



## Human Rights Watch Submission to the CEDAW Committee of Saudi Arabia's Periodic Report 69th Session

January 2018

We write in advance of the 68th 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, 6, 9, 11, 15, and 16 of the Convention.

This submission is based on information contained in a range of publications by Human Rights Watch, first-hand interviews with affected women, rights activists and other experts, media reports and information from partner organizations.

### **1. General Reservation To CEDAW**

The CEDAW committee in its last review of Saudi Arabia in January 2008 noted Saudi Arabia's general reservation upon ratifying the convention that "in case of conflict between the provisions of Islamic law and those of the Convention, the State party gives precedence to Islamic law." The committee argued that this reservation "is drawn so widely that it is contrary to the object and purpose of the Convention."<sup>1</sup>

The committee noted the Saudi delegation's insistence that "there is no contradiction in substance between the Convention and Islamic Sharia" and called on Saudi Arabia to remove its general reservation, yet as of January 2018 Saudi Arabia had not done so.

### **2. Nationality (CEDAW articles 1, 9, and 11)**

Saudi Arabia still does not allow women to transmit nationality to their children on an equal basis with men. Article 8 of the Saudi Nationality Regulation of 1954 allows the child of a Saudi mother and non-Saudi father born inside Saudi Arabia to apply for nationality once he or she

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<sup>1</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, paras. 4, 9, 10. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2fCO%2f2&Lang=en) (accessed June 6, 2017).

turns 18 and meets other restrictive conditions.<sup>2</sup> Saudi men can transmit Saudi nationality to their children automatically, regardless of whether they are married to a Saudi or non-Saudi women.

In 2012, the Saudi cabinet ordered special privileges for non-citizen children of Saudi women, including the ability to enter Saudi Arabia at the invitation of their mothers, waiving of residency fees, permission to work in the private sector, and access to education and health care on the same basis as Saudi citizens.<sup>3</sup>

The CEDAW committee in its last review of Saudi Arabia in January 2008 called on the government to “to amend the nationality code so as to bring it into conformity with article 9 of the convention and to withdraw its reservation concerning article 9, paragraph 2.”<sup>4</sup>

### **3. Male Guardianship System (CEDAW articles 1, 2, 3, 5, 7, 10, 11, 12, 13, 15, and 16)**

The CEDAW committee in its last review of Saudi Arabia in January 2008 called on Saudi Arabia to “take immediate steps to end the practice of male guardianship over women, including by awareness-raising campaigns.”<sup>5</sup>

Nevertheless, Human Rights Watch research indicates that Saudi authorities have failed to take adequate steps to end this discriminatory system. Under the system, every woman must have a male guardian – a father, brother, husband, or even a son – who has the authority to make a range of critical decisions on her behalf. The Saudi government requires women to receive guardian approval to apply for a passport, travel outside the country, study abroad on a government scholarship, get married, or exit prison. Saudi women regularly face difficulty conducting a range of transactions – from renting an apartment to filing legal claims – without a male relative’s consent or presence. The Saudi government does not require guardian permission for women to work or receive healthcare, but it does not penalize employers or

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<sup>2</sup> Saudi Nationality Law, art. 8. <http://www.refworld.org/pdfid/3fb9eb6d2.pdf>

<sup>3</sup> UN Committee on the Elimination of Discrimination against Women, “Combined third and fourth periodic reports of States parties in 2013: Saudi Arabia,” CEDAW/C/SAU/3-4, August 29, 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/CEDAW\\_C\\_SAU\\_3-4\\_6006\\_A.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/CEDAW_C_SAU_3-4_6006_A.pdf), para. 87.

<sup>4</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, paras. 27-28, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2fCO%2f2&Lang=en) (accessed June 6, 2017).

<sup>5</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, paras. 15-16, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2fCO%2f2&Lang=en) (accessed June 6, 2017).

hospitals that require this permission. Women also face challenges making decisions for their children on an equal basis with men.<sup>6</sup>

In April 2017, King Salman issued an order to all government agencies that women should not be denied access to government services because they do not have a male guardian's consent unless existing regulations require it.<sup>7</sup>

On September 26, 2017, Saudi Arabia announced that it would lift the ban on women driving cars in June 2018, but as of January 2018 it remained unclear whether Saudi authorities will impose any additional driving restrictions on women that it does not impose on men.<sup>8</sup>

#### 4. Personal status issues (CEDAW articles 1, 2, 15 and 16)

The CEDAW Committee, in its concluding observations in 2008, expressed concern that “legal provisions relating to personal status, in particular concerning marriage, divorce, the custody of children and inheritance, do not provide for equal rights for women and men.”<sup>9</sup> The committee welcomed the fact that Saudi Arabia was “currently in the process of drafting new legislation on the implementation of women’s rights and ... to compile, in writing, the provisions of Sharia on personal status.”<sup>10</sup>

Despite repeated pledges to promulgate a written personal status law, Saudi authorities still had not issued such a law as of January 2018, and Saudi judges’ interpretations of uncodified Islamic law meant that courts continued to discriminate against women in personal status issues.

While the Shura Council discussed making 18 the minimum age of marriage along with a package of proposed personal status changes in 2013, no formal rule has yet been passed.<sup>11</sup> Local media continues to carry occasional reports of child marriages.<sup>12</sup>

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<sup>6</sup> Human Rights Watch report, *Boxed In: Women and Saudi Arabia’s Male Guardianship System*, July 16, 2016, <https://www.hrw.org/report/2016/07/16/boxed/women-and-saudi-arabias-male-guardianship-system>.

<sup>7</sup> “Saudi Arabia: ‘Unofficial’ Guardianship Rules Banned,” Human Rights Watch news release, May 9, 2017, <https://www.hrw.org/news/2017/05/09/saudi-arabia-unofficial-guardianship-rules-banned>.

<sup>8</sup> “Saudi Arabia: As Women’s Driving Ban Ends, Provide Parity,” Human Rights Watch news release, September 27, 2017, <https://www.hrw.org/news/2017/09/27/saudi-arabia-womens-driving-ban-ends-provide-parity>.

<sup>9</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, para. 35.

<sup>10</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, para. 6.

<sup>11</sup> According to an activist, the Ministry of Justice has directed court clerks to refer cases of girls under 15 to judges before registering a marriage. Human Rights Watch interview with Fatima, (location withheld), August 30, 2015, and September 24, 2015. “New Saudi law to set marital age of consent at 18,” Al-Arabiya, December 16, 2013, <http://english.alarabiya.net/en/News/middle-east/2013/12/16/New-Saudi-law-to-set-marital-age-of-consent-at-18.html> (accessed February 8, 2016).

<sup>12</sup> Dina Fouad, “Jazan court ends minor’s marriage,” Arab News, March 27, 2016, <http://www.arabnews.com/saudi-arabia/news/901466> (accessed March 27, 2016) (Under 15-year-old girl

## 5. Violence against women and girls (CEDAW articles 1, 2, 3, and 16)

In August 2013, Saudi Arabia took a step toward implementing the CEDAW Committee's 2008 recommendation on violence against women by adopting a specific law on violence against women, including domestic violence.<sup>13</sup>

The 2013 Protection from Abuse Regulation defines domestic abuse as, "Any form of exploitation or physical, psychological, or sexual ill-treatment, or threat thereof, perpetrated by one person against another which exceeds the bounds of the guardianship..."

The law sets the penalty for domestic abuse at between one month and one year in prison and a fine of between 5,000 (US\$1333) and 50,000 (US\$13,330) riyals unless sharia law provides for a harsher sentence.

The law defines abuse as physical, psychological, or sexual abuse, but does not explicitly state that marital rape is a crime. While the law and the implementing regulations clearly state a guardian may be guilty of abuse, the definition of abuse condones some harm by stating that abuse is only that which "exceed the bounds of the guardianship."<sup>14</sup> It does not clarify what actions would be permissible within the bounds of guardianship and what would exceed it. The law also does not explicitly include economic abuse as one of the elements of domestic abuse as required under international standards.

Failing to clearly define the bounds of guardianship is particularly problematic in Saudi Arabia, where male relatives can bring legal claims against "disobedient" female dependents. Parents may bring legal claims against their children for *'uquq* (parental disobedience), guardians may bring claims for *inqiyad* (asserting their right for dependents, including adult women, to submit to their authority), men can bring claims ordering their wives be returned to the marital home, and a *mahram* (male unmarriedable relative) can request his female relative be returned to him.

Moreover, Human Rights Watch has documented problems with the implementation of the law. Women said the police had turned them away when they tried to report abuse or they felt uncomfortable going to a police station without a male relative accompanying them. Almost all police officers are male, according to a women's rights activist.

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married to 84-year-old man) "Marriage of teens aged 15 and 16 sparks controversy, Arab News, April 8, 2016, <http://www.arabnews.com/saudi-arabia/news/907271> (accessed April 8, 2016) (15-year-old girl married to 16-year-old boy).

<sup>13</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, paras. 11-12.

<sup>14</sup> Law on Protection from Abuse, Royal Decree No. 52/M of 2013, art. 1.

Some officers ask women to file a complaint with or through a guardian or another male relative, despite no law requiring such a process. Police also occasionally call or send women back to their guardians, even when they are attempting to report abuse.

The domestic violence legislation is also problematic in that it prioritizes reconciliation over protection, which can deter some women from reporting abuse, and leave others exposed to further violence. The 2014 implementing regulations states that one of the goals of the 2013 law is to provide rehabilitation programs with the aim of returning a woman to her family.<sup>15</sup>

Furthermore, while in some provinces the Ministry of Labor and Social Development has in cases of severe abuse, made an “emergency intervention or enter a place where abuse has taken place” including without guardian permission in accordance with the law, social workers said that in other provinces, the ministry and police had not been as responsive including refusing to enter the house without guardian permission or special permission from a local authority.

The government’s 2016 report to CEDAW noted that between 2009-2013 authorities received 8,086 domestic violence complaints, of which 86% were made by women.<sup>16</sup> The report noted that 93% of such complaints were made against immediate family members. While such data is helpful, it did not provide data on what assistance and redress such women received including on arrests, prosecutions, and convictions for domestic violence, and more broadly gender-based violence.

The report noted that the government maintains 12 shelters for women and 3 for children.<sup>17</sup> However, such shelters have restrictive policies on how women can leave, and the 2014 implementing regulations state that a woman must be allowed to leave a shelter, not necessarily with her guardian, but “in coordination with her family members in order to receive her.” Some shelters policies encourage her family members to receive her, including, if necessary, by facilitating a reconciliation process. According to abuse specialists, shelter administrators generally prefer that a woman leaves in the care of her guardian but, if the guardian is the abuser, often allow her to leave with another *mahram* (a male relative).

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<sup>15</sup> Art. 2(2), Implementing Regulations for the Protection from Abuse Law, Ministry of Labor and Social Development, Dec. No. 43047, June 13, 2014.

<sup>16</sup> UN Committee on the Elimination of Discrimination against Women, “Combined third and fourth periodic reports of States parties in 2013: Saudi Arabia,” CEDAW/C/SAU/3-4, August 29, 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/CEDAW\\_C\\_SAU\\_3-4\\_6006\\_A.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/CEDAW_C_SAU_3-4_6006_A.pdf), para. 55.

<sup>17</sup> UN Committee on the Elimination of Discrimination against Women, “Combined third and fourth periodic reports of States parties in 2013: Saudi Arabia,” CEDAW/C/SAU/3-4, August 29, 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/CEDAW\\_C\\_SAU\\_3-4\\_6006\\_A.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/CEDAW_C_SAU_3-4_6006_A.pdf), para. 56.

It is practically difficult for women to live alone—women still struggle to sign leases without a guardian and may require guardian permission to secure employment—so they may return to their abusers.

Saudi Arabia has no written criminal penal code, and no written laws relating to sexual harassment, assault, or rape. Convictions for such acts have taken place under judges' interpretation of sharia. Local media reported that the Shura Council has been considering a draft law on sexual harassment that provides penalties of a five-year prison sentence and a fine of up to 500,000 Saudi Riyals (approximately \$133,000) against anyone that utters indecent words of sexual nature.<sup>18</sup> Women who report rape or sexual assault can also be prosecuted for *zina* (sexual relations outside of marriage). Penalties can include the death penalty for adultery, or flogging for fornication.

## 6. Migrant domestic workers (CEDAW Articles 1, 2, 6, 11, and 15)

In its 2008 review, CEDAW recommended that Saudi Arabia “grant in law and practice female domestic migrant workers, including their children, the rights provided for in the Convention and to implement measures aimed at informing them about these rights.”<sup>19</sup> Saudi Arabia has taken small steps toward establishing new protections for migrant domestic workers.

Saudi households employ an estimated 1.5 million domestic workers, primarily from Indonesia, Sri Lanka, the Philippines, and Nepal. Smaller numbers come from other countries in Africa and Asia. While no reliable statistics exist on the exact number of abuse cases, the Saudi Ministry of Labor and Social Affairs and the embassies of labor-sending countries shelter thousands of domestic workers with complaints against their employers or recruiters each year.

Human Rights Watch interviewed dozens of women who said their employers forced them to work against their will for months or years. Excessive workload and unpaid wages, for periods ranging from a few months to many years, are among the most common complaints. Employers often take away passports, and lock workers in the home, and in some cases deprive them of food. Many domestic workers also reported psychological, physical, and sexual abuse.<sup>20</sup> Local media continue to report high-profile cases of severe abuse and inhuman or degrading treatment by employers of domestic workers.

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<sup>18</sup> “Draft bill sets new measures against sexual harassment,” Arab News, July 6, 2016, <http://www.arabnews.com/node/949846/saudi-arabia> (accessed July 8, 2017).

<sup>19</sup> CEDAW Committee, Concluding comments on the Committee on the Elimination of Discrimination against Women: Saudi Arabia, Fortieth session 14 January – 1 February 2008, UN Doc. CEDAW/C/SAU/CO/2, November 4, 2011, para. 24.

<sup>20</sup> “As If I Am Not Human”: Abuses against Asian Domestic Workers in Saudi Arabia, Human Rights Watch, July 2008, <https://www.hrw.org/report/2008/07/07/if-i-am-not-human/abuses-against-asian-domestic-workers-saudi-arabia>.

Saudi Arabia's Labor Law excludes domestic workers, denying them rights guaranteed to other workers. Saudi Arabia adopted a regulation in 2013 that grants domestic workers nine hours of rest in every twenty-four-hour period, with one day off a week, and one month of paid vacation after two years. But the regulations are not in line with the ILO Domestic Workers Convention. For instance, domestic workers can be required to work up to 15 hours a day, whereas Saudi labor law limits other workers to 8 hours of work daily.<sup>21</sup> It also does not set out workplace inspections including in private homes, with due respect to privacy.

The regulations also obligate the domestic worker to “not to reject to work or leave service without a legitimate reason” and to “keep secrets” of their employers, among others, and can face a penalty of up to 2000 Saudi riyals (US \$533) and/or a permanent ban from working in Saudi Arabia.<sup>22</sup> The fine can also be multiplied for the number of violations.<sup>23</sup>

The restrictive *kafala* (sponsorship) system ties migrant workers' visas to their employers, and means employers can deny workers the ability to change jobs or leave the country. The 2013 domestic worker regulations also reinforce this system by requiring the employer to report the domestic worker to the police if she runs away.<sup>24</sup> In February 6, 2017, Saudi Arabian Labor Ministry issued a ministerial decree that allows migrant domestic workers to transfer sponsorship without the consent of their employers in certain circumstances including where it is proven that the employer did not pay the domestic worker three months' salary or mistreated them.<sup>25</sup> This however still leaves workers trapped with abusive employers as they can be arrested if they flee their employers' homes. Workers may need to prove such abuse or mistreatment which can be difficult as the abuse takes place inside their employers' homes.

## Recommendations

- Remove Saudi Arabia's general reservation to CEDAW, which is contrary to the object and purpose of the Convention, and sign and ratify the Optional Protocol to CEDAW.
- Amend the Saudi Nationality Regulation of 1954 to stipulate that a Saudi citizen is any person born to a Saudi father or a Saudi mother.
- Abolish ministerial regulations requiring a guardian to apply for or renew a woman's passport, and for guardian permission for a woman to travel abroad.

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<sup>21</sup> Rothna Begum, “Gulf States Fail to Protect Domestic Workers From Serious Violence,” Newsweek, October 16, 2015, <http://europe.newsweek.com/gulf-states-fail-to-protect-domestic-workers-from-serious-violence-334857> (accessed June 6, 2016).

<sup>22</sup> Bylaw of Domestic Workers and Employees in Similar Category, No. 8/4/276109, issued August 14, 2013, arts. 6, and 18.

<sup>23</sup> Bylaw of Domestic Workers and Employees in Similar Category, art. 18.

<sup>24</sup> Bylaw of Domestic Workers and Employees in Similar Category, art. 13.

<sup>25</sup> “Minister of Labor approves transfer of sponsorship for 13 housemaids,” Saudi Press Agency, February 19, 2017, <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1593718> (accessed May 21, 2017).

- Lift the ban on women driving immediately, and do not impose any further restrictions on women driving that are not applied to men.
- Issue clear and explicit directives allowing women to be released from prisons and juvenile detention centers without being released to a male guardian.
- Propose amendments to the Protection from Abuse Law, including to article 1, explicitly stating that no family member has the authority to “discipline” female dependents using violence, that “discipline” is not a legal defense in cases involving family violence, immediately rescinding guardianship from those accused of abuse, immediately rescinding guardianship from those who refuse to agree to a woman’s release from prison or her request to leave a shelter, and amending articles in the law that appear to prioritize family reconciliation over protection of the woman or limit shelter options to cases determined to be sufficiently severe by the ministry.
- Issue clear and explicit directives to all places of employment prohibiting employers from requesting guardian permission from women to work and imposing penalties on any employers that do so.
- Issue a directive clearly stating that women may study abroad on government scholarships without a male guardian’s permission or accompanied by a male relative.
- Issue clear and explicit directives to all hospitals and clinics prohibiting all staff from requesting guardian permission to allow an adult woman to be admitted or receive care of any kind, and establish penalties for institutions that continue to require guardian permission.
- Promulgate a prohibition on any form of discrimination against women in practice, policy or regulation and the dismantling of the legal guardianship system for adult women, guaranteeing that women are considered to have reached full legal capacity at 18 years of age.
- Abolish the right to file legal claims against women based on *‘uquq* (parental disobedience), *inqiyad* (submission to a guardian’s authority), or leaving the marital or guardian’s home. Remove these claims from the ministry’s electronic complaint system.
- Promulgate a new family law code that ensures men and women have equal rights in family matters, including establishing 18 as the minimum age of marriage, ensuring all adults have the right to freely enter into marriage, that which parent a child should live with is determined on the basis of the best interests of the child in line with international standards, and that during a marriage and following divorce, parents



have equal rights to open bank accounts, enroll in school, make health decisions or travel with children.

- Decriminalize adult consensual sexual relations.
- Reform discriminatory evidence standards for prosecution of rape and train police, investigators, public prosecutors, and judges on handling sexual violence cases, and ensure policewomen with specialised training are available to assist and support women who report rape. Rape victims should receive medical treatment, psychological counselling, and other support services.
- Undertake a number of specific reforms to ensure the rights of migrant domestic workers such as:
  - Reform the *kafala* visa-sponsorship system so as to allow domestic workers to transfer employment without employer consent and without losing valid immigration status. Remove sanctions on “absconding,” including deportation and bans on future work.
  - Enforce the prohibition on the confiscation of workers’ passports. Sanction employers and recruiters who violate this prohibition.
  - Amend the labor regulation on domestic workers. Ensure that it provides protections at least equal to those contained in the Saudi Arabia’s other labor laws and complies fully with the ILO Convention on Decent Work for Domestic Workers.
  - Ratify the ILO Convention on Decent Work for Domestic Workers, the Protocol of 2014 to the ILO Forced Labour Convention, 1930, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
  - Create a domestic work inspection task force to monitor working conditions and legal compliance for this sector, including inspecting places of work where domestic workers have alleged violations and expediting dispute-resolution for domestic worker complaints. Improve provision of emergency shelters and other assistance, and publicize their existence in Arabic and languages spoken by larger migrant populations in the Saudi Arabia. Ensure that domestic workers can access such shelters.
  - Expand government monitoring of domestic worker recruitment agencies to ensure accountability for abuse.
  - Undertake regular public information campaigns to inform domestic workers and employers of their rights and responsibilities under Saudi Arabia law, and

provide information and contact details for sources of assistance for abused workers.