

# Les analyses



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## Women and « Human Rights » in Saudi Arabia

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### Abstract

The issue of women and "Human Rights" in Saudi Arabia can first be studied in consideration of different statistics. The study highlights the particular situation of women under human rights as contained in the Universal Declaration of 1948 that all member states of the UN should apply. It must therefore be ascertained whether the fact that Saudi Arabia rely on other international texts may explain this situation.

### Keywords

Gender; Women; Human Rights ; Saudi Arabia ; Middle East ; Iraq; Iran; Tunisia; Islam; France ; Geography of the Population; International Conventions

### Résumé

La question des femmes et des « Droits de l'Homme » en Arabie saoudite peut d'abord être étudiée à l'examen de différentes statistiques. L'étude met en évidence la situation particulière de la femme au titre des droits de l'homme tels qu'ils figurent dans la Déclaration universelle de 1948 que tous les pays membres de l'ONU devraient appliquer. Il faut donc rechercher si le fait pour l'Arabie saoudite de s'appuyer sur d'autres textes internationaux est susceptible d'expliquer cette situation.

### Mots-clés

Genre ; Femmes ; Droits de l'homme ; Arabie saoudite ; Moyen-Orient ; Irak ; Iran ; Tunisie ; Islam ; France ; Géographie de la population ; Conventions internationales

To treat the question of women and the “rights of man” in any country presents a recent enough semantic difficulty. In effect, as much at the time of the Declaration of human and citizens’ rights of August 1789, as of that of the Universal Declaration of Human Rights – as adopted and proclaimed by the UN’s General Assembly in its resolution 217A of 10th December 1948, the meaning given to the word “man” didn’t raise any difficulties. “Man” then incontestably designated all human beings, of whatever sex. Thus in the 1995 Robert Dictionary, the first definition of the word “man” specifies: “being (male or female) belonging to the Earth’s most evolved animal species, primate mammal of the hominid family, sole representative of its species”.

However, it is necessary to observe that the semantic evolution, especially since the 2000 years, conducts more and more to use the word “man” to designate the masculine sex and, in consequence, to use the word “woman” when one talks of the female sex. It results thereof, by example, that in the language of the past two years, the Universal Declaration of the Rights of Man would without doubt be called “Universal Declaration of Human Rights”. It is therefore convenient to specify the necessity, in the present text, to keep in account the context for determining if the word “man” is used in its first definition covering all human beings (“male or female being”) or in its second one (person of male sex).

In order to understand well the situation of women in Saudi Arabia, it is important to compare with other countries. In this sense, it is coherent to consider first of all similar countries, not only because they belong to the same geographic region (the Middle East) of the same planet (Earth), but also in the measure in which their economy rests largely on petroleum or gas activity susceptible of providing them important means for responding to women’s needs in sanitary terms, education access, professional opportunity,... Saudi Arabia shall therefore be compared with Iran and Iraq, even if these countries’ past and present geopolitical situation<sup>1</sup> is evidently different, notably taking into account the insecurity reigning in Iraq since 2003. Then, the comparison consists in retaining Tunisia, Arab-Moslem country like Saudi Arabia but considered as less the least unfair in its regulating between men and women<sup>2</sup> - in effect, besides the measures taken with the adoption of the personal status code in 1956, this country has abolished polygamy and made

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<sup>1</sup> Dumont, Gérard-François, « *Histoire et géopolitique des territoires irakiens* », *Géostratégiques*, n° 6, 2<sup>e</sup> trimestre 2005; « *L’exception iranienne* », *Géostratégiques*, n° 18, 2008

<sup>2</sup> Sophie Bessis: « *sur la place des femmes dans le monde arabe* », *Moyen-Orient*, n° 15, juillet-septembre 2012; Dumont, Gérard-François, Montenay, Yves, « *Le Maghreb, une géopolitique éclatée* », *Géostratégiques*, n° 32, juillet 2011.

obligatory explicit consent between two prospective spouses. Spouses are equal also in the divorce process. Women there have an educational level as high as men and are in the majority at University. During the 1990s and 2000s, several reforms have secured women's rights, notably in the matter of child care. Parental authority has replaced the father only responsibility and, in 2004 the Penal Code punished sexual harassment. Since 2010 the mother can, like the father, transmit her nationality to the children. However, there still exist several discriminatory dispositions in Tunisia, such as inheritance inequality (women can claim only half of that attributed to men)<sup>3</sup>, a Moslem woman cannot marry a non-Moslem man, and one can question oneself as to post-Ben-Ali Governments' attitudes on the risk of direct or indirect neutralization of the equality measures cited above. Finally, it shall be interesting to put into perspective the Saudi Arabia data in comparison to a Western country, in fact France.

To analyse in which measure the rights of man apply to women in Saudi Arabia, let's examine first the objective elements permitting to answer this question, by considering five types of rights: health, education, work, information and citizenship.<sup>4</sup> Having become aware of the realities, it becomes necessary to question one's self on the textual sources susceptible of explaining them.

In order to situate the female condition in Saudi Arabia, let's begin by examining the right to health which is formulated in general manner in Paragraph 1 of Article n°25 of the Universal Declaration of the Rights of Man, in the following terms: "Every citizen has the right to a standard of living sufficient to assure his/her health."

#### *Women and the right to health*

*A priori*, Saudi Arabian women are not disadvantaged in comparison to the men, in health matters in conformity with the criterion of life expectancy at birth. In effect, for women this is two years more than the men's.<sup>5</sup>

Nevertheless, the comparative analysis leads to a less favourable conclusion. First of all, life expectancy for women at birth in Saudi Arabia is not very high relatively, since it is 2 years less

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<sup>3</sup> This rule for transmission of wealth is considered as founded on the following extract from the Koran: "As for your children, Dieu orders you to attribute to a boy a share amounting to that of two girls." Sourate IV-11. *Le Coran*, translated by D. Masson, Paris, Gallimard, 1967.

<sup>4</sup> Here we examine uniquely the question of Saudi women and therefore not that of women who have immigrated into Saudi Arabia and who may well find themselves in an inferior legal position despite the "Colombo process" recommended by the International Organization for Migration (IOM), in order to favour dialogue and cooperation between countries of origin and host countries. In the region of which Saudi Arabia is part, the Colombo Process is known as the "Abu Dhabi dialogue".

<sup>5</sup> This item and the following are mainly from the *World population data sheet*, 2012, and "*Les femmes et les filles de notre monde. Fiche de données 2011*", Population Reference Bureau.

than that for Tunisia, a country whose health system cannot benefit from high petroleum revenues, and 10 years less than for France. In the measure in which it is noted<sup>6</sup> that a slight difference in life expectancy between men and women results from the disadvantaged condition of women, and that a big difference translates – excepting for Russia and some ex-USSR countries – into a more equal health situation for both sexes, women must be considered as relatively disfavoured in Saudi Arabia, in a proportion superior to those of other Middle-East countries considered. This means that the right to health for Saudi Arabian women is exercised in less favourable conditions than in the other countries considered, and this leads to research for the explanatory factor(s).

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A first explanatory factor could be insufficient health check-up for Saudi women in their maternal biological identity. One can rightfully question whether these women have life expectancy limited by risk of abnormally high death rate during childbirth, because of lack of medical attention. However, this factor is not at all validated by the study of the percent of births assisted by qualified personnel (doctors, nurses or midwives). In effect, in Saudi Arabia, this is 96%, as much as in Iran and Tunisia, much higher than in Iraq, and slightly less than in France where it reaches close to 100%.

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A second criterion, the maternal mortality rate confirms that one must discard a female life expectancy limited by risks related to their maternity. Let's remind that the female mortality rate is measured by the number of deaths of women in conditions related to pregnancy, childbirth and any related complication per 100 000 live births. However in Saudi Arabia, this rate is 24 women dead per 100 000 births, less than that in Iran and much less than for Tunisia and Iraq. All the same, Saudi Arabia's result is three times higher than for France, this means there is room for progress by reducing even further maternal mortality.

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Two explanatory factors being discarded, let's examine a third possible one: the probability of a woman's death from pregnancy or childbirth after-effects. This measure combines the probability of a pregnancy and the risk of death associated with each pregnancy (measured by the rate of

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<sup>6</sup> Dumont, Gérard-François, "*Hommes et femmes en lutte pour les places dans le monde*", *La Géographie*, n° 1543, October/November/December 2011.

maternal mortality). According to this criterion, Saudi Arabia's position seems less advantageous than that of Iran, but quite good with a probability inferior to that of Tunisia and even very inferior to Iraq's. Iran's better position is not explained by any better sanitary system, but by this country's lesser fecundity: 1,9 children per woman.<sup>7</sup> On the other hand, Saudi Arabia's probability is 5 times that of France, difference that can be exclusively explained by the countries' fecundities: 2,8 children per woman in Saudi Arabia compared to 2 in France.

Therefore one must research for another risk factor specific to Saudi Arabian women and permitting to understand the small difference in life expectancy compared to the men. World health statistics elaborated by the World Health Organization (WHO) discard totally tobacco smoking whose prevalence in Saudi Arabia is essentially of the men – 24% men compared to 1% women,<sup>7</sup> in other words a strong difference compared to France where tobacco consumption prevalence of adults aged over 15 years is 36% for men and 27% for women.

On the other hand, one of the explanatory factors of the relatively low life expectancy at birth of Saudi Arabian women is incontestably obesity. In effect, amongst the five countries considered, Saudi Arabia counts the highest level of obesity,<sup>8</sup> in fact 44 % of the women, a percentage of 8 points more than Iraq, 11 points more than Tunisia, 14 points more than Iran and 29 points more than France. These numbers, like others furnished for other countries by the WHO, testify to a certain feminine condition associated with a lifestyle that doesn't permit sufficient activity susceptible of eliminating the risks of obesity. In all countries where female obesity is not only prevalent but also more than for men, "women's status plays an important role ... in particular in Moslem space, women spend a large part of their time at the family domicile, occupied notably with preparing meals, and participate very little in outside activity, for example sports. The lack of physical and sports activity constitutes for nutritionists an aggravating behaviour, in the same way as "frequent snacking".<sup>9</sup> Indeed, the facts of not being able to do a minimum of 30 minutes of rapid walking per day, of not being able to move about without male authorization, of often having to be chaperoned when going out, of not being able to do some sports, is all bad for health. In Saudi

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<sup>7</sup> A rate that Iranian President Mahmoud Ahmadinejad judges too weak; cf. Dumont, Gérard-François, "*À quoi bon tant de monde ?*", *La sœur de l'ange*, n° 10, automne 2011.

<sup>7</sup> In 2008; see *Statistiques sanitaires mondiales 2012* (World Health Statistics 2012), WHO, p. 111

<sup>8</sup> Obesity is defined in objective fashion by considering the Body Mass Index (BMI), in other words the weight in kilograms divided by the waist/height in square metres (kg/m<sup>2</sup>). The WHO defines overweight as corresponding to a BMI equal or superior to 25, and obesity as corresponding to a BMI equal or superior to 30

<sup>9</sup> Jean-Paul Charvet, *L'agriculture mondialisée*, Paris, *La Documentation photographique*, n° 8059, September-October 2007, p. 20

Arabia, according to the newspaper *Le Monde*,<sup>10</sup> “women are not considered as worthy of sports, there is no physical education in public schools. Women don’t have access to swimming-pools.” Still according to *Le Monde*, “Females in sports – as explained by a religious dignitary to authors of the Human Rights Watch report in February 2012 – leads to immorality: those are the devil’s own steps.” Women who dare to practise sport anyway, do it in private places that the authorities oftentimes close down; and in order to protest, women have brandished the ironic slogan “Let them get fat!” “Nevertheless, for the first time in the history of the Olympic Games, women were present in all the 204 competing delegations at London.” At the Pekin Olympic Games in 2008, three countries were still ignoring the Olympic Charter that proclaims that sports are a universal right and must suffer no discrimination: Saudi Arabia, Qatar and the Brunei Sultanate. These three Moslem countries had sent only male athletes. At the last minute in 2012, Riyadh accepted that two Saudi girls participate in the games, however one of them – Sarah Attar, 19 years old, runner in the 800 metres – lives in the United States and has dual nationality, whereas the other – Wodjan Ali Seraj Shaherkhani, age 18 years, a judoka –had been trained at home by her father (a professional trainer), because females couldn’t do judo outside of their homes.

Thus, although the right to health is universally recognized for men as for women, the numbers reveal that its application is insufficient in Saudi Arabia, because of the way in which the female condition is considered. Let’s as from now examine the right to education that should be exercised for women as for men, in virtue of paragraph 1 of article 26 of the Universal Declaration of Human Rights, specifying: “Everyone has a right to education”.

#### *Women and the right to education*

In this matter of education, a first criterion – although indirect, concerns the question of premature childbirth. In effect, in the countries where the number of births by women aged between 15 and 19 years is quite high, the risk of a minimum of education for these women is higher. However, according to this criterion, the birth rate for a 1000 women aged between 15 and 19 years in Saudi Arabia is low, even if appears to be double that of Tunisia or of France. Therefore it’s not the premature childbirths that could limit in any significant way the schooling rate of women in Saudi Arabia.

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<sup>10</sup> 29 July 2012, p. 1

Another measure, more direct, of the right to education, consists in examining literacy, precisely the “youth literacy rate” for those between 15 and 24 years of age. This rate measures the percentage of persons between ages 15 and 24 years who can read, understand and write a simple concise declaration on everyday life. This percentage is rated at 100% in France, for both sexes, a percentage that excludes the literacy question.

In Saudi Arabia and other countries considered, the literacy rate is equally high, but slightly less for women. Only Iraq has much lower rates.

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Since the level required for the calculation of the literacy rate numerator for youth is low, the question of the right to education must be considered via another criterion, the relationship between the female schooling rate at the secondary level compared to the male rate at the same level, this rate also being called the parity index for the sexes with regards secondary level education. This criterion exposes a lesser right to education for women in Saudi Arabia, since the rate is 86% in this country. This is higher than in Iraq but lower than in Iran (95%) and especially in Tunisia where it is over 100%. This last percentage can be explained either by the effect of lesser investment for boys’ schooling, or by the early participation by boys in economic activity.

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There results from the preceding elements that progress is still possible for equal access in education for women compared to men in Saudi Arabia. After health and education rights, let’s examine “the right to work” as recognized for all persons in Article 23 of the Universal Declaration of Human Rights.

#### *Women and the right to work*

The right to work can be measured by the proportion of those aged 15 years or more of the active population, even if, it’s true, the manner for estimating active population can vary from one country to another. Let’s remind that active population is that considered as either having employment or being on unemployment benefits, that is to say all those who participate or qualify to participate in economic activity.

In four of the five countries considered, the gap between women and men is considerable, the highest being in Saudi Arabia where 80% of the 15 years old or more males are classified in the active population, whereas only 21% of the females are. These percentages are very different to France, for economic and demographic reasons, taking into account the importance of youth

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presence in higher studies in France as well as the retired populace. But the essential difference between Saudi Arabia and France is the considerably smaller gap in France between the men and the women.

A second criterion permitting to distinguish the lesser right of women to work: the rate of salaried women outside of the agricultural sector, that is to say the number of women holding paid employment in the non agricultural sectors (either in industry or the services) related to the total number of salaried personnel outside of the agricultural sector.

Whereas in France, clearly half of salaried workers outside of the agricultural sector are women, this percentage is 25% in Tunisia and 15% in Saudi Arabia, in other words a very different proportion than in Iraq and Iran.

From the criteria measuring women's right to work in Saudi Arabia, one must conclude that this field is very limited. One of the reasons could quite simply be the difficulty for women to go to work since Saudi Arabia doesn't let women drive a car. Another right of women, that must be examined is the right to be informed.

#### *Women and the right to be informed*

This right can be estimated through determining the percentage of married women aged between 15 and 49 years using some form of contraception – traditional or “modern” (anti-ovarian pill, injections, hormone treatment, intra-uterine devices, condoms or sterilization). In this area, Saudi Arabian women seem less well informed, since they represent the weakest percentage of the five countries studied.

Finally, one must consider the political rights that paragraph 1 of Article 21 of the Universal Declaration on Human Rights specifies thus: “Every person has the right to take part in the management of the public affairs of his/her country, whether directly or by freely chosen representative.” Paragraph 3 of the same Article specifies notably the necessity of “fair universal suffrage”.

### *Women and political rights*

The political rights of Saudi women can first of all be examined by considering the Fundamental Law that King Fahd declared as from 1<sup>st</sup> March 1992: this concept is indeed one of fundamental law as opposed to the notion of a constitution, as the first article stipulates: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam; the Prophet's Holy Koran and *Sunna* (Tradition) (may eternal peace be His) form its Constitution." The word "woman" does not appear and is not implicated in this law that specifies in its Article n°26 that "The State protects the rights of man in conformity with the Islamic *Sharia*." The Fundamental Law confirms the monarchical character of the Government, specifying in its Article n°5 that "The Dynastic Laws belong to the sons of the founder and to his descendants." It therefore seems to result implicitly from the text that a woman may not govern. Moreover, the text of the Law uses several times the expression "Crown Prince" and never "Crown Princess".

Another element for analyzing the political rights of women consists in considering the right to vote. This right exists in the four other countries examined, but not in Saudi Arabia.

Yet another measure of the effective character of the political rights of women consists in examining the proportion of female members of Parliament. Certainly, Saudi Arabia has no Parliament in the sense of the separation of powers expressed by Montesquieu, but does have a Council whose members are appointed by the King and which functions on the consultation (*choura*) principle. However, since no woman is allowed into this Council which is the closest thing to a representative body in Saudi Arabia, therefore officially women are just not represented, whereas they are in Iran and in lesser measure in Iraq, but much more in Tunisia and France. Concerning the Municipal Advisers, half of them are now voted into office, but women cannot vote or be officially represented.

It therefore follows from the preceding elements that the political rights of women in Saudi Arabia are officially non-existent.

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### *The range of the Universal Declaration of Human Rights*

All data shows that there must be more progress made with regards women's rights. But does Saudi Arabia have the will to engage this path? The answer to this question appears paradoxically positive, because this country is a United Nations member and therefore adheres to the Universal Declaration of Human Rights which must, for all UN members and according to the terms of its articles of creation, be "the common ideal to be reached by all peoples and all nations". The United Nations website specifies that it is convenient to bring to bear the Universal Declaration of Human

Rights, in order to serve as “yardstick for measuring the conduct of States”.<sup>11</sup> This Declaration, even if its ideal is yet to be achieved, isn’t a text that has been archived at the bottom of some cupboard, on the contrary it is the most translated document in the world, after the Guinness Book of Records, because it exists in 375 languages and dialects.

However, this Universal Declaration, after its preamble, includes a first Article whose first line is the following: “All human beings are born free and equal in dignity and in rights”. One can underline that the term “human being” is used there, which incontestably includes the female text. This equal place for women is moreover confirmed in Article n°2 paragraph n°1: “Each person can claim all the rights and liberties proclaimed in the present Declaration, without any distinction, notably as to race, colour, sex, language, religion, political or any other opinion, national or social origin, wealth, birth or any other situation.”

Even if no country applies perfectly the Universal Declaration, this latter is considered as a fundamental international reference in the domain of the Human Rights. Its normative force is notably rooted in the fact that in 1966 the General Assembly adopted two treaties that refer to that content matter: the Pact for Civil and Political Rights, and the Pact for economic, social and cultural rights. These Pacts, associated with mechanisms to ensure their respect, have been very largely ratified by the member-States of the UN: respectively 154 and 151 ratifications.<sup>12</sup> And the International Conference of the Rights of Man held in Tehran proclaimed on 13<sup>th</sup> May 1968 “The Universal Declaration expresses the common concept that the entire world’s peoples have of inalienable and inviolable rights inherent to all members of the human family and constitutes an obligation for the members of the international community.<sup>13</sup> Saudi Arabia as member of the UN cannot exempt itself from applying the Universal Declaration of Human Rights, this being, moreover, implicitly written in Article n°81 of its own Fundamental Law, in the following terms: “The enforcement of the present Law does not challenge treaties and agreements signed by the Saudi Arabia Kingdom with international organizations and institutions.”

Moreover, Saudi Arabia is concerned by different international texts that treat the question of human rights, such as the 1979 United Nations Convention on the Elimination of Discrimination Against Women, the 1990 Declaration of the Rights of Man in Islam drawn up in the framework of the Organization of Islamic Cooperation (later the 2004 Arab Chart of Human Rights drawn up anew by the Arab League), and the new 2008 Chart of the Organization of Islamic Cooperation. It is therefore important to examine these texts, in order to attempt questioning oneself in which measure they may be explanatory of the condition of women in our subject country. Indeed, following the chronological order of the four texts cited, let’s begin with the United Nations Convention on the Elimination of Discrimination Against Women.

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<sup>11</sup> <http://www.un.org/fr/rights/overview/charter-hr.shtml>, site consulté en août 2012.

<sup>12</sup> Of which France in 1980.

<sup>13</sup> Moreover, certain countries such as France have attributed to this a reference value for supreme jurisdictions.

*Reserves about the United Nations Convention on the*

*Elimination of Discrimination Against Women*

This Convention (English abbreviation: CEDAW, French CEDEF) was adopted in 1979 by the United Nations General Assembly. It is often described as an international declaration of the rights of women, and officially recognizes that culture and tradition can contribute to women having limited exercise of their fundamental rights as in the following paragraph of its preamble: "Conscious that the traditional role of the man in a family and in society must evolve as much as of the woman, if one wants to achieve real equality of men and women." The CEDAW defines in its first article the notion of discrimination: "For the ends of the present Convention, the expression "discrimination against women" means any distinction, exclusion or restriction founded on sex that has as effect or goal to compromise or to destroy the recognition, enjoyment or exercise by women, whatever their matrimonial status, on the basis of the equality of men and women, of human rights and fundamental liberties in the political, economic, social, cultural and civil domains or in any other domain."

The Convention's aim is clear, it is incontestably to extend human rights to women, as is specified notably in Article n°2: "The signing States condemn discrimination in all its forms against women, and agree to pursue by all appropriate means and without delay a policy tending to eliminate discrimination against women."

The fact that Saudi Arabia signed and ratified on 7<sup>th</sup> September 2000 can give the impression that the feminine condition could evolve in this country. All the same, as in other countries, Saudi Arabia has formulated reserves that limit the range of its signature. The first Saudi Arabian reserve is the following: "1. In case of contradiction between the Convention's terms and Islamic legal standards, the Kingdom is not held to respecting the Convention's contradictory terms." The practical and detailed effects of this reserve are not at all specified, which just implies that the consequences can be very far-reaching.

The second Saudi Arabian reserve is formulated thus: "The Kingdom does not consider itself bound by the Convention's Article 9 Paragraphe 2 or by the Convention's Article 29 Paragraph 1." However, the text of Article 9 reads: "1. The signing States grant to women rights equal to men's in so far as are concerned acquisition, change or conservation of Nationality. They guarantee in particular that neither marriage with a foreigner, nor nationality change by the husband during marriage, can change the wife's nationality, or make her stateless, or oblige her to take her husband's nationality with regards the nationality of their children if any. 2. The signing States grant to women rights equal to men's, as far as is concerned the nationality of their children." This reserve means that only the Saudi man can exercise any right over the nationality of his own children.

As for Article 29, it specifies: “1. Any disagreement (between two or more signing States concerning the interpretation or the application of the present Convention) that is not settled by negotiation is then submitted to arbitration, upon request by one or another of the parties. If within six months of the date of the arbitration request the parties still have not managed to settle an agreement on the arbitration process, then any one of the parties can submit the disagreement to the International Court of Justice, by depositing a petition conform to the Court’s statutes.” So the reserve concerning this Article seems to aim to discard any possibility for a State to ask Saudi Arabia to apply any part of the Convention, for example to other nation’s citizens residing in Saudi Arabia.

Keeping in account these two reserves by Saudi Arabia over the United Nations Convention on the elimination of all forms of discrimination against women, it appears that the latter is limited in effect concerning the evolution of the female condition in this country.

However, Saudi Arabia can refer to another text: the Declaration of the Rights of Man in Islam.

#### *A restrictive declaration on human rights?*

The Organization of the Islamic Conference, created on 25<sup>th</sup> September 1969 became, on 28<sup>th</sup> June 2011 the Organization of Islamic Cooperation: it regroups 57 countries having a Moslem majority and who have decided “to gather their resources, unite their efforts and speak with one voice to defend their interests and assure progress and well-being for their populations and for all Moslems around the world.”

In Cairo on 5<sup>th</sup> August 1990, the Organization of the Islamic Conference had adopted a Declaration of the Rights of Man in Islam, ratified by said 57 countries and which aims to be the consensual expression of the rights of man according to the interpretation in Islam and therefore an adaptation imbued with a strong religious impregnation, of the Universal Declaration of Human Rights.

Thus Article 1-a) removes all difference between men and women, but situates them in their “submission to God”: “All human beings constitute one family whose members are united by their submission to God and to their belonging to Adam’s posterity. All peoples, without distinction of race, of colour, of language, of religion, of sex, of political persuasion, of social situation or of all other consideration, are equal in dignity, in duty and in responsibility.”

Article 5-a) is implicitly retreated in relation to the Universal Declaration of the Rights of Man, where it is specified: “The family is the foundation and the construction of society, it is based in marriage. Men and women have the right to marry. No hindrance invoking race, colour or nationality is to prevent enjoying this right.” It is convenient to note that this text doesn’t exclude another possible obstacle, that of religion, since in number of countries a female Moslem can only marry a Moslem. However this obstacle is truly avoided by Article n°16 Paragraph n°1 of the

Universal Declaration of the Rights of Man, that specifies: “As from childbearing age, any man and any woman without any restriction as to race, nationality or religion has the right to marry and to found a family.”

Another excerpt from the Declaration of the Rights of Man in Islam can be judged too restrictive. Certainly, Article 6 first paragraph seems conform to the principle of equality between men and women elaborated in the Universal Declaration of the Rights of Man, it specifies: “a) A woman is the equal of a man, in human dignity. She has as much rights as duties. She can enjoy her civil personality and financial autonomy, as well as the right to keep her name and maiden name.” However, the second paragraph operates a distinction between the level of responsibility of the man and of the woman: “b) The charge of maintaining the family and the responsibility of watching over it are incumbent upon the husband.”

Another article on the liberty of circulating, Article 12, appears ambiguous for it could be interpreted as restrictive in relation to the Universal Declaration of the Rights of Man. In effect, for the Universal Declaration of the Rights of Man, the right to circulate and to emigrate is entire according to Article n°13: “1. All persons have the right to circulate freely and to choose a residence in any State. 2. All persons have the right to leave any country, including their own, and to return to their country.”

However, Article 12 of the Declaration of the rights of man in Islam indicates: “Any man has the right, within the framework of the *Sharia*, to the liberty to circulate and to choose his place of residence inside or outside his country.”

The question of the liberty of opinion is equally submitted to the *Sharia*, as indicates Article 22: “a-) Each man has the right to express freely his opinion so long as it isn't in contradiction with the principles of the *Sharia*. b-) .... c-) Information is a vital imperative for society. It is prohibited to use or exploit it to diminish the prophets' sacredness and dignity or to ends that could damage moral values susceptible of exposing society to division, dissension or discord or to the weakening or disintegration of faith.” This text appears equally restrictive in relation to Article 18 of the Universal Declaration of the Rights of Man, that specifies “Each person has the right to the freedom of thought, of conscience and of religion; this right implies the liberty of changing religion or conviction.” More generally, the Declaration of the rights of man in Islam seems to limit the liberty of choosing one's religion and of changing it.

Finally, the Declaration of the rights of man in Islam raises a true difficulty in the measure in which it places the *Sharia* above all other reference, so equally above the Universal Declaration of the Rights of Man, and still without having specified precisely what one can expect with the *Sharia*, except that it codes and regulates all public and private aspects of the life of a Moslem. However, its normative power can vary according to the interpretations. Therefore, when Article 25 specifies: “The *Sharia* is the unique reference for explaining or interpreting one and all of the articles in the

present declaration.” However it is ill considered to even infer a generally accepted meaning of what it signifies for the women.<sup>14</sup>

On the question of women and the rights of man, Saudi Arabia can also refer to a third text: the Arab Chart of Human Rights.

#### *The ambiguities of the Arab Chart of Human Rights*

This Arab Chart of Human Rights was adopted in May 2004 in Tunis, at the 16<sup>th</sup> Summit of the League of Arab States. In conformity with its Article 49 which exacts its ratification by seven of the League’s member States, it started being enforced as from 15<sup>th</sup> March 2008, 2 months after the ratification date of a seventh State, the United Arab Emirates, adding to Jordan (28 October 2004), Algeria (11 June 2006), Bahrein (18 June 2006), Libya (7 August 2006), Syria (6 February 2007) and Palestine (28 November 2007). The Chart has a preamble and 53 Articles. Being an update of the preceding Chart adopted in 1994, the 2004 version of the Arab Chart of Human Rights has been the object of criticism because of the incompatibility of certain of the text’s passages with the international instruments for protection of human rights.

Certainly, the 2004 Arab Chart of Human Rights marks a significant evolution on the question of women in comparison with the 1994 text which largely eluded it, thus the subject of male-female equality is mentioned and affirmed several times, indirectly or directly. Indirectly, the end of the preamble claims to reaffirm “the principles of the United Nations Charter, concerning the declaration of the rights of man.” Directly, in Article 3 paragraph a-)<sup>15</sup> which affirms equality thus: “Each State party to the present Chart engages itself to guarantee to all individuals of its competence the right to enjoy the rights and liberties declared in the present Chart, without distinction as to race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental handicap.”

All the same, this article 3 contains a paragraph c-) which reads: “Man and woman are equal with respect to human dignity, rights and duties in the framework of positive discrimination instituted in favour of women by the Islamic *Sharia*...”. The International Commission of Jurists created in Berlin in 1952 and composed of 60 eminent jurists who represent various justice systems of the world, found the text to be ambiguous and moreover has requested – in vain – its clarification. Further on, the Arab Chart of Human Rights doesn’t exclude the death penalty against women, since Article 7’s second paragraph reads: “The death penalty cannot be executed on the person of a pregnant woman until she has given birth, or on a mother that only breastfeeds two years after childbirth, in each case the interest of the infant is priority.”

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<sup>14</sup> *Towards an Arab system of Protection of Human Rights : the Arab Chart of Human Rights, Centre Arabe pour l'Éducation au Droit International Humanitaire et aux droits Humains (ACIHL) and Institut des Droits de l'Homme de Lyon, Lyon, 2002.*

<sup>15</sup> The translation of the Arab text was done by the United Nations High Commission for Human Rights, Geneva

On the other hand women appear as human beings having full political rights according to Article 24: “a-) Each citizen has the right to practise freely a political activity; b-) Each citizen has the right to participate in the direction of public affairs, directly or by freely chosen intermediary representatives; c-) Each citizen has the right to be candidate or to select his/her intermediaries in regular free elections and in the conditions of equality between all citizens assuring the free expression of his/her will.”

Such an Article implicitly supposes the right to vote and eligibility of women, unless one must consider that women don't have citizenship. Likewise, Article 26 Paragraph 1 forbids all discrimination between men and women with regards the right to circulate, it reads as follows: “a-) All persons finding themselves legally on territory of a party State can enjoy the right to circulate freely...”.

Another point, any person, regardless of sex must be able to emigrate, according to Article 27 Paragraph (a): “No-one can be arbitrarily or illegally prevented from leaving any country, including his/her own, refused residence in a given region, or obliged to stay in said country.” However ... a Saudi woman cannot emigrate without male authorization. One must also mention another paragraph of Article 33, which incontestably permits women to practise a sport: “d-) The party States take all necessary measures to guarantee notably for youth the right to exercise a sports activity.”

Yet other Articles recognizing the equal place of women lead to underline the gaps existing between this new Arab Chart of Human Rights and the reality of the female condition in Saudi Arabia, but also in other Arab countries.

A fourth and last text, the Chart of the Organization of the Islamic Conference, must be examined.

#### *The supremacy of State laws over human rights?*

The Organization of the Islamic Conference has reformulated at “Dakar, Senegal Republic, the seventh *Rabia al awwal* one thousand four hundred and twenty-nine of the Hegira, corresponding to fourteenth March two thousand and eight” a new Chart to replace that registered on 1<sup>st</sup> February 1974. In its preamble, this chart of the organization of the Islamic Conference reaffirms its attachment to the principles of the United Nations Charter.

Then Article 1 that bears on “The Objectives of the Organization of the Islamic Conference” specifies implicitly women's rights in one paragraph: “14-) To promote and protect human rights and fundamental liberties, including the rights of women, children, youth, senior citizens and the needy, and to watch over the safe-keeping of values inherent to the Islamic family.”

But in parallel, the preamble specifies that one must guard “to preserve and promote women's rights and to favour their effective participation in all domains of life, in conformity with the laws and legislation of the member States.” Therefore this preamble can be considered as equivocal in

the measure in which women's rights have no universal value but are regulated according to the laws and legislation of the member States.

The examination of the female condition in Saudi Arabia shows that it presents itself in differentiated in accordance with chosen criteria. This appears quite unfavourable with regards health but not with regards the sanitary aspects of maternity. It further reveals it is disadvantaged in the matters of the right to education and the right to work. And women's political rights are practically non-existent. All the same, one could think that these insufficiencies in the application of the Universal Declaration of Human rights in favour of women shall progressively dissipate since Saudi Arabia, as a United Nations member, accepts the terms of this declaration as the common ideal to realize.

But the international texts accepted by Saudi Arabia are not limited to the Universal Declaration of Human Rights. This country is also implicated by other texts on which it has pronounced reserves or which include ambiguities that can explain the fact that the objectives of the Universal Declaration of Human Rights appear insufficiently represented. Thus, whatever one thinks of the female condition in Saudi Arabia, it's still possible for this country to advance the juridical arguments susceptible of justifying the existence of incontestable and soon reprehensible inequalities between the status of men and that of women. In conclusion, the efforts conducted by one part of Saudi society to smooth away this painfully clumsy and unsightly inequality, even with regards minor rights such as sports, driving a car and moving around the country without having to require authorization of a male guardian, have too limited results.

**G.-F. D.**

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