

## **Algeria's ratification of CEDAW with a reservation and its impact on the Algerian family**

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### **Introduction**

The CEDAW Convention (CEDAW) is known as an international convention on the elimination of all forms of discrimination against women, while this convention derives its name by linking the initials of the phrase (The Convention on the Elimination of All Forms of Discrimination against Women), which means in Arabic the Convention on the Elimination of All Forms of Discrimination against Women

The Convention was adopted by the United Nations General Assembly in 1979 as a draft international law on women's rights, while CEDAW consists of a preamble and 30 articles designed to define what constitutes discrimination against women. All Arab countries except Sudan and Somalia have signed the CEDAW Convention, and Egypt was one of the first countries to sign the Convention in 1981, while Palestine was the last country to sign it in 2014, but it is noticeable that most Arab countries have expressed reservations on some of the provisions of the Convention, based on their conflict with their national legislation, or because of the conflict of some of its articles with Islamic law, especially Article No. 16, and Palestine is almost the only country in the Middle East and North Africa, which has signed without any reservation all the provisions of the Convention<sup>1</sup>.

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<sup>1</sup>- The Israeli occupation state also expressed its reservation to some articles of the Convention, including Article 16, when it signed the CEDAW Convention, according to a document issued by the Israeli Foreign Ministry.

## **Part one: Algeria's ratification of CEDAW with a reservation**

CEDAW has a number of goals that it seeks to achieve, all of which revolve around absolute equality between the sexes, including:

1. Eliminate discrimination against women by achieving full equality between women and men, which can be achieved by bringing about a change in the role of women and men, as the Convention states in the preamble that "States Parties recognize that achieving equality between men and women requires a change in the traditional role of men as well as in the role of women in society and the family.

2. Recommend temporary special measures to accelerate the achievement of de facto equality between women and men, and that States establish legal protection against discrimination through national bodies and public institutions.

3. Call for the enactment of national legislation prohibiting discrimination by repealing and amending all existing laws, regulations, customs, and practices that constitute discrimination against women, and in particular seeks to amend Arab personal status laws derived from Islamic law.

4. Oblige public authorities and bodies in ratifying states to refrain from discriminatory practices against women and to provide a comprehensive framework for the advancement of women.

5. It aims at family planning, as it is the first convention in this area, asking member states to commit to providing guidance on family planning through the education process. Article X (10), and to develop family laws to guarantee women the right to freely decide how many children they wish to have, the number of years between one child and the other, as well as the means they follow to achieve their tests and claim joint responsibilities in raising a child between parents<sup>2</sup>.

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<sup>2</sup>- Rushdi Shehata Abu Zeid, *Convention on the Elimination of All Forms of Discrimination against Women from an Islamic Perspective*, Dar Al-Wafa for the World of Printing and Publishing, Alexandria, Egypt, 2007., p. 40

Although these goals seem to give women their rights, they are difficult to achieve in Islamic countries and conservative societies, which is why Islamic countries have reservations on many of the provisions of the CEDAW Convention, especially Articles 02, Article 09, paragraph 2, Article 15, paragraph 4, Article 16 and Article 29, most of which are related to personal status, which are based on the principles of Islamic law.

## **I/ The legal framework for Algeria's ratification of CEDAW**

Algeria ratified CEDAW by Presidential Order 96/51 of 22 January 1996 with reservations, including Articles 02, 09, paragraph 02, Article 15, paragraph 04, Article 16 and Article 29, paragraph 01 thereof. Ratification in international law is the conduct by which a State or an international organization agrees and accepts to be bound definitively by the provisions of a treaty in accordance with the procedures established by law, defined by article II (02), paragraph (b), of the Vienna Convention as: "the international procedure by which a State acknowledges at the international level its consent to be bound by the treaty", as defined by it.

Article (14) of the Vienna Convention that: "Expression of the consent of the State and bound by the treaty", and the methods of adherence to the treaty vary from one State to another according to the system of government followed in the State<sup>3</sup>.

The obligation of States to implement the terms of the treaty is one of the important principles under the law of treaties, as every international human rights treaty creates binding obligations that States parties must fulfill, and States are obliged to apply the treaty in accordance with its spirit<sup>4</sup>.

The article 26 of the Vienna Convention on the Law of Treaties (1969) provides that: "Every treaty in force is binding on its parties, and they must execute it in good faith", and article 27 states: "A party to a

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<sup>3</sup>- Rabah Souad, Algeria and International Human Rights Law, PhD thesis, Faculty of Law, University of Tlemcen, 2016-2017, p 29.

<sup>4</sup>- Hala Said, Women's Rights under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1st edition, Al-Halabi Human Rights Publications, Syria, 2011, p. 86.

treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty". These obligations include the so-called positive and negative obligations, as the State must fulfill its positive and negative obligations, as it is obliged to refrain from participating in any discriminatory acts or practices (negative obligation), or to take the necessary measures to achieve de facto equality (positive obligation).

## **II/ Justifications for Algeria's reservation to some provisions of CEDAW**

A reservation is a single means used by States when signing, ratifying or acceding to an international treaty, in order to exclude the legal effect of certain provisions of the treaty<sup>5</sup>. It is a measure aimed at amending some provisions of the Convention to bring them in line with national legislation, provided that it does not affect its essence, and regardless of its legitimacy, it remains the only measure that guarantees the State not to sever its ties with the international community<sup>6</sup>.

The Vienna Convention on the Law of Treaties defines a reservation in article 20, paragraph d: "a unilateral declaration of whatever form or designation, formulated by a State when it signs, ratifies, approves or accedes to a treaty, purports to exclude or alter the legal effect of certain provisions of the treaty as to their application to that State.

### **1. Algerian family law derives from Islamic law**

The second article of the Algerian constitution stipulates that: "Islam is the religion of the state", and therefore religion has a special place within Algerian society, so it is natural that the Islamic religion is the reference in everything related to building the family, determining relations within it, and regulating all matters related to it.

The Algerian Family Code is the only law within the Algerian legislative system derived from Islamic law in its various sources, which

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<sup>5</sup>- Alwan, Muhammad Khalil Musa, International Human Rights Law, Part Two, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2009, p. 38.

<sup>6</sup>- The reservation formula by a State aims to exclude or modify the legal effect of certain provisions of the treaty in their application to that State. More than the legality which is obvious, of this procedure it is its legitimacy that poses problems; Recourse to this procedure would have the consequences of modifying the treaty, undermining its integrity, upsetting its balance, fragmenting its regime, However, it remains the only way to decide not to cut itself off from the international community... ABDELLAH Benhamou, Implementation of the International Convention on the Rights of the Child, R.A.S.J.E.P, Faculty of Law, University of Algiers, Issue : 01,2000, p. 242.

is stipulated in the preamble to the preliminary draft, which states: "In developing these texts, the Committee relied on the following basic sources: the Holy Qur'an, the Sunnah of the Prophet that is proven to be acceptable to hadith scholars (measurement, consensus, measurement and ijihad) and jurisprudence on the four schools of thought and others in some matters<sup>7</sup>.

The legislator has left the regulation of family matters to the rules of Islamic law, taking into account the close link between it and religion, and taking into account the specificity of the Algerian family in terms of its nature, authenticity, belief, composition and Islamic doctrine<sup>8</sup>. Article 222 of the Algerian Family Code stipulates: "Anything that is not provided for in this Code shall be subject to the provisions of Islamic Sharia." It is known that Algeria belongs to the Sunni sphere with its Maliki doctrine of jurisprudence, with an Ibadi minority, which was adopted by the Algerian legislator in preparing the provisions of the Family Code, leaving the judge free to give preference to any doctrine of jurisprudence in the absence of any provision in the legal text.

## **2. Privacy of the Algerian family**

The French colonization of Algeria strongly affected the formation of society, and the Black Decade, which is more than ten years in which Algeria witnessed serious terrorist operations, contributed to affecting the composition and characteristics of families in Algeria, and led to drawing the features of the modern family as it is known today.

Despite the laws regulating relations within the family, and despite Algeria's ratification of most international conventions on human rights, which stipulate non-discrimination among members of society, especially on the basis of sex, the Algerian family is still subject to the customs and traditions it has acquired over time.

### **a- Parental or masculine authority**

Some researchers believe that in the traditional Algerian family, the head of the family exercises all rights over his wife and children, and

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<sup>7</sup>- Ghorabi Ahmed, The extent of commitment to legitimacy in amendments to the Algerian Family Code, Journal of Studies and Research, University of Djelfa, eighth year, No. 22, March 2016, p. 187.

<sup>8</sup>- Abdel Fattah Taqia, Analytical Legal Studies within the Framework of the Scientific Symposium 'The Scope of Application of the Provisions and Principles of Islamic Sharia in Algerian Family Law, Algerian Journal of Legal, Economic and Political Sciences, No. 1, 2014, p. 230.

everyone who lives under his responsibility, and he is the decision-maker regarding marriage, divorce, adoption, deprivation of parentage or inheritance, and buying and selling related to real estate and movable as well, cattle or others, of his right to his wife everything beating, expulsion or divorce, and his children also beating, expulsion or deprivation, there is no objection to his will, because the family system is the one that formulates him to be above him Outside it, on the other hand, the traditional role of women gives them a secondary role, as the traditional role of men as the head of a family gives the husband authority and gives her the status of a submissive woman, and based on this logic, she is subordinate to her husband, who is the "master" who does not discuss or negotiate<sup>9</sup>.

The male's enjoyment of a sovereign position over the female, as he believes, comes in line with religious values rooted in the conscience of the children of Arab and Islamic societies, reflected in noble Quranic verses such as the saying of the Almighty GOD: "Men are the guardians of women by what Allah has favored over each other and by what they have spent from their wealth"<sup>10</sup>.

Whether this idea takes the common concept of men being superior to women or the concept of taking responsibility for spending on women, it is welcomed by men in the traditional Arab community on the one hand and conforms to the standards of behavior determined by the patriarchal descent rule on the other<sup>11</sup>.

### **b- Raising children is religious education**

The family still plays an important role in instilling religious and moral values in the hearts of children in Algeria, as the child usually acquires religious foundations and principles from the family to which he belongs, as it determines the religion that he will adopt in his life, and the doctrine that he will follow, and the family is the one that teaches the child religious duties such as prayer, fasting and other religious practices

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<sup>9</sup>- Hassan Triki The Change of Family Values in Contemporary Algerian Society, An Analytical Study, Al-Riwaq Magazine, Issue 09, December 2017, p. 89.

<sup>10</sup>- Surat An-Nisa Verse 34.

<sup>11</sup>- Al-Aqbi Al-Azhar, Social Centers and Roles and their Cultural Determinants in the Arab Family System, Journal of Humanities and Social Sciences, Issue Eight, June 2012, p. 81.

and rites, the individual's view of religion and worship and how he deals with people depends on the family in which he grows up<sup>12</sup>.

### **c- The evolution of the status of women in the Algerian family**

The status of women in social life was the most changing center, especially in the last half century, as women went down to the field of work and tasted the sweetness of earning and felt their economic value and that they became a lady of position and can suffice for themselves by themselves, and therefore there is no need to bear the restrictions imposed on them by men, and therefore women have become a positive element that intervenes in choosing their life partner and drawing the lines of their married life, and shared with men sovereignty over the family, and became free and responsible in the affairs of their home<sup>13</sup>.

In view of Algeria's de facto commitment to custom and religion, Algeria made a reservation to article 16 of the CEDAW Convention, which reads as follows: "The Government of the People's Democratic Republic of Algeria declares that the provisions of article 16 concerning the equal rights of men and women in all matters relating to marriage and upon its dissolution should not conflict with the provisions of the Algerian Family Code."

### **3. Conflict between Algerian law and CEDAW Convention on Women's Freedom**

It is understood from our extrapolation of the CEDAW Convention that it not only gave women rights, but also gave them the freedom to act regardless of religion, customs, traditions and customs, as they are free even to exploit their bodies as being equal to men, and urged that stereotypical roles for men and women should be abolished. The application of the Convention entails allowing women to have sexual relations outside marriage, as well as the freedom to choose a same-sex partner, which is contrary to Islamic law on the one hand and the internal penal code on the other, which criminalizes such acts.

#### **a- Regarding sexual relations outside marriage**

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<sup>12</sup>- Salwa Abdel Hamid Al-Khatib, A Look at Family Sociology, Egyptian Printing Services, Cairo, 2007, p. 22.

<sup>13</sup>- Samia Mostafa El Khashab, Social Theory and Family Study, International House for Cultural Investments S.A.E., Cairo, Egypt, 1998, pp. 84-85.

The law in Algeria does not give women the right to have sexual relations outside marriage, as the Algerian penal code criminalizes adultery<sup>14</sup>. On the other hand, Algerian law does not consider adultery of an unmarried woman a crime, because the crime does not arise until after the husband's complaint.

As for the CEDAW Convention, it gives women full freedom and equality with men in all fields, especially in article V of the Convention, which stipulates those prejudices and customary customs based on the superiority of one of the sexes must be eliminated, and thus allows women to have sexual relations like men without being bound by the institution of marriage.

#### **b- Regarding homosexuality**

Islamic law prohibits sodomy, or what is known as homosexuality, and the Algerian legislature criminalizes such acts, stating in article 338 of the Penal Code: "Anyone who commits an act of homosexuality against a person of the same sex shall be punished by imprisonment from two months to two years and a fine of 500 to 2,000 dinars. If one of the perpetrators is a minor who has not completed eighteen, the penalty of the adult may be increased to imprisonment for three years and a fine of 10,000 dinars", Article 333 of the Algerian Code stipulates that: "Whoever commits an act in public and indecent acts shall be punished by imprisonment from two months to two years and a fine of 500 to 2,000 dinars. If the public act of indecency is an act of homosexuality committed against a person of the same sex, the penalty shall be imprisonment from six months to three years and a fine of 1,000 to 10,000 dinars".

The Convention on the Elimination of All Forms of Discrimination against Women of 1979 is considered one of the most important conventions that contributed to the legalization of same-sex marriage, as it tried to eliminate not only the differences in rights between men and

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<sup>14</sup>- Article 339 of the Penal Code (Law No. 82-04 of February 13, 1982) states: "Any married woman found guilty of adultery shall be sentenced to imprisonment from one to two years. The same penalty applies to anyone who commits adultery with a woman who he knows is married. A husband who commits adultery is punishable by one to two years' imprisonment and the same penalty is applied to his partner. Measures shall only be taken on the basis of a complaint by the injured spouse, and the latter's forgiveness puts an end to all prosecution".



women, but rather to overthrow even the biological differences between them, and to include both men and women in the term gender<sup>15</sup>.

## **Part two: Effects of Algeria's ratification of CEDAW on the Algerian family**

### **I/ Positive effects of Algeria's ratification of CEDAW**

The CEDAW Convention was not the first to grant women in general and Algerian women in particular their rights, as Islamic law ordered that woman must be respected, determining for them family and financial rights that guarantee them a decent living, and among the most important amendments brought by the Algerian Family Code to be in line with the provisions of the CEDAW Convention, which had positive effects on the Algerian family:

#### **1. Equal age of marriage:**

The Family Code of 1984 states that the capacity of men to marry is completed at the age of 21 and the woman at the age of 18 years, and the judge may authorize before that for an interest or necessity, but influenced by the CEDAW Convention, the Algerian legislator has amended Article VII of the Family Code, and equated between men and women in the age of marriage, so that it became unified with the full age of civil majority 19 full years, while maintaining the issue of marriage authorization before that for the benefit or necessity<sup>16</sup>. The age of marriage for women is equal to that of men because marriage is a partnership for both parties with the same rights and obligations.

#### **2. Consultation between spouses in the conduct of family affairs and birth spacing**

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<sup>15</sup>- Article 5, paragraph 1, of the Convention states: "States Parties shall take all necessary measures to change the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudice, customary customs and all other practices based on the belief that either sex is inferior or superior to the other".

<sup>16</sup>- Abdelaziz Saad, Algerian Family Code in its New Dress, Provisions of Marriage and Divorce after Amendment, Dar Houma Printing, Algeria, 2007, p. 25.

In its latest amendment, the Algerian legislature stipulates the duty of consultation in the management of the family between spouses and the right of the wife to give her opinion on the spacing of mothers, as affirmed in the CEDAW Convention in article 16, paragraph 1, letter "e", by stipulating that women have the same rights to decide freely and responsibly the number of their children, the period between having a child and to obtain information such as education, and the means to enable them to exercise these rights. Rights and responsibilities as a parent.

This principle, before it was stipulated in the amendment of the Family Code, was established in Algerian society, in which the status of women has developed, since women have become educated, and a large segment of women have gone out to work and contribute to family incomes, it is natural that they contribute to decision-making within the family, in which parents now agree on a specific number of children, often not exceeding three children, in order to preserve the mother's health on the one hand, and to take into account the family's income on the other.

Algeria has been pressured by the Committee on the Elimination of All Forms of Discrimination against Women and some non-governmental organizations to remove the reservations it made to the Convention that it considered to be contrary to Islamic law<sup>17</sup>.

### **3. Women's right to birth control and childcare**

Article 36 of Ordinance No. 05-02 of 2005, paragraph 3, stipulates those spouses must cooperate in the interests of the family, the welfare of the children and their proper upbringing, and paragraph 4 provides for consultation in the conduct of family affairs and the spacing of births.

According to Algerian law, women are not free to make fundamental decisions regarding reproduction and raising children without involving their husbands in the decision-making. On the other hand, the Convention on the Elimination of All Forms of Discrimination against Women stipulates the right of women to decide freely and responsibly, on a basis

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<sup>17</sup>- Djilali TCHOUAR, Algeria's reservations to some articles of international conventions related to women's family rights between retreat and adherence, Journal of Economic and Political Legal Sciences, University of Abou Bakr Belkaid, Tlemcen, No 10, 2010, P 07.

of equality with men, the number of their children and the spacing between having one child.

Birth control is one of the main measures in the area of protecting women's health, since frequent childbearing affects their physical and mental health, and in this context the Convention stipulates in its article XII that States parties must take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure that they have equal access to health-care services, including those related to family planning.

#### **4. Equality of women with men in the granting of nationality**

Prior to the amendment of Ordinance No. 86-70 by Ordinance 05-01, article VI of the Algerian Nationality Code provided that Algerian nationality by descent or blood bond on the part of the Algerian mother is acquired only in two cases:

- The boy born to an Algerian mother and an unknown father.
- A child born to an Algerian mother and a stateless father.

In other cases, the Algerian mother is unable to pass on her nationality to her children from a foreign husband, unlike the father.

In order to reflect equality between men and women in this area, the CEDAW Convention amended the text of article 6 of the Algerian Nationality Code by giving women the right to pass on their nationality to their children (article 9 of the Convention), which stipulates that States parties must grant women equal rights with men to acquire, retain or change their nationality, and in particular ensure that marriage to a foreigner or change of nationality of the husband during marriage does not automatically change the nationality of the wife, render her stateless or that The nationality of the husband is imposed on her.

It is clear from this article that women are entitled to a nationality and are entitled to change it if they wish without dependency on anyone, and that a woman's nationality must not be changed automatically as soon as she has married, or because her husband has changed his nationality.

However, one of the effects of the amendment of Article 6 is that the purpose of the new amendment is the principle of gender equality, but this results in the entry of many children into the original Algerian

nationality, whether they are legitimate, or they are Zionist, Jewish or Christian fathers because their mother is Algerian, as well as the case for those born before the 2005 amendment in accordance with the text of Article 2/1 of the Algerian Nationality Code, which stipulates the retroactive effect of the original Algerian nationality for all those born before the date of the procedure. The provisions of the amended Nationality Law shall apply, as the text of the article states: "The provisions relating to the granting of Algerian nationality as an original nationality shall apply to persons born before the date of entry into force of these provisions<sup>18</sup>.

## II/ Negative effects of Algeria's ratification of CEDAW

### 1. Reducing the role of the guardian

In Islamic law, the guardian is considered one of the pillars of marriage, and accordingly, article 9 bis, paragraph 3 of the Algerian Family Code stipulates that the guardian is a condition of the marriage contract<sup>19</sup>, Article 11 of the Family Code stipulates that: "An adult woman shall enter into her marriage in the presence of her guardian, her father, one of her relatives or any other person of her choice... Although the previous article before the amendment stipulated: "A woman shall marry her guardian, who is her father, one of her first relatives, and the judge shall be the guardian of those who have no guardian".

Accordingly, with reference to Article 9 of the Algerian Family Code, the consent of the spouses is considered the only element in the marriage contract, while the rest of the pillars (considered as pillars of the rest of the jurists) are mere conditions, including the guardian, since by reference to Article 11 thereof, we find that the legislator gave the adult woman the right to conclude her marriage contract in an absolute manner,

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<sup>18</sup>- Makhbat Yacoub Aicha, The injustice of women in the transmission of original and acquired Algerian nationality, Annals magazine, Algeria 1, Volume 35, Issue 02, 2021, p. 336.

<sup>19</sup>- Ordinance No. 05-02 of February 27, 2005.

and made the role of the guardian in the contract not exceed the honorary presence<sup>20</sup>.

Article 16/1, paragraph (f), of the CEDAW Convention stipulates the same rights and responsibilities with regard to guardianship, as the same article stipulates in paragraphs (a) and (b) the right to marry and to choose whomever she wants, and to conclude a marriage in full freedom and equality with men.

Article 16 of the CEDAW Convention stipulates that a woman has the right to choose her husband with her consent and that this consent is free and complete, meaning that no one may interfere in the choice of a woman, in particular the intervention of the guardian, whether father or other.

Article 11 of the Algerian Family Code stipulates that: "An adult woman shall enter into her marriage in the presence of her guardian, who is her father, a relative or any other person of her choice."

Without prejudice to the provisions of article 7 of this Act, the marriage of minors shall be carried out by their guardians, namely the father, who is one of the first relatives and the judge is the guardian of those who do not have a guardian."

After it was stipulated that: "The marriage of a woman shall be carried out by her guardian, who is her father, one of her first relatives, and the judge is the guardian of those who have no guardian."

Under the amendment, the guardian was not dispensed with definitively, but his role in the matter of marriage was reduced, as the Algerian legislator tried to reconcile the provisions of Islamic law, which stipulated the wali as a cornerstone of marriage, and the convention, which gave women the freedom to enter into marriage as they wished.

## **2. Cancellation of the duty to obey the husband**

In Islamic law, women are obliged to obey their husbands, and therefore, before the 2005 amendment, the Family Law stipulated in article 39: "The wife must obey and observe the husband as the head of the family...".

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<sup>20</sup>- Abdelhafid Baqa, The Guardian's Corner in the Marriage Contract and the Problems Raised by Article 11 of the Algerian Family Code, Journal of Law and Human Sciences, No. 23, Volume I, Zayan Ashour Djelfa Magazine, pp. 112-113.

However, in the 2005 amendment, the legislator abolished the article on obedience, placing the husband and wife in an equal position, equal rights and duties between them, despite the fact that the guardianship and degree of the man are according to human nature and instinct.

However, with reference to the content of Article 36 of the Family Law, judicial decisions, especially cases related to disobedience, the wife's entitlement to alimony and its inclusions, the provisions of divorce and recourse, and the consequent rights and duties enshrine the most important aspects of the husband's guardianship<sup>21</sup>.

CEDAW considers obedience to the husband as a form of servitude and restriction on the basis of sex, a discriminatory practice that must be eliminated, and a customary custom based on the idea of inferiority (art. 5 (a)) and appropriate measures must be taken to eliminate it.

### **3. Restriction on polygamy**

The Algerian legislator permitted polygamy in the Family Code promulgated in 1984, article 8 of which stipulates: "Marriage with more than one wife is permitted within the limits of Islamic law, when there is a legal justification and the conditions and intention of justice are met.

Article 8 of Ordinance No. 05-02 restricts polygamy, which stipulates: "Marriage with more than one wife is permitted within the limits of Islamic law when there is a legal justification and the conditions and intention of justice are met.

The husband must inform the former wife and the woman with whom he is willing to marry, and submit an application for permission to marry to the president of the court for the place of the marital domicile, and the president of the court may authorize the new marriage if he ascertains her consent and proves the husband's legitimate justification and ability to provide justice and the necessary conditions for married life."

Article 8 bis also stipulates that in the event of fraud, any wife may file a lawsuit for divorce.

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<sup>21</sup>- Faouzia Nchadi, The Impact of the Abolition of the Article of the Algerian Family Code on the Guardianship System, Journal of Legal and Economic Studies, Si Hawass Brika University Center, Vol., Issue, June 2022, p. 901.

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ISSN 2552-7770

It is clear from the above that the legislator has maintained polygamy but restricted it, that is, he followed the position of permissibility with the restriction of the polygamy system by controlling it with a set of legal conditions, trying to reconcile the abandonment of polygamy at all, and the prohibition and rejection at all<sup>22</sup>. With these conditions, pluralism in Algerian society has become difficult, if not impossible.

Article 16, paragraph 1, of the CEDAW Convention states: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."

Algeria's reservation to the text of article 16 of the Convention because it is incompatible with the provisions of the Algerian Family Code in matters relating to marriage, the family and the equality of rights and responsibilities arising from marriage and its dissolution, etc. On the other hand, Algeria has recognized equality between women and men on the one hand and in several places, when equality does not affect the fundamental issues mentioned in Islamic law, such as guardianship, pluralism and the division of inheritance... It also strengthened the status of women within the family on the other hand, and therefore CEDAW reflected on the Algerian family, and this reflection had many effects...

## Conclusion

CEDAW is considered the international legal text that has attached special importance to women in various fields: civil, political, economic and social, as a legal mechanism has been established to ensure its activation by member states, represented by the Committee on the Elimination of Discrimination against Women, which monitors, through reports submitted by ratifying countries, the extent of commitment to the implementation of the Convention within the country.

However, the Convention contains provisions for absolute equality of rights and obligations between the sexes, ignoring that biological difference between the sexes inevitably leads to the inequality between

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<sup>22</sup>- Nassima Amal Hefri, Polygamy in Algerian Family Law between Permissibility and Criminalization, *Sawt Al-Qanoon Magazine*, Jilali University in Bonaameh, Algeria, Volume VIII, Issue 02, 2022, p. 590.

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the sexes and, consequently, to the diversity of roles and responsibilities that each plays within the family first and in society second.

CEDAW also attempts to impose its unilateral view as the sole reference for states on women's issues and to reject the legislative and legal differences of many countries, including personal status law, which has been rejected by many countries that apply Islamic law in matters related to the family. Like other countries, Algeria has ratified CEDAW with reservations to some of its provisions, which are contrary to Islamic law and national laws.

We have reached the most important results:

- The provisions of the Convention seek to enshrine absolute equality between men and women in all fields, while Islamic law establishes rights for women, but taking into account the innate differences between men and women, on the basis of which the role and responsibility of each in society are determined.

- The CEDAW Convention includes a number of provisions and women's rights that are identical to the provisions of Islamic law and the provisions of the Personal Status Law, but there are other rights that clash with the constants of Algerian society, so Algeria had to reserve them.

## **Recommendations:**

The CEDAW Convention does not represent the best guarantee for women to achieve their rights, for even if Algeria ratifies the Convention with reservations, the promotion and enjoyment of women's rights can only be achieved at the internal level first through several mechanisms, the most important of which are:

- The need to educate women about the rights guaranteed to them by Islam and the law.

- Combating customs and traditions that limit the role of women in society and prevent them from enjoying their rights.

- Develop mechanisms to protect women from violence, especially domestic violence.



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ISSN 2552-7770

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