

Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) on Saudi Arabia 89th Session

We write in advance of the 89th Session of the Committee on the Elimination of Discrimination against Women and its review of Saudi Arabia's compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This submission addresses articles 1, 2, 3, 5, 6, 10, 11, 12, 14, 15, and 16 of the Convention.

This submission is based on information contained in Human Rights Watch publications and media reports.

1. Discrimination Against Women in the Personal Status Law (articles 1, 2, 10, 11, 15, and 16)

The Personal Status Law, issued on March 8, 2022, codifies discriminatory practices and includes provisions that facilitate domestic violence and sexual abuse in marriage. The law also uses vague language that gives judges wide discretion when adjudicating cases, increasing the likelihood of inconsistent interpretations.

Male guardianship in Saudi law undermines women's right to make autonomous decisions, including about marriage. Articles 13 and 15 require women to obtain a male guardian's permission to marry irrespective of her age or former marital status while men do not need such permission and can have four wives at any one time.¹ Even if a woman's guardian agrees to the marriage, the law allows other relatives up to the third degree to object to the marriage.² Women can apply to court if the primary guardian prevents a marriage, and the judge can appoint another guardian or act as her guardian to execute the marriage contract. However, Human Rights Watch documented Saudi judges' deferential treatment of a guardian's opinion regarding the suitability of a marriage.³

¹ Human Rights Watch report, "Saudi Arabia: Law Enshrines Male Guardianship," March 8, 2023, <https://www.hrw.org/news/2023/03/08/saudi-arabia-law-enshrines-male-guardianship>.

² Ibid.

³ Human Rights Watch report, "Boxed In: Women and Saudi Arabia's Male Guardianship System," July 16, 2016, <https://www.hrw.org/report/2016/07/17/boxed/women-and-saudi-arabias-male-guardianship-system>.

Article 42 requires married women to obey their husbands in a “reasonable manner” and breastfeed their children unless there is an impediment. The same article prohibits spouses from abstaining from sexual relations or cohabitation without the other spouse’s consent, implying a marital right to intercourse.⁴

Financial support by the husband is specifically contingent on the wife’s “obedience,” and she can lose her right to such support if she refuses without a “legitimate excuse” to have sex with him, move to or live in the marital home, or travel with him, according to articles 45 and 55.⁵

Men can file cases for “disobedience” against their wives, daughters, or female relatives under their guardianship, which can result in the arrest and forcible return to their male guardian’s home or imprisonment.⁶ Some Saudi law firms say that women can hire lawyers to contest these cases within 30 days, creating a financial barrier for women who cannot afford legal counsel.⁷

Men can unilaterally divorce their wives while a woman can only petition a court to dissolve their marriage contract on limited grounds and must “establish [the] harm” that makes the continuation of marriage “impossible” within those grounds, according to article 108. However, the law does not have a threshold for what constitutes harm or what can be used to establish it, leaving these terms entirely at the discretion of the presiding judge. Saudi lawyers have noted that photos, voice notes, and text messages, which may be the only records of a husband’s abuse that women have, may not be accepted by judges, who often favor items such as medical and police records. Survivors of physical abuse often struggle to report incidents to the authorities or access social services or court action without a male relative, or because they are discouraged from reporting due to social stigma, especially if their spouse is also a cousin.⁸

According to Article 27, if a woman wishes to have the same right to unilaterally divorce her husband, the husband must agree to it as a condition in the marriage contract at the time of stipulating their agreed marriage terms. However, this is uncommon, seen as shameful to include, or not allowed by marriage registrars who view this practice as un-Islamic.⁹

⁴ Human Rights Watch report, “Saudi Arabia: Law Enshrines Male Guardianship.”

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid; Human Rights Watch report, “Boxed In: Women and Saudi Arabia’s Male Guardianship System.”

⁹ Ibid.

A woman can also request a divorce based on khul', by which her husband consents to the divorce in exchange for compensation.¹⁰ The compensation may be returning the money or goods given to her by the groom or his family at the time of marriage, or property of similar or equal value. Similar payout requirements are not imposed on men who initiate a divorce.

If a woman is unable or unwilling to pay for a khul' divorce, she can file for fault-based divorce on grounds prescribed in the law such as failure to provide financial support, the husband's abandonment of the marital home for more than four months, or if the husband does not, or swears he will not, have sex with her for four months without a "legitimate excuse."¹¹

Women also face discrimination regarding the status of children after divorce. The law provides that following a divorce, children are to be cared for by a "custodian," the default being the mother, unless the court rules otherwise, but the law gives the father all decision-making authority.¹² Regardless of whether the court appoints a woman as "custodian" of her child, the law provides that the child's father remains the default guardian. Children can also be removed from living with their mothers if their mothers re-marry.¹³

Article 126 provides that a woman must not marry a man who is a stranger to a child in her custody unless it is in the child's "best interest," a term that is not defined in law. A father can seek to terminate the mother's custody of the children on the grounds that she is no longer a "competent" custodian or because she remarried a man who is a stranger to the child. The law does not extend the mother the same right to contest custody if the father remarries.

Article 8 sets the legal age of marriage as 18. However, courts can authorize the marriage of a child under 18 if they have "reached puberty" – which could be younger than 15 – and if the marriage provides an "established benefit" to the child.¹⁴ The law does not define "puberty," though in practice this is understood, for girls, to refer to her first menstruation.

Under article 215 of the law, daughters inherit half of the amount their brothers get from either parent's assets.

¹⁰ Ibid.

¹¹ Human Rights Watch report, "Saudi Arabia: Law Enshrines Male Guardianship."

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

2. Discrimination Against Women in Other Laws and In Practice (articles 1, 2, 5, 12, and 15)

Saudi Arabia does not have a penal code but applies its own interpretation of sharia. (Islamic law) as its national law. Saudi Arabia criminalizes private consensual relations such as khilwa (meeting of an unrelated man and woman, especially alone), zina (extramarital sex), and abortion.¹⁵ Saudi courts have sentenced people to flogging for sex outside marriage and other offenses. Charges for consensual adult relationships disproportionately impact women, whose pregnancy serves as evidence of the so-called crime. Rape survivors have faced prosecution when they report violence against them.¹⁶ While rarely, if ever, carried out, stoning sentences have been issued for adultery. These and other “moral” offenses and associated punishments violate international human rights law.

Saudi authorities also use flogging without a court sentence. Women detained in shelters, often for “deviat[ing] from the straight path” or disobeying the male guardians, have reported seeing shelter officials flog women for allegedly breaking the rules.¹⁷ Women require male guardian permission to exit prison, even after completing their sentences, and to exit state-run domestic abuse shelters.¹⁸ If a woman’s abuser is also her male guardian, this requirement increases the likelihood that she will remain in detention past her sentence or that she will be returned to an abusive situation.

Under article 22 of the Law of Practicing Healthcare Professions, abortion is illegal in Saudi Arabia unless it is to save the woman’s life or risks her health, provided the pregnancy is under four months old.¹⁹ A healthcare practitioner who administers an abortion faces a penalty of up to six months in prison and/or a SAR 100,000 [approximately US\$ 26,600]

¹⁵ News release, Human Rights Watch, “Saudi Arabia: Forthcoming Penal Code Should Protect Rights,” April 29, 2022, <https://www.hrw.org/news/2022/04/29/saudi-arabia-forthcoming-penal-code-should-protect-rights>.

¹⁶ Human Rights Watch Submission to the Universal Periodic Review of the Kingdom of Saudi Arabia, July 20, 2023, <https://www.hrw.org/news/2023/07/20/submission-universal-periodic-review-kingdom-saudi-arabia>.

¹⁷ News release, Human Rights Watch, “Saudi Arabia: Forthcoming Penal Code Should Protect Rights.”

¹⁸ Lynzy Billing, “Inside Saudi Arabia’s Secret Detention Facilities Where Women Disappear,” Elle Magazine, June 6, 2022, <https://www.elle.com/culture/a39787294/inside-saudi-arabias-secret-detention-facilities-where-women-disappear/> (accessed January 14, 2024); “Joint statement in support of Saudi women human rights defenders and their call for gender equality,” March 8, 2021, https://www.ernesturtasun.eu/wp-content/uploads/2021/03/Joint-statement-in-support-of-Saudi-WHRDs-and-their-call-for-gender-equality_final.pdf; Human Rights Watch phone interviews with Saudi women activists on August 12, 2024 and August 19, 2024.

¹⁹ Saudi Ministry of Health, “Law of Practicing Healthcare Professions,” <https://www.moh.gov.sa/en/Ministry/Rules/Documents/Law-of-Practicing-Healthcare-Professions.pdf>.

fine.²⁰ Women also require male guardian permission to obtain some forms of sexual and reproductive health care, including an abortion.²¹

Single women under 21 years of age must obtain their guardian's permission to travel outside Saudi Arabia unless they have government scholarship to study abroad or are employees participating in official trips abroad.²² Married women are entitled to travel without permission irrespective of their age. However, if a male guardian does not want a woman under his guardianship to travel, he can approach the competent court to issue a travel ban.²³ A husband can file a complaint in court against his wife for disobedience for leaving the home, and as a result, a woman may be denied spousal financial support until she returns to the marital home. Women attempting to flee abuse at home or report such abuse have faced months of detention under disobedience charges.²⁴

Women divorced from Saudi men told Human Rights Watch that husbands can withhold consent if a woman seeks higher education abroad.²⁵ Non-Saudi female students on a scholarship are required to have a mahram (father or close male relative she cannot marry) accompany them for their studies in Saudi Arabia.²⁶

3. Violence Against Women (articles 2, 3, and 16)

While Saudi Arabia has a law on the protection from abuse, it does not fully protect women. The 2013 law defines abuse as “Any form of exploitation or physical, psychological, or sexual ill-treatment, or threat thereof, perpetrated by one person against another that exceeds the bounds of the guardianship.” The law does not clarify what actions are permissible within the bounds of guardianship and what exceeds it. Saudi Arabia does not

²⁰ Ibid.

²¹ Saudi Ministry of Health, “اللائحة التنفيذية لنظام مزاولة املهن الصحية,” pg. 11, <https://istitlaa.ncc.gov.sa/ar/health/moh/healthprofessions/Documents/%D9%85%D8%B4%D8%B1%D9%88%D8%B9%20%D8%AA%D8%B9%D8%AF%D9%8A%D9%84%20%D8%A7%D9%84%D9%84%D8%A7%D8%A6%D8%AD%D8%A9%20%D8%A7%D9%84%D8%AA%D9%86%D9%81%D9%8A%D8%B0%D9%8A%D8%A9%20%D9%84%D9%86%D8%B8%D8%A7%D9%85%20%D9%85%D8%B2%D8%A7%D9%88%D9%84%D8%A9%20%D8%A7%D9%84%D9%85%D9%87%D9%86%20%D8%A7%D9%84%D8%B5%D8%AD%D9%8A%D8%A9.pdf>.

²² Human Rights Watch report, “Trapped: How Male Guardianship Policies Restrict Women’s Travel and Mobility in the Middle East and North Africa,” July 18, 2023, <https://www.hrw.org/report/2023/07/18/trapped/how-male-guardianship-policies-restrict-womens-travel-and-mobility-middle>.

²³ Ibid.

²⁴ Ibid.

²⁵ Human Rights Watch report, “Saudi Arabia: Law Enshrines Male Guardianship.”

²⁶ Human Rights Watch report, “Trapped: How Male Guardianship Policies Restrict Women’s Travel and Mobility in the Middle East and North Africa.”

explicitly criminalize marital rape. Many activists have also said that Saudi authorities fail to implement the law.

Although the Personal Status Law provides that spouses should treat each other with respect and kindness and not harm one another, the law codifies discriminatory practices and includes provisions that facilitate domestic violence and sexual abuse in marriage. The requirement to obtain consent from the other spouse to abstain from sexual relations, implying a marital right to intercourse, is incompatible with the human right to personal autonomy and can lead to women being subjected to sexual assault.²⁷

Human Rights Watch documented unlawful killings and excessive use of force by the Saudi border guard on the border with Yemen against Ethiopian migrants and asylum seekers. Saudi border guards have repeatedly fired on groups of unarmed migrants irregularly trying to cross the Yemen-Saudi border, often comprising a large proportion of women and children.²⁸ If committed as part of a Saudi government policy to murder migrants, these killings would be a crime against humanity. Human Rights Watch found that the proportion of women and girls traveling along this corridor has increased in recent years.

4. Migrant Domestic Workers (articles 2, 3, 6, 11, and 15)

Human Rights Watch and other organizations have documented abuses of domestic workers in Gulf states, including in Saudi Arabia.²⁹ Migrant workers in Saudi are governed by the Kafala (visa sponsorship) system that ties migrant workers' legal status to their employers which exposes them to abuse, including long workdays with rare days off, indebtedness from recruitment fees, confiscation of passports by employers, delayed and unpaid wages, confinement to the employer's house, and in some cases, physical, verbal, and sexual abuse, with little access to redress.

The total number of domestic workers in Saudi Arabia is reportedly 3.8 million, 30% of which are women.³⁰ The Labor Law and the recent reforms exclude domestic workers, who are among the least protected and most vulnerable to abuse, denying them important

²⁷ Human Rights Watch report, "Saudi Arabia: Law Enshrines Male Guardianship."

²⁸ Human Rights Watch report, "'They Fired on Us Like Rain': Saudi Arabian Mass Killings of Ethiopian Migrants at the Yemen-Saudi Border," August 21, 2023, <https://www.hrw.org/report/2023/08/21/they-fired-us-rain/saudi-arabian-mass-killings-ethiopian-migrants-yemen-saudi>.

²⁹ Human Rights Watch Submission to the Universal Periodic Review of the Kingdom of Saudi Arabia, July 20, 2023, <https://www.hrw.org/news/2023/07/20/submission-universal-periodic-review-kingdom-saudi-arabia>.

³⁰ Migrant Rights news release, "Saudi Arabia Extends Wage Protection System to Domestic Workers," May 27, 2024, <https://www.migrant-rights.org/2024/05/saudi-arabia-extends-wage-protection-system-to-domestic-workers/> (accessed August 30, 2024).

rights and protections.³¹ The absence of these protections means that employers can deny domestic workers the ability to change jobs or leave the country.

According to a new Domestic Worker Law that will come to effect in September 2024, domestic workers should not work for more than 10 hours a day, are entitled to breaks and daily uninterrupted rest of at least 8 hours and need to be at least 21 years of age.³² The law also explicitly prohibits passport confiscation, physical and verbal abuse, discrimination and sexual harassment and has laid out conditions in which a domestic worker can terminate their contract. However, despite the stronger provisions, as with the current domestic worker regulations, its impact will boil down to implementation.

Saudi Arabia has started including new migrant domestic workers in its Wage Protection System (WPS) since July 2024 and plans to roll it out to all current domestic workers by January 2026.³³ While a positive step, wage theft remains rampant in Saudi Arabia including for private sector workers. The new law also does not provide a fixed minimum wage for domestic workers.

Unless Saudi Arabia abolishes the kafala system, it will remain difficult for domestic workers to enjoy rights and protections as they can be arrested and deported for “absconding” if they flee their employer’s home. Despite recent reforms that include a two-month grace period to allow an “absconding” domestic worker to leave the country before their legal status becomes irregular, workers do not receive adequate notification from the relevant authorities about absconding cases filed against them, unknowingly pushing them into irregular status.³⁴

5. Discrimination against Women in Saudi Arabia’s 1954 Nationality Law (articles 1 and 9)

Saudi Arabia discriminates against women by not allowing them to pass nationality to their children on the same basis as men. However, in January 2023 Saudi authorities amended

³¹ Human Rights Watch news release, “Saudi Arabia: Labor Reforms Insufficient,” March 25, 2021, <https://www.hrw.org/news/2021/03/25/saudi-arabia-labor-reforms-insufficient>.

³² Migrant Rights news release, “An overview of Saudi’s new Domestic Workers Law,” October 17, 2023, <https://www.migrant-rights.org/2023/10/an-overview-of-saudis-new-domestic-workers-law/> (accessed August 30, 2024).

³³ “Saudi HR ministry launches wage protection service for domestic workers,” May 13, 2024, <https://www.arabnews.com/node/2509561/saudi-arabia> (accessed August 30, 2024).

³⁴ Saudi Ministry of Human Resources and Social Development, “ضوابط تحسين العلاقة التعاقدية,” <https://www.hrsd.gov.sa/sites/default/files/2024-04/%D8%B8%D9%88%D8%A7%D8%A8%D8%B7%20%D8%AA%D8%AD%D8%B3%D9%8A%D9%86%20%D8%A7%D9%84%D8%B9%D9%84%D8%A7%D9%82%D8%A9%20%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%82%D8%AF%D9%8A%D8%A9%20%D9%84%D9%84%D8%B9%D9%85%D8%A7%D9%84%D8%A9%20%D8%A7%D9%84%D9%85%D9%86%D8%B2%D9%84%D9%8A%D8%A9.pdf>

article 8 of the Saudi Arabian Nationality System granting the prime minister, currently Crown Prince Mohammed bin Salman, the authority to approve citizenship applications.^[35] Children born to Saudi mothers and non-Saudi fathers now have an added barrier to the existing strict conditions that they have to fulfill to apply for citizenship after they turn 18. Children born to Saudi fathers are automatically granted citizenship at birth.^[36] This falls short of granting women equal rights to men in conferring nationality to their children and spouses.

Recommendations

The CEDAW committee in its 2018 concluding observations made a number of recommendations that have not been implemented, including calls on Saudi Arabia to repeal or modify without delay discriminatory legislation, including provisions in the Personal Status Law, the Nationality Law, and other laws.

We encourage the Committee to make the following recommendations to the Saudi government:

- Reform the Personal Status Law to provide women with equal rights in entering marriage, during marriage, and at its dissolution, including in all issues concerning children, inheritance, and property rights.
- Remove restrictions on women's freedom to travel abroad including the requirement that women under 21 need male guardian permission and the right of men to apply to courts to prohibit their wives from travelling abroad.
- Criminalize child marriage explicitly starting with removing the provision in the Personal Status Law that allows courts to authorize a marriage for a child under 18 if they have reached puberty and if the marriage provides an "established benefit" to the child.
- Amend the Law of Protection from Abuse to make all forms of violence against women and girls, including domestic violence, a criminal offense. Explicitly criminalize marital rape. Ensure that legislative reforms are implemented.
- Immediately and urgently revoke any policy, whether explicit or de facto, targeting migrants and asylum seekers with explosive weapons and close-range attacks on civilian migrants on the border with Yemen.
- Investigate and appropriately discipline or prosecute security personnel responsible for firing explosive weapons and shooting at close range of migrants at the Yemen border.

- Decriminalize adult consensual sexual relations in private.
- Strengthen the implementation of the new law on domestic workers, including by raising awareness of the new provisions, strengthening monitoring and complaints mechanisms, investigating and prosecuting allegations and complaints against employers and agents for violations.
- Ensure that domestic workers benefit from minimum wage coverage, including an hourly minimum wage, under law and that compensation does not discriminate based on sex, gender, race, or national origin.
- Ratify the ILO Domestic Workers Convention.
- Reform the kafala system to allow all migrant workers, including domestic workers, to leave or change employers at will, and without losing their legal status.