Women oppressed in the name of culture and religion

Saudi Arabia and the Convention on the Elimination of All Forms of Discrimination Against Women

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Abstract

In Saudi Arabia women are legal minors who need permission from a male guardian in, among others, matters concerning education, employment and health care. Despite the obvious subordination of women in the country, Saudi Arabia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women, with a reservation saying that in cases of contradiction between the Convention and Islamic law they do not obligate themselves to follow the rules of the Convention. Respecting the culture, tradition and religion of non-western societies is important in the work with implementing international human rights. However, in the case of Saudi Arabia, it seems like the cultural and religious claims merely function as justification of an institutional oppression of women. This institutional practice of oppression is unique and taken to the extreme, but oppression of women in itself is a global phenomenon, which is not connected to a specific culture.

Key words: Saudi Arabia, CEDAW, women’s rights, Feminism, Cultural Relativism, Islamic law
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1 Introduction

Human rights have been declared universal but despite this member States formulate dubious and sometimes contrarious reservations to the human rights treaties. The Convention on the Eliminations of All Forms of Discrimination Against Women (hereinafter referred to as CEDAW) is highly affected by reservations, which indicates that there is an existing friction concerning the human rights as universal. In many of these reservations, cultural and religious arguments are presented as reasons for non-committance to certain articles. Saudi Arabia ratified CEDAW in 2000 with a general reservation saying that in cases any terms of CEDAW contradict with Islamic law they are under no obligation to commit to those terms. The Kingdom of Saudi Arabia is unique in their extreme practice of an institutional separation of the sexes in where women are the most underprivileged. Women are legal minors depending on male guardians in decisions concerning employment, education and access to health care. They are not permitted to travel inside the state or outside without permission or the company of a male relative and women are not allowed to drive cars. These are just a few examples of restrictions, claimed to be based on religious and cultural beliefs that deprive the Saudi women of their human rights and freedoms. Having in mind the situation of the Saudi women and the fact that CEDAW states that all discrimination of women shall be eliminated, complications occur when reservations are justified with religious and cultural arguments. Within the international human rights system cultural and religious diversity must be taken into consideration. However, due to the fact that oppression of women is not something unique for particular societies but rather a global and historical phenomenon, it might be important to sometimes look at certain religious and cultural practices with hesitant eyes and even question the actual connection between particular practices and religion. Since the Saudi women are prevented from a meaningful participation in public life, one might also question the representation and the interests behind these claims. The Committee of CEDAW meets Saudi Arabia’s reservation to CEDAW with skepticism but there seem to be an absence of stronger condemnations.

1.2 Aim and research questions

In this thesis we aim to look closer at how oppression of women is legitimized by cultural and religious arguments. We have chosen to analyse how the religious and cultural claims are used by the Saudi Arabian Government in defending the upholding of an institutional
oppression against women. In addition, we shall investigate how these claims are received by the international community which in this case is represented by the CEDAW Committee. Saudi Arabia will stand as example for our study due to the fact that they are unique in their practice of gender separation and their treatment of women as legal minors. A systematic oppression of women permeates the entire Saudi Arabian society and the purpose of this paper is to analyze the connection between religion/culture and the oppression and subordination of the Saudi women. The questions we shall try to answer in this thesis are:

- Are culture and religion legitimate reasons for depriving women of their human rights?
- In the dialogue between Saudi Arabia and the CEDAW Committee, how are these cultural/religious arguments as reasons for reservations presented and accepted?
- What is the actual relation between religion/culture and these claims?

1.3 Method and Material

Our paper is a case study of Saudi Arabia in which we use two theories to analyze the issue of cultural and religious claims for non-commitance to certain provisions of women’s human rights. By looking at the actual situation of women in Saudi Arabia, the arguments presented by the Saudi Arabian representatives and the response from the CEDAW Committee we aim to illustrate the complexity of religious reservations made on women’s rights. Our study is based on legal documents and documented material from the dialogue between the Saudi representatives and the CEDAW Committee. In addition, secondary and primary material has been used, such as international literature, reports from NGO’s, domestic legal documents and international legal documents and treaties. The books we have chosen to use are written by experts within the subjects but we are aware of the fact that these authors’ personal opinions may shine through in some parts.

1.4 Delimitations

In our thesis, Saudi Arabia and Islam stand as examples in the dialogue concerning reservations made with cultural and religious references and the response from the international community, represented by the Committee of CEDAW. We have chosen to use the Kingdom of Saudi Arabia for our study because of its unique application of an institutionalized gender separated system in which men and women are segregated as much as
possible and where women are the most exposed and underprivileged, seen as the inferior sex. For that reason we focus on the women’s situation in Saudi and on the dialogue under the Convention on the Elimination of All Forms of Discrimination Against Women. We are aware of the fact that cultural and religious references are used in other matters, as well by representatives of other religious beliefs. Yet, in the light of the many reservations to CEDAW made by Muslim countries invoking Islamic law we have chosen to look closer at Saudi Arabia’s reference to Islamic law and their specific culture as reasons for their reservation. Due to the complexity of Islamic law and the possibilities for different interpretations of Shari’ah we are not to formulate a legal analyze on Islamic law and the Saudi interpretation of Shari’ah.

1.5 Chapter outline

This thesis is divided into nine chapters. In the second chapter our two theories are presented together with an explanation of the choice of theories. Chapter three contains facts about CEDAW, the Committee of CEDAW and the regulations on reservations of the Convention. The fourth chapter discusses the legal and political system in Saudi Arabia. In the fifth chapter the situation of women in Saudi Arabia is described in connection to health, education, employment and the male guardianship. Chapter six starts with a description of the Saudi reservation to CEDAW and is followed by a review of the dialogue between the representatives of Saudi Arabia and the Committee of CEDAW. In chapter seven we have chosen to divide our analysis into three parts in where we discuss our research questions. The eighth chapter consists of conclusions drawn from our analysis. The ninth and final chapter consists of our thoughts about future research connected to our thesis.

2. Theoretical frameworks

As analytical tools for this study we use feminism and cultural relativism. We are aware of the fact that some feminist scholars agree with some cultural relativist standpoints, therefore we have chosen to use cosmopolitan feminism since it stands for a belief in the universality of women’s rights and freedoms represented by CEDAW and because of its ideas about fundamentalism and cultural relativity. The choice of theories is made with the intentions to create a discussion based on the tension between women’s rights and religious and cultural claims. We are aware of the fact our theory of cultural relativity mostly is based on facts represented by critics of cultural relativism. The reason for this is that we had problems
finding cultural relativist writers with a substantial discussion concerning the issue of women’s rights and religious and cultural autonomy.

2.1 Cultural relativism and women’s human rights

Cultural relativism developed within the field of moral philosophy and anthropology. There are a variety of relativist standpoints but in general cultural relativists lean on the comprehension that there are no universal standards. Principles, values and practices are culturally bound and there are no universal norms upon which cultures may be judged. In the rejection of the legitimacy to use foreign values to judge cultures, cultural relativists are particularly sensitive about the use of western standards when judging non-western societies. Among the most criticized aspects of international human rights is its individualism, which is considered a western way of thought, not applicable on most non-western societies. The most radical cultural relativists identify international human rights as distinctively western values. They reject the universality of all human rights and argue that the forcing of these principles upon third-world societies are actions of ethnocentrism and imperialism (Mayer 2007:9). More common are a rejection of a particular right, a specific content or the interpretation of certain rights. Cultural relativists may even recognize rights with all its parts, but reject the accusation of certain cultural practices to be violations of these rights (Brems 1997:143-144).

The deepest division between human rights activists and cultural relativists appears within the field of women’s rights. This is particularly true when it comes to cultures based on religion. Since women in many cases are central to the definition of cultural identity and serve as spiritual guardians, the control over women’s position becomes a symbol for cultural autonomy (Coomaraswamy 2001:81). In the context of CEDAW Cultural relativity is particularly used to protect family and personal law from international standards. Since women in many societies are restricted to the home and the family this has come to mean the right of cultures to control women’s private sphere wherein sexuality, marriage and family are central (2001:82). In their understanding of the impropriety of one society to judge traditions and practices of other societies, and their denial of the validity of external judgement of cultural practices, many cultural relativists label the efforts of the international community to condemn oppression against women as cultural imperialism (Mayer 1995:176). In the case of the women in Saudi Arabia relativists might maintain that since Muslim law has a direct connection to religious precepts there are reasons to respect non-committance to international norms. Demanding respect for women’s human rights is here equated with disrespect of traditional religious norms in Islamic law (1995:177). In the debate over women’s human
rights it is often contended that Islam is not compatible with human rights law and among the Muslim states that have ratified CEDAW, reservations to its substantive provisions have been made on religious grounds (1995:178).

2.2 Cosmopolitan feminism

Feminist Niamh Reilly presents her account of cosmopolitan feminism as a theory in which she presupposes the following two essential views: A recognition of global patriarchal power relations, even if experienced differently by different women at different locations, and a critical commitment to universal norms in the struggle against gender based oppression (Reilly 2009:7). Reilly does not assume that all women are oppressed in the same way or oppressed at all and she criticizes the premise that all women, in capacity of being women, share common agendas. However, she recognizes the structural patterns that exist globally working to disadvantage women and girls, a gender-specific oppression that particularly affects those already marginalized due to location, ethnicity, race etc. With this recognition an opportunity for feminist cooperation over borders, global solidarity and collective action appears (2009:8-9).

In her theory of cosmopolitan feminism Reilly highlights the issue of religious fundamentalism and its implication on women’s human rights and how fundamentalist projects control public and private domains by using legal and political infrastructure. And, at an international level, influence the UN to promote specific religious practices and beliefs and to bring international public policy in course with these particular values (2009:140). She underlines that fundamentalism is not something unique for Islam. Fundamentalist activity has existed across all religions and regions, though, fundamentalist Islamist movements have been among those with the most wide and dramatic impact on women’s lives. Further, Reilly points out that the many variations in practice and interpretations of Muslim law affecting women, through history and depending on location, prove that religious dictates are nothing but reflections of power relations and social and historical conditions. This knowledge makes it possible for women all over the world to question religious arguments used to legitimate discrimination. In addition, attention is drawn to the common agendas of fundamentalist movements: the control of the public and private sphere in where the subordination of women is central (2009:141-143). Reilly underlines that fundamentalist projects in actual fact are political roads to influence and power with no actual connection to religion and one of the core agendas that defines fundamentalism is the control of women (2009:144-145). When
gaining power, leaders of fundamentalist groups promote visions of cultural values as timeless and create a fixed collective identity, which they impose on the wider community. However, the actions of fundamentalist leaders rather prove that cultural values are not timeless truths since the so called traditional practices introduced as “lost culture” in many cases are brought from other cultures and are new and alien to the community. Fundamentalists often present their view of the world as the antidote to the modern and western world but in fact they make use of many of the components of modernization, such as new media and technology, when striving for power or to keep control. Reilly points out the importance of looking at cultures as sites that are complex and change, to look past the view of cultures as homogenous sites of resistance towards oppressive westernization and to recognize internal differences (2009:145-146).

The subordination and control of women is according to Reilly one of the defining features of fundamentalism and something that reappear in all fundamentalist projects regardless of what religious belief that are promoted. Control of sexual relations is central, in particular women’s sexuality, which is seen as the root of social disorder. Women’s rights, status and body are targeted by fundamentalist movements and women are constructed as the primary bearers of culture. Law is used to undermine democracy and to support gender inequalities and most radical legal changes appear in family law diminishing the rights of women related to child custody, marriage and divorce. Moreover, laws concerning dress codes and gender separation are brought in to control reproduction, freedom of movement and the sexuality of women. Other warning signs of a growing grip of fundamentalism are restrictions on freedom of association, particularly in relation to women’s movements and human rights organizations (2009:146). Reilly also highlights that the development in Islamic fundamentalist states towards more and more restrictions for women outside the area of sexuality and reproduction, such as education and health care, indicate in an even more distinct way how cultural and religious arguments are used as justification of an aggressive oppression of women (2009:152).

Reilly also raises the issue of cultural relativism and how fundamentalist politics feed on relativist arguments. The interpretation of human rights as entirely western ideas of individualism that undermine non-western cultures, expressed by many relativists, are arguments frequently used by fundamentalist leaders. In addition, the legitimizing of religious
fundamentalism from western apologist leads to a demonization of Muslim cultures that can be a threat to the realization of women’s human rights (2009:148). A naive and even racist view of the culture of the “others” as timeless and unchanging is constructed, at the expense of women’s agency. Reilly also touches the complex terrain of the Muslim headscarf and points out that when voices in the west are raced in support for women’s rights to veil themselves if they prefer one must bear in mind what the actual consequences of many women who refuse to wear it are. If the alternative is oppression, is it really a choice (2009:149-150)? Further Reilly underlines that cultural relativity expressed in the west and by fundamentalists in the global south rely on a similar logic based on a false dichotomy: the defense of a timeless local culture and the resistance to the imperialistic west. This creates a situation in where critics of oppressive fundamentalist states are dismissed as “westernized” betrayers of local culture and Islam (2009:150).

From the poorest to the richest nations, north to south, regardless of religious beliefs what unites fundamentalist movements is their intense resistance to women’s empowerment. According to Reilly this demonstrates the inevitability of a fight against fundamentalism and a skeptical attitude to religious and cultural arguments in the struggle for women’s human rights (2009:157). Her account of cosmopolitan feminism emphasizes the importance of international law as a site of struggle that cannot be avoided by women’s movements for an effective global struggle against fundamentalism (2009:158).

3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

3.1 Introductory remark

The Commission on the Status of Women (CSW) was established in 1946 as a sub-commission of the Commission on Human Rights. CSW has during the time elaborated the general guarantees of non-discrimination from a gender perspective in various UN instruments and treaties and the work of CSW resulted in many conventions during the 1950’s promoting and protecting women’s rights. However, their work was fragmentary and the need of a comprehensive protection of women’s rights ended up with the Declaration on the
Elimination of Discrimination Against Women, which was adopted by the General Assembly on 7 November 1967. In 1979 CEDAW was adopted by the General Assembly by votes of 130 to none with 10 abstentions. When the twentieth Member State had ratified the Convention it entered into force. This was on 3 September 1981 and it was the fastest process for any human rights Convention to enter into force (UN Women (a)).

3.2 The aim and the substance

The preamble to the Charter of the United Nations is the core of the faith of the fundamental human rights. This is the first international instrument that especially refers to human rights and brings up equality between men and women. The UN Member States are contractual to strive for the respect for human rights and the fundamental freedom for all persons with no distinction, inter alia, as to sex. CEDAW is oftentimes described as the international bill of rights for women. The Convention consists of a preamble and 30 articles. The States that have ratified CEDAW (hereinafter referred to as the State Parties or Member States) are legally obliged to follow the content of the Convention and to ensure to take appropriate measures to end discrimination against women in all forms, including legislation and temporary special measures to ensure women their human rights and fundamental freedoms (UN Women 1981a).

The definition of discrimination of women in CEDAW is defined in article 1 and states that

/.../any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Bayefsky 1981:Article 1)

This definition covers discrimination in the public sphere as well as in the private sphere. Article 2 and 3 call on the States to take all appropriate measures to end all discrimination against women, in particular in the political, social, economic and cultural fields. Means to be taken are inter alia, legislative measures to modify existing laws and regulations, customs and practices that are contrarious to women’s equality to men. Under article 5 the State Parties shall modify existing social and cultural patterns and customs that are based on the idea of the inferiority or the superiority of either sex. Article 7 and 8 deal with the obligation for the
3.3 The Committee of CEDAW

In accordance with article 17 in CEDAW a committee (hereinafter referred to as the Committee) was established. The Committee consists of 23 independent experts representing a cultural and geographical variety (UN Women 1981b). When a State ratifies CEDAW it automatically accepts the Committee’s mandate to monitor the implementation of national measures to correspond with the aim of the Convention taken by the Member States. Overall the Committee shall follow the progress of the situation of the women in the Member States. Within one year after ratifying CEDAW the States must hand in a report clarifying the measures taken to comply with the treaty obligations. After that the Member States shall submit such reports at least every fourth year. A pre-session group reviews these reports and draws up questions based on the material. The questions are submitted to the State Parties, in a document called Lists of Issues, followed by a meeting between the Committee and the country’s representatives where the questions are being responded and discussed. The next step for the Committee is to resume the reports and the meeting and formulate Concluding comments which outlines factors and obstacles affecting the implementation of the Convention for the State Party, positive aspects, recommendations and suggestions (UN Women (b)).

3.4 CEDAW on reservations

The legality of reservations is regulated in articles 28-29 in CEDAW. Article 28.2 provides that "A reservation incompatible with the object and purpose of the present Convention shall not be permitted” (Bayefsky 1981: part VI, Article 28.2). This is in line with the principle contained in the Vienna Convention on the Law of Treaties. CEDAW does not prohibit reservations but states that draft hesitant reservations to the provisions of the Convention might be challenged by other State Parties. Many Muslim countries have ratified CEDAW without reservations, a few Muslim countries have failed to ratify and a large number of Muslim countries have ratified the Convention along with reservations, Common for these countries is that a large number of the reservations relate to the core provisions of the Convention. Most reservations are made invoking Islamic law as the reason but it is various
provisions in CEDAW, which the reservations are made on. These various references to Islamic law indicate a disagreement on which CEDAW-articles that are in contradiction to Islamic law (UN Women (c)); Mayer 2007:118-119). In 1986 after some Muslim countries had formulated very sweeping reservations to CEDAW some concerned State Parties urged the Secretary-General of the United Nations to make a statement concerning reservations incompatible with the Convention. However, this initiative was criticized for being anti-Islamic and for being an attack on the Third World countries. In 1987 the CEDAW Committee suggested a specialized study on the status on women in Islamic law. Due to statements from Muslim countries claming that the suggestion verified the religious intolerance and cultural imperialism of the Committee, the suggestion was annulled and the study was never carried out. This resulted in the Committee’s acceptance of some Middle Eastern states to be treated as parties to the Convention despite reservations challenging the core of the CEDAW provisions (Mayer 1995:178-179).

4 Legal and political system in Saudi Arabia

4.1 Governmental system

The Kingdom of Saudi Arabia is an absolute monarchy ruled by the al-Saud family. The current monarch, King Abdullah bin Abdul Aziz (hereinafter referred as to King Abdullah or the king) entered the throne in 2005. The huge al-Saud family is extended to the members of the tribe, who are often appointed to central leading positions in society (Thunander 2010:165-166). Article 39 in the Basic Law of the Kingdom stipulates that political parties are prohibited in the country and in the municipal council elections in 2005, women were not allowed to vote. When these elections were announced there were no criteria or instructions for voting or for running in the elections. The Ministry of Justice did support the right of voting for women but voiced objections were projected, mainly from the conservative religious establishment. The Minister of Interior decided that women were not allowed to vote due to the lack of sex-separated polling place and that the municipal meetings would have to be sex-separated for women to attend (Freedom House 2010:62th paragraph from above). Alongside the royal family the religious establishment has a lot of influence. Highest in the hierarchy is the conservative ulema, the religious scholars who together with other religious
institutions issue *fatwās*, legal opinions. The ulema controls the *mutawwa* which is the powerful religious police whose function is to uphold the morality and religion among people (Thunander 2010:18-19).

### 4.2 Legal system

#### 4.2.1 Islam, Sharī’ah and fiqh

Islam is considered born in the Arabic peninsula, today Saudi Arabia. The Prophet *Muhammad ibn ‘Abdullāh* was born in Mecca and between 610-632 our calendar he received visions from God in Mecca and Medina where he lived and operated (Thunander 2010:18; Hjärpe 2005:47). Traditionally, Islamic law is not strictly monolithic and its jurisprudence opens up for a pluralistic interpretation of its sources. This involves a diversity of legal opinions that may vary significantly in a comparative legal analysis. However, this diversity is something appreciated and is seen as an important principle of Islamic law. Islamic law is a product of its sources and methods and an important division is made between *Sharī’ah*, the source from which the law derives and *fiqh*, the method by which the law is derived, interpreted and applied. The most authoritative source within Islamic law is the *Qur´an*, consisting of the visions from God to Muhammad. Sharī’ah means *path to be followed* or *right path* and is based on the Qur´an and the *Sunnah*- the authentic traditions of the Prophet Muhammad. Both the Qur´an and the Sunnah are based on general rules without indulging in much detail, which opens up for wide possibilities of interpretation. Conventional it is said that there are five *madhāhib* (schools, singular *madhhub*) of Islamic jurisprudence in present time, four *Sunnī madhāhib* and one *Shī’ah*. In general the different schools of jurisprudence have the Qur´an and the Sunnah as the primary sources of Islamic law. The differences lie in their interpretations of some Qur´anic verses and Prophetic traditions (Hjärpe 2005:30-33, 148; Baderin 2003:32-38, 41).

#### 4.2.2 Hanbalī school and Wahhabism

Saudi Arabia is the sole Muslim country that bases its` legal system on Sharī’ah and all decrees and laws must be formulated in a way that is compatible with Sharī’ah. Saudi Arabia is ruled bye the *Hanbalī madhhab*, which is considered very strict based on the religious ideal
from the early Islam. Many puritanic movements have been inspired by these teachings and
the movement called *Wahhabism* is one. Saudi is impregnated by the wahhabism movement
and the Hanbalî school constitutes as foundation of the country’s legal system. This results in
the almost non existing procedure of lawmaking and the royal decrees issued by the king is an
explication of the Hanbalî legal tradition in the regarding matter. However the judges do not
have to consider these decrees and are relatively free to interpret and derive rules from the
Qur’an and Sunnah for guidance in a trial which results in a extensive legal inconsistency
(Hjärpe 2005:30-33, 150; Baderin 2003:37-38; Thunander 2010:196).

4.2.3 The Basic Law

In 1992 the constitution-like Basic Law was introduced by the former king, King Fahd Bin
Abdulaziz Al-Saud, after dissatisfaction and impatience from both liberal and conservatives
regarding the al-Saudi family’s autocratic rule, the insufficient legal system and the lack of
fundamental rights and freedoms. However the Basic Law did not improve the severe
situation of oppression for the Saudi people. King Fahd projected it as the law derived from
Islamic sources and contended that the democratic system was not a suitable system for the
people of Saudi Arabia and the region since they have Islamic beliefs that consist of a
complete integrated system (Mayer 2007:45). There are no articles in the Basic Law that
specifically manifest the equality between men and women but in article 26 it is stated that the
State shall protect human rights in accordance with Sharî‘ah (Royal Embassy of Saudi Arabia

4.3 Attitude towards international human rights

Saudi Arabia has shown a general repugnancy towards international human rights treaties.
This is projected inter alia in their absence of ratification of the principal human rights
instruments: the International Covenant on Economic, Social and Cultural Rights (ICESCR)
of 1966, the International Covenant on Civil and Political Rights (ICCPR) as well of 1966 and
the Universal Declaration of Human Rights (UDHR) of 1948. These documents are written in
a rather general language, which allows a variety of interpretations (Mayer 2007:27-28).

The Universal Declaration of Human Rights of 1948 has become a foundation for modern
human rights and customary law, accepted and recognized worldwide. When this was drafted
a substantial group of Muslim nations opposed the article regarding religious freedom. The
group had not been consulted nor had they asked for participation but when the final decision
was going to be taken, this group voted down almost the whole declaration due to this article. The countries’ representatives claimed that their religion did not accept one person to change his religious belief. Many of the countries did change this statement but Saudi Arabia was one of few that adhered to the claimed statement and in the end they abstained from voting regarding the whole declaration (Mayer 2007:27; Eleanor Roosevelt 1949:22-24th paragraph from above).

5 The situation of Women

Ten years ago there did not exist any notable human rights advocates in Saudi Arabia. Since the country has gradually ratified international human rights treaties, international law has entered into the Saudi society and a greater acceptance of a public debate about human rights has spread. Still, there is a long way to go, especially for women. In 1957 King Saud promulgated an edict in line with the Wahhabi regime where he banned Saudi women from driving, a ban which is still active. The highly gender segregated Saudi society in where women are legal minors forced to wear the abaya, the long black dress only revealing the eyes, is a hybridous of patriarchal traditions and a strict religious interpretation. Despite the small opening in the domestic public debate there is still a widespread view that human rights are in conflict with Sharî‘ah and human rights activists are harassed and opposed to a large extent. In Islam, it is well ingrained that people are rights-bearers, but in Saudi Arabia there is no functioning system where you can bring to justice those who are guilty of human rights violations (HRW 2010:5-6, 10; Murawiec 2003:14; Mayer 2007:139).

5.1 Gender Apartheid

Saudi Arabia is unique among world states taking separation of the sexes to the extreme. Women are the most exposed and underprivileged and are in practice prevented from a meaningful participation in public life. In 2010 Saudi Arabia was listed as 129 out of 134 countries in the Global Gender Gap Report issued by the World Economic Forum (World Economic Forum 2010:262). The mutawwa is working constantly to uphold this separation between the sexes and if they discover unlawful mixes of the sexes they are authorized to arrest the violators. Despite several bans the last years, intended to restrict the religious police’s activity, there are small reforms in practice. One example that illustrates the situation is dated 2002 from an elementary girls school in Mecca. Even though this happened eight years ago, it was two years after Saudis’s ratification of CEDAW and they were therefore under the same legal obligation as they are today. A fire started in the school and when the
girls tried to escape the fire, the mutawwa prevented the girls from leaving the building. 15 girls died in the fire and the justification for the mutawwa’s actions was that the girls did not wear the correct clothes to be exposed for the male viewers (HRW 2010:20-21; HRW 2008:12; Mayer 2007:140).

5.2 The male guardianship

The most severe violation of the fundamental rights of Saudi women is the system of male guardianship, which implicate that every adult woman must have a male guardian, a *mahram*. All Saudi women are affected by this system, regardless of social or economic status. This institutionalized system of guardianship controls adult Saudi women’s daily life. Normally it is a father, a husband or a son who fills the role of making critical judgements concerning women’s life. Women must ask for permission in matters like work, education, travel or marriage. This system is grounded in a very restrictive interpretation of a verse in the Qur’ān, which states that men are the protectors and maintainers of women because God has given them more strength. In most manifestations of male guardianship and sex segregation there are no written legal provisions that explicate these systems, but the whole Saudi Arabian community is imbued by these practices (Amnesty International 2010:277; HRW 2008:10). The role of the government in establishing and upholding these customs is duplicitous. The government is applying the most restrictive provisions of Islamic law and ignores the more progressive interpretations. It is clear that it has been done little do improve the situation for women when it comes to these matters and the government has a significant role in maintaining the oppressive structures (HRW 2008:2-5). King Abdullah has made a small change in society since he entered the throne in 2005. One of the areas where reforms have been made is within women’s rights, even though it is only small ones, irrelevant for the fundamental situation for the women. However according to the *Center for Democracy & Human Rights in Saudi Arabia* the king is using the method of re-creating royal decrees that sound liberal for the public but in reality they are always rejected by the religious establishment and the royal handlers (CDHR 2010:1th paragraph from above). In 2008 the king decided that women were allowed to stay in hotels without their male guardians and in 2009 the Saudi Government pledged that the male guardianship over women should be abolished but no legislative measures have been taken to execute this commitment. Still Saudi women must have their guardian’s approval for many basic decisions. For example for
foreign journeys and for domestic travels women need the "yellow card" which signifies the permission for travelling inside Saudi Arabia within one year (HRW 2010:16).

5.2.1 Islamic law and the male guardianship

Experts on Islamic law have provided a range of analysis on the rationale behind the institution of guardianship in Islamic history and its diminishing relevance today. Many Islamic scholars argue that the guardianship system arose in an era when there was much more insecurity with no governments and authorities providing the citizens with security as they do today. The two basic preconditions for the male guardianship: physical strength and women’s lack of supporting themselves are not current in the modern world. Today, the physical strength is not relevant and women can support themselves and therefore many experts claim that the guardianship is outdated and has no importance anymore. Many participants in the debate argue that the jurisprudence of the Hanbalî School in Saudi Arabia has no legal capacity in it’s discrimination between men and women. Even many Hanbalî jurists in favour of the guardianship argue that the system must be limited and conditional (HRW 2008:11-12; Brems 2001: 226-230).

5.3 Women and employment

Saudi Arabia has one of the world’s lowest rates of women working since women are almost totally excluded from the labour market. King Abdullah has encouraged women’s education and entry into the workforce, and has tolerated increased visibility of women in public places like restaurants and shopping malls, but most of his gestures have been symbolic, with no institutional or legal affirmation. The new Saudi Labor Law, which came into force in 2006, no longer includes an explicit provision requiring sex segregation, instead conditioning all work-related provisions to the rulings of the Islamic Shari’a. King Abdullah has also encouraged women to enter the workplace by dropping certain licensing requirements. The Saudi Labor law states that all Saudi workers have equal right to work without discrimination, but consideration must be taken to the Shari’ah and the fact that women shall work in those fields suitable to their nature. Women are unattractive as employees for reasons that the employers need to set up separate facilities for the women and women’s inability to interact with other agencies, institutions etc. without a male representative. In addition, women need to be transported by drivers, which can end up in great cost for the employers. In the Royal decree No. 187 of 2005 it is stipulated that private enterprises are allowed to open sections
employing women without a license being required and a decision was taken by the Council of Ministers Resolution to allow women to apply for business licenses. And in an important symbolic message, King Abdullah in November 2009 fired a cleric who had criticized gender mixing, and reinstated the chief of the religious police in Mecca who was fired earlier for declaring certain forms of gender mixing permissible (HRW 2008:17-18; HRW 2010: 17-19). Another example which indicates that King Abdullah often just is using empty words and not fulfills these in practice, is the example from August 2010 regarding the Panda supermarket chain that was employing 16 female cashiers in Jeddah, the most liberal city in Saudi Arabia. Even though the cashiers were covered from head to toe, only revealing the eyes and only serving families, the religious establishment protested violent and reprehended people not to support the Panda supermarket. This ended up with no customers and an empty store. Nothing was heard from the king about the episode, neither any support for Panda supermarket on their decision on employing women, nor any criticisms against the religious establishment for their antagonize acting (CDHR 2010:2th paragraph from above; HRW 2010:48).

5.4 Women and education

Women’s right to education is undermined. All educational facilities are highly segregated and university policy restricts offered programs and courses for women. Often the departments for women are locked during the teaching hours and female students cannot leave campus without a driver or legal guardian there to pick them up. In some libraries women are prohibited to enter and to get hold of the books, they usually send their drivers (always male) to collect them. Women make up more then 50 % of the university graduates but the majority study at teachers’ colleges. During the last decade there has been some progress, inter alia increased accessibility for women to study law. There exist a few educated female lawyers in the country but they are prohibited from practice their profession and it is impossible for women to become judges (HRW 2008:15-16; HRW 2010:19; Thunander 2010). In February 2010 the Justice Minister announced that soon a new law would take effect allowing women for the first time to appear in court. The cases would be restricted to child custody, divorce, marriage and other family related issues and the female lawyers would only be allowed to have female clients. In July 2010 no law had yet come into force. However, the opposition against men and women in close contact with each other is still very widespread. Usually it is the religious establishment and conservative clerics that oppose openings in the situation for women. Either is it considered that woman shall not leave their homes or that most jobs are not in line with women’s nature (HRW 2008:18; Amnesty International 2010:277).
5.5 Women under the law

Saudi Arabia lacks a written penal code and both men and women are subject to arbitrary arrests. The major crime for arrest of women is *khulwa*, the illegal mingling between men and women (Freedom House 2010:13th paragraph from above). As legal minors, women are requested to be accompanied by a male representative to be able to gain access and engage in court and governmental bureaucracy. To be heard in a case or to file a case the legal guardian must be presented. Many times women are not allowed to speak in court and the guardians must do so, on behalf of the women. On occasions when women are allowed to speak they must were the niqab that covers the whole face and it is not enough for the women to bring their ID card, but they must also be identified by a *mu’arif* (a person who can identify a woman in niqab). In the matter of non-existing female sectors, and female staff in the court women, must bring their own mu’arifs for identification. A paradox in the system is that women are not accepted as having legal capacity but they are responsible and punished for their crimes as any man of age (HRW 2008:24-25).

5.6 Women and health

Many women’s lives are put on the line when hospitals require permission from the guardians for women and her children to be admitted or go through any medical procedures. This rule is not based in any regulation but more constructed by social factors and the level of conservatism on the hospitals decides to what extension the permissions are required. In urgent situations when time is limited and the male guardians are not accessible to give the permission, doctors who carry out procedures take huge personal risks (HRW 2008:20; Thunander 2010:134-135).

6 The dialogue between Saudi Arabia and the Committee of CEDAW

6.1 The Saudi reservations on CEDAW

The Kingdom of Saudi Arabia ratified the Convention on the Elimination of All forms of Discrimination Against Women on the 7 September 2000. In a country where the daily lives of women are very restricted this was a promising step forward. However Saudi Arabia did formulate a rather sweeping reservation in connection with the ratification. Our focus is put on paragraph 1 of the reservation and on the reservation made on article 9.2 (Bayefsky 2000a).
Reservations:

1. “In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention”

They also issued a more specific reservation to article 9.2 and article 29.1.

2. “The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention”

(Bayefsky 2000b)

Article 9.2 says that “States Parties shall grant women equal rights with men with respect to the nationality of their children” and in 29.1 the term is:

Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court

(Bayefsky 1981:Article 9.2, 29.1)

Twelve State Parties to CEDAW objected to the reservations made by Saudi Arabia. Most of the opposition concerned the general reservation regarding the contradiction between the Convention and the norms of Islamic law. The criticism was concerning the obscurity on how the Convention would be affected by the reservations. A clarification regarding this matter was directed to Saudi Arabia to prove its support and commitment to the Convention. However, in all objections from the State Parties it was stated “This objection shall not preclude the entry into force of the Convention between /…/ and the Kingdom of Saudi Arabia” which means that the objection will not prevent the entry into force of the treaty vis-à-vis the reserving State. This results in a situation wherein Saudi Arabia is able to maintain its reservations to CEDAW with no legal effects (Bayefsky 2000b; Bayefsky 1981).

6.2 Arguments for reservations

Based on the documents from the Saudi Arabia’s State report (2006), Replies to Lists of Issues (2008d) and the Summary Records (2008a), (2008b) from the meeting with the CEDAW Committee this is a review of the information provided by the Saudi Arabian representatives.
The ratification of CEDAW is based on the fact that its general provisions are consistent with Saudi Arabia’s approach to human rights and women’s rights. The reason for the reservation is necessary in the light of Shar’iah since there is no theory in Islamic Law for a separation between church and state as many States have. Since lawmaking in the country derives from Islamic Shar’iah it is not possible for the legislative authority within the Kingdom to change and modify the laws if the principles will be incompatible with the bases of Islamic Shar’iah. The reservation is also made in the light of the fact that there exist small differences in the implementation of the CEDAW provisions between Islamic Law and the judicial authorities that interpret the Convention. Since the human rights concept is developing in a fast tempo the Saudi Government is concerned that some interpretations will go beyond the literal content of the Convention. In those cases Saudi would like to have the possibility not to be bound to the Convention. It is stipulated that, in general, there is no discrimination against women in the laws of the Kingdom but the Convention has been regarded when framing new laws and regulations or in amending existing laws. The delegation explains that it must be understood that Shar’iah is accepted by the majority of the Saudi society and Islamic law supports the rights of women (Bayefsky 2006:8-11; Bayefsky 2008a:2, 4).

Regarding the matter of equal rights of women and men the Saudi replies are shifting during the dialogue. Sometimes women’s rights are referred to as the same rights as men but sometimes it is indicated that women have similar rights to men. The Saudi delegation strongly emphasizes the importance of the Saudi Arabian Government to preserve human dignity and to eliminate all forms of discrimination. In the same context the importance of respect of cultural diversity is accentuated and how this should constitute as a central provision within the United Nations and CEDAW. The Kingdom has, since its creation, taken all measures to ensure equality of women and men in respect of rights. These include the right to obtain education and work, training to acquire the skills necessary to qualify women for access to the job market and equipment to raise their children and care for their health. All laws and regulations in Saudi Arabia are under the Basic Law of Governance, which derives from the Qur’an and the Sunnah. The Qur’an and Sunnah prohibit discrimination on grounds of race, colour, gender or other forms of discrimination and the two sources advocate non-discrimination of men and women, desiring that women enjoy the same rights and duties on a basis of equality. The sexes are equal in respect of a basic humanity but there are natural
(biological) differences as for example women´s role as a conceiver, child bearer and mother and for these reasons the man is the provider for the family. Shari`ah is not based on discrimination against women or men, but based on the fact of the different physiological and biological nature of the sexes. Women are not to be separated but complementary to men and in this way they have their natural, given roles in society. It would not be in favour of women if the roles in society were equal between men and women. At another occasion it is explained that women are considered by the Prophet to have similar rights as men (Bayefsky 2006:7, 11-14). The dissimilar definitions concerning women´s rights are never really sorted out.

Since the traditional view on women has changed in the country all obstacles preventing women to participate in social and economic activity have been removed. All legal measures have been taken to create a social balance in the Saudi society but some laws concerning women are under the development to be updated. However, there might exist shortcomings based on individual traditions and customs. Cases of discrimination are taken care of as other claims under the Code of Sharia Procedure and the Code of Criminal Procedure. If the discrimination in question has resulted in the woman being deprived of rights, or the violation of her honour, it is taken more seriously. The juridical authorities do not contain any detailed statistics addressed to women and discrimination but will be able to do so in the future since recently an electronic system has been introduced (Bayefsky 2008a:2; Bayefsky 2006:16).

Regarding the ban for women to drive, this is just a misconception since this is not covered under Shari`ah or other legal provisions. This is an issue that is deep-seated in strong traditional mentalities and people´s mentality must change before a reform is possible. An example that indicates this is when education for girls was introduced it was met by a strong reaction from the commonage. With this fact in mind it is important that the Government sits down and discusses this matter to not upset the Saudi people and making them believe that the Nation´s sovereignty is threatened. However the Saudi delegation is optimistic and says that women will be able to drive in a near future (Bayefsky 2008b:8; Bayefsky 2008d:5).

Article 5
It is explained that all efforts are made to modify social- and cultural practices that are based on the vision of a superior sex. To achieve social development the focus has been to enroll all
citizens in educational institutions. Women’s participation in education is limited and will gradually expand since oppositional citizens’ fear the negative social consequences, as co-education and immodest education have had in many countries. The different traditions and norms in a large country need their own time to change but compulsory measures have been taken to limit parents’ exercise of their authority in the regard of young women who are married off instead of completing their education. Before 2000 the cases of domestic violence was not recognized as a problem in Saudi Arabia and few cases existed. These cases were referred to as special cases due to their private nature and in order to ensure the secrecy of the families. Social, medical and security services have always been available at all levels for support and help. Since 2000 the issue has been brought to public attention and led to research, including on patterns in particular social groups. The collection of data on violence against women focus on areas regarding the victims and their personal lives, inter alia victim’s level of education, victim’s social and material status, number of times married, standard of living and type of residence and whether the victim would prefer to have her case dealt with through reconciliation or through the courts. The focus is to solve the problems in an amicable manner between the parties inter alia by social counseling services, not much is said about the procedure of prosecuting and punishing the violators. No statistics are available addressing violence against women but will be soon. In regard to a question from the Committee is ascertained that a law on protection against domestic violence is under process (Bayefsky 2006:21-22; Bayefsky 2008d:9-12).

Permission to travel for women is just a matter of regulations and most women can travel on their own and obtain passports. It is explained as something positive that many women have standing permission to travel on their own and most women of the Saudi delegation are travelling without male companions. The delegation is optimistic and believes that changes in society will reform this matter of permission to travel. However they do not succeed to define what possibilities women have to travel on their own without permission or if this will be possible in the future (Bayefsky 2008a:5).

Article 7 and 8

It is emphasized that no reservation is made on article 7 in the Convention, to point out that the low number of women in the political life in Saudi is not a matter of discrimination but a question of organization. The fact that women did not participate in the municipal elections in
2005 is simply explained with no precise details about women having the same rights as men to participate in the decision-making process. Women are not prohibited to participate in elections, however, the participation is not completely possible in practice (Bayefsky 2006:23).

Article 9.2
Through a royal decree several articles in the Saudi Arabian Nationality Law have been amended to affirm the principle of equality between men and women in all matters relating to Saudi nationality. The reservation to article 9.2 was made upon one of the most important foundations of the Saudi Arabian Nationality Act, the principle of non-recognition of dual nationality. Nationality Law stipulates that a Saudi national is a person with a Saudi father or with a Saudi mother and stateless father or father of unknown nationality. There is no discrimination against women in the provisions of this law but it is noticed that these provisions always seek to avoid dual nationality (Bayefsky 2006:27, 17; Bayefsky 2008b:3).

Article 10
The Kingdom of Saudi Arabia guarantees all male and female citizens the right to education, which is free of charge, without any discrimination whatsoever. The Kingdom ensures equal rights for both men and women in matters relating to this article and the Saudi laws do not distinguish between men and women in these areas. In only one sentence, with no details, it is explained that girls’ education is independent from boys’ education in accordance with the teachings of the Islamic religion. Many improvements have been made to enroll girls and women in education and some fields of education are now open for women, such as law. Still women are excluded from some fields but this shall not be regarded as a matter of prohibition but rather a matter of doors being closed (Bayefsky 2006:28-31; Bayefsky 2008a:2-5).

Article 12
Concerning women’s right to health care and health services it is explained that women have the right to access and take decisions concerning medical procedures on their own. Due to the fact that women sometimes are requested to show the permission from their male guardian, all issues of women’s rights to medical procedures are to be addressed and all new medical and nurse graduates will be informed about these issues. All unnecessary requirements shall be reported and it is promised that more information about women’s health will be provided in
the next State report (Bayefsky 2008a:5; Bayefsky 2008b:5-6). Concerning the guardianship
the Saudi delegation has very vague answers and it is confusing to sort out all the
explanations since they contradict each other. It is explained that this system is just a matter
of misconception since no laws are regulating this, not Shari`ah or other laws. However a
vague answer is made that guardianship within the family has a legal basis in Islamic law.
This is only for the purpose to protect women and to preserve their dignity and it is not based
on the intention to restrict women’s movement or their rights. The term wardship is
mentioned which has been interpreted by several religious schools but is not covered by any
laws. It is clearly explained that the wardship should not be mistaken with the guardianship.
Outside the family the guardianship should only be regulated to children. The only clear
answer regarding the guardianship/wardship concerns women’s right to start their own
business. If the guardianships in these cases are handled with abuse, women have the legal
right to file a complaint to a court against their male guardians. However women who fall
victims of domestic violence do not need do ask for permission in case of needing to file a
complaint. In cases of domestic violence there are possibilities for a woman to ask to be
released from the guardianship if she is able to provide for herself and her children (Bayefsky
2008a:5-6, 8; Bayefsky 2008b:2, 8). Concerning identity cards, the delegation explains that
the old royal decree stating that women need permission to apply for identity cards is replaced
by a new decree and now women do not need their guardians’ permission when applying for
identity cards (Bayefsky 2008b:7-9).

Article 15 and 16

Regarding the “courts of personal status”, which rules in all matters related to personal
status, there are no distinctions between men and women in terms of rights and
responsibilities. Concerning women’s rights compared to men’s rights with respect to legal
capacity, access to courts and participation in proceedings before the courts, is ruled under
Shari`ah and is not open for interpretations. All provisions in Shari`ah however are raised on
wisdom. For example, a man’s inheritance counts twice as much as a woman’s. However he
is responsible for supporting his family regardless of his wife’s economical situation, while
women do not have this obligation. Residence and employment are matters taken through
consultation within the family and men and women have every right to work and engage in all
economical activities. There are no laws governing such matters (2008d:29). In several places
during the meeting the Saudi delegation is referring the obstacles to the development of
women to women’s lack of knowledge of their rights and their responsibilities under Shari´ah law. It is also explained that changing deep-rooted habits and customs needs time. Through education and campaigns, women will be more enlightened on these subjects and this will improve the situation. Instead of answering some of the questions from the Committee, the Saudi delegation is referring to future reports due to the lack of substantial statistics or with the explanation that measures of certain problematic matters are carried out for the moment (2008a:5, 7).

6.3 Concluding comments of the Committee

To start with, The Committee congratulates Saudi Arabia for ratifying CEDAW and expresses its appreciation for the Saudi reports, reply to the list of issues and to the important delegation that was sent to the meeting with the Committee. However the Committee expresses worry concerning Saudi’s general reservation made on CEDAW and regards that this reservation can be in opposition to the central provisions of the Convention. Therefore it is urged that Saudi Arabia reconsider its withdrawal, having in mind that the Saudi delegation has assured that CEDAW and Shari´ah do not contradict with each other (Bayefsky 2008c:1-2).

There is a concern regarding the lack of general awareness of the Convention in Saudi Arabia and it is noticed that the Saudi information does not consist of cases from courts where the provisions of the Convention have been directly invoked in court. The Committee urges Saudi Arabia to spread knowledge about the Convention and its jurisprudence, in public and among all employers and actives in the legal services so a legal culture will be established based on gender equality and non-discrimination. Regarding the male guardianship, the Committee understands this as something widely accepted in the country even though it has no legal basis. The Committee is concerned that this system contributes to a patriarchal society with discriminatory traditions and other obstacles, which prevent women from enjoying their human rights. The de facto ban to drive for women is another obstacle that restrains women of their freedom of movement and the Committee sees with concern that the State is not accessory enough in the approach to delete discriminatory stereotypes. The Committee urges Saudi Arabia to take “immediate steps” to end the male guardianship system. It also calls upon the State to adopt clear goals and timetables without delay, to eliminate negative cultural practices and stereotypes that discriminate women and to promote women’s full enjoyment of their human rights. Noting that a domestic violence law is drafted, the Committee is
concerned about the incidents of violence against women, the lack of absence of laws relating to this matter and the lack of prosecution and punishment of the violators. The Committee requests the State to high priority to measures addressed to all forms of violence against women and calls upon the State to enact a comprehensive law on domestic violence that inter alia ensure women and girls the immediate access to means of redress and that perpetrators are prosecuted and punished (Bayefsky 2008c:2-5).

Concerning the Saudi reservation on article 9.2, the Committee is concerned regarding the conflict between the Saudi Arabian Nationality Code and this article. The Saudi Arabian Nationality Code discriminates against Saudi Arabian women married to non-Saudis nationals and that children of these marriages do not have the same right to nationality as children of Saudi men married to non-Saudi women. Therefore it is requested that the Nationality Code is modified to not contradict with article 9.2 and then that the Saudi reservation is withdrawn (Bayefsky 2008c:6).

The Committee recommends Saudi Arabia to adopt all measures to ensure equal access for girls and women to all levels and fields of education and in the next State report it is requested more detailed information on education of girls and women. Saudi Arabia is also requested to take immediate steps to increase women’s participation in the workforce. The Committee is concerned regarding the fact that women may need permission from their guardians to have access to health services. In the light of these facts, the Committee calls upon the State to take all necessary measures to improve women’s access to health care and it is recommended to adopt training for hospital employees on women’s rights regarding health care. In general the Committee encourages the State to improve the collaboration with civil society, organisations and in particular with women’s associations, to strengthen the implementation of the substance of the Convention (Bayefsky 2008c:7-8).

7 Analysis

7.1 The religious/cultural claims

Saudi Arabia ratified the International Convention of All Forms of Discrimination Against Women in 2000 and thereby accepted the international jurisdiction of the Convention and the obligation to take action to end all discrimination against women. The general Saudi
reservation to the treaty and their reservations to article 9.2 and 29.1 is however a reason to doubt the Saudi regime’s credibility to incorporate and fulfill the contents of CEDAW and to actually improve Saudi women’s situation. From the Cosmopolitan feminist view the cultural and religious arguments for reservations used by Saudi spokesmen serve as a way of legitimating the oppression and dictatorship identified with fundamentalism and, moreover, as a way of promoting the acceptance of specific religious practices to breed an international climate wherein exceptions for particular religious and cultural practices are accepted (Reilly 2009:140). Cultural relativity becomes a political instrument for the Saudi leaders in their intentions to maintain power. To keep women out of education, employment and to let the health of women depend on the guardianship of a male relative creates a situation in where women depend entirely on men, which is not synonymous with “Islamic culture” (2009:141). The governmental spokespersons of Saudi Arabia contribute to the demonization of their own culture and the view of the Saudi population, and in a greater context all Muslims, as “the others” (2009:148). Moreover, since the extreme control of women exercised by the Saudi Government stretches over areas such as education and health care, according to cosmopolitan feminism, the religious justifications becomes even more questionable. There is not a question only about separation of the sexes and control of sexual relations, but about an aggressive oppression of women wherein they are prevented to access education, proper health care and the labour market and from obtaining the same rights and freedoms as men (2009:152).

In their defense the Saudi Arabian representatives underline that Sharî’ah is accepted by the majority in the Saudi society. The cultural relativistic argument of the impropriety of the committee to judge the Saudi Arabian culture might in this scenario be legitimate and the attempts to force women’s rights on Saudi Arabia could be looked at as cultural imperialism (Mayer 1995:176-177). However, since women do not have the possibility to engage in the official sphere where cultural norms and values are created and since Saudi Arabia is an absolute monarchy identified with dictatorship there are reasons to question the actual width of the acceptance of Shari’a. According to cosmopolitan feminism Saudi Arabia would be an example of a fundamentalist state where extreme interpretations of Islam and Sharî’ah are manifested in oppressive laws that are forced upon the population. It is not a matter of traditions supported and willingly adopted by the majority in a cultural process (Reilly 2009:145).
Common arguments used by the Saudi delegation are that the people are not ready for change and that women are not aware of their rights. Since women in principle are excluded from the public sphere and do not have basic rights, such as the right to vote, one can question the ability of women to influence the rights they are alleged to possess. Cosmopolitan feminists would say that it is not a matter of fear of change among the public that prevent women in Saudi Arabia to obtain their rights, rather, the subordination of women is part of a political system synonymous with fundamentalistic movements (2009:145). From the cultural relativist point of view a forced change upon Saudi Arabia towards western ideas of equality would represent western ethnocentrism and disrespect of Saudi culture (Mayer 2007:9). The feminist reply would be that change is part of culture. Saudi Arabian culture, as other cultures, is not resistant to change and might not be the antidote to western culture as presented by fundamentalist leaders. In fact, Saudi Arabia makes use of many of the components associated with “western modernity” (Reilly 2009:145-146).

7.2 The response from the CEDAW Committee

In CEDAW it is not to be found any prohibition to make reservations but in article 28.2 it is termed that reservations incompatible with the object and purpose of the Convention shall not be accepted. Cosmopolitan feminists claim that one factor in recognizing patriarchal power is the critical commitment to universal norms in the struggle against gender-based oppression. Another significant factor is that women often are central to the definition of cultural identity and serve as spiritual guardians. The control over women’s position becomes a symbol for cultural autonomy. The fact that CEDAW is highly affected by reservations from the State parties may definitely verify these two statements and it shows that women’s rights are negotiable (Reilly 2009:7; Coomaraswamy 2001:81).

After receiving hesitant reservations on CEDAW from Muslim countries it was suggested in 1987 that the Islamic doctrines were to be investigated concerning women under Shari’ah. However this suggestion was met with harsh criticism for being anti-Islamic and representing religious intolerance and Western values. The study was never carried out and it resulted in that countries were allowed to be treated as parties to the CEDAW despite reservations contrary to the core provisions of the Convention. In this case it is clear that the states base their reservations on cultural relativistic arguments holding that human rights as universal is based on Western ideas, undermining non-western cultures. Despite that CEDAW says that
all human beings are born free and are equal in dignity and rights, the UN and the CEDAW Committee are having trouble to stand up for the universal believes on women’s rights and to protect women in accordance with the Convention in the light of avoiding criticism. By being liberal in terms of reservations, the Committee leaves space for cultural relativistic arguments saying that some principles, values and practices are culturally bound and that there are no universal norms upon which cultures may be judged (Mayer 2007:9). In the communication between the Committee and the representatives of Saudi Arabia the Committee is balancing the criticism not to insult the state. This appears in the reports and meetings where a very gentle, polite and cautiously language is used, in line with the Committee’s general guidelines. No strong words or formulations are used and instead of using bans the Committee communicates by means of recommendations and suggestions. The Committee urges Saudi Arabia to withdraw its general reservation invoking Islamic law, having in mind that the Saudi delegation has assured that the provisions of CEDAW are in line with Saudi’s approach to human rights and women’s rights. Regarding the male guardianship the Committee urges Saudi to take immediate steps to end this system. The Committee urges, recommends and suggests Saudi Arabia in matters that are regarded as not compatible with the substance of CEDAW. The twelve State Parties that opposed Saudi’s reservation ensured that their objections would not prevent the entry into force vis-à-vis Saudi Arabia. The States condemn the reservation but still allow the cultural relativistic claims since no legal consequences are carried out (see chapter 6.1 and 6.3 above).

Cosmopolitan feminism states that subordination and control of women is mutual for all fundamentalistic movements and political and legal means are tools in the active process of controlling women. This perspective indicates that the Saudi regime has succeeded in using political tools within international law when having its reservation accepted by the CEDAW Committee (Reilly 2009:144-145). This results in a situation where Saudi Arabia continues to be a State Party to CEDAW while upholding the oppressive system in the country where the Saudi women are deprived of their rights and freedoms, without facing any legal consequences.

7.3 The actual relevance of religion/culture

The Saudi arguments invoking Islamic law as reason not to be obliged to the Convention in cases of conflicts between the Convention and Sharî’ah are not giving any indications on what
obligations Saudi Arabia are under to CEDAW. When State Parties refer to Islamic law as reason to their formulated reservations it occurs a complexity since it does not indicate what obligations remain due to that Islamic law or Shari‘ah itself not is static. According to cosmopolitan feminism this would be an example of Saudi Arabia defending their domestic legal system with religious claims that are not general for Islam or Shari‘ah but a fundamentalist interpretation of Islam. The fact that other Muslim states makes reservations to other provisions of CEDAW but with the same arguments proves that it is not a matter of timeless culture and the respect for culture and religion promoted by cultural relativism becomes problematic when considering the various interpretations of Islamic law (Reilly 2009:145-146).

Saudi Arabia is unique in the Muslim-world with its sex-segregated system. The criticism of the Saudi male guardianship coming from experts on Islamic law gives support to the cosmopolitan feminist view that the extreme control and subordination of women has no actual connection to religion but is something that historically reappears in all fundamentalistic movements, regardless of religious connection. This gives reason to question cultural relativist arguments not to implement legislation in line with CEDAW’s provisions and that the implementation of women’s rights in Saudi Arabia is equal with disrespect of Saudi culture and religion. From the cosmopolitan feminist’s standpoint the intense resistance to women’s empowerment in Saudi Arabia is not the result of a timeless unique culture, but a political structure synonyme with fundamentalism. In extreme or less extreme ways, patriarchal structures exist globally, and have existed historically in all societies. This indicates that UN should take on a more critical position against cultural and religious claims concerning women’s rights (Mayer 1995:177; Reilly 2009.157-158).

8 Conclusions

Since the CEDAW Committee has been exposed to criticism and being accused of cultural imperialism by non-western states, it is natural that cautiousness develops. In the light of avoiding criticism the Committee is nowadays liberal concerning reservations. It is affirmed in CEDAW that reservations incompatible with the object and purpose of the Convention shall not be permitted but there are no prohibitions in CEDAW against making reservations. CEDAW is affected by a large number of reservations and declarations from the State Parties
and several reservations are formulated dubious and contradict the main provisions of the Convention. Many Muslim countries have ratified CEDAW along with reservations. Common for these reservations is the reference to Islamic law, but they are submitted to different provisions of the Convention. This variety on references indicates disagreements on which CEDAW-articles that are in contradiction to Islamic law. It is natural that there exist several interpretations of a religion, but in the case of Saudi Arabia we have come to the conclusion that religion is misused as justification for oppression and dictatorship. The problematic issues are to what extent, and in what context, religious and cultural claims should be accepted. Saudi Arabia has ratified CEDAW but in the dialogue it becomes obvious that there is a conflict concerning the universality of human rights, in particular women’s rights. In the global diversity of cultures and religions a natural conflict appears when efforts are made to unite world states under international law. The criticism against the UN for being an organization based on western values is understandable since the initiative of several western states was the foundation in the birth of the UN. However, it is important to remember that most of the world states are members of the UN and that a ratification of a Convention means that the jurisdiction of the UN is recognized. One way to look at it is that the UN does not represent any culture more or less, but stands for a minimum standard in the protection of human beings, a minimum standard that states who become members and who ratify conventions are obligated to accept.

In the dialogue between the CEDAW Committee and the Saudi Arabian representatives, it is explained that the reservation was also made in the light of the fact that there exist small differences in the implementation of the CEDAW provisions between Islamic Law and the judicial authorities that interpret the Convention. It is explained that since human rights concept is developing in a fast tempo and that the interpretations of the Convention could go beyond the literal content of the Convention, Saudi would like to have the possibility not to be bound to the Convention in those cases. During the dialogue between the Committee and the Saudi representatives, it is claimed that the Saudi ratification of CEDAW was in line with the Saudi Government’s approach to human rights and women’s rights. In the same context the importance of respect of cultural diversity is accentuated and how this should constitute as a central provision within the United Nations and CEDAW. The contradiction in these statements is that the universality of women’s human rights is accepted, at the same time they want to have the possibility to derogate from these rights.
It is claimed that the Saudi Government needs time and patience to change people’s mentality. These strong traditional mentalities are one reason why women are prevented from participating in certain levels of society and not are able to practice their privileges. It is explained that the ban of driving for women is not regulated under any laws but is one example of a strong mentality in the Saudi society that regulates this. The Saudi Government does not want to upset the Saudi people by urge some reforms in society. When it comes to women’s legal capacity and their rights in regard to men much is regulated under Shari’ah and these regulations are not open for interpretations.

The CEDAW Committee is concerned regarding several matters concerning the situation for the Saudi women. The Committee urges Saudi Arabia to withdraw its reservation having in mind that the Saudi representatives have assured that the CEDAW provisions are in line with the Saudi approach on women’s rights. The Committee also urges Saudi Arabia to take immediate steps to end the male guardianship system and to adopt clear goals to eliminate negative cultural practices and stereotypes that discriminate women and to promote women’s full enjoyment of their human rights. The problem is that the Saudi Government has much power and is able to ignore the suggestions and recommendations from the Committee due to the fact that there are no legal consequences. Saudi Arabia has formulated a general reservation that can be seen as contrary to CEDAW since it does not give indications on how it will effect Saudi’s obligations to CEDAW. According to article 28.2 in CEDAW, such reservations shall not be permitted but the fact is that Saudi Arabia continues to be a State party to CEDAW having a “legal protection” in its reservation and continues to oppress their women and deprives them of most of their rights. Since the Saudi regime is bound to report to the CEDAW Committee every fourth year, there is a possibility that the influence from the Committee has effects on the Saudi regime.

The importance of respecting the culture, tradition and religion of non-western societies should definitely not be diminished in the work with implementing international human rights. However, in cases like Saudi Arabia, it seems like the cultural and religious claims serve as justification for an institutional oppression of women, a form of oppression that is unique and taken to the extreme, but oppression of women in itself is a global phenomenon.
which is not connected to a specific culture. The political usefulness of cultural relativism becomes an obstacle for women in their struggle for human rights.

9 Future work

During our work with this paper a few questions were raised that there were no room for in our thesis. The existing reservation system within the UN and the international human rights treaties might undermine the effectiveness of CEDAW as a legal instrument but is also an evident of the inherent weakness in the consensual United Nations Human Rights system. Regarding reservations to human rights treaties, maybe there shall be more clear instructions on how reservations shall be formulated? If that was the case, the State Parties would need to formulate their reservations in more specific terms with no hesitation to their obligation to the treaties. Another interesting reflection in the discussion of culture and religion as excuses for oppression is the comparison with oppression based on other grounds. In a future paper it would be interesting to compare the arguments used concerning oppression of women, and the arguments used concerning racial oppression. Are they accepted to the same extent? In the case of Saudi Arabia the gender separation system is very similar to the system of racial Apartheid in South Africa. It seems like oppression based on race causes greater reactions from the international community. South Africa was economically boycotted and excluded from the UN. Despite the similar features of the oppression of women this is not the case for Saudi Arabia, on the contrary they have very good trade contacts and are considered an important economical partner in the field of international trade. As far as we concern there are no serious discussions regarding a trade boycott of Saudi Arabia, of course, this could be the reason for why cultural and religious arguments are accepted to a greater extent.
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