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## RESEARCH ARTICLE

### PROGRESS OR PATRIARCHY? AN ANALYSIS OF THE UAE'S COMMITMENT TO GENDER EQUALITY IN ITS NATIONAL LEGISLATION

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#### ABSTRACT

Could the United Arab Emirates (UAE) commit more fully to eliminating gender discrimination by amending its existing legislation and adopting new laws which support and promote gender equality? This article sets out to determine the truth of the claim that its ability to do so is limited due to a conflict with Islamic law which is operational in the UAE and other regions of the Middle East and North Africa (MENA). One of the ways this examination does so is by investigating the socio-cultural context from which Islam emerged. It argues that UAE jurisprudence reflects and reinforces a patriarchal model of society which undergirds numerous decrees to be found in the Personal Status Laws, or Muslim Family Law. These are laws that govern marriage, divorce, child custody, inheritance and many other matters intrinsic to family life in the UAE which are wholly biased in favour of males. Men are given full license in law to preside as guardians over, demand obedience from, supervise and regulate the movement and travel of, and even physically discipline the female members of their household. This arrangement, with its basis in patriarchal complementarity, permeates all inter-familial dealings between the sexes and is contributing to an increase in travel bans, spousal abuse, rape, domestic violence and marital rape, for which there are little to no robust provisions or mechanisms in law or state policy that can act as safeguards for the women these acts are perpetrated against. Despite this state of affairs, the UAE, along with several other Muslim majority states, has signed the Convention for the Elimination of Discrimination Against Women (CEDAW); a convention that strives to guarantee the creation and protection of formal and substantive rights for women by recognising their rights to be human rights. As explicated in this article, CEDAW is a United Nations convention that recognises the dynamic interplay of laws, social relations, religions, custom and cultural traditions in the continued subordination and oppression of women worldwide. A failure to comply with it carries a heavy reputational and image bearing cost before the international community. Pertinent to this investigation is a critique of how to date, the UAE and many other states in MENA have - to a certain extent - been able to evade the full brunt of international censure by habitual appeals to 'Islamic Law'. These religious appeals have duly been entered into their reservations to CEDAW - notably Article 16 which deals with gender equality in marriage and the family - largely unchallenged. They have functioned to deftly shut down any possibility of disputing patriarchal readings of Islamic Law and meaningful engagement with alternative visions of Islam, as put forth by the many millions of adherents around the globe who advocate for gender equality. Accordingly, this analysis will investigate if cooperation between progressive Muslim groups and the international community, with the aim of fostering enhanced religious dialogue, exchange and literacy could be a strategy for building an infrastructure of jurisprudence that positively promotes gender equality in the UAE, which is then subsequently cascaded to all other MENA states.

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## INTRODUCTION

In recent years the United Arab Emirates (UAE) has, along with some other Muslim majority states in the Middle East and North Africa (MENA), made noticeable progress where women's rights are concerned. The last decade has seen women become more visible in the 'public realm' specifically with respect to employment, education and politics. This is in stark contrast to the 'private realm' where gender discrimination in Personal Status Laws, influenced by

patriarchal interpretations of the Qur'an, subject women to systematic oppression, marginalisation and abuse in marriage, the family and the home. It is a rather controversial subject that habitually evades serious scrutiny by international law owing to appeals of 'Islamic Law' that are entered into reservations by Muslim majority states in the Convention for the Elimination of Discrimination Against Women (CEDAW), an international treaty which contains provisions to end the subordination and discrimination against women in all areas of life. These religious appeals have thwarted a critique of, or challenge to gender discriminatory legislation that impacts a woman's lived experience, particularly in the private realm, rendering this area as off-limits, and in so doing forestalling efforts for reform.

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By using the UAE as a representative example, this analysis seeks to provide a systematic understanding of what some of the reasons underpinning this could be, and how they might be addressed for the benefit of the UAE and other MENA countries. The investigation opens with 'Gender Equality in the Middle East and North African (MENA) Countries', which takes a brief look at two reports - a 2010 Freedom House Report and the 2017 Global Gender Gap Report - to provide a contextual overview of the current situation for women in MENA countries. 'Why it is Vital to Examine the Socio-Cultural Context' and 'How Legislation Embeds and Strengthens the Patriarchal Society', attempts to show some of the ways that religion, law and culture have intertwined and the significance of this synthesis in relation to the oppression of women.

'CEDAW: A Convention to Guarantee Women's Rights Worldwide' introduces the section in this discussion which reviews the seminal international legislation for women designed to institute national action to end their subordination and discrimination. It encompasses some of CEDAW's key aims and objectives, features and strengths, as well as the criticisms this international convention has received. Having laid this foundation, the analysis then turns to the UAE's problematic relationship to the international treaty for women's rights. 'CEDAW and the 'Islamic Law' Manoeuvre' reveals how the UAE, in tandem with other Muslim majority states, has sidestepped full compliance with some of the provisions of CEDAW by overruling it with 'Islamic Law'. 'Women's Rights in the UAE' and the accompanying sections assess the significance of this manoeuvre to the lived reality of women in the UAE. It importantly includes an examination of articles in the UAE Constitution and the Personal Status Codes which affect identity, marriage, violence against women, citizenship and freedom of movement.

The discussion concludes with 'The Need for Reform' and 'A Call for Enhanced Religious Literacy' which evaluates the viewpoints of progressive Muslim scholars, Muslim women's rights groups and the many adherents of Islam around the globe who are challenging the monolithic way that their religion is being used to justify the non-implementation of provisions within international treaties such as CEDAW which promote human rights for women and it considers the implications of their argument that Islamic Law supports gender equality and can in actual fact be used to eliminate gender discriminating behaviour.

### Gender Equality in the Middle East and North African (MENA) countries:

Gender equality is intrinsic to the healthy functioning of societies and their economies.<sup>1</sup> If the sum total of a country's population is fully developed and all of the talents within it are discovered and effectively deployed, this can have a marked impact on its economic growth, competitiveness and business performance globally.<sup>2</sup> The Global Gender Gap Report, compiled and published by the World Economic Forum (WEF) is designed to 'create global awareness of the challenges posed by gender gaps and the opportunities created by reducing them'.<sup>3</sup> As stated by WEF's Founder and Executive Chairman Karl Schwab:

Talent is one of the most essential factors for growth and competitiveness. To build future economies that are both dynamic and inclusive, we must ensure that everyone has equal opportunity. When women and girls are not integrated—as both beneficiary and shaper—the global community loses out on skills, ideas and perspectives that are critical for addressing global challenges and harnessing new opportunities.<sup>4</sup> In 2017, the Global Gender Gap Report detailed the progress towards gender parity of 144 countries. In its key findings it noted that based on the current rate of progress the global gender gap can be closed in 61 years in Western Europe, 62 years in South Asia, 79 years in Latin America and the Caribbean, 102 years in Sub-Saharan Africa, 157 years in the Middle East and North Africa, 161 years in East Asia and the Pacific, and 168 years in North America.<sup>5</sup> The report focused on four themes, 1. Economic Participation and Opportunity, 2. Educational Attainment, 3. Health and Survival, and 4. Political Empowerment. As a region, MENA ranks ahead of Sub-Saharan Africa and South Asia on Educational Attainment and surpasses East Asia and the Pacific, and South Asia on Health and Survival. It has substantially progressed from the previous year (2016) by closing its gender gap by more than 60%.<sup>6</sup> Notwithstanding this, overall on the global report MENA ranks last.<sup>7</sup>

*Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, published by the NGO Freedom House in 2010 reported several important steps taken in MENA to improve the status of women since its previous report in 2005.<sup>8</sup> There were breakthroughs in the areas of employment, education and political representation where women now 'hold jobs, are literate, and enrol in areas of study previously deemed inappropriate for them'; overall they are now more visible.<sup>9</sup> Specifically, some of the more noteworthy achievements occurred in the Gulf Cooperation Council member states.<sup>10</sup> In the UAE and Bahrain women judges were appointed for the first time in 2008 and 2006 (respectively).<sup>11</sup> Bahrain, Kuwait and Qatar had laws requiring permission from a male guardian in order for women to travel independently rescinded.<sup>12</sup> Additionally, in Kuwait women obtained the right to vote and run for public office in 2005, and in 2009 the first four female members of the Kuwaiti parliament were elected.<sup>13</sup> However, although women around the world continue to struggle to achieve the full realisation of their rights, the Freedom House report also stated that it is in the MENA region where it is more pronounced and 'a substantial deficit in women's rights persists in every

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Sanja Kelly and Julia Breslin, 'Women's Rights in the Middle East and North Africa: Progress Amid Resistance', *Freedom House* (2010) <https://freedomhouse.org/report/women039s-rights-middle-east-and-north-africa/womens-rights-middle-east-and-north-africa-2010> [accessed 7 August 2018]

<sup>9</sup> Ibid 5.

<sup>10</sup> The Gulf Cooperation Council (GCC) countries are Saudi Arabia, Kuwait, the UAE, Qatar, Bahrain and Oman. The GCC represents a political and economic alliance established in May, 1987 in Riyadh, Saudi Arabia.

'Gulf Cooperation Council', *Encyclopaedia Britannica*, <https://www.britannica.com/topic/Gulf-Cooperation-Council> [accessed 10 September 2018]

<sup>11</sup> Kelly and Breslin (n 6).

<sup>12</sup> Ibid.

<sup>13</sup> Mark Tran, 'First women elected to Kuwait parliament', *The Guardian* (May 2009) <https://www.theguardian.com/world/2009/may/17/kuwait-women-elected-parliament> [accessed 19 August 2018]

<sup>1</sup> 'The Global Gender Gap Report 2017', *World Economic Forum*, <https://www.weforum.org/reports/the-global-gender-gap-report-2017> [accessed 19 August 2018]

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

country'.<sup>14</sup> It attributes this deficit to systematic discrimination in law and social customs, a result of ingrained societal norms and conservative interpretations of Islamic law which serve to perpetuate the subordination and oppression of women.<sup>15</sup> Personal status laws are a case in point; they are legislation that govern marriage, divorce, child custody, inheritance and other matters intrinsic to family life, which are biased in favour of men.<sup>16</sup> Spousal abuse and rape, domestic and gender-based violence are serious problems for women in MENA exacerbated by: poor legal literacy, cultural requirements that women must first seek authorisation from their male guardians before filing a complaint with the courts, laws that state a woman's testimony is inferior to that of a man, and proclaim the husband to be head of the family and that his wife is duty bound to obey him.<sup>17</sup> Added to this, the passing of new legislation in MENA is undermined by the traditionalist patriarchal prejudices of male judges.<sup>18</sup>

Progress in MENA is further impeded by the lack of an independent judiciary, democratic institutions and freedom of association and assembly.<sup>19</sup> Subsequently, women's rights groups face excessive restrictions in their efforts to organise and lobby the government in any meaningful way.<sup>20</sup> Moreover, research and data on the status of women in MENA is scarce which constrains the work of non-governmental organisations (NGOs) and activists. Essentially, new laws cannot guarantee rights for women in MENA if they are not accompanied by implementation and enforcement measures by state authorities working in cooperation with advocates and NGOs.<sup>21</sup> As stated by Englehart and Miller, rights for women are unavoidably intertwined with 'deeply ingrained cultural systems' that can seem very difficult and almost impossible to change.<sup>22</sup>

**Why it is Vital to Examine the Socio-Cultural Context:** The oppression of women existed long before Islam.<sup>23</sup> In fact, Judaism, Christianity and Islam all emerged into male dominated societies already shaped by endogamy, patrilineality and patriarchy.<sup>24</sup> Before Islam, endogamy, or marrying within a specific social group, clan, tribe or cast, was practiced to protect property, wealth and power, and to keep these within the group, as well as to preserve the group's existence and cohesion.<sup>25</sup> Intersecting with patrilineality, which describes when group membership and assets are passed down through the male line, it is men who constitute, socially reproduce and are the dominant, fixed points of such a social order.<sup>26</sup>

The significant social reproduction is from father to son, since only the boys remain in the lineage.<sup>27</sup> By contrast, daughters within a patrilineal framework hold very little value, since they are destined to leave their lineage through marriage.<sup>28</sup> They are constituted as the subordinate, moving parts, who marry and are unable to be economically viable without proximity to a man.<sup>29</sup> The influence of these pre-Islamic customary practices in Arabia, along with pre-existing Christian customs and Roman laws were strong, so that when Muslim family laws were eventually codified they represented a confluence of four Islamic schools (Hanafi, Maliki, Shafi'i and Hanbali), Western legal systems (French, Swiss and Belgian) and pre-Islamic/tribal customs which gave male kinship members extensive control over the lives of their female kinship peers.<sup>30</sup>

It can be convincingly argued that it is the socio-cultural context of religion which gives rise to gender discrimination and bias and that the practices of a religion, however pervasive, do not necessarily correspond to, or reflect the dictates of its holy books or scriptures.<sup>31</sup> The religions most widely spread across the globe are Christianity (2.1 billion) and Islam (1.3 billion) which more than half of the world's population claims affiliation to.<sup>32</sup> The five most influential religions are Christianity, Islam, Hinduism, Buddhism and Judaism (respectively), practiced by 75 % of the world's population.<sup>33</sup> Nevertheless, there are reported to be 4,300 religions worldwide divided into 'churches, denominations, congregations, religious bodies, faith groups, tribes, cultures, and movements'.<sup>34</sup> These statistics not only suggest a great variety of size and influence amongst the world's religions, they also indicate that a closer investigation would not only reveal similarity, parallels and equivalence, but also dissent, controversy and discord in the rendering and interpretation of their key religious precepts and doctrine. The socio-cultural backdrop is a determining factor in the application and implementation of religious attitudes towards gender equality. It is an aspect which needs to be foregrounded and critically evaluated in order to illuminate the ways it inflects jurisprudence and perpetuates gender inequality. Depending on time, place and socio-cultural context, the same holy book or scripture can be used to either support or condemn women's rights. For instance, both Christians and Muslims believe in gender equality before God; that in the eyes of their God both women and men are equal, and on this basis will be judged according to their deeds,<sup>35</sup> rather than their gender. Yet this belief becomes distorted when overlaid with traditional socio-cultural practices that are historically steeped in patrilineality and patriarchy, which in MENA states decree that women are subordinate and inferior to men and that their biologically determined future restricts them to bearing children and confinement to household chores and domestic duties. Typically, women are required to respect and obey male

<sup>14</sup> Kelly and Breslin (n 6).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

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

<sup>23</sup> Valentine M. Moghadam, 'Patriarchy in Transition: Women and Changing Family in the Middle East' *Journal of Comparative Family Studies* (2004) 137-162.

<sup>24</sup> Ibid.

<sup>25</sup> 'Endogamy', *Anthropology* <http://anthropology.iresearchnet.com/endogamy/> [accessed 17 August 2018]

<sup>26</sup> Monica Das Gupta et al., 'State Policies and Women's Autonomy in China, India, and the Republic of Korea, 1950-2000: Lessons from Contrasting Experiences' *SSRN* (2000) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=632567](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=632567) [accessed 14 September 2018]

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Moghadam (n 8).

<sup>31</sup> Samar El-Masri, 'Challenges Facing CEDAW in the Middle East and North Africa', *The International Journal of Human Rights* (2012) 16:7 931-946.

<sup>32</sup> Stephan Juan, 'What are the most practised religions of the world?' *The Register* 6 October 2006, [https://www.theregister.co.uk/2006/10/06/the\\_odd\\_body\\_religion/](https://www.theregister.co.uk/2006/10/06/the_odd_body_religion/) [accessed 2 September 2018]

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> El-Masri (n 9).

guardians who are appointed legal authority over their human rights and freedoms.

**The Patriarchal Model of Society Defined:** A 'patriarchal' society has been defined as one in which power is held by male householders.<sup>36</sup> In the private realm, the patriarch has power over the junior males, females and children who are 'subject to distinct forms of control and subordination'.<sup>37</sup> In the public realm, power is distributed amongst the male patriarchs in accordance with the existing social organisation and hierarchy.<sup>38</sup> Whereas most men expect to be patriarchs at a future time in their lives, access to power for females is very limited or non-existent; it is only possible via the male patriarchs who they might informally influence within the household or formally entreat where public office is concerned.<sup>39</sup> In classic patriarchy, women are a form of property exchanged by men, their 'honour' - virginity and chaste conduct - represents the honour of the family, and the labour that they produce - in the form of children - is considered the property of the male patriarchs.<sup>40</sup> Notably, in a patriarchal society there is a clear distinction between the public and private domains.<sup>41</sup> The family is an institution which is integral to the patriarchal model. Its biological kinship ties and women's reproductive capacities have conferred the status of 'essential' and 'natural' upon this social institution.<sup>42</sup> The nuclear family is a fundamental unit which serves two key functions within the patriarchal society, according to sociologist Talcott Parsons it, 1. socialises children into society's norms, values and status expectations, and 2. is tasked with providing a 'stable emotional environment' for the patriarch, to shield him from psychological damage occasioned by his forays into the 'alienating occupational world'.<sup>43</sup> Both roles are predominantly carried out by the female as a wife and a mother, while the male's role is to be a financial provider and disciplinarian.<sup>44</sup>

Interestingly, strict adherence to the complementarity of these gender stereotypical roles for men and women found within the patriarchal ideal of the family unites both Muslim and Western conservatives.<sup>45</sup> This was demonstrated in the 1990s which saw a coalition of conservative Muslims, Catholics and Protestants united over what they perceived as threats to 'family values'.<sup>46</sup> The alliance was formed to protest women's sexual rights at the UN International Conference on Population and Development (ICPD) in Cairo, 1994, and at the Fourth World Conference on Women (FWCW) in Beijing, 1995, and in addition, to stop 'the expansion of sexual and political protections' for gay people at the UN General Assembly on AIDS in New York, 2001.<sup>47</sup> Conservative fundamentalists emphasise biologically determined roles for males and females within a patriarchal family structure, where men are spiritual leaders and decision-makers and women are maternal, supportive and self-sacrificing, as part of 'God's

plan'.<sup>48</sup> Similarly, conservative religious groups, such as the 1990s coalition, habitually warn against family breakdown and extol the importance of family values during times of rapid social change, socioeconomic turbulence, or political upheaval.<sup>49</sup> They have been found to capitalise on times of social instability by romanticising a 'golden age of the family' in the past which society needs to return to for stability and harmony - a time that historians have yet been able to locate.<sup>50</sup>

**How Legislation Embeds and Strengthens the Patriarchal Society:** State policy, incorporating its legal framework, is integral to the strengthening or weakening of patriarchy.<sup>51</sup> When it comes to gender equality legislation can be used to either facilitate social change, or to maintain a status quo that 'subordinates women to the control of men'.<sup>52</sup> It is possible to see patriarchy in action in legislation in MENA regions which authorises women to seek permission from their father, husband, brother, son or other male guardian in order to marry, gain employment, file a law suit, start a business or travel.<sup>53</sup> It is also evident in legislation which decrees that marriage does not require the consent of the female party, only the male can divorce unilaterally (and without providing justification), women may not marry non-Muslims, marital rape is not a criminal act and when men who commit 'honour' crimes against women are frequently acquitted or receive leniency.<sup>54</sup> Furthermore, it is possible to see the lasting impact of patrilineality in MENA countries when children can only acquire citizenship and religious status from their father. These are just some common trends in family law and social policies in MENA, to be examined in more detail in this article, which demonstrate how archaic modes of social organisation have infiltrated state legal policies.

**CEDAW: A Convention to Guarantee Women's Rights Worldwide:** The Convention for the Elimination of Discrimination Against Women (CEDAW)<sup>55</sup> represented a first in the history of the international community, an acknowledgement of the importance of the creation and protection of formal and substantive rights for women.<sup>56</sup> It has been described as 'an international bill of rights for women'<sup>57</sup> and 'an agenda for action'<sup>58</sup> which cites women's rights to be human rights<sup>59</sup> and establishes a commitment to guaranteeing women worldwide the enjoyment of those rights.<sup>60</sup> Essentially, it foregrounds women - who constitute half of humanity - as 'the focus of human rights concerns'.<sup>61</sup>

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Moghadam (n 8) 138.

<sup>51</sup> Moghadam (n 8).

<sup>52</sup> Moghadam (n 8) 148.

<sup>53</sup> Moghadam (n 8).

<sup>54</sup> Ibid.

<sup>55</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>56</sup> Lauren Bock Mullins, *CEDAW: The Challenges of Enshrining Women's Equality in International Law*, *Public Integrity* (2018) 20:3 257-272

<sup>57</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women', *UN Women*

<http://www.un.org/womenwatch/daw/cedaw/> [accessed 26 August 2018]

<sup>58</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [accessed 29 August 2018]

<sup>59</sup> Mullins (n 14).

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>36</sup> Moghadam (n 8).

<sup>37</sup> Moghadam (n 8) 141.

<sup>38</sup> Moghadam (n 8).

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> As cited in Moghadam (n 8) 137.

<sup>44</sup> Moghadam (n 8).

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and entered into force as an international treaty on 3 September 1981,<sup>62</sup> with 189 state parties to date<sup>63</sup> it is one of the most ratified human rights treaties.<sup>64</sup> Comprised of a preamble and thirty articles, CEDAW acknowledges the persistence of 'extensive discrimination against women',<sup>65</sup> defines what constitutes it, and institutes national action to end it.<sup>66</sup> As stated in Article 2, it aims 'to condemn discrimination against women in all its forms, to pursue by all appropriate means and without delay a policy of elimination of discrimination against women'.

**Some Features of CEDAW:** The agenda for equality as specified in CEDAW's first fourteen articles covers an array of aggravating factors which have a marked effect upon the lived experience of women.<sup>67</sup> There is a pronounced emphasis on the legal status of women and their civil rights, their reproductive rights, as well as some of the cultural factors which unduly influence or bias gender relations.<sup>68</sup> In addition to these areas, the convention recognises that the historical oppression and systematic discrimination of women, which is embedded in cultures, is oftentimes 'reinforced by political and religious convictions'.<sup>69</sup> It is for this reason that the CEDAW has been praised for its noble ambitions in taking a multi-layered approach to gender equality.<sup>70</sup> Some of the provisions within CEDAW restate other earlier international conventions concerned with gender equality. Article 7 which deals with the equal participation of women in politics and public life, incorporating their eligibility to vote in elections and to hold public office, is a reiteration of the 1952 Convention on the Political Rights of Women.<sup>71</sup> Article 9, which calls attention to how a woman's legal status has often been compromised by marriagemaking her dependent on her husband's nationality rather than conceptualised as an individual in her own right,<sup>72</sup> mandates that a woman's marital status should not negatively impact her nationality or render her stateless, and is a provision which reinforces the 1957 Convention on the Nationality of Married Women adopted by the UN General Assembly.<sup>73</sup>

El-Masri argues that the public/private dichotomy of international law that speaks to the 'public' or official duties and activities of states, as opposed to the 'private' actions of individuals has been removed with CEDAW.<sup>74</sup> Formerly, in very few cases were the rights of individuals and groups the concern of international law,<sup>75</sup> rather they were viewed as the responsibility of the domestic laws of a state.<sup>76</sup> In contrast, CEDAW goes beyond human rights treaties which counsel governments to respect rights; it holds states responsible for gender discrimination within their boundaries regardless of whether this is as a result of state action, or by actions instigated by private organisations and individuals.<sup>77</sup> In this way, private acts have become a public concern.<sup>78</sup> Full compliance with CEDAW entails a rooting out of gender discrimination in the public, private, domestic and individual spheres.<sup>79</sup>

The subordination and oppression of women worldwide permeates and is perpetuated by laws, social relations and cultural traditions.<sup>80</sup> By demanding an end to gender discrimination that is undergirded by 'custom, practice, and religion', and mandating for formal and substantive gender equality at the legal, institutional and individual levels, CEDAW 'sets the bar high'.<sup>81</sup> As noted by Mullins<sup>82</sup> it is unique in connecting political rights to economic, social and cultural rights, an interplay that is expressed in its

**Article 13:** States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- The right to family benefits;
- The right to bank loans, mortgages and other forms of financial credit;
- The right to participate in recreational activities, sports and all aspects of cultural life.

**Article 16 of CEDAW:** CEDAW does not shy away from, what could be viewed as, culturally sensitive matters; Article 16 confronts equality in marriage, the family and family planning. Incorporated in this article is the provision that women are free to choose their marriage partner and to enter into marriage with their 'free and full consent' (Article 16: b). Women are to have equal rights and responsibilities 'during marriage and at its dissolution' (Article 16: c). They have the right to decide 'the number and spacing of their children' and are to be provided with access to information and education in the exercise and fulfilment of this right (Article 16: e). Moreover, child marriage is to have 'no legal effect'; a minimum age for marriage must be specified by states and underscoring this mandate it should be compulsory for all marriages to be registered in an official registry (Article 16: 2).

<sup>62</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

<sup>63</sup> Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Treaty Collection*, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg_no=IV-8&chapter=4&lang=en) [accessed 29 August 2018]

<sup>64</sup> Mullins (n 14).

<sup>65</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [accessed 26 August 2018]

<sup>66</sup> Convention on the Elimination of All Forms of Discrimination Against Women', *UN Women* <http://www.un.org/womenwatch/daw/cedaw/> [accessed 26 August 2018]

<sup>67</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [accessed 26 August 2018]

<sup>68</sup> Ibid.

<sup>69</sup> El-Masri (n 9) 932.

<sup>70</sup> Englehart and Miller (n 8).

<sup>71</sup> UN General Assembly, *Convention on the Political Rights of Women*, 20 December 1952, A/RES/640(VII)

<sup>72</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [accessed 26 August 2018]

<sup>73</sup> UN General Assembly, *Convention on the Nationality of Married Women*, 29 January 1957

<sup>74</sup> El-Masri (n 9).

<sup>75</sup> El-Masri (n 9) 932 cites as an exception the case of an injured citizen in a foreign state who 'gives his/her 'imputability', to transfer to it the legal attribution of this particular act to become its own act and hence responsibility'.

<sup>76</sup> El-Masri (n 9).

<sup>77</sup> Englehart and Miller (n 8).

<sup>78</sup> El-Masri (n 9).

<sup>79</sup> Englehart and Miller (n 8).

<sup>80</sup> Mullins (n 14).

<sup>81</sup> Englehart and Miller (n 8) 24.

<sup>82</sup> Mullins (n 14).

**Some Weaknesses of CEDAW:** Despite CEDAW's laudable foray into culturally sensitive domains, as an international legal document it has been criticised for possessing 'weak and vague provisions' and overlooking serious violations of women's rights in certain parts of the world.<sup>83</sup> It has been denounced for employing terminology that repeatedly asks states to take 'required' and 'appropriate' measures to eliminate gender discrimination, rather than 'necessary' ones.<sup>84</sup> The failure to precisely specify what these 'appropriate' measures are supposed to entail and leaving implementation solely to the discretion of states, has furnished state parties with an escape clause for postponing any modifications to their domestic laws - under the guise that these are simply not 'appropriate'.<sup>85</sup> Crucially, the word 'violence' is nowhere to be found in the text of the CEDAW.<sup>86,87</sup> Yet violence against women - particularly domestic violence within the private sphere - remains an 'epidemic of global proportions'<sup>88</sup> with severe effects on their physical, mental, emotional and social well-being.<sup>89</sup> In its 'first global systematic review of scientific data', the World Health Organisation reported in 2013 that 1 in 3 women throughout the world will experience 'physical and/or sexual violence by an intimate partner or sexual violence by a non-partner'.<sup>90</sup> Relatedly, CEDAW has also been accused of marginalising the experiences of non-Western women, as reflected in its failure to mention public stoning and flogging (the latter incorporating whipping, caning and lashing)<sup>91</sup> and female genital circumcision.<sup>92</sup>

**CEDAW and the 'Islamic Law' Manoeuvre:** It is no secret that women's rights in the Middle East are highly contested and hyper-politicised. Disingenuous appeals to women's rights have served all sorts of agendas in the Middle East, from the colonialist and neo-imperialist to the anti-colonialist and post-colonialist to the religious extremist.

**Ayesha S. Chaudhry:** 'Interrogating the "Shari'a" Excuse: Religious Reasoning, International Law, and the Struggle for Gender Equality in the Middle East' (2015:1). International organisations, such as the globally representative United Nations, which can exert international pressure on countries, should be sought after and relied upon for help in the achievement of women's rights in the Middle East, says Chaudhry.<sup>93</sup>

Conventions such CEDAW can be used as a platform for women's voices to be heard and their needs legitimised. They

<sup>83</sup> El-Masri (n 9) 937.

<sup>84</sup> El-Masri (n 9) 937.

<sup>85</sup> El-Masri (n 9).

<sup>86</sup> El-Masri (n 9).

<sup>87</sup> The UN General Assembly later adopted the Declaration on the Elimination of Violence Against Women, 20 December 1993 A/RES/48/104

<sup>88</sup> 'Domestic Violence as a Cause of Trafficking in Women', *Stop Violence Against Women*, The Advocates for Human Rights [http://www.stopvaw.org/Domestic\\_Violence](http://www.stopvaw.org/Domestic_Violence) [accessed 2 September 2018]

<sup>89</sup> Ibid.

<sup>90</sup> 'Global and Regional Estimates of Violence Against Women', *World Health Organisation* (2018)

<http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/> [accessed 2 September 2018]

<sup>91</sup> 'Stoning or Flogging of Women', *Stop Violence Against Women*, The Advocates for Human Rights [http://www.stopvaw.org/harmful\\_practices\\_stoning\\_flogging](http://www.stopvaw.org/harmful_practices_stoning_flogging) [accessed 2 September 2018]

<sup>92</sup> El-Masri (n 9).

<sup>93</sup> Ayesha S Chaudhry, 'Interrogating the "Shari'a" Excuse: Religious Reasoning, International Law, and the Struggle for Gender Equality in the Middle East', *Joint Learning Initiative on Faith and Local Communities* (2015) [https://jlicf.com/wp-content/uploads/2015/07/UAE-Paper\\_World-Bank.pdf](https://jlicf.com/wp-content/uploads/2015/07/UAE-Paper_World-Bank.pdf) [accessed 10 August 2018].

puts states in a position where they are publically called upon to decide whether they will sign and agree to its aims, or they are required to provide justification as to why they refuse to do so. Moreover, women's organisations working within states who have ratified CEDAW can use it to strengthen and support their work. They can petition the UN if its provisions are not being implemented by states who have ratified it.<sup>94</sup> It can also be used to provide external legitimacy to the work of women's groups who can cite the various articles within it, which cannot be so easily dismissed since it is endorsed by the international community and therefore has a reputational, image bearing cost attached to it.<sup>95</sup> Nonetheless, a ploy that has been used to great effect by Muslim majority countries in MENA to justify and preserve the patriarchy undergirding their laws, whilst simultaneously evading international censure, has been to declare that their domestic laws are in fact 'Islamic'.<sup>96</sup> As noted by Chaudhry, this claim performs several tactical functions. It silences attempts to criticise gender discriminatory patriarchal laws both at home (from their citizens) and abroad (from other nations).<sup>97</sup> A corollary of this is, any criticisms of these laws issuing from the global community can be met with accusations of Islamophobia, Western imperialism and Orientalism.<sup>98</sup> In this way, Muslim majority states in MENA are absolved of instituting any substantive reforms and can even go as far as to demand international respect and support for their gender discriminatory laws 'that purportedly stem from religious convictions'.<sup>99</sup>

Yet, it is pertinent to bear in mind that the majority of believers in Islam do not live in the Middle East,<sup>100</sup> and these many millions around the globe strongly condemn the gender discriminatory assertions that have been attributed to their religion by certain Muslim majority countries. In short, they do not believe that Islam or Islamic law discriminates against women.<sup>101</sup> It is their belief that the most archaic patriarchal and patrilineal renderings of Islamic law are deliberately being selected by the legislature of particular Muslim majority states, overriding alternative interpretations that reflect and can promote gender equality and substantive reforms in their societies.<sup>102</sup> Chaudhry refers to this as an 'interpretive monopoly' that women's rights groups in the Middle East are challenging on religious grounds and urges the international community to support them.<sup>103</sup> This international endorsement will not only supply these groups with external validation and visibility, but will also help to raise vital questions regarding the credibility of the rigid and inflexible claims that are being made about a 'complex, living religious tradition', and whether they are simply a guise to prohibit the reform of patriarchal legal structures.<sup>104</sup>

Fourteen countries cited 'Shari'a' or 'Islamic law' in their reservations to Article 16 of CEDAW without specifying which aspects of the article they are at odds with. It was only the UAE, who ratified the treaty on 6 October 2004, who

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid 2.

<sup>100</sup> Juan (n 9).

<sup>101</sup> Chaudhry (n 19).

<sup>102</sup> Ibid.

<sup>103</sup> Ibid 4.

<sup>104</sup> Ibid 4.

provided 'an extensive explanation' for using this religious justification<sup>105</sup> as follows:

**Article 16:** The United Arab Emirates will abide by the provisions of this article insofar as they are not in conflict with the principles of the *Sharia*. The United Arab Emirates considers that the payment of a dower 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 case in which she has been harmed.<sup>106</sup> As outlined earlier, Article 16 of CEDAW focuses on ending the discrimination of women in family law and marriage.<sup>107</sup> An examination of the UAE's explanation for their reservation in Article 16 may potentially offer valuable insight into the rationale behind the habitual appeals to the 'Shari'a' and 'Islamic law'.<sup>108</sup> It may also help to ascertain whether there is a relationship between these religious reservations and the gender discriminatory family laws to be found in certain countries.

Chaudhry believes that it is possible to make a correlation between 'using religion as a smokescreen' in justifying reservations to CEDAW's Article 16 and patriarchal interpretations of religious law.<sup>109</sup> In explanation, Chaudhry points to Israel and Singapore who also cited religious reasons for their reservations. In the case of Israel, Chaudhry describes how the Orthodox Jewish communities adhere to gender discriminatory, patriarchal interpretations of Jewish religious texts which have received heavy criticism from Jewish feminist circles.<sup>110</sup> With respect to Singapore, it maintains that the multi-racial and multi-religious make-up of its society and commitment to respecting 'the freedom of minorities to practise their religious and personal laws' makes it unable to apply Article 16.<sup>111</sup> In both cases there is overarching assumption that respect for religious beliefs and freedom usurp the international communities' quest for gender parity. This raises some intriguing questions surrounding why it is that religious beliefs can essentially be presented as diametrically opposed to gender equality in marriage and the family without raising any cause for concern.<sup>112</sup>

**Women's Rights in the UAE:** Every woman has our deepest appreciation. Every role a woman takes to contribute to society makes her a partner in building our nation. Shaikh Mohammed bin Rashid Al Maktoum Vice-President and Prime Minister of the UAE and Ruler of Dubai (*Twitter*, April 2014)<sup>113</sup>

A look at the UAE Embassy website depicts a country that is proud of its achievements in gender equality in education,

literacy, government and business.<sup>114</sup> The literacy rate of women in the UAE is 95.8% and 46% of university graduates in science, technology, engineering and mathematics are women.<sup>115</sup> Nine women serve in the UAE cabinet, including Shamma Al Mazrui, who in 2016 became the youngest minister to be appointed in the world at 22 years of age.<sup>116</sup> In 2015 it was announced that the UAE was to establish a Gender Balance Council, a government organisation appointed with increasing 'the role of women in leadership positions'.<sup>117</sup> Moreover, the Embassy website reports that the UAE is the first country in the region to enact legislation to ensure that there are female board members in every company and government agency.<sup>118</sup> Yet, there is evidence to suggest that these publicised initiatives on women's rights by the UAE, that the nation is invested in building as part of its global identity, are incongruous with the reality of gender discrimination that the majority of its female population endures.<sup>119</sup>

**The demographic make-up of women in the UAE has been divided as follows:**<sup>120</sup>

- UAE citizens
- Foreign professionals on temporary employment contracts
- The wives of foreign professionals on temporary employment contracts
- Migrant workers employed in the informal sector

The ability of the above four groups of women to gaining access to justice and exercising their rights is directly in accord with their position in UAE society.<sup>121</sup> This positioning incorporates: citizenship, nationality, occupation, political views and the political views held by their husbands and/or relatives.<sup>122</sup> It is also a reflection of their legal literacy and how informed they are of the rights available to them.<sup>123</sup> Based on this criteria, many professional Emirati women and those who belong to the ruling class enjoy free housing, health care, education, mobility and access to information,<sup>124</sup> whereas migrant workers employed in the informal sector are amongst the most deprived and vulnerable women residing in the UAE, with fewer benefits, rights and protections.<sup>125</sup> The exploitation of the latter continues despite the signing of a new labour rights bill specifically for domestic workers – of which women comprise the largest majority - in September 2017 by the president.<sup>126</sup> Nevertheless, regardless of the disparity in social

<sup>114</sup> 'Women in the UAE', *Embassy of the United Arab Emirates*, <https://www.uae-embassy.org/about-uae/women-uae> [accessed 2 September 2018]

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> 'Musawah Thematic Report on Article 16 & Muslim Family Law United Arab Emirates', *Musawah* November 2015. <http://www.musawah.org/sites/default/files/MusawahThematicReportUAE62-ilovepdf-compressed.pdf> [accessed 2 September 2018]

<sup>120</sup> Serra Kirdar, 'United Arab Emirates' *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* Freedom House (2010) <https://freedomhouse.org/report/women039s-rights-middle-east-and-north-africa/womens-rights-middle-east-and-north-africa-2010> [accessed 7 August 2018]

<sup>121</sup> *Ibid.*

<sup>122</sup> ICJHR (n 23).

<sup>123</sup> Kirdar (n 24).

<sup>124</sup> ICJHR (n 23).

<sup>125</sup> Kirdar (n 24).

<sup>126</sup> Although the bill includes one weekly rest day, 30 days paid annual leave, sick leave and 12 hours per day for rest, it still does not prohibit employers

<sup>105</sup> *Ibid.* 4.

<sup>106</sup> Reservations to CEDAW', UN Women, United Nations Entity for Gender Equality and the Empowerment of Women', <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> [accessed 2 September 2018]

<sup>107</sup> Chaudhry (n 19).

<sup>108</sup> Chaudhry (n 19).

<sup>109</sup> Chaudhry (n 19) 5.

<sup>110</sup> Chaudhry (n 19).

<sup>111</sup> *Ibid.* 6.

<sup>112</sup> Chaudhry (n 19).

<sup>113</sup> 'End All Injustice Against Women in the United Arab Emirates', *International Centre for Justice and Human Rights (ICJHR)*, October 2015 [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARE/INT\\_CEDAW\\_NGO\\_ARE\\_21873\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARE/INT_CEDAW_NGO_ARE_21873_E.pdf) [accessed 2 September 2018]

standing represented across these groups of women, as shall be described in the next sections, in comparison to their male counterparts all of them are constituted in law as second-class citizens.

**The UAE Constitution and Gender:** The UAE is governed by Islamic law, or *Shari'a*, which encompasses personal status and family laws (and some criminal activities), and civil law which incorporates criminal, civil and commercial law.<sup>127</sup> The UAE Constitution provides the political and constitutional organisational framework for the country.<sup>128</sup> It was established in December 1971 and permanently adopted in May 1996.<sup>129</sup> It contains 152 articles which are divided into ten categories.<sup>130</sup> Article 25 which is listed under Part III in the provisions for 'Public Freedom, Rights and Duties' states:

All persons are equal before the law, without discrimination between citizens of the Union in regard to race, nationality, religious belief or social status.<sup>131</sup> In the above article that foregrounds the equality of '[a]ll persons', a legal prohibition of discrimination based on gender is not explicitly mentioned as a criterion.<sup>132</sup> In fact, there is no mention of gender equality in the Constitution, neither are there any laws or policies with the express purpose of eliminating discrimination based upon gender.<sup>133</sup> The word 'gender' is not mentioned in the UAE Constitution and all other national laws omit this important identifying category.<sup>134</sup> The Constitution socially identifies women as wives and mothers, rather than autonomous agents and citizens in their own right. Furthermore, Article 8 states, 'No citizen of the Union may be deprived of *his* nationality nor may *his* nationality be withdrawn...' (emphasis added) along with Articles 26 and 34 these statements depict the citizen of the UAE Constitution as a man. When taken all together the net result is that the Constitution can be said to be upholding and reinforcing traditional gender roles for men and women that are emblematic of patriarchy, rather than promoting gender equality.<sup>135</sup>

**The UAE's Personal Status Law No. 28 of 2005 and Marriage:** The Personal Status Law or Muslim Family Law or has been referred to as the key 'index of social change in the Middle East, a barometer of the internal debate with Islam... and highly indicative of the role of the state and state legal policy in matters of gender and the family'.<sup>136</sup> The Personal

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from offloading recruitment expenses, compensation for termination of employment without breach of contract and return ticket home onto the already economically disadvantaged migrant worker, as explained in 'Human Rights Watch Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report 62<sup>nd</sup> Session', *Human Rights Watch*, February 2015 <https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report> [accessed 2 September 2018]

<sup>127</sup> Kirdar (n 24).

<sup>128</sup> The Constitution, *Government.ae*, The Official Portal of the UAE Government (August 2017) <https://www.government.ae/en/about-the-uae/the-constitution-of-the-uae> [accessed 3 September 2018]

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> 'United Arab Emirates, 1970 (rev. 2009)', *Constitute* [https://constituteproject.org/constitution/United\\_Arab\\_Emirates\\_2009?lang=en](https://constituteproject.org/constitution/United_Arab_Emirates_2009?lang=en) [accessed 3 September 2018]

<sup>132</sup> ICJHR (n 23).

<sup>133</sup> Kirdar (n 24).

<sup>134</sup> ICJHR (n 23).

<sup>135</sup> Ibid.

<sup>136</sup> Moghadam (n 8) 147.

Status Law No. 28 of 2005<sup>137</sup> represented the first codification of personal status issues in the UAE.<sup>138</sup> It regulates family matters, incorporating marriage, divorce and child custody concerns.<sup>139</sup> It is based on the Maliki School of Law in Sunni Islam and is influenced by the Egyptian code and French civil law.<sup>140</sup> Enacted in November 2005, it was heralded as a positive development for the advancement of women's rights; issues that were somewhat precariously dependent on an individual judges' interpretation of the *Shari'a*,<sup>141</sup> were now delineated and unequivocally fixed in law. However, as noted by Kirdar, certain provisions of the Personal Status Law 'simply codify pre-existing inequalities',<sup>142</sup> such as Article 55 and 56 in Chapter Six which state<sup>143</sup>:

#### Article 55

##### Rights of the wife towards her husband

- Alimony.
- Non-obstruction to complete her education.
- Non-opposition to visit her ascendants, descendants and brothers.
- Non-interference with her personal properties.
- Non-infliction of bodily or moral prejudice to her.
- Equitable treatment between her and the other wives, in case the husband has taken more than one wife.

#### Article 56

##### Rights of the husband towards his wife:

- Willful obedience.
- House supervision and preservation of its contents.
- Suckling his children from her unless there is an impediment.

As delineated above, the rights and responsibilities of women and men are codified as complementary in law.<sup>144</sup> Husbands have the right to demand 'willful obedience' from their wives in return for providing them with a dowry and financial support.<sup>145</sup> In practice, this complementarity does not lead to equity in rights and responsibilities.<sup>146</sup> A wife's failure to obey, or *nushuz*, could result in her losing her right to financial maintenance, whereas a husband's failure to fulfil his duty as a provider does not forfeit his right to demand obedience from his wife.<sup>147</sup> Moreover, women who are financial providers of the family do not as a consequence gain the rights, privileges

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<sup>137</sup> *United Arab Emirates Ministry of Justice*, Federal Law No. 28 of 2005, 'Personal Status, Federal Law No. 28 of 2005' <https://elaws.moj.gov.ae/engLEGL.aspx> [accessed 2 September 2018]

<sup>138</sup> Ibid.

<sup>139</sup> Musawah (n 24).

<sup>140</sup> Ibid.

<sup>141</sup> Kirdar (n 24).

<sup>142</sup> Ibid.

<sup>143</sup> *United Arab Emirates Ministry of Justice*, Federal Law No. 28 of 2005, On Personal Status, 'Book One: Marriage' <https://elaws.moj.gov.ae/engLEGL.aspx> [accessed 2 September 2018]

<sup>144</sup> Musawah (n 24).

<sup>145</sup> Chaudhry (n 19).

<sup>146</sup> Musawah (n 24).

<sup>147</sup> Ibid.

and authority accorded to men in the same role.<sup>148</sup>This arrangement has been described as the ‘maintenance-obedience formula of the classical legal framework in Muslim family law’ which perpetuates other forms of gender discrimination in law and practice, including the normalisation of a variety of forms of physical, emotional, sexual and financial coercion.<sup>149</sup> Closer scrutiny of the marriage arrangement reveals the imposition and assignment of essentially patriarchal roles to UAE men and women. It is Chaudhry’s opinion that underpinning this legislative framework is the assumption that men carry a financial burden upon marriage which is counterbalanced by the power they are permitted to wield over their wives and family.<sup>150</sup> Women on the other hand are presented in UAE law as gaining financial independence and security through the marriage contract. According to Personal Status Code 56, men are given ‘guardianship over the family’; a privilege that is only awarded to men, women cannot be guardians.<sup>151</sup>Men have the right to unilaterally divorce their wives, whereas women can only do so on condition that they can provide evidence of ‘harm’ in a judicial court.<sup>152</sup> In the Personal Status Codes men are spoken of as being rational and in control of their emotions, whereas women are dependent wards who relinquish their rights to freedom of movement, association and decision-making in the family through marriage.<sup>153</sup>A further point to note is, the fact that women can only exit marriages on demonstration of *harm* implies that there is a high possibility that the power over women that men obtain and exert in marriage is likely to be abused.<sup>154</sup>

**UAE Law and Violence Against Women:** The UAE provides little, to no, robust mechanisms in law for gender-based violence against women and girls, including: domestic violence, rape and marital rape.<sup>155</sup>The UAE legislative framework neglects to demarcate the responsibilities and obligations of the police, courts and government agencies in effectively handling these abuses.<sup>156</sup> What this effectively means is that female victims are deprived of a duty of care at an incredibly traumatic time. A 2013 report that recorded 507 cases of physical attacks and verbal insults by husbands abusing their wives did not contain details of any convictions.<sup>157</sup> A 2014 report revealed that domestic violence in Abu Dhabi had tripled.<sup>158</sup> In spite of these occurrences, there are no independent women’s rights organisations in the UAE who could help lobby the government for change.<sup>159</sup>

Marital rape is not deemed a crime in the UAE, rape is defined as occurring only if it can be proved with highly improbable

evidence, or if the victim is under fourteen years old.<sup>160</sup>Since sexual intercourse outside of marriage is prohibited and punishable with a one year prison sentence, women who have been sexually assaulted or raped are afraid of reporting these crimes for fear they will be convicted and sentenced for either committing *azina* offence<sup>161</sup> or ‘indecentcy’ under Article 356 of the Penal Code, which in some cases has resulted in the punishment of stoning or flogging.<sup>162</sup> A survey of 323 women in the UAE found that half would not report a rape to the police as they were concerned that it would result in them being put on trial.<sup>163</sup> Dubai police reported that only 9.5% of sexual assaults are reported.<sup>164</sup> This state of affairs is also attributable to prevailing social mores.<sup>165</sup> Police, prosecutors and the courts scrutinise the character of the rape survivor who may also face social ostracism and rejection by their family for tainting the family honour, name and reputation.<sup>166</sup>Essentially, by being treated as criminals women are systematically having their fundamental right to due process of law as rape victims violated.<sup>167</sup> Foreign domestic workers who are confined within the households of their employers with little, to no access to the outside world, are very vulnerable to a wide range of physical and sexual abuses.<sup>168</sup> Many endure these assaults on a daily basis for fear of deportation and due to their dependence on their employers for food, shelter and finances to support themselves and/or their families in their countries of origin.<sup>169</sup> Those who dare to seek redress are faced with many legal and practical hurdles, the result of a lack of effective recourse mechanisms and procedures,<sup>170</sup> and discrimination based on their gender, class, nationality and immigration status.<sup>171</sup>

**UAE Law and Citizenship:** It is possible to see the modern-day operation of patriarchy in the laws governing UAE citizenship. The Emirati woman cannot transfer her citizenship to her foreign husband unless permission has been sought and granted by the Presidential Court.<sup>172</sup> No such formal undertakings or special authorisations are required for an Emirati man. By contrast, the UAE man need only present proof of his nationality, a copy of his non-national wife’s passport accompanied by their marriage certificate, and within 24 hours their marriage is legitimised by the state.<sup>173</sup>Furthermore, should the Emirati woman have any children with her foreign husband, the children will ‘have no claim to UAE citizenship’, whereas, citizenship is automatically conferred upon the children of the Emirati man and his foreign wife, regardless of whether he divorces his

<sup>148</sup> Ibid.

<sup>149</sup> Musawah (n 24) 7.

<sup>150</sup> Chaudhry (n 19).

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> ‘Women’s Rights in the UAE’ *International Campaign for Freedom in the United Arab Emirates (ICF UAE)*, 16 October 2017 <http://icfuae.org.uk/issues/women%E2%80%99s-rights-uae-0> [accessed 5 September 2018]

<sup>156</sup> ‘Human Rights Watch Submission to the CEDAW Committee of the United Arab Emirates’ Periodic Report 62<sup>nd</sup> Session’, *Human Rights Watch*, February 2015

<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report> [accessed 5 September 2018]

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> ICF UAE (n 30).

<sup>161</sup> Ziba Mir-Hosseini, ‘Criminalizing sexuality: zina laws as violence against women in Muslim contexts’, *SUR-Int’l J. on Hum Rts.* 15 (2011): 7.

<sup>162</sup> ‘Human Rights Watch Submission to the CEDAW Committee of the United Arab Emirates’ Periodic Report 62<sup>nd</sup> Session’, *Human Rights Watch*, February 2015

<https://www.hrw.org/news/2015/02/17/human-rights-watch-submission-cedaw-committee-united-arab-emirates-periodic-report>

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> ICF UAE (n 30).

<sup>169</sup> ICF UAE (n 30).

<sup>170</sup> ICJHR (n 23).

<sup>171</sup> ‘United Arab Emirates Events of 2017’ *Human Rights Watch*, 2018 <https://www.hrw.org/world-report/2018/country-chapters/united-arab-emirates> [accessed 29 August 2018]

<sup>172</sup> Kirdar (n 24).

<sup>173</sup> Ibid.

wife or even dies.<sup>174</sup> As a result of this gender disparity, it has been recommended that the law governing UAE nationality is amended so that Emirati women obtain the same rights as Emirati men enabling them to transfer UAE citizenship to their spouses and children.<sup>175</sup><sup>176</sup>

**Freedom of Movement and Women in UAE Law:** Article 29 of the Constitution states, '[f]reedom of movement and freedom of residence shall be guaranteed to citizens within the limits of the law'.<sup>177</sup> Yet once again, the citizens that are referred to here are *men* since in reality women are prohibited from travelling outside the UAE without permission from their husbands or male guardians.<sup>178</sup> Travel bans are common; men of any nationality can impose them on their wives and children.<sup>179</sup> A man can confiscate the passports of any of the women and girls in his household and he will not be challenged for his illegal behaviour by any government institutions.<sup>180</sup> With regard to female migrant domestic workers, this action was deemed illegal on September 2017 since it perpetuated their exploitation by ruthless employers and forced many of them to endure situations of involuntary servitude due to their inability to leave the country or abscond. However, the implementation of the September 2017 law still remains uncertain. Social customs dictate that matters involving the private sphere are to be dealt with by the male patriarchs. On account of this, women are strongly discouraged from seeking legal protection from the public sphere, and the fact that it is male dominated means it is highly likely that they will encounter a man in a position of authority who will disregard their testimony in favour of their male guardian/employer. This is corroborated by the fact that according to the Hanbali school of Shari'a a woman's testimony in a criminal matter 'is equal to only half of a man's'.<sup>181</sup>

Ultimately, the state can choose to use family law to place greater restrictions on women or to deploy social policies and laws that promote equality within the family and can improve the social and economic status of women.<sup>182</sup> Chaudhry indicts the UAE's choice and utilisation of 'patriarchal family laws' as follows: The UAE's entire legal structure related to family life, marriage, and divorce discriminates against women and disempowers them in precisely the ways in which Article 16 of CEDAW seeks to protect and empower them. However, by citing "shari'a" as the source of their reservation to CEDAW, the UAE is attempting to evade international pressure to reform their domestic laws, all the while continuing to uphold patriarchal family laws that systematically disenfranchise women. This disenfranchisement makes them vulnerable not only financially, but physically as well.<sup>183</sup> On account of the discrimination and disempowerment perpetuated by family

laws which continue to uphold patriarchy, it is a historically contested and debated area that feminist organisations, Islamists, and neopatriarchal states have battled to influence.<sup>184</sup> Family codes are a priority of women's organisations who demand that it be modernised in their push for 'women's rights and full citizenship'.<sup>185</sup>

**The Need for Reform:** The Qur'an introduced numerous reforms to many of the existing gender discriminatory cultural practices in pre-Islamic society.<sup>186</sup> These reforms included outlawing female infanticide and entitling women to marriage contracts, to own and inherit property, to retain control of their wealth, and to receive shares in inheritance.<sup>187</sup> It has been argued that if this trajectory of reform had continued uninterrupted and had carried forward to reflect the changing times and contexts 1400 years later it could have led to gender equality in all areas.<sup>188</sup> There are Muslim scholars who have offered new progressive, egalitarian, interpretations of the Qur'an.<sup>189</sup> These readings unreservedly advance the belief that God created all humans equal to one another; there is no superiority, discrimination or privileging where sex and gender is concerned.<sup>190</sup> As Chaudhry states, men do not become 'pseudo-deit[ies]' in their relationships as husbands to their wives as doing so would compromise and contravene the monotheism that is a distinctive feature of Islamic theology.<sup>191</sup> These scholars take into account the socio-economic context of seventh century Arabia which depict men as authoritative and physically abusive disciplinarians and recognise the ways in which this medieval patriarchal backdrop, from out of which the Qur'an emerged, would have inevitably coloured subsequent translations of it.<sup>192</sup> In formulating their alternative readings of the Qur'an with respect to inter-familial gendered relationships, these contemporary scholars emphasise mutual consultation, problem-solving and activities and behaviours that can strengthen bonds between a wife and her husband.<sup>193</sup>

Although it may seem radical to some, reforming laws which are archaic, outmoded and harmful to large numbers of the populace is not new. As stated by Chaudhry, the practice of updating laws and bringing them in line with the contemporary social context has been employed in the UAE for decades.<sup>194</sup> Indicative examples are:

- Outlawing slavery; this was a permissible institution in medieval Islam.<sup>195</sup>
- Allowing full engagement with global finance; interest-bearing profits from financial transactions were prohibited in medieval Islam.<sup>196</sup>

1. Setting and increasing the minimum marriage age to eighteen; this (in the instances where it was set) was formerly six years of age.<sup>197</sup> What the above examples demonstrate is

<sup>174</sup> Ibid 519.

<sup>175</sup> Ibid.

<sup>176</sup> In 2012, it was announced that 1117 children of Emirati women married to foreign men were to be granted citizenship at 18 years of age. These were children who 'satisfied requirements for citizenship'.

see Shane McGinley, '1,117 'foreign' children granted UAE citizenship', *Arabian Business* (20 February 2012)

<https://www.arabianbusiness.com/1-117-foreign-children-granted-uae-citizenship-446111.html> [accessed 2 September 2018]

<sup>177</sup> Kirdar (n 24).

<sup>178</sup> Ibid.

<sup>179</sup> Musawah (n 24).

<sup>180</sup> Kirdar (n 24).

<sup>181</sup> Ibid 520.

<sup>182</sup> Moghadam (n 8).

<sup>183</sup> Chaudhry (n 19) 13.

<sup>184</sup> Moghadam (n 8).

<sup>185</sup> Ibid 147.

<sup>186</sup> Musawah (n 24).

<sup>187</sup> Moghadam (n 8).

<sup>188</sup> Chaudhry (n 19).

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

that religious communities do and can exercise agency in their interpretation of divine texts. Islamic law is not fixed or static. Religious reasoning can be used to eliminate harmful discriminating behaviour and to promote equality by employing responsible readings of Islamic law that are fully cognizant of the consequences for *all* members of society. If the UAE has chosen to amend its laws on slavery, financial transactions and child marriage, it can choose to address gender discrimination by altering its existing patriarchal legal structure and building an infrastructure of jurisprudence designed to develop and promote gender equality in marriage and family law.<sup>198</sup> In this way, the UAE will set a precedent among several of its Muslim majority contemporaries by spearheading gender equality family laws and in decades to come will be viewed as a leader in breaking away from the classical legal traditions which allowed for the mental, emotional, psychological and physical violence against residents in their country simply because they happened to be assigned female at birth.<sup>199</sup>

**A Call for Enhanced Religious Literacy:** Formal and substantive legal reform in the UAE and other Muslim majority states does not end there; the international community has a greater part to play in the development of legislation for women's rights in these countries. Instead of shutting down the question of gender equality, when religion is used to perpetuate discrimination against women this should present the opportunity for greater religious literacy and learning to urgently critique and problematise such a standpoint. Appeals to 'Islamic law' and 'Shari'a' should be knowledgeably challenged and debated using religious, legal and human rights discourses and by engaging with the expertise of Muslim women's groups and scholars who are already advocating for gender equality.<sup>200</sup> Musawah, a 'global movement for equality and justice in the Muslim family' are one group of many who provide alternative arguments within Islamic legal theory to challenge the monolithic way that Islam is used to justify discrimination and the non-implementation of provisions within international human rights treaties.<sup>201</sup> They have suggested recommendations for reform based on good practices already in place within Muslim contexts.<sup>202</sup> Examples of these supplied by Musawah with respect to marriage and male guardianship include:<sup>203</sup>

**Kyrgyz Republic:** Article 22 of the Family Code stipulates that women and men have the same rights and duties in marriage, and spouses should care for each other and develop their own abilities.

**Morocco:** The Moroccan Family Code, or *Moudawana*, specifies the 'mutual rights and duties' between spouses, including both the wife and the husband assuming the responsibility of managing and protecting household affairs, and the children's education and consultation on decisions.

**Uzbekistan:** The Family Law Code envisages family relations based on mutuality and equality, with mutual support and responsibility of all family members, and the unhindered enjoyment by family members of their rights.

**Bangladesh, Pakistan, Sri Lanka:** A guardian, or *waliis* not required for women who have reached puberty.

**Kyrgyz Republic, Turkey, Uzbekistan:** A *wali* is not required.

**Morocco:** A woman gains the capacity to contract her own marriage at the age of majority.

**Tunisia:** Both husband and wife have the right to contract their marriage themselves, or to appoint proxies. The consent of a *wali* is not required, provided that both husband and wife are of the legal age of consent. In addition, Musawah believe that Qur'anic principles of justice '*adl*, equality *musawah*, dignity *karamah* and love and compassion *mawaddah wa rahmah* should eclipse the codification of gender discriminatory rights and responsibilities in marriage and the family.<sup>204</sup> They suggest a democratisation of how Islam is 'understood, practiced, and codified in law' which reflects the views and lived realities of Muslim women who should rightly be a party to the shaping of interpretations, norms and laws that affect their lives.<sup>205</sup> Without this input, interpretation will continue to be confined to the most conservative forces within Islam.<sup>206</sup>

## Conclusion

This analysis has shown that although the UAE has made a number of appreciable strides and now has women visible in the public realm of education, government and business, these are overshadowed by what is legally sanctioned in the private realm of marriage and the family. The evidence presented herein has shown this to be very significant for two reasons:

1. The family is integral to the maintenance of a society that is based on the patriarchal model with its gender stereotypical maintenance/obedience formula of complementarity for men and women. The family is where a plethora of abuses are found to be committed against women, including spousal abuse, domestic violence, rape and marital rape. As an institution that socialises children into society's norms and values, it is easy to see how these dangerous behaviours become normalised for and perpetuated by future generations. This investigation has shown how the UAE Constitution and Personal Status Codes strengthens a patriarchal framework, hence why it is unsurprising that they do very little to provide women with robust provisions, mechanisms and procedures in law and state policy against the systematic oppression, subordination and discrimination which they are subjected to. Added to this scenario, the UAE is a party to CEDAW, a convention which explicitly incorporates both the public and private life of women. Its Article 16 specifically directs attention to marriage and family life and the entire convention calls upon states to amend their domestic legislation so that it is fully compliant with CEDAW in upholding, creating and protecting formal and substantive rights for women. However, reservations entered into Article 16 by the UAE and other MENA states veto these multi-faceted provisions on the basis of Islamic Law. As a result, this article formulated a critique of these religious appeals to question their validity and plausibility. It has sought to explicate how very narrow and conservative interpretations of Islamic Law are heavily influenced by pre-Islamic patriarchal modes of social

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Musawah (n 24).

<sup>202</sup> Ibid.

<sup>203</sup> Musawah (n 24) 10, 12.

<sup>204</sup> Musawah (n 24) 9.

<sup>205</sup> Musawah (n 24).

<sup>206</sup> Ibid.

organisation and in essence are utilised to prevent women from receiving their human rights in UAE jurisprudence. The findings contained within this study suggest that contemporary Muslim societies are a complex configuration of Islam, politics, law and gender that demand the transformation of archaic discriminatory laws and practices.<sup>207</sup> It has highlighted the importance of garnering alternative visions of Islam which embrace women's rights; this is a matter of urgency in countries where it is used as the source of culture, tradition, public policy and law.<sup>208</sup> It is therefore recommended that the international community become religiously literate and work with Muslim women's right groups and scholars to gain the skills necessary to critique and debate patriarchal interpretations of Islamic Law with the objective of positively reforming it and its discriminatory practices for half of the population in the UAE, and other MENA countries, who are women.

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