favourable treatment than more skilled non-nationals and Emirati women.

In 1974, the UAE ratified the CERD, but the Committee was only able to examine its 1<sup>st</sup> periodic report in 1995. Hence, the UAE took in excess of 10 years to submit its first report, despite Article 9(1) requiring state parties to submit their reports periodically every two years. Yet this is a very common occurrence and many countries take their time when they submit reports or do not submit anything at all.<sup>49</sup> The High Commissioner for Human Rights observed in 2011 that only around one third of state parties adhere to the reporting duties in the given timeframe.<sup>50</sup> However, even if all countries complied, it would not be possible to analyse the reports, as there are not enough resources and it therefore takes a while for reports to be considered.<sup>51</sup> However, this does not mean that the UAE government is not committed to affording protection to women. To the contrary, the UAE is committed to adopting a policy to eliminate all forms of racial discrimination at the national and international level.<sup>52</sup> Article 14 of the UAE constitution emphasises the importance of social justice; equality and equal opportunities without discrimination for all nationals, including women. Moreover, Article 25 guarantees equality for all citizens before the law and prohibits discrimination on the basis of ethnicity, origin, social status and religion. In 2015, the UAE also enacted an Anti-Discrimination Law by decree, which makes it illegal to spread religious or racial hatred or to insult religion in order to protect the dignity and rights of citizens, as well as its

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<sup>48</sup> S. Esim, C. Kerbage, *The Situation of Migrant Domestic Workers in Arab States: A Legislative Overview, Strengthening Dialogue to Make Migration Work for Development in the ESCAP and ESCWA Regions*, Beirut, Lebanon, 2011, 28-30, 14

<sup>49</sup> S. Sheeran, N. Rodley, *Routledge Handbook of International Human Rights Law* (Abingdon, Routledge 2013) 673

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Committee on the Elimination of all Forms of Racial Discrimination, Consideration of reports submitted by states parties under article 9 of the convention, Periodic Reports, Geneva, United Nations, CERD/C/279/Add, 8 May 1995, 1-2

residents.<sup>53</sup> However, as pointed out by the CERD Committee, it should be clarified that not only nationals of the UAE enjoy the constitutional safeguards in Articles 14 and 25, but also all non-nationals.<sup>54</sup> The same is the case with Articles 26, 29 and 34 which all mention only rights for citizens, but such an approach is not permissible under international human rights law, which only allows this in respect of certain rights e.g. to vote in elections.<sup>55</sup> For equal treatment to be genuinely realised within the meaning of international standards, all individuals, irrespective of whether being men or women and without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, have to be therefore afforded the various rights set out in the international treaties.

### **3.1.1.2 An overview of the CEDAW and the implementation of the CEDAW by the UAE**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) affirms equality between men and women and is one of the international cornerstones for the protection of women.<sup>56</sup> The Convention has shaped national constitutions

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<sup>53</sup> N. Al Remeithi, Widespread praise for UAE's new anti-discrimination law, *The National*, 20 July 2015 <<http://www.thenational.ae/uae/government/widespread-praise-for-uaes-new-anti-discrimination-law>> accessed 6th June 2016; *The National*, Anti-discrimination law enacted across UAE, 20 July 2015 <<http://www.thenational.ae/uae/government/anti-discrimination-law-enacted-across-uae>> accessed 5th June 2016

<sup>54</sup> Committee on the Elimination of Racial Discrimination, United Nations General Assembly Report, Forty-third session supplement no. 18 (a/43/18), New York, United Nations General Assembly, 1988, 43-44; also see the Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Mission to the United Arab Emirates, Human Rights Council, Fourteenth Session, A/HRC/14/43/Add.3, 31 March 2010, 1-22, 6-7 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/125/76/PDF/G1012576.pdf?OpenElement>> accessed 20th November 2015

<sup>55</sup> *Ibid*

<sup>56</sup> H. B. Schöpp-Schilling, *The Role of the Convention on the Elimination of All Forms of Discrimination against Women and Its Monitoring Procedures for Achieving Gender Equality in Political Representation*, International IDEA Workshop, Budapest, Hungary, 2004, 22-23

and laws in many countries and has thus provided protection against sex discrimination.<sup>57</sup> It does so by requiring states to adhere to various duties. Firstly, states have to take measures to eliminate all forms of discrimination against women in all fields of life. Secondly, states have to guarantee the full advancement and development of women, so that they are able to enjoy the same rights as men. Thirdly, state parties must allow the CEDAW Committee to monitor their implementation efforts and practices.<sup>58</sup> Article 1 defines discrimination against women as “*any distinction, exclusion or restrictions made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women*” To date, 186 countries have ratified this Convention, but the Islamic world is split: Some countries (Iran and Sudan) still refuse to ratify the Convention, whereas some states (Turkey and Tunisia) had initially ratified the Convention with reservations, but subsequently withdrew all of these.<sup>59</sup> Other Muslim countries have ratified the Convention, but have entered reservations due to religious and cultural reasons.<sup>60</sup> Many Muslim countries consider the core articles, particularly Articles 2f, 9, 15:2, 16 and 29:1, incompatible with Sharia law and tradition.<sup>61</sup> Reservations are permissible in international law, so long as the reservations do not contradict the purpose of the treaty.<sup>62</sup> Article 19 of the Vienna Convention on the Law of Treaties 1969 provides that a reservation is permitted unless “(a) *the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the*

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<sup>57</sup> Demos.org, Women’s Rights and the Arab Spring, Overview on the Middle East and North Africa, 1 November 2011 <<http://www.demos.org/publication/women%E2%80%99s-rights-and-arab-spring>> accessed 1<sup>st</sup> January 2014

<sup>58</sup> N.56, 1

<sup>59</sup> CEDAW Task Force of The Leadership Conference on Civil and Human Rights, 2014 <<http://www.womenstreaty.org/index.php/about-us>> accessed 3<sup>rd</sup> March 2014

<sup>60</sup> L. M. Keller, The Convention on the Elimination of Discrimination against Women: Evolution and (Non)Implementation Worldwide, 27(1) *Thomas Jefferson Law Review* 2004, 35-44, 39

<sup>61</sup> The reservations are discussed below. A. Buang, R. Suryandari, Education, political empowerment and Muslim women in the Middle East – Understanding the paradox, 7(4) *Malaysian Journal of Society and Space* 2011, 51-64, 51-52

<sup>62</sup> N.6, 106

*treaty.*” In *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*<sup>63</sup>, the International Court of Justice (ICJ) condemned any reservations which may undermine the aim of the treaty, thus imposing certain limits in relation to reservations which are acceptable under the Vienna Convention regime.<sup>64</sup>

The reservations by the UAE result in some of the provisions not being scrutinised by the Committee on the CEDAW, which was established with a view of ensuring that state parties discharge their obligations under the Convention. Article 18 provides that “*state parties must submit a report to the CEDAW committee after one year of the ratification and this report should cover any legislative, administrative or any other measures [which] have been taken by the state in order to implement the convention provision.*” Accordingly, countries, which have chosen to ratify the CEDAW, have also agreed to furnish a report within one year after the Convention enters into force. The report therefore acts as a catalyst to ensure that all the necessary legislative and administrative measures are being adopted and to give the state an opportunity to identify in which aspects it still lacks behind and to explain the reasons for this.<sup>65</sup>

The CEDAW is an international Convention, which details a broad range of rights for women. It deals with political, civil, economic, social, as well as some third generation rights.<sup>66</sup> Article 3 of the CEDAW requires countries to increase participation by women in all these fields and thus provides that “*States Parties shall take in all fields, in particular in the*

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<sup>63</sup> *Genocide Case, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Reports, Advisory Opinion, 1951, pp23-24

<sup>64</sup> O. De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (2nd ed, Cambridge, Cambridge University Press 2014) 145

<sup>65</sup> R. Holt, Women's Rights and International Law: The Struggle for Recognition and Enforcement, 1(1) *Columbia Journal of Gender and Law* 1991, 117-141, 134

<sup>66</sup> I. Jaising, International Women's Rights Action Watch Asia Pacific (IWRAW), The Validity of Reservations and Declarations to CEDAW: The Indian Experience, 2005, 1-36. 1 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1146815](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1146815)> accessed 15<sup>th</sup> March 2015

*political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of Guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*” Articles 7 to 16 of the CEDAW explicitly cover the rights of women to non-discrimination within the political and public sphere, on the basis of nationality, in the field of education, health, employment and the economic sphere and with regards to social benefits, and require equality before the law and in respect of family life and marriage. Article 7<sup>67</sup> of the CEDAW stipulates that “*States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country.*” The CEDAW expressly mentions that the right to political participation constitutes a step towards *de facto* gender equality and therefore highlights the importance of taking affirmative action to accelerate women's political participation and involvement within decision-making. Article 8 of the Convention deals with the participation of women at the international level and encourages state parties to allow women to represent their country, including by assuming roles with international organisations. Article 9 deals with the right of citizenship of women, which is a difficult obligation for many state parties.<sup>68</sup> This provision stresses that state parties shall accord women equal rights to men in order to acquire, change or retain equal rights when their children have a different nationality. Article 10 of the Convention deals with the right of education for women. All state parties have to grant equal rights to women, including equal access to schools and vocational training. States must also take appropriate measure to eliminate existing stereotypes about the role of men and women

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<sup>67</sup> Article 7 encourages states parties to take all appropriate measures to ensure three sets of rights:

- A. Granting females a vote in all elections and public referenda in the country, as well as to stand for election for all publicly elected bodies.
- B. Involving women in the formulation and implementation of state policy, to hold public office and to perform all public functions at all levels of government.
- C. Granting women the right to participate in NGOs and associations, which deal with the public and political life of the state.

<sup>68</sup> E. Y. Krivenko, *Women, Islam and International Law Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (Boston, Martinus Nijhoff Publishers 2009) 32

through a review of their school curricula and teaching methods. The issue of equality in employment is covered by Article 11, which mentions that state parties shall guarantee women equal opportunities to men in relation to recruitment, promotion, training, equal remuneration, social security and safe working conditions. They must also provide protection for women during pregnancy and motherhood and not discriminate them on the basis of their marital status. Women's right to health care is affirmed in Article 12. This Article obligates state parties to guarantee equal rights for women to access health care services, including reproductive health services. Article 13 deals with economic and social benefits of women. This Article requires state parties to guarantee that women have equal rights to enjoy family benefits and to have access to bank loans and other forms of financial credit. Also, the Article requires that women can equally participate in all aspects of cultural life. Article 15 emphasises equality of women before the law and requires state parties to treat women and men equally before the law. Women have the same legal rights to conclude contracts, to own private property, and to choose their domicile and residence. Article 16 deals with marriage and family life and states parties have to ensure that women and men enjoy equal rights with regards to marriage and as parents, as well as in relation to other aspects of family life. The Optional Protocol to the CEDAW<sup>69</sup> grants women further rights and all state parties are therefore encouraged to accede and ratify it. The Protocol sets out two mechanisms to ensure that states comply with their assumed obligations. Firstly, the Protocol provides for a communication procedure, which allows women to directly complain about any rights violations. Secondly, an inquiry allows the CEDAW Committee to investigate any violation of women's rights.<sup>70</sup> However, the UAE, like other GCC counties, has still not ratified this

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<sup>69</sup> The Optional Protocol to the Convention was adopted by the General Assembly on 6 October 1999 in its resolution 54/4 (A/RES/54/4), without reference to a Main Committee and was then opened for signature two months later on December 10, 1999, on the International Day of Human Rights. After receiving the tenth instrument of ratification on 22 December 2000, the Optional Protocol entered into force.

<sup>70</sup> L. A. Hoq, The women's convention and its optional protocol: Empowering women to claim their internationally protected rights, 32(3) *Columbia Human Rights Law Review* 2011, 677-726, 678

Protocol or the seminal ICCPR. Accordingly, women have no access to a legal complaints mechanism to inform the Committee that their rights have been breached.<sup>71</sup> Consequently, accountability in respect of the day-to-day realities of women is not achieved, as there is no channel to voice concerns about less favourable treatment. No accountability therefore exists at the international level. This does not mean that there is no accountability at all, as issue may well be addressed at the domestic level. Yet the problem is that if there is no proper redress domestically, then women have no other forum to take their complaint to.

The UAE ratified the CEDAW in October 2004 by virtue of Federal Decision No. (38) of 2004; however, it also entered reservations with respect to Articles 2f, 9, 15:2, 16 and 29:1 due to a perceived conflict with Sharia law and also state policy.<sup>72</sup> Article 2 requires all state parties to adopt policy measures to eliminate all forms of discrimination against women. State parties have to therefore modify or abolish existing laws, the constitution, regulations, custom and practices within society. Entering a reservation in respect of this Article is problematic because it constitutes an integral characteristic of the entire legal framework created by the CEDAW.<sup>73</sup> Nonetheless, the UAE considered it necessary that a reservation was entered in respect of Article 2(f), which deals with inheritance, and stated “[t]he United Arab Emirates, being of the opinion that this paragraph violates the rules of inheritance established in accordance with the precepts of the Shariah, makes a reservation thereto and does not consider itself bound by the provisions thereof.” Hence, the UAE entered the reservation in order to avoid a conflict with Islamic inheritance law.

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<sup>71</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 11-12

<sup>72</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 16-17

<sup>73</sup> M. A. Freeman, Reservations to CEDAW: An Analysis for UNICEF, UNICEF Policy and Practice, December 2009, 1-48, 7 <[http://www.unicef.org/gender/files/Reservations\\_to\\_CEDAW-an\\_Analysis\\_for\\_UNICEF.pdf](http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf)> accessed 1<sup>st</sup> January 2014



At present this means that there are still laws, customs, and practices, which are discriminatory from the perspective of international law. Secondly, in relation to Article 9, which deals with discrimination on the basis of nationality, women should have the same rights as men to retain, acquire or even change their nationality and the nationality of their children. Yet the UAE asserted that granting nationality is an internal matter and therefore subject to domestic laws, criteria and conditions. Hence, this approach rather reflects a paternalistic and conservative approach, as opposed to a tenet advocated by the Sharia. Thirdly, Article 15 provides that the law treats women just like men, including the right to freedom of movement and to choose where to live and to own properties. The UAE has entered a reservation in relation to Article 15(2), which deals with testimonies and rights to conclude contracts. This was deemed necessary, as the provisions could not be brought in line with the Sharia. This is because the man is perceived to act as manager for the woman.<sup>74</sup> Fourthly, a reservation was entered to Article 16. This provision outlaws discrimination during marriage and within family relations. It ensures the autonomy and integrity of women by affirming that women can freely choose whom to marry and can decide how many children they want to have. The Article further guarantees women the same rights as men during the marriage and also upon dissolution of the marriage. Moreover, it provides that state legislation must “*specify a minimum age of marriage.*” However, the UAE stated that it will “*abide by the provisions of this article insofar as they are not in conflict with the principles of the Shariah. The United Arab Emirates considers that the payment of a dowry and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband’s or her own expenses out of her own*

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<sup>74</sup> A. Sachedina, 'Woman, Half-the-Man? The Crisis of Male Epistemology in Islamic Jurisprudence' in (eds) F. Daftary, *Intellectual Traditions in Islam* (London, IB Tauris & Co Ltd 2000) 160

*property. The Shariah makes a woman's right to divorce conditional on a judicial decision, in a case in which she has been harmed."*

Finally, Article 29(1) deals with jurisdiction and requires any dispute between states parties to be settled through arbitration at the International Court of Justice (ICJ). The UAE entered a reservation since it was felt that any of these matters should only be dealt with by the ICJ.<sup>75</sup> The Committee of the CEDAW has criticised the UAE for entering these reservations, particularly in relation to Article 16, which contradicts the overall purpose of the Convention and thus poses a significant obstacle to women exercising their rights.<sup>76</sup>

Yet the UAE is not the only country in the region, which has ratified the Convention with reservations due to the conflict with Sharia law, important social values and state policy. For example, Kuwait was the first Gulf country which ratified the CEDAW in 1994, but which entered a general reservation to the Articles, which conflict with Sharia and national laws. Kuwait entered three reservations in relation to Articles 7(a), 9:2 and 16(f). In relation to Article 7(a), which requires women to be granted the same political participation rights as men, the government entered a reservation because of a conflict with the Electoral Act. This Act only allowed men to vote. However, in 2005 the Kuwaiti government withdrew this reservation and amended Act No. 35 of 1962 by virtue of Act No. 17 of 2005. As a result, since 2009, women are granted the same political participation rights as men.<sup>77</sup> Secondly, in

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<sup>75</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 17

<sup>76</sup> Musawah, CEDAW and Muslim Family Laws In Search of Common Ground, Selangor, Musawah Musawah for Equality in the Family, 2011, 1-87, 7 <<http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws.pdf>> accessed 1<sup>st</sup> January 2014

<sup>77</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, Kuwait, CEDAW/C/KWT/CO/3-4, 18 October 2011, 2 & 14

relation to Article 9(2), the government found that this conflicted with the Kuwaiti Nationality Act. Thirdly, in respect of Article 16(f), which obligates states parties to grant women the same rights and responsibilities with regards to trusteeship, wardship, guardianship and adoption of children, it was considered that this contravened the Sharia.<sup>78</sup> Algeria, which is another Muslim country, confirms in Article 2 of its constitution that Islam is the religion of the state. It has a mixed legal system, which is influenced by French civil law and Sharia law, particularly the family code.<sup>79</sup> Algeria became a signatory to the CEDAW in 1996 and entered the same reservations as the UAE, but provided different reasons. In relation to Article 2, the Algerian government noted that this contradicts its family law provisions.<sup>80</sup> Furthermore, Algeria entered a reservation in relation to Article 15 because the rights of women to choose their domicile and residence conflicts with the provisions of chapter 4 (Art. 37) of the Algerian family law. Equally, in relation to Article 16, which deals with the relationship between men and women during marriage and upon dissolution of marriage, the government concluded that its provisions contradict the Algerian family law.<sup>81</sup> Finally, in respect of Article 29, the Algerian government made clear that no dispute can be submitted to the ICJ or arbitration without the consent from all parties.<sup>82</sup>

Despite these reservations, the CEDAW has helped improve the status of women in most Middle East Muslim countries, particularly in relation to education. The ratification of the Convention was thus a turning point for many Emirati women, who have been empowered politically and economically. After its ratification, the UAE government has made

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<sup>78</sup> N.70, 30-31

<sup>79</sup> R. Potz, *Islamic Law and the Transfer of European Law*, European History Online, November 2011 <<http://ieg-ego.eu/en/threads/europe-and-the-world/european-overseas-rule/richard-potz-islamic-law-and-the-transfer-of-european-law>> accessed 26<sup>th</sup> February 2013

<sup>80</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined third and fourth periodic reports of States parties - Algeria, CEDAW/C/DZA/3-4, 24 March 2010, 12-13

<sup>81</sup> *Ibid*, 12

<sup>82</sup> *Ibid*, 12, 13 & 25

remarkable efforts to encourage women to participate in different areas of life. Articles 1, 2 and 4 of the CEDAW require all state parties to take steps to ensure that the Convention provisions take precedence over their national laws. This necessitates *de jure* and *de facto* compliance by state parties.<sup>83</sup> Pursuant to Articles 47 and 60 of the UAE constitution, all international treaties and conventions must be approved by the Federal Supreme Council, whilst the cabinet is responsible for supervising the implementation of any international treaty or convention. The CEDAW thus entered into force and was treated as national law after the Federal Decision was confirmed by the Federal Supreme Council.<sup>84</sup> After the CEDAW entered into force, the UAE became obliged to submit a report to adhere to its responsibility under the Convention. The Ministry of Foreign Affairs started the preparation for the country's report for the Committee on the Elimination of Discrimination against Women. A commission was specifically set up and composed of individuals from different ministries, such as the Interior Ministry, the Labour Ministry, the Ministry of State for Federal National Council Affairs and the Ministry of Social Affairs. Furthermore, two main NGOs were involved in the report, namely the Family Development Foundation and the General Women's Union.<sup>85</sup> The report identified positive change for women after ratification of the CEDAW. However, the UAE was equally criticised by the Committee for not having fully implemented the CEDAW. Firstly, the status of the CEDAW was not clear enough, particularly whether the CEDAW takes precedence over national law or not. Secondly, the UAE was criticised for failing to ensure gender equality, especially for non-nationals; and the challenges, which the UAE faces in terms of social integration, were also recognised. Finally, the CEDAW Committee encouraged the UAE government to withdraw all reservations,

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<sup>83</sup> C. Forster, V. Jivan, *Gender Equality Laws: Global Good Practice & a Review of Five Southeast Asian Countries* (Bangkok, United Nations Development Fund for Women 2009) 662

<sup>84</sup> Article 25 of the constitution of the United Arab Emirates' constitution; Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 6

<sup>85</sup> *Ibid* (Committee on the Elimination of Discrimination against Women), 3

which hamper the ability of women to achieve equal rights.<sup>86</sup> Resultantly, the UAE has further promoted women empowerment.

### 3.1.2 Women empowerment at the national and international level

The trucial states<sup>87</sup> suffered from extreme poverty and underdevelopment before the exploration of oil, which greatly increased the wealth of the population.<sup>88</sup> The economy was traditionally based on agriculture, pearl fishing and maritime commerce.<sup>89</sup> Most trucial women were illiterate and poor and had insufficient access to health care.<sup>90</sup> Women played a vital role within the societal structure, as they were responsible for the family and housekeeping.<sup>91</sup> This was no easy task and entrusted females with great responsibilities, as the man had to often travel for several months in order to provide for the family.<sup>92</sup> After the discovery of oil and the creation of the federation in 1971, the UAE government adopted an initial strategy to modernise its society by focusing on education and this gradually changed the role of women within UAE society and provided them with new work opportunities outside the family context.<sup>93</sup> However, these new policies were not welcome by the majority of people because of religious beliefs, social values and cultural sensitivities.<sup>94</sup> For example,

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<sup>86</sup> Ibid, 4

<sup>87</sup> The UAE was formed from a combination of tribal systems, known as the trucial states, namely Abu Dhabi, Dubai, Sharjah, Umm al-Quwain, Fujarah, Ajman and Ras al-Khaimah. In the 1820s, a long-standing Convention was entered into with the British government to take responsibility of the external affairs of the trucial states: M. Joyce, *On the road towards unity: The Trucial States from a British perspective, 1960-66*, 35(2) *Middle Eastern Studies* 1999, 45-60, 45

<sup>88</sup> T. Bradshaw, *The Dead Hand of the Treasury: The Economic and Social Development of the Trucial States, 1948-60*, 50(2) *Middle Eastern Studies* 2014, 325-342, 330

<sup>89</sup> Ibid

<sup>90</sup> V. C. Pinto, *Nation-building, state and the genderframing of women's rights in the United Arab Emirates (1971-2009)* (Reading, Ithaca Press 2012) 19

<sup>91</sup> Ibid

<sup>92</sup> F. Heard-Bey, *The tribal society of the UAE and its traditional economy* in (eds) E. Ghareeb, *Perspectives on the United Arab Emirates* (London, Trident Press 2001) 99

<sup>93</sup> H. Chapin Metz, *Persian Gulf states: country studies*, Washinton DC, Library of Congress Federal Research Division <<http://countrystudies.us/persian-gulf-states/>> accessed 4<sup>th</sup> January 2014

<sup>94</sup> V. C. Pinto, *Nation-building, state and the genderframing of women's rights in the United Arab Emirates (1971-2009)* (Reading, Ithaca Press 2012) 35

women were prevented by their family to study because it was expected that they would marry early and raise a family.<sup>95</sup> It was also socially unacceptable for women to work without gender segregation.<sup>96</sup> The UAE government believed that the mentality of society must be changed and this underlying objective played an important role in the education of male and female alike and has facilitated that traditional attitudes have changed over time.<sup>97</sup> Additionally, the UAE government adopted a national strategy for the advancement of women in order to meet its international obligations under the respective Conventions and ratified the rights therein contained in order to promote the rights of women. It has further affirmed its commitments by way of a declaration at the Beijing Conference. This strategy is designed to empower women, for instance, through education, political and economic participation, as well as through the adoption of laws.<sup>98</sup> There are nonetheless still obstacles, also because Sharia law in the UAE particularly deals with “*social laws, such as [nationality], family law, divorce or succession [and inheritance].*”<sup>99</sup> This reinforces conservative values, which make achievement of the international standards more difficult. Nonetheless, women now play a much greater role than in the past and have thus become partners and contributors in the development and nation building process, which has positively benefitted UAE’s economy.<sup>100</sup> In light of the fact that about 32.4% of the total UAE population are women, of whom 49% are Emirati nationals, it is important to further integrate these women fully by granting them the same rights as men.<sup>101</sup>

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<sup>95</sup> Ibid

<sup>96</sup> K. Adam, *Women's empowerment and leadership in education: a key factor for Emiratisation in the United Arab Emirates*, Master of Education, University of South Africa, 2003, 2

<sup>97</sup> Ibid

<sup>98</sup> Human Rights Council, National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 United Arab Emirates, Geneva, United Nations, A/HRC/WG.6/15/ARE/1, 2 November 2012, 6

<sup>99</sup> U. Ibp, *Dubai Business Law Handbook, Volume 1, Strategic Information and Basic Laws*. (Washington DC, International Business Publications 2005) 37 N77

<sup>100</sup> N.37, 3

<sup>101</sup> National Bureau of Statistics, Millennium Development Goals United Arab Emirates Report, Third Report, Abu Dhabi, 2012, 36

### **3.1.2.1 Political participation and decision making and civil and political rights for women in the Muslim world and the UAE**

Islam considers women and men equal and does not object to women exercising political rights without discrimination, particularly the right to vote, to participate in public life and to hold a public office. Women can also freely participate in political life and can vote and be chosen as candidate in the political arena. Also, they can represent their country locally and internationally. For example, at the time of the Prophet Mohamed, women participated in many discussions and arguments about a number of sahabat<sup>102</sup> and also discussed with the prophet certain political issues.<sup>103</sup> However, this has nevertheless been a controversial issue within Islamic jurisprudence and two main approaches have been adopted. Firstly, some jurists oppose that women have political rights and for this purpose rely on a biography of the Prophet. For example, in verses 34 chapter 4 (Surat) An-Nisa (The Women) of the Holy Quran, it is stated “*Men are the protectors and maintainers of women...*” Also, verse 228 chapter 2 (Surat) Al-Baqarah (The Cow) notes that men have a higher degree of responsibility and authority than women. However, opponents claim that whilst God distinguished men and women in several respects, particularly in relation to family matters, that this should not extend to public affairs. This school of thought supports the idea that women should be granted the right to participate in public affairs.<sup>104</sup> General proponents of political rights of women therefore assert that women should be fully empowered to exercise equal rights within the public and political realm and they rely on verse 71 Chapter 9 (Surat) At-Tawbah (The Repentance) “*The Believers, men and women, are protectors, one of*

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<sup>102</sup> Sahabat are the companions of the Prophet Muhammad. The Quran mentions many of them. Sahabat already lived at the same time as the Prophet Mohamed and spent much time with him.

<sup>103</sup> A. M. Usman, *Women’s Political Rights in Islam: Concept and Application*, Yobe State University, 2012, 1-10, 4-5 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2038516](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038516)> accessed 3<sup>rd</sup> January 2014

<sup>104</sup> A. T. Al-Hamli, *Islam, Democracy, and Human Rights: can universal human rights be applied in our relativistic world?* Thesis, Hull, Hull University, 2006, 146

another: they enjoin what is just, and forbid what is evil.” It is clear that God has called upon both men and women to order what is just and forbidden, what is evil, which is essentially part of the political mission, and is concerned mostly with the legislative process.<sup>105</sup> The issue is that these different interpretations impact the enjoyment of women rights. This is particularly the case since a government has social and political power to develop, enhance or stop the advancement of gender equality.<sup>106</sup> Women are still not often involved in politics<sup>107</sup> and men therefore still dominate this field, though this is the case in many, particularly Muslim countries, around the world.<sup>108</sup> However, many countries in the Middle East have started to adopt new political processes, which enable women to participate in political life.<sup>109</sup> The political, social and cultural rights of women in the Middle East were limited, particularly since women had insufficient experience in partaking in political life and public affairs.<sup>110</sup> The UAE government has particularly modernised the political process and there are many, who support that women should be granted political rights and rights to fully participate in public life. As a result, 30% of Emirati women hold high-ranking positions and have therefore got decision-making capacity; nonetheless, gender equality has not yet been fully realised.<sup>111</sup> In the past, women did not participate in the political process since the establishment of the Federal National Council in 1972 and no democratic elections took

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<sup>105</sup> Ibid, 147

<sup>106</sup> A. Abusharaf, Women in Islamic Communities: The Quest for Gender Justice Research. 28(3) *Human Rights Quarterly* 2006, 714-728, 718 & 727

<sup>107</sup> M. Al Dabbagh, L. Nusseibeh, Women in Parliament and Politics in the UAE, Dubai: Dubai School of Government, Ministry of State for Federal National Council Affairs, February 2009, 1-68, 14 <[http://www.uae-embassy.org/sites/default/files/pdf/Women\\_in\\_Parliament\\_UAE\\_Study.pdf](http://www.uae-embassy.org/sites/default/files/pdf/Women_in_Parliament_UAE_Study.pdf)> accessed 5<sup>th</sup> March 2015

<sup>108</sup> United Nations Women, Facts and figures: Leadership and political participation, Women in parliaments, 2017 <<http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>> accessed 1st July 2017; M. C. Kittilson, L. A. Schwindt-Bayer, *The Gendered Effects of Electoral Institutions: Political Engagement and Participation* (Oxford, Oxford University Press 2012) 125

<sup>109</sup> F. Sadiqi, M. Ennaji, *Women in the Middle East and North Africa: Agents of Change* (Abingdon, Routledge 2011) 140; M. Tajali, A. S. College, 'Women's Rise to Political Office on Behalf of Religious Political Movements' in the Project of Middle East Political Science, Women and Gender in Middle East Politics, 10 May 2016, 1-61, 20 <[http://pomeps.org/wp-content/uploads/2016/05/POMEPS\\_Studies\\_19\\_Gender\\_Web.pdf](http://pomeps.org/wp-content/uploads/2016/05/POMEPS_Studies_19_Gender_Web.pdf)> accessed 1st July 2017

<sup>110</sup> Dubai Women Establishment, *Emirati Women Perspectives on Work and Political Participation*. Dubai: The Dubai Women Establishment, 2012, 11

<sup>111</sup> National Bureau of Statistics, Millennium Development Goals United Arab Emirates Report, Third Report, Abu Dhabi, 2012, 43



place. Instead all male members were appointed by the rulers of the Emirates. Yet women have attained more privileges to partake in political life and have become members of the Federal Cabinet and the Federal National Council. Until 2006, no national parliamentary elections took place, but President Sheikh Khalifa's electoral reform of the Federal National Council (FNC) changed this. Since then, half of the NFC members are elected through the Electoral College, including women, whilst the other half are appointed by the Emirati rulers. However, this was criticised, though the government explained that the election was a political novelty in a young country, which has only a limited history of political participation.<sup>112</sup> In 2006, the rulers were chosen by 6,689 members of the Electoral College out of which 17% were females.<sup>113</sup> In the second round of elections in 2011, the government increased the number of the Electoral College to 129,274 members and also increased the percentage of women to 46%.<sup>114</sup> Out of the 40 seats in the Federal National Council, 7 were held by women.<sup>115</sup> Although women therefore made up 17% of the FNC's members, only one woman was elected to the Council, though the Emirati rulers also appointed other female members. In the 2015 Federal National Council election, one woman was elected as well as seven were appointed and for the very first time in the Arab world a woman became the chairman of the Federal National Council.<sup>116</sup> This certainly highlights the efforts, which the UAE government has made to ensure that the obligations under the CEDAW and CERD Conventions are realised, so that women can enjoy the same political rights as men. Also, the vice president of the UAE parliament is a female. This certainly highlights that there exist opportunities for female empowerment. Nevertheless, despite the efforts of the UAE government to empower women through political participation in the last elections, there

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<sup>112</sup> N.94, 89

<sup>113</sup> N.107, 22

<sup>114</sup> National Election Committee, 12 July 2011 <<http://www.uaenec.ae>> accessed 21<sup>st</sup> February 2014

<sup>115</sup> Ibid

<sup>116</sup> I. Naar, UAE hails 'first woman in Arab world' to head national council, Al Arabiya English, 18 November 2015 <<http://english.alarabiya.net/en/perspective/profiles/2015/11/18/UAE-hails-first-woman-in-Arab-world-to-head-advisory-body-.html>> accessed 5th March 2016

seems to be a social and cultural barrier, which still hinders participation of women. According to a study about the first Federal National Council election, conducted by the Dubai School of Government, 57% of women candidates reported to have experienced negative, culturally based attitudes about their participation.<sup>117</sup>

Furthermore, in 2006 the judiciary law in Abu Dhabi and Dubai was amended to allow women to assume judicial posts as prosecutors and judges.<sup>118</sup> However, the CEDAW Committee highlights that women are still underrepresented in the judiciary and at the Federal National Council and recommends that quotas are used and time-based targets are set.<sup>119</sup> The 2015 Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul highlights that Article 18 and 58 of Federal Law No.3 of 1983 proscribe that women can become federal prosecutors and judges, which clearly breaches the CEDAW.<sup>120</sup> She also notes that institutional gender discrimination is prevalent throughout the justice system, including when complaints are filed with the police.<sup>121</sup> However, she acknowledges that women can otherwise become local prosecutors and judges and points out that in Abu Dhabi 18 female prosecutors and 9 female judges have been appointed and there are 73 women lawyers who are registered with the Abu Dhabi courts which represents 19% of registered lawyers.<sup>122</sup> In Dubai, there are 17 female prosecutors and three judges.<sup>123</sup>

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<sup>117</sup> N.107, 35

<sup>118</sup> Committee on the Elimination of Discrimination against Women, Responses to list of issues and questions with regard to the consideration of the initial periodic report of states parties: United Arab Emirates, Geneva, United Nations, CEDAW /C/ARE/Q/1/Add.1, 19 October 2009, 10

<sup>119</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined second and third periodic reports of the UAE, CEDAW/C/ARE/CO/2-3, 20 November 2015, 7

<sup>120</sup> Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to the United Arab Emirates, Human Rights Council, Twenty-ninth session, A/HRC/29/26/Add2, 5 May 2015, 1-22, 14 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/088/85/PDF/G1508885.pdf?OpenElement>> accessed 20th November 2015

<sup>121</sup> Ibid

<sup>122</sup> Ibid, 14-15

<sup>123</sup> Ibid

Moreover, 20% of the diplomatic posts are held by women and there are also four female ministers in the federal cabinet and in 2016, there were eight ministers, representing a 100% increase to the previous election year. Moreover, in February 2016, Khawla Abdul Rahman Al Mulla was elected as the Chairperson of the Sharjah Consultative Council (SCC), making her the first woman to be elected to this position since the SCC was established in 1999.<sup>124</sup> The Emirates Youth Council is also chaired by Shamma Al Mazroui and the Ministry of State for Youth is run by eight women and only six men. However, obstacles are not confined to the field of politics, as women are also still discriminated when it comes to exercising nationality rights.

- **Nationality rights**

Equal treatment in respect of nationality rights is not yet fully enjoyed by women in the UAE. Various domestic laws in the UAE still conflict with international standards because the Sharia regulates social issues differently. Pursuant to the Citizenship and Passport Law, Emirati women who are married to non-Emirati men cannot transfer their citizenship. In contrast, Article 3 of the Emirati Citizenship and Passport Law (1972/17) provides that Emirati men can transfer their citizenship after three years upon waiver of their original nationality. Moreover, children of Emirati mothers cannot acquire UAE nationality, whereas children from Emirati fathers can have UAE nationality. However, according to Article 2(d) of the Emirati Citizenship and Passport Law (1972/17), children can become citizens if born in the UAE or abroad to an Emirati mother, even if not legally attributed to a father. The differences in approach have also resulted in the UAE entering reservations when ratifying the CRC in 1997 in respect of Article 7, which provides that “*nationality is an internal*

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<sup>124</sup> M. Achkhanian, First women chairperson of Sharjah Consultative Council elected, Gulf News, 11 February 2016 <<http://gulfnews.com/news/uae/government/first-woman-chairperson-of-sharjah-consultative-council-elected-1.1670436>> accessed 3rd March 2016

*matter...whose terms and conditions are established by national legislation.*"<sup>125</sup> Further, in respect of Article 14, which deals with children's rights and freedoms, the Article only applies to the extent that this "*does not conflict with the principles and provisions of Islamic law.*"<sup>126</sup> Recently, these national laws, which deal with the acquisition of nationality of children from Emirati women, were further amended by virtue of the presidential decree of 2011. As a result, children of Emirati women are treated as nationals, without any discrimination based on nationality, in the areas of employment, health and education. Also, children who have reached the age of 18, have the right to apply for national citizenship.<sup>127</sup> Nationality rights are therefore gradually becoming aligned with international standards. Women have also been further empowered in other important fields, particularly through education.

### **3.1.2.2 Economic, social and cultural rights for women in the Muslim world and the UAE**

- **Access to education and the right to education under Islam and in the UAE**

Islam grants women the same rights to education as men. This is because education is considered very important and highly valued by Islam. Hence, Islam does not state that women should not learn; to the contrary, Islam encourages to search for the truth and to acquire and disseminate knowledge.<sup>128</sup> Indeed, Prophet Mohammed emphasised that learning

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<sup>125</sup> A. A. An-Na'im, *Islamic Family Law in a Changing World, A Global Resource Book* (London, Zed Books Ltd 2002) 143

<sup>126</sup> Ibid, 143

<sup>127</sup> Human Rights Council, National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, United Arab Emirates, Geneva, United Nations, A/HRC/WG.6/15/ARE/1, 2 November 2012, 14

<sup>128</sup> A. Buang, R. Suryandari, Education, political empowerment and Muslim women in the Middle East – Understanding the paradox, 7(4) *Malaysian Journal of Society and Space* 2011, 51-64, 57-58

and seeking knowledge are compulsory for men and women.<sup>129</sup> However, in some Muslim countries, local customs, traditions and practices have imposed obstacles to this right being exercised by women.<sup>130</sup> For example, in the 1960s, many Saudi citizens complained to King Saud bin Abdulaziz for not permitting their daughters to be educated.<sup>131</sup> During the crucial days, illiteracy was high for many reasons: firstly, men and women had access to rudimentary schooling and women were only taught to read, but not to write because it was believed that they may otherwise establish an illicit relationship.<sup>132</sup> However, some people considered education important, whilst others were not convinced and thought that women should just marry.<sup>133</sup> As the UAE government strongly values education, it has tried to change these traditional attitudes, prevalent amongst a large section of the population, particularly through its modernisation strategy, also with a view of discharging its responsibilities, as set out in the CEDAW and the CERD. The UAE government particularly considers universal education crucial and the cabinet therefore adopted a draft law in 2012 which renders education compulsory for children of citizens and non-nationals until the age of 18 years. Non-nationals also obtain full or partial support to educate their children, which are paid in the form of benefits to public and private sector employees. However, to date this law has not been implemented.<sup>134</sup>

Education is crucial for social and economic development and education has therefore been widely made available to females in the Middle East.<sup>135</sup> Emirati women enjoy equal

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<sup>129</sup> M. Csapo, Religious, Social and Economic Factors Hindering the Education of Girls in Northern Nigeria, 17(3) *Comparative Education* 1981, 311-319, 314

<sup>130</sup> N.115, 58

<sup>131</sup> Ibid

<sup>132</sup> N.94, 20

<sup>133</sup> Ibid, 40

<sup>134</sup> Gulf News, Cabinet approves a proposed federal law on compulsory education, 3 July 2012 <<http://gulfnews.com/news/uae/education/cabinet-approves-a-proposed-federal-law-on-compulsory-education-1.1052379>> accessed 8th March 2016

<sup>135</sup> V. M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (2nd ed, Colorado, Lynne Rienner Publishers 2003) 1

educational opportunities as men and the UAE government has particularly given government scholarships to women to undertake education both in the UAE, as well as abroad.<sup>136</sup> In 2005/2006, 43 Emirati women were sent abroad to pursue higher education.<sup>137</sup> Statistics published by the Ministry of Education show that enrolment of girls also increased significantly both in respect of general and technical education. Whilst in 1972/1973, female school enrolment was only 15,696, this rose to 145,956 in 2004/2005.<sup>138</sup> Moreover, According to the Central Bureau of Statistics in 2012 there were 270,918 students in public schools at all levels in 52.2% of whom were females<sup>139</sup>. By 2011, the majority of Emirati university students were female, i.e. 77%, which is the highest proportion of women in higher education worldwide.<sup>140</sup> A study about the reasons why the percentage of male university students is so much lower in the UAE found that a large proportion of men intended to either stay at home or work, as opposed to study.<sup>141</sup> The higher educational standards amongst women have also facilitated that women can partake in work life and has therefore promoted economic participation.

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<sup>136</sup> Article 55 (2) of the Personal Status Act 2005 requires husbands not to prevent their wives from completing their education; also see R. Pennington, UAE students make most of overseas scholarships, *The National*, 21 December 2015 <<http://www.thenational.ae/uae/education/uae-students-make-most-of-overseas-scholarships>> accessed 6th March 2016; A. Kumar, Scholarship boom in UAE Universities, *Gulf News*, 15 January 2014 <<http://gulfnews.com/news/uae/education/scholarship-boom-in-uae-universities-1.1278065>> accessed 6th March 2016; Ministry of State for Federal National Council Affairs, Women in the United Arab Emirates: A Portrait of Progress, Dubai, 2008, 1-7, 8 <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR\\_UAE\\_ANNEX3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR_UAE_ANNEX3_E.pdf)> accessed 1<sup>st</sup> October 2014

<sup>137</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 19

<sup>138</sup> *Ibid*, 18

<sup>139</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Second and third periodic reports of States parties due in 2014, United Arab Emirates, CEDAW/C/ARE/2-3, 10 July 2014, 16

<sup>140</sup> H. M. Al-Othman, Attitudes toward Women's Participation in Public Life in the United Arab Emirates, 14(5) *Journal of International Women's Studies* 2011, 233-246. 235

<sup>141</sup> F. Abdulla, N. Ridge, Where Are All the Men? Gender, Participation and Higher Education in the United Arab Emirates, Dubai School of Government Working Paper Series Working Paper 2011, 1-15, 1

- **Economic rights and workforce participation in the Middle East and the UAE**

Women are financially entirely secure in Islam, as they do not need to work to live because it is the duty of the man, whether as father, brother or husband to provide for them. However, Islam does not prevent women from working and women can freely seek work if they have valid reasons. Women employment is explained in the Quran. For example, verse 23 chapter 28 (Surat) Al-Qaşaş (The Stories) provides “*And when he came to the well of Madyan, he found there a crowd of people watering [their flocks], and he found aside from them two women driving back [their flocks].*” He said, ““*What is your circumstance?*” They said, “*We do not water until the shepherds dispatch [their flocks]; and our father is an old man.*”

Indeed, Sharia law can also be used as a way to promote and develop the economic rights of women in the Muslim world. Yet the main problem, which hinders the rights of women to freely exercise their economic rights, including to work, is that most Muslim countries have limited these rights because of custom and traditions, rather than because of the Sharia.<sup>142</sup> Sharia guarantees all women an independent legal personality, including the ability to keep and dispose of property.<sup>143</sup> The oil wealth in the Middle East has significantly contributed towards economic development. This has allowed many Middle Eastern countries to become much more integrated within the globalised trading system and this has also increased job opportunities for women.<sup>144</sup> Article 20 of the UAE constitution deals with rights to work and provides that “*Society shall esteem work as a cornerstone of its development. It shall endeavor to ensure that employment is available for citizens and to train them so that they are prepared for it.*” Furthermore, Article 34 states that “*Every citizen shall be free to choose*

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<sup>142</sup> Also see M. Baderin, *International human rights and Islamic law* (OUP Oxford, 2003) 218

<sup>143</sup> A. An-Na'im, The rights of women and international law in the Muslim context, 9(3) *Whittier Law Review*, 1987, 491-561, 495

<sup>144</sup> V. M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (2nd ed, Colorado, Lynne Rienner Publishers 2003) 2

*his occupation, trade or profession within the limits of law.*” By significantly encouraging females to pursue higher education and females now outnumbering their male counterparts, women have become empowered to enter new professions and sectors, such as medicine, engineering and the media and information technology.<sup>145</sup> This is also reflected by statistics. Whilst in 1995, only 11.6% of women were state employees, this figure increased to approximately 22% in 2005, which is the highest rate in the GCC countries and in 2007, this increased to 66% in the government sector, including 30% in senior decision-making positions.<sup>146</sup> Also, 15% of the faculty members at the University of the Emirates are women and 60% of the technical jobs in medicine, teaching, pharmacy and nursing are held by women.<sup>147</sup> Women also serve in the regular Armed Forces, police and customs.<sup>148</sup> In 2012, women made up 59% of the national labour force market and work, for example, as professors at universities, for the government, in the oil industry, within health care, the media and in many other sectors.<sup>149</sup>

Apart from being able to freely partake in work life, economic participation of women is particularly based on conferring equal property rights to men and women in the UAE. Women have full capability to manage their own financial affairs, administer property and enter into contracts.<sup>150</sup> Women and men in the UAE can also equally open bank accounts and apply for finance and women do not have to obtain permission from their fathers or

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<sup>145</sup> S. Kirdar, *Women’s Education in the GCC — The Road Ahead*, Middle East Institute, 2010 <<http://www.mei.edu/content/women%E2%80%99s-education-gcc-%E2%80%94-road-ahead>> accessed 3<sup>rd</sup> January 2014

<sup>146</sup> United Arab Emirates Ministry of Economy, *Millennium Development Goals United Arab Emirates, Second Report, 2007*, 1-39, 11

<sup>147</sup> *Ibid*

<sup>148</sup> *Ibid*

<sup>149</sup> N.37, 2

<sup>150</sup> Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1*, 17 September 2008, 55



husbands.<sup>151</sup> In 2014, there were 21,000 female employees and 10% of female business owners accounted for the private sector and women were in charge of approximately 40 billion Dirham.<sup>152</sup> Furthermore, female business owners made up 15% of the members of board of directors of companies in the UAE.<sup>153</sup> This certainly suggests that the right to freely exercise property rights is not just a theoretical and elusive right in the UAE. Labour and human resource legislation provides protection for both Emirati and non-Emirati-women and proscribes that a female is dismissed or threatened with a dismissal because of pregnancy, delivery or parenting. Women have to be also paid their full salary for the first 45 days if they have worked for the employer for one year and are thereafter entitled to 100 days without pay.<sup>154</sup> This is relatively short in comparison to the UK, where women are entitled to 52 weeks' statutory maternity leave and 39 weeks of statutory maternity pay.<sup>155</sup> The UAE could therefore further improve its maternity law in order to make it easier for women to fulfil their roles as mothers, whilst enabling them also to resume work.

- **Marriage, divorce and child custody rights under the Sharia and the Personal Status Law 2005**

The Qur'an and the Sunnah are the primary sources of Sharia law, which are accepted by all Muslim societies. The Quran is the main source of the Sharia, which is supplemented by the

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<sup>151</sup> United Nations Children's Fund Regional Office for the Middle East and North Africa, United Arab Emirates MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa, UNICEF, 2011, 1-12, 4 <<http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>> accessed 1<sup>st</sup> October 2014

<sup>152</sup> Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second and third periodic reports of States parties due in 2014 United Arab Emirates, Geneva, United Nations, CEDAW/C/ARE/2-3, 3 December 2014, 9

<sup>153</sup> Ibid

<sup>154</sup> Article 30 of Federal Labour Law 2012; Emirates Diary, Maternity Leave as per UAE Labour Law, 27 January 2016 <<http://emiratesdiary.com/job-tips/maternity-leave-per-uae-labour-law>> accessed 5th March 2016

<sup>155</sup> Gov.uk, Maternity pay and leave, 2016 <<https://www.gov.uk/maternity-pay-leave/overview>> accessed 3rd June 2016

Sunnah.<sup>156</sup> However, these two main sources have to be interpreted, which Prophet Mohamed also did during his lifetime through hadith (sayings).<sup>157</sup> Over time, Islam expanded after the death of the Prophet Mohamed and several new issues arose, which were not directly covered by the Quranic verses or prophetic tradition.<sup>158</sup> Ijtihad (independent reasoning or legal reasoning) was employed to further develop the Sharia. Several legal methods were developed, such as Qiyās (legal analogy) and Ijmā (juristic consensus), in order to address new developments.<sup>159</sup> The main two denominations in Islam are Sunni and Shia. For Sunni Muslims the following four main schools of fiqh (jurisprudence) are: Hanafi, Maliki, Shafi, Hanbal,<sup>160</sup> while the Shia majority follows the fiqh of Imam Jafar.<sup>161</sup> The differences in view between these schools have caused different interpretations of the Qur'an and the hadith.<sup>162</sup> The Qur'an and Sunna represent progressive values, which are lawfully regulated, particularly the well-being of women, for instance, through the payment of the dowry, marriage and divorce.<sup>163</sup> However, many Muslim countries have adopted the different areas of the personal status law in two stages. During the first stage, these were incorporated in the national laws, as for example, Egypt did between 1920 and 1940. During the second stage, the new personal law was codified and the first Muslim countries where this law became enforceable were Jordan, Morocco and Tunisia.<sup>164</sup> Before the adoption of the Personal Status Law in 2005, UAE Sharia courts did not follow specific procedural rules and this meant that

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<sup>156</sup> A. S. Alarefi, Overview of Islamic Law, 9 *International Criminal Law Review* 2009, 707-731, 709

<sup>157</sup> Ibid, 712

<sup>158</sup> N.142, 28

<sup>159</sup> Ibid, 29

<sup>160</sup> N.156, 718

<sup>161</sup> N. Latif, *Women, Islam and Human Rights*. PhD Thesis, Newcastle: University of Newcastle-upon-Tyne, 2002, 13

<sup>162</sup> N.156, 720

<sup>163</sup> J. Rehman, The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq, 21 *International Journal of Law, Policy and the Family* 2007, 108-127, 113

<sup>164</sup> The most recent Muslim countries, which have codified the personal status law are the UAE in 2005 and Qatar in 2006; n.156, 163

court decisions varied from judge to judge.<sup>165</sup> In 2005, the UAE codified the Federal Law of Personal Status No.28/2005 for the very first time. Judges are therefore bound to apply the personal status law when dealing with family matters and this precludes them from reaching their own interpretation of the Sharia law.<sup>166</sup> The Personal Status Law deals with different family matters, for instance, marriage, dissolution of marriage, custody, as well as inheritance.<sup>167</sup> Article (2)30 provides that “*whosoever has passed puberty but is not 18 years old shall be married only with the consent of the judge after ascertaining the interest*” (i.e. the interest of the minor being married below 18). The years are lunar (article 3). The provision thereby protects against child marriage. Whilst the adoption of the Personal Status Law can be considered a step into the right direction, women still face obstacles when pursuing justice in courts because some provisions are still discriminatory due to the conservative interpretation of the Sharia. The areas where women face most obstacles in achieving equal treatment are marriage, divorce, inheritance, custody and all aspects of family life. While the Personal Status Law applies only to Sunni Muslim, Shia Muslims<sup>168</sup> can pursue Shia family law issues through a special Shia Council, instead of using the ordinary judicial system.<sup>169</sup> The UAE expressed reservations about those CEDAW articles, which directly contradict the Sharia in respect of inheritance rights, marriage and family life, divorce, including custody rights of children.

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<sup>165</sup> B. S. Al-Muhairi, The Development of the UAE Legal System and Unification with the Judicial System, 11 (2) *Arab Law Quarterly* 1996, 116-160, 123

<sup>166</sup> L. Welchman, Bahrain, Qatar, UAE: First time Family Law Codifications in Three Gulf States. *International Survey of Family Law* 2010, 163-178, 163

<sup>167</sup> L.-M. Möller, Custody Regulations in the United Arab Emirates: Legal Reforms and Social Realities, 11(1) *Hawwa-Journal of Women of the Middle East and the Islamic World*, 2013, 41-57

<sup>168</sup> The percentage of Shia Muslims in UAE is less than 15% percent. They concentrated in the emirates of Abu Dhabi, Dubai and Sharjah.

<sup>169</sup> The Jaafari Waqf Charity Council was established by decree by His Highness the late Sheikh Rashid bin Saeed Al Maktoum, Ruler of Dubai on 12.27.1971 for the purpose of regulating the affairs of the Shia Jafari in Dubai; United States Department of State, *United Arab Emirates 2012 International Religious Freedom Report*. United States Department of State, Bureau of Democracy, Human Rights and Labor, 2012, 2

- **Inheritance rights**

Legally recognising the rights of women to inherit equally is another important element to combat gender inequality, especially discriminatory elements of the cultural and religious practices enshrined in the personal status codes in many territories. The CEDAW Committee has highlighted the importance of equal inheritance rights for women and has repeatedly criticised this serious form of discrimination.<sup>170</sup> Despite this, in some Muslim countries, even Western inheritance cases are still governed by the Sharia.<sup>171</sup> As a result, women have the right to inherit, but their share of the inheritance is half the share of the man if there was one male and one female in the same relationship to the deceased.<sup>172</sup> This is based on verse 11 chapter 11 (Surat) An-Nisā' (The Women), which states "*Allah instructs you concerning your children: for the male, what is equal to the share of two females.*" Yet under the Sharia, this rule cannot be used to double the share of the man. There are some cases in which females get the same share of inheritance as men. For instance, the father and mother get an equal share (one-sixth each) to survive and inherit when their son dies in the same capacity as the parents.<sup>173</sup> Another example is the uterine sister, who gets an equal share (in the same capacity) with her uterine brother.<sup>174</sup> However, in some inheritance cases, such a division is simply unfair. Nevertheless, this is justified on the basis that men shoulder a greater financial commitment since they have to support their families, including not only their spouses and children, but also their sisters and elderly parents.<sup>175</sup> These examples certainly highlight that inheritance rights of women in the Sharia are not based on gender, but instead the differences in the division of the inheritance are based on three criteria: Firstly, the level of relationship

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<sup>170</sup> N.83, 80

<sup>171</sup> N.7, 499

<sup>172</sup> United Nations Children's Fund Regional Office for the Middle East and North Africa, United Arab Emirates MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa, UNICEF, 2011, 1-12, 2 <<http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>> accessed 1<sup>st</sup> October 2014

<sup>173</sup> N.142, 186

<sup>174</sup> Ibid

<sup>175</sup> N.156, 63

between the heir and the legatō. Under this rule, the inheritance is distributed in accordance with how close a relative was to the deceased and priority is given to those, who were closest. Secondly, the age is considered and aging people take a smaller share than younger ones. Thirdly, the overall family structure is considered and as in Islam the man always shoulders financial responsibilities, he is being awarded a bigger share in certain cases.<sup>176</sup> The Civil Federal Code and the Federal Law No.2 of 1987 and the Personal Status Law No.28 2005 regulate inheritance and wills in the UAE. In contrast, when non-citizens die, foreign law applies and not the Sharia. This is confirmed in Article 17/1 of the Civil Code, which provides that *“inheritance shall be governed by the law of the deceased at the time of his death.”*

- **Marriage and family life**

Not only in Islam, people believe in the sanctity of marriage and family and this is entrenched in culture and ideology around the world. In Islam, marriage is considered a core element to build a family.<sup>177</sup> As Prophet Mohammed repeatedly said *“Marriage is my Sunna and those who do not follow this way of life are not my followers.”*<sup>178</sup> A husband must provide a dowry for his wife because it provides her with some autonomy within her marriage and constitutes social security in case of widowhood or divorce.<sup>179</sup> As clearly stipulated in chapter 4 (Surat An-Nisa (The Women) of the Holy Quran verses 4 *“And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease.”* Consent to the marriage is required from both men and women to conclude the contract.<sup>180</sup> But the distinct debate is whether she requires the consent of her

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<sup>176</sup> N.104, 143-145

<sup>177</sup> S. Brotman, E. Kata, K. Jessie, W. West, A. Irvane, D. Daibes, Implementing CEDAW in North Africa and the Middle East, Roadblocks and Victories, Middle East and North Africa (MENA) Report, 3 March 2008, 1-35, 5 <[http://pages.uoregon.edu/aweiss/intl421\\_521/CEDAW\\_Report\\_MENAf.pdf](http://pages.uoregon.edu/aweiss/intl421_521/CEDAW_Report_MENAf.pdf)> accessed 7<sup>th</sup> March 2015

<sup>178</sup> M. I. Bukhāri, *The translation of the meanings of Sahih al-Bukhari: Arabic-English* (Dar-us-Salam 1997) 19

<sup>179</sup> N.10, 596

<sup>180</sup> C. Lehmann, I. Jaafar, Women’s Rights in Islam Regarding Marriage and Divorce, 4(3) *William Mitchell Journal of Law & Practice* 2011, 1-29, 5

guardian or can conclude the marriage contract without the guardian. Three Sunni schools of jurisprudence of Sharia law (Maliki, Hanbali and Shafi) do not allow women to conclude their own marriage contract without her guardian,<sup>181</sup> though the Hanafi school permits women without any reservation to marry without the consent of their guardian.<sup>182</sup> The husband must provide maintenance to the wife during the time of the marriage.<sup>183</sup> Early marriage was one of the main features of UAE society and girls often had to marry their cousin and otherwise a distant relative or outsider.<sup>184</sup> It was one of the reasons why girls could not complete their education because parents often stopped the education of their girls when they were aged nine or ten to prepare them for marriage.<sup>185</sup> However, the situation is changing and there are not as many arranged marriages and marriages between close and distant family members as in the past. Citizens can freely choose whether they want to marry someone from the UAE, the neighbouring countries or any country. In the UAE, marriage is seen as a contract, and for it to be valid certain requirements have to be met. Firstly, both parties must freely enter into this contract and both have to be of sound mind. However, despite there being no minimum or maximum age for marriage, the Qur'an Personal Status Law clearly stipulates in Article 30(2) that those who are not 18 years old require the consent of a judge. Secondly, both must provide consent; otherwise the marriage is void. Thirdly, there should not be an objection to the relationship. Fourthly, a bride must be given a dowry

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<sup>181</sup> M. Alkhateeb, A Resource Guide for Legal Professionals, Advocates, Imams & Communities, Islamic Marriage Contracts, 2012, 1-84, 5&16 <[http://www.peacefulfamilies.org/wp-content/uploads/2012/10/Islamic.Marriage.Contracts.Resource.Guide\\_Produced.By\\_.PFP-API.Institute-BWJP\\_2012.pdf](http://www.peacefulfamilies.org/wp-content/uploads/2012/10/Islamic.Marriage.Contracts.Resource.Guide_Produced.By_.PFP-API.Institute-BWJP_2012.pdf)> accessed 6th March 2015

<sup>182</sup> N.156, 131

<sup>183</sup> Netherlands Ministry of Foreign Affairs, *The position of women in Islamic countries: possibilities, constraints and strategies for change* (Brighton, Institute of Development Studies 1992) 5

<sup>184</sup> S. H. Hurriez, *Folklore and Folklife in the United Arab Emirates* (Abingdon, Routledge 2013) 94; <sup>184</sup> S. Esim, M. Smith, *Gender and Migration in Arab States: The case of Domestic Workers*, Beirut, Regional Office for Arab States, International Labour Organisation, 2004, 95&99

<sup>185</sup> N.94, 20

in order to protect her financially after the marriage.<sup>186</sup> These requirements are further detailed in the new Federal Law of Personal Status, including maintenance, for example, section 5 deals with the payment of dowry.

- **Divorce and custody of children**

It may be a common misconception of Sharia law that men have the exclusive right to dissolve the marriage.<sup>187</sup> Under the Sharia, a marriage can be dissolved in several ways: the contract can be unilaterally terminated (talaq); upon the request of the wife (khul), by mutual agreement between the husband and wife (mubara'ah) and by virtue of a divorce order granted by a judge in the Sharia court (faskh)<sup>188</sup> Some Muslim countries, including the UAE, have a section in the Personal Status Law, which details these different ways in accordance with traditional norms considered permissible to dissolve a marriage under the Sharia.<sup>189</sup> While an Emirati man can divorce his wife for any reason, women can only request a divorce in particular circumstances, except when they choose to return the dowry. When they choose to return the dowry, they can request a divorce at any time without having to satisfy the particular evidential burden required to establish the specific circumstances, which allow a woman to divorce her husband and nevertheless keep the dowry.<sup>190</sup> Also, in Judgment No.16/16 (1984), it was found by the Abu Dhabi Court of Cassation that women, who are Muslim, can ask for a divorce when facing physical abuse and the parties cannot resolve their differences. Furthermore, upon being granted a divorce, women are often granted custody of

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<sup>186</sup> Y.-O. Jansen, Muslim Brides and the Ghost of the Shari'a: Have the Recent Law Reforms in Egypt, Tunisia and Morocco Improved Women's Position in Marriage and Divorce, and Can Religious Moderates Bring Reform and Make It Stick? 5(2) *Northwestern Journal of International Human Rights* 2007, 181-212, 185

<sup>187</sup> N.148, 189

<sup>188</sup> N.142, 53

<sup>189</sup> N.129, 189

<sup>190</sup> United Nations Children's Fund Regional Office for the Middle East and North Africa, United Arab Emirates MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa, UNICEF, 2011, 1-12, 2 <<http://www.unicef.org/gender/files/UAE-Gender-Eqaulity-Profile-2011.pdf>> accessed 1<sup>st</sup> October 2014

their daughters until they reach the age of 13 and their sons until they reach the age of 10. When the particular age is reached, a court will reassess the custody rights.<sup>191</sup> Also, a woman, who remarries, can still have custody over the children. For example, in Judgment No.8/97 (1997), the Dubai Court of Cassation held that custody rights would still remain with a mother, who had divorced and then married again. This demonstrates that the rights of women are being incrementally developed.

### **3.2 Women migrant workers**

The proportion of women migrant workers has significantly increased in the last few decades. As a result, half of the international migrants are women.<sup>192</sup> In 2010, 6.45 million of the international migrant workers came from South Asia to the GCC countries, though the Kingdom of Saudi Arabia had the highest proportion of migrant workers among the Gulf countries.<sup>193</sup> Women migrant workers are vulnerable due to the weak institutional structures in their home states. Their plight is further exacerbated by cultural attitudes, which all facilitate a culture of exploitation and abuse.<sup>194</sup> There are many migrants in the UAE and this has also implications for the labour market.<sup>195</sup> According to official statistics released by the UAE government in 2011, expatriates make up 88.5% out of the total population, from more

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<sup>191</sup> Ibid

<sup>192</sup> E. Kofman, P. Raghuram, Skilled female labour migration, Focus Migration, Policy Brief No.13, 2009, 1-8, 1

<sup>193</sup> H. Dhawan, India, Pakistan account for 71% of female migrants from South Asia, Times of India, 5 June 2012 <<http://timesofindia.indiatimes.com/world/south-asia/India-Pakistan-account-for-71-of-female-migrants-from-South-Asia/articleshow/13831960.cms>> accessed 3<sup>rd</sup> January 2014

<sup>194</sup> G. S. Manseau, Contractual Solutions for Migrant Labourers: The Case of Domestic Workers in the Middle East, 2006, 1-23, 38-39 <<http://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2006/migrantlabourers.pdf>> accessed 4<sup>th</sup> January 2014

<sup>195</sup> M. Baldwin-Edwards, Labour immigration and labour markets in the GCC countries: national patterns and trends. Research Paper, Kuwait Programme on Development, Governance and Globalisation in the Gulf States, March 2011, No.15, 1-71, 56 & 57 <<http://www.lse.ac.uk/middleEastCentre/kuwait/documents/Baldwin-Edwards,%20Martin.pdf>> accessed 4<sup>th</sup> January 2014



than 200 nationalities<sup>196</sup> and the majority of these are highly- and semi-skilled migrant workers who are employed in the private sector.<sup>197</sup> It is important to highlight that both the CEDAW and the CERD apply also to these expatriates. Nonetheless, there are concerns whether the respective rights can also be exercised by those most in need of them, particularly because of the sponsorship system. The UAE government has continuously tried to improve the rights of migrant workers, particularly also in response to the deep concerns, which the Committee on the Elimination of Racial Discrimination expressed in 1995 about the allegations of ill-treatment of migrant workers, particularly women domestic workers of foreign origin. The delegation recommended that the government should show utmost diligence to prevent any acts of abuse against migrant workers, especially domestic workers, and should undertake all appropriate measures to combat any kind of racial discrimination.<sup>198</sup> Also, the Experts Committee of the ILO requested the government to modify the Act to ensure that direct and indirect work discrimination is specifically prohibited at all workplaces.<sup>199</sup>

Like other countries, the UAE has the Kafala system, which allows workers to enter the country with assistance from the employer, who acts as sponsor. This Kafala system is designed to ensure that visas will only be issued upon the employer agreeing to employ the worker and the employer thereby assuming responsibility for his/her wellbeing.<sup>200</sup> However, the Committee on the Elimination of Discrimination against women has highlighted that this

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<sup>196</sup>Human Rights Watch, Arabic Network for Human Rights Information, Gulf Centre for Human Rights and Index on Censorship, Contribution to the Universal Periodic Review Mechanism 15th session of the UPR Working Group, Periodic Reports, Geneva, United Nations, 2013, 5

<sup>197</sup> N.192, 16

<sup>198</sup> Committee on the Elimination of Racial Discrimination, Report of the Committee on the Elimination of Racial Discrimination General Assembly, Fiftieth Session Supplement No. 18 (A/50/18), New York, United Nations, 1998, 572 & 573

<sup>199</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, 21 September 2009, CERD/C/ARE/CO/17, 15

<sup>200</sup> S. Esim, M. Smith, Gender and Migration in Arab States: The case of Domestic Workers, Beirut, Regional Office for Arab States, International Labour Organisation, 2004, 54

sponsorship system can result in the sponsor often confiscating the passports and this makes workers more vulnerable to exploitation.<sup>201</sup> However, the government of the UAE has adopted stringent measures to regulate the conduct of sponsors, particularly those who are trading visas and domestic workers with other sponsors.<sup>202</sup> Also, those, who hire workers without sponsorship can be imprisoned for up to three months and fined 10,000 dirhams.<sup>203</sup> Furthermore, in the last few years, the UAE has made significant efforts to improve the situation for workers, particularly women. On the international plane, the UAE has ratified an additional nine international conventions<sup>204</sup>, which deal with important issues, such as working hours, forced labour, equal pay and night work for women. However, the UAE has still not ratified the ILO Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2011 (No.189). Moreover, the UAE government has signed 10 memoranda with labour-sending states to promote worker rights and to ensure that they are not exploited, for instance, with India, Thailand, Pakistan and Bangladesh.<sup>205</sup> At the national level, the Wage Protection Office was established in 2008 to monitor that wages are protected and working hours are enforced.<sup>206</sup> The UAE government has also emphasised the importance of providing decent housing for all workers. A manual of general norms for collective housing of workers was particularly adopted by virtue of Cabinet Decision No.13

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<sup>201</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 8

<sup>202</sup> N.200, 100

<sup>203</sup> Ibid

<sup>204</sup> The United Arab Emirates ratified 6 of 8 fundamental Conventions, 1 of 4 Governance Conventions (Priority) and 2 out of 177 technical Conventions:

a. Fundamental Conventions: Forced Labour Convention 1930, Equal Remuneration Convention 1951, Abolition of Forced Labour Convention 1957, Discrimination (Employment and Occupation) Convention, 1958, Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention 1999.

b. Governance (Priority) Convention: Labour Inspection Convention 1947.

c. Technical Conventions: Hours of Work (Industry) Convention 1919 and Night Work (Women) Convention (Revised) 1948

<sup>205</sup> Human Rights Council, National Report submitted in accordance with paragraph 15(A) of annex to human rights council resolution 5/1 United Arab Emirates, Periodic Reports, Geneva, General Assembly United Nations, A/HRC/WG.6/3/ARE/1, 16 September 2008, 21

<sup>206</sup> Committee on the Elimination of Discrimination against Women, Responses to list of issues and questions with regard to the consideration of the initial periodic report of states parties: United Arab Emirates, Geneva, United Nations, CEDAW /C/ARE/Q/1/Add.1, 19 October 2009, 26-27

of 2009. Moreover, employers are required by law to take out comprehensive, health insurance for all workers.<sup>207</sup> All these measures are particularly important to protect domestics. In the UAE, 83% of migrant women are domestics, who support their family.<sup>208</sup> Female domestic workers often do not get paid and have to work very long hours.<sup>209</sup> The UAE government adopted new immigration policies to enhance protection and to promote the rights of domestic workers. In 2007, a new Regulation was adopted to ensure that it becomes a standard practice to provide all workers with an employment contract, which details various aspects, such as healthcare, sets out the duration of the contract and requires the wage to be clearly stated. The Regulation also requires that this standard contract is agreed between the employer and the employee. Article 1 of the Regulation affirms that workers have the right to receive their full wage at the end of each month. Furthermore, the salary payment must be recorded and two people have to sign in order to prove that the salary has been received.<sup>210</sup> In addition, the Department of Nationality and Residency established a special department to receive complaints from workers, as well as from supervisors about their work.<sup>211</sup> However, domestic workers are excluded from the protection of the UAE Labour law and the General Directorate of Residency and Foreigner Affairs at the Ministry of Interior has jurisdiction over domestic workers and this exclusion clearly violates Article 2 of the CEDAW, which requires state parties to adopt appropriate policies without delay.<sup>212</sup> As a result, domestic

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<sup>207</sup> Human Rights Council, National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, United Arab Emirates, Geneva, United Nations, A/HRC/WG.6/15/ARE/1, 2 November 2012, 16-17

<sup>208</sup> Women in and beyond, 2013 <<http://www.womeninandbeyond.org>> accessed 4<sup>th</sup> January 2014

<sup>209</sup> Human Rights Watch, Arabic Network for Human Rights Information, Gulf Centre for Human Rights and Index on Censorship, Contribution to the Universal Periodic Review Mechanism 15th session of the UPR Working Group, Periodic Reports, Geneva, United Nations, 2013, 6

<sup>210</sup> Human Rights Council, National Report submitted in accordance with paragraph 15(A) of annex to human rights council resolution 5/1 United Arab Emirates, Periodic Reports, Geneva, General Assembly United Nations, A/HRC/WG.6/3/ARE/1, 16 September 2008, 21

<sup>211</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, 21 September 2009, CERD/C/ARE/CO/17, 16

<sup>212</sup> Migrant Forum in Asia, Women migrant workers in the UAE: not quite in the portrait NGO Submission to 45th Session of the Committee on the Elimination of Discrimination against Women., Periodic Reports, Migrant Forum in Asia, 2009, 6

workers still have to frequently undertake heavy work, work for long hours without being compensated for overtime and often do not get a decent break.<sup>213</sup> Also, some other fundamental issues still exist, such as restrictions on movement and passport confiscation.<sup>214</sup> However, the proposed new domestic workers bill draft, which was approved by Cabinet Decision No. 1/1/1 2012, but which in June 2016 had still not been adopted by the National Federal Council, would further improve the situation of domestic workers. This bill sets out additional safeguards to protect women migrant workers from exploitation. The new bill complies with the International Labour Organisation's Convention (No.189) and recommendation 21 on decent work for domestic workers, which was ratified by UAE government in 2011.<sup>215</sup> This draft law also proposes that migrant domestic workers can freely change their employers. On the 31st May 2017, a revised draft of the domestic workers bill was adopted.<sup>216</sup> Whilst this law is more far-reaching and also safeguards domestic workers against verbal and physical abuse, this law has not been approved as law, like the 2012 predecessor bill. This gives the impression of cyclical “*window-dressing*” in response to criticisms of international NGOs. Another problem with the 2017 draft law is that the rights for domestic workers are not as robust as those guaranteed by the UAE Labour Law and domestic workers are therefore not treated the same as other workers, despite this contravening the ILO Domestic Workers Convention.<sup>217</sup>

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<sup>213</sup> Human Rights Watch, Arabic Network for Human Rights Information, Gulf Centre for Human Rights and Index on Censorship, Contribution to the Universal Periodic Review Mechanism 15th session of the UPR Working Group, Periodic Reports, Geneva, United Nations, 2013, 6

<sup>214</sup> N.195, 48

<sup>215</sup> N.39

<sup>216</sup> S. Salama, FNC passes draft law on domestic workers, GulfNews, 31 May 2017

<<http://gulfnews.com/news/uae/government/fnc-passes-draft-law-on-domestic-workers-1.2036023>> accessed 1st July 2017

<sup>217</sup> Human Rights Watch, UAE: Domestic Workers Rights Bill A Step Forward, 7 June 2017

<<https://www.hrw.org/news/2017/06/07/uae-domestic-workers-rights-bill-step-forward>> accessed 1st July 2017

### **3.3 Conclusion**

Many steps have been taken at the international level to combat discrimination against women, but conservative Muslim countries have been reticent in conferring women the necessary rights to enjoy their right to equality. Instead, these countries assume that Islam already confers women all the rights. Yet this position has become increasingly untenable, though customs and Arabic tribal traditions and a resultant patriarchal and androcentric point of view still undermine progress. A male biased approach has therefore become deeply entrenched within culture and it takes time to deconstruct the social meanings in a way which accords with Western standards based on a liberal model of feminism, as enshrined in the CEDAW.

The UAE government has taken many steps to empower women and has tried to implement international women rights. The ratification of various instruments by the UAE, particularly the CERD and the CEDAW, are important milestones and underscore the UAE's commitment to change. Yet the UAE could improve its record of engagement with the treaty bodies. This also means implementing the suggestions of the CERD Committee. This is very important since non-nationals, particularly female domestic workers, are generally more prone to abuse. Just like Kuwait lifted some of its reservations to relevant treaties, the UAE could incrementally do the same in line with legislative amendments, which will undoubtedly take place over the coming years. The UAE could also demonstrate further commitment by acceding to the Optional Protocol to the CEDAW.

The UAE should also consider ratifying the ICCPR and the ICESCR, as well as the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Whilst these instruments were not ratified since it was felt that many of its articles

contradict the Sharia, culture, tradition and national laws and that entering reservations would frustrate the purpose and object of these conventions, it would be better if this position was reconsidered. Ratification of these other human rights treaties would signal that the UAE is strongly committed to advancing human rights, including women human rights.

This is not to say that the UAE's modernisation programme has not been successful, to the contrary, it has ensured that women have entered the public arena and have become important players in the political arena. The 2015 appointment of a woman as the chairman of the Federal National Council certainly underscores this. Yet in other areas, the UAE has not yet achieved full compliance with the CEDAW. Nationality rights do not entirely accord with the tenet of equal treatment, though steps have been taken to improve the situation. Most improvement has been made in the area of education, with Emirati women achieving the highest number of university enrolment globally. Yet this knowledge, which women have been acquired, is not yet fully utilised economically and workforce participation could still be higher.

Moreover, as the Sharia is a primary source for regulating family affairs, there are still considerable divergences from international standards in the field of marriage, divorce and child custody rights. However, the enactment of the Personal Status Law 2005 is an important step in the right direction. The Sharia also conceptualises inheritance rights very differently, which makes it difficult to fully align UAE law with international standards. Much progress has also been made in respect of marriage, and early child and/or arranged marriages to distant relatives have increasingly become a relic of the past. Women are also afforded the right to divorce their husbands, though whilst a man can divorce a wife for any reason, women are more limited in case they want to retain the dowry. Progress has also been made

in relation to granting custody rights to women. The position of women migrant workers has been considerably enhanced, including through the enactment of a regulation which makes it a standard practice to furnish an employment contract and to establish a body which hears worker complaints. Yet domestic workers are still disadvantaged since the Labour Law does not extend to them and none of the announced draft bills for domestic workers have yet been enacted. The failure to ensure that domestic workers are adequately protected, including by conferring the same rights on other workers, can only be explained by a lack of willingness to fully uphold the concept of equality and to combat gender related discrimination of racial discrimination.<sup>218</sup>

The next chapter presents the results from interviews which were conducted with various government and public bodies and analyses the findings against the relevant literature in order to further scrutinise whether the UAE has adopted measures to empower women, including as a result of the adoption of international conventions and domestic legislation and policy initiatives. It particularly focuses on the topics of the CEDAW, overcoming customs and traditions, creating mechanisms for women empowerment, the CEDAW reservations, the protection of temporary workers, and realising gender equality.

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<sup>218</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 25, Gender Related Dimensions of Racial Discrimination (Fifty-sixth session, 2000), U.N. Doc. A/55/18, annex V at 152 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 214 (2003) <<http://hrlibrary.umn.edu/gencomm/genrexxv.htm>> accessed 1st July 2017

## Chapter four

### Understanding the UAE's efforts to realise gender equality through interviews with senior officials

#### 4. Introduction

Gender inequality constitutes a problem throughout the entire world, particularly in the Middle East and this can hamper social and economic development.<sup>1</sup> This is because gender equality is a crucial development policy, which promotes economic growth and increases productivity.<sup>2</sup> Women are often considered the subordinate gender, as a result of the patriarchal concept that “*men are superior.*”<sup>3</sup> These patriarchal values have not been fully outlawed in all countries, especially the Middle East and this gives rise to social inequality and results in the full potential of women being undermined.<sup>4</sup> Whilst in the West, Islam is often considered as having fostered gender inequality, it is important to highlight that gender inequality is the result of political, social, cultural and economic practices.<sup>5</sup> Accordingly, the role of women has been shaped by history, as well as cultural and social circumstances and some practices also reflect “*societal development.*”<sup>6</sup> Hence, it is rather the distinct Arab-Gulf culture coupled with rapid socio-economic development, which has not particularly fostered *de jure* and *de facto* gender equality.<sup>7</sup>

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<sup>1</sup> H. Malick, S. T. Hunter, *Modernization, Democracy, and Islam* (Westport, Greenwood Publishing Group 2005) 99

<sup>2</sup> World Bank, *Gender and Development in the Middle East and North Africa: Women in the Public Sphere* (Washington DC, World Bank 2004) 17

<sup>3</sup> D. Ghanim, *Gender and Violence in the Middle East* (Westport, Greenwood Publishing Group Inc 2009) 55

<sup>4</sup> Ibid

<sup>5</sup> T. Benn, G. Pfister, H. Jawad, *Muslim Women and Sport* (Abingdon, Routledge 2011) 213

<sup>6</sup> N. R. Keddie, *Women in the Middle East: Past and Present* (Princeton, Princeton University Press 2006) 243

<sup>7</sup> N.5



Recognising the importance of overcoming gender inequality and promoting the rights of women, the UAE government has adopted a public policy for over 20 years designed to empower women and this has, for example, translated itself into rising numbers of females being enrolled at schools and universities and women entering the workplace.<sup>8</sup> As discussed in the previous chapter, the UAE has signed various international conventions, but also entered reservations. For instance, the CEDAW was ratified in 2004, yet the government conceded at the time that not all its practices and policies complied with the CEDAW, but assured that these would be reviewed and amended over time to guarantee compliance.<sup>9</sup> By signing these Conventions the UAE government has symbolically acknowledged the importance and reinforced its commitment to empower women in line with its vision to modernise the country.

As the goal of achieving gender inequality necessitates that different steps are taken to empower women, the researcher conducted various interviews in order to fully understand the issue. The objective was therefore to investigate whether the UAE has adopted measures to empower women, including as a result of the adoption of international conventions and domestic legislation and policy initiatives.

Individual face-to-face interviews were therefore conducted with fourteen respondents from the following government bodies: the Ministry of the State for National Council Affairs, the Ministry of Health, the Ministry of Interior, the United Arab Emirates University (UAEU), the Ministry of Foreign Affairs (MoFA), the Ministry of Justice, the United Arab Emirates National Committee to Combat Human Trafficking, the Emirates Human Rights Association

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<sup>8</sup> D. P. Baker, A. W. Wiseman, *Gender, Equality and Education from International and Comparative Perspectives, International Perspectives on Education and Society: Volume 10* (Bingley, Emerald Group Publishing Ltd 2009) 321

<sup>9</sup> A. Al-Malki, D. Kaufer, S. Ishzaki, K. Dreher, *Arab Women in Arab News, Old Stereotypes and New Media* (London, Bloomsbury Publishing plc 2012) 227-228

(EHRA), UAE non-profit bodies (NGOs), the General Women's Union, the Ewa'a Shelter for Women and Children, the Family Development Foundation Abu Dhabi and the Dubai Foundation for Women and Children.

Purposive sampling was used in accordance with the following criteria: most of the participants were involved in the first and second CEDAW, the Universal Periodic Review (UPR) and the CERD reports. The Ministry of the State for National Council Affairs was chosen, as it is the body which supports the Federal National Council and assists with promulgating legislation and importantly has a Committee which is responsible for preparing the UAE's periodic human rights reports. A senior officer, who sits on this Committee and who had previously assisted with the preparation of the CEDAW, the UPR and CERD reports, was therefore selected. A senior officer from the Ministry of Health was interviewed, as the researcher was aware that this person had also previously been involved with the preparation of the first and second CEDAW, UPR and CERD reports and was therefore extremely familiar with the topic of women rights in the UAE, as well as the CEDAW and the CERD. The Ministry of Interior was selected, as it is one of the most important federal bodies in the UAE, which is responsible for the safety and security of UAE's citizens and residents, realising justice, modernising the UAE and understanding what the local community, including women, needs. The researcher selected a senior officer, who had previously participated in the preparation of the CEDAW, CERD and UPR reports, as he was considered very knowledgeable in this field. A senior officer from the Ministry of Foreign Affairs was also interviewed since the research also deals with non-Emirati women and this Ministry has a host of knowledge, including about issues which domestic workers face and memoranda which have been entered into between the UAE and labour sending countries. The senior officer had also previously been involved in the preparation of the CEDAW,

CERD and UPR reports. As the research deals with the topic of how discrimination against women can be overcome and analyses the legal framework of the UAE, it was considered important to interview a senior officer from the Ministry of Justice. The officer was trained in law and was therefore familiar with the relevant constitutional provisions and domestic laws, as well as the UAE's international obligations and had therefore also been involved in the past with the preparation of the CEDAW, CERD and UPR reports. Women are often subjected to human trafficking and it was therefore considered important to interview a member of the United Arab Emirates National Committee to Combat Human Trafficking. Again this person had been previously involved in the preparation of the CEDAW, CERD and UPR reports. An expert in women rights was also interviewed from the United Arab Emirates University. As the topic deals with what ultimately constitute human rights for women, it was also deemed important to speak with a member of the Emirates Human Rights Association, who was particularly familiar with the topic of women rights. Apart from speaking with UAE government bodies or emanations of the state, the researcher also sought to obtain the opinions from UAE NGOs, namely the General Women's Union, the Ewa'a Shelter for Women and Children, the Family Development Foundation Abu Dhabi and the Dubai Foundation for Women and Children, as these are all institutions which are particularly familiar with the issues and problems which women face on a day-to-day basis. The interviewer again chose to interview those, who had previously prepared the CEDAW, CERD and UPR reports, as these individuals were very senior and possessed relevant knowledge.

In terms of the interview process, the researcher firstly prepared the interview questions in light of the research aims and objectives. It was ensured that the questions addressed the various sub-topics which had to be addressed in order to answer the main research question. The interviews were semi-structured and this permitted a certain degree of flexibility during

the interviews. The interview questions were approved by the researcher's supervisor and a letter was signed to confirm that the questions did not raise any ethical issues.

The interviews were conducted between June 2014 and July 2014, mostly at the offices of the respondents and in a private and confidential setting. When data was reached, data collection was ceased.

The researcher asked fifteen questions.<sup>10</sup> Firstly, questions were asked about the reasons for ratifying CEDAW, its impact, the influence by the international community and what progress has been made in respect of women enjoying equal rights. Secondly, it was ascertained how customs and traditions are being overcome, what impact they still have on the process of women empowerment in the UAE, what steps are taken to eliminate practices, which affect women's political participation and what challenges exist to adopt national gender equality laws. Thirdly, the researcher asked what mechanisms have been created for women empowerment, so that women can complain when their rights are not being enforced, it was enquired whether participants thought that these complaint mechanisms were effective and it was asked what other additional steps have been taken to prevent sex discrimination. Fourthly, questions were asked about the CEDAW reservations and the likelihood that these reservations will be withdrawn. Fifthly, the topic of temporary worker protection was discussed, the strategy, which has been adopted to avoid further criticism, the prevailing problems and possible solutions to enhance protection. Finally, it was explored how gender equality can be realised, whether it is possible to replace all discriminatory laws and whether in the past decade legislation and agreements were adopted or rejected, which promote the rights of women.

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<sup>10</sup> See Appendix 1

The interviews the same questions were asked for each interviewee. It took between twenty and thirty-five minutes to conduct each interview. Notes were taken and transcripts were prepared, which were translated into English. A qualitative content analysis was undertaken to understand what was said and to interpret the meaning.<sup>11</sup> The findings were read many times in order to grasp their meaning. Subsequently, the data was separated into the following themes, which were abridged and assigned a code<sup>12</sup>: The CEDAW, overcoming customs and traditions, creating mechanisms for women empowerment, the CEDAW reservations, the protection of temporary workers and realising gender equality. These themes were also reviewed. Hence, an analytical process was employed for the qualitative analysis.

## **4.1 A discussion and analysis of the interview findings**

The interviews provided detailed and rich insights about the manner in which those who are practically engaged with the topic of gender inequality in the UAE perceive the issue and this helped understanding the larger picture, especially against the background of the applicable literature.

### **4.1.1 The principal findings and the applicable literature**

The respondents generally agreed that the UAE has substantially modernised itself and during this process women have also been empowered to become equal partners in various different fields. Hence, despite the fact that the UAE was only founded in 1971, the state has become

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<sup>11</sup> Also see K. Krippendorff, *Content Analysis: An Introduction to its Methodology* (London, SAGE Publications 2012)

<sup>12</sup> C. Howell Major, M. Savin-Baden, *An Introduction to Qualitative Research Synthesis, Managing the information explosion in social science research* (Abingdon, Routledge, 2010) 63; G. Guest, K. M. MacQueen, *Handbook for Team-Based Qualitative Research* (Plymouth, Alamira Press, 2008) 143

one of “*the most modern countries in the world.*”<sup>13</sup> As part of the UAE’s desire to become a global leader, it has embraced its international obligations and has therefore ratified various Conventions, including to promote the rights of women.<sup>14</sup> The respondents confirmed that ratification of the important CEDAW was with a clear understanding that social progress is an important component of the overall development that the UAE envisaged for itself as a modern country. This has resulted in the UAE accepting what effectively constitutes “*a universal bill of rights for women*” to ensure gender equality, whilst nonetheless acknowledging that measures still have to be taken to achieve the goal of gender equality in accordance with the Sharia.<sup>15</sup> All respondents agreed that since the ratification of the CEDAW in 2004, substantial progress has been made to empower women. Yet already before accession to the CEDAW, the UAE had taken steps to improve the position of women and, for instance, already in 2002, UAE girls outperformed boys academically.<sup>16</sup> Also, whilst in 1995, only 13% of the working population were females and which also includes migrant workers, this increased by 12% in 2004.<sup>17</sup> Recent statistics also confirm that women have been empowered to become partners in all sectors, though unemployment and under-representation, especially in leadership roles, are still endemic.<sup>18</sup> However, the respondents considered that over time customs and traditions, which facilitate gender discrimination, will diminish in importance, but acknowledged that these still inhibit change.

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<sup>13</sup> International Business Publications, *United Arab Emirates, Country Study Guide, Strategic Information and Developments* (Washington DC, International Business Publications 2013) 198

<sup>14</sup> The Hours of Work (Industry) Convention 1982, the Equal Remuneration Convention 1997, the Convention concerning Night Work of Women Employed in Industry 1948 and the Convention on Minimum Age 1998, the CEDAW and the International Convention of Child Protection 2004: UAE Interact, European press hails Sheikha Fatima's initiatives, the 2nd Arab Women Organisation Conference, 2008 <<http://www.uaeinteract.com/french/news/default.asp?ID=392>> accessed 25th July 2014

<sup>15</sup> N.9, 227

<sup>16</sup> L. Bartlett, A.Ghaffar-Kucher, *Refugees, Immigrants, and Education in the Global South: Lives in Motion* (Abingdon, Routledge 2013) 182

<sup>17</sup> UAE Ministry of Planning, Central Statistical Department, 1995 Population Census; cited from C. Nelson, UAE National Women at Work in the Private Sector: Conditions and Constraints, Centre for Labour Market Research & Information, 2004, 1-44, 5 <<http://www.zu.ac.ae/infoasis/modules/mod8/business/documents/uaenationalwomenatworkintheprivatesector.pdf>> accessed 19th October 2014

<sup>18</sup> P. Gupte, *Dubai: The Making of a Megapolis* (New Delhi, Penguin Books India Pvt Ltd 2011) 288

All respondents agreed that effective mechanisms have been created for women to enforce the right to be treated equally, as enshrined in the constitution and as further transposed by virtue of various laws. Women can therefore enforce their rights through the courts and additionally submit complaints to all government bodies. Yet the literature also highlights that discriminatory laws still exist.<sup>19</sup> Additionally, it was explained that various institutions, such as the National Committee to Combat Human Trafficking and shelters, had been established.

It was thought that these complaint mechanisms and institutions were effective, but that more awareness should be raised and that statistics should be published and that the resolution of complaints should be analysed, as part of an ongoing process to continuously improve the complaint mechanism. The literature also highlights that statistical evidence is crucial, including about cases in which laws designed to promote gender equality, are being enforced and that the publication of reports, which explain the statistics are an essential tool to promote gender equality.<sup>20</sup>

The respondents thought that as UAE society is undergoing rapid change, it is likely that the CEDAW reservations will be reviewed and possibly withdrawn, so long as Sharia compliance is nevertheless guaranteed. However, as already demonstrated by the enormous progress which has been made over the years in terms of women empowerment in the UAE, the way in which the Sharia has been interpreted has also changed. For instance, women and men can work together, women are no longer solely confined to the private sphere, can pursue education, work and move freely without a male companion when they leave the

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<sup>19</sup> Freedom House, *Women's Rights in the Middle East and North Africa: Citizenship and Justice* (Oxford, Rowman & Littlefield Publishers Inc 2005) 315-316

<sup>20</sup> C. Verger, *Holy Academia* (Xlibris Corporation 2010) 17

house. The adoption of a more modern interpretation of the Sharia may therefore make it possible in the future to fully align UAE laws with that of the CEDAW. Yet it was also pointed out that the reservations had been carefully studied at the time of the ratification of the CEDAW. These reservations had been entered since it was considered that the Sharia perceives that men and women still fulfill distinct roles, which are complementary.<sup>21</sup>

Moreover, in excess of 85% of the population are foreign residents, out of which 98% work in the private sector, of which many are temporary workers.<sup>22</sup> There have been negative reports about temporary workers being exploited and hardly being able to afford the basics of life.<sup>23</sup> Domestic workers are also often prone to sexual exploitation, have substandard working conditions face and other abuse.<sup>24</sup> The UAE has therefore adopted many laws and regulations to improve the situation and is in the process of passing even more laws. It has also set up field investigation teams to enforce these laws and created courts to enforce these rights. The respondents therefore thought that the government has been very proactive. They pointed out that supply and demand side economics and the open economy approach and resultant lack of money by many temporary workers make it nevertheless difficult to realise *de facto* gender equality. The unwillingness of some sending states to agree minimum wages and the often poor education were all identified as hurdles to protect temporary workers. However, the literature also highlights that there is a pressing need to adopt legislation to

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<sup>21</sup> C. Morrow, T. A. Fredrick, *Getting In Is Not Enough: Women and the Global Workplace* (Baltimore, The Johns Hopkins University Press 2012) 189

<sup>22</sup> International Business Publications, *United Arab Emirates, How to Invest, Start and Run Profitable Business in the UAE Guide, Practical Information, Opportunities, Contacts* (Washington DC, International Business Publications 2014) 74

<sup>23</sup> L. Allen, Dark side of the Dubai dream, BBC, 2009 <[http://news.bbc.co.uk/2/hi/uk\\_news/magazine/7985361.stm](http://news.bbc.co.uk/2/hi/uk_news/magazine/7985361.stm)> accessed 25 July 2014

<sup>24</sup> R. Sabban, United Arab Emirates: Migrant Women in the United Arab Emirates, The case of female domestic workers, Gender Promotion Programme, International Labour Office, Geneva, 1-62, 3 <[http://www.biblioteca.cij.gob.mx/Archivos/Materiales\\_de\\_consulta/Migracion/Articulos/ingles7.pdf](http://www.biblioteca.cij.gob.mx/Archivos/Materiales_de_consulta/Migracion/Articulos/ingles7.pdf)> accessed 25 July 2014



particularly protect female domestic workers, as Article 3(c) of the current Labour Law<sup>25</sup> excludes domestic workers from its protective safeguards.<sup>26</sup>

All respondents agreed that many laws and international conventions have been adopted to realise gender equality. Undoubtedly, the UAE is leading amongst the Arab countries when it comes to gender equality, but the Gender Gap Report 2015 still ranks the UAE at the 119th place, which is four places down from 2014.<sup>27</sup>

#### 4.1.2 The CEDAW

The following themes, categories and sub-categories were identified in relation to the questions dealing with the CEDAW, its impact and the influence by the international community and the progress, which has been made.

**Table 4.1 The themes relating to the CEDAW**

	<b>Themes</b>	<b>Categories</b>	<b>sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>
<b>1</b>	Adoption of best practices, including human rights	Becoming more developed	Confirmation of already adopted state policy	Adoption, amendment of various laws	Modernisation of state	Business hub
<b>2</b>	Realise women empowerment	Equal opportunities	Additional protection	Positive discrimination	Give way to demands of society	More rights
<b>3</b>	Align practices with international standards	Be proactive	Cooperate with international community	Respond to criticism		
<b>4</b>	Lots of progress made	More females in higher education than men	Females in all sectors	Females part of political process	UAE scores high on global Social Progress Index & improves global Gender Gap Report	Achieved equality between women and men to very high degree

<sup>25</sup> Article 3(c) of the UAE Labour Law Federal Law No. 8 of 1980 provides that “the provisions of this Law are not applicable to the following categories....c) Domestic servants working in Private residences and the like...”

<sup>26</sup> Human Rights Watch, UAE: Proposed Law to Benefit Domestic Workers, 11 May 2012 <<http://www.hrw.org/news/2012/05/11/uae-proposed-law-benefit-domestic-workers>> accessed 18th October 2014

<sup>27</sup> World Economic Forum, It's Back to the Future as Women's Pay Finally Equals Men's...From 2006, 2016 <<http://reports.weforum.org/global-gender-gap-report-2015/press-releases/>> accessed 1st March 2016

Since the adoption of the CEDAW in 1979, the Convention has been widely ratified by 187 countries.<sup>28</sup> When the UAE signed the Convention in 2004, all respondents agreed that this was important to advance social progress and to send out a strong signal that the UAE government considers respecting human rights in accordance with international human rights treaties a priority. The respondents identified that the main reasons for the ratification of the CEDAW were to adopt best practices and to highlight that the UAE firmly believes in equality between men and women. It was pointed out that the UAE seeks to work together with the international community. Respondent four highlighted that the CEDAW was ratified to give additional protection to women. Ratification was also viewed as confirmation that the state does not accept any form of discrimination against women and to uphold the rights of women and to ensure that women are active partners. It was generally thought that becoming a modern state requires giving special attention to women to achieve this pursuit.

The UAE signed CEDAW in 2004 with a clear understanding that social progress is an important component of the overall development that the UAE envisaged for itself as a modern country. From an international perspective, the government also became aware that respecting human rights in accordance with international human charters and customs is a priority, and it looked to meet this priority at all levels, including signing of CEDAW. In this context, respondent seven explained *“in an otherwise traditional and conservative society, the government began to invest its energies to modernise laws and practices wherever required and according to changing times.”*

Various respondents noted that the UAE respects international obligations and international human rights. The fact that gender equality is closely related to human rights was made clear

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<sup>28</sup> Womens Treaty, CEDAW 2014, Frequently asked questions, 2014 <<http://www.womenstreaty.org/index.php/about-cedaw/faq>> accessed 27th July 2014; M. L. McCue, *Domestic Violence: A Reference Handbook* (2nd edn, Santa Barbara, ABC-CLIO Inc 2008) 84

in the 1995 Beijing Platform Mission Statement, which announced that “*Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace.*”<sup>29</sup>

The respondents all thought that much progress had been made to remove existing barriers for women and most considered that this was not only attributable to the ratification of the CEDAW. For instance, it was pointed out that the government had encouraged female education prior to the CEDAW ratification. Research also confirms that it has become much more socially accepted for women to be educated.<sup>30</sup> It was emphasised that for the last forty-three years, there has been substantial development, and programs have been adopted to increase women's participation. The establishment of the General Women's Union<sup>31</sup> in 1975 was considered an important driver of progress in the field of health, education and employment.

Yet it was also explained that women have always played an important role within society, as they worked in trade and agriculture and that whilst the CEDAW was important to promote the development of the role which women play, the most important aspect for Emirati women and national institutions is to share this vision in order to realise the envisaged change. Consequently, it was perceived that the CEDAW ratification was largely a symbolic act. In this context, respondent nine pointed out that the changing role, which Emirati women play, started a long time before the ratification and noted that she herself worked as a teacher and then became a director of a school before assuming her present role and stated that nowadays

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<sup>29</sup> N.9, 227

<sup>30</sup> L. J. Kemp, Progress in female education and employment in the United Arab Emirates towards Millennium Development Goal (3): gender equality, 15(4) *Foresight* 2013, 264-277

<sup>31</sup> The General Women's Union has been established and chaired by the wife of the State's former president, H.H. Sheikha Fatima bint Mubarak, pursuant to the Federal Law No. (6) of 1974 and it represents women throughout the State. It is responsible for promoting women religiously, culturally and socially, so that they can participate in the national and Arab renaissance in line with the values and traditions of the true Islamic religion - Extending women activity to include all emirates of the State - supporting overall national renaissance and contribution in its success by shouldering responsibilities and performing duties suitable for women.

females work in the private and public sector. Hence, this respondent did not perceive the CEDAW as the main reason, but instead thought that women have just realised that they can undertake a lot of work. However, not all agreed with this view and highlighted that in relation to employment, women can still only choose from a narrow scope of occupations, but can particularly work within the public sector. This was considered an issue and it is therefore important that this is further investigated during the subsequent research stage.

Furthermore, the respondents pointed out that since the CEDAW ratification women have been particularly empowered in the political arena. It was explained that in November 2004, the first female minister, Sheikha Lubna Al-Qasimi, had been appointed to the Cabinet. Also, in the 2006 UAE elections, 65 out of 452 candidates were women and 17.7% were members of the Electoral College.<sup>32</sup> Whilst in the elections only one woman was appointed, eight others were nominated by the government to hold one of the 40 seats of the Federal National Council, so that 22.5% of seats were held by women, which exceeded the global average of 17%.<sup>33</sup> In 2008, the number of women ministers then increased to four<sup>34</sup> and to eight in 2016. In 2011, the political participation was enlarged to 135,308 electorates of which 46% were women.<sup>35</sup> In 2011, from the approximately 450 candidates, 84 were women and one woman was directly elected by popular vote.<sup>36</sup> Also, six more women were nominated as members of the Federal National Council in 2011, representing 17.5%.<sup>37</sup> Additionally, four female

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<sup>32</sup> K. Augsburg, I. A. Claus, K. Randeree, *Leadership and the Emirati Woman* (Munster, Lit Verlag 2009) 23

<sup>33</sup> Oxford Business Group, *The Report: Abu Dhabi 2013* (Oxford, Oxford Business Group 2013) 16

<sup>34</sup> K. Katzman, *United Arab Emirates (UAE): Issues for U. S. Policy* (Washington DC, Congressional Research Service 2010) 5

<sup>35</sup> UAE Ministry of State for Federal National Council Affairs, Federal National Council Elections 2011, 2012 <<http://www.mfnca.gov.ae/en/Pages/elections2011.aspx>> accessed 5th November 2014

<sup>36</sup> Gulf News Report, FNC election winners accounted, 2011 <<http://gulfnews.com/news/gulf/uae/government/fnc-election-winners-announced-1.873914>> accessed 8th November 2014

<sup>37</sup> N.34

ministers were appointed to serve within the Cabinet, representing 17%.<sup>38</sup> Additionally, it was observed that political participation for women, including in respect of positions, which require travel, had particularly increased in recent years.

Also, it was pointed out that the first female judge and female ambassadors were appointed in 2008 and 2013 respectively. Respondent thirteen further highlighted that in December 2012 the Council of Ministers had issued its decision on mandatory participation of Emirati women as directors on boards of companies, agencies, and federal institutions. Hence, it has become part of the vision and strategy of the UAE government to consider women as main partners.

To highlight the impact of the government's efforts to promote gender equality, respondent seven explained that according to 2012 data *“66 percent of the government's workforce is made up of women, 30 percent being in senior positions, 15 percent in technical jobs (medicine, nursing and pharmacy), 15 per cent in the armed forces, customs and police, 37.5 percent in the banking sector staff, and about 12,000 businesswomen are running 11,000 investment projects worth Dh12.5 billion, and 77 per cent are students in higher education, the highest proportion in the world.”*<sup>39</sup>

It was further explained that a 2014 report found that the UAE ranks number one for treating women with respect<sup>40</sup> and that according to the global Social Progress Index, which is a holistic index prepared by leading international economists, the UAE was found to have the

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<sup>38</sup> Emirates24/7, Women, youth to play major role in FNC polls, 16 July 2011 <<http://www.emirates247.com/news/emirates/women-youth-to-play-major-role-in-fnc-polls-2011-07-16-1.407934>> accessed 8th November 2014

<sup>39</sup> Also see M. M. Al Serkal, Sky's the limit for Emirati women, Gulfnews.com, 2012 <<http://gulfnews.com/news/gulf/uae/society/sky-s-the-limit-for-emirati-women-1.1030969>> accessed 25th June 2014

<sup>40</sup> WAM, UAE is world's No.1 in respect for women, Fundamental truth of Emirati culture: Mohammed, Emirates 24/7, 2014 <<http://www.emirates247.com/news/government/uae-is-world-s-no-1-in-respect-for-women-2014-04-27-1.547165>> accessed 28th June 2014

lowest rate for homicide, violent crime and undernourishment and had the highest secondary education and overall ranked 37th on a global basis.<sup>41</sup>

A respondent also noted that since the ratification of the CEDAW, the Global Gender Gap Report found that progress had been made, as in 2006 the UAE only scored 0.5919 with 1 being the highest possible score and 0 the lowest, but that this had steadily increased to 0.6372 in 2013.<sup>42</sup>

Similarly, the United Nations (UN) Human Development Report found that out of 148 countries, which were assessed through the Gender Inequality Index, the UAE ranked 47th in 2014 and 17.5% of females were parliamentary members, more females had secondary or higher education than men and 46.5% of females work in comparison to 92% of men.<sup>43</sup>

It was also recently announced by the representative at the UN, Ambassador Lana Nussaibah, that gender equality forms part of the UAE's development objectives for post-2015.<sup>44</sup> It is therefore likely that further progress will be made over the coming decade. Overall, the respondents therefore considered that women's empowerment was particularly attributable to government initiatives, but acknowledged that the CEDAW had a positive influence.

The respondents generally recognised that the international community can put pressure on states, but that the UAE strives to advance development. As the UAE cooperates with the international community, it responds to demands, so long as this complies with Islamic

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<sup>41</sup> WAM, UAE ranks first in the world for respecting women, Gulfnews.com <<http://gulfnews.com/news/gulf/uae/government/uae-ranks-first-in-world-for-respecting-women-1.1325036>> accessed 28 June 2014.

<sup>42</sup> Also see UAE Interact, Women, 2014 <<http://www.uaeinteract.com/society/women.asp>> accessed 28th June 2014

<sup>43</sup> United Nations Human Development Reports, Gender Inequality Index, 2014 <<http://hdr.undp.org/en/composite/GII>> accessed 28 July 2014

<sup>44</sup> WAM, UAE affirms support for gender equality goals, Envoy to the UN reiterates commitment to a gender-sensitive development, Gulfnews, 2014 <<http://gulfnews.com/news/gulf/uae/government/uae-affirms-support-for-gender-equality-goals-1.1300749>> accessed 28 July 2014

Sharia law and public policy. Respondent ten stated “*there is no doubt that these organisations played a significant role*”. Equally, respondent eleven said that “*international organisations have a role in the empowerment of women in fields that were previously not possible in the UAE.*”

Yet it was emphasised that not all reports have got the same veracity, especially if written by NGOs, which use unreliable sources and more weight is given to reputable reports by international organisations. Also, NGOs often receive funding from Western countries and this has also resulted in a “*credibility crisis*”, as the donors often dictate the goals and this may result in reports not being neutral or taking a harsher approach towards certain countries.<sup>45</sup> This is because through their work, NGOs are exerting political power and affect policies and international relations.<sup>46</sup> It is therefore important to critically scrutinise reports, as NGOs often pursue the agendas of those who run and fund them.<sup>47</sup> Accordingly, it is important to not just assume that these are entirely independent bodies.<sup>48</sup> However, the problem with perceiving independent NGOs, including foreign NGOs, as a political and national threat which undermine the authority of the government is that it curtails civil society activism. Yet civil society activism together with international pressure advance policy adoption and state practices and thereby greatly enhance the general state discourse.<sup>49</sup> It is therefore a too narrow approach to promote *de jure* and *de facto* realisation of human rights in general, including women rights, only through government-led initiatives.<sup>50</sup> Instead it is essential that civil society, including independent NGOs, have the political freedom to

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<sup>45</sup> J. McGann, M. Johnstone, The Power Shift and the NGO Credibility Crisis, Global Policy Forum, January 2006 <<https://www.globalpolicy.org/component/content/article/176/31423.html>> accessed 8th June 2016

<sup>46</sup> J. McGann, M. Johnstone, 'The Power Shift and the NGO Credibility Crisis' (2005) 11(2) The Brown Journal of World Affairs, 159-172, 159.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> M. Hughes, M. L. Krook, P. Paxton, Transnational Women's Activism and the Global Diffusion of Gender Quotas, 59 *International Studies Quarterly* 2015, 357-372, 357

<sup>50</sup> B. Stachursky, *The Promise and Perils of Transnationalization: NGO Activism and the Socialization of Women's Human Rights in Egypt and Iran* (Abingdon, Routledge 2013) 209

operate. They must therefore be allowed to lobby for change. Hence, a certain degree of constructive criticism should be tolerated and not everything ought to be classified as dissent.<sup>51</sup> Otherwise, it is difficult for the government to ensure that discrimination against women is eradicated and real equality between the sexes are fully achieved.

However, this is not to say that the government has not listened and responded to criticism. A respondent gave as example, where the UAE government paid attention to the recommendation of the CEDAW Committee, the opening branches of shelter centers in Sharjah, Umm Al Quwain and Ras Al Khaimah. Another respondent also thought that many institutions and associations had been specifically created, which specialise in women's affairs and empowerment.

It was explained that since the UAE was positioning itself as a business hub, it realised that its image as a socially progressive country was important. As a result, it became important to reflect this through the various channels of international organisations and reports. In this context, respondent four also explained that the human development report 2007/2008 found that the UAE had gained the 29th rank for women empowerment.

Respondent twelve thought that the main driver for the promotion of gender equality was “*a national sense of the importance of building any change in accordance with the values and customs of the society.*” It was explained that the development of women's rights was particularly attributable to Sheikh Zayed and Sheikh Mohammed bin Rashid. It was further highlighted that the constitution and national laws promote the development of women's rights. Overall, the respondents emphasised that the government is committed to the pursuit of women empowerment and gender equality.

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<sup>51</sup> Amnesty International, “There Is No Freedom Here”, Silencing Dissent in the United Arab Emirates (UAE), 2014, 1-80, 5 <[https://www.amnesty.org.uk/files/mde\\_25.018.2014\\_-\\_there\\_is\\_no\\_freedom\\_here\\_-\\_silencing\\_dissent\\_in\\_the\\_united\\_arab\\_emirates\\_uae.pdf](https://www.amnesty.org.uk/files/mde_25.018.2014_-_there_is_no_freedom_here_-_silencing_dissent_in_the_united_arab_emirates_uae.pdf)> accessed 1st July 2017



Achieving equality was therefore identified as an important objective of the UAE government, which is keen to build the capacity of women, so that they can play an important role in the development of society. In terms of women rights, it was highlighted that the constitution is a very important source since it provides for equal opportunities. It was stressed that the principle of equal opportunities is firmly entrenched in relation to employment opportunities, education, health and social welfare and parliamentary and leadership positions and that merit is the main criterion. It was noted that positive discrimination standards have been used to promote equal opportunities for women. For instance, more women were appointed as members of the Federal National Council and the Cabinet. Yet it was also observed that the application of regulation and laws, which promote equal opportunities, can still constitute practical problems in some cases.

Respondent eight highlighted that the subject of equality between men and women is still debated and varies from Emirate to Emirate and that it is considered difficult to apply this concept like European countries do. It was explained that the amendments of the social security and maternity leave laws all promote equal opportunities, though the law regulating pensions of women after death could still be further improved. It was noted that whilst it was thought that women had been given rights, these rights have not yet been fully utilised by women and as example it was pointed out that not so many women ran for membership in the National Federal Council elections.

In contrast, respondent ten disagreed and stated that the UAE has achieved the principle of equality between men and women because both have equal rights in all fields, women can equally progress with their careers and receive promotions, the salaries are the same and laws

have been adopted to provide good working environments, including by providing child care, maternity leave, breastfeeding hours, to mention a few.

Respondent seven pointed out that women have outnumbered men in obtaining higher qualifications and referred to an article and stated that “*women are responding with strong academic performance, according to the Economist Intelligence Unit (EIU).*”<sup>52</sup>

Overall, it was thought that the state pays great attention to achieving gender equality, especially in the economic sphere and at the governmental level.

Respondent thirteen also corroborated that a “*society, which misses the social and economic participation of women, is a society which misses half of the community's efforts in the development process.*”

#### 4.1.3 Overcoming customs and traditions

The following themes, categories and sub-categories were identified in relation to the questions dealing with customs and traditions, educational and media programs to eliminate practices, which affect political participation and challenges to adopt national gender equality laws.

**Table 4.2 The themes relating to customs and traditions**

	<b>Themes</b>	<b>Categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>
<b>1</b>	Culture is changing	Women can travel alone	Women can work	More women study	Represented in all sectors	
<b>2</b>	Promotion of political participation	Workshops, campaigns & media	Women in Cabinet and members of			

<sup>52</sup> M. Swan, Emirati women ‘leading the way in previously male-dominated fields’, 2014 <<http://www.thenational.ae/uae/education/emirati-women-leading-the-way-in-previously-male-dominated-fields>> accessed 28th June 2014; SyndiGate.info, Paying off! Emirati women outdoing their male counterparts in science and technology! 2014 <<http://www.albawaba.com/business/uae-education-investments-563833>> accessed 28th June 2014

		programs	the FNC			
3	Traditions/customs still conservative	Women still fulfill a traditional role	Some Emirates stricter	Dependent on family	Women & men different	Tribal society
4	Female employment	Not many females in leading positions	Women directed to take up particular jobs	Despite education, often do not work		

The respondents thought that customs and traditions are changing due to the rapid modernisation of the state. Since the first modernisation program started around the 1950s with the Al Maktoum Bridge and the Dubai international airport in 1959, the UAE has transformed its former pearl fishing industry fundamentally.<sup>53</sup>

Yet it was noted that women have always played an important role, even before the discovery of oil. Respondent twelve stated that part of the culture is that there is cooperation and partnership between men and women. The respondents informed that the UAE government and especially Her Highness Sheikha Fatima Mubarak, who heads the Women’s Union, which was created in 1975, has sought to eliminate practices that affect women’s work. Additionally, various women associations have been created in Dubai, Sharjah, Ajman, Umm Al Quwain and Ras Al Khaimah to promote the rights of women.

Nonetheless, it was explained that the fact that the UAE has a tribal society results in customs, traditions and norms still being followed. Hence, society is conservative and “tribalism” is still prevalent.<sup>54</sup> Respondent nine stated that “*many of the families...at the current time allow women to receive education but do not allow them to work...*” and that it requires time to change this. Respondent eight attributed habits as an inhibitor of change. It was also noted that some Emirates adhere more strongly to customs and traditions than

<sup>53</sup> S. Lis, *Dubai, from the scratch until today - A new vision of tourism?* (Norderstedt, GRIN Verlag 2009) 3

<sup>54</sup> P. Mahdavi, *Gridlock, Labor, Migration, and Human Trafficking in Dubai* (Stanford, Stanford University Press 2011) 48

others, for instance, Dubai, which is more cosmopolitan. Accordingly, women's freedom often depends on the particular Emirate and family. For instance, the old custom that a woman cannot travel abroad alone, but has to bring a Mahrem<sup>55</sup> and which was enforced by the family, is no longer commonly practised. Nowadays more women are able to travel alone, highlighting that the freedom, which Emirati women enjoy, has greatly increased. It was also considered that customs and culture are deeply rooted within the hearts of some women and that this makes change more difficult. For example, many women freely choose to stay and look after their children when they are born, as opposed to going to work.<sup>56</sup>

Yet it was explained that the government's vision to modernise UAE society has made it possible for women to work and access sectors, which were previously the exclusive domain of men. Respondent fourteen disagreed that women can freely enter any sector and stated that women are frequently directed to certain disciplines of study and certain jobs exclusively. Hence, he thought that the roles were more limited for women. It was also pointed out there were not many women in leadership roles and that many still choose to remain at home, despite having received education.

Nevertheless, the majority of respondents thought that by promoting education, customs and traditions will become overcome. Already it has become accepted for women to pursue professional careers. This in turn has changed the traditional image and the social roles and it was thought that over time, this will erode the remaining customs and traditions, which constitute a barrier to women empowerment. However, the interviews also confirmed that traditions and customs still play a part because traditions are being preserved, despite the

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<sup>55</sup> A "Mahrem " is a Muslims term use to describe a man who is in a legal relationship according to religion and/or society with a Muslim woman he could be her brother, husband, father, etc.

<sup>56</sup> G. Crocetti Benesh, *Culture Shock! A Survival Guide to Customs and Etiquette, United Arab Emirates* (Tarrytown, Marshall Cavendish Corporation 2010) 62

country's modernisation program.<sup>57</sup> Accordingly, overcoming “*deep-rooted stereotypes of women's roles in society*”, which are not based on the Sharia, but are attributable to the culture, is therefore important to ensure that women can become equal partners in all fields, as envisaged by the CEDAW.<sup>58</sup>

The UAE government has particularly initiated various educational and media programs to eliminate traditions and customs that affect women's political participation. It was explained that the Ministry of State for the Affairs of the Federal National Council hosted various political workshops for women and the Women's Union ran projects to enhance the role of female parliamentarians and organised public seminars in which the importance of women's political participation was emphasised.

Respondent thirteen further explained that the following associations seek to eliminate traditions and customs: “*the Women's Association in Dubai, the Union Women's Association in Sharjah, the Um Al Moamenin Association in Ajman, the Women's Association in Umm Al Quwain and the Women's Association in Ras Al Khaimah*” and that, for example, the project “*Know Your Rights*” was launched and various workshops and campaigns were held and a booklet was published to educate females about their rights, including about alimony, custody and women's rights as rational consumer. Respondent eight pointed out that he provided workshops during the second election campaign. The women foundations have also cooperated with the Ministry of Foreign Affairs and the Women Union and the Strategic Studies Centre and other ministries.

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<sup>57</sup> Oxford Business Group, *The Report: Sharjah 2008* (Oxford, Oxford Business Group 2008) 21

<sup>58</sup> International Federation for Human Rights, Women's Rights in the United Arab Emirates (UAE), Women's Rights in the United Arab Emirates (UAE), Note submitted to the 45<sup>th</sup> Session of the Committee on the Elimination of Discrimination Against Women (CEDAW) on the occasion of its first examination of the UAE, January 2010, 1-7, 4 <[http://www.fidh.org/IMG/pdf/UAE\\_summaryreport\\_for\\_CEDAW.pdf](http://www.fidh.org/IMG/pdf/UAE_summaryreport_for_CEDAW.pdf)> accessed 27th July 2014

Women were also sent to parliaments in different countries, for instance, to Jordan. A leader program was run in Dubai. It was also noted that the public sector has encouraged promotion. An awareness program has been run. Various programs have been shown on TV and in the media and in newspapers. Yet it was noted that these programs could be even more far-reaching, but undoubtedly, all these initiatives have promoted the political participation of women.

Nonetheless, it is also important to advance gender equality by adopting national gender equality laws. The majority of respondents also thought that such laws could be adopted, so long as these do not conflict with the Sharia. However, it was considered important to undertake a review of state policy and the relevant Islamic provisions to clear up any misconceptions about the religious teachings and reasons. Furthermore, respondent eight thought that *“Islamic law and public policy of the state is one of the most important challenges.”* Hence, the application and interpretation of laws was perceived as an issue.

Overall it was thought that the constitution and the laws do not contain any discriminatory statements. In contrast, the literature highlights that whilst the constitution affirms equal treatment of all, it does not deal with gender-based discrimination and instead all laws are based on the Sharia.<sup>59</sup> Whilst this omission in the constitution does not necessarily constitute a problem, it is important to overcome *“the traditions of a patriarchal society.”* This is further underscored by the interviews since it was noted that in practice men have more liberties than women, for instance, polygamy is legal. Also, men can discipline women and limit their ability to freely move. However, despite these challenges, the respondents thought that it is possible to adopt national gender laws.

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<sup>59</sup> OECD, *Atlas of Gender and Development, How Social Norms Affect Gender Equality in Non-OECD Countries* (OECD 2010) 170

#### 4.1.4 Creating mechanisms for women empowerment

The following themes, categories and sub-categories were identified in relation to the questions dealing with complaint mechanisms, their effectiveness and additional important steps, which should be taken.

**Table 4.3 The themes relating to mechanisms for women empowerment**

	Themes	Categories	Sub-categories	Sub-categories	Sub-categories	Sub-categories
1	Courts	Women can enforce their legal rights				
2	Complaint mechanisms	All government institutions accept complaints	New human rights departments set up	Effective, but more awareness is needed	No official statistics & reports	Monitor effectiveness of complaint mechanisms
3	Support through women organisation	Set up shelters				
4	More legislation	Removing the CEDAW reservations				
5	Police complaints confidential					

In terms of the available complaint mechanisms for women to enforce their rights, participant eight pointed out that a distinction has to be drawn between the following: *“in case there is a violation of a particular law, women may resort to the courts....in case there is not a violation of the law, there are formal and informal channels.”* Other respondents also explained that women can enforce their rights through the courts. This is because of Article 42 of the UAE constitution, which provides that *“Every person shall have the right to submit complaints to the competent authorities, including the judicial authorities concerning the abuse or infringement of the rights and freedom stipulated in this Part.”* Yet the literature highlights that the following laws do not promote gender equality viewed from the lens of Western

standards and the CEDAW:<sup>60</sup> For instance, Article 56 of the Personal Status Law 2005 provides that wives have to be obedient to their husbands, are responsible for the house and for bringing up the children. Women are only granted custody for their boys until they reach 10 years of age and for girls until they reach 13 years of age. Also, when Emirati women want to marry a foreigner, they have to obtain a licence and whilst Emirati men can pass their citizenship to their foreign wife, Emirati women cannot do the same. Women can also only inherit 1/3 pursuant to Articles 321-328 of the Personal Status Law. Emirati women can be requested to return to their husband if they leave him under Article 71 of the Personal Status Law. Whilst Article 34 of the constitution states that all Emirati citizens can freely select their profession, trade or occupation, Articles 27, 29 and 34 of the Labour Laws provides that women cannot work at night or take on morally or physically adverse, hazardous, arduous or work not authorised by the Ministry of Labour and the guardian or husband has to also approve this. Yet it is also important to understand these perceived differences from the perspective of the Sharia.

The respondents also explained that apart from enforcing rights through the courts, complaint mechanisms have been established at all public institutions and human rights departments have been created. Complaints are accepted from employees and clients. Hence, women can raise complaints, for instance, with the Cabinet, the Federal National Council, the Ministry of Presidential Affairs, the Institution of Family Development, the Women Union in cooperation with the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Interior and the Emirati Human Rights Foundation, the human rights department at the Judicial Department

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<sup>60</sup> International Federation for Human Rights, Women's Rights in the United Arab Emirates (UAE), Women's Rights in the United Arab Emirates (UAE), Note submitted to the 45<sup>th</sup> Session of the Committee on the Elimination of Discrimination Against Women (CEDAW) on the occasion of its first examination of the UAE, January 2010, 1-7, 4-5 <[http://www.fidh.org/IMG/pdf/UAE\\_summaryreport\\_for\\_CEDAW.pdf](http://www.fidh.org/IMG/pdf/UAE_summaryreport_for_CEDAW.pdf)> accessed 27th July 2014



in Abu Dhabi and the Human Development and Human Rights Association in Dubai and any other ministry.

Respondent ten further explained that *“specialised offices have been founded in departments of labour disputes in the sector of the Nationality and Residency, to receive workers' complaints...the Ministry of Labour has set up a plan to monitor the protection of wages and hours of work, and [to]...establish offices to protect wages...for the government sector, committees for women working in the federal government have been formed, to meet the needs of women...[and] in the fields of women protection, the state created many complaints mechanisms to report violence and abuse [and set up] shelter centres [and] hotlines to receive complaints...”*

It was also noted that the women's committees and associations offer support and that the police have adopted an electronic system to ensure that the identity of complainants remains confidential. Live broadcasts can also be used to voice problems. Whilst it was thought that these mechanisms were effective, it was highlighted that women have to be made more aware of these mechanisms and more follow-ups and monitoring have to take place. Hence, lack of knowledge was considered the main reason, which currently undermines effectiveness. Respondent thirteen considered it important to collect and publish official statistics and to analyse what solutions were reached in response to complaints. It was also pointed out that these mechanisms have to be continuously further developed in accordance with the demands by women and women associations.

Apart from the complaint mechanisms, it was noted that more legislation could be adopted and more steps could be taken to prevent sex discrimination. Educating women about their

rights was considered particularly important. Respondent fourteen thought that it is important to “give greater powers to the relevant institutions of civil society, such as the national committee.”

In the UK, the Equality Act 2010 outlaws sex discrimination within the employment context, including discriminatory job adverts,<sup>61</sup> whereas in the UAE, it is not illegal, for instance, to have an advert for “an attractive Russian”, as an open market policy is being pursued.<sup>62</sup> According to the UK Equality Act 2010, women can pursue claims for sex discrimination and seek compensation at Employment Tribunals, as also mandated by European Law<sup>63</sup> and can also pursue equal pay claims when there is sufficient evidence that men are paid more for comparable like work.<sup>64</sup> Statistics and reports are also being published about these claims.<sup>65</sup> It was also suggested by the respondents that the public institutions, which receive complaints, publish statistics and reports, so that it can be assessed whether these complaints are being effectively dealt with. Hence, a process of follow-ups and monitoring should be adopted, also to verify the content of international reports. Any highlighted issues, which discriminate women, should be remedied through appropriate actions, programs and legislation.

#### **4.1.5 The CEDAW reservations**

The following themes, categories and sub-categories were identified in relation to the questions dealing with the withdrawal of the CEDAW reservations.

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<sup>61</sup> H. Collins, *Employment Law* (2nd edn, Oxford, Oxford University Press 2010) 56

<sup>62</sup> M. Croucher, Job advert discrimination not illegal in UAE, *The National*, 2013

<<http://www.thenational.ae/news/uae-news/job-advert-discrimination-not-illegal-in-uae>> accessed 29 July 2014

<sup>63</sup> Also see Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, I. Smith, A. Baker, *Smith & Wood's Employment Law* (11th edn, Oxford, Oxford University Press 2013) 349; also see G. Razzu, *Gender Inequality in the Labour Market in the UK* (Oxford, Oxford University Press 2014) 31

<sup>64</sup> C. Turner, *Unlocking Employment Law* (Abingdon, Routledge 2013) 290

<sup>65</sup> Equality Law, Tribunal statistics: discrimination claims fall by a quarter, 2014 <<http://www.equality-law.co.uk/news/2470/66/Tribunal-statistics-discrimination-claims-fall-by-a-quarter/>> accessed 29th July 2014

**Table 4.4 The themes relating to the CEDAW reservations**

	<b>Themes</b>	<b>Categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>
<b>1</b>	Withdrawal of reservations	No objections	Likely in light of changing time	Possible so long as compatible with Sharia	Being studied
<b>2</b>	Retaining the reservations	Reservations were carefully studied at the time	Reflect social & cultural heritage		

It was thought that in light of changing times and the thus rapid development of UAE society, it was likely that the CEDAW reservations will be withdrawn in the future, particularly because new policies are required to keep pace. It was further explained that the UAE is actively seeking to support international conventions, as it wants to ensure that internationally recognised best practices are adopted to guarantee the best quality of all life for all. For this purpose, the legislator regularly reviews legislation, including the existing reservations. However, the respondents pointed out that, whilst the government is currently reconsidering whether the reservations can be withdrawn and legislation can be amended, it nevertheless has to be ensured that this is compatible with the Sharia and that the UAE’s social and cultural heritage is respected.

Respondent thirteen gave the following examples where legislative amendments already took place: *“inheritance and testimony provisions, guardianship and all matters relating to marriage and family relations during marriage and annulment and the right to choose a family title.”* Respondent fourteen further explained that *“the UAE took the initiative, for example, the state granted nationality to a number of sons of women citizens, despite its reservation to Article 9 of the Convention, which deals with the right of acquiring nationality.”* These legislative amendments make it arguably easier to withdraw the reservations. However, respondent twelve also made it clear that when the Convention was

ratified these reservations were carefully studied because these conflicted with the cultural and social heritage of the UAE and that it was therefore unlikely that these would be changed. Yet Mayer points out that such a view is misperceived since governments pursue policies and not religious beliefs.<sup>66</sup> Whilst they may consider religious views, their policies are affected by strategic interests.<sup>67</sup> For example, they may argue that Islam requires that women are subjugated since granting women human rights may be opposed by fundamentalists or to consolidate the legitimacy of their regime by showing allegiance to the Sharia or to strengthen national identity.<sup>68</sup>

Also, the problem with entering several reservations, including in respect of Article 16 which commands that discrimination against women in respect of family relations and marriage is eradicated, is that vital provisions of the CEDAW are being rejected.<sup>69</sup>

Indeed, the UAE provided a more detailed explanation in respect of the reservations in comparison, for example, to Saudi Arabia, which simply stated that it does not feel compelled to adhere to any of the CEDAW provisions, which contravene the Sharia or Islam.<sup>70</sup> In respect of Article 2(f) of the CEDAW, the UAE explained that “*it violates the rules of inheritance established in accordance with the precepts of the Shariah.*” In relation to Article 9(2) it was considered that nationality is an internal matter.<sup>71</sup>

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<sup>66</sup> A. E. Mayer, ‘Religious Reservations to the Convention on the Elimination of all Forms of Discrimination against Women: What Do They Really Mean?’ In C. W. Howland (eds), *Religious Fundamentalisms and the Human Rights of Women* (New York, Palgrave Macmillan 1999) 105

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> A. E. Mayer, ‘Religious Reservations to the Convention on the Elimination of all Forms of Discrimination against Women: What Do They Really Mean?’ In C. W. Howland (eds), *Religious Fundamentalisms and the Human Rights of Women* (New York, Palgrave Macmillan 1999) 105

<sup>70</sup> A. Vrdoljak, *The Cultural Dimension of Human Rights* (Oxford, Oxford University Press 2013) 216

<sup>71</sup> E. Y. Krivenko, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (Leiden, Koninklijke Brill NV 2009) 174

Also, in respect of Article 15(2) of the CEDAW, the UAE made clear that this violates “*the precepts of the Shariah.*” In respect of other Articles, for instance, Article 16, the UAE noted that it will endeavour to adhere to the Articles “*insofar as they are not in conflict with the principles of the Shariah*” and additionally explicated that “*the payment of a dowry and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property. The Shariah makes a woman's right to divorce conditional on a judicial decision, in a case in which she has been harmed.*”<sup>72</sup> This is also rooted in the view that “[t]he sharia honours women and makes the man responsible for the financial support of the woman, whether his wife, daughter, mother or sister, not requiring the wife to support either herself or her family, even if she is wealthy.”<sup>73</sup>

However, despite these explanations, the Government of the Federal Republic of Germany observed that whilst it is clear that the UAE considers that Sharia takes precedence over the CEDAW in relation to the reservations to Article 2(f), Article 15(2) and Article 16, it is unclear to what extent the UAE feels obligated to comply with the Convention.<sup>74</sup> In other words, the extent of these reservations is unclear, as one can interpret the Quran in many different ways.<sup>75</sup> This is because there exist no unified conceptualisation of what the Sharia commands in relation to women rights, as in some Muslim countries Islam is interpreted

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<sup>72</sup>N.52, 217

<sup>73</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 58

<sup>74</sup> UN Women, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2000-2009 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 29th July 2014

<sup>75</sup> A. E. Mayer, Islamic Reservations to Human Rights Conventions, A Critical Assessment, 15 *Recht van de Islam* 1998, 25-35, 26

more progressively than in others.<sup>76</sup> Consequently, discrimination against women is permitted in various spheres.<sup>77</sup> This runs counter to the purpose of the CEDAW, which commands that women and men are treated equally and specifies several distinct fields where women should not be treated less favourably.<sup>78</sup>

The Committee of the CEDAW also considered that the UAE should “*withdraw its reservation to article 16...and...introduce legislative reforms to provide women with equal rights in marriage, divorce, property relations, the custody of children and in inheritance.*”<sup>79</sup>

This is because reservations in respect of Article 16 contravene the main aim of the CEDAW.<sup>80</sup> Also, the Government of the Federal Republic of Germany highlighted that the reservations in relation to Article 9(2) and Article 15(2) appear incompatible with the objective of the Convention and that this breaches Article 28(2) of the CEDAW, which states that this is not permissible.<sup>81</sup> Hence, from the perspective of the West, for example, Article 16, which deals with being entitled to equal treatment in respect of family life and marriage, and Article 2, which deals with practices and laws, which discriminate against women, the effect of the reservations is that the main aim of the CEDAW is being significantly undermined.<sup>82</sup> This is also highlighted by reports, for instance, about a foreign women being jailed for having extramarital sex after reporting that she had been raped.<sup>83</sup>

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<sup>76</sup> Ibid, 29

<sup>77</sup> Ibid, 26

<sup>78</sup> Ibid, 28

<sup>79</sup> Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/1, 5 February 2010, para.48

<sup>80</sup> Committee on the Elimination of Discrimination against Women, United Arab Emirates Summary record, U.N. Doc. CEDAW/C/SR.914 (2010) para. 21

<sup>81</sup> UN Women, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2000-2009 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 29th July 2014

<sup>82</sup> M. D. Dalelv, Sharia Law, the UAE and Women's, Rights, Lip Magazine, 31 July 2013 <<http://lipmag.com/news/world/sharia-law-the-uae-and-womens-rights/>> accessed 18th October 2014

<sup>83</sup> Ibid

Yet it is important to point out that one of the issues is that in respect of personal status, classic Islamic law is being applied and this makes it very difficult to provide clear answers, as a certain degree of flexibility is required.<sup>84</sup> Nonetheless, the UAE should try and ensure that the reservations are perceived as temporary and should make clear in the periodic reports what positive steps have been taken to ensure compliance with a provision and even if no full compliance has been achieved, transparent and precise answers should be provided.<sup>85</sup> For instance, the UAE was asked to “*provide information on steps taken to ensure equality between women and men in respect of personal status with respect to marriage, divorce, child guardianship, custody, as well as inheritance.*”<sup>86</sup> Clearly, by requiring the UAE to provide such answers, the international community also encourages the UAE to further advance the rights of women, illustrating the positive effect of the CEDAW.<sup>87</sup>

Also, when reviewing the withdrawal of reservations, the UAE should carefully study how other Muslim countries have successfully accommodated international standards into their domestic laws without this contravening their legal system and religious traditions.<sup>88</sup> The UAE could adopt similar models in respect of the personal status and family laws as Morocco, Algeria and Tunisia have.<sup>89</sup> For instance, Morocco enacted a new Family Law in 2004, which affirms that women are their own guardians.<sup>90</sup> Both sexes can marry upon reaching 18 years of age; polygamy has been limited and more equal provisions have been adopted in respect of divorce proceedings and women have been permitted to request a

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<sup>84</sup> N.62, 175

<sup>85</sup> Ibid, 176

<sup>86</sup> Committee on the Elimination of Discrimination against Women, United Arab Emirates List of issues and questions, U.N. Doc. CEDAW/C/ARE/Q/1, 13 March 2009, para. 29

<sup>87</sup> T. Deen, Gender: UN Women's Treaty Weakened by Slew Reservation, 8 December 2009 <<http://www.ips.org/mdg3/gender-un-womens-treaty-weakened-by-slew-of-reservations/>> accessed 16th October 2014

<sup>88</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, para.46

<sup>89</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Initial report of the United Arab Emirates, U.N.Doc. CEDAW/C/SR.915, 1 April 2010, para. 37

<sup>90</sup> M. A. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion Paper, December 2009, 1-48, 19

divorce more easily and the influence of the Sharia has been curbed and both parties can also request a divorce when they mutually consent to this.<sup>91</sup> The new law also enacts international law provisions in respect of child custody in order to abolish male preference; and makes changes to the inheritance law.<sup>92</sup> In 2007, Morocco also amended its nationality law, so that children of Moroccan mothers can take their nationality.<sup>93</sup> Similarly, in Algeria the Family Code was revised in 2005 and, for example, the duty to obey the husband was abolished and polygamy has to be authorised by a judge.<sup>94</sup> Equally, Tunisia recognised that the principle of equality governs marriage and decisions in relation to children.<sup>95</sup> Sexual harassment has also been criminalised.<sup>96</sup> Article 46 of the Tunisian constitution now states that “[t]he state commits to protect women’s established rights and works to strengthen and develop those rights” and provides ““equality of opportunities between women and men to have access to all levels of responsibility and in all domains.”<sup>97</sup> However, in contrast, the UAE constitution does not incorporate the principle of equality of women and men, and discrimination has also not been defined. In light of the fact that other Middle East Muslim countries have revised their personal status/family and inheritance laws and withdrawn their reservations, the UAE should follow suit and once it has effected similar reforms should lift or narrow its reservations or at least set a timeframe for withdrawal.

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<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Ibid, 21

<sup>94</sup> United Nations Educational, Scientific and Cultural Organization, *Arab-Muslim Civilization in the Mirror of the Universal Philosophical Perspectives* (Paris, United Nations Educational, Scientific and Cultural Organization 2010) 357

<sup>95</sup> Human Rights Watch, Tunisia: Landmark Action on Women's Rights, First in Region to Lift Key Restrictions on International Treaty, 30 April 2014 <<https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights>> accessed 8th June 2016

<sup>96</sup> United Nations Educational, Scientific and Cultural Organization, *Arab-Muslim Civilization in the Mirror of the Universal Philosophical Perspectives* (Paris, United Nations Educational, Scientific and Cultural Organization 2010) 357

<sup>97</sup> Human Rights Watch, Tunisia: Landmark Action on Women's Rights, First in Region to Lift Key Restrictions on International Treaty, 30 April 2014 <<https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights>> accessed 8th June 2016



Apart from the withdrawal of reservations, there has also been a call for the adoption of the Optional Protocol to the CEDAW in order to facilitate implementation.<sup>98</sup> Nonetheless, it is also important to emphasise that not only Muslim countries have entered broad reservations and the United States has not even ratified the CEDAW, though undoubtedly reservations weaken the effectiveness of the CEDAW.<sup>99</sup>

#### 4.1.6 The protection of temporary workers

The following themes, categories and sub-categories were identified in relation to the questions dealing with the strategy to minimise the criticism of reports about the protection of temporary workers and current problems to ensure that temporary female workers receive equal treatment.

*Table 4.5 The themes relating to the protection of temporary workers*

	<b>Themes</b>	<b>Categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>
<b>1</b>	More legislation	Contracts	Bank payments to avoid late payments	Human trafficking	Ability to change employer	New law for support workers still to be issued & need for one to regulate recruitment practices
<b>2</b>	Lack of money	Open economy, supply & demand	Sending countries refuse fixed wages	Scrupulous recruitment agencies in sending countries	Inequality between those with money & the poor	
<b>3</b>	Lot of progress	Give more legal rights	Signed agreements with sending countries			

<sup>98</sup> Women's Learning Partnership, Rights & Reservations: Realizing CEDAW, Eliminating Discrimination against Women in the Arab Region, 2014 <<http://www.learningpartnership.org/cedaw>> accessed 28th July 2014

<sup>99</sup> Women Living Under Muslim Law, UN: CEDAW Weakened by Slew of Reservations, 2010 <<http://www.wluml.org/node/6063>> accessed 27th July 2014

4	Uneducated	Do not know much English & Arabic	Insufficiently skilled	Do not know how to enforce their rights	
5	Created institutions to protect workers	Labour Ministry's investigation teams	Shelters	Courts for workers to enforce their rights	Women associations

It was explained that the UAE has adopted an open market policy to promote development in all fields in order to increase economic growth, especially by investing its oil revenues in developing the state. This has resulted in workers coming from all over the world to earn salaries, which they may not have earned in their home country.

Whilst the UAE has been criticised in reports for failing to adequately protect temporary workers, the respondents thought that most of the issues arise because of money, especially because female temporary workers are predominantly employed in two sectors: as household workers and in retail shops. Women with a high salary can bring their family, whereas housemaids are unable to do this. Hence, the prevalent market dynamic of demand and supply is one of many obstacles. Having often received little education and not being able to proficiently speak Arabic or English and not having the necessary skills to perform work tasks, being unaware, especially of their rights and duties, all make temporary workers more vulnerable to exploitation, especially by groups in their native homeland, which often employ fraudulent tactics. All these factors contribute to female temporary workers not having the same rights as professional foreign workers. Yet the literature also highlights that a low level of education is not always the reason why temporary workers experience abuse. For instance,

Pilipino temporary workers<sup>100</sup> are often educated, have studied and/or pursued professional careers before migrating.<sup>101</sup>

Indeed, the UAE government has persistently tried to improve the situation of female temporary workers. For instance, the government has passed many laws and regulatory measures to protect temporary workers, which the Ministry of Labour together with the inspection teams strictly enforce. The Ministry of Labour also works diligently with several authorities to improve the status of temporary workers. Yet most domestic temporary workers are employed by the private sector and the respondents therefore stressed that responsibility should also fall on the private sector. It has recently been proposed that a campaign should be launched to educate the private sector about how to treat domestic workers.<sup>102</sup>

It was explained that female temporary workers can easily change their job if a no objection certificate has been obtained and a unified contract provides protection. Pursuant to Federal Law No. 8 of 1980 Regulating Labour Relations, as amended by Federal Laws No. 24 of 1981, No. 15 of 1985, No. 12 of 1986 and No. 8 of 2007 (Labour Law), and relevant Ministerial Orders, a written employment contract has to be given and a written statement of particulars and the duty of good faith is implied into the contract; working hours are restricted, normally to no more than eight hours per day and no more than 48 hours per week and a rest break has to be given and all workers are entitled to a holiday and sick pay is also paid after the probationary period and extensive maternity rights are granted, but wages are

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<sup>100</sup> Globalization 101, The Case of the Filipino Nurses, The Levin Institute, 2014 <<http://www.globalization101.org/the-case-of-the-philippine-nurses/>> accessed 17th October 2014

<sup>101</sup> International Organization for Migration, Country Migration Report, The Philippines 2013, 1-312, 51-52 <<http://www.iom.int/files/live/sites/iom/files/Country/docs/CMReport-Philippines-2013.pdf>> accessed 16th October 2014

<sup>102</sup> R. Ruiz, More needs to be done to protect domestic workers, Ramadan Council hears, The National, 2014 <<http://www.thenational.ae/uae/more-needs-to-be-done-to-protect-domestic-workers-ramadan-council-hears>> accessed 20th July 2014

not fixed.<sup>103</sup> Salaries have to be transferred through the banks to avoid delays in receiving salaries and competent courts have been established to enforce the laws and regulations for temporary workers.

However, respondent ten disagreed that these laws are sufficient, especially for domestic workers and noted that *“one of the problems is the lack of clear and fixed contracts of employment and lack of clarity of the tasks assigned to these vacancies and the number of working hours and salaries.”* It was pointed out that there is no law, which regulates support workers, but that in 2012 and 2014, the UAE announced a draft law to protect domestic workers.<sup>104</sup> This is very important in light of reports about cases where domestic workers have been virtually treated like slaves.<sup>105</sup>

It was therefore thought that more legislation could be passed, but that responsibility should also fall on the private sector and ordinary citizens. Other respondents thought that many of the problems are caused by the workers’ recruitment offices, which often issue fraudulent and distorted resumes, or trick women by false promises or fail to send workers back and do not reimburse monies to employers, so that they have no option, but to accept the worker. It was therefore suggested that a law should be passed to regulate the recruitment process. Equally, the Ramadan Council suggested that the recruitment process should be regulated.<sup>106</sup> Respondent fourteen suggested that an office should be created, which employers can contact when workers are being sent and problems arise.

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<sup>103</sup> Practical Law, Employment and employee benefits in United Arab Emirates: overview, 2013 <<http://uk.practicallaw.com/6-503-3460?service=crossborder#>> accessed 28th July 2014

<sup>104</sup> A. Nagraj, UAE Drafting New Law for Domestic Workers, Gulf Business, 2014 <[http://gulfbusiness.com/2014/06/uae-drafting-new-law-domestic-workers/#.U9l\\_gEDG-IQ](http://gulfbusiness.com/2014/06/uae-drafting-new-law-domestic-workers/#.U9l_gEDG-IQ)> accessed 28th July 2014

<sup>105</sup> C. Hilleary, Modern Slaves: Domestic Migrant Workers in Kuwait, UAE, Saudi Arabia, Middle East Voices <<http://middleeastvoices.voanews.com/2012/05/modern-slaves-domestic-migrant-workers-in-kuwait-uae-saudi-arabia-23585/#ixzz38zv0xRxU>> accessed 29th July 2014

<sup>106</sup> N.89

Also, sex discrimination is not specifically outlawed by virtue of the Labour Law, except for those working in the Dubai International Financial Centre (DIFC), namely by virtue of Article 58 of the Employment Law of the DIFC No.4 of 2005 and Article 55 of the Abu Dhabi Global Market (ADGM) Employment Law No 1 of 2014. Accordingly, only persons working in the DIFC or ADGM can pursue employment proceedings for discrimination based on sex, marital status, race, religion, nationality or disability. Similar provisions also apply to the Employment and Sponsorship Regulations of the Abu Dhabi Media Free Zone Authority, though under the Labour law harassment is not outlawed, except for assault, but harassment is nonetheless unlawful by virtue of Ministerial resolutions.<sup>107</sup> As female temporary workers are primarily employed as domestic workers or in the retail sector, they cannot pursue claims for sex discrimination.

Human trafficking is also being combated by virtue of Federal Law 51 of 2006 which imposes stiff penalties. A National Committee to Combat Human Trafficking was also established in 2007. The 2006 was also amended by virtue of Federal Law No.1 of 2015 in order to give victims greater rights and to facilitate the exchange of information with members of the community, as well as the international community. Additionally, the Dubai Shelter for Women and Children provides support and psychological care, including to expatriates. A new shelter was opened in Abu Dhabi in 2008 in cooperation with the Red Crescent Authority and the National Committee to Combat Human Trafficking and two more shelters were also established in Sharjah and Ras Al Khaimah. The women associations also offer help.

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<sup>107</sup> N.90

Additionally, several bilateral conventions have been signed with labour exporting countries, such as India, Bangladesh, Sri Lanka, the Philippines and Indonesia to enhance cooperation between the two countries in following-up the conditions of workers and their rights. However, sending states did not want to agree to fixed wages, but only agreements to follow up on the rights of workers and as a result, female temporary workers are often in a vulnerable position, especially because of fraudulent practices by recruitment agencies in their home countries.

Respondent nine further explained that *“the UAE government actively monitors and analyses reports and studies them and responds to them by amending or adopting new legislation.”* Yet it was also pointed out that some reports contained many fallacies, especially because it is overlooked that the state deals strictly with cases where the rights are not being upheld. It was also noted that the media is used to portray a positive image and UN committee members have been invited to monitor the situation. It was recommended that a general human rights strategy should be adopted.

#### 4.1.7 Realising gender equality

The following themes, categories and sub-categories were identified in relation to the questions dealing with the elimination of all discriminatory laws and the adoption/rejection of legislation and agreements to promote women's rights in the past decade.

**Table 4.6 The themes relating to realising gender equality**

	<b>Themes</b>	<b>Categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>	<b>Sub-categories</b>
<b>1</b>	Realising gender equality	Possible over time	Unlikely that all laws will be changed	There is no gender discrimination	Not many laws, except regarding pensions, are discriminatory	Influenced by traditions and culture, not just laws

2	Adoption of many laws/conventions during last decade	Various examples, the Personal Status Law, etc.	Signing of international conventions
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The respondents overwhelmingly thought that gender equality could be realised over time and that there were not many discriminatory laws, if any at all. Hence, with the passage of time, all laws could be amended. Respondent eight stated *“I think it is easy to change the laws that would enable women, provided that they do not conflict with Islamic law.”* Another respondent considered that the few laws, which discriminate against women, do so in a positive manner. Otherwise respondents noted that the laws do not discriminate and that discussions are held about the few areas where there are minor issues.

The UAE is already leading amongst the Middle East countries in affording gender equality according to the Global Gender Gap Report 2013.<sup>108</sup> Also, as mentioned above, the fact that the UAE reached the 47th place on the Gender Inequality Index, which assessed 186 countries in 2014, shows that the UAE has come a long way towards realising gender equality and that its strategy to empower women, which it has pursued for more than twenty years, is paying off.<sup>109</sup> Of course, there are still some laws in existence, which particularly appear discriminatory through the lens of the Western world. For instance, whilst women can now pass on their nationality to their children, this can only be done upon them reaching 18 years of age.<sup>110</sup>

<sup>108</sup> C. Malek, Gender equality in the UAE ranked best in GCC region, The National, 2013 <<http://www.thenational.ae/uae/education/gender-equality-in-the-uae-ranked-best-in-gcc-region#ixzz3900HxwyH>> accessed 30th July 2014

<sup>109</sup> United Nations Human Development Reports, Gender Inequality Index, 2014 <<http://hdr.undp.org/en/composite/GII>> accessed 28 July 2014

<sup>110</sup> M. S. Olimat, *Arab Spring and Arab Women, Challenges and opportunities* (Abingdon, Routledge 2014) 59

Nonetheless, during the past decade, the UAE government has adopted various pieces of legislation and agreements to promote the rights of women and the respondents enumerated a long list of laws, which have been amended and passed to promote women's rights. Constitutional guarantees have thus been implemented through legislation. The adoption of the Personal Status Law, which includes issues, such as marriage, divorce, alimony, child custody and inheritance, was considered particularly important to promote the rights of women. Also, the passing of the Civil Service Law gives extensive maternity leave to women. The respondents also explained that citizenship rights can now be granted to children born to women, who are married to non-Emirati husbands. A law to combat human trafficking was passed in 2006 and further amended in 2015. Pursuant to Cabinet of Federal Minister's Resolution No.319 of 2013, all boards of government bodies, companies and federal institutions are being required to have a minimum of one woman.

Respondent two reported that pursuant to a Cabinet Decision, nurseries have been established inside government institutions and women organisations, for instance, for family development and shelters. Women committees have also been established at various government institutions. Also, a program is run to identify "*sustainable labour practices*" to overcome obstacles, which make it more difficult for women to enter the workplace.<sup>111</sup>

An advisory committee was formed at the Federal Authority for Human Resources to study the needs of women. Additionally, the Women's Union developed a national strategy for the advancement of women.

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<sup>111</sup> United Nations Framework Convention on Climate Change, Options and ways to advance the gender balance goal, Submissions from Parties and observer organizations, Conference of the Parties, Nineteenth session, Warsaw, 2013, 1-15, 14-15 <<http://unfccc.int/resource/docs/2013/cop19/eng/misc02a01.pdf>> accessed 28th July 2014



It was further reported that positive discrimination standards have been used to ensure that women partake in political life, for instance, to guarantee membership at the National Federal Council. As a result, between 2008 and 2012, the UAE ensured that women had seats in the Cabinet and women participated in the parliamentary elections, resulting in the Federal National Council having 17% female members in 2011. A federal law has also been proposed to support service workers. Significant progress had been made to fill jobs with female workers: 66% of all public sector jobs were filled by women and 30% of senior roles were held by women. The fact that 95% of all females with secondary education continue with higher education and 70% of all university students are females will further facilitate women empowerment.

All of this demonstrates the UAE's unwavering commitment and eagerness to further promote that women can actively and fully participate in all fields to fully realise gender equality. International conventions, such as the CRC and the CEDAW, were signed, but the Convention to protect immigrant labour's rights and their families was rejected. Yet it was also pointed out that laws by themselves cannot realise gender equality, but traditions and the culture have to also change.

## **4.2 Conclusion**

The interviews have generally confirmed the literature. It was highlighted that ratification of the CEDAW constituted the logical conclusion of a long standing started state policy to promote gender equality. The CEDAW ratification thus symbolically confirmed the UAE's commitment to promoting gender equality. The UAE has thus ensured that its laws are broadly in line with international standards, further underscoring its responsibilities and cooperation at the international plane. All of the participants considered that further progress has been made since the CEDAW was signed in 2004. Yet it was highlighted that this

progress is particularly attributable to the many government initiatives, which have been promoted already since the 1970s.

Alongside the rapid transformation of UAE society from a predominantly pearl-fishing based economy to a state with two vibrant metropolises, Abu Dhabi and Dubai, as a result of the exploration of oil and its investment back into the state, it was clear that social development has to keep pace. This also means that the state cannot override traditions and customs, but has to ensure that these are respected in accordance with the distinct culture of the Middle East. As a result of the excellent vision of His Highness Sheikh Zayed bin Sultan Al Nahyan, the UAE has been transformed into a global leader, with established international centres and business hubs.

By recognising the importance, which women play in fostering social progress and development, and promoting change, many of the traditions and customs, which previously constituted barriers to women empowerment, have been overcome. Of course, this is not to say that no more progress can be made, as progress is an ongoing pursuit.

Many measures have been adopted to advance the rights of women, ranging from setting up shelters, creating complaints mechanisms, amending and passing new laws, running workshops, setting up women associations and nurseries within public institutions, and running campaigns, including educating women about their rights to adopting positive discrimination.

The reservations to the CEDAW are also being reviewed and the respondents thought that their withdrawal was possible, so long as Sharia compliance could be ensured. If there is no

problem with the Sharia, then the UAE will also withdraw the reservations and the way the Sharia is interpreted is likely to change in the future in light of socio-economic development. The UAE government has not only ensured that Emirati citizens are afforded the best possible living standards, but temporary workers in search for a better life and work have also been afforded a host of employment rights. Yet those unskilled are often unable to fully utilise these rights and in the future, it may be important to establish law centres where free advice is offered and to also furnish some basic advice in the workers' native language to them. The recent proposal to run a campaign to educate the private sector about how to treat domestic workers appears to be an important initiative. As development is a natural process, it is only inevitable that over the course of time, the UAE will realise full gender equality in light of its stellar aspirations.

The next chapter will present the findings from the two surveys, which were conducted with female Emiratis and non-Emiratis, who live in the UAE.

## Chapter five

### Understanding the UAE's efforts to realise gender equality through questionnaires with female Emiratis and non-Emiratis

#### 5. Introduction

This chapter was designed to ascertain the views of female Emiratis and non-Emiratis, as the opinions of expert senior officials, who work for the UAE government or are affiliated with it, may not capture the entire reality of women's lives in the UAE. For this purpose, the researcher prepared two questionnaires to understand the issue of gender equality in the UAE, including to what extent the measures, which the UAE has adopted to empower women, are considered effective. One questionnaire was designed for female Emiratis and another one for female non-Emiratis, who had migrated to the UAE. In total, 313 female nationals completed the first questionnaire and 114 female non-UAE nationals completed the second questionnaire. Hence, in total 427 individuals participated in the survey. In terms of the sample, the participants came from diverse socio-economic backgrounds. For the first questionnaire, female UAE nationals from all the seven Emirates completed the questionnaire. Similarly, participants from different nationalities completed the other questionnaire. Only those aged eighteen or above asked to partake in the questionnaires. A good overview of the female population was thereby obtained and some comparisons can also be drawn between the answers provided by female Emiratis and migrants.<sup>1</sup> However, the two questionnaires were different. For instance, the female non-Emiratis were asked to provide qualitative comments and the generally positivist approach was thus complemented by this interpretivist question since the researcher considers that this further adds to the

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<sup>1</sup> B. Gillham, *Developing a Questionnaire* (London, Continuum International Publishing Group 2007) 18

understanding of the different “layers of social meaning and context that underpin social behaviour and practices.”<sup>2</sup> The female non-Emiratis were asked to comment since female Emiratis are often more privileged and may therefore not experience the same struggles as female non-Emiratis.

The researcher had a letter which confirmed that he is a doctoral candidate and that he is collecting data for his doctoral thesis. He obtained permission from participating UAE universities by contacting their research centres. The administration departments disseminated the questionnaire by email to staff and students. It was explained in the questionnaire what the CERD, CEDAW and the Optional Protocol to the CEDAW are. The participants could complete the questionnaires online through the smart survey software, which is the UK's leading online questionnaire tool.<sup>3</sup> The researcher also obtained permission from the Human Resource (HR) department of a UAE bank, private companies and various government bodies and the respective HR departments then distributed the questionnaires by email to their staff. Participants were also asked to forward the email to their friends, so that they could also take part in the survey. Additionally, the researcher distributed paper copies of the questionnaires to those without Internet access, particularly less skilled individuals, for instance, those who work in restaurants, shops and in shopping malls. However, the researcher did not distribute the questionnaire to domestic workers as they work in private homes to which researcher had not access. The completed questionnaire was then returned to the researcher, who entered the details on behalf of these participants.

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<sup>2</sup> P. Cane, H. Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, Oxford University Press 2010) 931

<sup>3</sup> Smart Survey, 2014 <<https://www.smartsurvey.co.uk/>> accessed 27th December 2014

A quantitative inquiry was undertaken through the structured questionnaire.<sup>4</sup> Each questionnaire contained a section, which enquired about the demographics of the participants and for the other sections Likert scales were used and the participants were presented with statements and could indicate whether they strongly disagreed, disagreed, were neutral, agreed or strongly agreed.<sup>5</sup> Apart from the section dealing with the demographics, the questionnaire for the female Emiratis contained 30 statements<sup>6</sup> and the questionnaire for the female non-Emiratis had the same amount of statements.<sup>7</sup> The questionnaires could be completed in Arabic and English. In terms of the statements, these dealt with gender equality laws, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of all Forms of Racial Discrimination (CERD), overcoming customs and traditions, creating mechanisms for women empowerment, the CEDAW reservations, the protection of temporary workers, Sharia law and its incompatibility with Western conceptions of women rights and realising gender equality in the UAE.

The benefit of the questionnaire method was that it was quite straightforward to ascertain the views, attitudes and beliefs of a large amount of participants and to achieve a high degree of data standardisation, though it was also borne in mind that the participants may not disclose their values and beliefs accurately, but give answers in a manner, which displays them positively.<sup>8</sup> Whilst in some cases, participants ducked taking a position by opting for the

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<sup>4</sup> Also see A. Rubin, E. Babbie, *Essential Research Methods for Social Work* (2nd edn, Belmont, Brooks/Cole Cengage Learning 2010) 102

<sup>5</sup> Also see *ibid*

<sup>6</sup> See Appendix 2

<sup>7</sup> See Appendix 3

<sup>8</sup> M. McConville, W. Hong Chui, *Research Methods for Law* (Edinburgh, Edinburgh University Press Ltd 2007) 61

neutral response, the researcher considered it nonetheless important to give participants such opportunity, as otherwise not that many may have completed the questionnaires.<sup>9</sup>

For the data analysis and interpretation, the univariate descriptive method is employed and a general summary is given together with a frequency distribution and the highest percentage within the frequency distribution is provided, i.e. the mode, in order to assess the central tendency.<sup>10</sup> The questionnaires provide a standardised and systematic description about the topic of gender equality in the UAE and by further analysing the results in light of the literature a better understanding is gained about the actual situation of women in the UAE.

## **5.1 The survey participants and their characteristics**

The majority of female Emiratis and female non-Emiratis, who completed the questionnaire, were aged between eighteen and twenty-four years and between twenty-five and thirty-four years. The survey was representative of UAE society, which has a young population,<sup>11</sup> with the majority of non-Emiratis being aged between twenty-five and thirty-nine years<sup>12</sup> and the greatest proportion of female migrants being aged twenty-five to twenty-nine years.<sup>13</sup> The survey participants received a briefing which explained what the CERD, CEDAW and the Optional Protocol to the CEDAW are. Otherwise, it is not clear to what extent they were familiar with the Conventions and the Optional Protocol. However, as the survey participants were generally more educated, they may have had more knowledge about the Conventions.

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<sup>9</sup> N.4,102

<sup>10</sup> N.8, 61-62

<sup>11</sup> B. D. Augustine, UAE to reap rich demographic dividend from young population, Gulfnews.com, 7 August 2014 <<http://gulfnews.com/business/economy/uae-to-reap-rich-demographic-dividend-from-young-population-1.1369237>> accessed 23rd December 2014

<sup>12</sup> L. Bartlett, A. Ghaffar-Kucher, *Refugees, Immigrants, and Education in the Global South: Lives in Motion* (Abingdon, Routledge 2013) 182

<sup>13</sup> UNICEF, United Arab Emirates, Migration Profiles, Part I. Global legal instruments related to international migration, 1-4, 2 <<http://esa.un.org/MigGMGProfiles/indicators/files/UAE.pdf>> accessed 22nd December 2014

Over 50% of the female Emiratis who completed the questionnaire had achieved an undergraduate degree as their highest qualification. The sample is thus representative, as nowadays many female Emiratis obtain university degrees.<sup>14</sup> Similarly nearly 30% of non-Emirati women, who completed the questionnaire, had an undergraduate degree and 25.44% had even a postgraduate degree and 5.26% had achieved a PhD. Hence, those non-Emiratis who completed the questionnaire were fairly skilled and were not domestic workers and they therefore have not experienced themselves the day to day reality of domestic workers and this has to be borne in mind when they critique the situation of domestic workers in the UAE.

The majority of female Emiratis lived in Dubai, followed by Sharjah, Abu Dhabi, Fujarah, Umm Quwain, Ras Al Khaimah and Ajman and as Dubai is the largest city in the UAE, the sample was also representative in this respect.<sup>15</sup> Equally, most non-Emirati women lived in Dubai and these other places, but none lived in Umm Quwain. The great majority i.e. 98.08% of the female Emiratis were Sunni Muslims and only 1.28% were Shia Muslims, whilst 0.64% had a different faith and official statistics also confirm that the majority are Sunni Muslims.<sup>16</sup> Over 50% of the non-Emirati women were Muslims, about one third were Christians and the rest were Hindus or had a different faith. This also very roughly accords with a 2005 census, which found that 76% of noncitizens are Muslims, 9% are Christians and 15% belong to other religions.<sup>17</sup>

Over 50% of the female Emiratis were single, whilst 37.5% were married. Indeed, many UAE women, who are aged thirty, are nowadays single because of the high dowries and also

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<sup>14</sup> P. Gupte, *Dubai: The Making of a Megapolis* (New Delhi, Penguin Group 2011) 283

<sup>15</sup> His Highness Sheikh Mohammed bin Rashid Al Maktoum, Seven Emirates, 2012 <<http://www.sheikhmohammed.com/vgn-ext-templating/v/index.jsp?vgnextoid=7dbb4c8631cb4110VgnVCM100000b0140a0aRCRD>> accessed 22nd December 2014

<sup>16</sup> United States Department of State, International Religious Freedom Report for 2011, 1-8, 1 <<http://www.state.gov/documents/organization/193123.pdf>> accessed 22nd December 2014

<sup>17</sup> Ibid, 1-2



because they opt for education and pursuing careers.<sup>18</sup> Equally, more than 50% of non-Emirati women were single, whilst 42.11% were married. Around 62% of female Emiratis had children, whilst 38% had no children. Equally, whilst 51.14% of non-Emirati women had children, 48.86% had no children, though the children of migrants are not granted Emirati citizenship, except when they are married to a male Emirati and the children obtain the same visa as their parents.<sup>19</sup>

Over 50% of female Emiratis lived with their parents, 36.1% lived with their spouse, whilst only 2.56% lived by themselves. In contrast, most non-Emirati women lived with their spouse, then with their parents and children, whilst 15.75% lived alone, suggesting that migrant women were more independent. 53.67% of female Emiratis were employed, 34.82% were students, 7.03% were unemployed, 2.24% were not looking for work, 1.28% were self-employed and 0.96% were retired. Similarly, the great majority of non-Emirati women were employed, whilst around one third were students, though no one was unemployed, as residency requires a residence visa, which has to be obtained by the employer.<sup>20</sup> However, statistics reveal that not as many female Emiratis work as the sample population and by 2011, 31.6% of those aged between fifteen and twenty-four years were part of the labour force, though other age groups were not as economically active.<sup>21</sup>

Those who participated in the survey worked predominantly in the public sector (83.05%) whilst the rest worked in the private sector. This is also in line with statistics, which show that female Emiratis prefer to work in the public sector, as this often offers more holidays,

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<sup>18</sup> E. Mohammed, Spinster crisis: Why 30-year-old UAE women still single? Middle-East-Online.com, 2nd February 2012 <<http://www.middle-east-online.com/english/?id=53150>> accessed 22nd December 2014

<sup>19</sup> N.12, 182

<sup>20</sup> International Business Publications, *UAE: How to Invest, Start and Run Profitable Business in the UAE Guide, Practical Information, Opportunities, Contacts* (Washington DC, International Business Publications 2014) 256

<sup>21</sup> Ibid

better pay and fewer hours.<sup>22</sup> There is also no law, which requires the private sector to employ a particular percentage of women<sup>23</sup> and Emiratis are generally “under-represented in the private sector.”<sup>24</sup> In contrast, three quarters of non-Emirati women worked in the private sector, whilst the remainder worked in the public sector. Generally, migrant workers can be found in all sectors.<sup>25</sup>

Those non-Emirati women, who participated in the survey, worked in the following industries: 38.54% of non-Emirati women worked as professionals, for instance, as engineers, doctors, teachers, accountants, IT specialists, in the legal sector, etc., followed by 20.83% who undertook clerical work and provided office support, e.g. as office boy, receptionist, messenger, general office clerk, 12.5% worked in the services and sales sector, e.g. as waitress, cashier, as salesperson, security guard, hairdresser, laundry worker, etc., 11.46% had a managerial role in any industry sector, whilst 16.67% had a different role. The survey participants thus differed from the majority of female migrants who in 2006 predominantly offered domestic services or worked in the health care industry.<sup>26</sup>

The majority of participants came from India and the Philippines and 31 different nationalities provided a response, resulting in a representative sample. Statistics also inform that most unskilled workers come from South East Asia and these make up around 50% of UAE society, followed by 23% Iranians and Arabs and 17% Westerners. The latter mostly

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<sup>22</sup> S. Sahoo, Emiratisation progress proves slow for UAE women, *The National*, 17 September 2013 <<http://www.thenational.ae/business/industry-insights/economics/emiratisation-progress-proves-slow-for-uae-women>> accessed 22nd December 2014

<sup>23</sup> Ibid

<sup>24</sup> Oxford Business Group, *The Report: Abu Dhabi 2007* (Oxford, Oxford Business Group 2007) 52

<sup>25</sup> S. Ossman, *The Places We Share: Migration, Subjectivity, and Global Mobility* (Plymouth, Lexington Books 2007) 179

<sup>26</sup> N.12, 182

took up roles in the white collar, trade, managerial and service sectors, whereas only around 20% of the population are Emiratis.<sup>27</sup>

Most non-Emirati women obtained their residence visa in Dubai, followed by Abu Dhabi, Sharjah, Ajman and Ras Al Khaimah. Nearly 2/3 of non-Emirati women had lived for more than six years in the UAE, followed by those who had lived for one to three years and those who had lived for three to six years, whilst only around 10% had lived under a year in the UAE. In this context, it is important to note that the UAE does not grant a permanent residence visa, including to property owners.<sup>28</sup> Overall, the questionnaires captured a wide snapshot of society and this also benefitted the findings.

## **5.2 A discussion and analysis of the findings and the applicable literature**

The questionnaires provided important insights about the manner in which female Emiratis and non-Emiratis perceive gender inequality in the UAE and this helped understanding the larger picture, especially against the background of the applicable literature.

### **5.2.1 Female Emiratis perceptions of gender equality laws**

The majority of female Emiratis generally thought that there exists gender equality legislation in the UAE. 88% strongly agreed and agreed that the law in the UAE guarantees gender equality, whilst only 2% disagreed and 1% strongly disagreed. The constitution also provides that men and women have equal rights, but does not really affirm gender equality. Article 25 only states that equality is provided to Emirati citizens “without distinction between citizens of the Union in regard to race, nationality, religious belief, or social status” and women are

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<sup>27</sup> N.25, 179

<sup>28</sup> N.20, 66

not always afforded their legal, social and economic rights.<sup>29</sup> This is also because the constitution makes clear in Article 15 that the family unit forms the backbone of society. Article 15 states that “[t]he family shall be the basis of society. Its support shall be religion, ethics and patriotism. The law shall guarantee its existence and shall safeguard it and protect it from corruption.” Moreover, Article 16 provides that “[s]ociety shall be responsible for protecting childhood and motherhood and shall protect minors and others unable to look after themselves for any reason, such as illness or incapacity or old age or forced unemployment. It shall be responsible for assisting them and enabling them to help themselves for their own benefit and that of society. Such matters shall be regulated by Public Assistance and Social Security legislation.” Yet this arguably strengthens “traditional roles for women.”<sup>30</sup> Customs have also not made it possible that equal rights are ensured,<sup>31</sup> so that the legal rights of women are not always consistently enforced or are only partially implemented.<sup>32</sup> Yet when formal education was introduced, women were given equal access to education, including university education.<sup>33</sup>

Moreover, 94% of female Emiratis agreed that the national legislation of the UAE supports women and only 2% disagreed. For instance, pursuant to Article 20 of the Personal Status Law 2005, women can include in their marriage contract that they are allowed to work and pursue education.<sup>34</sup> Also, instead of having to show that one of the narrow divorce grounds are made out (i.e. that they have been physically harmed, have been deserted for three months

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<sup>29</sup> Freedom House, *Freedom in the World 2011: The Annual Survey of Political Rights and Civil Liberties* (Lanham, Rowman & Littlefield Publishing Group Inc 2011) 709; S. Kelly, J. Breslin, *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (Lanham, Rowman & Littlefield Publishing Group 2010) 519

<sup>30</sup> Ibid (Kelly and Breslin) 519

<sup>31</sup> Oxford Business Group, *The Report: Sharjah 2008* (Oxford, Oxford Business Group 2008) 21

<sup>32</sup> S. Nazir, L. Tomppert, *Women's Rights in the Middle East and North Africa: Citizenship and Justice* (Lanham, Rowman & Littlefield Publishers Inc 2005) 314

<sup>33</sup> D. Baker, A. W. Wiseman, A. W., *Gender, Equality and Education from International and Comparative Perspectives* (Bingley, Emerald Group Publishing Ltd 2009) 321

<sup>34</sup> N.29 (Kelly and Breslin) 524

or the husband has not financially supported his wife or children), they can rely on Article 110 of the Personal Status Law 2005 and divorce their husband by returning their dowry.<sup>35</sup> UAE law also renders it illegal to commit abuse, harassment and rape, and women can be granted a divorce on the basis of domestic violence, and in case a husband wants to marry a second wife, the first wife has to agree to this.<sup>36</sup> However, whilst the penal code proscribes rape, the law does not clarify whether the law proscribes spousal rape.<sup>37</sup> Furthermore, when women report rape, they may be prosecuted for having illegal sexual relations.<sup>38</sup> The penal code also allows men to employ violence against women and young family members.<sup>39</sup> Emirati men also receive land or cash or a house from the government, whereas women are not provided with this since it is thought that their husband or male relative houses them.<sup>40</sup>

Furthermore, 82% of female Emiratis agreed that in the UAE, there are laws/policies in place which protect women from discrimination and only 5% disagreed. However, the literature informs that employment discrimination is prevalent.<sup>41</sup> Research has also found that the abilities of women are frequently questioned and that they are not always assessed based on performance and that more laws are required to combat sexual harassment and sex discrimination.<sup>42</sup> The law also does not proscribe gender discrimination,<sup>43</sup> but harassment is

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<sup>35</sup> Ibid

<sup>36</sup> N. R. Keddie, *Women in the Middle East: Past and Present* (Princeton, Princeton University Press 2007) 158

<sup>37</sup> A. Herzberg, G. M. Steinberg, Second Class Rights, How Amnesty International and Human Rights Watch Fail Women in the Middle East, December 2013, 1-97, 18 <<http://www.ngo-monitor.org/secondclass.pdf>> accessed 23rd December 2014

<sup>38</sup> N.36, 158

<sup>39</sup> N.37, 17

<sup>40</sup> K. Augsberg, I. A. Claus, K. Randeree, *Leadership and the Emirati Woman: Breaking the Glass Ceiling* (Berlin, LIT Verlag 2009) 10

<sup>41</sup> N.36, 159

<sup>42</sup> K. Nicolopoulou, M. Karata--Ozkan, A. Tatli, J. Taylor, *Global Knowledge Work: Diversity and Relational Perspectives* (Cheltenham, Edward Elgar Publishing Ltd 2011) 201

<sup>43</sup> N.37, 17

proscribed and can be reported to the police.<sup>44</sup> Article 32 of the Labour Law also requires that women receive the same remuneration when they undertake equal work as men.<sup>45</sup>

### **5.2.2 The CEDAW and the CERD**

The majority thought that international society, such as intergovernmental and non-governmental organisations, had a positive effect on the promotion of gender equality in the UAE. 79% of female Emiratis agreed that the international society has had a positive effect on the promotion of gender equality in the UAE, whilst only 6% disagreed. Yet the UAE has not only promoted gender equality because of international pressure, but because it seeks to become an international business, high-tech and financial hub and to fully utilise the benefits of globalisation for which modernisation and national development are required.<sup>46</sup>

Ratification of the CEDAW was equally perceived to have changed the role which women play, though to a lesser degree. 57% of female Emiratis agreed that the ratification of the CEDAW by the UAE has changed the role, which women play in the UAE, whilst only 7% disagreed. Hence, a very high number agreed that the ratification of the CEDAW has had positive effects. This may be explained by the fact that there is awareness that women have fewer rights in the Middle East than in other parts of the world. The participants may have therefore attributed any change to the initiatives at the international level. This is despite the

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<sup>44</sup> S. Kirdar, United Arab Emirates in (eds) S. Kelly, J. Breslin, *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (Landham, Rowman & Littlefield 2010) 1-27, 15-16 <[https://freedomhouse.org/sites/default/files/inline\\_images/United%20Arab%20Emirates.pdf](https://freedomhouse.org/sites/default/files/inline_images/United%20Arab%20Emirates.pdf)> accessed 25th December 2014

<sup>45</sup> OECD, *Women in Public Life Gender, Law and Policy in the Middle East and North Africa* (Paris, OECD 2014) 175

<sup>46</sup> D. Kirk, D. Napier, Issues of gender, equality, education, and national development in the United Arab Emirates, 10 *Gender, Equality and Education from International and Comparative Perspectives* 2009, 301-331, 301

fact that the enforcement mechanisms of the CEDAW are not as strong in comparison to other human rights agreements and the CEDAW also does spell out economic rights for women and being not as clear in respect of social rights.<sup>47</sup> Indeed, states which ratify the CEDAW are expected to eliminate any obstacles which make equality between men and women difficult.<sup>48</sup> Equally, the majority (58%) expressed that ratification of the CERD has reduced gender discrimination, though 35% gave a neutral response and 7% disagreed. The very high agreement with the statement may also be explained by the fact that the participants considered that change is attributable to international efforts.

Certainly, ratification by itself does not reduce gender discrimination, though it at least ensures that states have to report progress.<sup>49</sup> The UAE had to report to the CEDAW and CERD Committees in 2009 and 2010.<sup>50</sup> Both Committees made recommendations, including in relation to foreign workers and particularly in respect of “the living and working conditions of non-citizens contract workers; the situation of domestic foreign workers, [and] the situation of stateless bidoons in the country.”<sup>51</sup> Bidoons are those, who failed to register themselves as Emirati citizens when the UAE was formed in 1971, either because they did not belong to a particular tribe or because they were illiterate.<sup>52</sup> These individuals are stateless, though they have resided in the UAE since birth and it is estimated that there are

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<sup>47</sup> N. A. Englehart, M. K. Miller, *The CEDAW Effect: International Law's Impact on Women's Rights*, 13(1) *Journal of Human Rights* 2014, 22-47, 22

<sup>48</sup> A. Al-Malki, D. Kaufer, S. Ishizaki, K. Dreher, *Arab Women in Arab News: Old Stereotypes and New Media* (London, Bloomsbury Academic 2012) 227

<sup>49</sup> J. Henshall Momsen, *Gender and Development* (London, Routledge 2004) 10

<sup>50</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, CEDAW/C/ARE/CO/17, 21 September 2009; W. Kymlicka, E. Pföstl, *Multiculturalism and Minority Rights in the Arab World* (Oxford, Oxford University Press 2014) 182

<sup>51</sup> *Ibid* (CERD); *ibid* (Kymlicka and Pföstl)

<sup>52</sup> A. Zacharias, *Bidoon celebrate UAE National Day as Emiratis*, *The National*, 24 November 2013 <<http://www.thenational.ae/uae/heritage/bidoon-celebrate-uae-national-day-as-emiratis>> accessed 8th July 2016

around 10,000 bidoons living in the UAE.<sup>53</sup> However, no further information has been furnished by the UAE to the two Committees.

### **5.2.3 Female Emiratis perceptions of overcoming customs and traditions**

In terms of female representation at UAE policy-making institutions, the overwhelming majority of female Emiratis (85%) thought that Emirati women were well represented, whilst only 4% disagreed. A great majority of female participants thus considered that women had assumed leadership positions through which they could influence policy. Indeed in 2007, there were four female cabinet ministers and 22% of the Federal National Council members were women; and in 2008, 20% of diplomatic posts were held by women, out of which two were ambassadors and 66% of public sector positions were filled by women out of which 30% had decision-making and leadership roles, but women were hardly present at the Board of Director level, i.e. there were only 0.8%.<sup>54</sup> Yet this has also changed, as a law requires public and private organisations to have women on their Board.<sup>55</sup> Women now hold many leadership positions including in sectors, such as aerospace. By 2012, there were more women in charge of the top stock market companies than in the UK.<sup>56</sup> Also, in 2012, only 12% of the French parliament seats were held by women,<sup>57</sup> whereas in the UAE the percentage was much higher.

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<sup>53</sup> Ibid

<sup>54</sup> S. Turnbull, P. Case, G. Edwards, D. Schedlitzki, P. Simpson, *Worldly Leadership: Alternative Wisdoms for a Complex World* (Basingstoke, Palgrave MacMillan 2012) 174

<sup>55</sup> C. Malek, UAE women thrive in leadership positions, *The National*, 21 April 2014 <<http://www.thenational.ae/uae/uae-women-thrive-in-leadership-positions>> accessed 26th December 2014

<sup>56</sup> Ibid

<sup>57</sup> G. Nuseibeh, The UAE is a great country for women to show strong leadership, *The National*, 4 November 2012 <<http://www.thenational.ae/business/industry-insights/economics/the-uae-is-a-great-country-for-women-to-show-strong-leadership>> accessed 25th December 2014



The majority (72%) thought that women were treated like men in all areas of public life including in politics, but 18% also gave a neutral response and 10% disagreed. Indeed, when women opt not to work, it is frequently not the result of discriminatory laws or insufficient opportunities, but because of good economic and social conditions.<sup>58</sup>

Moreover, 66% of female Emiratis strongly agreed and 31% agreed that the role of the Emirati women has changed in the last decade and 3% gave a neutral response, whilst no one disagreed or strongly disagreed. Hence, 97% of participants considered that Emirati women command a different role than in the past. Research has also found that the younger generation perceived women managers very differently from the older generation and as a result of modernity, patriarchal assumptions about women may further decline.<sup>59</sup> Indeed, His Highness Sheikh Zayed has particularly promoted women's advancement.<sup>60</sup>

Most also agreed that the UAE government has encouraged that women obtain higher education. 79% of female Emiratis strongly agreed and 18% agreed with this statement and 3% gave a neutral response, whilst no one disagreed or strongly disagreed. This is also clearly confirmed by statistics, which indicate that Emirati women are outperforming men, so that female Emiratis are “overrepresented in secondary and tertiary education, leading to a reverse gender gap in educational attainment.”<sup>61</sup>

Moreover, 96% of female Emiratis agreed that UAE society supports women, who want to work, whilst only 1% disagreed. Yet the Global Gender Gap report 2014 gave the UAE 0.64,

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<sup>58</sup> Ibid

<sup>59</sup> M. M. Mostafa, Attitudes towards women managers in the United Arab Emirates, 20(6) *Journal of Managerial Psychology* 2005, 522-540, 522

<sup>60</sup> D. Halkias, C. Smith, P. W. Thurman, R. S. Nason, *Father-Daughter Succession in Family Business: A Cross-Cultural Perspective* (Farnham, Gower Publishing Ltd 2011) 83

<sup>61</sup> C. Davies, Mideast women beat men in education, lose out at work, CNN, 7 June 2012 <<http://edition.cnn.com/2012/06/01/world/meast/middle-east-women-education/>> accessed 25th December 2014; n.12 (Bartlett and Ghaffar-Kucher) 182

with 1 being absolute equality and 0 absolute inequality and the UAE also only scored the 115th place out of 142nd places, which is down from 109th when report also observes that “[t]he country is below average on the economic participation and opportunity and political empowerment subindexes, but above average on the educational attainment and health and survival subindexes.”<sup>62</sup> In line with the findings of the Global Gender Gap report 2014,<sup>63</sup> 55% of the female Emirati participants thought some Emirates do not consider that women should work and 24% gave a neutral response, but 13% disagreed and 8% strongly disagreed. Another study also found that women are often not receiving enough support and that family and personal reasons, traditions and society can constitute barriers for women to be entrepreneurs.<sup>64</sup>

36% agreed that tradition and religious values still discourage women from working and 27% gave a neutral response, but 37% disagreed. Opinion was thus divided, as roughly the same amount agreed and disagreed. To date not that many female Emiratis participate in the workforce.<sup>65</sup> This is because there still exist cultural barriers and structural issues. Whilst numbers have slightly increased, labour reform may be needed in order to fully utilise the “valuable human resource asset”, which women can be.<sup>66</sup>

Despite the challenges, which were acknowledged by participants, the majority of Emirati women thought that they had the same work opportunities as men. 74% agreed and 41% agreed, whilst 16% gave a neutral response and 10% disagreed. However, the fact that over a

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<sup>62</sup> A. E. Khaishgi, UAE improves gender equality score in global study, *The National*, 31 October 2014 <<http://www.thenational.ae/uae/uae-improves-gender-equality-score-in-global-study>> accessed 25th December 2014

<sup>63</sup> Ibid

<sup>64</sup> H. Itani, Y. M. Sidani, I. Baalbaki, United Arab Emirates female entrepreneurs: motivations and frustrations, 30(5) *Equality, Diversity and Inclusion: An International Journal* 2011, 409-424, 409

<sup>65</sup> N.12, 182

<sup>66</sup> E. Rutledgea, F. Al Shamsia, Y. Bassionia, H. Al Sheikhb, Women, labour market nationalization policies and human resource development in the Arab Gulf states, 14(2) *Human Resource Development International* 2011, 183-198, 183

quarter did not agree suggests that sometimes cultural barriers still prevent women from progressing, for instance, some families may not approve that women work in a mixed environment.<sup>67</sup>

Equally, the great majority agreed that education has become important for women. 69% of female Emiratis strongly agreed and 26% agreed that it is considered important for Emirati women to obtain education and 4% gave a neutral response, whilst no one disagreed and only 1% strongly disagreed. The overwhelming majority concurred that education has become an important priority for women in the UAE. Women have thus wholeheartedly made the most of educational opportunities, including higher education.<sup>68</sup>

Yet a slight majority also acknowledged that women are directed towards particular areas of study and jobs, as illustrated by following table:

**Table 5.1: Directing women to particular disciplines of study and jobs**

Strongly Disagree	11%
Disagree	23%
Neutral	26%
Agree	29%
Strongly Agree	11%

11% of female Emiratis strongly agreed and 29% agreed i.e. 40% agreed that it is common for women to be directed to certain disciplines of study and certain jobs exclusively, whilst 23% disagreed and 11% strongly disagreed, i.e. 34% disagreed. For instance, research has found that Emirati women are not sufficiently represented in the information technology sector and that not many hold senior positions in this sector, especially because familial and

<sup>67</sup> A. Almazrou, Emirati women and workforce in a clash of culture, The National, 19 May 2012 <<http://www.thenational.ae/news/uae-news/emirati-women-and-workforce-in-a-clash-of-culture>> accessed 26th December 2014

<sup>68</sup> S. Sumaya, L. Tennant, P. Stringer, Perspectives of Emirati women in higher education, 2(1) *International Journal of Education and Research* 2014, 1-12, 1

cultural barriers prevent Emirati women to determine which career they want to pursue, coupled with adverse stereotypes about women.<sup>69</sup> Parents also influence the choice of occupation of their daughters and the decision to join the labour market, though when fathers have obtained tertiary education, their daughters are more likely to opt for work than to stay at home.<sup>70</sup>

An overwhelming majority of participants also agreed that UAE society is still conservative, i.e. 31% of female Emiratis strongly agreed and 44% agreed, 21% gave a neutral response, whilst only 3% disagreed and 1% strongly disagreed. The literature also highlights that conservative attitudes are still prevalent, despite the government being firmly committed to liberalisation.<sup>71</sup>

#### **5.2.4 Female Emiratis' and non-Emiratis' perceptions of creating mechanisms for women empowerment**

The majority of female Emiratis thought that the complaints and grievance procedures for woman were effective, i.e. 27% of female Emiratis strongly agreed and 40% agreed, though 26% also gave a neutral response and 5% disagreed and 2% strongly disagreed. Certainly, women, like men, can access courts and enjoy the due process safeguards, which have been put in place and a hotline created by the police for women and children, so that they can register complaints.<sup>72</sup> Employment contracts can be enforced in court and employees can, for

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<sup>69</sup> A. H. Al Marzouqi, N. Forster, An exploratory study of the under-representation of Emirate women in the United Arab Emirates' information technology sector, 30(7) *Equality, Diversity and Inclusion: An International Journal* 2011, 544 - 562, 544

<sup>70</sup> E. Rutledge, M. Madi, I. Forstenlechner, Parental influence on female vocational decisions in the Arabian Gulf, Munich Personal RePEc Archive, MPRA Paper No.47521, 13 June 2014, 1-28, 1 <[http://mpra.ub.uni-muenchen.de/47521/1/MPRA\\_paper\\_47521.pdf](http://mpra.ub.uni-muenchen.de/47521/1/MPRA_paper_47521.pdf)> accessed 23rd December 2014

<sup>71</sup> N.33, 320

<sup>72</sup> N.29, 321

example, bring unfair dismissal cases.<sup>73</sup> However, the majority of survey participants also acknowledged that there are still legal obstacles, which affect the empowerment of Emirati women, as illustrated by the following table:

**Table 5.2: Participants perceptions of creating mechanisms for women empowerment**

Statements	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
<i>Female Emiratis' perceptions of the legal obstacles affecting women empowerment</i>	11%	20%	29%	30%	10%
<i>Female non-Emiratis' awareness of the complaint and grievance mechanisms for female temporary workers</i>	7%	19%	40%	26%	8%
<i>Female non-Emiratis' perceptions of the effectiveness of the complaints and grievance procedures</i>	4%	14%	44%	29%	9%
<i>Female non-Emiratis' perceptions of the enforceability of female temporary workers' rights in courts</i>	8%	21%	38%	24%	9%
<i>Female non-Emiratis' perceptions of the need to adopt more laws to protect female temporary workers</i>	3%	5%	25%	40%	27%
<i>Female non-Emiratis' perceptions of the available support for female temporary workers, who escape abusive employers</i>	7%	13%	49%	21%	10%
<i>Female non-Emiratis' perceptions of the safeguards against sexual, physical and psychological abuse of female temporary workers</i>	1%	3%	17%	40%	39%
<i>Laws/policies to protect female temporary workers from discrimination</i>	3%	14%	25%	43%	15%
<i>The importance to take more legal steps to protect female</i>	1%	6%	18%	46%	29%

<sup>73</sup> M. Kalsi, Disciplinary Action in the United Arab Emirates, Al Tamimi & Co, October 2013 <<http://www.tamimi.com/en/magazine/law-update/section-5/october-3/disciplinary-action-in-the-united-arab-emirates.html>> accessed 25th December 2014

<i>temporary workers</i>					
<i>Female temporary workers enjoy a good status in the UAE</i>	<b>4%</b>	<b>10%</b>	<b>31%</b>	<b>45%</b>	<b>10%</b>
<i>Female temporary workers, including domestic workers, receive their wages on time</i>	<b>8%</b>	<b>21%</b>	<b>38%</b>	<b>24%</b>	<b>9%</b>
<i>Foreign recruitment agencies often use fraudulent practices for female temporary workers</i>	<b>1%</b>	<b>9%</b>	<b>36%</b>	<b>37%</b>	<b>17%</b>

More agreed with this statement (i.e. 40%) than disagreed (31%) highlighted by the table at 5.2 above. The literature further highlights that gender-based discrimination is not sufficiently proscribed and that in the family and marriage context discrimination still prevails, as well as in the fields of citizenship and nationality, inheritance and in respect of the freedom of movement. There are also insufficient safeguards against violence, e.g. domestic abuse, female genital mutilation, rape and in respect of employment since women are prevented from undertaking particular work, e.g. night work.<sup>74</sup>

Interestingly, the majority of female non-Emiratis gave a neutral response when asked whether they were aware of the complaint and grievance mechanisms, as highlighted by the table at 5.2 above. 40% gave a neutral answer and this suggests that they did not know the answer and also 26% disagreed that they were aware of the complaint and grievance mechanisms to enforce the rights of female temporary workers. Nonetheless, 34% agreed with the statement and this highlights that opinion was divided. As in this survey the participants were not domestic workers, but predominantly undertook fairly skilled jobs, which may explain why so many opted to provide a neutral answer. However, Human Rights Watch also observes that domestic workers are frequently not provided with the necessary

<sup>74</sup> Also see Articles 27, 29 and 34 of the UAE Labour Law; International Federation for Human Rights, Women's Rights in the United Arab Emirates, Note submitted to the 45th Session of the Committee on the Elimination of Discrimination Against Women (CEDAW) on the occasion of its first examination of the UAE, January 2010, 1-7, 3&6 <[https://www.fidh.org/IMG/pdf/UAE\\_summaryreport\\_for\\_CEDAW.pdf](https://www.fidh.org/IMG/pdf/UAE_summaryreport_for_CEDAW.pdf)> accessed 27th December 2014

information, so that they do not know the complaint procedure.<sup>75</sup> In 2007, Human Rights Watch also observed that the issue is not just that labour violations take place, but that the UAE government fails to enforce its laws.<sup>76</sup> Human Rights Watch further explained that the UAE does not sufficiently investigate and charge employers, who breach labour laws and that there is no transparent system to resolve labour disputes.<sup>77</sup> However, since the report, progress has been made and many labour complaints have been filed by employers and migrants alike, but it has been observed that more court staff is needed and local and federal agencies should coordinate their work better, so that labour laws are more effectively enforced.<sup>78</sup>

When the female non-Emiratis were asked whether the complaints and grievance procedures for temporary workers are effective, the majority gave a neutral response (44%), whilst 18% considered the complaints and grievance procedures ineffective in comparison to 38%, who thought the opposite (see table 5.2 above). In this context, Human Rights Watch points out that domestic workers, who complain about an employer, risk being accused of theft, or that it is difficult to challenge an abusive employer because workers do not have the full names and addresses of employers and because some embassies may not be aware when an employer changes his address or because the authorities do not investigate when abuse is reported.<sup>79</sup>

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<sup>75</sup> Human Rights Watch, *Exported and Exposed, Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates* (New York, Human Rights Watch 2007) 120

<sup>76</sup> Human Rights Watch, *The UAE's Draft Labor Law: Comments and Recommendations*, 2007 <<http://hrw.org/backgrounders/mena/uae0307/>> accessed 29th December 2014; cited from D. Keane, N. McGeehan, *Enforcing Migrant Workers' Rights in the United Arab Emirates*, 15 *International Journal on Minority and Group Rights* 2008, 81-115, 91

<sup>77</sup> *Ibid* (Human Rights Watch); *ibid* (Keane and McGeehan)

<sup>78</sup> F. T. Malit, A. Al Youha, *Labor Migration in the United Arab Emirates: Challenges and Responses*, Migration Policy Institute, 18 September 2013 <<http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>> accessed 29th December 2014

<sup>79</sup> *Ibid*, 119-120

The survey participants were also not fully supportive of the statement that female temporary workers can easily enforce their rights at UAE courts (see table 5.2 above). Most opted to give a neutral response and whilst 33% agreed with the statement, 29% also disagreed; opinion was thus again divided. In 2007, Human Rights Watch also observed that there is no accessible and transparent system in place to resolve labour disputes and this coupled with the fact that labour laws are not stringently enforced and employers' conduct is not strictly regulated means that labour laws can be violated.<sup>80</sup> The International Confederation of Free Trade Unions also states that whilst domestic workers can theoretically lodge a case in court “more often than not, legal fees and the fear of reprisals or even expulsion deter them from taking any official action.”<sup>81</sup>

In line with calls by international human rights association, an overwhelming majority of female non-Emiratis thought that more laws should be adopted, especially against sex discrimination, in order to protect female temporary workers (see table at 5.2 above). Overall 67% of survey participants agreed, whilst only 8% disagreed and this highlights that more should be done to safeguard female temporary workers. For instance, it would be good if female temporary workers were paid a minimum wage and legislation to that effect was adopted.<sup>82</sup> Workers are also not allowed to form trade unions or to bargain collectively and migrant workers are not permitted to strike and if they do so, they may be banned from working for a minimum of one year.<sup>83</sup>

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<sup>80</sup> Human Rights Watch, *The UAE's Draft Labor Law, Human Rights Watch's Comments and Recommendations* (New York, Human Rights Watch 2007) 2

<sup>81</sup> International Confederation of Free Trade Unions, *Annual Survey of Violations of Trade Union Rights 2006*, 374; cited from n.72 (Human Rights Watch) 120

<sup>82</sup> N.76, 2

<sup>83</sup> Ibid



Equally, there was disagreement about whether victims of human trafficking are safeguarded. 6% of female non-Emiratis strongly agreed and 27% agreed that victims of human trafficking are safeguarded and 41% gave a neutral response, whilst 19% disagreed and 7% strongly disagreed. Hence, there was some disagreement about whether or not victims of human trafficking are sufficiently cared for. In the literature, it is reported that the emphasis on human trafficking has resulted in the government paying less attention to migrants' rights and reform of the kafala system and overly focusing on the sex industry and this has resulted in rescue campaigns and raids.<sup>84</sup> Police departments have established vice squads and many trafficked women have been subjected to abuse by the police, who have arrested and deported them. Whilst those women who fall into the category of trafficked women have not all been deported, the problem is that those who do not fit into the trafficking paradigm are not afforded the victim protection they urgently require.<sup>85</sup> For instance, in one case a woman, who had been abused and had burn marks everywhere on her body, was not afforded any help since she had come to the UAE as a domestic worker and was approved by the Ministry of Labour.<sup>86</sup> As a result, particular nationalities are also more stereotyped and perceived as criminals, e.g. Philippines who often work as domestics.<sup>87</sup> It would therefore be better to deal with “labor and migration issues within a human rights framework.”<sup>88</sup> By 2010, the UAE had also not investigated, prosecuted or convicted individuals for forced labour offences, which the Anti-Trafficking Law 2006 also includes, but instead all cases were for sex trafficking.<sup>89</sup> There was also disagreement about whether there was enough support for vulnerable female temporary workers after they escape abusive employers, as illustrated by table 5.2 above. Although 31% thought that there was sufficient help, 20% also disagreed and 49% gave a

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<sup>84</sup> F. Winddance Twine, B. Gardener, *Geographies of Privilege* (Abingdon, New York 2013) 33

<sup>85</sup> Ibid

<sup>86</sup> Ibid, 34

<sup>87</sup> Ibid, 35-36

<sup>88</sup> Ibid, 36

<sup>89</sup> US Department of State, *Trafficking in Persons Report*, 10th edition (Washington DC, US State Department 2010) 334

neutral response. Hence, participants were quite divided about whether or not female temporary workers receive sufficient help. A 2014 Human Rights Watch Report also states that “[m]any domestic workers who leave abusive employers face a stone wall. (...) They can be prosecuted for running away, while their abusers have little to fear.”<sup>90</sup>

A mixed response was also given by the survey participants in respect of the question whether the human rights of female temporary workers are protected. 10% of female Emiratis strongly agreed and 39% agreed that the human rights of female temporary workers are protected, but 33% gave a neutral response, whilst 13% disagreed and 5% strongly disagreed. Indeed, whilst domestic workers' standard contract was amended in June 2014, so that they are now entitled to an eight hour break in every 24 hours, the contract does not comply with international labour standards and there are also insufficient labour law safeguards and whilst a draft law has been prepared for domestic workers in 2012, this has not been implemented as of yet and whilst employers can be fined for charging workers' recruitment fees, this 2012 Ministry of Labour regulation does not apply to domestic workers and the electronic wage protection system, which was created by the Ministry of Labour in 2009, also does not extend to domestic workers and equally the positive changes which have been made to the kafala system, i.e. that workers can change employers if certain conditions apply, has not been extended to domestic workers.<sup>91</sup> Domestic workers have therefore not been afforded as many rights and this also undermines their human rights.

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<sup>90</sup> Human Rights Watch, United Arab Emirates: Trapped, Exploited, Abused, 23 October 2014 <<http://www.hrw.org/news/2014/10/22/united-arab-emirates-trapped-exploited-abused>> accessed 27th December 2014

<sup>91</sup> Human Rights Watch, I Already Bought You, Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates, 2014, 1-85, 17 <[http://www.hrw.org/sites/default/files/reports/uae1014\\_forUpload.pdf](http://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf)> accessed 28th December 2014

An overwhelming majority considered that female temporary workers should be better protected against sexual, physical and psychological abuse and only a very small percentage disagreed (see table 5.2 above). Overall 79% agreed that more should be done to avert sexual, physical and psychological abuse and only 4% disagreed. There are also various reports by domestic workers that employers often beat them and that they are afraid to report this.<sup>92</sup> Some have also suffered serious injuries when trying to escape.<sup>93</sup> Also, when they require medical help, their employers refuse to call assistance.<sup>94</sup> Several domestic workers have also reported sexual assaults and harassment, including rape.<sup>95</sup> When the workers refuse this, some get threatened that they will be killed and many are also subjected to verbal and psychological abuse and are shouted at, called dirty, idiot and other insulting names.<sup>96</sup> A 2014 Human Rights Report which also urges the government to grant workers effective legal rights, which they can enforce and to put in place protective safeguards to avert abuse and exploitation.<sup>97</sup>

When asked whether female temporary workers are protected by legislation, the majority of female non-Emiratis thought that this is the case, though about 1/3 also gave a neutral answer in each case. 5% of female non-Emiratis strongly disagreed and 9% disagreed that there is legislation in the UAE, which guarantees the rights of female temporary workers and 33% gave a neutral response, whilst 9% disagreed and 5% strongly disagreed. Whilst the majority, i.e. 53% considered that the rights of female temporary workers were guaranteed, the literature highlights that the UAE Labour Law does not cover foreign domestic workers and the Ministry of Interior, namely the Immigration Department is responsible for them, which

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<sup>92</sup> Ibid, 32-35

<sup>93</sup> Ibid, 32-35

<sup>94</sup> Ibid, 32-35

<sup>95</sup> Ibid, 32-35

<sup>96</sup> Ibid, 32-35

<sup>97</sup> Ibid, 2

arguably breaches Article 2 of the CEDAW.<sup>98</sup> Article 2 provides that “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” General Recommendation No.26 on women migrant workers also requires that “states parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country...they should ensure that contracts for women migrant workers are legally valid. In particular, they should ensure that occupations dominated by women migrant workers, *such as domestic work* and some forms of entertainment, *are protected by labour laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate.*”<sup>99</sup> In the absence of the Labour Law being extended to domestic workers, female domestic workers are not adequately protected against “beatings, hunger, overwork, underpayment and forced labour.”<sup>100</sup> This is very serious, as there are around 146,000 female domestic workers in the UAE who are not afforded sufficient protection.<sup>101</sup> In 2014 Human Rights Watch highlights that female domestics from Africa and Asia are particularly vulnerable to abuse because of the kafala visa system, as they cannot find another job without their employer agreeing to this and

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<sup>98</sup> Migrant Forum in Asia, Women migrant workers in the UAE: Not quite in the portrait, NGO Submission to the 45th Session of the Committee on the Elimination of Discrimination against Women, undated, 1-15, 5 <[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/MigrantForumAsia\\_UAE\\_45.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/MigrantForumAsia_UAE_45.pdf)> accessed 22nd December 2014

<sup>99</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R, 11

<sup>100</sup> Guardian, Beaten, trapped, abused and underpaid – migrant domestic workers in the UAE, 23 October 2014 <<http://www.theguardian.com/global-development/2014/oct/23/migrant-domestic-workers-uae-beaten-abused>< accessed 22nd December 2014

<sup>101</sup> Human Rights Watch, “I Already Bought You”, Summary, 23 October 2014 <<http://www.hrw.org/node/129797/section/2>> accessed 22nd December 2014

therefore often have to work to the end of the contract period and as a result, they may not escape abusive working conditions.<sup>102</sup>

When asked whether female temporary workers are supported by legislation, the majority of female non-Emiratis thought that this is the case, though about 1/3 also gave a neutral answer. 3% of female non-Emiratis also strongly disagreed and 8% disagreed, but 45% agreed and 11% strongly agreed. However, for instance, Ministerial Decree No.360 of 1997: To Issue the Executive By law of the Federal Law No. 6 of 1973 Concerning the Entry and Residence of Expatriates may not fully support female temporary workers since the law provides that migrants who terminate their contract will be banned for six months before they can be reemployed and even a one-year ban can be imposed if the employee breaches the employment agreement or applicable labour laws and regulations. Whilst skilled workers such as accountants, doctors and teachers, are not affected by this ban, it nonetheless affects unskilled female workers.<sup>103</sup> Yet prior to 2006, migrant domestic workers were even banned for an entire year when they wanted to transfer to another employer, whereas they now only have to get a no objection certificate or complete the contract period, but they also have to pay a transfer fee to change their visa and this can cost between US\$136 and US\$408.<sup>104</sup>

Temporary workers who nonetheless decide to leave their sponsor without permission become illegal aliens and are deported and banned for one year.<sup>105</sup> “Many previous sponsors punish their employees by not issuing a no objection certificate, forcing them to exit the

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<sup>102</sup> Human Rights Watch, United Arab Emirates: Trapped, Exploited, Abused, Migrant Domestic Workers Get Scant Protection, 23 October 2014 <<http://www.hrw.org/news/2014/10/22/united-arab-emirates-trapped-exploited-abused>> accessed 22nd December 2014

<sup>103</sup> N.98, 6-7

<sup>104</sup> Human Rights Watch, Exported and Exposed, Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates (New York, Human Rights Watch 2007) 117

<sup>105</sup> B. Van Esveld, *"The Island of Happiness": Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi* (New York, Human Rights Watch 2009) 29

country. Others put a ban on [workers] from several months to one year, which prevents them from entering the country or finding work during this period.”<sup>106</sup> Unskilled female temporary workers are therefore deterred from making complaints since they are greatly dependent on their employer.<sup>107</sup> When female temporary workers abscond, they are even more vulnerable to exploitation, sexual abuse, low wages, as they have no leverage to negotiate their salary and cannot pursue the company in case they do not receive their wages.<sup>108</sup> As a result of not having any legal status, they may end up in slavery like conditions.<sup>109</sup>

The majority of female non-Emiratis thought that laws/policies are in place to protect female temporary workers from discrimination (see table 5.2 above). Overall, 58% agreed, whilst 25% gave a neutral response and 17% disagreed. However, the Labour law framework does not contain provisions which outlaw sex discrimination, except for those who work in the free zones.<sup>110</sup>

Yet the majority (53%) of female non-Emiratis thought that the UAE government has promoted the rights of female temporary workers and only 3% of female non-Emiratis strongly disagreed and 12% disagreed, though again quite a significant amount of 32% gave a neutral response. Even the UAE government has acknowledged that more could be done.<sup>111</sup>

Most fundamentally, the Labour Law safeguards should be extended to female temporary

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<sup>106</sup> Email communication from Sharia Musabih, City of Hope/Dubai Foundation for Women and Children to Human Rights Watch, 29 September 2007; cited from n.87 (Human Rights Watch) 117

<sup>107</sup> However, the law also obligates employer to report that a worker has absconded and a failure to do so results in a fine and the new employer has to also pay a fine and the Ministry of Labour does not allow the employer to recruit anyone until the workers has been dismissed: B. Van Esveld, *"The Island of Happiness": Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi* (New York, Human Rights Watch 2009) 29

<sup>108</sup> Ibid (Van Esveld)

<sup>109</sup> D. S. Weissbrodt, *The Human Rights of Non-citizens* (Oxford, Oxford University Press 2008) 203

<sup>110</sup> Practical Law, Employment and employee benefits in United Arab Emirates: overview, 1 December 2014 <<http://uk.practicallaw.com/6-503-3460?source=relatedcontent#>> accessed 27th December 2014

<sup>111</sup> 7Days Dubai, UAE Government officials say protection policies are in place for domestic workers, 22 October 2014 <<http://7daysindubai.com/uae-government-officials-say-protection-policies-place-domestic-workers/>> accessed 27th December 2014

workers and they should be able to evoke the amendments to the kafala system, so that they can leave abusive employers.<sup>112</sup>

Participants overwhelmingly thought that female temporary workers can freely practice their religion and culture. Only 3% of female non-Emiratis strongly disagreed and 5% disagreed that the national legislation and policy of the UAE government allow female temporary workers to freely exercise their cultural rights and practice their religion and 18% gave a neutral response, whilst 55% agreed and 20% strongly agreed. The UAE constitution also affirms the right to religious freedom in accordance with customs and religious groups do not have to seek a licence to practice their religion.<sup>113</sup>

The great majority felt that more laws should be passed to protect female temporary workers (see table 5.2 above). Overall, 75% of female non-Emiratis agreed that it is important that more legal steps are taken to further protect female temporary workers, whilst only 7% disagreed. Hence, the overwhelming majority considered that the plight of female temporary workers has to be further improved through the enactment of more laws. For instance, the standard contract for domestic workers should comply with international labour standards, the draft law on domestic workers should be adopted, so that domestic workers are entitled to annual paid leave and can take time off when they are sick, though as the draft law provides less protection than the labour law, it may be better to extend the labour law to domestic workers, as well as the wage protection system and the revised kafala system.<sup>114</sup>

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<sup>112</sup> R. Takum, UAE's visa sponsorship system ties domestic workers to abuse – HRW, GMA News, 24 October 2014 <<http://www.gmanetwork.com/news/story/384942/pinoyabroad/news/uae-s-visa-sponsorship-system-ties-domestic-workers-to-abuse-hrw>> accessed 27th December 2014

<sup>113</sup> J. Castellino, K. A. Cavanaugh, *Minority Rights in the Middle East* (Oxford, Oxford University Press 2013) 136

<sup>114</sup> N.91, 17

However, it is important to emphasise that the survey participants considered that the overall status of temporary workers was good (see table 5.2 above). 55% considered that female temporary workers enjoyed a good overall status in contrast to only 14%, who disagreed, though about 1/3 also gave a neutral response. Temporary workers are those, who have only temporary contracts. The literature also informs that there are huge health disparities and some female migrant workers experience human rights violations, especially those working as domestic workers, as well as trafficked persons, and these persons may be exploited, subjected to debt bondage and may experience inhumane living and working conditions.<sup>115</sup>

Not being educated enough to find well paid jobs was considered a problem. 13% of female non-Emiratis strongly agreed and 26% agreed that female temporary workers lack education to find well paid jobs and 24% gave a neutral response, whilst 29% disagreed and 8% strongly disagreed. Hence, 39% agreed, whereas 37% disagreed and a high percentage of 24% gave a neutral response. Indeed, many unskilled migrants moved to the UAE, but highly skilled persons also travelled to the UAE, mainly because of the high salaries, though most are low or semi-skilled migrants.<sup>116</sup>

Equally, not speaking English or Arabic was considered a problem. 11% of female non-Emiratis strongly agreed and 55% agreed that not speaking English or Arabic makes female temporary workers more prone to abuse and 25% gave a neutral response, whilst 12% disagreed and 8% strongly disagreed. Hence, the majority concurred that language problems can increase the vulnerability of female migrants. For instance, the employment contract may

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<sup>115</sup> S. Sönmez, Y. Apostopoulos, D. Tran, S. Rentrop, Human rights and health disparities for migrant workers in the UAE, *Health and Human Rights Journal* 2014 <<http://www.hhrjournal.org/2013/08/20/human-rights-and-health-disparities-for-migrant-workers-in-the-uae/>> accessed 27th December 2014

<sup>116</sup> M. Collyer, *Emigration Nations: Policies and Ideologies of Emigrant Engagement* (London, Pgrave MacMillan 2013) 80



be written in Arabic and whilst not all have a contract, without speaking the language, it is difficult to contact the right institutions to complain about abuse.<sup>117</sup>

In respect of enforcing rights at court, there was some disagreement amongst the female non-Emiratis (see table 5.2 above). Overall, 33% agreed, but 29% of the survey participants also disagreed and 38% gave a neutral response and that there are issues is also highlighted by the literature, which informs that workers have to overcome legal obstacles, for instance, have to rebut counter-charges by employers for theft or breach of contract.<sup>118</sup> A 2014 Human Rights Watch report also highlights that many women, who work as domestics, experience abuse, have their passports confiscated, may be physically abused, may not receive their wages, have to work very long hours without enough breaks or are not provided with sufficient food and good living conditions and may not be able to access medical treatment and some may even be subjected to trafficking or forced labour.<sup>119</sup> Also, whilst the CEDAW promotes human rights for women, the Concluding Observations of States Parties' reports often highlight the problems which migrant women face and the Committee has given examples in its General Recommendations how particular provisions should extend to female migrant workers.<sup>120</sup> Most fundamentally, Article 15 of the CEDAW requires that men and women are afforded equal treatment in law and the Committee has interpreted nearly all substantive CEDAW provisions to cover migrant workers.<sup>121</sup> For instance, a destination country such as

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<sup>117</sup> G. Moreno-Fontes Chammartin, Domestic Workers: Little Protection for the Underpaid, Migration Policy Institute, 1 April 2005 <<http://www.migrationpolicy.org/article/domestic-workers-little-protection-underpaid>> accessed 27th December 2014

<sup>118</sup> Human Rights Watch, United Arab Emirates: Trapped, Exploited, Abused, 23 October 2014 <<http://www.hrw.org/news/2014/10/22/united-arab-emirates-trapped-exploited-abused>> accessed 23rd December 2014

<sup>119</sup> N.91, 1

<sup>120</sup> See for example the Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, paras 10, 26-27 and 36-37(a); V. Chetail, C. Bauloz, *Research Handbook on International Law and Migration* (Cheltenham, Edward Elgar Publishing Ltd 2014) 324

<sup>121</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation No.26, On Women Migrant Workers, UN Doc. CEDAW/C/2009/WP.1/R, 5 December 2008

the UAE would have to “ensure that women migrant workers who are in detention do not suffer discrimination or gender-based violence, and that pregnant and breastfeeding mothers as well as women in ill health have access to appropriate services” and to “review, eliminate or reform laws, regulations, or policies that result in a disproportionate number of women migrant workers being detained for migration-related reasons.”<sup>122</sup> The UAE government has therefore taken various steps in line with these recommendations. For instance, since April 2007 domestic workers receive a standardised written employment contract, which also deals with dispute settlement and a website and hotline have been made available, so that complaints can be filed with the police, wages have to be paid electronically, hiring domestic workers illegally has been rendered a criminal trafficking offence, not providing the passport to the worker has been proscribed and stringent labour inspections are also carried out.<sup>123</sup>

Whilst the UAE government has taken several measures to improve the situation of female temporary workers<sup>124</sup>, problems also arise because of foreign recruitment agencies, as confirmed by the survey findings (see table 5.2 above). 54% concurred with the statement, whilst only 10% disagreed. The UAE government has also recognised this and the Ministry of Labour has adopted regulations for recruitment agencies, which penalise them with the suspension or withdrawal of their licence in case they engage in trafficking or forced labour and since March 2014, they can also not charge excessively high fees.<sup>125</sup>

The female non-Emiratis were also asked the question “What problems do you think are there to ensure that female temporary workers are afforded equal treatment and how could these

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<sup>122</sup> Ibid, para.26(j)

<sup>123</sup> N.98, 3-4

<sup>124</sup> UAE Interact, Human Rights, 2016 <[http://www.uaeinteract.com/government/human\\_rights.asp](http://www.uaeinteract.com/government/human_rights.asp)> accessed 13th July 2016

<sup>125</sup> N.91, 17; Human Rights Watch, World Report 2015, Events of 2014, 1-660, 579 <[http://www.hrw.org/sites/default/files/wr2015\\_web.pdf](http://www.hrw.org/sites/default/files/wr2015_web.pdf)> accessed 28th January 2015

problems be overcome?” One participant explained that she mostly ticked a neutral answer since she believed that everything has to go through a maturity cycle, and that the UAE is now at a stage where its population is culturally ready to give more power and freedom to women, though she also cautioned that “women empowerment” should not be rushed at the expense of family cohesion and family roles. Another participant thought that as long as Emirati women are not given all freedoms, it would be unrealistic to expect that Emirati lawmakers would be fully accepting of female migrant workers and that this is the consequence of a male-dominated society and that female migrant workers should also expect a male-dominated society when they move to the UAE.

Another participant noted that some female workers stay illegally in the UAE and this makes it difficult to seek government help. The sponsorship process, which enables employers to hold passports for lower paid workers i.e. maids and nannies, was identified as making it difficult for females to leave abusive situations. It was acknowledged that the UAE regulates some issues, but it was pointed out that the UAE is unable to prevent abuse in the migrants' home country and thus cannot regulate bondage and exploitation, for instance, in the Philippines and India. Additionally, it was observed that privacy and the sanctity of the home make it difficult for the UAE government to regulate the ways that migrant workers are treated inside households. Hence, whilst there are policies that outlaw abuse, enforcing them is difficult to do. Yet it was also pointed out that it is commonly known that the police arrest women who ask for help.

As a solution, it was proposed that migrant should receive a contract which requires the employer to afford them their human rights. It was also pointed out that too little information exists about female migrants' rights and the different options for legal recourse and to seek

protection. Accessibility to legal advice and guidance for the lowest paid female temporary workers was therefore deemed important, also to prevent the “absconder problem.” Some thought that whilst female workers have been given full rights and opportunities that the problem is that laws are not enforced, whereas others thought that the issue lies with people and their mindsets and that this is what has to change. Hence, it was considered that a cultural shift is necessary, so that it is no longer legally, morally and socially considered acceptable to exploit female temporary workers and to ensure that they are perceived as whole humans, worthy of respect and care and no longer as second-class citizens. Adopting legislation was therefore not considered to be the sole solution.

It was deemed important to educate employers of migrant workers why sexual harassment and assaults should not happen. Additionally, it was suggested that a monitoring agency should be created to ensure the safety of these workers and to enable women to confidently approach law enforcement in order to seek protection from abusive employers, without fear of being condemned in return. It was observed that there should be a simple and efficient process that actually holds wrongdoers accountable for their erroneous actions. Hence, the private sector should be more regulated.

A participant suggested that male/female interaction should be more encouraged, as this could generate innovative ideas. It was also recommended that there should be a social media campaign to make female temporary workers aware of their rights.

It was also observed that international pressure has had an adverse effect in the UAE in many ways - the first is that it has pushed the government to develop superficial policies and committees that do not address root causes of these issues. Building awareness and asking

serious questions around the treatment of migrant workers at the lowest levels of service does not occur for fear of sullyng the UAE's reputation abroad. International conventions do not take into account the nuanced and specific cultural and social contexts of countries like the UAE and as a result push governments to implement “best practices” that do not work. It is therefore far more important to educate governments about the benefits of promoting gender equality. Research has found that wider society benefits from gender equality since it increases economic growth and human development.<sup>126</sup> Persons, especially women, enjoy tangible benefits in terms of education, financial independence and their career.<sup>127</sup> Gender equality has also intangible benefits, as it brings happiness, choice and freedom.<sup>128</sup> Hence, instead of criticising governments, it is important that governments firmly commit to effective policies which result in real change. This requires that they realise that women empowerment is an essential prerequisite for social and economic development and also prosperity.

### 5.2.5 Female Emiratis’ perceptions of the CEDAW reservations

In relation to the CEDAW reservations, the majority of female Emiratis thought that the reservations should be withdrawn, as illustrated by the following table:

**Table 5.3: Female Emiratis’ perceptions of withdrawing the CEDAW reservations**

Statements	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
<i>Withdrawing the CEDAW reservations</i>	4%	15%	56%	19%	6%
<i>The need to ratify the optional protocol to CEDAW to equip women with the legal complaint mechanism</i>	2%	6%	45%	32%	15%

<sup>126</sup> European Institute for Gender Equality, Women and political decision-making, Online discussion report, 2014, 1-20, 7 <[http://eige.europa.eu/sites/default/files/documents/MH0413192ENC\\_PDF.Web\\_.pdf](http://eige.europa.eu/sites/default/files/documents/MH0413192ENC_PDF.Web_.pdf)> accessed 12th July 2016

<sup>127</sup> Ibid

<sup>128</sup> Ibid

25% of female Emiratis agreed, whilst only 19% disagreed and 56% gave a neutral response. This suggests that it was generally thought that withdrawal of the reservations was desirable. In light of the weak enforcement mechanisms contained in the CEDAW, the ingrained cultural attitude towards women, it may be important to withdraw the various reservations to facilitate gender equality.<sup>129</sup> Withdrawal of the reservations also appears important, as in practice the reservations cause sex discrimination and thus contradict the aim of the CEDAW.<sup>130</sup>

The majority also thought that the Optional Protocol should be ratified, so that women can use the legal complaints mechanism (see table 5.3 above). 47% of survey participants agreed, whilst only 8% disagreed. Indeed, without ratification of the Optional Protocol, the CEDAW is not “on an equal footing with other international human rights instruments” and the rights which are afforded by the CEDAW are only “as effective as their ability to be implemented”. Without this, the rights in the CEDAW remain weak and can be too easily ignored.<sup>131</sup> Ratification of the Optional Protocol would also aid with implementing the CEDAW and ensuring compliance, as the Protocol creates a complaints procedure for individuals by virtue of Article 2 and a procedure, which allows for inquiries by virtue of Article 8.<sup>132</sup>

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<sup>129</sup> S. El-Masri, Challenges facing CEDAW in the Middle East and North Africa, 16(7) *The International Journal of Human Rights* 2012, 931-946, 931

<sup>130</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2016 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 11th July 2016

<sup>131</sup> A.-M. Mooney-Cotter, *Pregnant Pause: An International Legal Analysis of Maternity Discrimination* (Farnham, Ashgate Publishing Ltd 2010) 45

<sup>132</sup> E. Y. Krivenko, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (Leiden, Koninklijke Brill NV 2009) 206

### 5.2.6 Female Emiratis' and non-Emiratis' perceptions towards realising gender equality

A great majority of female Emiratis confirmed that there are campaigns or activities in their community or at their workplace, which promote the rights of women. 29% of female Emiratis strongly agreed and 48% agreed and 16% gave a neutral response, whilst only 5% disagreed and 2% strongly disagreed. Hence, the great majority thought that the UAE is promoting the rights of women through campaigns or activities. Various women's societies exist and organisations, which promote not only women education, but also workplace participation and which design programmes to facilitate this.<sup>133</sup> Moreover, a women leadership exchange program is run with Sweden, a women in boards initiative exists, an Arab women leadership outlook programme is offered, so that more insight can be gained, a national corporate child care project has been launched, professional development sessions are offered, an Emirates' leader gathering takes place, so that women are inspired to assume important roles in the workplace and several other activities and campaigns are held.<sup>134</sup> However, not that many female non-Emiratis agreed with the statement, as illustrated by the following table:

**Table 5.4: : Female non-Emiratis' perceptions that there are campaigns or activities to promote the rights of female temporary workers**

Strongly Disagree	5%
Disagree	20%
Neutral	33%
Agree	28%
Strongly Agree	14%

Hence, only 42% agreed, whilst 25% of female non-Emiratis disagreed that there are campaigns or activities in their community or their workplace which promote the rights of

<sup>133</sup> High Highness Sheikh Mohammed bin Rashi Al Maktoum, Women in the UAE, 2012 <<http://www.sheikhmohammed.com/vgn-ext-templating/v/index.jsp?vgnextoid=7d3c4c8631cb4110VgnVCM100000b0140a0aRCRD>> accessed 26th December 2014

<sup>134</sup> Dubai Women Establishment, Projects and Initiatives, 2010 <<http://www.dwe.gov.ae/projects.aspx>> accessed 26th December 2014

female temporary workers in the UAE (see table above 5.4). This suggests that more is done for female Emiratis than for female temporary workers. This means that female non-Emiratis did not feel that their rights are being promoted and suggests that more is done for female Emiratis than for female temporary workers. Furthermore, even though female Emiratis considered that their rights were promoted, the overwhelming majority (78%) of female Emiratis considered it nonetheless important that more laws and policies are adopted to further empower Emirati women: 30% of female Emiratis strongly agreed and 48% and 17% gave a neutral response, whilst 4% disagreed and 1% strongly disagreed. The reason for such an outcome is possibly because at present women still lag behind men, for instance, in respect of pay.<sup>135</sup> Another study also found that one third of women thought that they were not treated as favourably as men.<sup>136</sup>

However, it was considered that women were treated well. 36% of female Emiratis strongly agreed and 52% agreed that at present, the overall status of women in the UAE is good and 9% gave a neutral response, whilst only 2% disagreed and 1% strongly disagreed. Hence, an overwhelming majority of 84% agreed that women are treated well in the UAE. The findings are also supported by the Worldwide Social Progress Index, which ranked the UAE as a leading country, which ensures that women are treated with respect.<sup>137</sup>

The participants thought that the UAE government has adopted policies to empower women. 53% of female Emiratis strongly agreed and 39% agreed that the UAE government's policies have empowered women and 6% gave a neutral response, whilst only 1% disagreed and 1%

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<sup>135</sup> V. Todorova, Women in the Middle East lagging behind on pay, regional survey shows, The National, 15 December 2014 <<http://www.thenational.ae/uae/women-in-the-middle-east-lagging-behind-on-pay-regional-survey-shows>> accessed 26th December 2014

<sup>136</sup> Ibid

<sup>137</sup> ICN, UAE ranked world's top country for respecting women, 12 November 2014 <<http://www.icn.com/en/globalhighlights/2014/11/12/uae-top-country-to-respect-women/index.aspx>> accessed 28th December 2014



strongly disagreed. Hence, 92% concurred that the UAE government has adopted policies which empower women. As the economy of the UAE has rapidly developed, it is only natural that the cultural mores may not change as quickly, but the government has adopted measures in order to facilitate cultural adaptation, particularly so that female nationals become part of the labour force.<sup>138</sup> Certainly, much progress has been made, but challenges and difficulties remain, as the “process of empowering women” further evolves.<sup>139</sup>

### 5.2.7 Incompatibility between Western and Sharia conceptions about gender equality

In relation to Sharia law, the majority thought that the Sharia reinforces gender roles, as illustrated by the following table:

**Table 5.5: Female Emiratis perceptions towards realising gender equality**

Statements	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
<i>Female Emiratis’ perceptions that Sharia law reinforces gender roles</i>	8%	12%	19%	38%	23%
<i>Female Emiratis’ perceptions that Sharia law favours male members in inheritance matters</i>	20%	16%	20%	29%	15%
<i>Female Emiratis’ perceptions that having only Sharia law and not other sources of law does not improve the rights of women</i>	27%	21%	26%	15%	11%

<sup>138</sup> M. Gallant, J. S. Pounder, The employment of female nationals in the United Arab Emirates (UAE): An analysis of opportunities and barriers, 1(1) *Education, Business and Society: Contemporary Middle Eastern Issues* 2008, 26 - 33

<sup>139</sup> UAE Ministry of State for Federal National Council Affairs, Women in the United Arab Emirates: A Portrait of Progress, 2008, 1-7, 2 <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR\\_UAE\\_ANNEX3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR_UAE_ANNEX3_E.pdf)> accessed 30th December 2014

There was broad consensus that Sharia law makes it more difficult to achieve gender equality as you can. Hence, religious pressures cannot be easily reconciled with a Western description of women's rights.<sup>140</sup>

Nonetheless, the survey participants did not perceive Sharia law as an obstacle to political participation. Only 7% of female Emiratis strongly agreed and 21% agreed that Sharia law has made political participation more difficult for women and 27% gave a neutral response, whereas 24% disagreed and 21% strongly disagreed. Yet the fact that at the 2006 election only one woman was elected to the Federal National Council speaks for itself, though eight women were nonetheless appointed and this also highlights that the UAE government is trying to facilitate political participation.<sup>141</sup> Research has also found that women, who are not particularly politically active, are not pressurised and determine by their own free will, whereas women, who are extremely politically active, often encounter barriers and oppression and if they hold a leadership position, there still has to be man with a higher position.<sup>142</sup>

In family and divorce proceedings, it was not considered that men are favoured. 15% of female Emiratis strongly agreed and 22% agreed that Sharia law favours men in family and divorce matters and 20% gave a neutral response, whilst 21% disagreed and 23% strongly disagreed. Under Islamic law, the husband is obligated to support or maintain his wife and in exchange the wife is expected to be obedient.<sup>143</sup> However, this traditional formula has been

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<sup>140</sup> N. S. Chaturvedi, O. Montoya, Democracy, Oil, or Religion? Expanding Women's Rights in the Muslim World, 6(3) *Politics and Religion* 2013, 596-617, 596

<sup>141</sup> M. Al-Sabah, *Gender and Politics in Kuwait: Women and Political Participation in the Gulf* (London, IB Tauris & Co Ltd 2013) 47

<sup>142</sup> E. A. Gibson, The Right to Choose: Women's Political Activity in Islamic States, 8(3) *Global Tides* 2014, 1-16, 1 <<http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1092&context=globaltides>> accessed 23rd December 2014

<sup>143</sup> L. Welchman, A Husband's Authority: Emerging Formulations in Muslim Family Laws, 25(1) *International Journal of Law, Policy and the Family* 2011, 1-23, 1

eroded as a result of international pressure since the ratification of CEDAW has coincided with family law reform, particularly changes to the divorce rules. Yet the 2015 Human Rights Watch Report also points out that the law is still unfair to women since men can ask for a unilateral divorce and can use chastisement against their wife and children. This was confirmed by a Federal Supreme Court decision in 2010, where it was explained that this is legal, so long as no physical marks are left.<sup>144</sup> Yet the codification of the Personal Status Law 2005 has also introduced changes to the rights of a divorced mother to have custody of her children and the new rules do no longer reflect Islamic law and confer a lot of discretion on judges to reach decisions in accordance with changing social values.<sup>145</sup> It is also important to note that Sharia law is not just biased in favour of men, for instance, a gift given by the fiancé to a woman prior to marriage remains her property and when a Muslim woman marries, she is given “mahr” i.e. predominantly money and this also remains hers.<sup>146</sup>

However, in respect of inheritance matters, a substantial minority participants thought that men are favoured, as illustrated by table 5.5 above. Sharia law governs inheritance matters and provides that women inherit 1/3, whereas men inherit 2/3 of the assets.<sup>147</sup> However, it is also important to appreciate that the rationale for this is that men have to care not only for their wife/wives, but also unmarried sisters and any other female dependents, albeit when men do not care for them there is no legal mechanisms which women can evoke to enforce this Islamic principle.<sup>148</sup> Moreover, for non-Muslims Sharia law does not apply, but instead the deceased's faith determines the inheritance.<sup>149</sup>

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<sup>144</sup> L.-M. Möller, Family Law in the Arab Gulf: Recent Developments and Reform Patterns, 9(2) *Journal of Islamic State Practices in International Law* 2013, 22-39, 22; N.120 (Human Rights Watch, World Report 2015) 580

<sup>145</sup> L.-M. Möller, Custody Regulations in the United Arab Emirates: Legal Reforms and Social Realities, 11(1) *Hawwa – Journal of Women of the Middle East and the Islamic World* 2013, 41-57, 41

<sup>146</sup> N.29 (Kelly and Breslin) 528

<sup>147</sup> Ibid

<sup>148</sup> Ibid

<sup>149</sup> N.32, 322

Importantly, it was thought that the Sharia does not deprive women of their rights (see table 5.5). Overall, only 26% agreed that having only Sharia law and not other sources of law, such as international law, does not improve the rights of women, whereas 48% disagreed. This demonstrates that the Western assumption that Sharia law constitutes a barrier to women's rights may not hold true and it may be better to adopt a “sharia-minded perspective”, so that women rights are advocated “not against the reality of sharia in Muslim lives” but with it.<sup>150</sup> Hence, whilst UAE society is still conservative and religious, women do not consider that Islam makes it impossible for them to pursue happiness; to the contrary, the Qur’an is perceived as a way to empower women and historically, the Qur’an was the first main religious book, which gave women the right to work, manage a business, inherit, sell and own property and the Prophet Muhammad has also stated that “[t]he pursuit of knowledge is a duty of every Muslim, man and woman.”<sup>151</sup> These ideas were certainly revolutionary at the time and whilst governments and countries may not have fully endorsed these ideas, Muslim women nonetheless perceive Islam as ““a liberating force.”<sup>152</sup>

### 5.3 Conclusion

The UAE is “progressive in terms of women's rights” since it has initiated various initiatives and legal reforms, so that women now play a much greater role within public life.<sup>153</sup> As a result, the unequal status which women have been afforded has become more and more narrowed, though challenges still remain.<sup>154</sup> For instance, statistics highlight that in 1985 only

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<sup>150</sup> A. Quraishi, What if Sharia Weren't The Enemy?: Rethinking International Women's Rights Advocacy on Islamic Law, 22 *Columbia Journal of Gender and Law* 2011, 173-249, 173

<sup>151</sup> S. M. Darraj, M. Puller, *Creation of the Modern Middle East, United Arab Emirates* (New York, Chelsea House 2009) 65

<sup>152</sup> Ibid

<sup>153</sup> N.141, 47

<sup>154</sup> S. Nazir, Challenging Inequality: Obstacles and Opportunities Towards Women's Rights in the Middle East and North Africa, 5 *Journal of the Institute of Justice and International Studies* 2005, 31-42, 31

0.37% participated in the workforce and this increased to 0.56% by 1995,<sup>155</sup> but by 2008, only 2% of female Emiratis worked and the average wage was only about \$7,600 in comparison to men who earned \$32,000 per year.<sup>156</sup> The emiratization process - a programme launched by the UAE government which is designed to promote that Emirati citizens are employed in the private and public sectors has therefore not particularly worked for UAE women and, for instance, in Bahrain and Qatar more female citizens work.<sup>157</sup>

This is primarily because many parents do not think that their daughters should seek employment after they leave education.<sup>158</sup> Hence, the issue is that UAE society is still very conservative. Lack of flexible work is another problem which discourages women to enter the work field.<sup>159</sup> Also, maternity leave is rather short, except for those who work for the Dubai Government. Yet those employed by the Dubai Government can evoke Decree No. 14 of 2017 on maternity and childcare leave for female employees of the Dubai Government.<sup>160</sup> This Decree ensures that a better balance is struck for women who pursue a career and have a family. Those with permanent jobs can take 90 days maternity leave and can also request maternity leave 30 days prior to their due date. It is also possible to be off from work for up to 120 days by requesting normal annual leave, maternity leave and leave without pay.

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<sup>155</sup> R. Sabban, United Arab Emirates: Migrant Women in the United Arab Emirates, The case of female domestic workers, Gender Promotion Programme, Geneva, International Labour Office, GENPROM Working Paper No.10, 1-62, 1 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_117955.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_117955.pdf)> accessed 22nd December 2014

<sup>156</sup> N.16 (Bartlett and Ghaffar-Kucher) 182

<sup>157</sup> The emiratization programme was started in 2004 and the National Human Resource Development and Employment Authority (TANMIA) was created to assist UAE nationals with training and to offer career advice and pursuant to the Labour Law No.3 of 2012, employers have to favour UAE nationals and then Arab nationals and employers who recruit other foreigners may be fined by the Ministry of Labour in case they recruit someone in circumstances where the position could have been filled by an Emirati or other Arab national: n.22 (Sahoo); Latham & Watkins LLP, Employment Issues in the United Arab Emirates, 2nd edn, undated, 1-8, 2

<sup>158</sup> M. Swan, Emiratization brings greater equality for UAE women, The National, 29 April 2013 <<https://www.thenational.ae/uae/emiratization-brings-greater-equality-for-uae-women-1.297326>> accessed 1st July 2017

<sup>159</sup> M. Swan, Retaining female employees vital to Emiratization, study finds, The National, 13 July 2016 <<https://www.thenational.ae/uae/government/retaining-female-employees-vital-to-emiratization-study-finds-1.163563>> accessed 1st July 2017

<sup>160</sup> WAM, New rules in Dubai for maternity, childcare leave, Khaleej Times, 1 May 2017 <<http://www.khaleejtimes.com/news/uae-health/new-rules-in-dubai-for-maternity-childcare-leave>> accessed 1st July 2017

Miscarriages and still birth also entitle women to seek maternity leave for 60 days. Dubai government entities with more than 20 employees must also create nurseries, so that children can attend these up to the age of four. In the future, it is important that a similar law like Decree No. 14 of 2017 on maternity and childcare leave for female employees of the Dubai Government is adopted for the whole of the UAE and not just women who work for the government. Employment quotas could also be adopted as part of the emiratization programme for female Emiratis.<sup>161</sup>

Certainly, the ratification of the CEDAW and the CERD, pressure from the international society, and particularly the efforts made by the UAE government to change the mindsets of a conservative society, which has undergone rapid economic and social development, have all substantially changed the role which women play within society. In certain aspects, the UAE has even adopted more liberal measures to advance women's rights than Western countries, for instance, by requiring that women sit on the board of companies. Of course, more has to be done to achieve gender equality and to protect female migrants. One of the participants emphasised the importance of creating a simple, but effective process for female temporary workers to seek redress and this necessitates that they are also given legal rights, for instance, to breaks and holidays, adequate accommodation, etc., which they can evoke in court. Female temporary workers should also be educated about their legal rights and the manner in which they can enforce these, for instance, through a social media campaign. It is equally important to substantially increase the enforcement of labour laws and to conduct more on the spot checks in private homes and to impose heavy fines and/or possibly criminal sanctions on employers, who are found to violate the human rights of female domestic workers. However, as explained by one of the participants, it is not possible to take every single matter to court

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<sup>161</sup> L. L. Matherly, S. Hodgson, Implementing Employment Quotas to Develop Human Resource Capital: A Comparison of Oman and the UAE, 2(7) *International Journal of Liberal Arts and Social Science* 2014, 75-90, 70

and therefore “maturity and acceptance and tolerance are key” and these objectives can be promoted by the Ministry of Education through awareness campaigns.

As observed by another participant, “everything has to go through a maturity cycle” and the ““UAE is now at a stage where its population is culturally ready to give more power and freedom to women.” Yet as pointed out by one participant, it is crucial to take into account the nuanced and specific cultural and social context which shapes the UAE and to not just opt for best practices. According to another participant, this also means recognising that the problems that female migrant workers face might not only lie with the UAE system or Emirati men, but simply with other men - Arabs or Asian who make up a big proportion of the community and bring their beliefs with them. In this context, it is also important to emphasise that Islam considers women to be distinct persons, who can own property, dispose their income freely. Mothers are extremely respected and the Quran requires men “not to look down on women”. It is only thought that in respect of natural functions, such as childbirth and raising children, there is a natural “division of labour” and women can therefore also work.<sup>162</sup> Hence, “an Arab model of women's empowerment”, which draws “ “in particular on Islam”” is required, but one which recognises that women's progress has been undermined not by Islam, “but [a] conservative interpretation of Islam, combined with local cultures. ”<sup>163</sup>

The next chapter is designed to discuss and analyses the findings from semi-structured interviews and survey in light of the literatures.

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<sup>162</sup> S. Abram, *Sharia Law, Islamic Quranic Law* (Douglas Chick 2012) 51

<sup>163</sup> R. W. Mansbach, *Global Politics in a Changing World* (Boston, Houghton Mifflin Harcourt Publishing Company 2009) 475

## Chapter Six

### **Women empowerment in the UAE: Discussion and analysis of research findings**

#### **6. Measuring the impact of ratified human rights conventions and how the UAE meets its international gender equality obligations**

This chapter discusses and analyses the findings from the interviews and questionnaires in light of the literature. It thus contributes to the available knowledge which has been gathered about promoting gender equality in the UAE, particularly through the ratification of international human rights conventions. Research confirms that international human rights treaties, including the CEDAW, have generally promoted women's rights.<sup>1</sup> For instance, women have had more access to education in the UAE, though societal barriers still exist and this means that educated women are not as readily accepted and as a result they are often only recruited in a small field of occupations, particularly the public sector.<sup>2</sup> Discriminatory practices, laws and social norms still frustrate gender equality in the Middle East.<sup>3</sup> Hence, despite ratification women are still not afforded all rights in Arab countries and challenges remain.<sup>4</sup>

It is therefore very important to monitor the progress which has been made since the ratification of various conventions in the UAE. These human rights conventions have

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<sup>1</sup> N. A. Englehart, M. K. Miller, The CEDAW Effect: International Law's Impact on Women's Rights, 13(1) *Journal of Human Rights* 2014, 22-47, 22

<sup>2</sup> L. J. Kemp, Progress in female education and employment in the United Arab Emirates towards Millennium Development Goal (3): gender equality, 15(4) *Foresight* 2013, 264-277, 264

<sup>3</sup> N. Sika, The Millennium Development Goals: Prospects for Gender Equality in the Arab World, 12(3) *Journal of International Women's Studies* 2011, 27-42, 27

<sup>4</sup> S. El-Masri, Challenges facing CEDAW in the Middle East and North Africa, 16(7) *The International Journal of Human Rights* 2012, 931-946, 931



imposed duties on the state parties which they have to discharge in their own jurisdiction.<sup>5</sup> Similarly, this research tried to identify what impact the ratification of the CEDAW and the CERD has had in the UAE. As discussed in previous chapters, these Conventions spell out important rights for women in various fields, such as the political sphere, education, employment, health care, and when participating in social and economic life.<sup>6</sup>

The interviews and survey results sought to measure the impact of the ratified conventions on women empowerment and how the UAE meets its international gender equality obligations. It is therefore firstly discussed and analysed in light of the literature how the UAE has fulfilled its reporting obligations under the CERD and the CEDAW. The UAE's commitment to women empowerment is then scrutinised against the background of the reservations which it has entered in respect of the CEDAW. The reasons for the reservations are explored and whether these may be withdrawn in light of changing times. Subsequently, the chapter assesses how the UAE is meeting its international gender equality obligations under the CEDAW.

The positive impact of the CEDAW and the CERD in effecting legal change in the UAE is discussed. Thereafter, the remaining challenges to meet the CERD and CEDAW standards are critically investigated. Then the topic of overcoming local customs and traditions is dealt with, including which steps have been taken by the UAE to overcome sexist stereotyping within society. In this context, it is also pointed out in which fields women have been empowered and how gender disempowering customs and traditions can be overcome through a national strategic plan and additional mechanisms. Furthermore, the UAE's national

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<sup>5</sup> A. C. Byrnes, M. Freeman, The Impact of the CEDAW Convention: Paths to Equality, *UNSW Law Research Paper* 2012, 3

<sup>6</sup> L. M. Keller, Convention on the Elimination of Discrimination against Women: Evolution and (Non) Implementation Worldwide, *27 Thomas Jefferson Law Review* 2004, 35, 36

mechanisms and national strategy for the advancement of women are presented. The next section then explores to what extent female temporary workers are protected. Finally, a roadmap is spelled out to realise gender equality in the UAE before the chapter concludes.

## **6.1 The CERD and CEDAW and the reporting process**

As mentioned in chapter 1, the UAE acceded to the CERD in 1974.<sup>7</sup> Article 9(1)(b) requires that a report is provided regularly every second year. However, the UAE has failed to periodically discharge this duty and, for instance, there was a nine year gap after the UAE submitted a report in 1986.<sup>8</sup> In 1995, the UAE then acknowledged that foreigners who reside in the UAE are by virtue of the constitution entitled to evoke the rights in the CERD.<sup>9</sup> The Committee responded to the UAE's 1995 report and voiced concerns about the inhuman treatment of foreign workers, including domestic servants, especially from Asian states.<sup>10</sup> Despite this, the UAE's 2009 report hardly made any reference to migrants and failed to address how the CERD duties are being discharged.<sup>11</sup> To the contrary, the UAE denied the allegation and stated that there was no need to adopt legislation to address violations of the CERD.<sup>12</sup> The UAE also did not report about the nationalities and only distinguished between

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<sup>7</sup> A. Chase, A. Hamzawy, *Human Rights in the Arab World: Independent Voices* (Philadelphia, University of Pennsylvania Press 2008) 239

<sup>8</sup> See the Committee on the Elimination of all Forms of Racial Discrimination, Periodic Report United Arab Emirates, CERD/C/130/Add.1, 21 July 1986; Committee on the Elimination of Racial Discrimination: State Party Report, United Arab Emirates, CERD/C/279/Add.1, 8 May 1995; United Nations Durban Review Conference, Review of Reports, Studies and Other Documentation for the Preparatory Committee and the Durban Review Conference and Contributions of Human Rights Bodies and Mechanisms, Geneva, 23 April 2008, 1-15, 5 <<http://www.un.org/en/durbanreview2009/pdf/CRP.5.pdf>> accessed 1st October 2015; Mafiwasta, UN Committee on the Elimination of Discrimination Against Women, Country Shadow Report: The United Arab Emirates, October 2009, 1-32, 7 <[http://www2.ohchr.org/english/bodies/cedaw/docs/Mafiwasta\\_E.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/Mafiwasta_E.pdf)> accessed 25th August 2015

<sup>9</sup> Committee on the Elimination of Racial Discrimination: State Party Report, United Arab Emirates, CERD/C/279/Add.1, 8 May 1995, para.30

<sup>10</sup> Committee on the Elimination of Racial Discrimination, Report of the Committee on the Elimination of Racial Discrimination General Assembly, Fiftieth Session Supplement No. 18 (A/50/18), New York, United Nations, 22 September 1995

<sup>11</sup> Committee on the Elimination of all Forms of Racial Discrimination, Periodic Report, United Arab Emirates, CERD/C/ARE/12-17, 13 March 2009, 28

<sup>12</sup> Ibid

Emiratis and non-Emiratis, despite the Committee recommending this.<sup>13</sup> This is despite the fact that persons are being distinguished and discriminated in accordance with their status, with Emiratis at the top of the hierarchy, followed by wealthy and educated expats and unskilled labourers/migrants at the bottom.<sup>14</sup> The non-governmental organisation Mafiwasta criticises the UAE for never having implemented the CERD and ignoring “the spirit of the Convention, which is one of inclusion and celebration of diverse groups.”<sup>15</sup>

The CERD is not the only convention which implicitly protects women and, for instance, the Universal Declaration of Human Rights 1948, Convention on the Political Rights of Women 1951, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the Declaration on the Elimination of All Forms of Discrimination against Women 1967, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict 1974 and the Declaration on the Elimination of Violence against Women 1993 and the Universal Declaration of Democracy 1997 are other international instruments which promote the rights of women.<sup>16</sup> Yet the CEDAW is particularly important in the context of women empowerment. As mentioned in previous chapters, the CEDAW is the first legally binding international convention which proscribes discrimination against women and obligates all states parties to take affirmative action in order to advance substantive equality of women.

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<sup>13</sup> Committee on the Elimination of Racial Discrimination, Report of the Committee on the Elimination of Racial Discrimination General Assembly, Fiftieth Session Supplement No. 18 (A/50/18), New York, United Nations, 22 September 1995

<sup>14</sup> H. Hari, The Dark Side of Dubai, The Independent, 7 April 2009 <<http://www.independent.co.uk/voices/commentators/johann-hari/the-dark-side-of-dubai-1664368.html>> accessed 29<sup>th</sup> August 2015

<sup>15</sup> Mafiwasta, UN Committee on the Elimination of Discrimination Against Women, Country Shadow Report: The United Arab Emirates, October 2009, 1-32, 3-4 <[http://www2.ohchr.org/english/bodies/cedaw/docs/Mafiwasta\\_E.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/Mafiwasta_E.pdf)> accessed 25th August 2015

<sup>16</sup> Inter-Parliamentary Union, Instruments of international law concerning women, 2016 <<http://www.ipu.org/wmn-e/law.htm>> accessed 12th July 2016

Pursuant to Article 18 of the CEDAW, all states parties are required to submit a report to the Secretary-General about the legislative, judicial, administrative or other measures that they have adopted in order to implement the CEDAW within one year after its entry into force, and then at least every four years thereafter, or whenever the Committee on the Elimination of Discrimination against Women makes a request. Like with the CERD reports, the CEDAW reports discuss which steps have been taken, as well as issues in respect of the implementation of the Convention, and these are forwarded to the Committee for consideration. Many commentators emphasise the important role which the reporting procedure has in enhancing the implementation of the rules set out in the Convention.<sup>17</sup> The reporting procedure focuses the attention of states parties on the treaty commitments and on evaluating how much progress has been made to realise the respective duties.<sup>18</sup> It also provides an opportunity for civil society to liaise with states parties during the preparation of the report, when the Committee reviews the report and also when following up concluding observations by the Committee.<sup>19</sup> Civil society, including non-governmental organisations, play a monitoring role since the reporting system under the CEDAW allows that comments are made in shadow reports about the different issues which impact women's rights.<sup>20</sup> This in turn facilitates a more constructive dialogue between the Committee<sup>21</sup> and the respective government and makes it easier to lobby for the implementation of relevant recommendations contained in the Committee's Concluding Comments.<sup>22</sup> Yet there are no independent non-governmental organisations in the UAE. This This is problematic since communication from

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<sup>17</sup> N.5, 13

<sup>18</sup> A. Hellum, H. Sinding Aasen, *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge, Cambridge University Press 2013) 347

<sup>19</sup> N5, 13

<sup>20</sup> L. Baldez, *Defying Convention: U.S. Resistance to the UN Treaty on Women's Rights* (Cambridge, Cambridge University Press 2014) 140

<sup>21</sup> Through the CEDAW reporting process, there is a dialogue between the government and the CEDAW Committee, and also follow-up takes place since the government response to the CEDAW recommendations in conjunction with domestic political advocacy groups.

<sup>22</sup> H. B. Schöpp-Schilling, 'The Role of the Convention on the Elimination of All Forms of Discrimination against Women and Its Monitoring Procedures for Achieving Gender Equality in Political Representation', in International IDEA Workshop, Budapest, Hungary, 2004, 5

women's NGOs is an essential aspect of the CEDAW reporting process.<sup>23</sup> No information is furnished in order to verify the assertions by the government and to assess how the situation of women can be improved.<sup>24</sup> No “*shadow reports*” are being jointly prepared by different independent NGOs.<sup>25</sup> There is therefore insufficient accountability and the effectiveness of the reporting procedure is undermined due to the lack of cooperation.<sup>26</sup>

Another problem is that the UAE has not ratified the Optional Protocol to the CEDAW. Article 2 of the Optional Protocol creates a complaints procedure for individuals and Article 8 allows for inquiries.<sup>27</sup> Hence, a stronger feedback system could be established if individuals could voice their concerns through a complaint mechanism and these complaints could be investigated. The survey participants also felt that it would be advantageous if the Optional Protocol was adopted. For instance, Tunisia ratified the Optional Protocol in 2008 and Libya in 2004, despite being a Muslim country.<sup>28</sup>

Nonetheless, even without ratification of the Optional Protocol, the requirement for states to furnish reports is an important stepping stone to encourage gender equality for the following reasons: Firstly, the monitoring mechanism emphasises that the state is accountable for ensuring that its citizens enjoy guaranteed rights and that states are responsible for violations of those rights. Secondly, it highlights the importance of conducting thorough investigations of overt and covert violations. Thirdly, it provides a process and forum where governments

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<sup>23</sup> S. Deller Ross, *Women's Human Rights: The International and Comparative Law Casebook* (Philadelphia, University of Pennsylvania Press 2008) 363

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> N.15 10

<sup>27</sup> E. Y. Krivenko, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (Leiden, Koninklijke Brill NV 2009) 206

<sup>28</sup> United Nations, Human Rights, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 2016 <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en)> accessed 13th July 2016

have to respond to comments and develop ways to fully discharge their responsibilities. Fourthly, it provides a forum whereby groups within countries can monitor whether their governments have made progress and this is very important, particularly since such opportunities are frequently not available at the local level.<sup>29</sup> However, whilst the UAE reported to the CEDAW and CERD Committees in 2009 and 2010 and both Committees made recommendations, particularly in respect of “the living and working conditions of non-citizens contract workers; the situation of domestic foreign workers; and the situation of stateless Bidoon in the country” and in respect of female domestic workers and to prevent violence, especially by making shelters available, no further information has been furnished by the UAE since then to either Committees.<sup>30</sup> This is problematic since apart from not ratifying the Optional Protocol, the UAE has also entered reservations to the CEDAW in order to safeguard its cultural and religious heritage and these are discussed next.

## **6.2 Reservations made by the UAE to the CEDAW**

The obligations under the CEDAW can be limited through reservations i.e. a “unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State.”<sup>31</sup> Hence, reservations strengthen “the legal boundaries of state action with regards to protected rights.”<sup>32</sup> The historic advisory opinion of the International Court of Justice (ICJ) on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

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<sup>29</sup> IWRAW, CEDAW Reporting and Review Process, 2015 <<http://www.iwraw-ap.org/cedaw/cedaw-sessions/cedaw-reporting-and-review-process/>> accessed on 24 May 2015

<sup>30</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, CEDAW/C/ARE/CO/17, 21 September 2009; W. Kymlicka, E. Pfössl, *Multiculturalism and Minority Rights in the Arab World* (Oxford, Oxford University Press 2014) 182

<sup>31</sup> Article 2 of the Vienna Convention on the Law of Treaties 1969; D. Moeckli, S. Shah, S. Sivakumaran, D. Harris, *International Human Rights Law* (Oxford, Oxford University Press 2014) 105

<sup>32</sup> M. L. Buenger, Human Rights Conventions and Reservations: An Examination of a Critical Deficit in the CEDAW, 20 *Buffalo Human Rights Law Review* 2013-2014, 67

establishes that reservations are forbidden if they contravene the purpose and object of the treaty.<sup>33</sup> Hence, to be valid a reservation has to be compatible with the purpose and object of the convention.<sup>34</sup> The ICJ thus stated that “the character of the multilateral convention, its purpose [...] and adoption are factors which must be considered in determining the [...] possibility of reservation.”<sup>35</sup> This object and purpose test has also been codified in the Vienna Convention on the Law of Treaties,<sup>36</sup> which spells out a framework for reservations in Articles 19-23 and Article 2(1)(d).<sup>37</sup> Moreover, Article 28(2) of the CEDAW Convention provides that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted.” Accordingly, the CEDAW restates the rule contained in Article 19(c) of the Vienna Convention.<sup>38</sup> This flexible approach towards reservations has made it possible for countries to enter reservations to the CEDAW.<sup>39</sup> Countries are thus allowed to determine themselves whether a reservation is admissible.<sup>40</sup> A disparate approach has thereby been facilitated since countries have entered reservations for different types of reasons, including but not only because of Islamic law.<sup>41</sup> As a result, “*the public international law principle that individuals have certain inalienable rights, which states cannot justify overriding by the imperatives of culture, tradition, expediency, economic advantage or other such factors has been undermined.*”<sup>42</sup> A better approach would have been if reservations could have been only entered in cases where the CEDAW expressly allowed

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<sup>33</sup> International Court of Justice Report of Judgment, Advisory Opinions and Orders Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide Advisory Opinions of May 28th, 1951, 15

<sup>34</sup> N.27, 81

<sup>35</sup> International Court of Justice Report of Judgment, Advisory Opinions and Orders Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide Advisory Opinions of May 28th, 1951, 15

<sup>36</sup> Article 19 of the Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

<sup>37</sup> B. Clark, The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women, 85(2) *The American Journal of International Law*, 281-321, 281

<sup>38</sup> *Ibid*, 282

<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid*, 289

<sup>41</sup> *Ibid*, 284-285

<sup>42</sup> *Ibid*, 286

for this and this was approved by the parties to the treaty.<sup>43</sup>

Another issue is that countries have entered general reservations, e.g. that a provision will only be honoured so long as this does not contravene the Sharia.<sup>44</sup> General reservations have thus been inserted instead of reasonably specific ones.<sup>45</sup> Uncertainty has thereby been promoted, as it is unclear whether a reservation is compatible and meets the object and purpose test.<sup>46</sup> Also, the failure to assess whether the object and purpose test is met in respect of the CEDAW as a whole, as opposed to in respect of a particular provision, means that states can enter many different reservations.<sup>47</sup> Yet clearly, the more reservations have been entered, the less convincing it becomes to argue that the object and purpose of the CEDAW are not frustrated.<sup>48</sup>

Another weakness of the CEDAW reservation regime, specifically Article 20 is that a ratification of a reservation is valid so long as no other state objects to it within 12 months of the notification of the reservation, resulting in tacit acceptance.<sup>49</sup>

### **6.2.1 The UAE's reasons for the CEDAW reservations**

As mentioned in chapter three, the UAE government ratified the CEDAW on 6 October 2004 pursuant to Federal Decree No. 38 of 2004, but with reservations concerning the texts of various Articles. Yet it is important to note that the UAE is not the only country which has entered reservations, and even Western countries, such as Austria, Bulgaria, France, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Switzerland and the United

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<sup>43</sup> Ibid, 289

<sup>44</sup> Ibid, 310

<sup>45</sup> Ibid

<sup>46</sup> Ibid, 311

<sup>47</sup> Ibid, 314

<sup>48</sup> Ibid

<sup>49</sup> Ibid, 312



Kingdom of Great Britain and Northern Ireland, have entered reservations.<sup>50</sup> Moreover, various states, such as Saudi Arabia, have made general reservations in respect of all provisions which do not comply with the Sharia or laws which are in force at the time.<sup>51</sup>

The interviewees thought that the CEDAW reservations may be withdrawn as UAE society is undergoing rapid change, but only if Sharia compliance can nevertheless be guaranteed. Yet some pointed out that these reservations had been carefully studied at the time of ratification. They therefore considered it unlikely that the government would withdraw the reservations in the near future. However, such a point of view appears misguided. As pointed out by el-Azhary Sonbol, one mistake which Muslim countries often make is to consider that their laws derive from the Sharia and therefore directly constitute the word of God.<sup>52</sup> Instead, these laws have developed over time through interpretations of the holy scriptures which has given rise to the current laws.<sup>53</sup> In other words, what is required is that Muslim countries start differentiating between what actually constitutes “God's laws” and what are only interpretations.<sup>54</sup> It is primarily the latter which prevent Muslim countries from withdrawing their reservations, which results in the CEDAW not being fully implemented.<sup>55</sup> The female Emirati and non-Emiratis survey participants also thought that withdrawal of the reservations is more desirable than their retention. Equally, 24.8% of non-Emiratis agreed that the UAE government should withdraw all the reservations to the CEDAW, 57.9% gave a neutral response, whilst 76% disagreed. Overall, the two groups of survey participants marginally favoured the withdrawal of the reservations.

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<sup>50</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2016 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 11th July 2016

<sup>51</sup> M. A. Freeman, Reservations to CEDAW: An Analysis for UNICEF, UNICEF, December 2009, 1-48, 6 <[http://www.unicef.org/gender/files/Reservations\\_to\\_CEDAW-an\\_Analysis\\_for\\_UNICEF.pdf](http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf)> accessed 14th July 2016

<sup>52</sup> A. el-Azhary Sonbol, A Response to Muslim Countries' Reservations Against Full Implementation of CEDAW, 8 *Journal of Women of the Middle East and the Islamic World* 2010, 348-367, 349

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Ibid

The reservations which the UAE has entered can be broadly divided into those which prevent that the Sharia becomes contradicted and those that intervene with the internal affairs of the UAE. Reservations to Article 2(f), Article 15, paragraph 2 and Article 16 were entered to uphold the Sharia, whereas reservations to Article 9 and Article 29, paragraph 1 prevent undue interference with national matters. The fact that several different reservations have been entered, even if permissible, has an accumulative effect and this has an adverse effect on the overall purpose and object of the CEDAW.<sup>56</sup>

Article 2(f) requires the state “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” However, this is problematic under Islamic inheritance law since a woman only receives half the share of what a man would receive in a similar situation.<sup>57</sup> The underlying rationale for such an approach is rooted in notions of justice, property, community, family and empowerment and these are linked to particular Quranic verses which facilitate “a conscious socio-economic religious ideology” in order to promote extended family cohesiveness.<sup>58</sup> This has to be also understood in light of the religious *waqf* doctrine which requires Muslims, particularly men, to care for poor and needy relatives.<sup>59</sup> Hence, in contrast to Western inheritance laws which do not prescribe particular rates and shares for every family member and which favour the surviving spouse, Islam requires a more communal approach towards inheritance.<sup>60</sup> However, Malaysia, which is also a Muslim country, withdrew its reservation to Article 2(f) since it did not find that this article

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<sup>56</sup> B. Clark, The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women, 85(2) *The American Journal of International Law*, 281-321, 314

<sup>57</sup> S. Sait, H. Lim, *Land, Law & Islam, Human Rights in the Muslim World* (London, Zed Books Ltd 2006) 108

<sup>58</sup> *Ibid*

<sup>59</sup> *Ibid*, 108-109

<sup>60</sup> P. Murphy, *Inheritance Laws in an Islamic Society: Islamic Cultures Are Distinct in Everyway* (Bloomington, iUniverse 2012) 9-10

contradicted the Sharia.<sup>61</sup>

Article 15(2) affirms women equal rights in respect of giving testimonies and the right to conclude contracts. However, Islamic criminal law requires that two women have to give a testimony, whereas it is enough for one man to give a testimony.<sup>62</sup> Yet some argue that Quranic verse 2:282 on which this dual witness principle is based is limited to certain financial transactions due to verse 24:6-9 specifically requiring that the evidence which men and women give is treated the same.<sup>63</sup> Such an interpretation may enable the UAE to narrow the reservation in respect of testimonies. Article 15(2) also conflicts with the Sharia since women cannot enter into a marriage contract and also require the consent of the husband in order to work and thus enter into an employment contract. Yet the Personal Status Law allows women to apply to a court in order to obtain consent to marry, so that the right to conclude contracts is to a large extent provided. In the future, this reservation may be withdrawn.

Moreover, a reservation was entered in respect of Article 16 which deals with discrimination during marriage and family relations because under the Sharia “the payment of a dowry and of support after divorce is an obligation of the husband, and the husband has the right to divorce just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property. The Sharia makes a woman's right to divorce conditional on a judicial decision, in a

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<sup>61</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2016 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 11th July 2016; A. Vrdoljak, *The Cultural Dimension of Human Rights* (Oxford, Oxford University Press 2013) 235

<sup>62</sup> N. Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London, British Institute of International and Comparative Law 2008) 28

<sup>63</sup> Ibid

case in which she has been harmed.”<sup>64</sup> Most states which evoke the Sharia have entered reservations in relation to Article 16.<sup>65</sup> This highlights that withdrawing the reservation in respect of this Article may be most controversial. Nonetheless, if more emphasis was placed on those Quranic verses which emphasise that man and woman are equal, namely al-Hajj, 22:5 and Nisa'4:1 this controversy could be easily overcome.<sup>66</sup> In Al-Hajj, 22:5 it is proclaimed *“O mankind! if ye have a doubt about a Resurrection, (consider) that We created you out of dust, then out of sperm, then out of a leech-like clot, then out of a morsel of flesh, partly formed and partly unformed, in order that We may manifest (our power) to you; and We cause whom We will to rest in the wombs for an appointed term, then do We Bring you out as babes, then (foster you) that ye may reach your age of full strength; and some of you are called to die, and some are sent back to the feeblest old age, so that they know nothing after having known (much), and (further), thou seest the earth barren and lifeless, but when We pour down rain on it, it is stirred (to life), it swells, and it puts forth every kind of beautiful growth (in pairs).”*<sup>67</sup>

Nisa'4:1 reads *“O people! Be careful of (your duty to) your Lord Who created you from a single soul and from its created its mate and spread from these two many men and women.”*<sup>68</sup>

El-Azhary Sonbol points out that these two verses do not refer to Adam's rib and accordingly women are not just created from men and are therefore not tangential.<sup>69</sup> Instead these verses focus on *“human equality”*, which is also a core feature of the underlying message of the Quran.<sup>70</sup> This is underscored by At-Tawbah 9:71-72, which commands that men and women

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<sup>64</sup> A. Vrdoljak, *The Cultural Dimension of Human Rights* (Oxford, Oxford University Press 2013) 217

<sup>65</sup> M. A. Freeman, Reservations to CEDAW: An Analysis for UNICEF, UNICEF, December 2009, 1-48, 6 <[http://www.unicef.org/gender/files/Reservations\\_to\\_CEDAW-an\\_Analysis\\_for\\_UNICEF.pdf](http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf)> accessed 14th July 2016

<sup>66</sup> A. el-Azhary Sonbol, A Response to Muslim Countries' Reservations Against Full Implementation of CEDAW, 8 *Journal of Women of the Middle East and the Islamic World* 2010, 348-367, 352

<sup>67</sup> Cited from *ibid*, 352-353

<sup>68</sup> *Ibid*, 353

<sup>69</sup> *Ibid*

<sup>70</sup> *Ibid*

discharge the same rituals and their duties to be given an eternal soul by God are the same.<sup>71</sup>

This verse states *“The Believers, men and women, are protectors, one of another; they enjoy what is just and forbid what is evil; they observe regular prayers, practice regular charity, and obey God and His apostle. On them God will pour His mercy, for God is exalted in power, wise. God has promised believers, be they men and women, gardens under which rivers flow, to swell therein, and beautiful mansions in gardens of everlasting bliss. But the greatest bliss is the Good Pleasure of God, that is the supreme felicity.”*<sup>72</sup>

Gender equality is also firmly embedded within the verses which discuss Judgment Day, namely Al-Nisa' 4:124; Al-Baqarah 2:30-34; Ghafir, 40:40; Al-Ahzab, 33:35 and Al-Imran 3:195.<sup>73</sup> Al-Nahl 16:97 is also very explicit in this regard and states *“Whoever does good whether male or female and he is a believer, We will most certainly make him live a happy life, and We will most certainly give them their reward for the best of what they did.”*<sup>74</sup> The UAE ought to therefore withdraw the reservation in order to ensure that the Sharia is fully upheld.

As mentioned above, the UAE has not only entered reservations to uphold the Sharia, it has entered two reservations to assert its sovereignty. Firstly, in respect of Article 9 of the CEDAW which deals with discrimination on the basis of nationality and enables women to have the same rights as men in relation to retaining, acquiring or even changing nationality, including of children. The UAE is not the only state which has entered a reservation to Article 9(2). Algeria, the Bahamas, Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, the

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<sup>71</sup> Ibid, 354

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Cited from ibid

Syrian Arab Republic and Tunisia have also entered a reservation.<sup>75</sup> The UAE considers that granting nationality is an internal matter and therefore subject to domestic laws, criteria and conditions. The issue with affording children of women, who are married to foreigners, the nationality of their mother is not a problem which is confined to the UAE and in 2014, 26 other countries limited this right.<sup>76</sup> However, as further discussed below, in 2011 the UAE adopted a decree which enables children of Emirati mothers who are married to expatriates to acquire nationality upon reaching 18 years of age.<sup>77</sup> This reservation may therefore be withdrawn in the future.

Moreover, a reservation has been entered in respect of Article 29(1) which deals with jurisdiction and requires that any “disputes between two or more State Parties concerning the interpretation or application on the present Convention which is not settled by negotiation shall...be submitted to arbitration. If...the parties are unable to agree...any one...may refer the dispute to the International Court of Justice...” The UAE explained that other states can use this to defend their own nationals and obtain a decision against the state and this goes against the UAE’s interests.

## **6.2.2 The CEDAW Committee and changing the attitude of the UAE towards the reservations**

The CEDAW Committee ensures a “constructive dialogue” with the state parties, so that legislation, customary practices and religious dictates are reviewed with a view to

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<sup>75</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2016 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 11th July 2016

<sup>76</sup> A. E. Theodorou, 27 countries limit a woman's ability to pass citizenship to her child or spouse, Pew Research Center, 5 August 2014 <<http://www.pewresearch.org/fact-tank/2014/08/05/27-countries-limit-a-womans-ability-to-pass-citizenship-to-her-child-or-spouse/>> accessed 14th July 2016

<sup>77</sup> W. Issa, Children of Emirati mothers, expatriate fathers offered citizenship, The National, 30 November 2011 <<http://www.thenational.ae/news/uae-news/children-of-emirati-mothers-expatriate-fathers-offered-citizenship>> accessed 1st October 2015.

determining whether the reservations can be withdrawn. The committee encourages states parties to review the reservations in order to narrow their scope. When state parties object to a complete withdrawal, they are reminded that they have changed their laws, but the Committee cannot compel states to withdraw reservations.<sup>78</sup> Nonetheless, the CEDAW states parties should question the validity and legal effect of the reservations, also in the context of other human rights treaties; reconsider such reservations with a view of strengthening the implementation of all human rights treaties; and compare the reservations to other human rights treaties i.e. analyse whether they contravene other human rights instruments.<sup>79</sup>

The CEDAW Committee has also encouraged the UAE to entirely withdraw its reservations. It has acknowledged that progress has been made and that the UAE has granted rights to women and has analysed the explanations which the UAE provided concerning its reservations to Article 2, subparagraph f, Article 9, Article 15, subparagraph 2, Article 16 and Article 29(1). Nonetheless, the Committee has concluded that these reservations undermine the main purpose and aim of the Convention and adversely affect women.

Furthermore, the CEDAW Committee expressed its concern that the UAE has not reviewed these reservations.<sup>80</sup> In the next report submitted by the UAE in 2014, the government responded that it periodically reviews its international obligations which were assumed by virtue of ratification, including its obligations under the CEDAW. It explained that the CEDAW had been circulated together with the first CEDAW Concluding Observations of the

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<sup>78</sup> N.57, 8

<sup>79</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 20, Reservations to the Convention, Eleventh session, 1992, U.N. Doc. A/47/38, 1993, 2 reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6, 2003, 249

<sup>80</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 3

Committee to all federal and local government institutions and civil society bodies, so that they can reconsider and study the possibility of withdrawing the reservations without contradicting the Sharia. Accordingly, the UAE is studying how national legislation and practices can be harmonised in a way which complies with the spirit of the Convention and makes it possible to withdraw the reservations or at least reduce the scope of the reservations.<sup>81</sup> Article 2 subparagraph (f) is particularly problematic as this article lays out the fundamental requirement, namely to comply with all the articles contained in the Convention. This article requires states parties to eliminate any laws or policies that discriminate against women. The UAE maintains that it cannot withdraw this reservation due to the conflict with the Sharia, which suggests that there exists a fundamental tension between human rights and Islam.<sup>82</sup> Yet the Quran affirms the importance of human dignity, just like human rights do,<sup>83</sup> but the issue is that it is perceived that the Sharia trumps human rights. Such a stance is also entrenched in the Universal Declaration of Human Rights in Islam 1980, the Cairo Declaration on Human Rights in Islam 1994 and the Arab Charter on Human Rights 1994, which all emphasise to a certain degree the superiority of the Sharia.<sup>84</sup> Religion is thus used to sacrifice the rights of women.<sup>85</sup> Accordingly, universal rights are curtailed by placing reliance on the Sharia, but without it being clarified what precisely is covered by the Sharia.<sup>86</sup> This renders the limitations which are imposed on rights unclear and ambiguous. For instance, Articles 24 and 25 of the Cairo Declaration state that the Sharia is the “only source

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<sup>81</sup> Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second and third periodic reports of States parties due in 2014 United Arab Emirates, Geneva, United Nations, CEDAW/C/ARE/2-3, 3 December 2014, 9

<sup>82</sup> A. E. Mayer, Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct? 15 *Michigan Journal of International Law* 1993-1994, 307-402, 308

<sup>83</sup> A. A-Ahsan, Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights, 24(2) *Journal of Law and Religion* 2008, 569-597, 569

<sup>84</sup> A. Guichon, 'Some Arguments on the Universality of Human Rights in Islam' in (eds) J. Rehman, S. C. Breau, Religion, *Human Rights and International Law: A Critical Examination of Islamic State Practice* (Leiden, Martinus Nijhoff Publishers 2007) 186

<sup>85</sup> N. Sandal, J. Fox, *Religion in International Relations Theory: Interactions and Possibilities* (Abingdon, Routledge 2013) 27

<sup>86</sup> Ibid



of reference”, thereby affirming that the Sharia is supreme.<sup>87</sup> As the state can define and apply the Sharia, individuals are subjected to state control and this deprives human rights of their universality and subjects them to national interpretations.<sup>88</sup> This has to be also understood against the background of political Islam and calls by Islamists to oppose Western human rights.<sup>89</sup> Moreover, cultural relativists perceive “universal human rights as a manifestation of Eurocentric arrogance or as an illusion doomed to collapse” which disregards the religious and cultural heritage of human rights.<sup>90</sup> Cultural feminists also argue that a universal account fails to acknowledge women's differences and that it is therefore illusory to adopt a stance which disregards women's special qualities.<sup>91</sup> They therefore demand that differences between men and women are recognised and valued, whereas the CEDAW emphasises that differences are minimised and the sexes are treated equally.<sup>92</sup> Similar to cultural feminism, cultural relativism emphasises that there are differences within cultures and cultural relativists therefore consider that it can only be judged whether something is acceptable or unacceptable viewed through the lens of the particular culture.<sup>93</sup> They therefore demand that local culture i.e. cultural difference is respected and that the interpretations and views of majorities should not replace those of minorities.<sup>94</sup> However, the bridge between cultural imperialism and cultural relativism may be bridged by perceiving “human rights as the center of a cross-cultural 'overlapping consensus' on basic normative standards...”<sup>95</sup> The moderate majority has favoured such a “human rights in Islam” approach,

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<sup>87</sup> T. Kayaoglu, *The Organization of Islamic Cooperation: Politics, Problems, and Potential* (Abingdon, Routledge 2015) 98

<sup>88</sup> Ibid

<sup>89</sup> J. Witte, M. C. Green, *Religion and Human Rights: An Introduction* (Oxford, Oxford University Press 2012) 63

<sup>90</sup> H. Bielefeldt, "Western" versus "Islamic" Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights, 28(1) *Political Theory* 2000, 90-121, 91

<sup>91</sup> G. T. Bonifacio, *Feminism and Migration: Cross-Cultural Engagements* (London, Springer 2012) 127

<sup>92</sup> Ibid

<sup>93</sup> M. Freeman, *Human Rights: An Interdisciplinary Approach* (2nd ed, Cambridge, Polity Press 2011) 126

<sup>94</sup> Ibid

<sup>95</sup> N.90, 114

as illustrated by the adoption of these international instruments.<sup>96</sup> Certainly, many parts of Islamic law, for example, in relation to cultural, social and economic rights do not conflict with human rights or have no direct impact on them, but particularly those relating to the status of women result in violations of human rights.<sup>97</sup> One way is to adopt domestic laws which temper the Sharia and whilst the UAE has opted for such an approach, this still does not resolve the issue that there still remain various contentious provisions which contravene women's rights.<sup>98</sup> The underlying reason for this problem is that human rights did not exist at the time when the Quran was revealed in the 7th century.<sup>99</sup> Yet this also arguably means that Islam does not oppose or support human rights since "human religious knowledge on the topic is necessarily incomplete" and Shirazi therefore argues that "[I]beral Muslims should make this argument" since human rights benefit Muslim societies.<sup>100</sup> However, so long as this does not happen, it is unlikely that the UAE will withdraw the reservation to Article 2 subparagraph (f).

Yet the UAE government could possibly withdraw or at least narrow its reservation to Article 9 because of the 2012 decree which permits Emirati women who are married to foreigners to pass their citizenship to their children once they are of legal age. Furthermore, Article 9 does not conflict with Article 14 of 17 of Federal Law No (17) 1972 concerning Nationality, Passport and amendments thereof.<sup>101</sup>

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<sup>96</sup> N.89

<sup>97</sup> N.60, 21

<sup>98</sup> 21&39

<sup>99</sup> S. Shirazi, *Pineapples in Paradise: Why Islam Does Not Necessarily Support Human Rights and Why That Is a Good Thing*, 10(1) *Religion & Human Rights* 2015, 24-44, 24

<sup>100</sup> *Ibid*

<sup>101</sup> Article 14 provides that "A national woman by virtue of law or by naturalization who marries a person holding a foreign citizenship, may sustain her nationality and does not lose it unless she enters her husband's nationality." Article 17 states that "A woman who is national by virtue of law, who has acquired the nationality of her alien husband, may regain her original nationality, if her husband dies, or has deserted or divorced her, on condition that she renounces the nationality of her husband; and her children from this husband may request to have the nationality of the country in case that their ordinary residence has been in the country and they expressed their intention to renounce the nationality of their father."

Furthermore, the UAE government should review the reservation to Article 15 subparagraph 2, as the reservation undermines the legal capacity of women i.e. their right to make and carry out decisions for themselves and their families and to own and manage property. Federal Law No. 28 on Personal Status and Federal Law No. (11) of 1992 concerning the Civil Procedures Law does not prevent women from managing property, concluding contracts, etc. Withdrawal of the reservation would send out a strong signal that women are capable at dealing with their own lives without male guardians.<sup>102</sup> Equally, the government should review, modify or withdraw its reservation to Article 16. At present, the reservation states that the UAE “will abide by the provisions of the article insofar as they are not in conflict with the principles of the sharia.”<sup>103</sup> However it has not been stated which provision(s) conflict(s) with the Sharia and as a result it is unclear to what extent the right in Article 16 is guaranteed.

### **6.3 CEDAW ratification and the role of the UAE government in meeting its international gender equality obligations**

Ratification and accession to any international convention, including the CEDAW, requires states parties to respect, protect and fulfil the rights embodied in the convention.<sup>104</sup> Fulfilment of the respective obligations means *de jure* compliance and requires that the legal framework of the state party accords with the obligations set out in the convention. Additionally, *de facto* compliance is required and this means that the treaty obligations are not just transposed through the passing or amendment of domestic laws, but also practically implemented with

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<sup>102</sup> M. K. Lodi, *Islam and the West: The Clash Between Islamism and Secularism* (Durha, Strategic Book Group 2011) 44

<sup>103</sup> Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women – United Arab Emirates, CEDAW/SP/2006/2, 6 October 2004

<sup>104</sup> V. Jivan, C. Forster, Challenging Conventions: In Pursuit of Greater Legislative Compliance with Cedaw in the Pacific, 10 *Melb. J. Int'l L.* 2009, 655- 90, 660I

the intended results.<sup>105</sup> Articles 1 to 4 of the CEDAW encourage all states parties to adopt legislative and other measures, so that the rights of women are legally protected. Many of the CEDAW provisions clearly set out which steps have to be taken in order to ensure compliance, though some provisions are framed more broadly and generically.

Article 3 of CEDAW particularly affirms political, social, economic and cultural rights.<sup>106</sup> It provides that “states parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” This means that state parties are obligated “to respect, protect, promote and fulfill this right to non-discrimination for women and to ensure the development and advancement of women....”<sup>107</sup> Hence states parties must take all appropriate measures in order to achieve the purpose laid down in Article 3 of the convention. These are in addition to specific measures, including constitutional and legal reform, as required under Article 2.<sup>108</sup> Similarly, General Recommendation No. 19 highlights the importance of addressing gender discrimination in all areas of political, social, economic and cultural life in the context of violence against women.<sup>109</sup>

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<sup>105</sup> Ibid

<sup>106</sup> M. A. Freeman, B. Rudolf, C. Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press, 2012) 105

<sup>107</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25 On article 4, paragraph 1, on temporary special measures reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004) paragraph 4; B. Rudolf, M. A. Freeman, C. Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination Against Women, A Commentary* (Oxford, Oxford University Press 2012) 115

<sup>108</sup> M. A. Freeman, B. Rudolf, C. Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press, 2012) 107

<sup>109</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003) 243

### **6.3.1 The positive impact of CEDAW and CERD on effecting legal change in the UAE**

The female Emirati who completed the questionnaire agreed that ratification of the CEDAW had changed the role which women play, with 57% agreeing and 7% disagreeing. Equally, the interviewees concurred with this. Similarly, the survey participants thought that ratification of the CERD has had a positive effect. Hence, there was agreement that the adoption of international conventions has benefitted women. However, as discussed above, the effectiveness of the CEDAW has been undermined by reservations.<sup>110</sup>

The interviews and surveys confirmed that over the last decade, the UAE has tried to improve the status of women and to create opportunities for women, to combat gender discrimination and to promote equality and full participation, particularly within the political and economic sphere. It was noted that already before accession to the CEDAW, the UAE government had taken positive steps to improve the position of women in different fields, such as education and employment, though this may also be attributable to the ratification of the CERD in 1974.

The constitution affords Emirati women the right to freely choose their profession, trade or occupation, except for Article 29 which proscribes that women undertake “hazardous, arduous, or physically or morally harmful work” and such types of work as the Ministry of Labour designates.<sup>111</sup> Moreover, the Labour Law, Article 27 does not allow women to work during the night, except when force majeure applies, though the wording of Article 27 is

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<sup>110</sup> N.6, 38

<sup>111</sup> S. Kelly, J. Breslin, *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (Lanham, Rowman & Littlefield Publishers Inc 2010) 530

vague and it can be interpreted as not permitting employers to require women to work at night, thereby leaving it up to women to determine whether or not they want to work at night.<sup>112</sup>

The financial security of a wife is ensured by upholding her full rights to her property and not requiring that the husband is paid or that expenses are deducted from her own property.<sup>113</sup> This is because under the Sharia and the Personal Status Law, it is the husband who has to financially support his wife.<sup>114</sup> Moreover, the amended social security and maternity leave laws promote equal opportunities. The great majority of female Emiratis (88%) who completed the survey, also confirmed that gender equality legislation had been adopted.

In 2005, the government passed Federal Law of Personal Status No.28/2005, just like other Muslim countries, for instance, Tunisia and Morocco, which reformed their Personal Status Law.<sup>115</sup> This law requires judges to apply the Personal Status Law when family cases are heard, thereby precluding judges from reaching their own interpretation based on the Sharia.<sup>116</sup> This has rendered the law less arbitrary.

In 2006, the UAE also adopted Federal Law No.51 of 2006 to combat human trafficking and also created the National Committee to Combat Human Trafficking and is operating a hot

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<sup>112</sup> Ibid

<sup>113</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 17

<sup>114</sup> Article 62 of Federal Law No. 28 Issued on 19/11/2005 Corresponding to 17 Shawwal 1426 H. on Personal Status

<sup>115</sup> M. M. Charrad, Family Law Reforms in the Arab World: Tunisia and Morocco, Report for the United Nations, 2012, 1-12, 1 <<http://www.un.org/esa/socdev/family/docs/egm12/PAPER-CHARRAD.pdf>> accessed 15th July 2016

<sup>116</sup> L. Welchman, Bahrain, Qatar, UAE: time Family Law Codifications in Three Gulf States. *International Survey of Family Law* 2010, 163-178, 163

line number for victims and persons who want to report human trafficking<sup>117</sup> in accordance with Article 6 of the CEDAW which requires states parties to “take all appropriate measures...to suppress...traffic in women...” In 2015, the UAE further tightened the law and imposed stricter sentences and also strengthened support for victims and witnesses.<sup>118</sup>

Furthermore, in 2006 President Sheikh Khalifa’s reformed the electoral system for the Federal National Council (FNC), just like other Gulf states, such as Qatar.<sup>119</sup> As a result, half of the FNC members are elected through the Electoral College, including women. Following constitutional amendments in December 2008, the federal judiciary law in Abu Dhabi and Dubai was amended in order to ensure that women can assume judicial posts and two females were appointed as federal prosecutors and two women as judges.<sup>120</sup> Similarly, in Egypt, the first female judge was appointed in 2003 and in Bahrain in 2006.<sup>121</sup>

Seventeen women were also appointed as assistant public prosecutors and marriage registrars in the UAE. Eight women were given ministerial posts in the Cabinet and women made up 17.5% of the UAE's partially elected representative body - the FNC in 2014. Globally, out of national parliamentarians 22 per cent were women in 2015, though in Nordic countries, this figure was much higher with 41.1 per cent, whereas the average in North Africa and the

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<sup>117</sup> UAE National Committee to Combat Human Trafficking, About Human Trafficking, 2010 <<http://www.shwc.ae/portal/are.you.a.victim.aspx>> accessed 26th August 2015

<sup>118</sup> D. Mouthallati, UAE human trafficking law tightened, *The National*, 25 March 2015 <<http://www.thenational.ae/uae/uae-human-trafficking-law-tightened>> accessed 29th August 2015

<sup>119</sup> J. Lambert, Political Reform in Qatar: Participation, Legitimacy and Security, Middle East Policy Council, 2011 <<http://www.mepc.org/journal/middle-east-policy-archives/political-reform-qatar-participation-legitimacy-and-security>> accessed 13th July 2016

<sup>120</sup> M. Al Dabbagh, L. Nusseibeh, Women in Parliament and Politics in the UAE, Dubai: Dubai School of Government Report for Ministry of State for Federal National Council Affairs, *Women, leadership and development in the Middle East*, 2009, 367

<sup>121</sup> B. Rubin, *The Middle East: A Guide to Politics, Economics, Society and Culture* (Abingdon, Routledge 2015) 571

Middle East was 17.1 per cent.<sup>122</sup> This means that the UAE ranked above the average in the Middle East and North African region, but has not yet achieved the global average. Furthermore, three women have been appointed as ambassadors, one as consul general and one as UAE's representative to the United Nations. Women also serve in the armed forces, customs and the police.<sup>123</sup>

In 2007, the UAE reformed the kafala system by granting government aid to workers who have not been paid their wages for two consecutive months.<sup>124</sup> This resulted in the UAE courts ordering businesses in 2007 alone to pay \$14.2 million (which were outstanding in unpaid wages) to workers.<sup>125</sup> Furthermore, in 2009, the UAE government introduced the Wage Protection System to ensure that the private sector pays workers on time.<sup>126</sup>

In response to the 2010 report by the CEDAW Committee, which recommended that the UAE should amend the Nationality and Passports Law,<sup>127</sup> so that Emirati women who marry non-Emirati men can transfer their nationality to their children or their foreign husbands,<sup>128</sup> the President of the State His Highness issued a royal directive on 2 December 2011. Prior to

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<sup>122</sup> United Nations Women, Facts and Figures: Leadership and Political Participation, 2016 <<http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>> accessed 14th July 2016

<sup>123</sup> General Women's Union, United Arab Emirates the National Report of the UAE on Beijing +20, 2014

<sup>124</sup> B. Anderson, I. Shutes, *Migration and Care Labour: Theory, Policy and Politics* (London, Palgrave MacMillan 2014) 59

<sup>125</sup> F. T. Malit, A. Al Yoha, Labor Migration in the United Arab Emirates: Challenges and Responses, Migration Policy Institute, 18 September 2013 <<http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>> accessed 28th August 2015

<sup>126</sup> Ibid

<sup>127</sup> The CEDAW was the first international instrument to affirm women rights in respect of nationality and their children's nationality; also see M. A. Freeman, B. Rudolf, C. Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press 2012). Part II of the convention, Article 9 addresses the nationality rights of women.

<sup>128</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 7



this, Federal Law No (17) of 1972 concerning Nationality, Passports and amendments thereof permitted Emirati men who married women and had children with them to pass on their citizenship, including associated benefits, whereas women were not entitled to this.<sup>129</sup> This impacted not only women, but also their children who as a result required a residence permit to stay in the UAE and were not allowed to cast a vote and were excluded from educational opportunities, health care, etc. The 2011 decree rectifies this issue and ensures that UAE citizenship is granted to the children of female citizens who marry foreigners according to the following requirements and rules: The children of female citizens are to be treated as original citizens without discrimination in respect of education, health and employment. These children are entitled to make an application to acquire nationality upon reaching the age of 18 years. Since the decree was issued, over 2,047 children of Emirati women have been granted Emirati nationality. The decree also covers children of female citizens where the identity of the father is unclear and cases where the parents are unknown.<sup>130</sup> Yet the decree does not yet ensure full equality since children do not receive nationality upon birth. Practical problems also still exist, with some reporting that they had to wait several years to be naturalised.<sup>131</sup>

In response to the CEDAW Committee's recommendation to guarantee equal participation of women in public affairs, including by adopting temporary special measures under paragraph 1 of Article 4 of the CEDAW Convention<sup>132</sup> and to take concrete measures, including

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<sup>129</sup> Articles 3 and 17 of Federal Law No (17) for 1972 Concerning Nationality, Passport

<sup>130</sup> Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second and third periodic reports of States parties due in 2014 United Arab Emirates, Geneva, United Nations, CEDAW/C/ARE/2-3, 3 December 2014, 16

<sup>131</sup> A. Almazroui, How the citizenship law throws up many questions of identity, The National, 23 March 2014 <<http://www.thenational.ae/thenationalconversation/comment/how-the-citizenship-law-throws-up-many-questions-of-identity>> accessed 5th October 2015

<sup>132</sup> Article 4(1) requires states parties to adopt temporary special measures aimed at expediting *de facto* equality between both women and men and this shall not be considered discrimination as defined in the present treaty, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. Also see Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25

through legislative amendments,<sup>133</sup> the UAE noted in its 2014 report in response to the observations that the following measures had been adopted: Cabinet Decision 319/15F/22 of 2012 was adopted in Session No. 15 entitled ‘Promoting Women’s Participation to the Boards of Directors of Federal Authorities, Companies and Institutions.’ The cabinet decision aims to ensure that women assume leadership roles with federal authorities and institutions, as well as companies which are owned by the UAE government, not only to promote gender equality, but to also increase the efficiency of those entities. Additionally, the UAE has enhanced the percentage of women in several sectors, for example, five women were appointed to the FNC; a woman became the first deputy speaker of the FDC during the 2015 parliamentary session in order to promote political participation of women after only one woman had won the last election; and a woman was appointed to serve as permanent representative of the UAE to the United Nations in 2013. Moreover, legislation is periodically being reviewed. Additionally, an advisory committee was specifically formed at the Federal Human Resources Authority in order to study the needs of working women. The Human Resources Law was amended by virtue of Federal Decree Law No. 9 of 2011, and which focuses on full-time, part-time and temporary full-time employment which is available to women and men alike.<sup>134</sup>

Some interviewees pointed out that female participation has changed dramatically since the ratification of the CEDAW and that Emirati women have been empowered in the political arena. An interviewee explained that in November 2004, the first female minister, Sheikha

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On article 4, paragraph 1, on temporary special measures reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004)

<sup>133</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates*, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 7

<sup>134</sup> Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second and third periodic reports of States parties due in 2014 United Arab Emirates*, Geneva, United Nations, CEDAW/C/ARE/2-3, 3 December 2014, 11

Lubna Al-Qasimi, had been appointed to the Cabinet. During the interviews, it was also noted that pursuant to a cabinet decision, nurseries have been established at all government institutions, including women organisations, in order to make it easier for women to enter the workplace and to return to work.

Furthermore, in 2014 the UAE government made it compulsory that domestic workers receive a standard contract – the Employment Contract for Domestic Workers and the Like - in which the salary and duties of the employer are detailed and which contains a job description and qualifications.<sup>135</sup> The contract has to also detail agent fees and imposes duties on the agent to prevent exploitation of workers by recruitment agencies. The contract can be for a term not exceeding two years, though it can be renewed. The contract stipulates a probationary period of six months during which the employer can terminate the contract and requires the agent to pay the costs to send the worker back to her country. The contract combats abusive conduct by requiring that the worker is informed of the salary whilst in her home country, rendering payment compulsory before the 10th of each month, requiring a signed receipt for each payment, rendering it unlawful to deduct money from the salary or from gratuities, except when a court has ordered a deduction for a debt or for damage which the worker has caused, though this can also not be more than up to four months of the worker's salary. Employers are obligated to give domestic workers a minimum of eight hours rest, one day off per week and 30 days holidays per year. All disputes have to be heard by a tribunal, which has been specifically created within the Ministry of Interior, though this tribunal may also refer cases to a court. The court can then award damages to the employee.

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<sup>135</sup> Also see S. Salama, Standard contract for maids in the UAE, Gulf News, 2 March 2014 <<http://gulfnews.com/business/sectors/employment/standard-contract-for-maids-in-the-uae-1.1297972>> accessed 28th August 2015

### 6.3.2 Remaining challenges to meet the CERD and CEDAW standards

Whilst the UAE has adopted and amended its laws during the last decades in order to ensure that sex discrimination becomes outlawed, the issue is that the constitution itself does not include a gender-based non-discrimination clause.<sup>136</sup> Hence, the constitution does not outlaw gender discrimination. Instead the constitution declares that “[a]ll persons are equal in law. There shall be no distinction among the citizens of the UAE.”<sup>137</sup> Article 25 therefore only guarantees equality amongst Emirati nationals irrespective of race, residency, religious belief, or social status; however, the word “sex” is not included as a reason for discrimination and this omission should be rectified i.e. the word ‘sex’ should be added.<sup>138</sup> Yet Article 15 provides that “[t]he family shall be the basis of society...” and this has been used to argue that women are “the basis of the society” and that therefore no distinction is made between women and men.<sup>139</sup> However, this is arguably insufficient, also in light of the fact that the state parties to the CERD are required “to promote and encourage...human rights...without distinction” also in respect of sex. The constitution also does not provide protection for all people in the UAE, but only for Emirati nationals and it is important that the protective reach is extended. This is concerning since in some cases racial discrimination mainly impacts women or affects them more than men, as highlighted by Committee on the Elimination of Racial Discrimination' General Recommendation 25 on Gender Related Dimensions of Racial Discrimination.<sup>140</sup> This General Recommendation also explains that very often women

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<sup>136</sup> N.111, 12

<sup>137</sup> Article 25 of the United Arab Emirates Constitution of 1971 with amendments in 2004

<sup>138</sup> International Federation for Human Rights, Women's Rights in the United Arab Emirates (UAE), Note submitted to the 45th Session of the Committee on the Elimination of Discrimination Against Women (CEDAW) on the occasion of its first examination of the UAE, January 2010, 1-7, 4 <[https://www.fidh.org/IMG/pdf/UAE\\_summaryreport\\_for\\_CEDAW.pdf](https://www.fidh.org/IMG/pdf/UAE_summaryreport_for_CEDAW.pdf)> accessed 25th August 2015

<sup>139</sup> OECD, Center of Arab Woman for Training and Research, *Women in Public Life Gender, Law and Policy in the Middle East and North Africa* (Paris, OECD 2014) 52

<sup>140</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 25, Gender Related Dimensions of Racial Discrimination (Fifty-sixth session, 2000), U.N. Doc. A/55/18, annex V at 152 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 214 (2003) <<http://hrlibrary.umn.edu/gencomm/genrexxv.htm>> accessed 1st July 2017

from certain ethnic or racial groups are particularly subjected to racial discrimination because they are female, for instance, domestic workers.<sup>141</sup> Women may be racially discriminated, e.g. raped, also because they are unable to legally pursue their perpetrators.<sup>142</sup> As the UAE has repeatedly been criticised for foreign domestic workers finding it difficult to pursue their employers in case they have been subjected to sexual abuse, it is important that equality is guaranteed to Emirati women and non-Emirati women alike.

Human rights are inalienable, universal and indivisible and racial discrimination can only be effectively combated if no distinction is made between Emiratis and foreigners.<sup>143</sup> Hence, constitutional rights cannot only be afforded to Emiratis, but have to be granted to everyone i.e. foreign residents and visitors alike. Otherwise there can be no real compliance with the CERD. Furthermore, whilst the constitution, Article 29, proclaims freedom of movement of both men and women, this is curtailed since women have to seek permission from their male guardian or husband when they want to leave the country.<sup>144</sup>

As mentioned in the previous section, the adoption of the Personal Status Law is a marked improvement, but nonetheless it is not yet fully compliant with all the CEDAW standards, but only reflects the UAE's commitments to the extent of the entered reservations. Article 39 of Federal Law No.29 of 2005 on Personal Status provides that women require a male guardian in order to enter into the marriage contract. Yet Article 34 allows a woman to ask a judge to act as their guardian in case there is a refusal and women have to freely consent to the

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<sup>141</sup> Ibid

<sup>142</sup> Ibid

<sup>143</sup> J. Ife, *Human Rights from Below: Achieving Rights Through Community Development* (Cambridge, Cambridge University Press 2009) 86

<sup>144</sup> D. Hamade, The UAE's women need better recourse to justice, *The National*, 4 January 2011 <<http://www.thenational.ae/thenationalconversation/news-comment/the-uaes-women-need-better-recourse-to-justice>> accessed 20th August 2015

marriage, thereby preserving female autonomy to a certain degree.<sup>145</sup> However, Article 21 of the Personal Status Law enables the male guardian to annul the marriage. From a Western perspective, the provisions subjugate women to their male guardians and undermine their personal autonomy to reach their own decision, whereas Islam considers that this is important to protect women.<sup>146</sup> This is because Islam places emphasis on community, as opposed to individuality i.e. values a communitarian, as opposed to an individualistic society.<sup>147</sup> Also, instead of affording human rights simply to persons because they are human, in Islam what is considered acceptable is not up to the person, but is based on a divine standard which God Allah has set.<sup>148</sup> The community and particularly the family defines the duties and privileges of persons, but this conflicts with Western conceptions of individuality and autonomy.<sup>149</sup> The private sphere is therefore insufficiently protected in order to safeguard the public sphere.<sup>150</sup>

This is not to deny that the concept of male guardianship for women is based on “private and public forms of patriarchy”, but explains to a certain extent its religious base.<sup>151</sup> These ideas are also embedded within Article 56 of the Personal Status Law, which states that women have to obey their husbands, keep the house orderly and breastfeed children, except when they have an impairment.<sup>152</sup> In exchange, husbands are required to pay maintenance

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<sup>145</sup> S. Bano, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law* (Basingstoke, Palgrave MacMillan 2012) 158

<sup>146</sup> Ibid; R. Begum, Time to Take Action for Women in the United Arab Emirates, Human Rights Watch, 8 March 2015 <<http://en.annahar.com/article/219247-time-to-take-action-for-women-in-the-united-arab-emirates>> accessed 15th August 2015

<sup>147</sup> A. Sachedina, *Islam and the Challenge of Human Rights* (Oxford, Oxford University Press 2009) 164

<sup>148</sup> C. Raghavan, J. P. Levine, *Self-determination and Women's Rights in Muslim Societies* (Brandeis, University Press of New England 2012) 82-83

<sup>149</sup> K. Y. Schooley, Cultural Sovereignty, Islam, and Human Rights - Towards A Communitarian Revision, 25 *Cumberland Law Review* 1994-1995, 651-714, 651

<sup>150</sup> S. Schroeter, *Gender and Islam in Southeast Asia: Women's Rights Movements, Religious Resurgence and Local Traditions* (Leiden, Koninklijke Brill 2013) 151

<sup>151</sup> H. Shahidian, *Women in Iran: Gender politics in the Islamic Republic, Volume 2* (London, Greenwood Press 2002) 12

<sup>152</sup> OECD, Center of Arab Woman for Training and Research, *Women in Public Life Gender, Law and Policy in the Middle East and North Africa* (Paris, OECD 2014) 272

throughout the marriage and in case of a polygamous marriage have to treat each wife fairly.<sup>153</sup> However, CEDAW General Recommendation No.21 explains that polygamous marriages violate the right to gender equality and therefore Article 5(a) of the CEDAW and such practice should thus be proscribed, also because it can have adverse financial and emotional implications for women.<sup>154</sup> For instance, in the UK, section 57 of the Offences Against the Person Act 1861 renders polygamy a criminal offence and any marriages after the first one are not recognised.<sup>155</sup>

Furthermore, Article 71 entitles a husband to refuse paying maintenance when a woman objects to sexual relations and has no valid justification. Article 72 of the Personal Status Law also requires women to seek permission if they want to work and a failure to do so is another example of disobedience, which constitutes a criminal offence.<sup>156</sup> The obligation of obedience is often linked to the husband paying maintenance in return, but this has been criticised for being unacceptable and outdated.<sup>157</sup> Furthermore, CEDAW General Recommendation No.19 makes clear that this amounts to family violence because women are deprived of their economic independence and are coerced to remain in relationships, despite these possibly being violent or abusive.<sup>158</sup>

Article 100 permits men to seek a unilateral divorce; however, women have to ask the court

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<sup>153</sup> Article 55 of the Personal Status Law

<sup>154</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 21, Equality in marriage and family relations (Thirteenth session, 1994), U.N. Doc. A/49/38 at 1, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003) para.14

<sup>155</sup> *Regina v Trigger Alan Mike Seed Philip Stark* (2007) EWCA 254; J. White, *The Western Case for Monogamy Over Polygamy* (Cambridge, Cambridge University Press 2015) 11

<sup>156</sup> E. Roberts, Human Rights Watch warns expat women about the UAE, *The Telegraph*, 5 August 2014 <<http://www.telegraph.co.uk/expat/expatnews/11012631/Human-Rights-Watch-warns-expat-women-about-the-UAE.html>> accessed 28th August 2015

<sup>157</sup> Z. Mir-Hosseini, K. Vogt, L. Larsen, C. Moe, *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* (London, IB Tauris & Co Ltd 2013) 67

<sup>158</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003) para.23

for permission and can only do so when the husband has not paid maintenance; or when he has disappeared or has deserted her; has been imprisoned for more than three years; has committed adultery; is infertile; or has contracted an illness or disease.<sup>159</sup> Hence, women can only seek a divorce in special instances or otherwise lose their financial entitlements.<sup>160</sup> However, in 2010 the Supreme Court declared that women can seek a divorce without the consent of their husband.<sup>161</sup> In the past, a woman, who requested a divorce without the husband consenting to this, would forego any compensation or dowry; however, following the decision, this is no longer always the case.<sup>162</sup> In case the woman is mistreated, then she will be entitled to all her financial rights, but if both are at fault, then the mistreatment determines the settlement and only if there is mistreatment by the wife, will she not be entitled to compensation or the dowry.<sup>163</sup> Moreover, women can also ask that their marriage is dissolved, so long as the husband agrees, but this often means that she cannot keep the dowry.<sup>164</sup>

These provisions discriminate against women and therefore breach Article 1 of CEDAW and therefore also Article 2 which requires states parties to eliminate such discrimination, including through legislation.<sup>165</sup> As women have to seek permission from their husband to exercise the right to work, Article 11 of the CEDAW is breached which affirms this is “as an inalienable right of all human beings.” Moreover, Article 15(2) of CEDAW requires that women are afforded “equal rights to conclude contracts“, but this is not the case in respect of

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<sup>159</sup> Articles 112-116, 124-132 of the Personal Status Law (No.29) of 2005

<sup>160</sup> S. Croucher, Sheikh Khalifa bin Zayed al-Nahyan: Britain under Shadow of UAE Human Rights Record, *International Business Times*, 29 April 2013 <<http://www.ibtimes.co.uk/uae-uk-trade-human-rights-sheikh-khalifa-462555>> accessed 25th August 2015

<sup>161</sup> H. Hassan, Supreme Court boosts divorce rights of women, *The National*, 24 November 2010 <<http://www.thenational.ae/news/uae-news/courts/supreme-court-boosts-divorce-rights-of-women>> accessed 28th August 2015

<sup>162</sup> *Ibid*

<sup>163</sup> *Ibid*

<sup>164</sup> Articles 110-111 of the Personal Status Law (No.29) of 2005; also see A. El-Azhary Sonbol, *Gulf Women* (London, Bloomsbury Academic 2012) 394

<sup>165</sup> Human Rights Watch, Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 25th August 2015



marriage contracts due to the requirement of the consent of the male guardian. Furthermore, the Personal Status Law conflicts with Article 16 of CEDAW which requires states parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations...on a basis of equality of men and women...”, particularly Article 16(a) which requires that both are afforded “the same right to enter into marriage”, but women have to seek permission from their male guardian; Article 16(c) which requires the same rights and responsibilities during marriage and at its dissolution since women have to be obedient, have to keep the house and breastfeed, whereas men have to pay maintenance, etc., it is easier for men to obtain a divorce than for women; and Article 16(g) which requires “the same personal rights as husband and wife” but only wives have to ask for permission to work, whereas men do not have to do the same and men can have several wives.

Furthermore, Article 53 of the UAE's penal code acknowledges the right of “chastisement by a husband of his wife and the chastisement of minor children”, so long as the assault does not exceed the limits prescribed by the Sharia and the law. However, although the husband has the right to discipline his wife under Article 53 of the penal code, he must abide by the conditions which limit this right, and if the husband abuses this right to discipline, he is not exempt from punishment under Article 339 of the Penal Code, which outlaws physical assaults. However, marital rape is not outlawed.<sup>166</sup> Irrespective of the legal limits imposed on chastisement, the statutory sanction of physical punishment of wives by their husbands is blatantly demeaning to women and poses serious risks to their well-being. This renders women prone to domestic abuse since the law does not render domestic abuse illegal.<sup>167</sup> The

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<sup>166</sup> K. Kehoe, Factbox: Women's rights in the Arab world, Reuters, 11 November 2013 <<http://www.reuters.com/article/2013/11/12/us-arab-women-factbox-idUSBRE9AB00I20131112>> accessed 25th August 2015

<sup>167</sup> L. L. Finley, *Encyclopedia of Domestic Violence and Abuse* (Santa Barbara, ABC-CLIO Inc 2013) 325

Dubai Foundation for Women and Children, prosecutors and the human rights committee of the FNC have highlighted that it is important to adopt a law which outlaws sexual, psychological and physical abuse.<sup>168</sup> This is illustrated by a recent case in which a wife could not obtain a quick divorce, despite her husband assaulting her several times since there was not enough shelters available and she had to keep living with him.<sup>169</sup> Furthermore, the adoption of a law is particularly pressing since there have been reports that domestic abuse is endemic.<sup>170</sup> Also, in 2010, the UAE's Federal Supreme Court issued a ruling which relied on the UAE's penal code to sanctions beatings and other forms of punishment or coercion by husbands on their wives, provided they do not leave physical marks.<sup>171</sup> The adoption of a law on domestic abuse would prevent these types of crimes not being investigated and prosecuted. Yet in October 2016, the UAE amended Articles 53 of the Penal Code 1987 under act No.7 of 2016. As a result, husbands can no longer evoke the legal right, since the part which states "Chastisement by a husband to his wife and chastisement of the parents, or whoever acts in their stead, to the minor children within the limits prescribed by Shari'a or by law" has been deleted. Article 53 now also makes clear that Islamic law cannot be relied upon to argue that it is lawful for a husband to chastise his wife. Nonetheless, the adoption of a law on domestic abuse would further strengthen the right of women and should be contemplated by the legislator. However, at present it has been ensured that Article 2(g) of

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<sup>168</sup> O. Salem, FNC investigates domestic violence problem in UAE, 27 January 2015 <<http://www.thenational.ae/uae/courts/fnc-investigates-domestic-violence-problem-in-uae>> accessed 29th August 2015; H. Dajani, Domestic abuse in Abu Dhabi triples in three years, The National, 30 March 2014 <<http://www.thenational.ae/uae/courts/domestic-abuse-in-abu-dhabi-triples-in-three-years>> accessed 20th August 2015; The National Staff, UAE calls for more laws to protect women and children, The National, 2 April 2015 <<http://www.thenational.ae/uae/government/20150402/uae-calls-for-more-laws-to-protect-women-and-children>> accessed 28th August 2015

<sup>169</sup> V. Nereim, Battered, beaten but not broken: UAE woman awaiting divorce speaks up, The National, 30 July 2013 <<http://www.thenational.ae/news/uae-news/battered-beaten-but-not-broken-uae-woman-awaiting-divorce-speaks-up>> accessed 27th August 2015

<sup>170</sup> H. Dajani, Domestic abuse in Abu Dhabi triples in three years, The National, 30 March 2014 <<http://www.thenational.ae/uae/courts/domestic-abuse-in-abu-dhabi-triples-in-three-years>> accessed 20th August 2015

<sup>171</sup> Human Rights Watch 2010, UAE: Spousal Abuse Never a 'Right' Federal Supreme Court Ruling Effectively Endorses Wife Beating, <<https://www.hrw.org/news/2010/10/19/uae-spousal-abuse-never-right>> accessed on 8<sup>th</sup> August 2015

the CEDAW is no longer directly breached.

Women are also at risk of discrimination since male privileges extend into the realm of the penal code, especially in respect of the crimes of rape and adultery.<sup>172</sup> The Sharia applies to the crime of adultery and this carries the death sentence of stoning, though the death sentence has not been practiced in recent years.<sup>173</sup> Equally, falling pregnant without being married, consensual premarital sex and prostitution are crimes which can result in flogging.<sup>174</sup> The issue with these offences is that it leaves women potentially vulnerable, as highlighted by a 2013 case against a Norwegian woman, who had been raped whilst visiting Dubai and who was prosecuted for adultery when she complained and was imprisoned for sixteen months.<sup>175</sup> Hence, women who report rape, risk charges for adultery.<sup>176</sup> In this context, the United Nations Working Group on discrimination against women in law and in practice observes that the imposition of severe types of punishment for adultery breaches women's human rights because women's testimony is often not afforded the same weight and they receive stricter penalties.<sup>177</sup> This is also the case in the UAE where women are not considered full persons before the law. When witness evidence is provided in adultery cases, the Sharia commands that the testimony of a woman is only given half the weight of that of a man.<sup>178</sup> Yet in civil matters, their testimony is afforded equal weight. The criminal law therefore conflicts with Article 15 of CEDAW which commands that women and men are afforded

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<sup>172</sup> P. Ilkkaracan, *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Aldershot, Ashgate Publishing Ltd 2008) 182

<sup>173</sup> Article 1 of the UAE Penal Code; C. Bassiouni, Crimes and the Criminal Process, 12(3) *Arab Law Quarterly* 1997, 280, 280

<sup>174</sup> J. Fox, *Political Secularism, Religion, and the State, A Time Series Analysis of Worldwide Data* (Cambridge, Cambridge University Press 2015) 70

<sup>175</sup> Freedom House, *Freedom in the World 2014: The Annual Survey of Political Rights and Civil Liberties* (Lanham, Rowman & Littlefield 2015) 735

<sup>176</sup> N.166

<sup>177</sup> Joint Statement by the United Nations Working Group on discrimination against women in law and in practice, Adultery as a criminal offence violates women's human rights, 18 October 2012 <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>> accessed 28th August 2015

<sup>178</sup> D. E. Arzt, The Application of International Human Rights Law in Islamic States, *Human Rights Quarterly* 1990, 202-230, 218

equality before the law.

Adultery, consensual premarital sex, etc. fall within the category of *zina* offences since in Islam sexual relations are illegal outside marriage.<sup>179</sup> Moreover, Article 356 of Federal Law No.3 of 1987 (the penal code) outlaws *zina* offences and states “[w]hosoever has flagrantly committed an indecent act shall be sentenced to detention for a minimum term of six months.” Human Rights Watch notes that the issue is that these offences can be used to discriminate against women, particularly since the term indecency has not been defined.<sup>180</sup> Human Rights Watch also refers to a case where a pregnant domestic worker, who was not married and who stole money from her employer since she was afraid that it would be found out that she was pregnant, was convicted to 100 lashes, imprisonment and deportation.<sup>181</sup>

Furthermore, when a child is born out of wedlock, the parents can be imprisoned for two years, though the couple will be offered to marry, whereas women who abandon their child can be prosecuted under the *zina* category, for posing a risk to the safety of the child and for abandonment.<sup>182</sup> However, the CEDAW Committee requires that mothers are afforded the same status irrespective of whether they are married.<sup>183</sup>

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<sup>179</sup> Z. Mir-Hosseini, Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Context, *International Journal on Human Rights*, 2015 <[http://www.surjournal.org/eng/conteudos/getArtigo15.php?artigo=15,artigo\\_01.htm](http://www.surjournal.org/eng/conteudos/getArtigo15.php?artigo=15,artigo_01.htm)> accessed 29th August 2015

<sup>180</sup> Human Rights Watch, Submission to the CEDAW Committee of the United Arab Emirates’ Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 25th August 2015

<sup>181</sup> Ibid; 7days, Pregnant maid to get 100 lashes after being found guilty of illegal affair, 9 October 2013 <<http://7days.ae/news-14918>> accessed 28th August 2015

<sup>182</sup> S. Al Amir, Tougher laws will deter people from having children out of wedlock, *The National*, 27 March 2014 <<http://www.thenational.ae/uae/courts/tougher-laws-will-deter-people-from-having-children-out-of-wedlock>> accessed 27th August 2015

<sup>183</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 21, Equality in marriage and family relations (Thirteenth session, 1994), U.N. Doc. A/49/38 at 1, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003) para.19

Moreover, pursuant to Article 340 of the penal code, women are not entitled to have an abortion, except when the baby suffers from fatal abnormalities or the life of the women is in danger. Human Rights Watch comments that this means that women who have been raped are not permitted to have an abortion or face imprisonment and/or a fine.<sup>184</sup> IPAS points out that women's right to access justice are breached by rendering abortion a criminal offence and this can result in criminal laws being used in a discriminatory fashion by police and judicial authorities.<sup>185</sup> Article 12 of the CEDAW also requires that women are not discriminated against in relation to health care, including family planning. However, this does not mean that an absolute proscription against abortion is necessarily incompatible with the CEDAW.<sup>186</sup>

The patriarchal nature of the law is also evident in respect of the law regulating inheritance since women are only entitled to one third of an inheritance, whereas men receive two-thirds.<sup>187</sup> The law regulating the pensions of women after death could also be further improved.

In the employment context, issues also still exist since sex discrimination is not specifically outlawed by virtue of the Labour Law, except for those working in the Dubai International Financial Centre, and the Labour law also does not specifically proscribe sexual harassment,

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<sup>184</sup> Human Rights Watch, Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 25th August 2015

<sup>185</sup> IPAS, CEDAW general discussion on access to justice, 18 February 2013, IPAS submission, 15 January 2013 <<http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/Ipas.pdf>> accessed 28th August 2015

<sup>186</sup> C. Bates, Abortion and a Right to Health in International Law: *L.C. v Peru*, 2(3) *Cambridge Journal of International and Comparative Law* 2013, 640-656, 655

<sup>187</sup> Articles 321-328 of the Personal Status Code; Human Rights Watch, *World Report 2013: Events of 2012* (New York, Human Rights Watch 2013) 115

except for assault, though harassment is nonetheless unlawful by virtue of Ministerial resolutions.<sup>188</sup>

The literature therefore highlights that Emirati women still experience systematic gender discrimination, which pervades every aspect of their life.<sup>189</sup> Different kinds of discrimination against women are thus still perceived as socially legitimised. This demonstrates that the implementation of the CEDAW has not removed all obstacles to realise full equality. This is not to say that the government has not tried to empower Emirati women. On the contrary, the government has tried to promote women advancement in many different fields, so that they become well represented in all echelons of society, including the political, diplomatic, judicial, personal life and commercial fields.

This is also strongly supported by the fieldwork, which highlights that development is an incremental process. Development can mean various things, for example, “change, progress, growth, modernization, ...advancement, improvement, expansion, realization of capabilities, structural differentiation...and many more.”<sup>190</sup> These phenomena can be perceived through different lenses and it is therefore best to understand development as being “holistic, multidimensional, multisectoral, multileveled, multivariate, normative, relative, reflexive, dynamic, goal oriented, deliberately planned, agent centered, and so on.”<sup>191</sup> This means that small goals have to be reached over time before an optimum situation can be realised.<sup>192</sup> Undoubtedly, the fact that UAE society has undergone a rapid period of modernisation has profoundly transformed the lives of men and women and has helped to erode sex roles, as

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<sup>188</sup> N.113

<sup>189</sup> N.175

<sup>190</sup> H. Zafarullah, A. S. Huque, *Managing Development in a Globalized World: Concepts, Processes, Institutions* (London, CRC Press 2012) 44

<sup>191</sup> Ibid, 44

<sup>192</sup> Ibid, 43

women have entered the work field, have gained access to education and have also entered the public arena.<sup>193</sup> Yet the pace at which change, including attitudinal change, takes place depends on the institutional structure and cultural legacy of a particular society, e.g. the role which Islam plays and the extent of democratisation.<sup>194</sup> The interview participants also observed that gender equality could be realised over time and that there were not that many discriminatory laws any more. It was thought that over the course of time, all laws could be amended. Otherwise the interview respondents noted that discussions are held about the remaining areas where there exist issues. The response by the Emirati and non-Emirati women who completed the questionnaire was similar, though their agreement that the CEDAW had changed the role which women play was not as forthcoming, as by those working for the UAE government and for important civil institutions. Yet the women who responded to the questionnaire may not really have been aware of the existence of the CEDAW, despite the fact that they received a narrative on the CEDAW, but that is arguably not enough. By contrast, those working in the government were naturally aware of the CEDAW.

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<sup>193</sup> R. Inglehart, P. Norris, *Rising Tide: Gender Equality & Cultural Change around the World*, Harvard University, 2002, 1-12, 2 <<https://www.hks.harvard.edu/fs/pnorris/ Acrobat/RisingTide.pdf>> accessed 13th July 2016

<sup>194</sup> Ibid

## **6.4 Strategies to overcome local customs and traditions**

Every society has its own traditions, custom, social practices and beliefs which inform how individuals should live and behave and which represent the common values of the particular society.<sup>195</sup> Some human rights advocates consider that traditions, customs and cultural and social practices oppress women in some societies.<sup>196</sup> Therefore, many international human rights instruments call on states to combat and eliminate any kind of traditional, customs and cultural practices which contravene the rights of women.<sup>197</sup> The CEDAW is one of the human rights instruments which obligates states parties to overcome traditions and customs which distinguish between men and women and in this context Article 5 of the Convention provides that “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women....” Also, General Recommendation No.19 about Articles 2(f), 5 and 10(c) observes that “[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion.”<sup>198</sup>

### **6.4.1 The efforts by the UAE to overcome stereotypes within society**

As discussed in chapter 2, the UAE government has adopted various strategies in order to empower women and to overcome stereotypes which prevent women from realising their full potential. It has become a party to the CEDAW and the CERD, adopted a national strategy

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<sup>195</sup> N. Wadesango, S. Rembe, O. Chabaya, Violation of Women’s Rights by Harmful Traditional Practices, 13 *Anthropologist* 2011, 121-29, 121

<sup>196</sup> R. Holt, Women's Rights and International Law: The Struggle for Recognition and Enforcement, 1 *Colum. J. Gender & L.* 1991, 139

<sup>197</sup> Ibid

<sup>198</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003)



and created civil society institutions, such as the Women's Union, and various Women associations. During the interviews, it was further pointed out that the UAE government also ran various educational courses and commissioned media programs which portray working women in a positive light in order to eliminate traditions, customs, and social practice that affect women's political and public participation. It was explained that the Ministry of State for the Affairs of the Federal National Council hosted various political workshops for women and the Women's Union ran projects to enhance the role of female parliamentarians and organised public seminars in which the importance of women's political participation was emphasised.

#### **6.4.2 Fields of women empowerment**

The UAE government has sought to vastly transform its society by improving the status of women.<sup>199</sup> Women empowerment has therefore become an important government policy for the UAE, including at the international level. In the field of education, much progress has been made. Whilst in 1972/1973, female school enrolment was only 15,696, this rose to 145,956 in 2004/2005.<sup>200</sup> By 2011, the majority of Emirati university students were female, i.e. 77%, which is the highest proportion of women in higher education worldwide.<sup>201</sup> The higher educational standards amongst women have also facilitated that women can partake in work-life and this has therefore promoted economic participation. The survey results also confirmed that education has become important for women and that women have been

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<sup>199</sup> Freedom House, Women's Rights Gain Traction in Gulf Arab States, but Inequality Persists, Washington DC, 2009 <<https://freedomhouse.org/article/womens-rights-gain-traction-gulf-arab-states-inequality-persists#.VH5H3mfeilR>> accessed 1<sup>st</sup> October 2014

<sup>200</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties: United Arab Emirates, CEDAW/C/ARE/1, 17 September 2008, 18

<sup>201</sup> H. M. Al-Othman, Attitudes toward Women's Participation in Public Life in the United Arab Emirates, 14(5) *Journal of International Women's Studies* 2011, 233-246, 235

encouraged to obtain higher education. As a result, they have become empowered to enter new professions and sectors, such as medicine, engineering and the media and information technology.<sup>202</sup> However, the survey also highlighted that women are still directed to particular fields of studies and roles. Nonetheless, this does not mean that the traditional view that women should remain at home has not changed. This is reflected by statistics. Whilst in 1995, only 11.6% of women were state employees, this figure increased to approximately 22% in 2005, which is the highest rate in the GCC countries.<sup>203</sup> Women, particularly nationals, prefer public over private sector jobs because this is considered more respectable by society since it demonstrates commitment to the country and the working hours are also shorter.<sup>204</sup> In 2012, over 12,000 businesswomen were managing investments of around 14 billion Dirham.<sup>205</sup> However, despite progressive policies, the overall number of working women in the UAE is still low, which highlights that cultural barriers are still prevalent.<sup>206</sup> Equally, the survey highlighted that in some Emirates, society still considers that women should not work and tradition and religious values still act as a barrier. Not many Emirati women hold upper management and executive positions, arguably due to ill-founded cultural perceptions that women are less capable, more irrational, and better suited for family responsibilities.<sup>207</sup> The fieldwork also suggested that Emirati women still experience difficulty in advancing beyond entry-level positions, despite their qualifications and job performance. This further underscores the popular perception that they were hired only to satisfy government quotas. Similarly, the participants agreed that UAE society is still

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<sup>202</sup> S. Kirdar, Women's Education in the GCC — The Road Ahead, Middle East Institute, 2010 <<http://www.mei.edu/content/women%E2%80%99s-education-gcc-%E2%80%94-road-ahead>> accessed 3<sup>rd</sup> January 2014

<sup>203</sup> United Arab Emirates Ministry of Economy, Millennium Development Goals United Arab Emirates, Second Report, 2007, 1- 39, 11

<sup>204</sup> N. 111, 513

<sup>205</sup> National Bureau of Statistics, Millennium Development Goals United Arab Emirates Report, Third Report, National Bureau of Statistics, Abu Dhabi, 2012, 30

<sup>206</sup> L. Bartlett, A. Ghaffar-Kucher, *Refugees, Immigrants, and Education in the Global South: Lives in Motion* (Abingdon, Routledge 2013) 182

<sup>207</sup> S. Kelly, J. Breslin, *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (Lanham, Rowman & Littlefield Publishers 2010) 4

conservative. For instance, family conflicts are frequently cited as cause for resignations and employment terminations by female Emiratis.

However, the majority of the surveyed women thought that they had the same work opportunities as men. This view was also shared by the interviewees. Indeed, equal opportunities have been promoted by the UAE adopting labour and human resource legislation in order to protect both Emirati and non-Emirati women and making it illegal to dismiss women or to threaten dismissal because of pregnancy, delivery or parenting.

Furthermore, women who work for the public sector are entitled to paid maternity leave.<sup>208</sup> Yet women still have to seek permission from their husbands in order to work, so that some legal barriers still exist. However, this restraint is primarily rooted in customs, traditions and religious practices.

In the political field, the issue is that despite the various campaigns which have been run in recent years by the UAE government to increase political and civil participation of Emirati women, the extent of participation still does not present a meaningful change on the societal level. Emirati women are still severely underrepresented and do not hold many political and leadership roles. The government should therefore do more to empower Emirati women to partake in public and political life since this empowerment can lead to cultural change, so that men are no longer seen as sole leaders and decision-makers. This is also implicitly mandated by Article 5 of CEDAW which requires “State parties...[to] take all appropriate measures...to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based

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<sup>208</sup> United Arab Emirates Embassy in Washington DC, Women in the UAE, 2009 <<http://www.uae-embassy.org/uae/women-uae>> accessed 4<sup>th</sup> January 2014

on the idea of the interiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Political participation in public life requires that negative cultural opinions are overcome since these traditional attitudes assume that the role of women is confined to the private sphere.<sup>209</sup>

Moreover, whilst Emirati women have been appointed to high-level government positions, these posts are mostly in governmental institutions which have no real power. For example, the FNC has no legislative authority and of the eight women who serve in the cabinet, six have no members of staff, though five have been appointed as Minister of State for Youth, the Minister of State for Public Education, the Minister of State for International Cooperation, the Minister of State for Tolerance, Minister of State for Happiness. The other two women serve as Minister of Community Development and Minister of Federal National Council Affairs. Hence, whilst some Emirati women have assumed public roles, they still cannot influence policy decisions or the legislative process. However, the interviewees pointed out that women have been sent to parliaments in different countries, for instance, to Jordan and that a leader program was run in Dubai, though also noted that these programs could be even more far-reaching.

### **6.4.3 Overcoming stereotypes through a national strategic plan**

The Committee on the Elimination of Discrimination against Women in 2010 recognised that the UAE has made efforts to change the stereotypical role of women and to promote that women actively participate in the private sector as businesswomen. Nonetheless, the CEDAW Committee was concerned that the social role which women and men play is still

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<sup>209</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 23, Political and Public Life (Sixteenth session, 1997), U.N. Doc. A/52/38/Rev.1 at 61 (1997), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 260 (2003) para.10; Y. Donders, V. Vleugel, *Universality, Diversity and Legal Certainty: Cultural Diversity in the Dialogue Between CEDAW and States Parties*, Amsterdam Law School Legal Studies Research Paper No.2014-40, 1-39, 14

based on patriarchy. The Committee therefore required the government to adopt a national strategic plan in order to change widely accepted stereotypes about the roles of women and men, particularly by promoting equal sharing of family responsibilities and equal status and responsibilities for women and men in the private and public arena.<sup>210</sup>

In the report submitted by the UAE in 2014, the government responded that some civil society institutions have developed and implemented different programmes in order to raise awareness about the rights of women, gender equality and to empower women within society and to change stereotypical roles which men and women perform. For example, the Family Development Foundation ran a series of awareness programmes to promote a sound understanding of motherhood as an important social function. Both fathers and mothers were targeted in the “Parental Relationship Programme” and “Childhood and Adolescence Programme.” These programmes instill a sense of joint responsibility in men and women for rearing and nurturing their children. Another programme was launched in 2010 to teach family men positive, constructive personal skills, so that married partners better understand themselves and to create a healthy and stable family unit. As of 2013, the programme has targeted 2,783 men. Three other programmes were also launched: “Enrichment of Marital Life,” “What Is Marriage” and “License for Married Life.” These present topics that clarify responsibilities and roles and promote equal sharing of household responsibilities and gender equality between husbands and wives in respect of status and responsibilities.<sup>211</sup>

Additionally, the Committee recommends that the UAE enhances the training of teaching

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<sup>210</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 5

<sup>211</sup> Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second and third periodic reports of States parties due in 2014 United Arab Emirates, Geneva, United Nations, CEDAW/C/ARE/2-3, 3 December 2014, 11-12

staff in regards to gender equality issues and that the school curriculum is revised in order to eliminate gender stereotypes. The Committee recommends that awareness-raising campaigns are launched and that the media should convey a positive image of women.<sup>212</sup>

In the 2014 report submitted by the UAE, the government responded that the Ministry of Education had published a national curriculum for both public and private schools in January 2013. The education curriculum is designed to strengthen UAE's national identity, morals and values amongst students. It also entrenches the individual's role in building a cohesive, stable family and promotes acceptance of cultural pluralism in society and a spirit of tolerance and acceptance of others based on equality. The ministry also periodically reviews the curriculum based on responses to a questionnaire on its website that allows interested persons to air their views about the curriculum. Also, many Emirati media channels, such as TV and radio programmes convey messages, which are designed to eliminate gender stereotypes about the roles and responsibilities of men and women and which promote role sharing in the family and gender equality.<sup>213</sup>

## **6.5 Strengthening national mechanisms for women's empowerment<sup>214</sup>**

Pursuant to Article 3, states parties are obligated to take appropriate measures in "all areas" to guarantee the full advancement, development and empowerment of women rights. The 1995

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<sup>212</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Arab Emirates, U.N. Doc. CEDAW/C/ARE/CO/1, 5 February 2010, 11

<sup>213</sup> Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second and third periodic reports of States parties due in 2014 United Arab Emirates, Geneva, United Nations, CEDAW/C/ARE/2-3, 3 December 2014, 11

<sup>214</sup> The national machinery for women advancement is defined by the UN as "a set of coordinated structures within and outside government, which aim to achieve equality in all spheres of life for both women and men": United Nations, Report of the Secretary General to the Commission on the Status of Women (CSW), New York, 1999; M. Spierenburg, H. Wels, *Culture, Organization, and Management in South Africa* (New York, Nova Publishers 2006)

Beijing Declaration and Platform for Action set out important strategies, including how national gender mechanisms can be further developed, e.g. by creating a National Committee for Women's Affairs.<sup>215</sup> Many countries thus adopted strategies in order to transpose the Beijing Declaration and Platform for Action at the national level and to systematically adopt activities and initiatives for women advancement and empowerment.

The strategic objectives spelled out in the Beijing Platform for Action require all states parties to create or strengthen national machineries and other governmental bodies; integrate gender perspectives within legislation, public policies, programmes and projects; and generate and disseminate gender-disaggregated data and information for planning and evaluation.<sup>216</sup>

The creation of national mechanisms is essential to realise gender equality. The CEDAW Committee, which monitors the implementation of the Convention regularly enquires about the national mechanisms which exist in the Member States, their nature, mandate, functions, resources, power and visibility, etc.<sup>217</sup>

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<sup>215</sup> This platform is an agenda to empower and advance women. As mentioned in the first chapter entitled 'Mission Statement' which comprises six paragraphs. The aim of this agenda is mentioned in the first few lines of the (Mission Statement): "It aims at accelerating the implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making"; See Platform for Action, UN Document approved by the Fourth World Conference on Women held in Beijing, China from 5th - 15th September 1995, Chapter 1, Mission statement, para.1

<sup>216</sup> Beijing Declaration and Platform for Action

<sup>217</sup> M. R. Tavares da Silva, Stocktaking Study of the Effective Functioning of National Mechanisms for Gender Equality in Council of Europe Member States, Council of Europe, 2004, 8

### **6.5.1 The UAE's national mechanisms and national strategy for the advancement of women**

The UAE government has endorsed the recommendations made at the Beijing 4th International Conference on Women in 1995 and worked on developing national strategies, plans and programs of actions in order to implement the Beijing Platform for Action in different field.<sup>218</sup> However, already in 1974, the UAE government created the General Women's Union as the country's first society after the creation of the UAE. Its initial purpose was to improve social relationships and women's social lives, but soon after the purview of the Union became more ambitious and was extended to empowering women in all fields of their lives.<sup>219</sup>

After the endorsement of the recommendations made in Beijing, the UAE created many institutions in order to empower and advance women rights. In 2000, the Supreme Council for Family Affairs in Sharjah was created pursuant to Emiri Decree No. (24). This Council has different departments in the fields of social and cultural development, the protection of the family, care and rehabilitation.<sup>220</sup> Furthermore, the Family Development Foundation was formed in May 2006, but the Foundation is finding it challenging to support women and enhance their role within society.<sup>221</sup> Moreover, in 2006 the Dubai Women Establishment (DWE) was created by virtue of Law No. (24) by His Highness Sheikh Mohammed Bin Rashid Al Maktoum – the UAE Vice President and Prime Minister and ruler of Dubai. As a

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<sup>218</sup> General Women's Union (GWU), 'United Arab Emirates the National Report of the UAE on Beijing +20', 2014, 5 & 53

<sup>219</sup> A. Al Hameli, History Project: Emirati women united by General Women's Union, 2014, <<http://www.thenational.ae/uae/history-project/history-project-emirati-women-united-by-general-womens-union#full>> accessed 16th August 2015

<sup>220</sup> Supreme Council of Family Affairs, 2015 <<http://www.family.org.ae/Index.aspx>> accessed in 16th August 2015

<sup>221</sup> Family Development Foundation, 2011 <<http://www.fdf.ae/En/aboutus/wordherhighness/Pages/default.aspx>> accessed 16th August 2015



statutory body of the Dubai government and as per its founding decree, the establishment aims to encourage and facilitate the participation of Emirati women in the workforce and society.<sup>222</sup> The DWE adopted a strategy for 2008 to 2012 which was based on the following four-pronged approach: finding a balance between work and home life; providing continuous training and work opportunities for women; nurturing leadership, and enhancing the image of Emirati women. The strategy focused on the adoption of national development policies to increase the contribution Emirati women make to the economy.

In addition, a human rights department has been created at both the Ministry of Interior and the Abu Dhabi Police General Command and family guidance and reform centers have been established at all state courts, as well as the Higher Council on Maternity and Childhood, the National Committee to Combat Human Trafficking<sup>223</sup> and Al-Amal women's shelter center within Dubai Police. The interviewees also pointed out that the Dubai Shelter for Women and Children provides support and psychological care, including to expatriates. Moreover, a new shelter was opened in Abu Dhabi in 2008 in cooperation with the Red Crescent Authority and the National Committee to Combat Human Trafficking. Two more shelters were also established in Sharjah and Ras Al Khaimah. Women's associations also offer help with a variety of issues. The interviewees also emphasised that women can enforce their rights through the courts.

In 2013, the FNC established a human rights committee which considers bilateral, regional and international human rights agreements and treaties and also looks at individual cases which are being brought to its attention. The committee's jurisdiction is limited to giving

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<sup>222</sup> Dubai Women Establishment, 2010 <<http://www.dwe.gov.ae/overview.aspx>> accessed 16th August 2015

<sup>223</sup> Some states establish inter-ministerial committees, focal points or working groups or other mechanisms in order to enhance the impact of their national machineries through effective linkages with other government institutions. For example, the Ministry of Interior has a Hawa (women) Committee is the main link between the Ministry of Interior and other national mechanisms which enhances women rights within the Ministry.

opinions about the extent to which prospective laws uphold human rights and additionally prepares reports about the recognition of human rights.<sup>224</sup> Recently, the UAE government additionally established the Gender Balance Council. The Council aims to reduce the gap between the sexes in the workplace, especially in the field of decision-making. The Gender Balance Council's functions range from reviewing legislation to recommending international conventions to increase gender equality within the workplace.<sup>225</sup>

These national programmes have helped women to assume leadership positions and the introduction of economic policies has enabled women to work from home. The objective was to adopt policies and support services which remove barriers which undermine women's progression and growth within the workplace, especially in the private sector, and to encourage that women return to work after starting a family. However, it is unclear how successful these initiatives have been since there is no statistical evidence about the initiatives. Yet efforts are made across the board to remedy this and the DWE has signed a strategic co-operation agreement with the Dubai Statistics Centre (DSC) to share crucial data that will further the goals of both organisations and will provide a better understanding about the status of UAE women. This data will help to identify challenges which UAE working women face in their day-to-day life and will facilitate the implementation of appropriate solutions.<sup>226</sup>

In addition, the national strategy for the advancement of women was launched in 2002 by

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<sup>224</sup> H. Dajani, FNC elects human-rights committee, *The National*, 1 May 2013 <<http://www.thenational.ae/news/uae-news/politics/fnc-elects-human-rights-committee>> accessed 27th August 2015

<sup>225</sup> N. Al Wasmi, Sheikh Mohammed bin Rashid forms Gender Balance Council to empower women, *The National*, 10 February 2015 <<http://www.thenational.ae/uae/government/20150210/sheikh-mohammed-bin-rashid-forms-gender-balance-council-to-empower-women>> accessed 22th August 2015

<sup>226</sup> V. P. Goby, M. S. Erogul, 'Female Entrepreneurship in the United Arab Emirates: Legislative Encouragements and Cultural Constraints', in (eds) *Women's Studies International Forum* (London, Elsevier, 2011) 329-334, 332

H.H. Sheikh Fatima bin Mubarak, Chairwoman of the General Women's Union, Supreme Chairwoman of the Family Development Foundation and President of the Supreme Council for Motherhood and Childhood. This strategy is one of the major achievements to facilitate women empowerment and advancement in the UAE. The national strategy is aimed at enhancing the role of women within society and supporting them in all aspects of their lives. The national strategy promotes economic growth and encourages social change in line with the Beijing agenda and the CEDAW. This strategy provides a roadmap for the advancement and empowerment of women in the following eight areas: education, law making, health, the environment, the economy, the social domain, information, political participation and decision-making. The UAE was the first state in the GCC to launch such a national strategy in order to keep pace with international recommendations for the advancement of women. This follows on from the national plan of action for women, which was launched in 1999 and approved by the General Women's Union.<sup>227</sup>

## **6.6 Achieving heightened protection for female temporary workers**

Female domestic workers (who were not spoken to during the fieldwork) are most vulnerable since they are excluded from UAE Labour Law Federal Law No. (8) of 1980. As a result, they are often deprived of fundamental protective safeguards.<sup>228</sup> This is particularly the case since the UAE operates a kafala programme under which migrant workers can only enter the UAE if they have a sponsoring employer, who assumes legal and financial responsibility for them.<sup>229</sup> The problem with the kafala system is that it “encourages the undesirable motivation

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<sup>227</sup> B. Bibbo, UAE women strategy launch today, 2002 <<http://m.gulfnews.com/news/uae/general/uae-women-strategy-launch-today-1.405371>> accessed 18th August 2015

<sup>228</sup> Article (3) sub paragraph (c) of UAE Labour Law Federal Law No. (8) Of 1980 Labour Law and its Amendment: “The provisions of this Law are not applicable to the following categories: Domestic servants working in Private residences and the like.”

<sup>229</sup> N.125

for employers to confiscate passports.”<sup>230</sup> As a result, domestic workers are entirely controlled by their sponsors.<sup>231</sup> The UAE has recognised these issues and, as discussed previously, has reformed the kafala system, though the wage protection system has not been extended to domestic workers.<sup>232</sup> Temporary workers are also entitled to retain their passport and the UAE government has printed brochures in different languages and has distributed these to the various embassies and consulates, so that domestic workers become aware of their rights.<sup>233</sup> As discussed previously, the recent introduction of the Employment Contract for Domestic Workers and the Like has also improved the situation of domestic workers and Lamya Rhaman of the Sharjah Department of Residency and Foreign Affairs points out that the same minimum rights now apply to domestic workers as to others.<sup>234</sup>

However, despite these reforms, some issues still remain. For instance, domestic workers cannot seek protection under the general labour law or regulations applying to the Dubai International Financial Centre and Employment and Sponsorship Regulations of the Abu Dhabi Media Free Zone Authority.<sup>235</sup> They can therefore not pursue claims for sex discrimination, and sexual harassment is also not outlawed.<sup>236</sup> Furthermore, the memoranda, which the UAE has negotiated with sending countries, do not extend to domestic workers and

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<sup>230</sup> UN Human Rights Council Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Mission to the United Arab Emirates, United Nations, A/HRC/23/48/Add.1, 22 February 2013, para.6

<sup>231</sup> R. Sabban, United Arab Emirates: Migrant Women in the United Arab Emirates, The case of female domestic workers, GENPROM Working Paper No.10, Series on Women and Migration, Geneva, International Labour Office, 2002, 1-54, 35  
<[http://www.biblioteca.cij.gob.mx/Archivos/Materiales\\_de\\_consulta/Migracion/Articulos/ingles7.pdf](http://www.biblioteca.cij.gob.mx/Archivos/Materiales_de_consulta/Migracion/Articulos/ingles7.pdf)> accessed 27<sup>th</sup> August 2015

<sup>232</sup> N.95

<sup>233</sup> Y. Kakande, Protecting the rights of domestic workers in the UAE, The National, 16 March 2014  
<<http://www.thenational.ae/uae/government/protecting-the-rights-of-domestic-workers-in-the-uae>> accessed 27<sup>th</sup> August 2015

<sup>234</sup> Ibid

<sup>235</sup> International Organization for Migration, Country Migration Report, The Philippines 2013, 1-312, 51-52  
<<http://www.iom.int/files/live/sites/iom/files/Country/docs/CMReport-Philippines-2013.pdf>> accessed 16<sup>th</sup> October 2014

<sup>236</sup> Ibid

as a result their rights are limited.<sup>237</sup> This breaches Article 11 of the CEDAW which obligates states parties “to eliminate discrimination...in the field of employment...to ensure...equality...”

The interviewees also thought that more steps could be taken to prevent sex discrimination.

Another issue is that domestic workers cannot leave their job if their employer does not consent to this and they therefore are often forced to work till their contract ends, even if this means facing abuse and arbitrary treatment.<sup>238</sup> Those who abscond can be arrested and prevented from leaving the UAE on their own accord.<sup>239</sup> When a domestic worker absconds, they can be deported, fined or banned from working for one year.<sup>240</sup> Those who escape abusive sponsors or want to complain about their work conditions often cannot seek justice against their sponsor for fear that the sponsor will fabricate allegations against them.<sup>241</sup>

However, due to the reforms, they can now apply to the tribunal. Yet domestic workers may nonetheless fear that their employer reports them for having committed a *zina* offence or use this as counter-allegation against them. This is because a *zina* conviction automatically results in deportation.<sup>242</sup>

Moreover, the UN Special Rapporteur on trafficking highlights that female temporary

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<sup>237</sup> Ministers Council Resolution No. 10 of 2012 amending Cabinet Decision No. 27 of 2010 and Ministerial Resolution No. 703 of 2013; Human Rights Watch, Submission to the CEDAW Committee of the United Arab Emirates’ Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 25th August 2015

<sup>238</sup> C. N. Conghaile, Beaten, trapped, abused and underpaid - migrant domestic workers in the UAE, The Guardian, 23 October 2014 <<http://www.theguardian.com/global-development/2014/oct/23/migrant-domestic-workers-uae-beaten-abused>> accessed 28th August 2015; S. Irianto, T.-D. Truong, From Breaking the Silence to Breaking the Chain of Social Injustice: Indonesian Women Migrant Domestic Workers in the United Arab Emirates, 9 *Migration, Gender and Social Justice* 2013, 29-45, 29

<sup>239</sup> Articles 96 and 96(a) of the Executive Regulations of the Entry and Residence of Foreigners Law; UN Human Rights Council Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Mission to the United Arab Emirates, United Nations, A/HRC/23/48/Add.1, 22 February 2013, para.5

<sup>240</sup> Articles 63 and Article 79(d) of the Executive Regulations of the Entry and Residence of Foreigners Law

<sup>241</sup> ITUC, Facilitating Exploitation: A review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries, Legal and Policy Brief, International Trade Union Confederation, November 2014, 1-58, 16 <[http://www.ituc-csi.org/IMG/pdf/gcc\\_legal\\_and\\_policy\\_brief\\_domestic\\_workers\\_final\\_text\\_clean\\_282\\_29.pdf](http://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers_final_text_clean_282_29.pdf)> accessed 27th August 2015

<sup>242</sup> Article 121 of Federal Law No (3) of 1987 on Issuance of the Penal Code and its amendment by Federal Law No. (34) of 2005

workers are more vulnerable to trafficking<sup>243</sup> and Human Rights Watch explains that this is because labour matters and human trafficking are viewed as two separate subjects, despite these two issues being interrelated.<sup>244</sup> They are therefore in a vulnerable position to be recruited by human traffickers. However, as discussed previously, following the 2015 amendments of the human trafficking law, victims are better protected and supported and have been given more rights, including, for instance, the right to receive legal support in their native language.<sup>245</sup>

The interviewees thought that the government has been very proactive and that since most domestic temporary workers are employed by the private sector, more responsibility should fall on the private sector to improve the situation of female temporary workers. Yet the private sector operates within the legal and policy framework shaped by the state and it is therefore crucial that further steps are taken to improve the situation of women.

## **6.7 A roadmap to realising gender equality in the UAE**

At the international level, more steps could be taken to firmly embrace human rights, including women rights. This could be achieved through the ratification of further human rights treaties, most notably the ICCPR and ICESCR, but also the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ratification of international treaties also requires the necessary commitment to honour the therein

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<sup>243</sup> UN Human Rights Council Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, mission to the United Arab Emirates, United Nations, A/HRC/23/48/Add.1, 22 February 2013, para.7

<sup>244</sup> Human Rights Watch, Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 25th August 2015

<sup>245</sup> N. Al Remeithi, Laws give UAE human trafficking victims more protection, The National, 12 March 2015 <<http://www.thenational.ae/uae/laws-give-uae-human-trafficking-victims-more-protection>> accessed 28th August 2015

contained obligations. This can be easily realised through the withdrawal of the reservations to the CEDAW.

The interviewees also considered that the reservations to the CEDAW ought to be incrementally withdrawn, as long as Sharia compliance is nevertheless guaranteed. For instance, as the UAE government has amended the laws in respect of nationality and there exists no conflict with the Sharia, it is no longer necessary to retain the reservation to Article 9. The survey participants also generally thought that withdrawal of the reservations is desirable. Whilst none of the interviewees questioned whether the Sharia should be the determining factor, patriarchal interpretations of the Sharia which are not firmly rooted in the Quran should be avoided. In other words, when the reservations are being reviewed in the future, it should be borne in mind that the Quran emphasises “*human equality*”, as is clearly apparent from a reading of al-Hajj, 22:5, Nisa'4:1, At-Tawbah 9:71-72, Al-Nisa' 4:124; Al-Baqarah 2:30-34; Ghafir, 40:40; Al-Ahzab, 33:35 and Al-Imran 3:195 and Al-Nahl 16:97.<sup>246</sup> Hence, androcentrism must therefore be avoided when the Quran is being interpreted by Islamic scholars.

Furthermore, it is important that the UAE government regularly submits reports in order to update the international community about the progress which has been undoubtedly achieved over the years in terms of combating racism in line with the CERD and women rights, as guaranteed under the CEDAW. In the context of combating racism, steps should be taken to eliminate gender related dimensions of racial discrimination, e.g. domestic workers should be firmly protected against sexual abuse.<sup>247</sup> It is for this reason that the Convention on the

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<sup>246</sup> A. el-Azhary Sonbol, A Response to Muslim Countries' Reservations Against Full Implementation of CEDAW, 8 Journal of Women of the Middle East and the Islamic World 2010, 348-367, 354

<sup>247</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 25, Gender Related Dimensions of Racial Discrimination (Fifty-sixth session, 2000), U.N. Doc. A/55/18, annex V at 152 (2000), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 214 (2003) <<http://hrlibrary.umn.edu/gencomm/genrexxv.htm>> accessed 1st July 2017

Protection of the Rights of All Migrant Workers and Members of Their Families should be ratified.

The majority of the survey participants also considered that the Optional Protocol to the CEDAW should be ratified. It was thought that this would empower women to directly notify problems at the highest level inform about their situation and to thereby create an international oversight mechanism. Indeed, it is certainly desirable that the Optional Protocol is adopted by the UAE. It would be groundbreaking for a country in the Middle East to accept a system whereby individuals can petition an international body. It would set a very good precedent which other Middle East countries may follow and not just in respect of the CEDAW, but other mechanisms. However, it is insufficient to merely ratify international conventions, as these instruments command that the appropriate steps are taken domestically.

Fundamentally, the constitution should be amended, so that sex discrimination becomes proscribed at the highest level. Yet it is questionable whether this will be done, as long as a conservative interpretation of the Quran is adopted. Furthermore, the Labour Law should proscribe sex discrimination. However, at present sex discrimination is only outlawed by virtue of the Dubai International Financial Centre (DIFC) Employment Law No. 4 of 2005, but this law only applies to those working in the DIFC. Sexual harassment should also be outlawed. In this context, it is also important to clarify that the Labour Law extends to all i.e. also domestic workers. Equally, the constitutional rights should be extended to all, as this would substantially realise compliance with the CERD.

The concept of 'male guardianship' could be rendered voluntary, as opposed to obligatory i.e. the patriarchal custom could still be practised, but without this being legally mandated. For example, women could be allowed to marry without the consent of the male guardian, but



could decide to choose that they wanted a male guardian in order to benefit from the Islamic family protection. Hence, they could be asked by the marriage registrar whether they wanted to opt for a marriage without male approval or a marriage with male approval. In case they opted for male approval, then this would also entitle the guardian to annul the marriage.

Equally, the notion of obedience to the husband could be liberalised. For instance, instead of rendering it a criminal offence to not seek permission from their husband to work, this could be reduced to a civil offence. At the same time, women should be reminded by the marriage registrar of their right that they can write in the marriage contract that they are entitled to work throughout the marriage. The right to travel, as guaranteed by the constitution, should be unimpeded for women.

The right of the husband to chastise his wife and children offends the prohibition of degrading and inhuman punishment or treatment and torture. In light of the fact that the UAE has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, it is therefore particularly important that it brings its law into line with the Convention. In Europe, the right to chastise children was formerly acknowledged, but over time this was no longer deemed socially acceptable.<sup>248</sup> As the UAE has transformed itself and is becoming a modern state, this practice should also be disapproved in the future. This could be particularly achieved through the adoption of a law on domestic abuse, as also proposed by the FNC and other bodies. Equally, in the UK marital rape was not prohibited until 1992<sup>249</sup> and many countries around the world have recognised this crime, so that arguably time has also come to follow suit.<sup>250</sup>

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<sup>248</sup> *A v UK* (1999) 27 EHRR 611; D. Ormerod, K. Laird, *Smith and Hogan's Criminal Law* (14th ed, Oxford, Oxford University Press 2015) 734

<sup>249</sup> *R v R* (1992) 1 AC 599

<sup>250</sup> K. Jaishankar, N. Ronel, *Second International Conference of the South Asian Society of Criminology and Victimology, 11-13 January 2013, Kanyakumari, Tamil Nadi, India* (Abishekapatti, South Asian Society of Criminology and Victimology 2013) 24

Additionally, abuse against women, whether within or outside the family context, should be combated. Women's testimonies, including in respect of adultery and all kinds of *zina* offences, should be fully weighed, just like the testimonies of men.

The majority of the female non-Emiratis, who completed the survey, considered that female temporary workers are protected by legislation and that the UAE government has promoted the rights of female temporary workers. The female Emiratis felt that there has been a lot of progress in the economic sphere. Similarly, skilled female non-Emiratis did not feel that there were barriers because of their sex which prevented them from progressing with their careers. Yet less skilled female non-Emiratis were not as forthcoming with their responses, which may suggest that more steps have to be taken to empower them. Equally, the majority of the interview participants emphasised that the UAE has been extremely proactive. For instance, it was pointed out that field investigation teams have been set up to protect female temporary workers. They thought that responsibility should also fall on the private sector. For instance, the government could launch a campaign to educate the private sector about how to treat domestic workers.<sup>251</sup> In contradiction to what the interviewees said, the survey participants felt that it was important that more laws are passed to protect female temporary workers. However, one of the interviewees also acknowledged that the 2012 Draft Bill for domestic workers should be adopted.<sup>252</sup> As discussed, in May 2017 the 2012 Draft Bill for domestic workers was amended. This new Draft Bill ought to be ratified at the earliest. There should be no undue delay in the adoption of this important law, as happened with the 2012 Draft Bill for domestic workers. Otherwise, the impression will persist that the new announcement of

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<sup>251</sup> R. Ruiz, More needs to be done to protect domestic workers, Ramadan Council hears, The National, 2014 <<http://www.thenational.ae/uae/more-needs-to-be-done-to-protect-domestic-workers-ramadan-council-hears>> accessed 20th July 2014

<sup>252</sup> Also see MEE Staff, GCC agrees on draft bill to improve domestic workers' rights - See more at: <http://www.middleeasteye.net/news/gcc-agrees-draft-bill-improve-domestic-workers-rights-103889462#sthash.we9BFBt1.dpuf>, Middle East Eye, 26 November 2014 <<http://www.middleeasteye.net/news/gcc-agrees-draft-bill-improve-domestic-workers-rights-103889462>> accessed 28th August 2015; S. Salama, Domestic workers get more protection from exploitation, Gulf News, 2 May 2012 <<http://gulfnews.com/business/sectors/employment/domestic-workers-get-more-protection-from-exploitation-1.1016692>> accessed 28th August 2015

the 2017 draft law was only done to pretend that the problem is finally being addressed, but without this happening in reality. Without this, Article 2 of the CEDAW is not fully complied with, despite the introduction of the new Employment Contract for Domestic Workers and the Like, since states parties are required to adopt a policy to eliminate discrimination, including through legislative measures. However, not only legislative steps must be taken.

One particular issue is at present that it is virtually impossible for independent NGOs to operate in the UAE, including foreign ones. As a result, it is more difficult for women to voice demands and to highlight issues. Independent NGOs ought to be therefore allowed to establish themselves in order to report about the situation on the ground, so that a cooperative dialogue is established with civil society, and victims are given a proper voice. In this context, it is important to note that civil society does not solely consist of NGOs and civil society organisations, but that a “*civil society ecosystem*” also requires other actors, such as online groups and grassroots associations which operate at the community level.<sup>253</sup> Normally, civil society activism (i.e. not government-led initiatives) further *de facto* and *de jure* achievement of human and women's human rights. The government should therefore permit that independent NGOs, including international NGOs, as well as other actors, are given the political space to operate. This will help to promote the government's declared aim of guaranteeing equality of freedom from discrimination. This necessitates that it is made easy for organisations to establish themselves, media oversight has to be loosened and it must be possible to receive foreign and local funding i.e. no direct or indirect restrictions should be imposed.<sup>254</sup> In other words, an enabling policy and legal climate for civil society organisations must be created.<sup>255</sup> Only this can create community mobilisation, facilitate a

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<sup>253</sup> World Economic Forum, The Future Role of Civil Society, January 2013, 1-64, 8  
<[http://www3.weforum.org/docs/WEF\\_FutureRoleCivilSociety\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf)> accessed 1st July 2017

<sup>254</sup> Ibid, 7

<sup>255</sup> Ibid

new public discourse about women empowerment and can lead to a wider social norm shift.<sup>256</sup>

Moreover, statistics should be collected, so that it can be determined to what extent these legal initiatives achieve gender equality. In the UK the Office for National Statistics collects data about domestic abuse and, for instance, in 2015, 1.4 million were victims of domestic abuse and which resulted in 107,104 prosecutions and more than 11,000 convictions.<sup>257</sup> UAE police should therefore record how many cases of domestic abuse have been reported and investigated, how many of these cases are passed to the prosecutor and result in convictions. Equally, in respect of the various initiatives, for example, the option to lodge complaints with various bodies, it should be identified how many complaints are filed by females, in respect of which matters and the outcome.

Awareness has to be also raised, so that women are educated about their rights i.e. that they can file complaints with any public body about sex discrimination, about their right to write in the marriage contract that they are permitted to work, that domestic workers can apply to the tribunal at the Ministry of Interior to enforce their contract, etc. Enforcement agencies, particularly the police, should be educated about the rights of females, so that complaints about marital rape, rape, sexual harassment and domestic violence are taken seriously.

## 6.8 Conclusion

Much progress has been made in the economic and educational realm. However, modernisation efforts have not been as successful in the political sphere. The October 2015

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<sup>256</sup> L. Michau, J. Horn, A. Bank, M. Dutt, C. Zimmerman, Prevention of violence against women and girls: lessons from practice, 385(9978) *The Lancet* 2015, 1672-1684, 1674

<sup>257</sup> A. Travis, 1.4 million women suffered domestic abuse last year, ONS figures show, *The Guardian*, 12 February 2015 <<https://www.theguardian.com/society/2015/feb/12/14-million-women-suffered-domestic-abuse-last-year-ons-figures-show>> accessed 14th July 2016; Crown Prosecution Service, Highest ever number of "violence against women" cases being prosecuted and convicted in England and Wales, 25 June 2016 <[http://www.cps.gov.uk/news/latest\\_news/highest\\_ever\\_numbers\\_of\\_violence\\_against\\_women\\_cases\\_being\\_prosecuted\\_and\\_convicted\\_in\\_england\\_and\\_wales/](http://www.cps.gov.uk/news/latest_news/highest_ever_numbers_of_violence_against_women_cases_being_prosecuted_and_convicted_in_england_and_wales/)> accessed 13th July 2016

FNC elections also highlights this, in which only one women obtained a seat.<sup>258</sup> Equally, in the civil field, which includes the private and family realm, stereotypical gender perceptions still make it difficult to assert equality of treatment. This is because the Sharia is still the main source of civil law i.e. for family and inheritance matters.<sup>259</sup> As a result, there exist an “unequal power balance in the private sphere.” This reinforces a patriarchal system premised on men and women fulfilling complementary roles, namely men to act as breadwinners and women as mothers, also because of the view that women should exercise modesty, including by avoiding interactions with men.<sup>260</sup> As the private sphere has repercussions on the public domain, this makes it difficult for women to become a full part of the citizenry. Yet over time, this “public/private split”, or what may also be described as “domestic/nondomestic” divide, may become eroded by the “forces of the marketplace”, even irrespective of legislative changes.<sup>261</sup> More difficult economic times may necessitate that women enter the workforce. Equally, the fact that women are more educated changes women's economic role.<sup>262</sup> As a result, the husband may find it difficult to refuse permission, resulting in the requirement becoming obsolete over time. Nevertheless, the question remains how much change there will be and it is important that further legislation is adopted to remove remaining formal obstacles which make it difficult for women to enter the public sphere, as well as to devise strategies to overcome structural inequalities which impede access.<sup>263</sup> For example, Article 25 of the constitution ought to be amended and the word ‘sex’ ought to be included, so that non-discrimination against women becomes constitutionally mandated. A

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<sup>258</sup> WAM, Emirates247, 4 October 2015 <<http://www.emirates247.com/news/emirates/fnc-elections-2015-the-winners-are-2015-10-04-1.605457>> accessed 6th October 2015

<sup>259</sup> S. H. Hashmi, *Islamic Political Ethics: Civil Society, Pluralism, and Conflict* (Princeton, Princeton University Press 2002) 57

<sup>260</sup> T. Jackson, *International Management Ethics: A Critical, Cross-cultural Perspective* (Cambridge, Cambridge University Press 2011) 194

<sup>261</sup> E. Kowaleski-Wallace, *Encyclopedia of Feminist Literary Theory* (Abingdon, Routledge 2009) 169; S. Wolosky, *Feminist Community and American Women's Poetry* (London, Routledge 2013) 93

<sup>262</sup> C. Goldin, The Quiet Revolution that Transformed Women's Employment, Education, and Family, National Bureau of Economic Research Working Paper Series 11953, 2006, 1-48, 1 <<http://www.nber.org/papers/w11953.pdf>> accessed 5th October 2015

<sup>263</sup> L. Code, *Encyclopedia of Feminist Theories* (Abingdon, Routledge 2000) 441

law should be passed to prohibit marital rape. The *hadd* punishment for adultery should be removed. The *zina* offences ought to be revised, so that women are not unfairly punished, e.g. when they report rape. The rights for non-citizens ought to be strengthened, ideally through constitutional amendment. More favourable labour laws ought to be adopted for domestic workers. The Law No. 2 of 2015 against Discrimination and Hatred ought to be revised, so that women also are protected by this law. The CEDAW ought to be transposed into domestic law. The reservations to the CEDAW should be withdrawn and the Sharia ought to be interpreted more progressively. The Optional Protocol to the CEDAW should be ratified. There should be more engagement with the CERD Committee. Independent NGOs, including international ones, ought to be given the political space to operate without fear of repercussions, including against employees. These types of measures will help overcome the challenges which still exist to realise gender equality.

This is crucial since laws, traditions, customs, practices and opinions are still influenced “by a patriarchal reading of Islam’s sacred texts and sustained by a set of outdated assumptions and juristic constructs about female sexuality, which are at the root of violence against women.”<sup>264</sup>

The UAE could adopt the approach of Turkey, which has successfully amended its Civil Code, the Penal Code and its constitution, so that there exists a firm “legal basis for gender equality.”<sup>265</sup> Tunisia has also included Article 46 in its new constitution, which states that “[t]he state commits to protect women’s established rights and works to strengthen and

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<sup>264</sup> Z. Mir-Hosseini, *Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Context*, 8(5) *International Journal on Human Rights* 2011, 6-33, 6

<sup>265</sup> M. Muftuler-Bac, *Gender Equality in Turkey*, European Parliament, Directorate General for Internal Policies, 2012, 1-20, 14  
<<http://www.europarl.europa.eu/document/activities/cont/201202/20120207ATT37506/20120207ATT37506EN.pdf>> accessed 15th July 2016

develop those rights” and which also contains an equality guarantee in relation “to all levels of responsibility and in all domains.”<sup>266</sup> Nonetheless, even in Turkey and Tunisia there still exist implementation issues due to social practices and norms, so that the legal rights cannot be fully exercised by women.<sup>267</sup> Hence, merely equipping women with legal rights is insufficient, but instead there has to be also social transformation.<sup>268</sup> Governments have to be therefore proactive when it comes to advancing social transformation. For instance, Turkey’s withdrawal of several reservations to the CEDAW sends out a strong signal that it is committed to advancing gender equality.<sup>269</sup> Similarly, the Tunisian government submitted its declaration on 17 April 2014 that it would lift various reservations, which it had entered in respect of Articles 9, 15, 16 and 29 of the CEDAW.<sup>270</sup> A withdrawal notification has been submitted, so that the reservations have been lifted.<sup>271</sup>

Moreover, change can only be effected in line with international standards if “human rights norms and values [are]...articulated in a language that can engage with local cultures, practices, and religious traditions.”<sup>272</sup> This means that despite international human rights signifying core values which are intrinsic and inalienable, the way in which these are realised

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<sup>266</sup> Human Rights Watch, Tunisia: Landmark Action on Women's Rights, 30 April 2014 <<https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights>> accessed 14th July 2016

<sup>267</sup> M. Muftuler-Bac, Gender Equality in Turkey, European Parliament, Directorate General for Internal Policies, 2012, 1-20, 14 <<http://www.europarl.europa.eu/document/activities/cont/201202/20120207ATT37506/20120207ATT37506EN.pdf>> accessed 15th July 2016; Human Rights Watch, Tunisia: Landmark Action on Women's Rights, 30 April 2014 <<https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights>> accessed 14th July 2016

<sup>268</sup> Ibid (Muftuler-Bac)

<sup>269</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2016 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 11th July 2016

<sup>270</sup> Human Rights Watch, Tunisia: Landmark Action on Women's Rights, 30 April 2014 <<https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights>> accessed 14th July 2016

<sup>271</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Declarations, Reservations and Objections to CEDAW, 2017 <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 1st July 2017; Human Rights Watch, Tunisia: Landmark Action on Women's Rights, 30 April 2014 <<https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights>> accessed 14th July 2016

<sup>272</sup> Z. Mir-Hosseini, Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Context, 8(5) *International Journal on Human Rights* 2011, 6-33, 6

can be done in a multitude of manners. Such an approach results in the same standards, but without the uniqueness of the social, cultural and religious heritage of the Middle East and the Sharia being undermined. This is important since the Sharia teaches crucial and fundamental values, for instance, that the institution of marriage is holy and sacrosanct and should not be eroded, that life is to be respected at all costs, that women should be cared for financially by their husbands, so that they can raise the family, that there is an interplay between men and women in terms of roles which is based on physical and thus natural functions i.e. that women give life, act as mothers and nurture children. Framing these values in language which respects the religious heritage, but overcomes the patriarchal influence is an essential goal to equip women in the UAE with tangible rights. Yet such approximation takes time, especially since the languages and the background against which international human rights and the Sharia have developed are very different. However, as noted by Barlas, “I came to the realization that women and men are equal as a result not of reading feminist texts, but of reading the Quran”<sup>273</sup> and it is hoped that such an understanding of the sacred texts challenges “the hegemony of patriarchal interpretations of the sharia” and paves the way for gender equality.<sup>274</sup>

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<sup>273</sup> A. Barlas, Qur'anic Hermeneutics and Women's Liberation, Keynote speech presented at International Congress on Islamic Feminism, Barcelona, Spain, 2005, 11; cited from L. Tønnessen, Islamic Feminism, Sudan Working Paper, Regional Institute of Gender, Rights, Peace & Diversity, 2014, 1-12, 2 <<http://www.cmi.no/publications/file/5289-islamic-feminism-a-public-lecture-by.pdf>> accessed 5th October 2015

<sup>274</sup> Z. Mir-Hosseini, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, 32 *Critical Inquiry* 2006, 629-645, 643





## **Chapter Seven**

### **Conclusion**

The main research objective was to critically assess to what extent the UAE has enabled women to enjoy political rights, as well as economic, social and cultural rights contained in international women rights instruments and to analyse the impact which the ratified international conventions have had on relevant UAE laws, policies and initiatives. This required identifying which women rights exist at the international level. Moreover, it had to be addressed which recommendations have been made by international human rights organisations in relation to advancing political, civil, economic, social and cultural rights for women in the UAE and which associated rights intergovernmental and non-governmental organisations have advocated in order to enable Emirati and migrant women to become more active members within society. Additionally, it was assessed whether Islam prevents Emirati women from being fully empowered and politically enabled. It was analysed whether traditions and customs impede women from holding public and political roles. Furthermore, the research explored which steps the UAE has taken in order to address recommendations from international human rights organisations. Also, the research investigated to which extent the female Emirati and non-Emirati, who live in the UAE, feel that the ratification of conventions and recommendations from international human rights organisations have had an impact on them. Hence, it was assessed what the nature of that impact was and it was asked what else could be done in order to increase the impact of the recommendations.

The first chapter explained why it is important to critically assess whether the UAE has afforded important women rights as a result of international conventions and also provided justifications for this. The second chapter studied the women's rights movement in the West and Middle East and the development of domestic and international women rights i.e. identified which rights have been incorporated at the international level to foster women's rights in general. Chapter three set out the context and background of women's socio-economic, political and civil rights in the UAE. The rights which have been incorporated at the international level to foster women's rights in general were further discussed in the context of the instruments which the UAE has ratified. It was considered to which extent ratification of these international conventions has enabled Emirati and migrant women to become more active members within society. Additionally, it was analysed whether Islam prevents Emirati women from being fully empowered and politically enabled. The influence of traditions and customs was also explored. Chapter four then presented the findings from the interviews. It discussed which steps the UAE had taken in order to address recommendations from international human rights organisations. Furthermore, the interviewees provided their opinion about the nature of the impact of the UAE's ratification of conventions and recommendations from international human rights organisations. Additionally, this chapter investigated what else could be done in order to increase the impact of the recommendations. The fifth chapter discussed the questionnaire research results and the findings from the data analysis. The results from the two surveys with female Emiratis and non-Emiratis living in the UAE were designed to capture the impact which the ratification of conventions and recommendations from international human rights organisations have had and enquired how the impact can be strengthened. Subsequently, chapter six discussed

and analysed the research findings in light of the literature in order to critically assess the extent to which the UAE has enabled women to enjoy political rights, as well as other rights affirmed by international women rights instruments and to analyse the impact which major international conventions, which the UAE has ratified, have had, as well as relevant national laws, policies and initiatives.

The pragmatic research strategy and the mixed method methodology have made it possible to meet the research aim. The research has thereby uniquely contributed to knowledge creation. The research determined what impact the ratification of international conventions and recommendations have had on female Emiratis and non-Emiratis living in the UAE. An innovative approach was adopted since not only the domestic laws were analysed in order to ascertain to what extent the UAE complies with international standards. The qualitative research segment with high-ranking and experienced officials generated in-depth data. Additionally, a rich sample was taken for the quantitative research, as in total 427 individuals participated, including female Emiratis and non-Emiratis, who are living in the UAE.

The research has also enabled the researcher to make various recommendations which aid the empowerment of women. Moreover, this is the first research which investigated the impact of the ratified conventions and recommendations in the UAE. The literature largely confirms the findings, which highlight that the UAE has made progress, but that there still exist various issues which impede gender equality in the UAE.<sup>1</sup> The research has various advantages, including the research methodology. The

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<sup>1</sup> See, for example, Human Rights Watch, World Report 2015: United Arab Emirates, Events of 2014 <<https://www.hrw.org/world-report/2015/country-chapters/united-arab-emirates>> accessed 19th November 2015; Freedom House, United Arab Emirates, 2013 <<https://freedomhouse.org/report/freedom-world/2013/united-arab-emirates>> accessed 20th November

findings contributed to understanding what impact the ratification of important conventions for women rights by the UAE have had. The legal analysis together with the mixed method research design produced more comprehensive findings since the law was not just considered in isolation, but its practical impact was also assessed. The in-depth qualitative findings produced broad findings, whereas the quantitative data generated precise findings. Accordingly, the benefits of both paradigms were reaped and the disadvantages commonly associated with positivism and interpretivism were reduced. The research topic was understood through the lens of various different individuals. Moreover, the response to the two questionnaires was quite large. Another benefit of the data was that senior officials from various ministries and civil society institutions participated in the research and who had themselves been involved in the preparation of responses to the CEDAW and CERD Committees. This renders the data unique. The data is also credible since those who participated in the interviews possessed relevant knowledge. Another advantage is that the findings can be generalised since in total 427 women participated in the surveys. However, it is impossible to investigate everything and one drawback was that the researcher could not involve female domestic workers. Domestic workers work in private households and it was therefore not possible to involve them in the research. Yet it was ensured that lower-skilled female migrant workers were included in the research. The researcher also did not work in a team and this also had an impact on the sample size. Another weakness was that the researcher was sponsored by the government. As a

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2015; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined second and third periodic reports of the UAE, CEDAW/C/ARE/CO/2-3, 20 November 2015; Human Rights Watch, "I Already Bought You", Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates, 22 October 2014 <<https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>> accessed 20th November 2015; Amnesty International, Amnesty International Report 2014/15 <<https://www.amnesty.org/en/countries/middle-east-and-north-africa/united-arab-emirates/report-united-arab-emirates/>> accessed 20th November 2015

result, there was the risk that the survey participants and interviewees did not feel that they could freely express their views. They may therefore have not given the right answers or evaded providing answers by opting for a neutral response when completing the questionnaire.

Moreover, the researcher undertook mixed method research, which has not been widely applied. Whilst this was more complicated and time-consuming, it ensured that not just legal answers were generated. This is arguably one of the greatest strengths of the research. As a result, the research generated comprehensive findings about the impact of ratified human rights conventions and how the UAE meets its international gender equality obligations. The research established that the UAE has made much progress in advancing women rights. During the interviews, it was emphasised that the UAE had embarked on an ambitious modernisation programme ever since the UAE was founded and that ratification of the CEDAW was a natural expression of its long-standing and unwavering commitment towards realising gender equality. Just like the 19th century women's movement preceded the adoption of the CEDAW, countries started ratifying the CEDAW after the topic of gender equality had domestically evolved and a certain level of progress had been made.<sup>2</sup> Similarly, the UAE had already taken many steps to empower women and progress had thus been made and it was only subsequently that the UAE then decided to sign the CEDAW. The interviewees therefore perceived that the signing of the CEDAW was more of a symbolic act, which was further evidence of the UAE's long-standing commitment towards realising gender equality. Yet the analysis of the legal framework showed that certain fundamental domestic legal protections are missing,

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<sup>2</sup> M. Kevane, Ratification of CEDAW, Santa Clara University, 2003, 1-31, 1-2 <[http://eml.berkeley.edu/~webfac/bardhan/e271\\_sp03/mcvane.pdf](http://eml.berkeley.edu/~webfac/bardhan/e271_sp03/mcvane.pdf)> accessed 15th July 2016

which makes it difficult to view the ratification of the CEDAW as somehow only ‘symbolic.’

However, it was also acknowledged that further steps had been taken since the ratification in 2004 in order to improve the rights of women. Nonetheless, it was felt that change was attributable to the many government initiatives, which had been pursued since the 1970s. It was explained that the UAE government could not rapidly override long-established traditions and customs which form part of the heritage of the Middle East and could also not impose standards which refute the Sharia. The interviewees explained that many customs and traditions which impede women empowerment had been overcome, though this was considered a gradual process and that further progress can still be made. Accordingly, withdrawal of any reservations was considered possible in the future, in so far as this did not compromise the Sharia. It was emphasised that the government had been proactive in combating exploitation of domestic workers, including through the setting up of field investigations teams.

Similarly, the survey largely confirmed the findings of the interviews. The female survey participants felt that they were protected by gender equality legislation and thought that the domestic legislation was supportive of women. A great majority considered that the CEDAW and the CERD has had a positive effect on the promotion of gender equality in the UAE. Nevertheless, it was thought that traditions and religious values still hold women back to a certain extent. For instance, women are still directed to certain disciplines of study and certain jobs exclusively. Equally, Sharia law was considered to reinforce gender roles.

Whilst it was thought that there exist effective mechanisms for women empowerment, it was also pointed out that there are still legal obstacles, which affect the empowerment of Emirati women. The great majority of female non-Emiratis also did not indicate whether they were aware of the complaint and grievance mechanisms to enforce the rights of female temporary workers and had no opinion about whether these mechanisms were effective. The great majority also did not confirm that there is sufficient help available to support vulnerable female temporary workers after they escape an abusive employer and equally thought that female temporary workers should be better protected against sexual, physical and psychological abuse.

Similarly, many reports have been issued, including the 20th November 2015 Concluding observations on the combined second and third periodic reports of the UAE by the Committee on the Elimination of Discrimination against Women, which inform that women and migrant women in the UAE still face discrimination. It is against this background that it is recommended that the legal system is further reformed and that additional steps are taken to further improve the situation of women.

Fundamentally, the UAE should engage in a more meaningful dialogue with the CERD Committee. Hence, it is crucial that the concerns which the Committee raised are fully addressed. The CERD has to be assisted in its task and this requires that the UAE compiles data which is divided in accordance with the make-up of nationalities and this data should also inform about the socio-economic status of the different



categories of persons.<sup>3</sup> Such a task could be undertaken by the National Bureau of Statistics and the Dubai Statistics Centre, as these bodies already gather a large amount of statistics, including about demographics.<sup>4</sup> The constitution could also be clarified through additional legislative enactments, so that the principle of equality and the fundamental rights which are spelled out by the constitution are clearly affirmed for non-citizens residing in the UAE.<sup>5</sup> Accordingly, Articles 14 and 25-26, 29 and 34 of the constitution could be amended, as it currently only mentions that certain fundamental rights are afforded to Emirati citizens. However, the recent enactment of Law No. 2 of 2015 against Discrimination and Hatred in July 2015 sends out a clear message that racial discrimination i.e. discrimination based on race/ethnicity is no longer allowed.<sup>6</sup> Article 1 of the new anti-discrimination law defines discrimination as “[a]ny distinction, restriction, exclusion or preference among individuals or groups based on the ground of religion, creed, doctrine, sect, caste, race, colour or ethnic origin”, though sex is not included in this definition. Nonetheless, this ensures that the UAE legal framework does not breach Article 2 of the CERD. The 2015 law also bans the incitement of racial hatred in line with Article 4 of the CERD.<sup>7</sup> However, an awareness campaign may be still necessary to combat racially discriminatory and harmful stereotypes at a grass-roots level. It is also important that the new law is enforced and that data is generated about complaints, investigations and prosecuted individuals and court decisions in order to avoid

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<sup>3</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, 21 September 2009, CERD/C/ARE/CO/17, 2

<sup>4</sup> Federal Competitiveness and Statistics Authority, 2016 <<http://www.fcsa.gov.ae/EnglishHome/tabid/96/Default.aspx#refreshed>> accessed 1st March 2016

<sup>5</sup> Ibid, 3

<sup>6</sup> UAE Law No. 2 of 2015 against Discrimination and Hatred; see also The National, Anti-Discrimination Law enacted across UAE, 20 July 2015 <<http://www.thenational.ae/uae/government/anti-discrimination-law-enacted-across-uae>> accessed 2nd March 2016

<sup>7</sup> Ibid, 3

allegations that the UAE is only paying lip-service to its obligations under the CERD and to satisfy the CERD Committee that it is fully discharging its commitments.

Moreover, the working and living conditions of non-citizens, particularly domestic workers, has to be further improved, as highlighted by the literature, so that there are fewer cases of abuse.<sup>8</sup> Whilst the interviewees criticised that certain Western NGO reports are not always accurate in terms of its sources, this may not always be a fair assessment. For instance, the Human Rights Watch Report entitled 'United Arab Emirates: Trapped, Exploited, Abused, Migrant Domestic Workers Get Scant Protection' is a lengthy report, which is based on interviews with 99 female domestic workers, lawyers, recruitment agencies and others.<sup>9</sup> When preparing this report, Human Rights Watch also contacted 15 different UAE bodies and ministries and publicly created organisations, though information was nonetheless not forthcoming, apart from one response from the Dubai Foundation for Women and Children.<sup>10</sup> Such reticence in providing information does not promote a constructive dialogue. A better approach would be to be more forthcoming and engaging when information is being requested by independent NGOs. Otherwise, it is also, difficult for NGOs, such as Human Rights Watch and others, to effectively fill the gap which exists because of the absence of independent national NGOs. This may lead in turn to accusations, as voiced by some of the interviewees that the reports by foreign NGOs are not always accurate because of their sources.

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<sup>8</sup> Human Rights Watch, United Arab Emirates: Trapped, Exploited, Abused, Migrant Domestic Workers Get Scant Protection, 22 October 2014 <<https://www.hrw.org/news/2014/10/22/united-arab-emirates-trapped-exploited-abused>> accessed 2nd March 2016

<sup>9</sup> Ibid

<sup>10</sup> Human Rights Watch, UAE: Protect Migrant Domestic Worker's Rights, Response letter to the Minister of State for Foreign Affairs, 24 November 2014 <<https://www.hrw.org/news/2014/11/24/uae-protect-migrant-domestic-workers-rights>> accessed 2nd March 2016

The majority of female non-Emirati survey participants also considered that more labour laws are needed to protect female temporary workers, especially against sex discrimination. During the interviews, it was reported that the Ministry of Labour enforces the various laws and regulatory measures to protect temporary workers through inspection teams. It is therefore important that steps are taken to document the work of the investigations teams i.e. to collect statistics about labour inspections, investigations, complaints, decisions and outcomes, including of awarded compensation in line with Articles 5 and 6 of the CERD.<sup>11</sup>

The interviewees stated that effective mechanisms have been created for women to enforce the right to be treated equally and explained that these rights can be enforced through the courts and that complaints can be sent to all government bodies. Hence, it was reported that accountability measures had been created at all government offices, so that women could voice complaints.

Just like the work carried out by the investigations teams should be recorded and data should be generated which document the number of inspections, investigations, decisions, etc., the same has to be done in respect of court cases which have been heard to enforce women rights and in respect of complaints lodged by women. Progress has to be monitored and this also requires developing qualitative and quantitative measures to determine the effectiveness of these measures. Only this will result in transparency and will ensure that the procedures become more effective over time. In light of the fact that the majority of female non-Emiratis gave a neutral response when asked whether they were aware of the complaint and grievance

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<sup>11</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, 21 September 2009, CERD/C/ARE/CO/17, 3-4

mechanisms, it is also important that more awareness is raised amongst female non-Emiratis, so that the created mechanisms are also utilised.

The literature highlights that it is important to strengthen the employment rights of domestic workers, particularly through the enactment of the draft domestic worker legislation. Additionally, a “labour-complaints court for domestic workers' complaints” should be created.<sup>12</sup> This is important since Article 5(a) of the CERD requires “[t]he right to equal treatment before the tribunals and all other organs administering justice.” However, at present UAE law fails to adequately safeguard domestic workers in comparison to other migrant workers, who have been afforded an array of employment rights.<sup>13</sup> Otherwise, there is a risk that certain nationalities, who work more frequently as domestics, are indirectly racially discriminated against, including their “right to security of person and protection by the State against violence or bodily harm” under Article 5(b) of the CERD. This is because they work in private households and there have been reports that female domestic workers have been sexually assaulted and/or raped by their employers.<sup>14</sup> Additional legislation is also important since the Sharia based criminal law does not favour women when it comes to *zina* offences and they may face criminal charges when they have an unwanted pregnancy because they have been raped.<sup>15</sup> The majority of survey participants also considered that more labour laws are needed to protect female temporary workers.

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<sup>12</sup> Human Rights Watch, UAE: Protect Migrant Domestic Worker's Rights, Response letter to the Minister of State for Foreign Affairs, 24 November 2014 <<https://www.hrw.org/news/2014/11/24/uae-protect-migrant-domestic-workers-rights>> accessed 2nd March 2016

<sup>13</sup> The Independent, United Arab Emirates law to protect migrant workers fails to cover domestics, 1 November 2015 <<http://www.independent.co.uk/news/world/middle-east/united-arab-emirates-law-to-protect-migrant-workers-fails-to-cover-domestics-a6717146.html>> accessed 2nd March 2016

<sup>14</sup> D. S. Adamson, Raped, pregnant and afraid of being jailed, BBC, 25 October 2015 <<http://www.bbc.com/news/magazine-34616879>> accessed 2nd March 2016

<sup>15</sup> Human Rights Watch Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 2nd March 2016

Children of Emirati women, who marry non-Emirati men were previously discriminated against in terms of their nationality rights, but a 2011 regulation has substantially rectified this, though full compliance with Article 5(d)(iii) of the CERD may also require that children are not only awarded full nationality when they reach 18 years of age, but already from birth.<sup>16</sup>

The CERD Committee had requested the UAE to furnish its next periodic report by 20 July 2014, but the UAE has failed to do so and it is important that there is no further undue delay.<sup>17</sup> Clearly, in light of the adoption of Law No. 2 of 2015 against Discrimination and Hatred, the UAE has ensured that it substantially complies in respect of most obligations with the CERD.

Like the CERD, there are still some issues with the CEDAW, particularly in the fields of family, marriage and inheritance, though the UAE has also acknowledged this and has therefore entered reservations. Moreover, the CEDAW does not trump domestic law.<sup>18</sup> In this context, it is also important to further embed the CEDAW within the jurisprudence of the courts i.e. to encourage judges to refer in their judgments to the obligations of the CEDAW. More legislative guidance is also needed and the term ‘discrimination’ should be comprehensively defined and the principle of equality of women and men should be put on a statutory footing.<sup>19</sup> Hence, a rights-based

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<sup>16</sup> N.11, 4

<sup>17</sup> Ibid, 6

<sup>18</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined second and third periodic reports of the United Arab Emirates, CEDAW/C/ARE/CO/2-3, 20 November 2015, 2

<sup>19</sup> Ibid

approach is advocated in order to realise gender equality.<sup>20</sup> This is very important, as evidenced by the women's in the West, which illustrates that most of the advances of women were also affirmed through the granting of rights. This ensured that women have not only been afforded civil and political rights, but also cultural, social and economic rights, which are crucial to fully empower them in a world, which to this present day is often still androcentric to a certain extent.

Ideally, explicit and precise non-discrimination against women and gender equality provisions should be included in the UAE constitution. The word 'sex' should be added to Article 25 of the constitution which affords equality amongst Emirati nationals irrespective of race, residency, religious belief, or social status. Additionally, this guarantee should be extended to non-Emiratis (i.e. non-Emirati residents and visitors), so that non-Emirati women can also invoke the protective safeguards of the constitution, which should be inalienable, universal and indivisible in respect of the rights to gender equality and non-discrimination. Hence, constitutional reform should be implemented in order to realise a comprehensive gender equality framework, for instance, the constitution could permit positive action to improve gender equality. A far-reaching consultation should take place, particularly with women's and other civil society organisations. Such a constitutional change has to be accompanied by gender equality training for civil servants, judges, police officers and the concepts of non-discrimination and gender equality could also be included in national curricula of schools and universities. In line with the Fourth World Conference on Women in Beijing 1995, the UAE government could create a "Ministry of Women's Affairs" and this ministry could be supported through gender

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<sup>20</sup> Also see United Nations Non-Governmental Liaison Service, Policy Brief 7, Recommendations on Women's Human Rights and Gender Equality for the UN General Assembly Open Working Group on Sustainable Development Goals, 2015, 1-6

units, particularly the Gender Balance Council, and other women organisations, as this would strengthen the national women's machinery.<sup>21</sup> A Ministry of Women's Affairs could be responsible for providing strategic oversight for the development of a national gender equality framework and improving the national strategic plan in order to change widely accepted stereotypes about the roles of women and men. It could make suggestions about legislative reforms and be entrusted with, for instance, providing advice about the ratification of other relevant international instruments; gender equality training; the development of policies to increase women's participation in public life; liaison with the media to enhance an environment of gender equality; engagement with all stakeholders responsible for data gathering and evaluation of data (i.e. what progress has been made) and also improvement suggestions.

Moreover, at present there are not many human rights or women's human rights NGOs present in the UAE and none which are independent. The work of international NGOs which work on migrants' rights is also constrained. This has a dampening effect on the implementation of the CEDAW and the CERD. However, instead of suppressing civil society groups, it is important to embrace them in order to reap the positive transformative changes which these groups can bring for society.<sup>22</sup> Human rights activists, including women rights activists, should be permitted to voice their opinions, so long as they do not insult the government or call for regime change. This also necessitates strengthening the right to freedom of expression, so that those wishing to speak up for human and women's rights feel assured that this does not lead

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<sup>21</sup> C. Grown, G. R. Gupta, A. Kes, *Taking Action: Achieving Gender Equality and Empowering Women* (London, Earthscan 2005) 142

<sup>22</sup> World Economic Forum, *The Future Role of Civil Society*, January 2013, 1-64, 7  
<[http://www3.weforum.org/docs/WEF\\_FutureRoleCivilSociety\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf)> accessed 1st July 2017

to punishment. This may also require amendment of Federal Legal Decree No. 5/2012 on combating cybercrimes, which has been criticised by Human Rights Watch and called an attack on free speech.<sup>23</sup> Joe Stork, the deputy Middle East director of Human Rights Watch, noted that “[t]he determination to police and punish on-line dissent, no matter how mild, is incompatible with the image UAE rulers are trying to promote of a progressive, tolerant nation.”<sup>24</sup> Article 26 of the Cybercrime law also renders it difficult for civil society to freely associate and to peacefully assemble since it imposes a five year prison sentence and a hefty fine on those who employ technology to set up an unlawful group.<sup>25</sup> The existence of this legal provision therefore acts as a deterrent for those individuals who may wish to form a women human rights group. Article 38 of the law also makes it difficult for information to be given to human rights organisations and independent journalists since those who do this may be imprisoned for having given “incorrect, inaccurate or, misleading information liable to harm state interests or damage its reputation, stature, or status.”<sup>26</sup> Again this provision discourages civil society engagement and makes it more difficult for society to act as a watchdog and defender of those who are marginalised, e.g. by reporting women rights abuses. Consequently, the government should consider allowing the formation of a “third sector” within society, which is separate to business and government.<sup>27</sup>

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<sup>23</sup> Human Rights Watch, UAE: Cybercrimes Decree Attacks Free Speech, Threatens Peaceful Activists, Ordinary Citizens Alike, 28 November 2012 <<https://www.hrw.org/news/2012/11/28/uae-cybercrimes-decree-attacks-free-speech>> accessed 1st July 2017

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> S. Salmenniemi, ‘Civic organizations and the state in Putin's Russia: co-operation, co-optation, confrontation’, in D. Purdue (eds), *Civil Societies and Social Movements: Potentials and Problems* (Abingdon, Routledge 2007) 26



The reporting procedure established through the CEDAW could also be further improved through the involvement of organisations which have no links with the government, as the UAE has been criticised for only taking into account the opinions of organisations which are not independent.

Most of the survey participants expressed that the Optional Protocol to the CEDAW should be ratified, so that women can use the legal complaints mechanism. This would reinforce the rights which are spelled out by the CEDAW. The adoption of the supervision procedures contained in the Option Protocol would set a very good precedent and would result in the UAE leading the rest of the Muslim world. However, the fact that there are reservations is an issue. Yet at least women could bring claims in respect of those articles where no reservations have been entered. However, in light of the various steps which have been taken to establish gender equality and to empower women through education and the establishment of enforcement mechanisms for women rights, it is clear that women will ask more questions and this will also implicitly result in supervision, albeit not at the international level.

The interviewees and survey participants were divided about whether or not the UAE may withdraw the reservations, which it has entered to the CEDAW primarily because of the Sharia. Yet not all reservations are entered because of the Sharia. The two reservations to Article 9 and 29(1) of the CEDAW are not based on any religious justifications, but were entered since the provisions go against the UAE's interests. The latest legal reform has rendered UAE law broadly compliant with Article 9 of the CEDAW, so that at least one reservation could be withdrawn. However, the other

reservations evoke the concept of cultural relativism because the relevant CEDAW provisions, which require “equality in family relations” and impose state duties to reform traditions and customs, are perceived to contradict the religious and cultural values of the UAE.<sup>28</sup> Hence, viewed through the lens of some Emiratis, requiring full adherence to the CEDAW is tantamount to “religious intolerance.”<sup>29</sup> This is because the liberal stance of the CEDAW fails to take into account the differences between the sexes, which in Islam are emphasised and this is considered culturally insensitive by those favouring a conservative interpretation of Islam. Yet such a stance disregards that “religious norms relating to the status of women are dynamic and should not be put forward as a justification for reservations to CEDAW.”<sup>30</sup>

Accordingly, it is important that the reservations are not abused, though it is clear that the UAE has taken many steps in order to bridge the still perceived gaps and that it takes time for patriarchal customs to change, as also evidenced by the history of the women’s in the West. In the future, it is nonetheless likely that the Sharia can be further reconciled with international women rights. This is because women rights are not necessarily incompatible with the Sharia, but only the conservative interpretation of Islam. Women rights can therefore be compatible with the Sharia, but this requires that more emphasis is placed on individual rights.<sup>31</sup> Islam has to be interpreted in a more egalitarian manner in line with the universalistic approach adopted by the

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<sup>28</sup> N. Kabeer, *Inclusive Citizenship: Meanings and Expressions* (London, Zed Books Ltd 2005) 35

<sup>29</sup> P. Alston, R. Goodman, *International Human Rights* (Oxford, Oxford University Press 2012) 1082

<sup>30</sup> J. Rehman, S. C. Breau, *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Leiden, Martinus Nijhoff Publishers 2007) 399; also see United Nations Special Rapporteur on Religious Intolerance: Civil and Political Rights, Including Religious Intolerance. Report submitted by Mr Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights Resolution 2000/33, UN.Doc/E/CN.4/2001/63; 2001 February 13, paras.186-187

<sup>31</sup> K. De Feyter, G. Pavlakos, *The Tension Between Group Rights and Human Rights: A Multidisciplinary Approach* (Oxford, Hart Publishing 2008) 116

CEDAW.<sup>32</sup> Efforts have to be made to interpret the Sharia in a way which does not undermine women empowerment. This means honouring verse 4.1 of the Quran which states “O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women.” This verse makes clear that men and women come from one soul and are therefore the same and equal and not different. In contrast, a conservative interpretation of the Sharia emphasises that the sexes are different, but this makes it difficult to ensure compatibility between the CEDAW and the Sharia. Sharia principles are flexible and can therefore evolve and for the UAE government to realise “meaningful gender equality in all spheres requires critically assessing and debating traditional ideas about women, culture and religion.”<sup>33</sup> Hence, the UAE should not reject Islamic law, but should engage in internal renovation and debate in order to reinterpret Islamic law, so that it is compatible with evolving norms and modern ways of living.<sup>34</sup> Law reform has to be holistic and progressive and women rights have to be advanced by acknowledging that the conservative interpretation of the Sharia breaches Islamic principles. Consequently, “Islamic reformist arguments” have to be used to combat discriminatory practices and laws and to challenge “conservatives who argue for the status quo.”<sup>35</sup> Such national debate has to be accompanied by law reform. A law should be adopted to protect and stop all kinds of gender-based violence. Until October 2016, Articles 53 of the Penal Code 1987 stated that

“There is no crime if the act takes place in good faith in the use of a right provided for in the law and within the limits set for such right. The following shall be considered as a use of right: (1) Chastisement by a husband to his wife

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<sup>32</sup> Ibid, 117

<sup>33</sup> J. Witte, M. C. Green, *Religion and Human Rights: An Introduction* (Oxford, Oxford University Press 2012) 283

<sup>34</sup> Ibid, 288

<sup>35</sup> Ibid, 289

and chastisement of the parents, or whoever acts in their stead, to the minor children within the limits prescribed by Shari'a or by law....”

However, the UAE amended this provision under act No.7 of 2016. The new Article 53 now reads

“There shall be no crime, if the act takes place in good faith, in the use of Islamic law and a lawful right, and within the limit of such a right.”

Hence, the words *in the use of Islamic law* have been added

Additionally, the previously contravening paragraph has been deleted in its entirety i.e.

“1. Punishment by a husband of his wife and punishment by parents and custodians of minor children, within the limits prescribed by Sharia or by Law.”

As a result, Islamic law cannot be evoked and there exists also no longer a lawful right for a husband to punish his wife or for parents and custodians to punish minor children. This puts an end to the previous lawful practice of husbands being able to chastise their wives and further aligns UAE law with international law i.e. Article 2(g) of the CEDAW which requires that all national penal provisions, which constitute discrimination against women, should be repealed.

However, no express provision has been enacted which renders it a crime when a husband chastises his wife. Instead, the defence of good faith has been removed, but this nonetheless ensures that men who chastise their wives can be criminally pursued. Yet it would be better if this was made clearer to ensure that domestic violence is

effectively combated, including sexual violence and marital rape.<sup>36</sup> A law, which is solely dedicated to domestic violence, should be adopted. For instance, in the UK, as in many other Western countries, a husband can be convicted for various different offences, such as threatening behaviour, assault, rape and under the Protection from Harassment Act 1997.<sup>37</sup> Whilst the Office of the Family Law Prosecutor within the Department of Justice in Abu Dhabi can investigate and prosecute perpetrators of criminal offences which take place within the family<sup>38</sup>, it is important that each case which is being investigated and/or prosecuted is recorded, so that statistics can be published. It may also be useful to set targets for the police in respect of domestic violence cases, so that this crime is taken seriously.

In the UK, women can be also protected through domestic violence protection orders, which proscribe that the partner returns to their property and contacts the victim and temporary orders can be issued by senior police officers and these orders can be extended by first instance courts.<sup>39</sup> Additionally, an applicant can seek a non-molestation order, which can protect a victim from particular specified conduct and a breach of such an order constitutes a criminal offence.<sup>40</sup> Abusers can also be temporarily banned from the family home by virtue of an occupation order.<sup>41</sup> Moreover, in the UK s.76 of the Serious Crime Act 2015 states that

(1) “A person (A) commits an offence if—

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<sup>36</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined second and third periodic reports of the United Arab Emirates, CEDAW/C/ARE/CO/2-3, 20 November 2015, 6

<sup>37</sup> J. Woodhouse, N. Dempsey, Domestic violence in England and Wales, House of Commons Briefing Paper, Number 6337, 26 February 2016, 1-18, 8

<sup>38</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Second and third periodic reports of States parties due in 2014, United Arab Emirates, CEDAW/C/ARE/2-3, 10 July 2014, 14

<sup>39</sup> J. Woodhouse, N. Dempsey, Domestic violence in England and Wales, House of Commons Briefing Paper, Number 6337, 26 February 2016, 1-18, 8-9

<sup>40</sup> Ibid, 9

<sup>41</sup> Ibid, 8-9

- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
  - (b) At the time of the behaviour, A and B are personally connected,
  - (c) The behaviour has a serious effect on B, and
  
  - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
- (a) A is in an intimate personal relationship with B, or
  - (b) A and B live together and—
    - (i) They are members of the same family, or
    - (ii) They have previously been in an intimate personal relationship with each other.”

A similar type of legislative regime could be adopted to safeguard wives and women in general against domestic violence, though it is likely to take considerable time until it also becomes recognised in the UAE that even controlling or coercive behaviour falls within the scope of what should be considered domestic violence. It also demonstrates that it is insufficient to merely remove the right of a husband to chastise and to criminalise domestic violence. In addition, a confidential reporting line should be established, so that women can report domestic violence and not only wives should be able to report sexual violence or domestic violence, but any woman, including domestic workers without fear of prosecution. Whilst a workshop has already been held for assistant judges and public prosecutors about women’s rights in 2011<sup>42</sup>, it is important that such training takes place more regularly and that training is also

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<sup>42</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Second and third periodic reports of States parties due in 2014, United Arab Emirates, CEDAW/C/ARE/2-3, 10 July 2014, 10

provided to the police, so that awareness is raised and domestic violence becomes socially stigmatised. The topic of gender equality should therefore also form part of the normal curricula of police officers, public prosecutors and judges, particularly those responsible for dealing with domestic violence cases.

Additionally, various initiatives should be launched, so that the public becomes educated that domestic violence is no longer socially acceptable conduct and this may require special TV programmes and advertising campaigns. The appointment of female police officers, public prosecutors and judges may also prove an effective strategy to overcome gender-stereotypes, which reinforce a conceptualisation of hegemonic and masculine men with power.<sup>43</sup> Accordingly, policies have to be developed, which work on eliminating “sex roles” i.e. women and men should not be conceptualised as having distinct personal characteristics.<sup>44</sup> For instance, the depiction of women as weak and emotionally unstable, but loyal and nurturing persons and men as strong leaders should be avoided.<sup>45</sup> Again the media could play an important role in combating stereotypes by educating the public about women’s important role within political and public life and about their rights. At the same time, by creating dramas, which portray women in roles which are no longer typical of social stereotypes, it can be achieved that new social meanings are slowly associated with women.

Furthermore, the work which is being done has to be documented and data has to be generated, so that it can be identified how many domestic violence cases have been

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<sup>43</sup> R. Collier, *Masculinities, Law, and Personal Life: Towards A New Framework for Understanding Men, Law, And Gender*, 33 *Harvard Journal of Law & Gender* 2010, 431-475, 433

<sup>44</sup> J. Z. Spade, C. G. Valentine, *The Kaleidoscope of Gender: Prisms, Patterns, and Possibilities* (3rd ed, Washington DC, SAGE Publications Inc 2011) xv

<sup>45</sup> A. Worrall, *Offending Women Female Law Breakers and the Criminal Justice System* (London, Routledge 1997) 60

reported, investigated, prosecuted and how many perpetrators have been sentenced, what sanctions have been imposed and what remedies have been awarded to victims. This results in more transparency and makes it easier to improve initial shortfalls in the long-term. Relevant public bodies may also have to be granted powers to collect and share data.

Furthermore, the UAE Federal Law No. 51 of 2006 on human trafficking, as amended by Federal Law No.1 of 2015, could be further strengthened by giving women, who are at risk of sexual exploitation and trafficking, the right to seek compensation against their traffickers. It is also important that the law is stringently enforced and that information is gathered about investigations, decided cases and the fate of trafficked victims, including about cases of child prostitution.

Further steps could also be taken in order to empower women to participate in political and public life. This means taking measures to combat negative stereotyping and entrenched gender roles, which can pose practical barriers. For instance, the assumption that it falls on women to be responsible for family responsibilities and child-rearing makes it more difficult for women to partake in public and political life. Whilst childcare facilities have been made available for women which work for public bodies, it is important that childcare facilities are made available for women, who partake in public and political life.

Women could also be financially incentivised or be specifically recruited and trained to run as political candidates. These women candidates should be able to access the same funding as men and get equal media coverage and this also requires



transparency in respect of election campaign expenditures and finances. Further research should be conducted by the advisory committee at the Federal Authority for Human Resources in order to identify particular challenges which hinder women's participation in public and political life. Women could also be granted a right to seek legal redress when they are being discriminated against when they run in elections. A certain amount of seats could be reserved for women who run in the Federal National Council elections.

Women have to also be more represented in other leading positions, particularly the judiciary and the legal sector and quotas may be an effective initial tool to open doors to sectors, which have traditionally been closed to women. Fundamentally, Articles 18 and 58 of Federal Law No.3 of 1983 should be amended since they proscribe that women can become federal judges and federal prosecutors. No career limitations in any sector should be allowed on the basis of sex, as this directly violates Articles 2 and 11 of the CEDAW.

Whilst the Code of Professional Behaviour and Civil-Service Ethics, which was adopted by virtue of Cabinet Decision No. 15 of 2010, required civil servants to undertake training, including in anti-discrimination and anti-harassment, further steps should be taken to combat institutional gender discrimination. For instance, women should be afforded more legal rights and then be educated about these, as well as the general public. When women are victims of gender discrimination or sexual harassment, sanctions should be imposed on businesses and organisations and perpetrators, so that there is no climate of impunity. The UAE has already outlawed sex discrimination by Article 58 of the Dubai International Financial Centre Employment Law No 4 of 2005 and Article 55 of the Abu Dhabi Global Market

Employment Law No 1 of 2014. In the future, similar provisions should be adopted for all those working in the UAE. Attempts should also be made to address power imbalances, for instance, through additional mentoring schemes designed to develop female leaders. Hence, just like the Ministry of State for the Affairs of the Federal National Council hosted various political workshops for women and the Women's Union ran projects to enhance the role of female parliamentarians and organised public seminars, similar initiatives should be launched to ensure that women also become future leaders in different industry sectors. As highlighted by the surveys, women are often directed towards certain industry sectors and it is important that initiatives are started, which result in women pursuing careers in non-traditional sectors and positions.

Moreover, women's ability to work is still curtailed by their husbands' right to authorise them to work and to proscribe that they can travel freely. Such a law promotes patriarchal dominance and Articles 71-72 of the Personal Status Law should therefore be revised. This would not preclude any such custom, but at least would result in more compliance with the CEDAW. The Department of Labour Guidance of the Ministry of Labour should also continue its efforts to educate women about their labour rights, including in the languages of workers' native countries.<sup>46</sup>

The idea of gender equality has to be also stringently enforced in other areas. As mentioned above, the children of women, who marry non-Emiratis, should be granted UAE nationality from birth and this requires that Federal Law No. 17 of 1972 on nationality, residence and passports, as amended by Law No. 10 of 1975, is further

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<sup>46</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Second and third periodic reports of States parties due in 2014, United Arab Emirates, CEDAW/C/ARE/2-3, 10 July 2014, 21

reformed. The concept of male guardianship in respect of marriage could be eliminated from Article 39 of Federal Law No.29 of 2005 on Personal Status, as it would not prevent the general custom. This would ensure that in law women are afforded “equal rights to conclude contracts” in accordance with Article 15(2) of the CEDAW.

Additionally, Article 21 of the Personal Status Law should be amended, so that male guardians are no longer allowed to annul the marriage of women. Moreover, Article 56 of the Personal Status Law promulgates sex roles since it commands that women obey their husbands, keep the house orderly and breastfeed children, whereas men have to provide maintenance throughout the marriage and in case of a polygamous marriage have to treat each wife fairly. This provision is also not compatible with Article 5(a) of the CEDAW. For instance, in Turkey and Tunisia, which are also Muslim countries, polygamy was rendered illegal and the UAE should consider whether time has come to break with this ancient practice.<sup>47</sup> Those, who live in polygamous relationships could be allowed to continue in them, but restrictions could be imposed on those who want to enter into new polygamous marriages. Also, Article 71 of Federal Law No.29 of 2005 on Personal Status should be revised, as making maintenance dependent on the wife not objecting to sexual relations without valid justification contravenes the CEDAW since it reinforces patriarchal dominance. Similarly, rendering it a criminal offence to work without the consent of the husband undermines women’s ability to freely conduct their affairs and can pose a significant obstacle to entering the work arena, particularly in light of the fact that conservative values, customs, traditions and religious practices often translate itself in men not

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<sup>47</sup> F. Pohl, *Modern Muslim Societies* (New York, Marshall Cavendish 2011) 35

wanting their wives to work. Hence, Article 72 of Federal Law No.29 of 2005 on Personal Status should be removed all together in order to avert a breach of Article 11 of the CEDAW. This does not prevent wives and husbands mutually agreeing on how to conduct their family affairs in line with values, customs and traditions.

Moreover, whilst inheritance law is based on the Sharia concept that men are responsible for providing for their female relatives, it should be considered whether an equal share should be awarded in cases where a man neglects this duty.

The criminal law also punishes women with the death sentence when they commit adultery. Crimes are also committed when a woman is pregnant without being married, or engages in pre-marital sex or prostitution and these crimes can result in the women being punished through flogging. The origin of these punishments are rooted in the patriarchal belief that a man, father or brother should be able to control and keep his women or daughter and that any of these acts erode his honour.<sup>48</sup> It should be therefore considered whether less harsh sanctions should be imposed in light of the CEDAW mandating that discriminatory customs should be eliminated. Ratification of the UN Convention on the Elimination of All Forms of Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment 1984 may also be important to reinforce the constitutional prohibition against torture contained in Article 26 and may prevent that women are stoned to death for committing adultery or sentenced to flogging or lashes for other crimes, such as prostitution.<sup>49</sup> Hence, these

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<sup>48</sup> G. Crocetti Benesh, *CultureShock! A Survival Guide to Customs and Etiquette, United Arab Emirates* (Tarrytown, Marshall Cavendish Corporation 2010) 88

<sup>49</sup> 7Days, Expat faces death by stoning after admitting in court to cheating on husband, 6 May 2014 <<http://7days.ae/expat-faces-death-stoning-admitting-court-cheating-husband>> accessed 6th March 2016; International Business Publications Inc, *Oman Criminal Laws, Regulations and Procedures Handbook - Strategic Information and Regulations* (Washington DC, International Business Publications Inc 2016) 250

outdated sentencing practices should be replaced by more humane and non-discriminatory sanctions.

Furthermore, at present the testimony of a women in criminal cases only counts half in comparison to that of a man in breach of Article 15 of the CEDAW, which requires equality before the law. This also renders trafficked women very vulnerable.<sup>50</sup> The UAE Federal Law No. 51 of 2006, as amended by Federal Law No.1 of 2015, also does not spell out a defence for women, who are trafficked and forced into prostitution, to the crime of adultery or prostitution. Those, who have been trafficked and coerced into prostitution are thus not legally recognised as victims.<sup>51</sup> Nonetheless, cases are also brought by victims, but the number is still very low, despite reports that Dubai is “a centre of human trafficking and prostitution.”<sup>52</sup> A further amendment of the UAE Federal Law No. 51 of 2006, as amended by Federal Law No.1 of 2015, could empower trafficked women to come forward and report their abusers, so long as the law grants them a defence and renders them immune from prosecution for crimes, such as adultery or prostitution.

Women may also be discriminated against when they are accused of having committed *zina* offences pursuant to Article 356 of Federal Law No.3 of 1987. It is therefore important that rape victims or victims of sexual harassment or violence are expressly exempted from Article 356 of Federal Law No.3 of 1987, including

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<sup>50</sup> S. Nazir, L. Tomppert, *Women's Rights in the Middle East and North Africa: Citizenship and Justice* (New York, Rowman & Littlefield 2005) 319

<sup>51</sup> Ibid

<sup>52</sup> T. Lageman, Dubai in United Arab Emirates a centre of human trafficking and prostitution, The Sydney Morning Herald, 20 January 2016 <<http://www.smh.com.au/world/dubai-in-united-arab-emirates-an-epicentre-of-human-trafficking-and-prostitution-20160115-gm6mdl.html>> accessed 15th March 2016

domestic servants, who are often imprisoned and flogged for illegal sexual relations.<sup>53</sup> Hence, the wide extramarital sex laws have to be narrowed and specific legal safeguards have to be devised to particularly protect domestic servants, victims of rape and trafficked women.<sup>54</sup> It may also be important to record how many women, including domestic workers, are charged for *zina* offences. The term indecency in Article 356 should also be defined, as this would ensure that the scope of this Article is narrowed.<sup>55</sup>

In light of the many reports which describe the abuse which female domestic workers still experience, it is important that the draft domestic workers law, which was approved by Cabinet Decision No. 1/1F/1 of 2012, is quickly adopted. Once the law has been enacted, it is important that the specialised offices, which have been set up in the dispute divisions in the Nationality and Residence Affairs Sector and which receives labourers' complaints will also record the number and types of complaints, as well as the outcomes, so that statistics can be prepared for both complaints by female temporary workers and female domestic workers.

Furthermore, the many efforts by the UAE government to overcome discriminatory customs and traditions and the various initiatives by various civil society institutions, such as the Women's Union, have to be continued. The national strategy on the advancement of women should be continually improved.<sup>56</sup> Additionally, the various

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<sup>53</sup> A. Topping, UAE imprisoning rape victims under extramarital sex laws - investigation, BBC, 26 October 2015 <<http://www.theguardian.com/world/2015/oct/26/hundreds-of-women-prosecuted-for-extramarital-sex-in-uae-finds-bbc>> accessed 15th March 2016

<sup>54</sup> Ibid

<sup>55</sup> Human Rights Watch, Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report, 62nd Session, February 2015 <<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>> accessed 25th August 2015

<sup>56</sup> Permanent Mission of the United Arab Emirates to the United Nations, High-Level Thematic Debate: Advancing Gender Equality and Empowerment of Women and Girls for a Transformative

programmes should become more coordinated and such function could be performed, for instance, by a new Ministry of Women's Affairs or the already existing Gender Balance Council. Fundamentally, the priority of the national strategic plan should be to raise awareness about the rights of women and their right not to be discriminated against and to be treated the same as men and to educate the young generation from an early age about gender equality. Hence, the media and the national curricula of schools have to promote a positive image of women as leaders in diverse professional roles and within politics.

Furthermore, the national mechanisms for women empowerment have to become more pronounced and developed. At the moment, the procedures are still in their infancy and therefore rather vague. Clear rules and procedures and protocols should be adopted and guidance leaflets should be produced for women, so that they know which particular process they can use in order to enforce the right not to be discriminated against and to be treated equally or to complain in the forum created for their particular issue. In this context, it is also important that a rights-based approach is reinforced through remedies/claims i.e. that a breach of the rights contained in the CEDAW also results in the woman being entitled to bring a claim and/or compensation.<sup>57</sup> This means that the Gender Balance Council and the General Women's Union together with other civil society institutions and the Federal National Council should consider how the various rights spelled out in the CEDAW can be transposed into legal claims which women can enforce through the domestic

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Post-2015 Development Agenda, New York, 2015, 1-4, 1 <<http://www.un.org/pga/wp-content/uploads/sites/3/2015/03/UAE-statement-on-women-International-Day.pdf>> accessed 15th March 2016

<sup>57</sup> G. W. Rainbolt, *The Concept of Rights* (Dordrecht, Springer 2006) 25

mechanisms.<sup>58</sup> Such an approach would signify a high extent of commitment in excess of CEDAW obligations and could result in the UAE becoming a leader in the protection of women rights.

A machinery has to be also created in order to produce gender-disaggregated data, so that the effectiveness of the various mechanisms can be scrutinised. This requires that new oversight mechanisms are created for the national mechanisms, as well as strategic planning and co-ordination, either by the existing Gender Balance Council or by a new Ministry of Women's Affairs.

Future research should particularly assess whether the various mechanisms and the national machinery successfully empower women. It is hoped that the UAE will generate more data and this should be carefully studied. Additionally, interviews should be held with women who have pursued court proceedings to enforce their right not to be discriminated against and those who have complained about abusive employers, as well as trafficked victims, as well as women in leadership positions, etc. in order to assess the effectiveness of the UAE's national strategy on the advancement of women and the national mechanisms and machinery which have been established.

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<sup>58</sup> B. Bibbo, UAE women strategy to launch today, Gulf News General, 11 December 2002 <<http://gulfnews.com/news/uae/general/uae-women-strategy-launch-today-1.405371>> accessed 15th March 2016



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## Appendix 1: Interview questions



### Interview Schedule

#### A. Opening:

1. (Introduce myself).
2. Explanation of the purpose of the interview.
3. Timeline: the interview will take about 20 to 30 minutes.

#### B. Questions:

**Q.1:** In your opinion, why did the UAE ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?

**Q.2:** Do you think that the role which women play in the UAE has changed after the CEDAW ratification? If so, can you provide any examples?

**Q.3:** In your opinion, has the international society ( Intergovernmental Organisation, NGOs and states) had an effect on the promotion of gender equality in the UAE?

**Q.4:** Has the UAE government made progress with implementing rights for women, which ensure that they are not treated less favourably than men? If so, in which areas are women enjoying more rights?

**Q.5:** In your opinion, which traditions and customs still inhibit Emirati women from being more empowered?

**Q.6:** Which educational and informational programs has the UAE government introduced to help eliminating traditions and customs, which make it difficult for



women to partake in the political process? Do you think that these programs have been effective?

**Q.7:** What challenges still exist, which make it difficult to adopt national gender equality laws?

**Q.8:** What complaint mechanisms have been established to effectively ensure that women can enforce their rights?

**Q.9:** In your opinion, are these complaint mechanisms effective and how could they be further improved?

**Q.10:** Apart from the existing complaint mechanisms, what else do you recommend should be done to ensure that women are no longer discriminated against?

**Q.11:** Do you think the UAE government will in the near future withdraw from any of the reservations to the Convention with a view of completely withdrawing all the reservations, which do not contradict the Sharia law, so as to ensure that women fully benefit from all the rights enshrined in the Convention?

**Q.12:** Despite the UAE government trying to provide protection for temporary workers, there have been reports that they still find it difficult to enjoy equal rights. Is there any strategy to further minimise this criticism?

**Q.13:** What problems do you think are there to ensure that female temporary workers are afforded equal treatment and how could these problems be overcome?

**Q.14:** Do you think it is possible to replace all laws, which still discriminate women to this date?

**Q.15:** Are you aware that any legislation designed to advance women's rights in the UAE has been adopted or rejected in the last decade?

## **Appendix 2: United Arab Emirates nationals of female questionnaire**

## Questionnaire

United Arab Emirates nationals of female gender in order to collect data relating to the impact of human rights on women in the United Arab Emirates giving a broad and non-biased view.

Dear participant,

I am a doctoral student at Middlesex University in United Kingdom conducting research that focuses on the issue of gender empowerment and women rights in the United Arab Emirates. The research is part of an independent study designed by a doctoral candidate at the school of law at the University of Middlesex. Your responses will be used for statistical analysis and evaluation of this research project only. All answers will be anonymous and confidential and cannot be identified you, your position, or place in any way. Your answers will be extremely appreciated. The questionnaire will take less than 10 minutes to complete. Thank you for your time.

### **Section one: Socio-demographic, characteristics and employment**

Please tick the correct answer.

1. How old are you?

18-24 years old  25-34 years old  35-44 years old  45-54 years old

55-64 years old  65-74 years old  75 years or older

2. What is the highest level of education, which you have attained?

not completed secondary education  completed secondary education

tertiary education-high diploma  undergraduate  postgraduate  PhD

3. Where are you from?

Abu Dhabi  Dubai  Sharjah  Ajman  Umm Quwain

Ras Al Khaimah  Fujarah

4. What is your faith?

Muslim Sunni  Muslim Shi  Other (please specify):

If other, please mention .....

5. What is your marital status?

Single  Married  Divorced  Windowed  Separated

Other (please specify):

If other, please mention.....

6. Do you have children?

Yes  No

7. Who lives with you?

Spouse  Children  Parent's  Alone  Other (please specify):

If other, please mention.....

8. What is your employment status?

Student  Employed  Unemployed  Self-employed

Not looking for work  Retired

9. If you are working, please state the sector?

Public sector  Private sector

**Section two: The United Arab Emirates government’s policies and women rights**

11. Please tick the correct answer, which reflects to what extent you agree or disagree with the following statements \*.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The legislation in the United Arab Emirates guarantee gender equality.					
The national legislation of the UAE supports women.					
In the UAE, there are laws/policies in place, which protect women from discrimination.					
The UAE government’s policies have empowered women.					
Emirati women are well represented at UAE policy-making institutions.					
Emirati women are treated like men in all areas of public life, including in politics.					
There are still legal obstacles, which affect the empowerment of Emirati women.					
The complaints and grievance procedures for woman are effective.					
There are campaigns or activities in your community or at your workplace, which promote the rights of women in the United Arab Emirates.					
It is important that more laws and policies are adopted to further empower Emirati women.					

### Section three: Social attitudes, the role of women and their rights

12. Please tick the correct answer, which reflects to what extent you agree or disagree with the following statements \*.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The role of the Emirati women has changed in the last decade.					
The UAE government has encouraged that women obtain higher education.					
UAE society supports women, who want to work.					
Society in some Emirates does not consider that women should work.					
Tradition and religious values still discourage women from working.					
Women have the same work opportunities as men in the UAE.					
It is considered important for Emirati women to obtain education.					
UAE society is still conservative.					
It is common for women to be directed to certain disciplines of study and certain jobs exclusively.					
At present, the overall status of women in the Unites Arab Emirates is good.					

## Section four: International conventions and Sharia law

13. Please tick the correct answer, which reflects to what extent you agree or disagree with the following statements.

\* Notes:

- (CEDAW) is an international bill of rights for women. Countries that ratify CEDAW agree to take concrete steps to improve the status of women and end discrimination and violence against women.

- Optional Protocol of CEDAW a State recognizes the competence of the Committee on the Elimination of Discrimination against Women the body that monitors States parties compliance with the Convention to receive and consider complaints from individuals or groups within its jurisdiction. \*

The international society has had a positive effect on the promotion of gender equality in the UAE.

The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the UAE has changed the role, which women play in the UAE. \*

The UAE government should withdraw all the reservations to the CEDAW.

The UAE should ratify the Optional Protocol to the CEDAW, so that women can use the legal complaints mechanism.

The ratification of the International Convention on the Elimination of all Forms of Racial Discrimination has reduced gender discrimination in the UAE.

Sharia law reinforces gender roles and thereby impacts a Muslim women's life, including her independence.

Sharia law has made political participation more difficult for women.

Sharia law favours men in family and divorce matters.

Sharia law favours male members in inheritance matters.

Having only Sharia law and not other sources of law, such as international law, does not improve the rights of women.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The international society has had a positive effect on the promotion of gender equality in the UAE.					
The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the UAE has changed the role, which women play in the UAE. *					
The UAE government should withdraw all the reservations to the CEDAW.					
The UAE should ratify the Optional Protocol to the CEDAW, so that women can use the legal complaints mechanism.					
The ratification of the International Convention on the Elimination of all Forms of Racial Discrimination has reduced gender discrimination in the UAE.					
Sharia law reinforces gender roles and thereby impacts a Muslim women's life, including her independence.					
Sharia law has made political participation more difficult for women.					
Sharia law favours men in family and divorce matters.					
Sharia law favours male members in inheritance matters.					
Having only Sharia law and not other sources of law, such as international law, does not improve the rights of women.					

## Appendix 3: Non United Arab Emirates nationals of female questionnaire



### Questionnaire

Non United Arab Emirates nationals of female gender in order to collect data relating to the impact of human rights on women in the United Arab Emirates giving a broad and non-biased view.

Dear participant,

I am a doctoral student at Middlesex University in United Kingdom conducting research that focuses on the issue of gender empowerment and women rights in the United Arab Emirates. The research is part of an independent study designed by a doctoral candidate at the school of law at the University of Middlesex. Your responses will be used for statistical analysis and evaluation of this research project only. All answers will be anonymous and confidential and cannot be identified you, your position, or place in any way. Your answers will be extremely appreciated. The questionnaire **will take less than 10 minutes to complete**. Thank you for your time.

#### Section one: Socio-demographic, characteristics and employment

Please tick the correct answer.

1. How old are you?

18-24 years old  25-34 years old  35-44  45-54 years old

55-64 years old  65-74 years old  75 years old or order

2. What is the highest level of education, which you have attained?

Not completed secondary education  Completed secondary education

Tertiary education – High diploma  Undergraduate  Postgraduate  PhD

3. Where do you live?

Abu Dhabi  Dubai  Sharjah  Ajman  Umm Quwain

Ras Al Khaimah  Fujarah

4. Where did you obtain your residence visa?

Abu Dhabi  Dubai  Sharjah  Ajman  Umm Quwain

Ras Al Khaimah  Fujarah

5. What is your faith?

Muslim  Christian  Hindu  Sikhism  Shinto  Buddhist

Confucianism  Baha'i Faith  Judaism  other (please specify):

If other, please mention .....

6. What is your marital status?

single  married  divorced  widowed  separated

other (please specify):

If other, please mention.....

7. Do you have any children?

yes  no

8. Who lives with you?

spouse  children  parents  other (please specify):

If other, please mention.....



9. What is your employment status?

- Student     Employed     Unemployed     Self-employed
  
- Not looking for work

10. Which of the following best describes your role in industry?

- Managerial ( e.g manager in any industry sector)
  
- professional and technician ( engineer, doctor, teacher, accountant, IT specialist, legal specialist, ect)
  
- clerical / office support ( e.g office boy, receptionist, messenger, general office clerk, ect)
  
- services and sales ( e.g Cook, Waiter, Cashier, Salesperson, Security guard, hairdresser, laundry worker ect )
  
- Other (please specify):

11. If you are working, please state the sector?

- public sector     private sector

12. How long have you been living in the United Arab Emirates?

- less than one year     between 1 and 3 years     between 3 to 6 years
  
- more than 6 years

13. Where do you come from?

Country

If other, please mention.....

**Section two: The United Arab Emirates government’s policies and the rights of female temporary workers**

14. Please tick the correct answer, which reflects to what extent you agree or disagree with the following statements.

Notes: whenever you see term "Temporary workers" in this questionnaire it means "migrant workers"

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
There is legislation in the UAE, which guarantees the rights of female temporary workers.					
The UAE legislation support female temporary workers.					
In the UAE, there are laws/policies, which protect female temporary workers from discrimination.					
The UAE government has promoted the rights of female temporary workers.					
The national legislation and policy of the UAE government allow female temporary workers to freely exercise their cultural rights and practice their religion.					
There are campaigns or activities in your community or at your workplace, which promote the rights of female temporary workers in the United Arab Emirates.					
I am aware of the complaint and grievance mechanisms to enforce the rights of female temporary workers.					
The complaints and grievance procedures for temporary female workers are effective.					
It is important that more legal steps are taken to further protect female temporary workers.					
At present, the overall status of female temporary workers in the Unites Arab Emirates is good.					

## Section two: Realising equal treatment for temporary female workers and current problems

15. Please tick the correct answer, which reflects to what extent you agree or disagree with the following statements.

Notes: whenever you see term "Temporary workers" in this questionnaire it means "migrant workers"

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Female temporary workers lack education to find well paid jobs.					
Not speaking English or Arabic makes female temporary workers more prone to abuse.					
Female temporary workers, including domestic workers, receive their wages on time.					
Female temporary workers can easily enforce their rights at UAE courts.					
More labour laws are needed to protect female temporary workers, especially against sex discrimination.					
Foreign recruitment agencies often use fraudulent practices for female temporary workers and this also results in debt bondage.					
Victims of human trafficking are safeguarded.					
There is sufficient help available to support vulnerable female temporary workers after they escape an abusive employer.					
The human rights of female temporary workers are protected.					
Female temporary workers should be better protected against sexual, physical and psychological abuse.					

## Section four: International convention

16. Please tick the correct answer, which reflects to what extent you agree or disagree with the following statements.

- (CEDAW) is an international bill of rights for women. Countries that ratify CEDAW agree to take concrete steps to improve the status of women and end discrimination and violence against women.
- Optional Protocol of CEDAW a State recognizes the competence of the Committee on the Elimination of Discrimination against Women the body that monitors States parties compliance with the Convention to receive and consider complaints from individuals or groups within its jurisdiction. \*

The international society has had a positive effect on the promotion of gender equality.

The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has improved the status of female temporary workers in the UAE.

The UAE government should withdraw the reservations to the CEDAW.

The UAE should ratify the Optional Protocol to the CEDAW to allow women to use the legal complaints mechanism.

The ratification of the International Convention on the Elimination of all Forms of Racial Discrimination by the UAE has reduced gender discrimination.

The UAE should ratify more Conventions to further protect female temporary workers.

It is important for the UAE to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990.

It is important for the UAE to ratify the Domestic Workers Convention 2011.

The ratification of several international conventions by the UAE has improved the working and living conditions of female temporary workers.

International standards have to be still further translated into change on the ground to overcome discrimination and exploitative practices.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The international society has had a positive effect on the promotion of gender equality.					
The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has improved the status of female temporary workers in the UAE.					
The UAE government should withdraw the reservations to the CEDAW.					
The UAE should ratify the Optional Protocol to the CEDAW to allow women to use the legal complaints mechanism.					
The ratification of the International Convention on the Elimination of all Forms of Racial Discrimination by the UAE has reduced gender discrimination.					
The UAE should ratify more Conventions to further protect female temporary workers.					
It is important for the UAE to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990.					
It is important for the UAE to ratify the Domestic Workers Convention 2011.					
The ratification of several international conventions by the UAE has improved the working and living conditions of female temporary workers.					
International standards have to be still further translated into change on the ground to overcome discrimination and exploitative practices.					

## Appendix 4: To whom concern letter for interviews

PHD Research Consent Form



Name Of Researcher: Mohamed Khaleifa Alhmodui

First of all thank you for agreeing to be part of this research by participation in (Questionnaire/Interview), which take place May 2014 to October 2014. This form contains full details about the study such as the purpose and natural of this research and description of your involvement required and your rights as participant.

- The title of this research:  
(The impact of international human rights reports on the rights of women: "A case study about the UAE)
- The natural and aims of this research:  
This study seeks to highlight the importance of international organizations whether it be Intergovernmental or Non-governmental Organizations in changing important issues, which still impede role of women from exercising the same political and public life including the right to vote and to be elected in NFC as well economic and education as men  
The study will examines the central recommendations identified in international human rights reports and in which extent has been implemented.
- The methods that will be used in this research to meet the aims of this study are:
  - Semi-Structured interviews.
  - Questionnaires.

Please read Carefully and complete this form. If you are willing to participate in this research, please tick the appropriate responses boxes and sign the declaration at the end of this form. If you do not understand anything and would like more explanation about this research, please do not hesitate to ask me.

(Please tick boxes as appropriate)

1	I have read and fully understood the information about the research, as provided in details.	<input type="checkbox"/>
2	I have been given the opportunity to ask questions about the research and my participation.	<input type="checkbox"/>
3	I have been informed that I may withdraw from this research at any time without having to give reason. Also, this will not affect my future. I voluntarily agree to engage in the research without any kind of pressure.	<input type="checkbox"/>
4		<input type="checkbox"/>
5	I totally agree to record this interview and I aware that any audiotape material of me will be used solely for research purposes and will be destroyed on completion of your research.	<input type="checkbox"/>
6	I understand that the data will be discussing the progress of the research with others at Middlesex university (Supervisors and examiner's).	<input type="checkbox"/>
7	I have been informed about the use of the information in this research, publications, sharing and archiving.	<input type="checkbox"/>
8	I understand that all my details will be treated in strict confidence such as name, position, date of interview.,etc.	<input type="checkbox"/>

I freely give my consent to participate in this research study :

\_\_\_\_\_  
Participant signature

\_\_\_\_\_  
Date

## Appendix 5: To whom concern letter for interviews

The Burroughs  
London  
NW4 4BT  
[www.mdx.ac.uk](http://www.mdx.ac.uk)  
Main switchboard:  
020 8411 5000



25.April.2014

### To Whom Concern

This letter confirms that Mr. Mohamed Khaliefa Alhmoudi is a doctoral candidate in the school of law at the University of Middlesex in **London (United Kingdom)**. He is in the process of writing his doctoral thesis and he is collecting data for that purpose. The doctoral thesis explores the impact of international human rights reports on the rights of women in United Arab Emirates.

Interviews will be conducted in United Arab Emirates from May to October 2014. He is planning to interview key personnel in government bodies and UAE community who are involved in the process of conventions ratification, the state party reports and responds to international reports. The data collected will be anonymised in order to ensure the confidentiality of participant's views and information provided. The purpose of this letter is to ask for your assistance by agreeing to be a participant in this study.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eleonore Kofman".

Eleonore Kofman  
Professor of Gender, Migration and Citizenship  
Co-Director Social Policy Research Centre  
School of Law  
Middlesex University  
[www.sprc.info](http://www.sprc.info)

## Appendix 6: To whom concern letter for Questionnaires

The Burroughs  
London  
NW4 4BT  
www.mdx.ac.uk  
Main switchboard:  
020 8411 5000



2<sup>th</sup>. October.2014

### To Whom Concern

This letter confirms that Mr. Mohamed Khaliefa Alhmoudi is a doctoral candidate in the School of Law at the University of Middlesex in **London (United Kingdom)**. He is in the process of writing his doctoral thesis and is collecting data for that purpose. The doctoral thesis explores the impact of international human rights reports on the rights of women in United Arab Emirates.

A survey will be conducted in United Arab Emirates from October to end of December 2014. He is planning to distribute a questionnaire for both UAE /non nationals of female gender in order to collect data relating to the impact of human rights on women in the United Arab Emirates giving a broad and non biased view. The collected data will be anonymised in order to ensure the confidentiality of participant's views and information provided. The purpose of this letter is to ask for your assistance by agreeing to be a participant in this study.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eleonore Kofman".

Eleonore Kofman  
Professor of Gender, Migration and Citizenship  
Co-Director Social Policy Research Centre  
School of Law  
Middlesex University  
[www.sprc.info](http://www.sprc.info)



## **Appendix 7: Samples of The Transcription of the Interview in English**

### **Language**

#### **Samples of The Transcription of the Interview in English Language**

##### **Participant One**



##### **Interview Questions**

##### **Middlesex University**

##### **Interview Schedule**

##### **1- An Introduction:**

**1- Presentation: Introducing the Scholar**

**2- Purpose: Clarify objectives of interview**

**3- Time: Time expected to achieve interview about 20 till 30 minutes**

##### **B- Study Questions:**

**Q1: In your opinion, what are the reasons or why the UAE government ratified the International Convention on elimination of all forms of discrimination against Women?**

A: I think that the attempts by the state towards the adoption of best practices in the field of human rights in general and women in particular was behind the ratification of the Convention to be a proof in formulation of policies and legislation aimed to the advancement and empowerment of women . In addition to that the state's belief that the respect and appreciation enjoyed by women in the UAE society and the reality of equal opportunities between them and the men in line with the spirit of the convention except in case of conflict with Islamic Sharia .

**Q2: Do you think that role of women in the United Arab Emirates changed after ratification of the International Convention on elimination of all forms of discrimination against Women?**

A: Yes, to some extent, the United Arab Emirates since its inception consider women as a main partner and effective in the development and therefore the ratification of the Convention was a matter of emphasis on the vision and strategy of the government towards the empowerment of women, and therefore the value achieved by ratification of Convention was to put criteria of follow-up and evaluation of progress achieved as well as benefit from the experiences and observations of the members of the UN Commission on the elimination of discrimination against Women in the continuous development of the best .

**Q3: Do you think that the international community (international governmental organizations and non-governmental organizations - states) have an impact on development of women's rights in the United Arab Emirates?**

A: Yes no doubt that the international community puts pressure on countries in general, and for the United Arab Emirates I think as it's part of the State's keenness to become No. 1 in the world, reports and observations of such organizations if they were not negative, they push the state towards search for ways of development .

**Q4: Do you think that the UAE government has achieved the principle of equality between men and women by the image which does not deal with women much less than men? And if so, what are the rights enjoyed by women more widely?**

A: In fact, UAE is keen to provide the principle of equal opportunities between women and men, and this is noted in equal opportunities of education, health and social welfare, employment opportunities , parliamentary and leadership positions where the area is open for all and efficiency are the standard of choice . But the state deliberately use positive discrimination standard stipulated in CEDAW convention regarding appointment of women when it is found that women need to support such a the decision of necessity of the presence of women in the boards of institutions and federal agencies, and the appointment of members of National Council only after winning by one woman . And on the other hand, the legislator in the state convenes to take into consideration the privacy of women in some of the legislations.

**Q5: Do you think that customs and traditions of the UAE community still have an impact on the process of empowerment of women?**

A: I think that with education and openness to other cultures and with the government's sound vision of cultural patterns changes in Emirati society, we find that women began to intervene and access fields that were dominated by men in the past, I think that the opportunity is available, and the matter requires that the woman herself exploit or invest such opportunities properly, which conform with the culture of the community.

**Q6: Did the government of the United Arab Emirates has developed an educational and media programs help to eliminate practices (traditions and customs) that affect the process of women's political participation ?**

A: Ministry of State for Federal National Council affairs, as the competent authority in the management of elections, has conducted a series of identification workshops, and likewise the Women's Union through the project of enhancing the role of women parliamentarians and the other women's institutions by organizing public seminars to publicize the importance of women's political participation .

**Q7: What are the challenges existing that make the approval of national laws of equality between men and women difficult?**

A: In general, the national laws do not contain any discriminatory statements against women, as all texts dealing with equal rights for citizens regardless of gender.

**Q 8: What are the mechanisms of complaint undertaken by the state to ensure the effectiveness of women's rights?**

A: There are many, the relevant institutions provide services of communication with customers and complaints, as well some women's institutions provide service to receive complaints of women and advising them .Also the Ministry of Presidential Affairs considering the needs of the citizens males and females, as well as the media consider the complaints of citizens (live broadcast).

**Q 9: Do you think that such mechanisms are effective? And how it can be developed?**

A: Effective to a high extent.

**Q 10: Besides the complaint mechanism, what are the things that can be done to ensure that there is no discrimination against women?**

A: Raise awareness by mechanisms and inform women about these channels in case of any discriminatory practices, with knowing that generally there are no real discriminatory practices.

**Q 11: Do you think that the Government of the United Arab Emirates will withdraw reservations it set on the CEDAW convention and which are not inconsistent with the provisions of Islamic Sharia law?**

A: Maybe on some items that do not conflict with Islamic Sharia.

**Q 12: Although the attempt by Government of the United Arab Emirates to provide protection for temporary workers in the country, there are reports indicate that there are still difficulty to enjoy equal rights, is there any strategy to reduce these criticisms?**

A: Yes, there is a strategy, and one of these strategies is to employ the media to convey a positive image and hosting UN committees' officials for viewing the experience closely.

**Q 13: What do you think are the problems to ensure that temporary female workers shall get equal treatment and how to overcome these problems?**

A: Create legislation regulates all these issues with stating all the rights of both worker and employer.

**Q 14: Do you think it is possible to replace all laws that still discriminate women?**

A: Yes, with passage of time, because the amendment of any legislation should pass through a series of measures, and I'm sure that if there is a real need to adjustment that serve women and society, the legislator in the UAE will not hesitate in doing such action.

**Q 15: Do you know any legislation or agreements aim to enhancing women's rights in the United Arab Emirates have been approved or rejected in the past decade?**

A: The past decade means the last ten years, the Personal Status Law issued , the decision of the presence of women in governmental authorities , the decision of establishing nurseries, some women's organizations establishing law such as the family development, shelters for women and children, Dubai Foundation for Women and Children .

## Participant Five



### Interview Questions

#### Middlesex University

#### Interview Schedule

##### 1- An Introduction:

1- **Presentation: Introducing the Scholar**

2- **Purpose: Clarify objectives of interview**

3- **Time: Time expected to achieve interview about 20 till 30 minutes**

##### B- Study Questions:

**Q1: In your opinion, what are the reasons or why the UAE government ratified the International Convention on elimination of all forms of discrimination against Women?**

A : United Arab Emirates is an integral part of the international community and has no objection to sign conventions and international treaties that enhance women's rights while maintaining the principles of Islamic Sharia , so I think that government deems to sign the CEDAW as it is United Nations convention.

**Q2: Do you think that role of women in the United Arab Emirates changed after ratification of the International Convention on elimination of all forms of discrimination against Women?**

A : No, I do not think that woman's role has been changed as she played many roles in the past in the fields of health and education and other field, but in the last periods and after signing CEDAW , the empowerment of woman has been increased and for example her presence in the national council and Cabinet and other positions.

**Q3: Do you think that the international community (international governmental organizations and non-governmental organizations - states) have an impact on development of women's rights in the United Arab Emirates?**

A : I think that these organizations are attacking countries in many aspects and many of these aspects wrong , and the UAE government is checking what is received from such organizations and are taking the necessary measures to remedy defects .

**Q4: Do you think that the UAE government has achieved the principle of equality between men and women by the image which does not deal with women much less than men? And if so, what are the rights enjoyed by women more widely?**

A: Yes, the principle of equality between men and women has been achieved, Emirate has given women a lot of rights compared to other countries, but still there are some laws that differentiate between men and women, such as women's pension in case of death.

**Q5: Do you think that customs and traditions of the UAE community still have an impact on the process of empowerment of women?**

A: Yes, but it differs from one emirate to another, for example, the emirate of Dubai, the society is more open and accept what is not accepted by society in the other Emirates and the reason is that education in Dubai, began before the Union in addition to mixing with other nationalities more than any other emirates where in some Arab Emirates tribal character may be dominant.

**Q6: Did the government of the United Arab Emirates has developed an educational and media programs help to eliminate practices (traditions and customs) that affect the process of women's political participation ?**

A : Yes, the government has prepared different programs through the media and television programs on local channels TV and newspapers, as well before issuance of the decision by the Head of State in 2006, namely : the election of half of members of the National Council and provide an opportunity for women to participate in the Council, a lot of courses and seminars are held in collaboration with the women's Union about the political participation of women and how to manage and empower themselves in the campaign in order to get a seat in the Council. Many women also have been sent to attend the parliamentary sessions in several countries such as Jordan.

**Q7: What are the challenges existing that make the approval of national laws of equality between men and women difficult?**

A: No, I do not see any degree of discrimination except for the issue of the pension after the death of women and I remember that this issue was under discussion and I do not know if it has been completed or not, and I do not find any form of discrimination requires the issuance of laws.

**Q 8: What are the mechanisms of complaint undertaken by the state to ensure the effectiveness of women's rights?**

A: Legally, there is any form of discrimination, but with respect to the rights of women who have a family it can have recourse to the courts and the judiciary in the event of any violence upon her or derogation of their rights and as well known, according to Islamic law , but even in this matter the state tries to ensure the rights of women through the support of the courts to guidance centers to resolve family

problems as well as it supported Dubai Foundation for Women and Children so that any woman reach to such degree of violence or any (whether she is citizen or resident) shall subject to investigations and providing refuge for her if required till her problem has been resolved , and all problems shall be considered and resolved as soon as possible in order to support her and keep her rights complete and this shall be achieved in legal way , and the state support that so that the suit shall not continue for many years .

**Q 9: Do you think that such mechanisms are effective? And how it can be developed?**

A: Yes, I see it is effective.

**Q 10: Besides the complaint mechanism, what are the things that can be done to ensure that there is no discrimination against women?**

**Q 11: Do you think that the Government of the United Arab Emirates will withdraw reservations it set on the CEDAW convention and which are not inconsistent with the provisions of Islamic Sharia law?**

A: I think that any country has the right to keep its cultural privacy, for example ( I do not know of this will be included in your study or not ) human right of gender it is belong to , I see that this not only conflict with Islamic Sharia but also against all ethics and manners, even in a lot of countries , this is not desirable but with development of civil society , it became accepted . This issue related to privacy of society, and I think that UAE shall not reject removal of all reservations that may conflict with provisions of Islamic Sharia and that may achieve the interest of citizen and resident in the state.

**Q 12: Although the attempt by Government of the United Arab Emirates to provide protection for temporary workers in the country, there are reports indicate that there are still difficulty to enjoy equal rights, is there any strategy to reduce these criticisms?**

A: At the beginning , we should realize that any labor deserve justice and equality like anybody else , but this does not mean to have right In nationality and transferred from temporary labor to immigrant labor , and protests on such cases not faced by UAE only but many other country such as France which suffer from great immigration from Maghreb countries . I think that Labors in UAE enjoy rights against law and other rights that may be not practiced in other countries .UAE revise the laws and regulations from time to time to provide more protection for them. As for strategy of UAE government, I think that Ministry of Foreign Affairs prepared some files to enhance the status of labors and doubtless the case of children of Al Rakby and then rights of temporary labors and others. As well as there is cooperation among Ministry of Interior , Ministry of labor and Ministry of Foreign Affairs so as to there are clear reports to show their efforts .

**Q 13: What do you think are the problems to ensure that temporary female workers shall get equal treatment and how to overcome these problems?**

**Q 14: Do you think it is possible to replace all laws that still discriminate women?**

A: In my opinion, all laws in the state grant the man and woman right of equality. I'm a woman and it is supposed that I am keen that no discrimination should be against me, and I did not find any discrimination, but in some cases, the woman is given more than her rights. However, in certain simple regulations, such as human resources law concerning pension issue after death, but to my knowledge, this subject is under discussion. So, I think that the state has no objection to amend laws in favor of man and woman as well.

**Q 15: Do you know any legislation or agreements aim to enhancing women's rights in the United Arab Emirates have been approved or rejected in the past decade?**

A: I do not know if there are legislations that are rejected, but as I said the state granted rights not formerly granted such as membership in National Council in 2006. In addition, there was no explicit legal provision grant the woman the right to be within the Council of Ministries, but now we have female minister and ambassador.



## Participant 9



### Interview Questions

#### Middlesex University

#### **Interview Schedule**

##### **C. Opening:**

4. (Introduce myself).
5. Explanation of the purpose of the interview.
6. Timeline: the interview will take about 20 to 30 minutes.

##### **D. Questions:**

#### **Q.1: In your opinion, why did the UAE ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?**

A: The reason behind ratification of convention of CEDAW by UAE is that Emirate is part of international community and committed to its international responsibilities towards women, so it wanted to be in line with international standards, which guarantee the women's rights and freedoms in the light of the customs and traditions and our religion.

#### **Q.2: Do you think that the role which women play in the UAE has changed after the CEDAW ratification? If so, can you provide any examples?**

A: Firstly, we must know that the role of Emirati women in the state began long ago, since the beginning of education in the state, she began the role of the teacher, and I am one of the first teachers who worked through this profession and then worked as a director of school till retirement and till working in the shelter center.

And over time the role of women has been changed and she became working in the private sector such as banks, private companies; she also went to the public sector and the various state ministries and become working in the police and armed forces and

others. So from my point of view that the reason for this change is that the women realized that she is able to do a lot of works, and CEDAW is not the main reason.

**Q.3: In your opinion, has the international society (Intergovernmental Organization, NGOs and states) had an effect on the promotion of gender equality in the UAE?**

A: In fact , unfortunately many of the international organizations especially the non-governmental organizations get their information from unfrosted individuals , so the state do not pay attention to reports provided by such organizations , but the state consider and pay attention to the recommendations and reports provided by the governmental organizations in order to apply the recommendations that would achieve its objectives in order to protect the women's right , for example , we have opened branches of shelter centers in Sharjah, Umm Al Quwain and Ras Al Khaimah and the reason is not because there is a phenomenon of human trafficking crimes but there are recommendations issued to us that the center shall have branches in all the state and this not limited to the Emirate of Abu Dhabi only. As well as we opened a shelter center for men and it is one of recommendations which always faced by the State and we responded to it , with knowing that till date and after one year passed from the date of opening the center, we did not receive any victim of men.

**Q.4: Has the UAE government made progress with implementing rights for women, which ensure that they are not treated less favorably than men? If so, in which areas are women enjoying more rights?**

**Q.5: In your opinion, which traditions and customs still inhibit Emirati women from being more empowered?**

A: Sure, traditions and customs still inhibit Emirati women from being more empowered especially in the United Arab Emirates which has the tribal society and still adhere to customs, traditions and norms. Many of the families in the state at the current time allow women to receive education but do not allow them to work and I do not know the reason. But I think with time passing there will be more understanding of the role of women, and there will be no impact of the habits and traditions on the process of empowerment of women in all fields.

**Q.6: Which educational and informational programs has the UAE government introduced to help eliminating traditions and customs, which make it difficult for women to partake in the political process? Do you think that these programs have been effective?**

A: Yes, the government of United Arab Emirates introduced programs in cooperation with the public women union.

**Q.7: What challenges still exist, which make it difficult to adopt national gender equality laws?**

A: For me, I am not a specialist in law but with my experience as a woman I do not think that there are laws that discriminate between men and women.

**Q.8: What complaint mechanisms have been established to effectively ensure that women can enforce their rights?**

A: There are a lot of mechanisms established in the state including not limited to: the Women Union and Family Development, receive complaints, as well as the Human Rights Department in the Judicial Department in Abu Dhabi.

**Q.9: In your opinion, are these complaint mechanisms effective and how could they be further improved?**

A: Yes, they are effective, but it needs to raise awareness of society in relation to such mechanisms.

**Q.10: Apart from the existing complaint mechanisms, what else do you recommend should be done to ensure that women are no longer discriminated against?**

A: \_\_\_\_\_

**Q.11: Do you think the UAE government will in the near future withdraw from any of the reservations to the Convention with a view of completely withdrawing all the reservations, which do not contradict the Sharia law, so as to ensure that women fully benefit from all the rights enshrined in the Convention?**

A: Yes, I think that the government would review its reservations to the Convention and it is possible to withdraw its reservations which do not contradict the Sharia law, and which enable women to enjoy more amounts of rights.

**Q.12: Despite the UAE government trying to provide protection for temporary workers, there have been reports that they still find it difficult to enjoy equal rights. Is there any strategy to further minimize this criticism?**

A: Yes, government of UAE has strategy, and it is monitoring of reports, analysis and studying them and responding to its content matching with national legislation and laws, as well as review of legislation and modifying them so as to ensure their rights more widely.

**Q.13: What problems do you think are there to ensure that female temporary workers are afforded equal treatment and how could these problems be overcome?**

A: I do not have sufficient experience in relation to workers and it is better to follow up with the Ministry of Labor.

**Q.14: Do you think it is possible to replace all laws, which still discriminate women to this date?**

A: Yes, I do not think that the government will stand as an obstacle against amendment or issuance of laws that would enable women more widely.

**Q.15: Are you aware that any legislation designed to advance women's rights in the UAE has been adopted or rejected in the last decade?**

A: Yes, amendment of the law of human traffics during this year, providing more protection for the rights of the victim.