

SAUDI ARABIA

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION
OF DISCRIMINATION AGAINST WOMEN
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Amnesty International presents this submission to the UN Committee on the Elimination of Discrimination against Women (CEDAW) in advance of the review of Saudi Arabia's fifth periodic report on measures taken to implement the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). The submission focuses on legislative changes in Saudi Arabia that codify gender-based discrimination and the crackdown on women human rights defenders and activists. It is not an exhaustive account of discrimination faced by women in Saudi Arabia.

INTRODUCTION

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Since Saudi Arabia's last review by CEDAW in 2018, the authorities have implemented reforms to the male guardianship system, including women being able to obtain passports and travel without the permission of a male guardian; to register the birth of a newborn child, the death of a relative and their own marriage or divorce, as well as to obtain a family record; and for women to act as heads of household.¹ Nevertheless, various other aspects of the male guardianship system were codified in newly enacted legislation.

Furthermore, the legislative reforms announced by Saudi Arabia's Crown Prince in February 2021, fall short of protecting women from gender-based violence. Among these is a Personal Status Law (Family Law) and a Penal Code for Discretionary Sentences. Amnesty International's analysis of the Family Law², which entered into force in June 2022, and a leaked draft of the Penal Code³, which has not yet been adopted, show that they do not adequately protect women from gender-based violence, including harassment, domestic violence or marital rape and entrench a system of gender-based discrimination.

FAMILY LAW ENTRENCHES A SYSTEM OF GENDER-BASED DISCRIMINATION IN MARRIAGE, DIVORCE, CUSTODY AND INHERITANCE

Saudi Arabia's first Family Law entered into force on 18 June 2022. Prior to that, Saudi Arabia did not have a codified Family Law as matters related to family life were subject to the discretionary application of the rules of Sharia (Islamic law) and interpretations of Islamic texts by a male-dominated judiciary.⁴ Upon adoption of the Family Law, Mohammad bin Salman praised the law as a "major qualitative leap in preserving and protecting human rights, family stability, women's empowerment and promotion of rights."⁵ However, Amnesty International's analysis shows that while the law introduces some positive reforms, such as setting a minimum age for marriage, it fails to adequately protect women from domestic violence and entrenches a system of gender-based discrimination in marriage, divorce, custody and inheritance.⁶

¹ Amnesty International, "Saudi Arabia: Women's rights reforms must be followed by release of detained activists", 2 August 2019, <https://www.amnesty.org/en/latest/press-release/2019/08/saudi-arabia-womens-rights-reforms-must-be-followed-by-release-of-detainedactivists/>

² Amnesty International, "Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women" (Index: MDE 23/6431/2023), 8 March 2023, <https://www.amnesty.org/en/documents/mde23/6431/2023/en/>

³ Amnesty International, Manifesto for Repression: Saudi Arabia's Forthcoming Penal Code Must Uphold Human Rights in Line with International Law and Standards (Index: MDE 23/7783/2024), 19 March 2024, <https://www.amnesty.org/en/documents/mde23/7783/2024/en/>

⁴ Amnesty International, "Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women" (previously cited).

⁵ Saudi Press Agency, "Recently-approved Personal Status Law Stems from the Provisions and Purposes of Islamic Sharia and Comes in London with the Latest Legal Trends and Modern International Judicial Practices, HRH Crown Prince Says", 8 March 2022, <https://www.spa.gov.sa/2335790>

⁶ Amnesty International, "Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women" (previously cited).

FAILS TO ADEQUATELY PROTECT WOMEN FROM FAMILY VIOLENCE

While the law stipulates that the husband has a duty to provide financial maintenance to his wife during the marriage, which includes food, clothing, accommodation and other essential needs,⁷ this right is conditional on the wife “submit[ing] herself to him”⁸ and may be denied if she, amongst other things, “refuses herself to her husband...without a legitimate reason.” Such provisions place women at risk of exploitation and abuse, including marital rape, which Saudi law does not criminalize.

DISCRIMINATION IN MARRIAGE

Under the Family Law, only men can be legal guardians, while women must have the consent of a male legal guardian to get married. The law does contain some safeguards which seek to protect a woman from being forced into marriage, such as proof of consent of both the man and woman and the prohibition of a legal guardian’s agreement to a woman’s marriage without her consent. However, it does not provide any clarity on what “consent” entails or how it should be obtained. If a woman’s legal guardian rejects the marriage, despite her desire for the marriage to go forward, that guardianship is transferred to the court, which is another male-dominated entity,⁹ to “take charge of marrying the woman.”¹⁰ This transfer of guardianship further diminishes women’s agency and impacts the ability of women to give their “free and full”¹¹ consent to marriage as required under international law and standards.

DISCRIMINATION IN OBTAINING DIVORCE AND OTHER FORMS OF SEPERATION

Under the Family Law, only men can unilaterally initiate divorce without conditions, verbally or in writing.¹²

Khula’ (separation, which can be initiated at the request of the wife but requires the consent of the husband and the wife compensating her husband) and faskh (annulment, which is a court-ordered, fault-based separation) are two others forms of separation that a woman can initiate, but in both, women face legal, financial and practical barriers that do not apply to men and disproportionately impact women.

DISCRIMINATION IN CUSTODY AND GUARDIANSHIP OF CHILDREN

The Family Law does not give women and men equal rights over matters relating to their children in the event of separation. While the mother is automatically granted custody, and is the child’s “custodian”,¹³ the father remains the child’s legal guardian, who is responsible for the “minor’s affairs and representation.”¹⁴ This includes the “general supervision of the minor in a manner that does not enter into conflict with the authority of the person raising the child in managing the child’s affairs.”¹⁵ However, these provisions are vague and allow judges significant discretion in situations where there is a disagreement between a child’s guardian (usually the father) and custodian (usually the mother).

⁷ The Kingdom of Saudi Arabia, Family Law, 2022, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/4d72d829-947b-45d5-b9b5-ae5800d6bac2/1>, Article 45.

⁸ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 51.

⁹ International Institute for Democracy and Electoral Assistance (IDEA), Gender Quotas Database, <https://www.idea.int/data-tools/data/gender-quotas/country-view/256/35> (accessed on 21 February 2023)

¹⁰ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 20.

¹¹ UN Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 21: Equality in Marriage and Family Relations, 1994; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 November 1962, Article 1.

¹² The Kingdom of Saudi Arabia, Family Law (previously cited), Article 77.

¹³ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 127.

¹⁴ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 137.

¹⁵ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 138.

Additionally, a legal guardian can terminate the mother's custody if she marries a man unrelated to the child, unless she can establish such marriage is in "the best interest of the child".¹⁶ This provision discriminates against divorced women with children seeking to re-marry, and it is unclear how the judiciary will interpret the "interest" of the child. There is no similar provision restricting a father's guardianship over his child based on his marital status. In practice, Personal Status Courts in Saudi Arabia do discriminate against women in custody hearings.¹⁷

UNEQUAL INHERITANCE RIGHTS

The Family Law discriminates between men and women with regards to inheritance, giving men a much larger share of assets than women.¹⁸

For a couple that has no children and no other descendants, the law stipulates that the wife inherits only one quarter of her husband's assets, while the husband inherits half of his wife's assets. If the couple does have children or other descendants, the wife inherits one eighth of her husband's assets, while the husband inherits a quarter of his wife's assets.¹⁹

Similarly for children of the deceased, the son gets twice as much of the inheritance than the daughter.²⁰

RECOMMENDATIONS

Amnesty International recommends that the Saudi authorities:

- Amend the Family Law to ensure that:
 - Provisions including remnants of the male guardianship system are repealed including, but not limited to, Articles 11, 13, 15, 20, and 129;
 - The law does not discriminate against women, including by codifying problematic and stereotypical gender roles that require wives to "obey" and "submit themselves" to their husbands, such as in Articles 42(5), 51, and 55;
 - All forms of forced or coerced early marriage are prohibited, and both parties to the marriage can enter into it freely without any undue influence or coercion, including the threat or violence or financial incentives;
 - Where coercion is suspected in marriage involving one or more individuals under the age of 18, there are procedures in place to evaluate the consent of the parties, and to protect the best interests of the child, due regard is given to the views of the child according to their evolving capacity;
 - Women and men have equal access to initiate divorce, and the law does not place disproportionate financial and legal burdens on women that limits their ability to end their marriage;
 - Men and women have equal rights and responsibilities with regards to guardianship of their children, and that the best interests of the child are prioritized when making any decisions regarding custody; and
 - Men and women have equal inheritance rights.

¹⁶ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 126.

¹⁷ Musawah, "Thematic Report on Muslim Family Law and Muslim Women's Rights in Saudi Arabia", February 2018, <https://www.musawah.org/wp-content/uploads/2019/02/Saudi-Arabia-Thematic-Report-2018-CEDAW69.pdf>, p.24.

¹⁸ The Kingdom of Saudi Arabia, Family Law (previously cited), Articles 210-215.

¹⁹ The Kingdom of Saudi Arabia, Family Law (previously cited), Articles 209-210.

²⁰ The Kingdom of Saudi Arabia, Family Law (previously cited), Articles 215 (2).

- Amend the Law on Protection from Abuse to explicitly criminalize marital rape and ensure that the authorities have a confidential and robust reporting mechanism for survivors to report domestic violence and abuse and seek redress without fear of reprisal.

DRAFT PENAL CODE FAILS TO SAFEGUARD WOMEN’S RIGHTS

In July 2022, a draft of the Penal Code for Discretionary Sentences was leaked online. Amnesty International has strong reasons to believe that the draft is an authentic working draft of the code.²¹ While a first written penal code could be a crucial opportunity for Saudi Arabia’s authorities to protect women’s rights, Amnesty International’s analysis of the leaked draft code shows that it fails to do so.²²

FAILS TO PROTECT WOMEN AND GIRLS FROM GENDER-BASED VIOLENCE

Research conducted in public healthcare centres in Saudi Arabia shows that domestic violence is widespread in the country.²³ Statistics gathered in several studies indicate that at least one-third of Saudi women are survivors of domestic violence.²⁴

The draft code protects the perpetrators of abuse and killings of women and girls by exempting them from criminal investigations if they committed crimes, including assault or killing, to protect their or another person’s “honour”.²⁵

The draft penal code defines rape as “intercourse with another person without their consent, and intercourse being an obscene act by penetration.”²⁶ The draft code does not explicitly recognize marital rape as a crime and includes penetration as a requirement to prove rape.

CRIMINALIZES ABORTION

Under Sharia, there is no absolute prohibition of abortion, and different interpretations in Islam permit abortion in particular circumstances during the first trimester of pregnancy, including when the physical and mental health or life of a pregnant woman is in danger, as well as in situations of severe deformities and genetic diseases of the fetus.²⁷ Saudi Arabia’s draft penal code shows a significant regression from current practices criminalizing both undergoing an abortion and aiding in performing an abortion – with or without a medical reason – with prison terms and/or fines.

RECOMMENDATIONS

Amnesty International recommends that the Saudi authorities:

- Ensure that the definition of rape in any penal code adopted is consent-based, does not require penetration or proof of physical resistance, and explicitly recognizes and includes marital rape as a crime;

²¹ In 2022, a number of Saudi legal experts, including a member of the bar association and two Saudi law firms publicly shared and commented on the leaked draft, confirming its authenticity. See: https://twitter.com/ialf_net/status/1546680495290843139?t=0ftliqkkJ1ouszaKZ2Bw&s=19; <https://hd-lawyer.com.sa/%D9%85%D8%B3%D9%88%D8%AF%D8%A9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D8%A9/> and <https://lawyersafran.com/%D9%85%D8%B3%D9%88%D8%AF%D8%A9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF/>

²² Amnesty International, Manifesto for Repression: Saudi Arabia’s Forthcoming Penal Code Must Uphold Human Rights in Line with International Law and Standards (previously cited).

²³ Kazzaz YM, AlAmeer KM, AlAhmari RA, Househ M, El-Metwally A. “The epidemiology of domestic violence in Saudi Arabia: a systematic review”, November 2019, Int J Public Health, Volume 64(8):1223-1232, <https://pubmed.ncbi.nlm.nih.gov/31628522/>

²⁴ Wali, R., Khalil, A., Alattas, R. et al. “Prevalence and risk factors of domestic violence in women attending the National Guard Primary Health Care Centers in the Western Region, Saudi Arabia, 2018”, 17 February 2020, BMC Public Health, Volume 20, <https://doi.org/10.1186/s12889-020-8156-4>

²⁵ Draft Penal Code, Article 68.

²⁶ Draft Penal Code, Articles 181-182.

²⁷ Interview by voice call with Hala Aldosari, Saudi academic, 1 August 2023.

- Ensure that any penal code adopted does not exempt individuals from criminal investigations or provide for any mitigating circumstances if they committed a crime to protect their or another person’s so-called “honour”;
- Amend the definition of harassment in the draft Penal Code in line with the Istanbul Convention on Violence Against Women;
- Ensure that any penal code adopted does not criminalize abortion and provides universal access to abortion, post-abortion care and evidence-based, non-biased abortion-related information, free of force, coercion, violence and discrimination;
- Remove abortion from any criminal laws and ensure that criminal or other punitive laws, policies and practices are not applied to those seeking or obtaining an abortion or to healthcare providers and others solely for having performed abortions or assisted or facilitated abortion medication or services; and
- Conduct meaningful consultation with civil society, including women human rights defenders, on the draft Penal Code and consider the input of independent experts and academics prior to its adoption.

CRACKDOWN ON FREEDOM OF EXPRESSION: WOMEN HUMAN RIGHTS DEFENDERS DETAINED AND RESTRICTED FROM TRAVELLING

Saudi authorities have subjected women human rights defenders in Saudi Arabia to ruthless repression. In March 2019, 11 women’s rights activists faced trial for their activism, and some women were charged with promoting women’s rights and calling for the end of the male guardianship system.²⁸ This group includes LaH, who was arbitrarily detained in 2018 and sentenced to five years and eight months in prison, which was later suspended by two years and 10 months, after a grossly unfair trial before the Specialized Criminal Court, the country’s counter-terror court. She was conditionally released in February 2021 and is now facing a travel ban.²⁹

In the past two years, Saudi women who have tweeted in support of women’s rights have been sentenced to some of the longest prison terms Amnesty International has ever documented for simply expressing one’s opinions, including sentences of 45 years and 27 years.³⁰ SaS, a Leeds University PhD student and mother of two from Saudi Arabia’s Shi’a minority, was sentenced to 27 years in prison, followed by a 27-year travel ban for terrorism-related offences after a grossly unfair trial for publishing tweets in support of women’s rights.³¹

MaO, a 30-year-old fitness instructor and women’s rights advocate, was sentenced to 11 years in prison in a secret hearing before the counter-terror court for tweeting in support of women’s rights and posting a picture of herself on Snapchat without wearing an abaya (traditional robe).³² Both of MaO’s sisters have also faced investigations and criminal charges for campaigning for women’s rights.

In MaO’s hearing, the Public Prosecutor noted that her sister, FaO, “leads a propaganda campaign to incite Saudi girls to denounce religious principles and rebel against customs and traditions in the Saudi culture” for using the ‘#society_is_ready’ hashtag which “promotes liberation and the fall of

²⁸ Amnesty International, “Saudi Arabia: Women activists persecuted under bogus charges”, 14 March 2019, <https://www.amnesty.org/en/latest/press-release/2019/03/saudi-arabia-women-activists-persecuted-under-bogus-charges/>

²⁹ Amnesty International, “Saudi Arabia: Verdict upholding Loujain al-Hathloul’s conviction an appalling injustice”, 10 March 2021, <https://www.amnesty.org/en/latest/news/2021/03/saudi-arabia-verdict-upholding-loujain-al-hathloul-conviction-an-appalling-injustice-2/>

³⁰ Amnesty International, “Saudi Arabia: On International Women’s Day, Civil Society Organizations Renew Their Call on Saudi Authorities to Release Jailed Women’s Rights Activists” (Index: MDE 23/7796/2024), 8 March 2024, <https://www.amnesty.org/en/documents/mde23/7796/2024/en/>

³¹ Amnesty International, “Saudi Arabia: Release woman sentenced to 27 years for tweets: Salma al- Shehab” (Index: MDE 23/6643/2023), 3 April 2023, <https://www.amnesty.org/en/documents/mde23/6643/2023/en/>

³² Amnesty International, “Saudi Arabia: Manahel al-Otaibi Sentenced to 11 Years in Prison” (Index: MDE 23/8012/2024), 6 May 2024, <https://www.amnesty.org/en/documents/mde23/8012/2024/en/>

male guardianship”.³³ The court document reviewed by Amnesty International states that a separate order would be issued for FaO’s arrest. She is currently in the United Kingdom and cannot return to Saudi Arabia for fear of arrest and prosecution.

Their other sister, MrO, is a prominent advocate against male guardianship in the Kingdom. She was previously charged and detained in 2017 for 104 days for her women’s rights activism and is currently subjected to a travel ban and restrictions on her right to freedom of expression.

RECOMMENDATIONS

Amnesty International recommends that the Saudi authorities:

- Immediately and unconditionally release those imprisoned solely due to their women’s rights activism or for exercising their right to freedom of expression; and
- Immediately lift all travel bans imposed on women’s rights activists and human rights defenders and all other conditions judicially imposed solely because of their peaceful work, as well as unofficial bans extrajudicially and arbitrarily imposed on their relatives and family members as form of reprisal.

MIGRANT DOMESTIC WORKERS

Migrant domestic workers in Saudi Arabia routinely face labour abuse and exploitation, exacerbated by the continued enforcement of the kafala system in place in the country. Rather than extending the protections of the labour law to include them, the government introduced a new regulation for domestic workers, set to take effect in October 2024.³⁴ Given the unique vulnerabilities of domestic workers—stemming from their job nature, gender, race, low income, and social status—this regulation should have gone beyond the rights outlined in the Labor Law. However, it fell short, opting instead for even less protections than in the Labor Law.

In recent years, the Ministry of Human Resources and Social Development introduced measures aimed at protecting the rights of both domestic workers and employers. These include allowing workers to change employers without permission under specific conditions,³⁵ introducing a new insurance scheme in February 2024 to safeguard the rights of both parties,³⁶ and launching an initiative in May 2024 to protect domestic workers’ salaries by streamlining the salary payments through the Musaned, an online government platform that facilitates the recruitment of domestic workers and offers related services.³⁷

While these initiatives are long overdue, they still fall short of fully protecting migrant domestic workers from widespread abuses. Recent interviews conducted by Amnesty International with domestic workers reveal a troubling pattern of exploitation and harsh working conditions, including excessively long hours, denial of rest days, passport confiscation, non-payment of wages, verbal and physical abuse as well as racial discrimination. Ultimately none of the women interviewed have seen their abuser held to account for their actions, which undermines the government’s reform efforts and feeds into the culture of impunity that continues to prevail in Saudi Arabia.

³³ Court document on file with Amnesty International.

³⁴ Uqn News, “اعتماد لائحة العمالة المنزلية ومن في حكمها” [“Adoption of the Regulations of Domestic Workers and Those of Similar Status”], 6 October 2023, <https://www.uqn.gov.sa/archive?p=23825>, p.12.

³⁵ Ministry of Human Resources and Social Development, “الموارد البشرية والتنمية الاجتماعية: تحدث قرار إمكانية نقل خدمات العمالة المنزلية بين أصحاب العمل بدون موافقة صاحب العمل وتمضيح حالات جديدة” [“Human Resources and Social Development: Updates the decision to transfer domestic workers’ services between employers without the employer’s approval and adds new cases”], 29 June 2022, <https://www.hrsd.gov.sa/ar/media-center/news/1133595>

³⁶ Ministry of Human Resources and Social Development, “The Ministry of Human Resources and Social Development launches the “Insurance Service” on domestic labor contracts for the first two years for new domestic workers via the Musaned Platform”, 7 January 2024, <https://www.hrsd.gov.sa/en/media-center/news/251220231>

³⁷ Ministry of Human Resources and Social Development, “The Ministry of Human Resources and Social Development launches the “Wage Protection Service” for domestic workers’ salaries”, 5 June 2024, <https://www.hrsd.gov.sa/en/media-center/news/130520241>

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